

SPEAKING OF JUSTICE

NEWS FROM THE FLORIDA BAR FOUNDATION
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PETE CROSS

Vickie Goldstein of Delray Beach is finally free of hepatitis C after her legal aid attorneys compelled Florida Medicaid to cover her treatment. She had been denied access to a potential cure for two years based on a policy that required she first have at least stage three liver fibrosis.

Legal aid attorneys push Florida Medicaid to cover cure for hepatitis C

For two years Vickie Goldstein filed appeals and wrote letters trying to get Florida's Medicaid program to pay for a drug with the potential to cure her of the viral infection that was slowly destroying her liver.

For two years she got the same answer: You have to get sicker first.

"I talked to a couple of attorneys who specialized in insurance law, and they all said to me, 'We can't make any money suing the government,' so they didn't want

any part of it," said Goldstein, who at 57 had been living with hepatitis C for more than a decade.

Finally, in December 2015, her Internet search hit upon Florida Legal Services Inc. staff attorney Miriam Harmatz, a health law expert whose work is supported by The Florida Bar Foundation.

"I stumbled onto Miriam. She was the only one I saw who represented poor people and not hospitals and doctors," said Goldstein, a resident of Delray Beach.

As it turned out, Harmatz would not be alone in representing Goldstein. She quickly brought in Vicki Tucci Krusel, managing attorney of the Coverage to Care Legal Initiative of the Legal Aid Society of Palm Beach County, as well as Abbi Coursolle of the National Health Law Program (NHeLP).

"They were the most amazing group of women that I have ever met," Goldstein said. "I mean they just went right into action mode."

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Message from the President

For many reasons, 2016 is likely to stand out in our collective memory for years to come, but one thing I hope every Florida resident, including lawyers and judges, will long remember is that 2016 was the year Florida joined the long list of states with a permanent access to justice commission.

On Oct. 10, Florida Chief Justice Jorge Labarga, with unanimous support of the other justices, issued an administrative order re-establishing the Florida Commission on Access to Civil Justice and making it a standing committee of the Court.

From the Commission's inception in 2014 as an interim commission to study access to justice issues, The Florida Bar Foundation has been a co-equal partner with the Florida Supreme Court and The Florida Bar in its work. Many of the Commission's accomplishments, including most notably the progress made on the Florida Legal Access Gateway (described on the next page) were profoundly dependent on the Foundation's contributions. Our Deputy Director Melissa Moss worked behind the scenes to help envision the Gateway project, and our Immediate Past President Donny MacKenzie helped implement the vision. Our funding of the Florida Justice Technology Center, the lead agency implementing the Clay County Gateway pilot, has enabled the Gateway project to get off the ground and into cyberspace as testimony begins on the feasibility of bringing court clerks and legal aid programs and referral services onto a shared platform.

Someday not long from now, every Floridian looking for information on how and where to access affordable civil legal help, court forms and other legal resources will have a centralized online starting point, thanks in no small part to The Florida Bar Foundation.

Additionally this November, we have deployed a new staff member to South Florida to begin working to expand pro bono collaborations and develop innovative models for engaging volunteer lawyers in helping bridge the justice gap (see page 6). Florida Bar President Bill Schifino has set a statewide goal of 2 million pro bono hours this year, and The Florida Bar Foundation fully expects that our Pro Bono Partnerships Program and our new South Florida Program Officer will be instrumental in achieving that goal.

As the year comes to a close, I'd like to thank all of you who have contributed your time and treasure to The Florida Bar Foundation this year and remind you to think of the Foundation as you plan any year-end charitable donations. Finally, I'd like to wish all of you a joyful holiday season and a peaceful and prosperous 2017.



Matthew G. Brenner



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Foundation continues to play vital role in Florida Commission on Access to Civil Justice

When Florida Chief Justice Jorge Labarga issued an administrative order Oct. 10 re-establishing the Florida Commission on Access to Civil Justice and making it permanent, the Florida Supreme Court's news release recognized The Florida Bar Foundation and The Florida Bar as co-equal partners in the effort to create Florida's first access to justice commission.

Now a permanent body, the Florida Commission on Access to Civil Justice counts among its 23 members three past presidents of The Florida Bar Foundation, including Donny MacKenzie of Holland & Knight, the Foundation's immediate past president and official designee on the commission.

"I'm deeply honored to be asked to continue on the Commission now that it has been made permanent," said MacKenzie, whose term on the Commission will run through June 30, 2019. "And I believe the members of this body are well-suited to ensure that the progress made over the last two years will continue."

Kathleen Schin McLeroy, past Foundation president and the recipient of the Foundation's 2016 Medal of Honor Award, was reappointed to a two-year term. McLeroy will chair the resource evaluation committee, which will inventory federal, state and private funding opportunities and the effect of unmet civil justice needs on Florida's businesses and economy. The committee also will review and develop funding plans for Commission projects.

William A. Van Nortwick Jr., also a past Foundation president and the 2015 Medal of Honor Award recipient, was reappointed to a one-year term. The permanent Commission has staggered terms to ensure continuity.

Meanwhile, Gregory W. Coleman, a past president of The Florida Bar and current Florida Bar Foundation board



Donny MacKenzie, immediate past president of The Florida Bar Foundation and the Foundation's designee on the Florida Commission on Access to Civil Justice, explains how the Florida Legal Access Gateway will be designed to serve as an online "control tower" directing users to the right destination in terms of legal resources and assistance. Behind him is fellow Commission member William A. Van Nortwick, who worked with MacKenzie to develop the gateway concept along with Commission member and Jacksonville Area Legal Aid CEO James A. Kowalski. MacKenzie and Van Nortwick were among the speakers Oct. 20 at the Tampa Airport Marriott, where the Florida Justice Technology Center held an informative celebration of its launch of a pilot project in Clay County to test the feasibility of the system as it is envisioned. The event was part of a meeting of The Florida Bar.

member, has been appointed to chair the Commission's executive committee, and James A. Kowalski Jr., executive director of Jacksonville Area Legal Aid, has been reappointed to a two-year term.

Kowalski, MacKenzie and Van Nortwick comprised a workgroup of the original Commission focused on developing its signature project, the Florida Legal Access Gateway (FLAG), a first-of-its-kind online triage system designed to connect individuals with the legal resources they need. As envisioned, the gateway would refer visitors to a wide range of information and service entities including, but not limited to: legal aid organizations, local court self-help centers, free online resources including DIY Florida, Florida's Elder Law

Hotline, law school clinics, law libraries, and The Florida Bar Lawyer Referral Service.

A FLAG pilot limited to divorces and evictions launched Oct. 20 in Clay County and was set to run through November.

The Foundation provided the initial funding for the Florida Justice Technology Center, which managed the pilot project on the Commission's behalf, and will continue to provide staff support to the Commission, as it has since its inception.

"Several members of our staff have played key support roles and will continue to do so," said Foundation CEO Bruce B. Blackwell. "Providing greater access to justice is our mission, pure and simple, so our goals and those of the Commission are one and the same."



“She’s such a strong and brave woman, but at the same time she was very physically broken, emotionally broken from this fight in trying to really save her own life.”

– Vicki Tucci Krusel

Legal Aid Society of Palm Beach County



“We wanted Vickie to get her medicine as soon as possible, because she was quite ill, but she was also very clear that she wanted to help other people.”

– Miriam Harmatz
Florida Legal Services Inc.

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At the time, Goldstein had already lost her appeals through her Medicaid managed care company and was about a month away from a fair hearing with the Florida Division of Administrative Hearings. She handed over to her legal team reams of documentation, along with research she’d done to support her case.

“She’s such a strong and brave woman, but at the same time she was very physically broken, emotionally broken from this fight in trying to really save her own life,” Krusel said.

Goldstein’s coverage denials were based on a policy of the Florida Agency for Health Care Administration (AHCA) and its contracted Medicaid managed care companies. The policy required that a patient’s liver fibrosis, or scarring, be at least a three on a four-point scale, with stage four liver disease being so severe that patients often need a liver transplant. Goldstein was not yet stage three, but her health was compromised. She had no appetite, weighed about 100 pounds, and her brain was foggy all the time.

Dr. Michael Fried, director of hepatology at the University of North Carolina at Chapel Hill, said delaying therapy until a patient has progressed to advanced fibrosis places that person at risk for liver cancer and other complications of cirrhosis.

“The best management is to treat patients in early stages of disease, prior to the development of scarring,” Fried said.

Goldstein’s attorneys knew they needed to get results quickly for Goldstein, but Goldstein wanted to do more.

“We wanted Vickie to get her medicine as soon as possible, because she was quite ill, but she was also very clear that she wanted to help other people,” Harmatz said. “One of the joys of our work is when we’re working with a client who sees the opportunity to not just help themselves but to help other similarly situated people, and she really wanted to do something systemically.”

A systemic approach was important since hepatitis C is the nation’s leading blood-borne infection, affecting about 3.5 million Americans and killing nearly 20,000 every year.

For that reason, Coursolle had been following Medicaid coverage of drugs offering a cure ever since they came on the market in 2013. The drugs, called direct-acting antivirals, are close to 95 percent effective. They are also expensive. Viekira Pak, the drug Goldstein had been prescribed by her doctor, cost up to \$31,000 a month at the time, and the course of treatment was three months.

Early on NHeLP had advocated with the Centers for Medicare & Medicaid Services (CMS), the federal agency that oversees the Medicaid program, asking them to inform states that they had to make direct-acting antivirals more widely available, in accordance with medical guidelines. In 2015, CMS did just that.

“At that point, once we saw certain states that were either very slow to implement the guidance from CMS or completely refusing, we felt like a litigation strategy could be appropriate to enforce the law in states that were still not making treatment available,” Coursolle said.

Rather than immediately filing suit in federal court, however, Goldstein’s legal team opted initially to conduct discovery at the administrative hearing level. Based on what they learned, they sent AHCA a demand letter, putting the agency on notice that it was in violation of the federal Medicaid Act. The letter demanded that AHCA change its policy and gave a realistic deadline.

The legal aid attorneys were pleasantly surprised with the response.

As of June 1, AHCA no longer requires evidence of advanced liver fibrosis for patients to receive curative hepatitis C treatment.

“Once they took the time to engage with us it was clear that the staff at the state really understood the issue and were

willing to work with us to try to do the right thing,” Coursolle said.

Having completed her treatment in September, Goldstein is starting to feel better, and the virus is no longer detectable in her blood. She now knows she’ll be able to go on caring for her aging parents. And she’s looking forward to having more energy for pickleball, a sport somewhat like badminton or tennis that’s her main social outlet.

She also wants to continue doing what she can to help those denied their medications for other conditions.

“It was so wrong. The whole thing was so wrong,” she said. “If I had breast cancer would they wait until I had stage four cancer until I got treated? I don’t think so.”

Fried, whose research has contributed to the development of direct-acting antivirals, had advised Goldstein’s legal team on the health consequences of delaying treatment.

“The policy about waiting until people get advanced fibrosis was groundless, and it was solely based on financial considerations. There was no medical reason why you would wait for people to get worse,” he said. “The other complications are way more costly than a one-time course of treatment. But payers are looking at the annual budget. They’re not necessarily looking at what happens 10 years from now.”

What sets direct-acting antivirals apart from other treatments, he said, is that they can cure a patient in a relatively short period of time, as opposed to medications patients have to take for life.

“Because the medicines are so effective, they are really very cost-effective,” he said.

In fact, it’s conceivable that in the not-too-distant future the cost to society of treating hepatitis C could be drastically reduced. That’s because with the arrival of direct-acting antivirals, the Centers for

Disease Control and Prevention, the Institute of Medicine and other groups are working on a national strategy for eradicating hepatitis B and C. The cost of treatment, meanwhile, has fallen by as much as 50 percent thanks to negotiated rebates and competition.

In spite of the long-term benefits, a 2016 study reported in the journal *Viral Hepatitis* found that at least 30 percent of Medicaid beneficiaries with hepatitis C who request a new breakthrough drug are denied access to treatment.

But thanks in large part to legal advocacy, that’s changing.

Fried said Medicaid programs and other payers around the country, including Blue Cross Blue Shield of North Carolina and the state’s Medicaid program, are following the lead of states like Florida and eliminating barriers to treatment.

“We’re starting to see some loosening of many restrictions,” he said. “You can attribute that to the success of these kinds of cases.”

David Prather’s gift to help usher in legal aid’s next generation

A civil trial attorney with Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin in West Palm Beach, Florida Bar Foundation board member David Prather understands the importance of cultivating a talented legal team. So, through a \$50,000 pledge to the Foundation, Prather is helping Florida’s legal aid organizations develop their next generation of talent. His gift will provide seed funding for a campaign to restore the Foundation’s Summer Fellows program. Suspended since 2012 due to lack of funding, the program places law students at Florida legal aid organizations to develop projects in areas such as homelessness, juvenile justice and medical-legal partnerships. Like Prather, Summer Fellows make lasting change in the communities they serve.



Foundation CEO Bruce B. Blackwell and President Matthew G. Brenner, from left, accepted a \$50,000 pledge from David C. Prather at the Foundation’s Sept. 9 board meeting. Joining them was Florida Bar President William J. Schifino Jr., a Foundation board member.

Florida Bar Foundation hires South Florida pro bono program officer



“I am committed to working with and on behalf of low-income communities and promoting equal access to civil justice, and I know that commitment is shared by many in the South Florida legal and social services communities.”

– Anais Taboas

**South Florida Pro Bono Program Officer
The Florida Bar Foundation**

Special thanks to



Anais Taboas joined The Florida Bar Foundation Nov. 7 as its new South Florida Pro Bono Program Officer and is working out of space donated by Akerman LLP in its Miami office. A statewide nonprofit organization whose mission is to provide greater access to justice, the Foundation is based in Maitland, where it has 15 staff members.

Taboas, who had served as pro bono coordinator and staff attorney at Florida Rural Legal Services in West Palm Beach and Ft. Myers, will be focused in her new role on fostering pro bono collaborations and partnerships in Miami-Dade, Monroe, Broward, and Palm Beach counties.

“I am committed to working with and on behalf of low-income communities and promoting equal access to civil justice, and I know that commitment is shared by many in the South Florida legal and social services communities,” Taboas said. “I am looking forward to helping form stronger alliances among the many partners and potential partners working to expand pro bono and increase its impact in South Florida.”

Taboas has a passion for pro bono that began in law school at the University of Maryland, where she participated in a clinic serving families and children dealing with re-entry issues for juvenile offenders. As a legal aid attorney she has worked with survivors of domestic violence, and while in private practice she helped families facing foreclosure.

Taboas will engage stakeholders including Foundation grantees and other legal services and pro bono providers, law schools, law firms, Florida Bar sections and committees, and voluntary bars to create and expand pro bono initiatives. And she will seek to develop rural/urban partnerships to assist residents and workers in rural pockets of South Florida by utilizing resources in nearby urban areas.

“Her experience in both urban and rural areas will be extremely beneficial as we continue to move forward in our Florida Keys Pro Bono program,” said Ericka Garcia,

the Foundation’s statewide Director of Pro Bono Partnerships. “And she will work to bring a new level of collaboration to pro bono efforts throughout South Florida.”

Akerman is supporting the Foundation’s statewide Pro Bono Partnerships program with the office space and through its own far-reaching pro bono initiatives.

“Akerman is focused on strengthening community partnerships and pro bono services to increase access to justice and positively impact the lives of the less fortunate,” said William A. Van Nortwick Jr., partner-in-charge of Akerman’s Pro Bono Program and a recipient of the Foundation’s Medal of Honor Award. “We view the Foundation as one of our great partners, and we are delighted to help further its mission by providing office space in the center of downtown Miami.”

Akerman also has provided conference room space for meetings of the Foundation’s grantees, as well as continuing legal education appellate training for legal aid lawyers.

“We are grateful for their generous support,” Garcia said. “It was vital to the establishment of this new position and will be vital to our ongoing efforts.”

Whitney Untiedt, Akerman’s director of pro bono initiatives, is looking forward to partnering with Taboas.

“Akerman has always been a strong supporter of the Foundation’s mission of service,” Untiedt said. “Miami is fortunate to have Anais on board as the Foundation’s local representative. Her experience in developing pro bono programming across the state will help us to continue strengthening our service models.”

Florida’s Children First, a Florida Bar Foundation grantee, recently presented Akerman with its 2016 Champions for Children Award, recognizing the firm’s lawyers throughout Florida who serve as Guardians ad Litem or lend appellate practice expertise to advance the cause of children’s rights.

Foundation funded first training for state's court public information staff



As The Florida Bar Foundation celebrates its 60th anniversary, we are taking a look back at how a small grant helped make a big difference to Florida's courts.

In early 2016, the Florida Supreme Court issued a statewide Court Communication Plan to be implemented by the state's court public information officers (PIOs) in order to better inform the press and the public about what Florida's courts do.

"When I came to the Supreme Court eight years ago 'twitter' meant something entirely different. So did 'friend' and 'like' and 'share,' " Chief Justice Jorge Labarga told a group of reporters gathered in Tallahassee in September for The Florida Bar Reporters' Workshop. "So, in this sense, as times change, so must people and organizations – even courts."

In the state that pioneered cameras in the courtroom in the 1970s, Florida's court PIOs continue to make the state's justice system more accessible and better understood, including most recently on social media. The statewide communication plan includes strategies to enhance public trust and confidence in the judicial branch, ensure the courts speak with one voice on key messages, improve communication methods, and strengthen internal communication.

But it wasn't until a Florida Bar Foundation grant funded the initial training for the state's first crop of designated court PIOs in 2005 that Florida had an organized and prepared network of court communications professionals

capable of implementing a statewide court communication plan like Florida's. The Foundation provided \$40,700 for that program, and for many years helped fund The Florida Bar's Reporters' Workshop, through its Improvements in the Administration of Justice grant program, which includes among its priorities projects to improve the operation and management of the court system and to enhance public understanding about the law.

After 9/11, then-Florida Chief Justice Charles T. Wells instituted an emergency operations plan requiring that circuit and district courts each designate a PIO. Courts began assigning PIO duties to existing personnel such as trial court administrators, or hiring people with public relations experience from outside the courts.

Michelle Kennedy, PIO for the 18th Judicial Circuit, had just been hired in 2000 and was among those new to the courts.

"I was the first PIO ever hired by our circuit," Kennedy said. "So there were no established procedures and no one to tell me what had worked or didn't work in similar situations. I was building a new position."

PIOs from Florida's 20 judicial circuits, five district courts of appeal and the Florida Supreme Court came together at the Supreme Court in Tallahassee for a multi-day seminar covering media relations, media interviews, the Florida courts' emergency operations plan, public records and crisis communications.

"I had years of prior experience in the field, but there are aspects of communicating with the media that are totally unique to the judicial branch. There are certain things I learned at that core training that I've used ever since," Kennedy said, citing a segment on handling high-profile trials.

"I remember sitting in that training thinking, 'That'll probably never happen in the 18th Circuit.' But fast forward a few years and we have State v. Zimmerman,

which became an international story with gavel-to-gavel news coverage.

The nonprofit Florida Court Public Information Officers Inc. (FCPIO) was formed after the 2005 seminar and now has an annual meeting where training is a key component. The group will hold a session in mid-March in Orlando to begin implementation of the new statewide communication plan.

"When the chief justice gave us this assignment, we were honored to play such an important role," said FCPIO President Eunice Sigler, PIO for the 11th Judicial Circuit.

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PETE CROSS

After legal aid steps in, Florida removes barriers to hepatitis C treatment for Medicaid patients

A game of pickleball used to wipe her out for the rest of the day, but now that she is free of hepatitis C Vickie Goldstein can once again enjoy the game that has become her main social outlet. After two years of fighting on her own to get Florida Medicaid to cover a drug with a 95-percent chance of ridding her body of the virus, Goldstein turned to Florida Bar Foundation grantee Florida Legal Services, which in turn enlisted the help of the Legal Aid Society of Palm Beach County and the National Health Law Program. Her legal team helped convince Florida's Agency for Health Care Administration to change its policy on direct-acting antivirals, making the potentially life-saving drug available to other Florida Medicaid enrollees with hepatitis C.