

**IN THE SUPREME COURT OF FLORIDA**

**IN RE: AMENDMENTS TO THE  
FLORIDA RULES OF EVIDENCE**

**CASE NO.: SC16–**

**CODE AND RULES OF EVIDENCE COMMITTEE  
THREE-YEAR CYCLE REPORT**

Peter A. Sartes, Chair of the Code and Rules of Evidence Committee (“CREC”), and John F. Harkness, Jr., Executive Director of The Florida Bar, file this Three-Year Cycle Report under Florida Rule of Judicial Administration 2.140(b). CREC has met on a regularly scheduled basis during the past three years to consider amendments to the Florida Legislation that would potentially impact the Florida Code of Evidence. The amendments CREC considered were to sections 90.702, 90.704, 766.102, and 90.803(24), Florida Statutes.

CREC is proposing that sections 90.702, 90.704, and 766.102, Florida Statutes, not be adopted as Rules of Evidence to the extent they are procedural. CREC is proposing that section 90.803, Florida Statutes, be adopted as a Rule of Evidence to the extent it is procedural.

As required by Rule 2.140(b)(2), the Committee’s proposals regarding sections 90.702, 90.704, and 766.102, Florida Statutes, were published for comments in the July 15, 2015, edition of *The Florida Bar News*. The Committee’s proposal regarding section 90.803, Florida Statutes, was mistakenly replaced in the initial publication by another recommendation the Committee was still considering so section 90.803, Florida Statutes, was published in the September 15, 2015, edition of *The Florida Bar News*. All of the proposals were posted on The Florida Bar’s website. *See* Appendix A.

A voluminous amount of comments were received in response to the July 15, 2015, publication. Those comments are discussed below within each specific CREC proposal. No comments were received with regard to the September 15, 2015, publication of section 90.803, Florida Statutes, for comment.

Also, as required by Rule 2.140(b)(2), CREC’s proposals were submitted to The Florida Bar Board of Governors (Board). CREC’s proposals were discussed at the Board’s July 24, 2015, meeting. The Board tabled voting on the proposals until

RECEIVED, 02/01/2016 01:38:37 PM, Clerk, Supreme Court

after CREC received and responded to comments. After considering the comments received, and making no changes to their proposals, CREC's proposals were submitted to the Board's October 16, 2015, meeting. The Board considered CREC's recommendations, as well as the minority position regarding the amendments to sections 90.702 and 90.704, Florida Statutes, and again chose to table their vote for more consideration. As required by Rule 2.140(b)(3), the Board considered CREC's proposals at its December 4, 2015, meeting and voted. The Board approved CREC's proposals regarding sections 90.702 and 90.704, Florida Statutes, by a vote of 33-9 and approved CREC's proposals regarding sections 766.102 and 90.803, Florida Statutes, by a vote of 37-0.

The Code and Rules of Evidence Committee respectfully submits the proposed recommendations for this Court's consideration for the following reasons:

**SEC. 90.702            TESTIMONY BY EXPERTS**

**SEC. 90.704            BASIS OF OPINION TESTIMONY BY EXPERTS**

The evidentiary standard by which an expert's testimony is deemed admissible, as amended by Chapter 2013-107, sections 1 and 2, Laws of Florida (*see* Appendix F), and codified in sections 90.702 and 90.704, Florida Statutes (*see* Appendix B – 1–B – 2), should not be adopted to the extent it is procedural. This recommendation was approved by CREC by a 16-14 vote. The Board of Governors concurred in this recommendation by a 33-9 vote.

Chapter 2013-107, Laws of Florida, specifically amends sections 90.702 and 90.704, Florida Statutes, adopting the expert witness qualification standard adopted by the United States Supreme Court in *Daubert v. Merrill Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and discarding the *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923) standard adopted by the Supreme Court of Florida in *Bundy v. State*, 471 So. 2d 9 (Fla. 1985) and *Stokes v. State*, 548 So. 2d 188 (Fla. 1989). The legislative amendment to section 90.702, Florida Statutes, reads:

If scientific, technical, or other specialized knowledge will assist the trier of fact in understanding the evidence or in determining a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify about it in the form of an opinion or otherwise, if:

- (1) The testimony is based upon sufficient facts or data;

(2) The testimony is the product of reliable principles and methods;  
and

(3) The witness has applied the principles and methods reliably to the facts of the case; ~~however, the opinion is admissible only if it can be applied to evidence at trial.~~

See Appendix F – 2. The legislative amendment to section 90.704, Florida Statutes, reads:

The facts or data upon which an expert bases an opinion or inference may be those perceived by, or made known to, the expert at or before the trial. If the facts or data are of a type reasonably relied upon by experts in the subject to support the opinion expressed, the facts or data need not be admissible in evidence. Facts or data that are otherwise inadmissible may not be disclosed to the jury by the proponent of the opinion or inference unless the court determines that their probative value in assisting the jury to evaluate the expert’s opinion substantially outweighs their prejudicial effect.

*Id.*

After the enactment of Chapter 2013-107, Laws of Florida (“*Daubert* bill”), CREC formed a working group to analyze the legislation. Citing *Massey v. David*, 979 So. 2d 931, 936–37 (Fla. 2008), the working group reported that, viewed through the lens of *Massey*, it seems clear that the *Daubert* bill is, at least in part if not in full, procedural in nature. The *Daubert* bill creates neither a right of action, a cause of action, or a defense; instead, it regulates the manner in which a party is permitted to use evidence to prosecute or defend a claim.

Though, the working group thus concluded: “Assuming that the *Daubert* Bill is procedural, at least in part, the Code and Rules of Evidence Committee [should] recommend its adoption...,” *id.*, and though discussion in 2013 appeared to support the *Daubert* bill as procedural, on October 17, 2014, CREC met to consider what should be its official recommendation. After debate, which included considering comments from the public and the report of the working group tasked with a more detailed review of the *Daubert* versus *Frye* issue, the Committee voted regarding a motion on what recommendation to make; 14 members voted in favor of adoption of the *Daubert* bill to the extent it is procedural, and 16 members voted against adoption of the *Daubert* bill to the extent it is procedural.

Upon completing the vote, members of the working group that analyzed the *Daubert* versus *Frye* issue were tasked with drafting a discussion of that analysis to serve as the majority view. *See* Appendix D. Members of the minority view were tasked with drafting a similar analysis. *See* Appendix E.

Based on a unanimous decision that this issue was of significant importance, CREC prepared an out-of-cycle report, utilizing the analyses of both the majority and minority views. This report was submitted to the Court on May 28, 2015. In a letter dated June 19, 2015, the Clerk of the Court instructed CREC to include its recommendation in this regularly scheduled Three-Year Cycle Report.

CREC now offers the following reasoning to support its recommendation that the Court not adopt the amendments to sections 90.702 and 90.704, Florida Statutes, to the extent they are procedural:

1. *The Committee recommends that the Court adhere to its precedent and not adopt the Daubert bill.*

Under Florida's separation of constitutional powers, the Supreme Court, not the Legislature, regulates practice and procedure in Florida courts. Art. II, § 3, Fla. Const; Art. V, § 2(a), Fla. Const. The admissibility of expert opinion evidence is a matter of procedure, subject only to the Court's authority. This is confirmed by the Court's continuing application of *Frye*, after the adoption of the evidence code:

Our specific adoption of that test after the enactment of the evidence code manifests our intent to use the *Frye* test as the proper standard for admitting novel scientific evidence in Florida, even though the *Frye* test is not set forth in the evidence code.

*Hadden v. State*, 690 So. 2d 573, 578 (Fla. 1997).

The Court adopted *Frye* in *Bundy v. State*, 471 So. 2d 9, 18 (Fla. 1985) and *Stokes v. State*, 548 So. 2d 188, 195 (Fla. 1989). And the Court has consistently held to the *Frye* procedure. For instance, the Court rejected the argument that the evidence code "did away with" the *Frye* procedure for admitting expert opinion evidence:

Since the *Frye* standard is not mentioned in the evidence code, several district courts concluded that the evidence code did away with this standard and replaced it with a relevancy standard. *See, e.g., Andrews v. State*, 533 So. 2d 841 (Fla. 5th DCA 1988), review denied, 542 So. 2d 1332 (1989);

*Kruse v. State*, 483 So. 2d 1383 (Fla. 4th DCA 1986), review dismissed, 507 So. 2d 588 (1987); *Hawthorne v. State*, 470 So. 2d 770, 782–86 (Fla. 1st DCA 1985). In *Kruse*, a case involving the issue of the admissibility of syndrome opinion evidence in a child-abuse prosecution, the Fourth District utilized the relevancy standard and found expert testimony concerning posttraumatic stress syndrome admissible. *Kruse*, 483 So. 2d at 1386. Other district courts relied upon this reasoning to find similar testimony admissible. In *Ward v. State*, 519 So. 2d 1082 (Fla. 1st DCA 1988), the district court cited *Kruse*'s relevancy standard with approval in finding expert testimony concerning child-abuse syndrome admissible. *See also Calloway v. State*, 520 So. 2d 665 (Fla. 1st DCA), review denied, 529 So. 2d 693 (Fla. 1988). ...

The question of the appropriate standard of admissibility of novel scientific evidence of any kind following the adoption of the evidence code was resolved by this Court in favor of the *Frye* test. ...

Our specific adoption of that test after the enactment of the evidence code manifests our intent to use the *Frye* test as the proper standard for admitting novel scientific evidence in Florida, even though the *Frye* test is not set forth in the evidence code.

*Hadden*, 690 So. 2d at 577–78 (citations omitted).

This Court has also continually refused to replace *Frye* with *Daubert*. In *Ramirez v. State*, 810 So. 2d 836, 843 n.8 (Fla. 2001), the Court stated:

[This] Court rejected the *Daubert* rule in favor of continued use of *Frye*. *See, e.g., Brim v. State*, 695 So. 2d 268, 271–72 (Fla. 1997) (“Despite the federal adoption of a more lenient standard in [*Daubert*], we have maintained the higher standard of reliability as dictated by *Frye*”); *Hadden v. State*, 690 So. 2d 573, 577 (Fla. 1997) (“The question of the appropriate standard of admissibility of novel scientific evidence of any kind following the adoption of the evidence code was resolved by this Court in favor of the *Frye* test.”); *Flanagan v. State*, 625 So. 2d 827, 829 n.2 (Fla. 1993) (“We are mindful that the United States Supreme Court recently construed Rule 702 of the Federal Rules of Evidence as superseding the *Frye* test. ... However, Florida continues to adhere to the *Frye* test for the admissibility of scientific opinions.”).

*Accord, Castillo v. E.I. DuPont De Nemours & Co.*, 854 So. 2d 1264, 1276 (Fla. 2003):

By considering the extrapolation of the data from the admittedly acceptable experiments, the Third District went beyond the requirements of *Frye*, which assesses only the validity of the underlying science. *Frye* does not require the court to assess the application of the expert's raw data in reaching his or her conclusion. We therefore conclude that the Third District erroneously assessed the Castillos' expert testimony under *Frye* by considering not just the underlying science, but the application of the data generated from that science in reaching the expert's ultimate conclusion. At least one commentator has [called] the Third District's analysis "essentially a Daubert analysis" because it focused on the expert's methodology and reasoning. Bert Black, *Expert Evidence in the Wake of the Daubert-Jones-Kumho Tire Trilogy*, SE01 ALI-ABA 125, \*169 (1999).

Later, in *Marsh v. Valyou*, 977 So. 2d 543, 547 (Fla. 2007), the Court reviewed federal case law and academic analysis on *Daubert* and reiterated: "Despite the Supreme Court's decision in *Daubert*, we have since repeatedly reaffirmed our adherence to the *Frye* standard for admissibility of evidence."

The Legislature seeks to undo *Marsh*, *Frye*, and other case law. Indeed, the Legislature's stated, but uncodified, intent is: (1) "to no longer apply the standard in *Frye*," (2) to instead "adopt the standards for expert testimony in the courts of this state as provided in *Daubert*," (3) to "requir[e] the courts of this state to interpret and apply the principles of expert testimony in conformity with specified United States Supreme Court decisions" (namely *Daubert* and its progeny), and (4) to go beyond *Daubert* and "prohibit in the courts of this state pure opinion testimony as provided in *Marsh*." Ch. 2013-107, Laws of Florida (preamble). (See Appendix F – 2.)

The Legislature's reach exceeded its grasp. As the Supreme Court made clear in *Dorsey v. State*:

It is well settled that such "prefatory language" cannot expand or restrict the otherwise unambiguous language of a statute.

"[T]he preamble is no part of the act, and cannot enlarge or confer powers nor control the words of the act, unless they are doubtful or ambiguous."

402 So. 2d 1178, 1180–81 (Fla. 1981) (quoting *Yazoo & M.V.R. Co. v. Thomas*, 132 U.S. 174, 188 (1889)). The amendments to the Florida Evidence Code within Chapter 2013-107, Laws of Florida, do not address *Marsh*; only the preamble to the legislation does. Accordingly, the Legislature’s preambulatory attempt to overcome *Marsh* is without force.

What is more, the *Daubert* bill, does not attempt to explain why the Florida Supreme Court, at the Legislature’s behest, should depart from *stare decisis* on an issue wholly within its own domain: practice and procedure for admitting expert testimony in Florida courts. The Court should follow the common law tradition and not depart from its precedent.

2. *The Committee recommends that the Court not adopt the Daubert bill because that adoption would undermine the right to jury trial.*

The effort of Chapter 2013-107, Laws of Florida, “to prohibit in the courts of this state pure opinion testimony as provided in *Marsh*” not only purports to overrule the Supreme Court’s procedural determinations, it also overlooks their source in the constitutionally guaranteed right to trial by jury. The long-established judicial practice of admitting pure opinion testimony did not garner the 2013 Legislature’s support, but the Supreme Court’s extensive discussion of such testimony and its utility in the trial setting shows that the procedure is to be looked upon with respect:

*Marsh*’s experts based their diagnoses and opinions about the cause of her fibromyalgia on a review of her medical history, clinical physical examinations, their own experience, published research, and differential diagnosis.

Experts routinely form medical causation opinions based on their experience and training. And there is always the possibility that two experts may reach dissimilar opinions based on their individual experience. However, a disagreement among experts does not transform an ordinary opinion on medical causation into a new or novel principle subject to *Frye*.

*Marsh*, 977 So. 2d at 548 (citations omitted).

Again citing multiple precedents, the Court explained:

“[P]ure opinion testimony, such as an expert’s opinion that a defendant is incompetent, does not have to meet *Frye*, because this type of testimony is

based on the expert’s personal experience and training. While cloaked with the credibility of the expert, this testimony is analyzed by the jury as it analyzes any other personal opinion or factual testimony by a witness.”

*Id.* at 548 (alteration in original) (quoting *Flanagan v. State*, 625 So. 2d 827, 828 (Fla. 1993)).

The Supreme Court addressed the fundamental, constitutional reason for its insistence on maintaining the utility of legitimate but competing expert opinion testimony to help juries decide cases on their merits:

Trial courts must resist the temptation to usurp the jury’s role in evaluating the credibility of experts and choosing between legitimate but conflicting scientific views. *See Castillo*, 854 So. 2d at 1275 (“[I]t is important to emphasize that the weight to be given to stated scientific theories, and the resolution of legitimate but competing scientific views, are matters appropriately entrusted to the trier of fact.”) (quoting *Berry [v. CSX Transp., Inc.]*, 709 So. 2d [552,] 589 n.14 [(Fla. 1st DCA 1998)]); *Rodriguez v. Feinstein*, 793 So. 2d 1057, 1060 (Fla. 3d DCA 2001) (same). A challenge to the conclusions of Marsh’s experts as to causation, rather than the methods used to reach those conclusions, is a proper issue for the trier of fact. *See U.S. Sugar [Corp. v. Henson]*, 823 So. 2d [104,] 110 [(Fla. 2002)]; *Castillo*, 854 So. 2d at 1270, 1272, 1276; *Rodriguez*, 793 So. 2d at 1060 (recognizing that “to involve judges in an evaluation of the acceptability of an expert’s opinions and conclusions would convert judges into fact-finders” to an extent not contemplated by Florida’s *Frye* jurisprudence).

*Marsh*, 977 So. 2d at 549–50. Thus, if the Legislature’s stated intent were to hold sway, litigants’ constitutional right to trial by jury would be diminished.

Although certain early First and Third District opinions proposed that Chapter 2013-107, Laws of Florida, supplanted the Supreme Court’s *Frye* jurisprudence, neither court addressed the *Daubert* bill’s abridgement of the right to jury trial.

In *Conley v. State*, 129 So. 3d 1120 (Fla. 1st DCA 2014), a Jimmy Ryce Act/sexually violent predator case, the trial court found the expert evidence not subject to *Frye* analysis. The First District did not discuss *Marsh* or the Court’s other precedents on pure opinion testimony or *Frye*, recited the enactment of Chapter 2013-107, Laws of Florida, and remanded the case to the trial court for it to consider the expert’s opinion under *Daubert* procedures. *Id.* at 1120–21.



In *Perez v. Bell South Telecommunications, Inc.*, 138 So. 3d 492 (Fla. 3d DCA 2014), the Third District affirmed a trial court’s exclusion of expert testimony and, alternatively, applied Chapter 2013-107, Laws of Florida. The appellant contended that the expert’s opinion was admissible as pure opinion testimony. The district court briefly noted “pure opinion” decisions, apparently feeling they were contrary to the exclusion in *Perez*, but made no reference to the right-to-jury-trial underpinnings of the Supreme Court’s long-standing approval of the proper use of pure opinion testimony. When the panel did footnote the Supreme Court’s ultimate authority on this subject, it said “We take comfort here in the fact that the Florida Supreme Court periodically adopts all legislative changes to the Florida Evidence Code to the extent they are procedural.” *Id.* at 498 n.12. This overlooked the fact that the Court had also previously refused to adopt a legislative amendment to the Code and Rules of Evidence. *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339 (Fla. 2000). And, contrary to the comfort taken by the Third District panel, the Supreme Court has more recently declined to adopt two legislative amendments. *In re Amendments to the Fla. Evidence Code*, 144 So. 3d 536 (Fla. 2014). The Third District opinion also said the Court had “already stricken all references to the *Frye* test from the Florida Rules of Juvenile Procedure and adopted the amendments to section 90.702,” citing *In re Amendments to the Fla. Rules of Juvenile Procedure*, 123 So. 3d 1128 (Fla. 2013). *Perez*, 138 So. 3d at 498, n.12. However, the district panel apparently did not consider that CREC’s recommendation to delete the single reference to *Frye* from a discovery rule on disclosing experts’ names merely avoided trying to predict whether the Supreme Court would ultimately adhere to *Frye* or adopt *Daubert*. Also, to the contrary of the Third District’s statement, the mere deletion of a case citation in a rule clearly does not mean the Supreme Court had “adopted the amendments to section 90.702.”

In *Gaiimo v. Florida Autosport, Inc.*, 154 So. 3d 385 (Fla. 1st DCA 2014), a First District panel viewed Chapter 2013-107, Laws of Florida, as overruling the Supreme Court’s decision and rationale in *Marsh*. However, it is the Supreme Court which will decide whether it has been overruled by the preamble to the legislation. Also, since *Gaiimo* was a workers’ compensation case without a jury trial, the opinion did not confront the right-to-jury-trial basis for pure opinion expert testimony. Finding the facts in civil jury trials and criminal jury trials requires compliance with the constitutional right to trial by jury, as reflected in the civil context by the Supreme Court’s decision in *Marsh*.

The First and Third Districts’ early opinions did not explain why the Supreme Court should depart from its precedent and adopt legislation raising

constitutional concerns. *In re Amendments to the Fla. Evidence Code*, 782 So. 2d 339 (Fla. 2000) (declining to adopt Chapter 98–2, section 1, Laws of Florida, due to constitutional concerns); *In re Amendments to the Fla. Evidence Code*, 144 So. 3d 536 (Fla. 2014) (declining to adopt Chapter 2011-233, section 10, Laws of Florida, due in part to constitutional concerns). Consequently, the Supreme Court should not find those opinions persuasive. And, given the impact of Chapter 2013-107, Laws of Florida, on the right to trial by jury, the Supreme Court should not adopt it.

More recently, a First District panel did recognize that “even under *Daubert* ... [the] gatekeeping function was not intended to supplant the adversary system or the role of the jury: vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. *Adams [v. Lab. Corp. of Am.]*, 760 F.3d [1322,] 1334 [11th Cir. 2014].” *Baan v. Columbia County*, 2015 WL 8114622, at \*5 (Fla. 1st DCA Dec. 8, 2015) (citation and internal quotation marks omitted).

3. *The Committee recommends that the Court not adopt the Daubert bill because that adoption would overburden the courts and impede the ability to prove cases on their merits.*

This unfunded legislative mandate imposes time, fiscal, and resource burdens on trial (criminal and civil) and appellate courts of Florida.

The *Daubert* procedure addresses all expert testimony, not just that based on new and novel science. *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147–49 (1999); Fed. R. Evid. 702. Because the *Daubert* inquiry is designed to cover more areas, with a multi-factorial analysis, the areas subject to challenge are greatly expanded and the hearings are more time-consuming and demanding. Thus, parties in federal cases governed by *Daubert* may, and frequently do, move to strike all the experts offered by the other side. *See, e.g., Hendrix v. Evenflo Co., Inc.*, 255 F.R.D. 568, 575 n.4 (N.D. Fla. 2009) (54-page *Daubert* opinion on twelve experts where the record “was voluminous, filling 23 binders ... comprising literally thousands of pages”). Indeed, federal courts commonly must conduct multi-day *Daubert* hearings at substantial cost in time and money. *See, e.g., Finestone v. Florida Power & Light Co.*, No. 03–14040–CIV, 2006 WL 267330, at \*4 (S.D. Fla. Jan. 6, 2006) (four-day *Daubert* hearing); *Allapattah Servs., Inc. v. Exxon Corp.*, 61 F.Supp.2d 1335, 1336, 1341 n.10 (S.D. Fla. 1999) (“an extensive *Daubert* hearing over six days”).

The need to schedule and conduct these hearings, and then write lengthy *Daubert* opinions, delays justice and consumes scarce judicial resources. In an era of restricted funding for Florida courts, expenses and resource use are real concerns. The additional burden even extends to appellate courts. In the federal courts, only a trial judge's abuse of discretion can produce a reversal after long, complex, tedious *Daubert* proceedings. *General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997) ("We hold, therefore, that abuse of discretion is the proper standard by which to review a district court's decision to admit or exclude scientific evidence."); *accord Kumho Tire Co.*, 526 U.S. at 141–42. To the contrary, after long, complex, tedious *Daubert* proceedings, Florida appellate courts would review *de novo*:

We specifically note that the appropriate standard of review of a Frye issue is *de novo*. Thus, an appellate court reviews a trial court's ruling as a matter of law rather than under an abuse-of-discretion standard.

*Hadden, supra*, 690 So. 2d at 579 (citations and footnote omitted).

Florida's judges have not been provided the level of resources and time available to their federal counterparts. The impact of *Daubert* procedures in Florida state courts would only worsen this disparity.

Litigants in all kinds of cases also bear an increased burden. Having to provide a lengthy expert report or answers to interrogatories, then have an expert witness prepare to testify in a deposition and a *Daubert* hearing, then defend a *Daubert* motion, all with the hope of being allowed to do it all over again in trial, is very expensive. *Daubert* "represents another procedural obstacle, another motion, another hearing, and another potential issue on appeal, all causing more delay and expense." Arthur R. Miller, *Simplified Pleading, Meaningful Days in Court, and Trials on the Merits: Reflections on the Deformation of Federal Procedure*, 88 N.Y.U. L. Rev. 286, 313–14 (Apr. 2013).

During CREC discussions, concerns were raised that litigation offering expert testimony under *Daubert* increases litigation costs, a prospect that only wealthy litigants can bear. Family and juvenile cases were raised as an example, since these cases often involve parties with lesser financial capabilities who must somehow participate in *Daubert* hearings or surrender their rights on the merits due to a lack of resources to fund these evidentiary fights. Contingency cases were mentioned as another example, in cases where some litigants will be unable to find counsel to represent them due to increased expenses associated with the use of

experts. A final example was presented in hourly rate cases when many litigants may be unable to afford to pursue the merits of their claims because of the expense of *Daubert* hearings guaranteed to come.

4. *The Court should not adopt the Daubert bill because the legislation produces an unworkable standard that produces arbitrary and unintended results.*

The leading treatise on federal civil procedure, *Federal Practice and Procedure*, described the standard as unworkable. Wright & Graham, *Federal Practice and Procedure: Evidence* §5168.1 (2011). The treatise suggested that flexible tests as announced in *Daubert* would produce arbitrary results. *Id.*

Additionally, the *Daubert* standard may lead to inconsistent results. In his *Daubert* dissent, Chief Justice William Rehnquist expressed a concern that courts would be unable to implement the *Daubert* standard because judges lack the necessary scientific training. He noted that *Daubert* would incorrectly impose on judges “the obligation [and] the authority to become amateur scientists.” *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 600–01 (1993). Referring to his colleagues, he wrote that “our reach can so easily exceed our grasp.” *Id.* Anticipating the certain eventual inconsistency among courts, he added: “[Q]uestions will surely arise when hundreds of district judges try to apply its teaching....” *Id.* at 600.

However, to accommodate the inevitable, in the next *Daubert* case Chief Justice Rehnquist adopted a liberal standard of review intended to ease the *Daubert* burden imposed on federal district judges. “Cases arise where it is very much a matter of discretion with the court whether to receive or exclude the evidence; but the appellate court will not reverse in such a case, unless the ruling is manifestly erroneous.” *General Electric Co.*, 522 U.S. at 142.

Federal litigation is worlds apart from what Florida trial judges face day in and day out — ever-expanding dockets in every kind of case with ever-in-doubt resources to handle cases usually involving at least some parties with limited finances. Those cases involve expert witnesses too.

Another problem with the *Daubert* bill is that the Legislature stated its intent to bring Florida in line with the Federal Rules of Evidence after *Daubert*, it did not address one of the key Federal-Florida differences that would persist if the *Daubert* procedure were to become part of Florida’s Rules of Evidence. Since their adoption, the Federal Rules of Evidence have allowed, as an exception to the hearsay rule, the use of statements in learned treatises as substantive evidence. Fed.

R. Evid. 803(18). But, for reasons unexplained, Chapter 2013-107, Laws of Florida, failed to address Florida's statutory and judicial rejection of the use of such statements "as substantive evidence since the treatise would be hearsay if offered as substantive evidence." *Donshik v. Sherman*, 861 So. 2d 53, 56 (Fla. 3d DCA 2003); *Green v. Goldberg*, 630 So. 2d 606, 609 (Fla. 4th DCA 1993). The Legislature may have thought the amendments to sections 90.702 and 90.704, Florida Statutes, would operate to bring Florida expert witness testimony procedure in line with the Federal Rules of Evidence, but they do not.

## 5. Conclusion

The Legislature's enactment of Chapter 2013-107, Laws of Florida, encounters the constitutional authority of the Florida Supreme Court with respect to rules of procedure. As the statute is procedural, the Legislature's attempt to abolish the *Frye* standard, a settled procedure adopted by the Supreme Court three decades ago and consistently adhered to, and the legislative decision to impose on courts the complications and complexities of the *Daubert* evidentiary procedure, must be tested with respect to the Florida Supreme Court's exclusive constitutional authority over practice and procedure in the court system. Further, the Legislature's stated intent to overrule *Marsh* and cast aside pure opinion testimony, a long-established procedure for admitting expert witness opinion testimony, faces not only the Court's exclusive constitutional rule-making authority, but also, and even more fundamentally, the constitutional right to trial by jury.

As previously discussed, CREC published its recommendation that the Court decline to adopt Chapter 2013-107, sections 1 and 2, Laws of Florida, to the extent it is procedural in the July 15, 2015, edition of *The Florida Bar News*. In regard to its recommendation regarding sections 90.702 and 90.704, Florida Statutes, CREC received 81 comments in support of CREC's recommendation to maintain the *Frye* standard (*see* Appendix C – 1–C – 91) and 29 comments in opposition of CREC's recommendation to not adopt the *Daubert* standard (*see* Appendix C – 92–C – 479). Many of the comments, though singularly filed, represented the viewpoints of multiple practitioners within the commenting law firm or organization.

CREC appreciates the volume of interest and expresses its appreciation for the comments submitted. Upon reviewing all of the comments, CREC determined that none of the comments contained any substantive arguments that had not already been considered by CREC in reaching its recommendation. Based on that determination, CREC concluded that there was no need to re-vote the matter.

Thus, the Code and Rules of Evidence Committee recommends that the Court not adopt Chapter 2013-107, sections 1 and 2, Laws of Florida, to the extent it is procedural.

**SEC. 766.102      MEDICAL NEGLIGENCE; STANDARDS OF RECOVERY; EXPERT WITNESS**

The evidentiary standard governing the admission of expert witness testimony in medical malpractice cases as amended by Chapter 2013-108, section 2, Laws of Florida (*see* Appendix G), should not be adopted to the extent it is procedural. This recommendation was approved by CREC by a 24-0-1 vote. The Board of Governors concurred in this recommendation by a 37-0 vote.

Upon review of Chapter 2013-108, section 2, Laws of Florida, CREC concluded that the amendments to section 766.102, Florida Statutes, appear to restrict section 90.702, Florida Statutes, which generally governs the admission of expert witness testimony. Because the amendments are procedural or contain procedural aspects, CREC concluded that it should analyze the legislation and provide a recommendation to the Florida Supreme Court on whether a rule amendment is warranted. The legislative amendments to section 766.102, Florida Statutes, read:

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless the person is a health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; ~~or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have the prior experience treating similar patients;~~ and

2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same ~~or similar specialty that includes the evaluation,~~

~~diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;~~

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same ~~or similar~~ specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same ~~or similar~~ specialty.

~~(14) This section does not limit the power of the trial court to disqualify or qualify an expert witness on grounds other than the qualifications in this section.~~

These amendments provide that an expert witness may give standard-of-care testimony in a medical malpractice case only if the expert witness and the defendant have the same specialty, even if that expert is otherwise qualified.

Chapter 2013-108, section 2, Laws of Florida (“Same Specialty Amendment”), appears to be in large part procedural in nature because it regulates “the course, form, manner, means, method, mode, order, process or steps by which a [medical malpractice litigant] enforces substantive rights.” *Massey v. David*, 979 So. 2d 931, 937 (Fla. 2008) (emphasis removed and quoting *Haven Fed. Sav. & Loan Ass’n v. Kirian*, 579 So. 2d 730, 732 (Fla. 1991)).

Based on a unanimous decision that this issue was of significant importance, CREC prepared an out-of-cycle report. This report was submitted to the Court on May 28, 2015. In a letter dated June 19, 2015, the Clerk of the Court instructed CREC to include its recommendation in this regularly scheduled Three-Year Cycle Report.

CREC now offers the following reasoning to support its recommendation that the Court not adopt the amendment to section 766.102, Florida Statutes, and its apparent limitation of section 90.702, Florida Statutes, to the extent it is procedural:

Before the Same Specialty Amendment, section 766.102, Florida Statutes, read, in part:

766.102 Medical negligence; standards of recovery; expert witness.

(5) A person may not give expert testimony concerning the prevailing professional standard of care unless the person is a health care provider who holds an active and valid license and conducts a complete review of the pertinent medical records and meets the following criteria:

(a) If the health care provider against whom or on whose behalf the testimony is offered is a specialist, the expert witness must:

1. Specialize in the same specialty as the health care provider against whom or on whose behalf the testimony is offered; or specialize in a similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients; and

2. Have devoted professional time during the 3 years immediately preceding the date of the occurrence that is the basis for the action to:

a. The active clinical practice of, or consulting with respect to, the same or similar specialty that includes the evaluation, diagnosis, or treatment of the medical condition that is the subject of the claim and have prior experience treating similar patients;

b. Instruction of students in an accredited health professional school or accredited residency or clinical research program in the same or similar specialty; or

c. A clinical research program that is affiliated with an accredited health professional school or accredited residency or clinical research program in the same or similar specialty.

Fla. Stat. § 766.102 (2012), and allowed expert witnesses qualified under section 90.702, Florida Statutes, to opine regarding the standard of care applicable to healthcare providers whose specialty was the same or similar to the expert's.

Moreover, as explained in *Weiss v. Pratt*, 53 So. 3d 395 (Fla. 4th DCA 2011), expert witnesses qualified under section 90.702, Florida Statutes, could offer opinions even if they did not have the same or a similar specialty, provided the expert had sufficient experience. In that case, a football player sued an orthopedic surgeon who, while serving as a team physician, provided non-specialized treatment to that player during the game. *Id.* at 401. The court found



that an emergency room physician was qualified to provide standard of care testimony based on the facts of the case. *Id.* The court further said:

It would certainly be easier to require the precise area of specialization, but then that requirement might devolve into subspecialty, sub-sub-specialty until there was no one with the same sub-sub-sub-specialty. The statute as written allows for sufficient expertise to ensure fairness. It does that by requiring either the same specialty or an expert with sufficient expertise to qualify.

*Id.*

Due to the Same Specialty Amendment, section 766.102, Florida Statutes, restricts standard of care testimony regardless of the testimony's admissibility under section 90.702, Florida Statutes. Now, an expert witness may opine regarding the standard of care applicable to only a healthcare provider whose specialty is the same as the expert's.

On June 27, 2014, with 25 voting members present, CREC voted by acclamation (except for one abstention) to recommend against adoption of the Same Specialty Amendment to the extent it is procedural. CREC reasoned as follows:

CREC believes that the Same Specialty Amendment contradicts longstanding law that allowed qualified experts to testify on matters that would aid the jury pursuant to section 90.702, Florida Statutes. Before the amendment, section 766.102(5), Florida Statutes, did not limit the power of a trial court to disqualify or qualify an expert witness on grounds other than specialization in the same or similar specialty. During discussions of CREC, the following examples were presented as problematic: a neurosurgeon could testify as to the standard of care applicable to an orthopedic surgeon regarding performance of procedures routinely performed by both specialties; or an internist could testify as to the standard of care applicable to a family medicine practitioner regarding treatment routinely provided by both specialties for the same conditions. In other words, qualified experts could testify as to standard of care. To support CREC's position, CREC points out that section 766.102(14), Florida Statutes, before the Same Specialty Amendment, specifically preserved a court's authority to admit expert testimony pursuant to section 90.702, Florida Statutes: "This section does not limit the power of the trial court to disqualify or qualify an expert witness on grounds other than the qualifications in this section."

CREC observes that the Same Specialty Amendment effectively removes this language. The Same Specialty Amendment removes the trial court's authority to apply section 90.702, Florida Statutes, where the otherwise qualified expert does not share the defendant's specialty. It is CREC's opinion that this amendment imposes a bright-line rule undermining the discretion section 90.702, Florida Statutes, gives judges to allow otherwise qualified expert witnesses to testify. The amendment prevents the trial court from allowing testimony even if the court finds that the expert is clearly qualified on grounds other than training and experience in the same specialty as the defendant. CREC is concerned that this statute will force a trial court, in medical malpractice cases only, to disregard the well-established rule that experts with appropriate knowledge, skill, experience, training, or education may provide testimony which assists the trier of fact in understanding the evidence or determining a fact in issue.

An additional concern is that the Same Specialty Amendment will unfairly prejudice the ability of medical malpractice litigants to retain qualified medical experts. Similar providers will not be able to provide standard of care testimony. Regardless of the type of treatment or condition at issue, or what types of physicians routinely provide identical treatment for the condition, the parties are bound by the defendant's specialty. This is true even when practitioners of the defendant's specialty do not typically treat the subject condition.

The Court recently declined to adopt other legislative changes to chapter 766 that limited medical malpractice litigants' ability to retain qualified expert witnesses. *In re Amendments to the Fla. Evidence Code*, 144 So. 3d 536, 537 (Fla. 2014) (declining to adopt chapter 2011-233, section 10, Laws of Florida). That legislation, by creating section 766.102(12), Florida Statutes, precludes standard of care testimony in medical malpractice cases unless the testifying expert is licensed as a practitioner by the State of Florida or obtains a witness certificate. The Court declined to adopt this requirement, citing concerns that "the provision is unconstitutional, would have a chilling effect on the ability to obtain expert witnesses, and is prejudicial to the administration of justice." *In re Amendments to the Fla. Evidence Code*, 144 So. 3d at 537. For those same reasons, the Court should decline to adopt the Same Specialty Amendment to the same statute.

As previously discussed, CREC published its recommendation that the Court decline to adopt Chapter 2013-108, section 2, Laws of Florida, to the extent it is procedural in the July 15, 2015, edition of *The Florida Bar News*. In regard to its recommendation regarding section 766.102, Florida Statutes, CREC received a comment from Attorney Sara Courtney Baigorri and a comment from Attorney

Chris Limberopoulos. *See* Appendix C – 480–C – 482. Both comments expressed support of CREC’s recommendation and CREC would like to express its appreciation for their comments

The Code and Rules of Evidence Committee thus respectfully recommends that the Court decline to adopt Chapter 2013-108, section 2, Laws of Florida, to the extent it is procedural.

**SEC. 90.803            HEARSAY EXCEPTIONS; AVAILABILITY OF  
DECLARANT IMMATERIAL**

The hearsay exception relating to reports of abuse by elderly or disabled adults as amended by Chapter 2014-200, section 1, Laws of Florida (*see* Appendix H), and codified at section 90.803(24), Florida Statutes, should be adopted to the extent it is procedural. This recommendation was approved by CREC by a 24-1-0 vote. The Board of Governors concurred in this recommendation by a 37-0 vote.

Chapter 2014-200, Laws of Florida, specifically amends section 90.803(24), Florida Statutes, removing the allowance of admitting nontestimonial statements where the witness testifies. The legislative amendments to section 90.803(24), Florida Statutes, read:

**(24) Hearsay exception; statement of elderly person or disabled adult.**

(a) Unless the source of information or the method or circumstances by which the statement is reported indicates a lack of trustworthiness, an out-of-court statement made by an elderly person or disabled adult, as defined in s. 825.101, describing any act of abuse or neglect, any act of exploitation, the offense of battery or aggravated battery or assault or aggravated assault or sexual battery, or any other violent act on the declarant elderly person or disabled adult, not otherwise admissible, is admissible in evidence in any civil or criminal proceeding if:

1. The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability. In making its determination, the court may consider the mental and physical age and maturity of the elderly person or disabled adult, the nature and duration of the abuse or offense, the relationship of the victim to the offender, the reliability of the assertion, the reliability of the elderly person or disabled adult, and any other factor deemed appropriate; and

2. The elderly person or disabled adult ~~either:~~

a. ~~Testifies; or~~

b. ~~is unavailable as a witness, provided that there is corroborative evidence of the abuse or offense. Unavailability shall include a finding by the court that the elderly person's or disabled adult's participation in the trial or proceeding would result in a substantial likelihood of severe emotional, mental, or physical harm, in addition to findings pursuant to s. 90.804(1).~~

(b) In a criminal action, the defendant shall be notified no later than 10 days before the trial that a statement which qualifies as a hearsay exception pursuant to this subsection will be offered as evidence at trial. The notice shall include a written statement of the content of the elderly person's or disabled adult's statement, the time at which the statement was made, the circumstances surrounding the statement which indicate its reliability, and such other particulars as necessary to provide full disclosure of the statement.

(c) The court shall make specific findings of fact, on the record, as to the basis for its ruling under this subsection.

In analyzing Chapter 2014-200, section 1, Laws of Florida, CREC reviewed the legislative staff analysis to determine the legislative intent of the amendment. According to the staff analysis, the 2014 amendment is meant to conform the hearsay exception to *State v. Hosty*, 944 So. 2d 255 (Fla. 2006), and to the U.S. Supreme Court's opinion in *Crawford v. Washington*, 541 U.S. 36 (2004).

In *Crawford*, the U.S. Supreme Court held that both unavailability and a prior opportunity for cross-examination are required to admit testimonial statements in criminal cases by specifically stating that “[w]here testimonial evidence is at issue, ...the Sixth Amendment demands what the common law required: unavailability and a prior opportunity for cross-examination.

In *Hosty*, consistent with *Crawford*, this Court said that even where the witness is unavailable, testimonial statements are not admissible if there is no opportunity for prior cross-examination. This Court further held that the pre-amendment exception violated the Confrontation Clause as applied to *testimonial* statements by a mentally disabled adult. The court deemed the exception constitutional as applied to *nontestimonial* statements by a mentally disabled adult. The Court said nontestimonial statements by a disabled adult “are admissible

provided that the State establishes a proper factual predicate, as explained above, and that the witness *either testifies or is unavailable* in accordance with the statute.” *Id.* at 267 (emphasis added). Thus, *Hosty* explicitly approved admission of nontestimonial statements where the witness testifies.

The legislative staff analysis recognizes that, in *Hosty*, this Court held that the Confrontation Clause requires the declarant to be unavailable for testimonial hearsay statements to be admissible. However, the analysis does not mention that *Hosty* approved admission of nontestimonial statements where the witness testifies. The analysis also does not mention the amendment’s application in civil cases.

CREC’s review of Chapter 2014-200, section 1, Laws of Florida, and the corresponding legislative staff analysis, leads it to conclude that the analysis is correct, but that it may be incomplete and the resulting amendment overreaching. The amended statute would remain unconstitutional as to testimonial statements in criminal cases where there has been no opportunity for prior cross-examination while it eliminates (potentially) constitutionally permissible application to nontestimonial statements in the criminal context and all applicable statements in civil cases.

Despite these observations, CREC observes that the requirement for prior cross-examination as to testimonial statements still applies as a matter of law, so the amendment’s elimination of the testifying language is appropriate in this context. Additionally, although the governing law requires an opportunity for cross-examination, omission of that requirement is appropriate because case law imposes it regarding testimonial statements while it is not required as to nontestimonial statements in criminal cases or any such statements in civil cases.

The Code and Rules of Evidence Committee thus respectfully recommends that the Court adopt Chapter 2014-200, section 1, Laws of Florida, as a Rule of Evidence to the extent it is procedural.

WHEREFORE, the undersigned respectfully requests that the Court not adopt sections 90.702, 90.704, and 766.102, Florida Statutes, to the extent they are procedural, and to adopt section 90.803(24), Florida Statutes, to the extent it is procedural.

Respectfully submitted on February 1, 2016.

/s/ Peter Anthony Sartes, II  
Peter Anthony Sartes, II, Chair

/s/ John F. Harkness, Jr.  
John F. Harkness, Jr., Executive

Code and Rules of Evidence Committee  
Law Offices of Tragos, Sartes & Tragos  
601 Cleveland Street, Suite 800  
Clearwater, FL 33755-4169  
727/441-9030  
peter@greeklaw.com  
Florida Bar No. 582905

Director  
The Florida Bar  
651 East Jefferson Street  
Tallahassee, FL 32399-2300  
850/561-5758  
jharkness@flabar.org  
Florida Bar No. 123390

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Code and Rules of Evidence Committee Three-Year Cycle Report was served through the Florida Courts E-Filing Portal or by U.S. mail on February 1, 2016, to:

William Harrison Ogle  
Ogle Law LLC  
444 Seabreeze Boulevard, Suite 800  
Daytona Beach, Florida 32118-3953  
meri@oglelawfirm.com

William Clay Mitchell, Jr.  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Floor 16  
Orlando, Florida 32801-2414  
CMitchell@forthepeople.com

Tom Brown  
The Nation Law Firm  
570 Crown Oak Centre Drive  
Longwood, Florida 32750  
tdemetrius@nationlaw.com  
tbrown@nationlaw.com

Wendy F. Lumish  
Carlton Fields Jordan Burt  
100 Southeast Second Street, Suite 4200  
Miami, Florida 33131-2133  
wlumish@carltonfields.com

Jeffrey A. Cohen  
Carlton Fields Jordan Burt  
100 Southeast Second Street, Suite 4200  
Miami, Florida 33131-2133  
jacohen@carltonfields.com

Steven E. Earle  
Morgan and Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202-3433  
Baustin@forthepeople.com

Sean C. Domnick  
Domnick Law PL  
11701 Lake Victoria Gardens Avenue  
Suite 3201  
Palm Beach Gardens, Florida 33410  
eservice@domnicklaw.com

Sara Courtney Baigorri  
Courtney Law Firm  
110 Merrick Way, Suite 3A  
Coral Gables, Florida 33134  
Courtneylawfirm@gmail.com

Roy C. Young  
Young, van Assenderp and Qualls, P.A.  
216 South Monroe Street  
Tallahassee, Florida 32301-1824  
ryoung@yvlaw.com

Robert M. Rudnicki  
Raymond James Financial, Inc.  
880 Carillon Parkway  
Post Office Box 23614  
Saint Petersburg, Florida 33716  
Robert.Rudnicki@raymondjames.com

Robert T. Joyce  
Joyce and Reyes  
307 South Hyde Park Avenue  
Tampa, Florida 33606-2233  
staff@jr-legal.com

Robert E. Anderson, Jr.  
Yeslow and Koeppel, P.A.  
1617 Hendry Street, 2nd Floor  
The Richards Building  
Fort Myers, Florida 33901  
robert.anderson@henlaw.com

Rick Ellsley  
Ellsley Sobol, P.L.  
BG Capital Building  
1250 South Pine Island Road, Suite 225  
Plantation, Florida 33324  
becky@ellsleysobol.com  
ellsley@ellsleysobol.com

Michael R. D'Lugo  
Wicker, Smith, O'Hara, McCoy and  
Ford, P.A.  
Bank of America Center, Suite 1000  
390 North Orange Avenue  
Post Office Box 2753  
Orlando, Florida 32802  
ORLCrtpleadings@wickersmith.com  
rowen@wickersmith.com

Paul Pritchard  
The Nation Law Firm  
570 Crown Oak Centre Drive  
Longwood, Florida 32750

Robert J. Hanreck  
Robert J. Hanreck, P.A.  
40 Northwest 3rd Street, Penthouse 4  
Miami, Florida 33128  
rhanreck@hanreck.com

Steven G. Koeppel  
Yeslow and Koeppel, P.A.  
1617 Hendry Street, 2nd Floor  
The Richards Building  
Fort Myers, Florida 33901  
kris@yklegal.com

Richards H. Ford  
Wicker, Smith, O'Hara, McCoy and  
Ford, P.A.  
Bank of America Center, Suite 1000  
390 North Orange Avenue  
Post Office Box 2753  
Orlando, Florida 32802  
ORLCrtpleadings@wickersmith.com  
seichner@wickersmith.com

Philip Freidin  
Freidin Dobrinsky Brown and  
Rosenblum, P.A.  
2 South Biscayne Boulevard, Suite 3100  
Miami, Florida 33131-1812  
pf@fblawyers.net  
ss@fblawyers.net  
pleadings@fblawyers.net

Patrick T. DiPietro  
Patrick T. DiPietro Law LLC  
8083 Northwest 66 Street  
Miami, Florida 33166



ppritchard@nationlaw.com

A. Crosby Crane  
Morgan and Morgan, P.A.  
201 North Franklin Street, Suite 700  
Tampa, Florida 33602  
accpleadings@ForThePeople.com

Adam Brum  
Morgan and Morgan, P.A.  
201 North Franklin Street, Suite 700  
Tampa, Florida 33602  
ABrum@ForThePeople.com

Linda Jude, Executive Director  
Florida Defense Lawyers Association  
Post Office Box 260037  
Tampa, Florida 33685  
ljude@fdla.org

Harold H. Kim  
Executive Vice President  
United States Chamber Institute for  
Legal Reform  
1615 H Street, Northwest  
Washington, D.C. 20062  
hkim@uschamber.com

Brian R. Denney  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
\_bdenneyteam@searcylaw.com

C. Calvin Warriner  
Searcy Denney Scarola Barnhart and

Patrick@DefendProperty.com

A. Scott Noecker  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 1600  
Orlando, Florida 32802-4979  
snoecker@forthepeople.com

Andrew S. Bolin  
Beytin, McLaughlin, McLaughlin,  
O'Hara, Bocch  
201 North Franklin Street, Suite 2900  
Tampa, Florida 33602-5817  
asb@law-fla.com

Andrew Needle  
Needle and Ellenberg, P.A.  
1401 Brickell Avenue, Suite 900  
Miami, Florida 33131  
ANeedle@nelaw.net

William L. Kirk, Jr.  
Rumberger, Kirk, and Caldwell, P.A.  
Lincoln Plaza, Suite 1400  
300 South Orange Avenue  
Post Office Box 1873  
Orlando, Florida 32802-1873  
bkirk@rumberger.com

Barry L. Davis  
Thornton Davis Fein  
1221 Brickell Avenue, Suite 1600  
Miami, Florida 33131-3247  
davis@tdflaw.com

Carlos R. Diez-Arguelles  
Diez-Arguelles and Tejedor, P.A.

Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
ccwteam@searcylaw.com

Charles T. Moore  
Morgan and Morgan, P.A.  
201 North Franklin Street, Floor 17  
Tampa, Florida 33602-5157  
cmoore@forthepeople.com

Chelsie M. Lamie  
Rebein Bangerter Rebein, P.A.  
102 West Whiting Street, Suite 500  
Tampa, Florida 33602  
chelsie@rbr3.com

C. Coleman G. Edmunds, Senior Vice  
President and Deputy General Counsel  
AutoNation, Inc.  
200 Southwest 1st Avenue, Suite 1400  
Fort Lauderdale, Florida 33301-1875

Damien Prosser  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 1600  
Orlando, Florida 32801  
dprosser@forthepeople.com

Daniel J. Fleming  
Melkus, Fleming and Gutierrez, P.L.  
800 West De Leon Street  
Tampa, Florida 33606  
djf@mfglaw.com

David B. Moffett  
Morgan and Morgan, P.A.  
20 North Orange Avenue, 4th Floor

505 North Mills Avenue, Suite 100  
Orlando, Florida 32803-5369  
mail@theorlandolawyers.com

Charles M. Trippe, Jr.  
Moseley, Prichard, Parrish, Knight and  
Jones  
501 West Bay Street  
Jacksonville, Florida 32202-4428  
cmtrippe@mppkj.com

Christopher S. Polaszek  
Morgan and Morgan, P.A.  
201 One Tampa City Center, Suite 700  
Tampa, Florida 33602-5138  
csppladings@forthepeople.com

Craig Stewart  
Morgan and Morgan, P.A.  
201 North Franklin Street, 6th Floor  
Tampa, Florida 33602  
CraigStewart@forthepeople.com

Daneil McAuliffe  
H. Dennis Rogers, P.A.  
28163 U.S. Highway 19 North  
Suite 200  
Clearwater, Florida 33761-2696  
hdrlaw@tampabay.rr.com  
dmcauliffe@tampabay.rr.com

Darrell W. Kropog  
Morgan and Morgan, P.A.  
201 North Franklin Street  
Tampa, Florida 33602-5182  
dkropog@forthepeople.com

W. Dennis Brannon  
Brannon and Brannon  
Post Office Box 5619

Orlando, Florida 32801  
DMoffett@ForThePeople.com

Fort Walton Beach, Florida 32549  
dennis@brannoncanhelp.com

Derrick Connell  
Morgan and Morgan, P.A.  
1775 West Hibiscus Boulevard  
Suite 102  
Melbourne, Florida 32901  
dconnell@ForThePeople.com

Erin O. O'Brien  
CSX Transportation, Inc.  
Law Department  
500 Water Street, J150  
Jacksonville, Florida 32202  
erin\_obrien@CSX.com

Francis M. McDonald, Jr.  
McDonald Toole Wiggins, P.A.  
111 N. Magnolia Avenue, Suite 1200  
Orlando, Florida 32801  
fmcDonald@mtwlegal.com

Frank M. Petosa  
Morgan and Morgan, P.A.  
Complex Litigation Group  
600 North Pine Island Road, Suite 400  
Plantation, Florida 33324  
fpetosa@forthepeople.com

Gary Iscoe  
Steinger Iscoe and Greene, P.A.  
1645 Palm Beach Lakes Boulevard  
Floor 9  
West Palm Beach, Florida 33401-2204  
GIscoe@InjuryLawyers.com

Eugene G. Beckham  
Beckham and Beckham, P.A.  
1550 Northeast Miami Gardens Drive  
Suite 504  
Miami, Florida 33179  
rmp@bekhamlaw.com  
egb@beckhamlaw.com

Gregorio A. Francis  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Floor 16  
Orlando, Florida 32801-4624  
gfrancis@forthepeople.com

Gregory D. Prysock  
Morgan and Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202-3433  
jillj@forthepeople.com  
gprysock@forthepeople.com

Gregory S. Berry  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 900  
Orlando, Florida 32801  
gberry@forthepeople.com

Gregory M. Krak  
The Nation Law Firm  
570 Crown Oak Centre Drive  
Longwood, Florida 32750  
gkrak@nationlaw.com

William B. Bowles, Jr.

Dane E. Jordan

Morgan and Morgan, P.A.  
201 North Franklin Street, Floor 7  
Tampa, Florida 35602  
bbowles@forthepeople.com

C. Todd Alley  
Alley Clark Greiwe  
701 East Washington Street  
Post Office Box 3127  
Tampa, Florida 33601-3127  
talley@tampatriallawyers.com

Darryl L. Lewis  
Searcy Denney Scarola Barnhart and  
ShIPLEY, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409-6601  
\_lewisteam@searcylaw.com

T. Hardee Bass, III  
Searcy Denney Scarola Barnhart and  
ShIPLEY, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409-6601  
\_bassteam@searcylaw.com

Henry Salas  
Cole, Scott and Kissane  
9150 South Dadeland Boulevard  
Suite 1400  
Miami, Florida 33156-7855  
henry.salas@csklegal.com

Herbert H. Hofmann, II  
Morgan and Morgan, P.A.  
2222 South Tamiami Trail  
Sarasota, Florida 34239  
hhhpleadings@ForThePeople.com

Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 1600  
Orlando, Florida 32801-4624  
djordan@forthepeople.com

C. Ryan Morgan  
Morgan and Morgan, P.A.  
20 North Orange Avenue, 14th Floor  
Post Office Box 4979  
Orlando, Florida 32802-4979  
rmorgan@forthepeople.com

David W. Molhem  
Molhem and Fraley, P.A.  
320 West Kennedy Boulevard  
Suite 330  
Tampa, Florida 33606-1456  
molhem.efile@molhemfraley.com

Jack P. Hill  
Searcy Denney Scarola Barnhart and  
ShIPLEY, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409-6601  
\_hillteam@searcylaw.com

David O. Caballero  
Cole, Scott and Kissane, P.A.  
9150 South Dadeland Boulevard  
Suite 1400  
Miami, Florida 33156-7855  
david.caballero@csklegal.com

Hunter A. Higdon  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 1600  
Orlando, Florida 32801  
hhigdon@forthepeople.com

John Hutchins Pinder, VI  
The Whittemore Law Group, P.A.  
100 Second Avenue South, Suite 304S  
Saint Petersburg, Florida 33701  
hpinder@wherejusticematters.com

J. Richard Caldwell, Jr.  
Rumberger, Kirk and Caldwell, P.A.  
100 North Tampa Street, Suite 200  
Tampa, Florida 33602-5830  
dcaldwell@rumberger.com

J. Jack Scarola  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409-6601  
\_scarolateam@searcylaw.com

Jason L. Odom  
Gould Cooksey Fennell  
979 Beachland Boulevard  
Vero Beach, Florida 32963  
jlo-eservice@gouldcooksey.com

Jennifer M. Lipinski  
Domnick Law  
11701 Lake Victoria Gardens Avenue  
Suite 3201  
Palm Beach Gardens, Florida 33410  
eservice@powersmcnalis.com

James W. Gustafson, Jr.  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
The Towle House  
517 North Calhoun Street  
Tallahassee, Florida 32301  
\_gustafsonteam@searcylaw.com

Henry J. Graham  
Barrett Fasig and Brooks, P.A.  
3360 Capital Circle Northeast, Suite B  
Tallahassee, Florida 32308  
grahamlaw8@hotmail.com

Jack R. Reiter  
Gray Robinson, P.A.  
333 Southeast 2nd Avenue, Suite 3200  
Miami, Florida 33131-2191  
jack.reiter@gray-robinson.com

James R. Holland, II  
Harrell and Harrell, P.A.  
4735 Sunbeam Road  
Jacksonville, Florida 32257-6107  
jrheserve@harrellandharrell.com

Jeffrey J. Humphries  
Morgan and Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202-5413  
jhumphries@forthepeople.com

Jeptha F. Barbour  
Marks Gray, P.A.  
1200 Riverplace Boulevard, Suite 800  
Post Office Box 447  
Jacksonville, Florida 32201-0447  
dboss@marksgray.com

Joshua A. Whitman  
Milton, Leach, Whitman, D'Andrea and  
Eslinger, P.A.  
815 South Main Street, Suite 200  
Jacksonville, Florida 32207  
jwhitman@miltonleach.com

Joseph M. Taraska  
Morgan and Morgan, P.A.  
20 North Orange Avenue  
Orlando, Florida 32801  
jtaraska@forthepeople.com

Justin H. Presser  
The Nation Law Firm  
570 Crown Oak Centre Drive  
Longwood, Florida 32750  
tdemetrius@nationlaw.com  
jpresser@nationlaw.com

Kerry C. Collins  
Brigham Property Rights Law Firm,  
PLLC  
2963 Dupont Avenue, Suite #3  
Jacksonville, Florida 32217  
kcollins@propertyrights.com

Laurie J. Briggs  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
The Towle House  
517 North Calhoun Street  
Tallahassee, Florida 32301-1231  
\_briggsteam@searcylaw.com

Mark A. Nation  
The Nation Law Firm  
570 Crown Oak Centre Drive  
Longwood, Florida 32750  
mnation@nationlaw.com

Mary F. Aspros  
Morgan and Morgan, P.A.  
313 North Monroe Street, Suite 401

John P. Berke  
Morgan and Morgan, P.A.  
2012 South Florida Avenue  
Lakeland, Florida 33803-2658  
jpbpleadings@ForThePeople.com

Lawrence Gonzalez, II  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 900  
Orlando, Florida 32801  
lgonzalez@forthepeople.com

Kelly A. Hyman  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
kah@searcylaw.com

Michael H. Kugler  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
mhk@searcylaw.com

Martin J. Jaffe  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Suite 1600  
Orlando, Florida 32801-4624  
mjaffe@forthepeople.com

Mara R. Hatfield  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.

Tallahassee, Florida 32301  
maspros@forthepeople.com

Michael A. Rettew  
Morgan and Morgan, P.A.  
201 North Franklin Street, Suite 700  
Tampa, Florida 33602-5138  
MARPleadings@forthepeople.com

Morgan W. Streetman  
Streetman Law  
1906 North Tampa Street  
Tampa, Florida 33602-2133  
morgan@streetmanlaw.com

Patrick J. Tighe  
X1Law, P.A.  
721 US Highway One, Suite 121  
North Palm Beach, Florida 33408  
pat@x1law.com

R. Eric Bilik  
McGuireWoods LLP  
50 North Laura Street, Suite 3300  
Jacksonville, Florida 32202-3661  
ebilik@mcguirewoods.com

Scott M. Whitley  
Morgan and Morgan, P.A.  
201 North Franklin Street, Floor 7  
Tampa, Florida 33602-5182  
smwpleadings@forthepeople.com

Tyler Everett  
Morgan and Morgan, P.A.  
313 North Monroe Street, Suite 401  
Tallahassee, Florida 32301

2139 Palm Beach Lakes Boulevard  
West Palm Beach, Florida 33409  
\_hatfieldteam@searcylaw.com

Michael J. Vitoria  
Morgan and Morgan, P.A.  
201 North Franklin Street, 7th Floor  
Tampa, Florida 33602  
mvitoria@forthepeople.com

Nicholas J. Ryan  
Nicholas J. Ryan and Associates  
110 Southeast 6th Street  
110 Tower, Suite 2100  
Fort Lauderdale, Florida 33301  
nick.ryan.sr66@statefarm.com

Paul M. Silva  
Somera and Silva, LLP  
One Boca Place  
2255 Glades Road, Suite 232W  
Boca Raton, Florida 33431  
paul@somerasilva.com

S. Sammy Cacciatore  
Nance Cacciatore  
525 North Harbor City Boulevard  
Melbourne, Florida 32935  
sammy@nancelaw.com

Stacie L. Cohen  
Fenster and Cohen, P.A.  
111 North Pine Island Road, Suite 202  
Plantation, Florida 33324-1836  
cohens@fenstercohenlaw.com

William Finn  
Morgan and Morgan, P.A.  
20 North Orange Avenue, Floor 16  
Orlando, Florida 32801-2414

TEverett@forthepeople.com

William A. Norton  
Searcy Denney Scarola Barnhart and  
Shipley, P.A.  
The Towle House  
517 North Calhoun Street  
Tallahassee, Florida 32301  
\_nortonteam@searcylaw.com

Mark K. Delegal  
Holland and Knight LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301  
mark.delegal@hkllaw.com

Neal A. Roth  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
nar@grossmanroth.com

Gary M. Cohen  
Grossman Roth, P.A.  
925 South Federal Highway, Suite 350  
Boca Raton, Florida 33432-6138  
gmc@grossmanroth.com

Natasha S. Cortes  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
nsa@grossmanroth.com

David M. Buckner  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard

WFinns@forthepeople.com

Kenneth W. Waterway  
Waterway Black  
1401 E. Broward Boulevard  
Victoria Park Centre, Suite 204  
Fort Lauderdale, Florida 33301  
kww@waterwayblack.com

Stuart Z. Grossman  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
szg@grossmanroth.com

Andrew B. Yaffa  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
aby@grossmanroth.com

William E. Partridge  
Grossman Roth, P.A.  
1800 2nd Street, Suite 777  
Sarasota, Florida 34236-5994  
wep@grossmanroth.com

Seth E. Miles  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
seth@bucknermiles.com

Brett E. Von Borke  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard



Suite 1150  
Coral Gables, Florida 33134-6040  
david@bucknermiles.com

Rachel W. Furst  
Grossman Roth, P.A.  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
rwf@grossmanroth.com

Eric Halsey  
Grossman Roth, P.A.  
925 South Federal Highway, Suite 350  
Boca Raton, Florida 33432-6138  
eth@grossmanroth.com

Richard S. Masington  
Grossman Roth, P.A.  
60 Edgewater Drive, Apartment 10F  
Coral Gables, Florida 33133-6988  
rsm@grossmanroth.com

Rodolfo Sorondo, Jr.  
Holland and Knight, LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131-2847  
rodolfo.sorondo@hklaw.com

Michael A. Abel  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
michael.abel@hklaw.com

Joshua D. Aubuchon  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301-1897

Suite 1150  
Coral Gables, Florida 33134-6040  
vonborke@bucknermiles.com

Patrick S. McArdle  
Grossman Roth and Partridge  
1800 2nd Street, Suite 777  
Sarasota, Florida 34236-5994  
psm@grossmanroth.com

Samuel W. Wardle  
2525 Ponce de Leon Boulevard  
Suite 1150  
Coral Gables, Florida 33134-6040  
sww@grossmanroth.com

Stephen H. Grimes  
Holland and Knight, LLP  
Post Office Box 810  
Tallahassee, Florida 32302-0810  
graciela.hirigoyen@hklaw.com  
connie.boatwright@hklaw.com

Dominic C. MacKenzie  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
donny.mackenzie@hklaw.com

Nathan A. Adams, IV  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301  
nathan.adams@hklaw.com

Beau A. Baker  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622

joshua.aubuchon@hkklaw.com

beau.baker@hkklaw.com

Daniel K. Bean  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
daniel.bean@hkklaw.com

Ricardo A. Bedoya  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
ricardo.bedoya@hkklaw.com

Sarah S. Butters  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301-1897  
sarah.butters@hkklaw.com

William P. Byrne  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
william.byrne@hkklaw.com

Jeremy J. Ches  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
jeremy.ches@hkklaw.com

Barbara Coccio  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
barbara.coccio@hkklaw.com

Timothy J. Conner  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
tjconner@cblpa.com

Kevin W. Cox  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301-1872  
kevin.cox@hkklaw.com

Lawrence N. Curtin  
Holland and Knight, LLP  
Post Office Box 810  
Tallahassee, Florida 32302-0810  
larry.curtin@hkklaw.com

Robert T. Devine  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
Robert.Devine@hkklaw.com

Robert R. Feagin, III  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301-1872  
bob.feagin@hkklaw.com

George D. Gabel, Jr.  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
george.gabel@hkklaw.com

Joseph G. Goldstein

Luis J. Gonzalez

Holland and Knight, LLP  
701 Brickell Avenue, Suite 3300  
Miami, Florida 33131-2847  
joseph.goldstein@hkklaw.com

Lawrence J. Hamilton, II  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
larry.hamilton@hkklaw.com

Jerome W. Hoffman  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
jerome.hoffman@hkklaw.com

Chris N. Kolos  
Holland and Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801-3461  
chris.kolos@hkklaw.com

Jennifer A. Mansfield  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
jennifer.mansfield@hkklaw.com

Drew P. O'Malley  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
drew.omalley@hkklaw.com  
rhonda.ockay@hkklaw.com

Michael G. Prendergast  
Holland and Knight, LLP

Holland and Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801-3461  
luis.gonzalez@hkklaw.com

Peter P. Hargitai  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
peter.hargitai@hkklaw.com

Suzanne M. Judas  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
suzanne.judas@hkklaw.com

Frederick J. Lotterhos, III  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
fred.lotterhos@hkklaw.com

Stephen B. Moss  
Holland and Knight, LLP  
515 East Las Olas Boulevard  
Suite 1200  
Fort Lauderdale, Florida 33301-4249  
stephen.moss@hkklaw.com

Frederick D. Page  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
fred.page@hkklaw.com

Jameson B. Rice  
Holland and Knight, LLP

50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
michael.prendergast@hklaw.com

Joshua H. Roberts  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
joshua.roberts@hklaw.com

Shannon H. Salimone  
Holland and Knight, LLP  
Post Office Box 810  
Tallahassee, Florida 32302-0810  
shannon.salimone@hklaw.com

Christina M. Schwing  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
christina.schwing@hklaw.com

Roger W. Sims  
Holland and Knight, LLP  
Post Office Box 1526  
Orlando, Florida 32802-1526  
roger.sims@hklaw.com

Lindsay D. Swiger  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
lindsay.swiger@hklaw.com

Melissa S. Turra  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
missy.turra@hklaw.com

800 17th Street Northwest, Suite 1100  
Washington, D.C. 20006-3962  
jameson.rice@hklaw.com

Philip E. Rothschild  
Holland and Knight, LLP  
515 East Las Olas Boulevard  
Suite 1200  
Fort Lauderdale, Florida 33301-4249  
Phil.Rothschild@hklaw.com

George E. Schulz, Jr.  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
buddy.schulz@hklaw.com

James E. L. Seay  
Holland and Knight, LLP  
200 South Orange Avenue, Suite 2600  
Orlando, Florida 32801-3461  
james.seay@hklaw.com

Andrew J. Steif  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
andrew.steif@hklaw.com

Lee P. Teichner  
Holland and Knight, LLP  
701 Brickell Avenue, Suite 3000  
Miami, Florida 33131-2847  
lee.teichner@hklaw.com

Eddie Williams, III  
Holland and Knight, LLP  
315 South Calhoun Street, Suite 600  
Tallahassee, Florida 32301-1872  
eddie.williams@hklaw.com

Scott G. Williams  
Holland and Knight, LLP  
50 North Laura Street, Suite 3900  
Jacksonville, Florida 32202-3622  
scott.williams@hklaw.com

Jason S. Miller  
Morgan and Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202-3433  
jmillier@forthepeople.com

Katherine M. Massa  
Morgan and Morgan, P.A.  
76 South Laura Street, Suite 1100  
Jacksonville, Florida 32202-3433  
kmassa@forthepeople.com

Terence A. Gross  
Gross and Schuster, P.A.  
803 North Palafox Street  
Pensacola, Florida 32501  
tagross@tagross.com

Samuel W. Bearman  
Law Office of Samuel W. Bearman, LC  
820 North 12th Avenue  
Pensacola, Florida 32501  
sbearman@bearmanlaw.com

Anthony N. Upshaw  
McDermott Will and Emery LLP  
333 Southeast 2nd Avenue, Suite 4500  
Miami, Florida 33131-2184  
aupshaw@mwe.com

### **CERTIFICATE OF COMPLIANCE**

I certify that these rules and forms have been read against West's *Florida Rules of Court, Vol. I— State* (2015 revised edition).

I certify that this report meets the font requirements of *Fla. R. App. P.* 9.120(a)(2).

/s/ Gregory A. Zhelesnik  
Gregory A. Zhelesnik, Staff Liaison  
Code and Rules of Evidence Committee  
The Florida Bar  
651 E. Jefferson Street  
Tallahassee, FL 32399-2300  
850/561-5709  
gzhelesnik@floridabar.org  
Florida Bar No. 52969