The Florida Bar Out-of-State Division

State-to-State

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Winter 2023

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COVER:
North Carolina State Capitol

Photo: courthouses.co

The North Carolina State Capitol in Raleigh is the former seat of North Carolina's legislature and housed all of the state's government until 1888. The Supreme Court and State Library moved into a separate building in 1888, and the General Assembly moved into the State Legislative Building in 1963. The Capitol was declared a National Historic Landmark in 1973. Today, the governor and his immediate staff occupy offices on the first floor of the Capitol. Source: Wikipedia.org

OOSD offers opportunities to meet with colleagues around the country

President's message

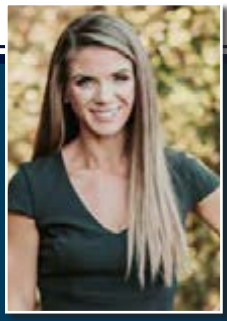
Brandon L. Wolff

During my first year as a Florida Bar and Out-of-State Division member, the OOSD president recommended attending one of the division's meetings. I made plans to attend the Annual Florida Bar Convention a few months later and was immediately welcomed by the Executive Council members at the OOSD meeting. I then attended other OOSD meetings including meetings by phone (in the days before Zoom), and soon enough I was a member of the Executive Council. I hope other members take that first step by attending one of our upcoming meetings either in person or via Zoom from the comfort of your office/home.

I have truly enjoyed being a member of the OOSD for many reasons. The division does a great job of representing the interests of out-of-state lawyers. In addition, I have enjoyed meeting members of The Florida Bar who practice in many states. At each of our out-of-state meetings, we plan unique CLEs that are designed for out-of-state practitioners and have great networking receptions. You should especially take advantage of the unique opportunity to interact with leaders of The Florida Bar at our annual joint meeting with the Board of Governors. These meetings are held in a different city each year. This year we are scheduled to convene in St. Louis, March 1-3. We are also planning to have a meeting during the Young Lawyers Division's out-of-state meeting, March 30-April 2 in New Orleans. Of course, we will also be meeting again during the Annual Florida Bar Convention, June 21-24 in Boca Raton. Please join us in St. Louis, New Orleans, and Boca Raton, or attend any of our meetings via Zoom if you cannot attend in person.

Finally, there are always opportunities to get involved with one of our committees. If you are interested or have any questions, please do not hesitate to contact me or any of our executive council members. I look forward to hearing from you and meeting you soon!

Volunteering is linked to good mental health



President-elect's message

Anais Taboas

Happy New Year! Entering a new year often brings new opportunities and the chance to review our happiness, health, and well-being. For many attorneys, the pandemic exacerbated the challenge that many attorneys experience with stress and anxiety. There is a direct nexus between stress and anxiety with substance abuse, depression, and even suicide. As referenced on The Florida Bar's Mental Health and Wellness website, 28% report mild or high levels of depression, 23% report mild or high levels of stress, and 19% report mild or high levels of anxiety.

If one of your goals for 2023 includes addressing your mental health, The Florida Bar offers member benefits to help you achieve that goal. The Florida Bar's Mental Health and Wellness Center provides a wealth of resources, including information about the Florida Lawyers Helpline (833-351-9355), toolkits, and articles. The website also links to Florida Bar member resources like EVideo Counselor, Calm Meditation and Sleep App, Fresh Meal Plan, and the YMCA.

In addition to the wonderful resources The Florida Bar's Mental Health and Wellness Center provides, studies suggest that volunteering is linked to boosts in mental health. The Journal of Happiness Studies examined data from nearly 70,000 research participants in the United Kingdom about their volunteer experiences and mental health. Compared to people who didn't volunteer, those who volunteered reported higher personal satisfaction levels and rated their health as better. Volunteering is often linked to mental health because it can result in intrinsic rewards, boost community connections, and provide gratifying interactions.

If one of your 2023 goals includes addressing your mental health and happiness, consider engaging in pro bono assistance. Many Florida legal aid organizations offer out-of-state attorneys opportunities to volunteer remotely. Whether the opportunity is in person or remote, volunteer opportunities can benefit our well-being, happiness, and mental health. You can find volunteer opportunities through The Florida Bar Foundation's Florida Pro Bono Matters (Florida Pro Bono Matters Covid | The Florida Bar Foundation).

Best wishes for a happy, successful, and fulfilling 2023!

What every lawyer should know about certificate of need

by Joy Heath


JOY HEATH

Are you familiar with certificate of need? Lawyers across the country providing representation on matters ranging from real estate deals to litigation disputes may find themselves representing health care providers. Regardless of your core practice area, when advising health industry clients it is prudent to have some familiarity with the unique requirements imposed by the various certificate of need (CON) statutes that apply in jurisdictions across the country.

Thirty-five states and the District of Columbia have CON laws that govern health care projects from equipment purchases to the development of new health care services and facilities. In some states, statutes use other nomenclature—Virginia, for example, is a certificate of public need (COPN) state.

As a litigator or deal lawyer, you may have concluded long ago that you would never undertake to represent an applicant seeking CON approval. Why, then, should you take the time to familiarize yourself with the basics of CON?

Consider the following scenario:

You represent your local hospital in entering a long-term contract to lease expensive medical equipment, and you include a clause allowing the hospital to acquire the equipment at the end of the lease term for a nominal $1 buy-out. When your client joyfully seeks to exercise the buy-out provision, the equipment owner balks, claiming the hospital cannot acquire the equipment because it has no right to do so under the state's CON law. The matter is now teed up for arbitration, and your hospital client anxiously awaits the outcome.

Here's another example:

You do real estate work for a physician group developing a medical office building (MOB), which you assume is outside the reach of your state's CON law. As the deal moves forward, you learn the group will be utilizing x-ray machines, an ultrasound, and a range of other diagnostic imaging equipment in its new office. Only then does it come to light that the group is developing not just an MOB but also what the state considers a "diagnostic center," which requires a CON. Among other penalty provisions, the state's CON law authorizes revocation or suspension of the license of any person who develops a diagnostic center without first obtaining a CON. Your physician client is nervous.

Knowing enough to issue-spot CON considerations is a worthy skill for any lawyer advising clients in the health care space. As a first step, lawyers should know whether their deal or dispute is taking place in a CON state.

If your health care matter is in one of the following 15 states, you may well be in luck from a CON perspective. Arizona does not require CON approvals for health care projects, but some Arizona laws do affect ambulances and ambulance services. Louisiana does not require CON approvals but does conduct so-called "facility reviews." California, Colorado, Idaho, Kansas, New Hampshire, New Mexico, North Dakota, Pennsylvania, South Dakota, Texas, Utah, Wisconsin, and Wyoming are not CON states.[1] As the list above indicates, anyone working with health care clients in the Eastern United States, other than in Pennsylvania or New Hampshire, should consider CON. A range of Western U.S. states, including Washington, Oregon, Nevada, and others still have CON laws on their books.

So, what questions should you be asking? State CON laws will

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determine the projects that require a CON and those that do not. While the laws may be difficult to decipher, fundamentally the statutes will answer the question of whether a new facility or equipment purchase first requires a CON. If you do not know, ask.

If the client in your transaction or civil dispute is a "provider," now is the time to ask about CON. Commonly regulated providers include hospitals, surgery centers, rehab providers, dialysis facilities, nursing homes, assisted living facilities, home health and hospice agencies and facilities, and psychiatric and chemical dependency treatment centers. Less obvious examples of "provider" locations—which may or may not be CON-regulated—include physician and dentist offices, family care and group homes, home care and private duty nursing agencies, freestanding radiation therapy centers, and behavioral health centers.

If you are handling a matter involving equipment, state CON laws may be relevant. Most commonly, CON laws govern the acquisition and replacement of PET and CT/MRI scanners, cardiac catheterization equipment, linear accelerators, and lithotripters, among others.

Regardless of the type of facility or equipment, if your case involves significant expenditures in the health care space or an addition to or relocation of existing health care capacities, you should inquire about CON implications. If your health care client wants to buy land to expand into a new state or enter a contract for the purchase of major medical equipment (be it more of the same or with new capabilities), at the earliest opportunity it is worth asking whether the CON laws in the relevant jurisdiction(s) will affect those plans.

Because of considerable variation in the scope of state CON laws, you may receive welcome news indicating that your state's CON laws will not affect your client's plans. Florida, for example, still has CON laws but has drastically curtailed the reach of its laws over the years. Other states, including North and South Carolina, the District of Columbia, and Virginia, maintain robust CON regulation.

If your client wants to enter or expand in a CON state, what should you expect? Some states will define areas with a "need" for new health care capacities, and opportunities to apply for a certificate will be limited to those identified areas of need. This may mean that your client is precluded from pursuing a desired CON approval. What then? In some states, the obvious answer for your client may be to buy what already exists.

If your client can pursue a CON, what will the process entail? Because CON laws are state-specific, one cannot rely on experience in one state to inform expectations about the process in another state. That said, the typical protocol involves preparation of a detailed CON application, which is reviewed by state regulators who produce a decision that competitors may be empowered to challenge in administrative tribunals and the state courts. While the process may look daunting to clients of all sizes, strategic navigation of the CON process may net a CON approval that authorizes the development of a facility or the acquisition of equipment that will be positioned to serve the health care needs of the community for generations to come.

CON is important for clients not only from a compliance standpoint, but also from a business success perspective. For home health and hospice providers, for example, securing a CON means the ability to expand geographically. For orthopedic surgeons, CON-approved MRI equipment is essential to the delivery of patient care. Oncologists rely on CON approvals of PET scanners to support their practices. Surgeons across multiple specialties require CON-regulated operating room availability to meet the surgical needs of their aging patient populations. While the CON process may be onerous, the ability to develop capacities allowing for the future delivery and reimbursement of care is invaluable.

CON laws are controversial, and efforts to repeal state CON laws are advancing in various parts of the country. The value of a health care transaction depends in no small part on the potential for the governing jurisdiction to retain CON regulation. Knowing a state's CON landscape may be helpful in negotiating transactions or resolving litigation disputes. At a minimum, any client operating in the health care arena should count on its legal counsel to flag CON considerations to ensure their existing operations and planned ventures comply with applicable CON requirements.

Endnote

1 The "Certificate of Need Requirements Chart" developed by Practical Law provides a 50-state overview of CON laws in each state and the District of Columbia. The most recent iteration is dated December 20, 2022.

Choice of law in removal proceedings that span multiple circuits

by Feng Xiao

FENG XIAO

The United States immigration adjudication system is complex to say the least. Being the most desired destination country for refugees worldwide, our immigration system faces thousands of new refugees each day. Almost all of them want asylum, an immigration status that will allow them to start a new life in the United States. Generally speaking, a noncitizen undergoes a credible fear interview with an immigration officer. If the immigration officer determines that the fear of harm is credible, the noncitizen is issued a notice to appear (NTA) that typically sets a date, time, and place for the noncitizen to appear in front of an immigration judge (IJ).

The time between the issuance of an NTA and the actual court date can be quite long, sometimes over a year or even longer. While a small percentage of noncitizens are detained during this time period, the vast majority of them start traveling around inside the border. Some of them wind up settling down in a place outside of the jurisdiction of the immigration court specified in the NTA. In the past an immigration attorney would usually file a motion to change venue to make it more convenient for the noncitizen and the attorney to appear in front of the IJ. This required the record of proceedings (ROP) to be mailed to the new court, and the new judge needed to take time to become familiar with the case, normally causing further delay to the disposition of the case. In recent years, with the advancement of remote videoconference capabilities, more and more cases are being handled via remote appearances.

The Department of Justice (DOJ) oversees the Executive Office for Immigration Review (EOIR), which manages the immigration courts, and the Board of Immigration Appeals (BIA), which decides the appeals of immigration judges' decisions. These institutions decide deportation cases and set legal precedent, impacting thousands of immigrants seeking a fair day in court every year. To improve case processing efficiency, EOIR started assigning cases to IJs sitting in a different circuit for adjudication using remote videoconference. Typically, the noncitizen would find a local attorney to help them with the petition, they would both appear via WebEx from the attorney's office, and the IJ, the Department of Homeland Security (DHS) attorney, and the interpreter would also appear from their own locations via WebEx.

This created a new problem: Which

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circuit's law would apply if from the time an NTA was filed to the time an IJ issued a decision in a particular case, actions in the case spanned more than one federal circuit? Because case precedence within each circuit is different, the choice of law could potentially determine the outcome of the case. For example, one of the key issues in an asylum application is to determine whether past harm rises to the level of persecution. In the Fourth Circuit, case precedence establishes that a death threat can be persecution while most other circuits require more.

The state of the law regarding venue and choice of law has always been complex and varies between circuits. At the time of this writing, the question regarding choice of law remains unsettled in most circuits, except in the Second and Fourth circuits.

In *Sarr v. Garland,* 50 F.4th 326 (2d Cir. 2022), the Second Circuit held that "an IJ 'completes' proceedings and, thus, venue lies in the location where—absent evidence of a change of venue—proceedings commenced." The circuit court emphasized that the statute states that jurisdiction vests with the IJ when an NTA is filed, and that venue can only be changed by motion from one of the parties. *Id.* The circuit court further held that administrative control immigration courts (ACCs) do not "wrest venue" from the immigration court where proceedings commenced because ACCs "merely service[ ]" the immigration court. *Id.* Therefore, if an IJ presides over a case that "commences in" an immigration court within the geographic boundaries of the Second Circuit, the immigration judge may apply the law of the Second Circuit.

The Fourth Circuit held in *Herrera-Alcala v. Garland* 39 F.4th 233, 242 (4th Cir. 2022) that 8 U.S.C. § 1252(b)(2) unambiguously references the location of the IJ as the location where proceedings are completed. The Fourth Circuit determined that venue was proper because the IJ "sat in Virginia during the proceedings" and therefore, "whatever action the Immigration Judge took to complete the proceedings must have occurred in the Fourth Circuit," even though the respondent was physically located in a different circuit during proceedings. *Id.* at 241. Therefore, IJs *physically* located within the Fourth Circuit's jurisdiction while presiding over immigration cases may apply Fourth Circuit law even if the case was docketed at hearing locations outside its geographic boundaries.

Outside of these two circuits, EOIR's longstanding position suggests that the hearing location, i.e., where a case is "docketed for hearing" and where immigration proceedings are deemed to take place, determines venue and, consequently, choice of law. This position was outlined by the Office of Chief Immigration Judge (OCIJ) in its Interim Operating Policies and Procedure Memorandum 04-06, *Hearings Conducted through Telephone and Video Conference*, (Aug. 18, 2004), *replaced by* the Director's Policy Memorandum 21-03, *Immigration Court Hearings Conducted by Telephone and Video Teleconferencing* (Nov. 6, 2020). The BIA affirmed this approach in its decision *Matter of R-C-R-*, where it stated that "[t]he circuit law applied to proceedings conducted via video conference is the law governing the docketed hearing location," and that the BIA would apply the law of the circuit where the case is docketed. 28 I&N Dec. 74, 83 n.1 (BIA 2020). Therefore, when there is no controlling decision regarding the issues of venue and choice of law in a particular federal circuit, an IJ may apply the law of the circuit where the case is docketed for a hearing.

In a world of online videoconferences and electronic dockets, the distinction between "commenced," "docketed," and "completed" is blurry at best. As a result, the current practices among IJs are to state which circuit's law the IJ intends to apply in the case and to ask both parties at the hearing whether there is any objection. This only works as an interim band-aid solution. The issue of choice of law in a case that spans multiple federal circuits begs a clear answer soon.

Mission of the Out-of-State Division

The purpose of the Out-of-State Division of The Florida Bar is to provide an organization for all Florida Bar members who reside outside of the state of Florida. The division focuses not on any specific practice area, but rather on the common interests and needs of out-of-state Florida Bar members as a whole. The division works toward the goal of ensuring equitable treatment for in-state and out-of-state Florida Bar members. This is accomplished through education, legislative, and administrative review; the production and update of a website for division members and the public at large; and the publication of a newsletter sent to the division's membership.

Tech arbitration tips (and more)

by Joel Levine


JOEL LEVINE

In 1970 a futurist named Alvin Toffler wrote a book called *Future Shock*, which explained that technological change was occurring at a faster and faster rate and people were having difficulty adjusting to the new paradigm. Today we see technological advances occurring not linearly but exponentially. Technologists, if there is such a word, are familiar with Moore's law, which postulates that integrated circuit capacity doubles approximately every two years. Just think of the memory and storage capacity and computational power of your computers and devices compared to 10 years ago. Similar rates of development can be found in the progress of human genome DNA sequencing, manufacturing processes, digital devices, and medical discoveries. This is my embarrassingly miniscule contribution to the tech revolution.

My interest in all things tech started with the confluence of three late 1980s events. I was president/CEO of a small but prolific entertainment company when digital film editing became possible, Windows was released, and all employees needed their own computers as well as access to peripherals. I quickly had to become the decision maker for acquisitions/upgrades of hardware, software, and systems, and I learned (and continue to learn) as much about technology as possible. I have served as arbitrator in a wide range of tech disputes and will share some tips that may be helpful in your practice.

Choose your arbitrator

Parties choose to arbitrate for many reasons, which include saving time, aggravation, and money; confidentiality and privacy; the ability to make a reasoned selection of arbitrators while you cannot choose your judge; easy access to arbitrators allowing quick resolution of discovery disputes and prompt rulings on motions or other interim relief; and the enforceability of awards across multiple jurisdictions under the New York Convention. Additionally, the limited grounds for challenging arbitration awards make arbitration awards effectively irreversible. Lastly, arbitration removes the irrational jury factor … I guess leaving only irrational arbitrators to contend with.

Given the relatively new emergence of technology issues and the rapidly evolving field of technology law, it is not likely litigants will be afforded the judicial expertise that an arbitration panel with true tech credentials can offer.

Two thoughts I'll emphasize that litigators in all areas of arbitration often do not realize:

1. The resumes you see are not exhaustive. Every American Arbitration Association (AAA) neutral is required to provide an updated biography and disclose any interest or relationship likely to affect impartiality or that may create an appearance of partiality or bias. What you may not realize is there are *strict space and policy limitations on what can and cannot be included in the bios*. Thus, a very qualified arbitrator who handles health care, employment, tech, and other commercial arbitrations will devote fewer characters to any one area, but might be more highly qualified than someone with more verbiage in the category of your case.

2. You have a right to make further inquiries. In fact, a law firm once requested copies of articles I'd written before selecting me as an arbitrator. If you have any question about anything in the biography or disclosures, make further inquiry. You are even permitted to send joint questions or to conduct joint telephonic interviews with potential panelists. I've been interviewed several times and believe the parties gain comfort through this process. I think this is particularly important in tech as the level of experience and expertise varies greatly in the newer rapidly developing areas of the law and in technology itself.

Ask anything. Don't be embarrassed. You can ask *if html and CSS are programing languages.* You'd be surprised how many arbitrators think html is a programming language. You should ask about the type of issues they have arbitrated and even their experience with the issues of your case. You can ask if they represented one category of clients or have experience on all sides of issues.

You usually need to select an arbitrator who is *knowledgeable* not just in tech issues but also in *the business* of tech. Too often adjudicators limit their consideration to law-school-like analysis but do not see the way the deals or situations unfold in the real world. If all you have done is negotiate license agreements, you might not be able to judge how things are supposed to work in the business environment in which the agreements are applied. Litigants will often complain that the judge or arbitrator did not grasp how things work in the industry. Your pointed questions to potential arbitrators can avoid being judged by someone with insufficient experience.

Here is a type of question you could ask a potential arbitrator that would be quite revealing. Based on an actual case, the agreement at issue related to a long-term outsourcing arrangement, under which Company A agreed to provide data processing services for Company B's operations worldwide. *What is a permissible level of down time for the systems?* In other words, recognizing that things often go awry, what percentage of Company B's system (or any portion of it) has to be down before a penalty is assessed against Company A? Is it OK if the system operates perfectly 50%, 70%, 90% of the time—or at what percent before Company A is penalized for excessive down time?

Try to answer that question before continuing. Hold on, you are

continuing without trying to answer the question. Bear with me. What do you think of a 95% smooth operation? Good? Acceptable? Disastrous?

Imagine an arbitrator finding a party who provided outsourcing services to a large company to be in compliance under the agreement where the system works perfectly 95% of the time—if you represent the client whose system is down 5% of the time. Clearly the arbitrator does not understand that normal standards require at least 99.5% operability—and probably 99.8% depending on the situation and the contract—and the catastrophic cost of being off more than 1% downtime. 2/100 of 1% tolerance is often the maximum allowable, but an inexperienced person may see 95% and think that is a solid A, so it must be acceptable.

The tip is, put the potential arbitrator through their paces before selecting them. The question could be framed: *In an outsourcing arrangement, what percentage of down time is customary before penalties kick in?*

The next example is also based on a tech-involved matter but can have applicability in all arbitration and litigation regardless of the subject matter.

I'll begin by asking if you know what an "advancement provision" is? You probably have some idea but haven't heard of it expressed exactly that way. Backing up, you do know what an "indemnify and hold harmless provision" is. Years ago this clause was simply basic protection that parties obtained from each other or their company when some form of claim or potential liability might be asserted against the party to be indemnified. However, like most contractual language, the scope of protection in indemnity provisions continues to proliferate. We now see more hold harmless and indemnification language providing for legal fees and costs to be paid *in advance* of a final arbitration award or judicial decision. A treatise could be written on every nuance of hold harmless agreements, but for brevity I'll omit all the possibilities and strategic decisions involved in the drafting and get to the case situation and takeaway.

In a complex and expensive intracorporate dispute, the claimants, the less-capitalized group, moved for advancement of its attorneys' fees from the company. It was a close call with significant conflicting case law in the relevant jurisdiction and nationally. After the briefing and telehearing on this issue, the panel remained online and agreed to grant the motion. While the language might have been drafted more precisely, the panel thought the better interpretation was that payment should be made for the costs of arbitration as things went on, rather than wait until the end of the case. At the end of the case there would be a reconciliation of who was ultimately entitled to attorneys' fees and costs, but for now they should be advanced by the company.

I drafted the order granting *both sides* advancement—since the language in the agreement read mutually and certainly did not say only one side is held harmless or indemnified. I emailed my draft order to panelists for their input. The other two panelists removed the mutuality concept—where both parties would be entitled to advancement—and determined only the claimant should receive advancement.

I asked my panelists why they changed my language and they said: *The respondent didn't ask for it*. In their view, parties have to ask for something before it is given to them. The claimant made the motion and argued for advancement in the brief and telehearing. The respondent just opposed it.

In the eyes of some, if you don't ask, you don't get. And in my eyes, the other arbitrators' way of thinking is: if you don't ask, you don't get—even if you're entitled. What do *you* think?

Bonus tip: Conventional thinking is prevailing parties are only entitled to legal fees if the agreement or some statute allows. When litigating or arbitrating in situations where the state statute does not provide relief, use indemnity and hold harmless language to argue for legal fees even if there is no statute or contractual provision allowing the prevailing party to obtain legal fees.

Scope of technology disputes

The technology universe is expanding like the actual universe, and today everything (except perhaps paternity) is arbitrable. Tech has crept into every area of the law. One does not often think of ADA (Americans with Disability Act) and tech in the same breath, but I recently dealt with a claim that a company's website was not sufficiently accessible to handicapped individuals, and understanding what needed to be done to comply with the claimant's demands was vital in dealing with this issue.

What will happen

At this point I should mention some hot-button issues in technology that you will encounter and may be resolved by arbitration—all of which have subparts and nuances: data/cybersecurity and privacy; management and monetization of big data; mobile payments; social media liabilities; wearable computing; venture capital and private equity; patents on new tech, validity and infringement; IT joint ventures; system development, implementation and integration; source code escrows; blockchain; crypto and other virtual currency; quantum computing; and artificial intelligence. As to artificial intelligence, not long ago Walmart laid off 500 robots. Not a joke—but I'm not sure the robots could arbitrate.

What has happened

In the last few years the following issues have been disputed in various forums: When is a digital asset a security or a commodity? Does hyping blockchain create an expectation of profit? Is blockchain a trademark, trade secret, or neither? Are free tokens tax-free? Does cryptocurrency guarantee semi-anonymity even in discovery? Can blockchain demonstrate membership in a class action? Are blockchain regulatory bodies real or bogus? Can election candidates incentivize engagement with cryptocurrency? Do companies have a

TECH TIPS
from preceding page

duty of care in managing customer tokens? Not to mention questions about liability for offering, selling, or promoting tokens or coins that are unregistered and non-exempt, and regulatory issues with SEC, CFTC (Commodity Futures Trading Commission) IRS, and FEC (Federal Election Commission).

While securities fraud remains the most active area for blockchain litigation, there are a number of recent cases involving intellectual property, unfair competition, contracts, class actions, consumer privacy, consumer protection, commodities, tax, public utilities, immigration, and elections law. And all this is just one subspecies of the genus *technology*.

Tech issues are complex and require a high level of understanding. In my newspaper on election day, the Dilbert comic strip had a character at a meeting saying, "I'm no expert on blockchain but I think we need to get the EVM stack on the bytecode so we don't run into a consensus fork." Then he says to the person next to him, "Did that mean anything?" and the person replies, "Don't ask me, I'm bluffing too." Needless to say you should avoid such an arbitrator.

This article originally appeared in *Arizona Attorney Magazine*, October 2022, used here with permission. A modified version was (re)printed in Oct. 21, 2022 ABA Section of *Litigation*.

Division News

JOIN THE OOSD NOW!

Not a member of the Out-of-State Division?

Join now!

Membership in the division is just $35 and provides a number of valuable benefits to out-of-state attorneys, including discounts on CLE registration, a free annual ethics CLE, and opportunities to network with other Florida lawyers. Join now! Invite a colleague!

For more information, please contact:

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EDITOR'S CORNER

Join us in networking and growing your practice

DON WORKMAN

The Florida Bar provides great support and opportunities for its members. Our OOSD president, the other officers, and executive council members are here to support the needs of out-of-state Florida Bar members. President Brandon Wolff provides his insights on being a part of the OOSD in his article, "OOSD offers opportunities to meet with colleagues around the country" on page 3. Brandon also discusses CLE and other committee opportunities in the OOSD.

Please feel free to contact the OOSD leadership. On page 8, you'll find the mission of the Out-of-State Division, and on page 14, you'll find a list of officers and executive council members. The Out-of-State Division is here to help you turn our shared interests into a strong professional practice. We're not shy—we want to help your practice.

Help us to help you and participate in the Out-of-State Division. By doing so, you'll help other out-of-state lawyers wherever they are around the world. We've mentioned in the past the reach of the OOSD. We're here to help you wherever you practice. And we'd love to meet you. The result should be a win-win for everyone. We challenge you to think of new ideas on how the OOSD can continue to improve services to Florida lawyers practicing out of state.

President-elect Anais Taboas helps us get the new year off to a good start with her article "Volunteering is linked to good mental health" on page 4. Consider her thoughts on how to give back to your community by offering your services pro bono to those in need.

One of our principal means to communicate with you is through our publication, which continues to grow. And we'd like even more! You'll see throughout the *State-to-State* our requests for contributing authors. We feature articles from members in Florida and elsewhere who share ideas and articles of interest to out-of-state members. Our contributing authors appear prominently, and we include the information you'd like others to read about your practice. We continue to look for ways to enhance the *State-to-State* and to provide more development opportunities. We have two goals here: to present your ideas to a broad audience and to introduce the readers to you. We want to help your practice.

We invite you to send us your articles and we'll get you published as quickly and as often as we can. And by all means, please let us know how we can serve you better. Feel free to contact me at dworkman@bakerlaw.com or by telephone at 202/861-1602.

Please visit the updated Out-of-State Division website flabaroutofstaters.org. It contains a number of new features in an easier-to-use format. You also can search for and view articles on the website. You should receive a link to each edition of the newsletter that allows you to view the edition online in color at your desk or on your mobile device. Check it out! You can also find us on Twitter @TFBOutofState and Facebook @TheFloridaBarOutofStateDivision.

And most important—please join and get involved!

S t a t e - t o - S t a t e

THE PUBLICATION OF THE OUT-OF-STATE DIVISION OF THE FLORIDA BAR

State-to-State is devoted to Florida and multi-jurisdictional legal matters. It is editorially reviewed and peer reviewed for matters concerning relevancy, content, accuracy, and style. *State-to-State* is sent electronically to approximately 15,000 legal practitioners throughout the United States.

Statements or expressions of opinion or comments appearing herein are those of the contributors and not of The Florida Bar or the division.

The deadline for the **SPRING 2023** issue is **APRIL 7, 2023**. Articles should be of interest to legal practitioners with multijurisdictional practices. Please submit articles in a Word format via email to Don Workman, *dworkman@bakerlaw.com*. Please include a brief biography with contact information and a photograph of the author. If a digital photo is not available, please mail a print to The Florida Bar, OOSD, 651 East Jefferson Street, Tallahassee, FL 32399-2300.

Author! Author!

The Out-of-State Division offers its membership a valuable forum for the exchange of information on legal issues affecting our interstate practices. To be truly effective, it is essential for a large cross section of our members to contribute articles, news, and announcements to this newsletter.

For those of you who would like to see your work in print, the rules for publication are simple: The article should be related to a subject of general interest to legal practitioners with multijurisdictional practices. Articles focused on your home state are less appealing than issues impacting a number of jurisdictions.

Please send documents in MS Word format via email to Don Workman, *dworkman@bakerlaw.com*.

Please help your colleagues to get to know you by including a brief biography with contact information, and include a head and shoulders photograph. Your photo and bio will be kept on file and need only be submitted once.

Contributing authors

The Out-of-State Division appreciates the articles submitted for this edition by our contributing authors. They can serve as a resource to fellow division members who might have a question regarding these authors' areas of expertise or if a referral is needed.

Joy Heath *is a health care attorney at Williams Mullen representing health industry clients in business and regulatory matters with an emphasis on certificate of need (CON). She is admitted to practice in North Carolina, the District of Columbia, and Florida. Ms. Heath proudly serves as the treasurer of the Out-of-State Division. Her office is in Raleigh, N.C., and she maintains a home in Vero Beach. She can be reached at 919/559-3904 or jheath@williamsmullen.com.*

Joel Levine *resides in Scottsdale, Ariz., and is member of the Florida, Arizona, and New York Bars. He has been a full time ADR practitioner for over 20 years having arbitrated approximately 200 cases involving a full range of commercial matters including technology. His website http://joellevineesq.com sets out his experience in detail. He can reached at 480/702-0560 or jlevine5@cox.net.*

Catherine Peek McEwen *is a U.S. bankruptcy judge for the Middle District of Florida, Tampa Division, and is co-chair of The Florida Bar Pro Bono Legal Services Committee. One of Judge McEwen's mantras is that "judges admire pro bono volunteers."*

Anais Taboas *is the president-elect of the Out-of-State Division. She joined the Legal Services Corporation in February 2019 as program counsel for Pro Bono Innovation and Veterans Grant Administration in the Office of Program Performance. She previously served as the pro bono program director at LSC grantee Maryland Legal Aid, the South Florida pro bono program officer at the Florida Bar Foundation, and as a staff attorney and private attorney involvement coordinator for LSC grantee Florida Rural Legal Services. She is admitted to practice in Florida and the District of Columbia. She can be reached at 305/528-2811 or anaistaboas@gmail.com.*

Brandon Lee Wolff *is the president of the Out-of-State Division. He practices commercial litigation and employment litigation in New York, New Jersey, Pennsylvania, Florida, and the District of Columbia. He holds leadership positions with the NJSBA YLD (treasurer), NYSBA YLS (chair), and ABA YLD, and he serves as an out-of-state representative on The Florida Bar YLD's Board of Governors. He can be reached at brandonleewolff@gmail.com.*

Donald A. Workman*, an OOSD past president and State-to-State editor, is a partner in the Business Group and head of BakerHostetler's bankruptcy and creditors' rights practice in the Washington, D.C., office. His practice areas include business bankruptcy, creditors' rights, debtor reorganizations, general insolvency, stockbroker liquidations, and commercial litigation. He can be reached at 202/861-1602 or dworkman@bakerlaw.com.*

Feng Xiao *was a computer programmer for over 20 years. In 2014, he became the only Florida court certified Mandarin interpreter. He enrolled in law school at Nova Southeastern University in 2019 with a full scholarship and graduated second in his class in 2022. Mr. Xiao joined the U.S. Department of Justice through the Attorney General's Honors Program and is now working for the Office of the Chief Immigration Judge as an attorney advisor. He enjoys pickleball, golf, and guitar in his free time. He can be reached at 954/907-8818 or feng.xiao@usdoj.gov.*

Become a contributor!
See submission information on page 12.

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Membership Application for

The Florida Bar Out-of-State Division

THE FLORIDA BAR
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www.flabaroutofstaters.org

More than 10 percent of Florida Bar members reside outside the state of Florida.

Although the division represents the interests of all lawyers outside the state, active participation in the division requires an election on the annual dues statement and, of course, the payment of dues (only $35).

Membership in this division will provide a forum for communication and education for the improvement and development of your practice through:

- Reduced fees for division-sponsored continuing legal education programs
- A newsletter especially designed for out-of-state practitioners
- A ready network for referrals and access to information through regional coordinators
- A web page especially designed for out-of-state practitioners
- An annual free online ethics CLE

To join, make your check payable to The Florida Bar and return your payment in the amount of $35 with this completed application form to:

Out-of-State Division
The Florida Bar
651 E. Jefferson Street
Tallahassee, FL 32399-2300

Membership will expire June 30. Dues will not be prorated.

To learn more, visit our website at www.flabaroutofstaters.org, or contact the program administrator at eyoung@floridabar.org.

Membership Application for
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Choose one:

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The Florida Bar – Out-of-State Division
Application for Student Membership

Of the more than 100,000 members of The Florida Bar, more than 14,000 members reside and/or practice outside Florida. The Out-of-State Division of The Florida Bar represents the interests of all Florida lawyers residing and/or practicing outside the state.

The Out-of-State Division seeks to keep its members informed of recent developments that could impact their practice as out-of-state Florida attorneys. Further, the division promotes opportunities to network—both socially and professionally—with other out-of-state Florida attorneys. Membership in the division provides access to the division's newsletter (*State-to-State*), the division's website (www.flabaroutofstaters.org), division-sponsored continuing legal education programs, and division meetings.

Student membership in the division will:

- ✓ Afford an opportunity to network with out-of-state Florida attorneys who can offer insights on practicing law as a Florida attorney outside the state.
- ✓ Allow for communication with Florida lawyers practicing in a variety of locales nationwide.
- ✓ Provide the member with access to the division's newsletter and website, which are designed especially for out-of-state practitioners, and an opportunity to submit articles for publication.
- ✓ Entitle the member to a reduced fee for division-sponsored continuing legal education programs.

To join, mail this completed application form to:
Out-of-State Division, The Florida Bar, 651 E. Jefferson St., Tallahassee, Florida 32399-2300.
(The application form also may be sent by email to eyoung@floridabar.org.)
Student membership will expire upon admission to The Florida Bar or one year after graduation from law school, whichever occurs first. There is no membership fee for students.

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This application is for attorneys only. FRPs need to post credit via their online profile.

The Florida Bar
Legal Specialization & Education
651 E. Jefferson Street
Tallahassee, FL 32399-2300
(850)561-5842 (Phone) (850)561-9421 (Fax)
clemail@floridabar.org

Attorney #: _____ Name: _____

Address: _____

City: _____ State: _____ ZIP: _____

Phone: _____ Fax: _____

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Date and Location of Course: _____

Please attach a course brochure and/or outline which:

(A) Fully describes the course content and level of presentation
(B) Indicates the time devoted to each topic covered within the program
(C) Identifies the instructors

BOARD CERTIFICATION CREDIT

Please list the area(s) of certification applicable to this activity:

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For more information on The Florida Bar's Board Certification program,
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Total Minutes on Instruction: (excluding breaks, meals, and introductions and based on a 50-minute hour)

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If requesting Ethics, Professionalism, Substance Abuse, Mental Illness Awareness, Bias Elimination, or Technology Credit, please check appropriate box below.

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NOTE: If you have completed the minimum number of required CLER hours, and are not seeking certification credit, please do not submit further courses for evaluation. **There is no carry over of hours in Florida from one reporting period to the next.**

Materials submitted for CLE credit review will be discarded once the credit has been determined. Should you wish to have your materials returned, please enclose a self-addressed stamped envelope.

PLEASE NOTE OUR NORMAL PROCESSING TIME IS 2-4 WEEKS.

THE FLORIDA BAR
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www.flabaroutofstaters.org

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