

## *Florida Landscape and Court Changes in 2019*

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The past year has seen a significant change in the composition of the Florida Supreme Court. Three plaintiff-friendly justices left the seven-member Court and were replaced by three more conservative jurists. The most dramatic result of this change was the Supreme Court's sudden and unexpected decision to reverse its rejection of the Florida Legislature's 2103 amendment to the Florida Evidence Code that adopted the *Daubert* standard for the admission of scientific evidence.

In decisions issued in 2017 and 2018, a four-justice majority of the Florida Supreme Court rejected the legislation adopting the *Daubert* standard and reverted the state to the old *Frye* standard. In *In re Amendments to the Florida Evidence Code*, 210 So. 3d 1231 (Fla. 2017), the Supreme Court decided by a 4-2 majority to reject the *Daubert* legislation to the extent that it was procedural, invoking the Court's constitutional power over rules of procedure. Justices Canady and Polston dissented, and Justice Lawson did not participate. The next year, the same four-justice majority went further in *DeLisle v. Crane Co.*, 258 So. 3d 1219 (Fla. 2018), and ruled that the legislation adopting of the *Daubert* standard violated the Florida Constitution's separation of powers because it infringed on the Supreme Court's jurisdiction over matters of procedure. This time, Justices Canady, Polston, and Lawson all dissented.

At the end of 2018, however, three of the four justices of that anti-*Daubert* majority left the Florida Supreme Court because they had reached mandatory retirement age. Shortly thereafter, Florida's newly elected governor, Republican Ron DeSantis, appointed three more conservative justices to the Court: Judges Barbara Lagoa and Robert J. Luck of Florida's Third District Court of Appeal and attorney Carlos G. Muñiz, who had held various positions in Florida government and had also served as general counsel to the U.S. Department of Education.

The significance of this change became evident within a matter of months. In May 2019, the Florida Supreme Court *sua sponte* reconsidered and reversed its 2017 decision to reject the *Daubert* amendment. In *In re Amendments to the Florida Evidence Code*, 278 So. 3d 551 (Fla. 2019), two of the three new justices, Lagoa and Muñiz, joined with Justices Canady, Polston, and Lawson in a decision to retreat from the 2017 decision and adopted the Legislature's *Daubert* amendment to the Florida Evidence Code. The other new justice, Luck, sympathized with the majority's desire to see the *Daubert* amendment adopted, but faulted the majority for deviating from the Court's established procedures in achieving that goal. The Florida Supreme Court's decision became effective immediately upon issuance.

The new, more conservative bent of the Florida Supreme Court was cited by the American Tort Reform Association as the key reason for downgrading Florida from perennial "Judicial Hellhole" to merely being on the "watch list." In addition to citing the adoption of the *Daubert* standard as one of the main accomplishments of the newly constituted Florida Supreme Court, the ATRA noted that the Florida Legislature "with a new governor, new legislative leadership, and a shift in Florida's courts" has begun to enact reform-minded legislation to address the state's long history of lawsuit abuse.

Since the decision to adopt *Daubert*, the Florida Supreme Court's composition has changed yet again. Two of the three new justices, Lagoa and Luck, have been appointed to the United States Court of Appeals for the Eleventh Circuit. Thus, Governor DeSantis has two vacancies to fill on the Florida Supreme Court.

President Trump, similar to what Governor DeSantis has been doing in Florida, continues to reshape the federal courts in Florida and across the nation by appointing conservative judges. Earlier in December, the President nominated John Badalamenti to the United States District Court for the Middle District of Florida. He currently serves as a District Judge on the Florida Second District Court of Appeal. President Trump has appointed and had confirmed two justices to the Supreme Court, as well as 50 circuit and 133 district judges since taking office in 2017.

It remains to be seen whether the reshaping of the Florida courts by Governor DeSantis and President Trump will yield the long-term results of deferring to the Legislature's attempts to reign in liability and lawsuit abuse and correcting the course set by prior courts, but the landscape of Florida's state and federal judicial system looks vastly changed as we head into 2020.