



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

December 2011

## Judge Scher Investiture December 2

Please join members of the Bar for the investiture ceremony of newly appointed Circuit Judge Rosemarie Scher to be held at 4:00 p.m. on December 2. The ceremony will take place in Courtroom 11A in the Palm Beach County Courthouse.

*The Board of Directors  
and Bar Staff  
Wish You and Your  
Family a  
Happy Holiday  
Season!!*



The PBCBA held its Second Biennial Diversity Summit in October with over 200 attendees. The event began with a luncheon with keynote speaker FL Supreme Court Justice James Perry, followed by roundtable discussions and a panel discussion featuring local legal leaders. Pictured here are Phil Hutchinson, John Howe, Justice James Perry, CDI Committee Co-chairs Rosalyn Sia Baker-Barnes and Laurie Cohen. For additional photos from this event, please see page 6.

## Mark your calendar for upcoming Membership Events

**Annual Holiday Party & Silent Auction**  
December 1  
Frenchman's Reserve, Palm Beach Gardens

**Third Annual Lawyer Variety Show**  
January 21, 2012  
Eissey Theatre, Palm Beach State College

**North County Section  
BBQ & Casino Night**  
February 2  
Bonnette Hunt Club, Palm Beach Gardens

**Bench Bar Conference**  
March 9  
Palm Beach County Convention Center

**Annual Judicial Reception**  
May 1  
The Harriet at City Place

**Annual Installation Banquet**  
June 2  
The Breakers Hotel, Palm Beach

## Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 15 and are due back in the office by 5 p.m. on January 13. Petitions for director-at-large seats will be available on December 22 and are due back in the Bar office by 5 p.m. on January 23. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it at [pburns@palmbeachbar.org](mailto:pburns@palmbeachbar.org). For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members who sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

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THE

# BULLETIN

PALM BEACH COUNTY  
BAR ASSOCIATION

JOHN M. HOWE  
President

www.palmbeachbar.org

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Executive Director

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(561) 687-2800  
FAX (561) 687-9007  
e-mail info@palmbeachbar.org.

#### Advertising Information:

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The mission of the Palm Beach County Bar Association is to serve its members, foster professionalism and enhance the public's understanding and awareness of the legal system.

## LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.



Send letters to:  
EDITOR Bar Bulletin  
Palm Beach County Bar Association  
1601 Belvedere Road, #302E  
West Palm Beach, FL 33406

## Bench Bar Conference scheduled for March 9 at Convention Center

This year's Bench Bar Conference has been scheduled for **Friday, March 9** at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms will be available online. Last year, over 1,000 people attended throughout the day and unfortunately, due to space limitations, many attorneys were turned away. Be sure to register early and look for new sessions for attorneys this year.

Sponsorship opportunities are available to assist in the underwriting of this year's conference in the following amounts:

- \$575 for law firms of 11 or more attorneys;
- \$375 for law firms with 3-10 attorneys; and
- \$225 for law firms with 1-2 attorneys.

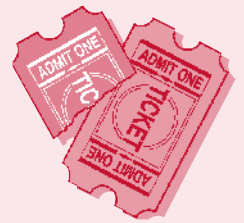
Checks should be made payable to the PBCBA and mailed to: Patience Burns, 1601 Belvedere Road #302E, WPB, FL 33406.

## Discount Movie Tickets for the Holidays

The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff, clients or end of the year gifts for teachers. Savings are available for the following theaters:

- \* Muvico Theater - \$8.00 each
- \* Regal Theaters \$8.00 each

Come by the office and pick up your tickets today (**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number. **PRICES ARE SUBJECT TO CHANGE**



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# President's Message



## A Home to Call Our Own

By John M. Howe

As the holiday season approaches, I am amazed at how fast another year has gone by. With the holiday season comes all of the usual excitement and anticipation of time spent with loved ones, doing charity, gift exchanges and the promise of the New Year. This year however, the holiday season brings another unique reason for our Bar to be excited. It is the excitement that comes with first-time homeownership!

Homeownership has always been the hallmark of achievement of the American dream. It represents the security, promise and self-determination that come with holding exclusive title to the place one calls home. In March of this year, the Bar secured exclusive title to the place it will call its home. I am pleased to announce that in January 2012, we will take occupancy in our new home which will be at 1507 Belvedere Road in West Palm Beach. However, this was no small task. This dream would not have been possible without the combination of the desire for a permanent home, diligent searches, a touch of blind luck and the incredible support and generosity of our members and partners in the community. It is a story worth telling.

Our Bar was founded in 1922. From 1922 until 1970, the Bar was operated from the business offices of the person who held the office of President. From 1971 until 1979, the Bar operated out of the law library with Mary Burdick serving as its Executive Secretary. In 1980, the Bar moved from the law library into its first "apartment" in the Citizen's Building in downtown West Palm Beach. In 1992, and as it outgrew that space, we again relocated moving to 1601 Belvedere Road, where we have been for the last 20 years. During this time, we have weathered rent hikes, lease modifications, lease term re-negotiations, space limitations and countless other challenges. For these reasons, the Board determined in 2008 that we should use our best efforts to secure a permanent home for the Bar and its membership.

In 2008, then Bar president, Richard

Schuler focused his year on finding a permanent home. We determined that the space would ideally be centrally located, close to freeways and major roadways, large enough to accommodate growth, and have access to sufficient parking. Each year after that, we searched high and low for such a location, but nothing suitable could be found. But then, call it what you may, divine providence, good luck, dumb luck, fortune – whatever – was visited upon us.

In October 2010, our Executive Director, Patience Burns, and her husband, Tom, happened to be driving by the old and very decrepit former Denny's restaurant on Belvedere Road when they saw some men erecting a "For Sale" sign. At that very moment, the skies parted, a bright light shone down from the heavens, and a great voice proclaimed.... Ok, I got a little caught up in the story, but a loud jet could have been taking off from PBIA at that very moment. Patience does tell me that she did say to Tom, "Wow, that Denny's has closed. What a perfect location that would make for the Bar. Looks like the right size building and it has parking!" When Patience relayed this information at our next board meeting, it took little discussion to realize we might have stumbled across a near perfect relocation opportunity, considering the aforementioned criteria. After the ensuing due diligence phase was completed, led by last year's President Michael Napoleone, the Bar closed on



the purchase of its new home on March 14, 2011. I would be remiss if I did not thank past Bar president, Manny Farach, and Steve Rubin who volunteered their time and expertise in real estate to assist us with our due diligence and all the way

through closing.

On September 12, the renovation of the building commenced and has been progressing at an amazing pace. With 5,842 square feet of usable space, the new building represents a great advancement and will enhance the Bar's ability to serve its



membership. It will feature a state-of-the-art seminar and meeting room, visiting attorney office, member services office, conference rooms, and much more. Bruce Alexander, of Casey Ciklin, generously volunteered to serve as the project consultant, and his service has been invaluable. The contractor, Butler Brothers Construction, has done an excellent job moving this project forward and ultimately securing our certificate of occupancy.

None of this would have been possible, however, without the incredible generosity of our members and community partners. In May of this year, we launched our Building Capital Campaign and reached out to our membership to make a commitment to securing the strength and stability of our Bar. The response, particularly with room sponsorships, has been nothing short of overwhelming. Through room sponsorship opportunities and our "Buy a Brick" campaign, we have secured \$316,500 in room sponsorships and brick purchases toward our ultimate goal of \$450,000. You can view a list of all our sponsors (as of November 1) on Page 5 or on our web site at [palmbeachbar.org](http://palmbeachbar.org). I would encourage you, if you have not already done so, to be a part of this momentous time in your Bar's history. It is a gift that will give back to you for the duration of your career. If you have already given, encourage a friend or colleague to do the same.

**Happy Holidays!**

*Continued on page 4*

# Historical Committee

## Who are they?

Can you guess who these members are? Answers can be found on page 19. If you have old pictures of yourself or other members that you'd like featured, please send them to Patience Burns at the Bar Office.



## A Home of Our Own

Continued from page 3

### Featured Board Member

This month's featured board member is my good friend Jason Guari. I have had the pleasure of serving on this board with him for the past four years. Jason attended law school at the Thomas M. Cooley Law School in Michigan and has been practicing personal injury and wrongful death law in Palm Beach County for over 15 years. Jason and his lovely wife, Nicole, have been married for 9 years and are the parents of a beautiful daughter named Lily. The Guari family pet is a



Maltese/Shih Tzu named "Milkshake" (I'll leave that one alone). When Jason isn't seeking justice for the injured, he enjoys playing tennis and golf, skiing and travel. Something you might not know about Jason is that he is an ardent supporter of the Leukemia and Lymphoma Society, and he is currently training to run the Disney Half Marathon in January. Jason's personal creed is "The difference between ordinary and extraordinary is that little 'extra'". Jason, we thank you for your extraordinary service to the Bar!

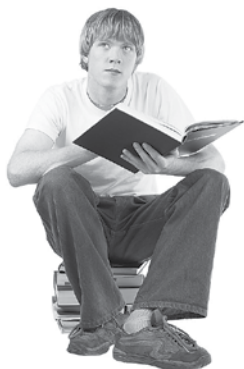
## SAVE THE DATE

For your Holiday Shopping and &  
Donate a book for Legal Aid's Pro Bono Auction!  
**Legal Aid Society of Palm Beach County's**

## 9th Annual Holiday Bookfest & Luncheon

Presented by Palm Beach County Chapter of FAWL  
Friday, December 2, 2011  
11:00 am until 4:00 pm  
Barnes & Noble CityPlace  
Complimentary Lunch!!

Please RSVP by calling 561-655-8944 ext. 316  
A Percentage of Sales will go to Legal Aid's Children's Advocacy Projects



The Solo & Small Firm Practitioners Committee  
presents its LUNCH & LEARN SERIES

# What You Need & Don't Need To Run Your Practice

*Join Us!*

Tuesday, January 17, 2012

11:45 am to 1:00 pm

Bar Office

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this paper?  
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**This course is expected to receive 1.0 CLER from The Florida Bar.**

RSVP online @ [www.palmbeachbar.org](http://www.palmbeachbar.org) or mail your check along with this portion of the form to:  
Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33410

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_ City/Zip \_\_\_\_\_

Email Address: \_\_\_\_\_

Cost: \$10.00 register by 5:00 pm on 1/13/12 to avoid a \$5.00 late fee

# Capital Campaign – Thank You to Those Who Have Contributed!



The Bar Association will soon be moving to its first permanent home located off Belvedere Road in West Palm Beach. The building will be a state-of-the-art facility for our legal community to enjoy for many years to come. You can be a part of history by naming a room or buying a brick.

We sincerely thank the following firms and members who have contributed as of 10/27/11:

Searcy Denney Scarola Barnhart & Shipley .....	Classroom
Richman Greer, P.A.....	Executive Director’s Office
Schuler, Halvorson, Weisser & Zoeller, P.A.....	Small Conference Room
Holland & Knight LLP .....	Member Services Office
North County Section & Young Lawyers Section .....	Communication Director’s Ofc
Lesser, Lesser, Landy & Smith .....	Front Bench
Lytal Reiter Smith Ivey & Fronrath .....	Reception Area
Jones, Foster, Johnston & Stubbs .....	LRS Office
Gunster .....	Landscape
Fisher & Bendeck .....	Landscape
Wyland & Tadros .....	Workroom
H. Irwin Levy.....	Visiting Attorney’s Office
Stuart & Allison Haft.....	Lounge
Brian Scher & Debbie Meltzer .....	Women’s Lounge

*Additional rooms are still available!*

## Personalized bricks:

- Akerman
- Adams, Coogler, Watson, Merkel,  
Barry & Keller, P.A.
- Agnant, Linda
- Babbitt, Johnson, Osborne &  
LeClainche, P.A.
- Beer, Jerald
- Bertisch, Robert & Harreen
- Breton, Lynch, Eubanks & Suarez-  
Murias, P.A.
- Burns, Lois
- Burns, Tom & Patience
- Clark, Fountain, LaVista, Prather, Keen  
& Littky-Rubin
- Coleman, Greg & Monica
- Colton, Roger B.
- Farrell, John
- Fine, Edward
- Fox Rothschild
- Gamot, Melinda
- Gordon & Doner, P.A.
- Hispanic Bar Association
- Howe, John
- Hunston, Jay and Jane
- Jenks, Debra & Robert Harvey
- Klett, Stan
- Kreusler-Walsh Compiani  
& Vargas, P.A.
- Law Offices of Irwin J. Block PLLC
- Law Offices of Robin Bresky
- Lazarus, Jason
- Legal Aid Society of Palm Beach County
- Leopold ~ Kuvin
- Maschler, Matthew H.
- Massa, Patrick
- McBane, Louis R.
- McCabe Rabin
- McCall, Wallace
- McClosky, D’Anna & Dieterle, LLP
- McHale & Slavin
- Murray & Guari
- Murrell, Donnie
- Napoleone, Michael
- Palm Beach Spine & Diagnostic Institute
- Pateman, Mark
- PBC Chapter of Paralegal Association
- Pineiro Byrd PLLC
- Pressly & Pressly
- Prior, Ted
- Proskauer Rose LLP
- Rock Legal Services & Investigations
- Rutherford Mulhall, P.A.
- Sabadell United Bank
- Signature Court Reporting
- Smith, Amy
- Sorgini & Sorgini, P.A.
- Stewart, Todd
- Suskauer, Michelle
- U.S. Legal Support
- Weissman, Joel & Alexandra
- Wroble, Art & Mary Ellen

### Would you like have a permanent place in the Bar’s new building?

For further information regarding naming rights or to purchase a brick, please contact Lynn Poirier at the Bar Office or scan the QR Code here with your Smartphone or go to [palmbeachbar.org/capital\\_campaign.php](http://palmbeachbar.org/capital_campaign.php)



## Diversity Summit Highlights



Panel members include State Attorney Michael McAuliffe; US Attorney for the Southern District of FL Willy Ferrer; Ethel Isaacs Williams, Regional Mgr., Corporate External Affairs for FPL; and Anna Torres, Powers, McNalis, Torres & Teebagy.



Other panelists included Art Menor, Shutts & Bowen; Barbara White, Chief Assistant, Public Defender's Office; Daryl Parks, President, National Bar Association; and Justice Perry.



Attendees included FL Bar Board of Governors Members Gene Pettis and Juliett Rouhlac, Daryl Parks, Justice Perry, Rosalyn Sia Baker-Barnes, Retired Judge Edward Rodgers, Board of Governors Member David Prather and PBCBA President John Howe.



Magistrate Larry Weaver, County Court Judge Sheree Cunningham and Magistrate Joy Shearer



Judges August Bonavita and Jack Cox



PBCBA Director Grier Pressly, Patti Leonard, 4th DCA Judge Spencer Levine and Siobhan Shea



PBCBA President-elect Adam Rabin, CDI Committee Members Alexcia Cox and Phil Hutchinson



### Patrick C. Massa, Esq.

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The Palm Beach County Bar Association's Family Law CLE Committee Presents:

# The Psychological Dimensions of a Family Law Case

Friday, January 13, 2012 9:15 a.m. – 5:00 p.m.

Bar Association Offices, 1601 Belvedere Road, #302E, WPB, FL

## Program Schedule



9:00am - 9:15am **Late Registration and Check in**

9:15am - 9:20am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq., Matthew Lane & Associates, P.A., Committee Chair*

9:20am - 11:20am **Panel Discussion—Social Investigations, Time-Sharing Evaluations, and GAL's** - *Eddie E. Stephens, III, Esq., Eddie Stephens P.A., Board Certified Marital and Family Law Attorney; Sheila Furr, PhD; Michael O'Hara, Psy.D.; and Lisa McDermott-Perez, PhD, LMHC*

11:20am - 12:00pm **Legal Aid Society of Palm Beach County Juvenile Advocacy Project - Dependency Overview** - *William W. Booth, Esq., Legal Aid Society of Palm Beach County*

12:00pm - 1:00pm **Lunch**

1:00pm - 2:30pm **Direct & Cross Examination of Psychological Experts** – *Charles D. Jamieson, Esq., The Law Firm of Charles D. Jamieson, PA, Board Certified Marital & Family Law Attorney, and Deborah O. Day, Psy.D.*

2:30pm - 2:45pm **BREAK**

2:45pm - 3:15pm **Case Law Update** - *Georgia T. Newman, Esq., Law Office of Georgia T. Newman, P.L.*

3:15pm - 4:00pm **Ethics Update - Income unreported to the IRS; Taking the 5th, and Recent changes in the ethical obligation to correct false testimony by a client** - *Erskine C. Rogers, III, Esq., Rutherford Mulhall, P.A., Board Certified Marital & Family Law Attorney*

4:00pm - 5:00pm **Annual View from the Bench** - *The Honorables Catherine Brunson, Martin H. Colin, James L. Martz, and Magistrate Diane M. Kirigin, Fifteenth Judicial Circuit, Moderated by Matthew Jay Lane, Esq., Matthew Lane & Associates, P.A., Committee Chair*

The Torrington, Romagnolo and Goldberg Wealth Consulting Group

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This course has been granted 8.0 CLER incl. 1.0 Ethics credits/ 6.0 Marital & Family Law Certification credits from The Florida Bar.

The cost of the seminar is \$200 (includes lunch) for PBCBA members/paralegals;

\$240 for non-PBCBA members/paralegals if registered by 1/6/12; add \$25 to registration fee after that date.

All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

**HOW TO REGISTER**



**BY CHECK**  
Return this form



**BY CREDIT CARD**  
For security purposes, you must register online at [www.palmbeachbar.org](http://www.palmbeachbar.org)



**Materials will now be emailed to all registrants prior to the seminar**

**Credit card registration payment not accepted by Fax to comply with PCI regulations.**

Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (1/13/12 Family Law) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY WITH THIS FORM.**





## Dismissal For Lack Of Prosecution – The Final Chapter

by Ted Babbitt

In all the years this writer served on the Rules of Civil Procedure Committee of the Florida Bar, the one rule that never seemed to make sense was Fla. R. Civ. P. 1.420(e) which provided for dismissal of a suit based on lack of prosecution. All of the many cases interpreting that rule involved actions where the prosecuting party clearly wanted the case to go forward. Were that not the case, an appeal would not have followed the order of dismissal. Dismissing a case a party wants to pursue after the statute of limitations has passed simply created new causes of action for legal malpractice and did nothing to clear dockets.

Prior to January 1, 2006, rule 1.420(e) provided that if there was no record activity during the preceding 12 months the suit would be dismissed absent a stay order in place or a finding of good cause. Numerous cases interpreted what the term “record activity” meant and a whole line of cases tried to separate active and passive record activity under the theory that only actions designed to move the case forward would constitute sufficient record activity within the meaning of the rule.

That issue came to rest in Wilson v. Salamon, 923 So. 2d 363, 368 (Fla. 2005) when the Supreme Court created a bright-line test for record activity concluding that any document filed in the record was sufficient. After January 1, 2006, the amendment to rule 1.420(e) shortened the period for lack of record activity to ten months but created a sixty day grace period during which the prosecuting party could avoid dismissal. The Second and Third Districts in Pagan v. Facilicorp, Inc., 989 So. 2d 21 (Fla. 2d DCA 2008), Edwards v. City of St. Petersburg, 961 So. 2d 1048 (Fla. 2d DCA 2007) and Padron v. Alonso, 970 So. 2d 399 (Fla. 3rd DCA 2007) concluded that the Supreme Court’s edict in Wilson, supra, applied to the type of record activity necessary to avoid dismissal within the sixty day grace period. The First District in Chemrock Corporation v. Tampa Electric Co., 23 So. 3d 759 (Fla. 1st DCA 2009) disagreed reverting to the question of whether the actions of the nonmoving party during the grace period were an attempt to move the case forward and, if not, that such actions were insufficient to avoid dismissal.

The conflict between these cases was decided by the Supreme Court in Chemrock Corporation v. Tampa Electric Co., 36 Fla. L. Weekly S318 (Fla. June 30, 2011).

It is interesting to note that the underlying facts of Chemrock are that the case was initially set for trial and then continued on joint motion. During the next three and a half years while no one moved to reset the case for trial, discovery was ongoing and trial preparation was being undertaken and there were numerous disagreements concerning discovery which did not result in any motions before the Court. This scenario is a perfect example of why the rule itself makes no sense. While record activity may not have occurred during this period of time, nonrecord activity was ample and the case was clearly moving towards conclusion despite the fact that the parties had not required the Court to intervene in their discovery disputes. Dismissing a case on that basis seems to make no sense.

At 320, the Supreme Court makes clear that the bright-line edict enunciated in Wilson, supra, with regard to the period of nonrecord activity also applies to the sixty day grace period in the revised rule.

Our plain meaning interpretation of the rule in Wilson remains applicable to the current rule. Less than two months after issuance of our decision in Wilson, we amended rule 1.420(e) to shorten the twelve-month period of record inactivity stated in the rule to ten months in order to trigger the filing of a notice of lack of prosecution. See In re Amendments, 917 So. 2d at 181-82. The amended rule then added a notice requirement followed by a sixty-day grace period during which the party could engage in record activity in order to avoid dismissal for lack of prosecution. The other provisions in the rule remained virtually the same. *Id.* at 181. Both rules require record activity, defined as the “filing of pleadings, order of court or otherwise.” Under both rules, dismissal is precluded if a stay order is entered or a party shows good cause in writing more than five days before a hearing on the motion to dismiss.

Our intent in amending the rule in 2005 was simply to alleviate the harshness of the rule by providing notice to a party that the action was at risk of being dismissed for lack of prosecution, and affording the party a reasonable time thereafter in which to engage in record activity in order to preclude dismissal. By creation of the sixty-day grace period, it was not our intention to create a situation in which the plaintiff or the trial court must again guess at what type of record activity will be required during the sixty-day grace period to preclude dismissal for lack of prosecution. Just as we held in Wilson, the bright-line interpretation of rule 1.420(e), under which any filing of record is sufficient to preclude dismissal, applies to both time periods set forth in the amended rule.

In Wilson, supra, at 367-68, the Supreme Court discussed what they concluded were two conflicting policies. The first was the Court’s desire for complete resolution of a case on its merits and, the elimination of cases which are not being prosecuted and which clog the system. The second is that The Court concluded that as to rule 1.420(e) “a secondary concern is to see that the resolution of cases on the merits is not impaired by the processing of cases without merit or cases that are filed and then abandoned in the system.”

The problem with that purported goal is that it ignores the reality that the cases involuntarily dismissed under that rule have continually clogged the appellate courts because the appealing parties indeed want their cases concluded on the merits and not dismissed for lack of prosecution. If the above quote is, indeed, the goal of the rule, a simple rule providing the Clerk would notify parties after a period of nonactivity and if no response were received within a reasonable period of time dismissal would ensue, would solve the problem without dismissing perfectly valid ongoing litigation simply because the parties had not filed something “in the record.”

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.

# Lawyers Have Heart Run

By Al LaSorte and Matt Chait

The third annual *Lawyers Have Heart 5K Run*, took place along Flagler Drive on October 1, and was a great success. Fantastic weather brought out nearly 800 runners, who joined the *Heart Walk's* 14,000 walkers for a morning of cardiovascular exercise and heart-health awareness with the American Heart Association. This year's *Run* featured Natalie Morales, news anchor of NBC's *The Today Show* as its Grand Marshall, which resulted in lots of favorable media exposure for the *Run* and for our legal community. Best of all, Natalie has indicated her intention to return next year as well.

Fifty law firms and law-related organizations sponsored teams, and several judges were spotted in the crowd of runners as well.

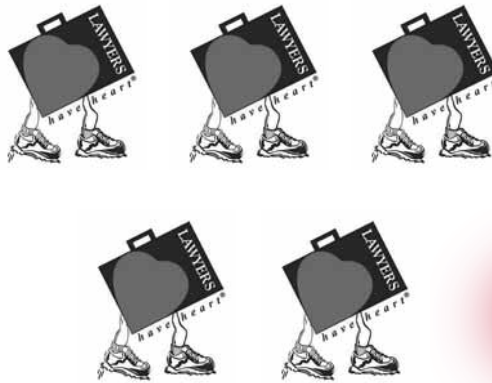
This was the twentieth annual *Heart Walk* along Flagler Drive. Since the *Lawyers Have Heart 5K Run* was added to the day's festivities in 2009, attendance in the event has dramatically increased, with this year's crowd of runners and walkers being the largest ever.

Robert Dabrowski was the overall men's winner of the *Run* with a blistering time of 17:35.2, and Kara Weber was the women's winner at an equally fast 19:29.1. Complete race results, including age group winners and the race times for all timed runners, can be found at [www.accuchiptiming.com](http://www.accuchiptiming.com) under the "Race Results" tab.

This year's *Run* raised nearly \$80,000 for cardiovascular research, treatment and education. Dozens of law firms and organizations pitched in to raise funds. Our firm, Shutts & Bowen LLP, raised \$22,600 - the largest amount by any firm in the *Run's* history.

As in past years, this year's *Run* also featured the Scales of Justice Challenge, a ten-week boot camp program in which thirty eager volunteers from the legal community underwent a rigorous boot camp-style training course in preparation for the *Run*. The program, which was donated by Hard Exercise Works boot camp gym ([www.hardexerciseworks.com](http://www.hardexerciseworks.com)) resulted in literally hundreds of pounds lost and tremendous increases in cardiovascular fitness of all participants (two of whom, Eric Ash and Victoria Morton, were featured in the Palm Beach Post).

Our thanks go out to all members of the Palm Beach County Bar Association who participated in this year's *Run*, and we look forward to seeing you all (and your co-workers, family and friends) out there with us on Flagler Drive next year.



Al LaSorte and Natalie Morales



4th DCA Judge Jonathan Gerber and State Attorney Michael McAuliffe



Board members Ron Ponzoli, Adam Rabin, Jill Weiss and John Howe



Erica Foersch, Brian Cooke and Michael Mopsick



Adam Langino and Wally McCall



Dan Methé, Kara Rockenbach and Dan Bachi



Natalie Morales with Matt Chait and WPB Mayor Jeri Muoio



The Estate and Probate Law Continuing Legal Education Committee presents:

**“The 29th Annual Estate and Probate Seminar - Part I”**

Wednesday, January 25, 2012 - 8:00a.m.- 12:00p.m.  
Crowne Plaza Hotel, Banyan Room, 1601 Belvedere Rd., WPB, FL 33406

**Program Schedule**



- 8:00a.m. - 8:25a.m. **“Hot” Breakfast Buffet / Late Registration and Check In**
- 8:25a.m. - 8:30a.m. **Welcome & Opening Remarks** - *John M. Severson, Esq., Board Certified Wills, Trusts & Estates Attorney, Burns & Severson, P.A., Committee Chair*
- 8:30a.m. - 9:00a.m. **Civil Law** - *Eugene F. Pollingue, Jr., Esq., The Wagner Law Group*
- 9:00a.m. - 9:30a.m. **Ancillary Administration Potpourri** - *Robert L. McElroy, IV, Esq., Downey and Downey, P.A.*
- 9:30a.m. - 9:45a.m. **Unusual Assets** - *Lesley S. Hogan, Esq., Akerman Senterfitt*
- 9:45a.m. - 10:00a.m. **Legislative Preview** - *Tasha K. Dickinson, Esq., Board Certified Wills, Trusts & Estates Attorney, Jones Foster Johnston & Stubbs P.A.*
- 10:00a.m. - 10:10a.m. **BREAK**
- 10:10a.m. - 10:40a.m. **Same Sex Couples Estate Planning** - *George D. Karibjanian, Esq., Proskauer Rose LLP*
- 10:40a.m. - 11:10a.m. **Guardianship Fee Issues** - *David R. Carlisle, Esq., Duane Morris LLP*
- 11:10a.m. - 11:40a.m. **Intellectual Property Rights (Pre and Post Death)** - *Patricia M. Carlson, Esq., Akerman Senterfitt*
- 11:40a.m. - 12:00p.m. **Judicial Presentation** - *Judges TBA*



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## Exemptions Issues and Strategies Regarding the Timing of Filing a Bankruptcy

By Alan R. Crane

A client who either has recently moved to Florida or that is about to move out of Florida presents some interesting options in terms of exemptions. In these situations, the bankruptcy attorney must do an analysis to determine whether Florida, another state or federal exemptions apply. There are two key Bankruptcy Code provisions relevant to this analysis. First, 11 U.S.C. §522(b)(3) which states that a debtor must reside in a state for at least 730 days before they can claim that state's exemptions. Second, 28 U.S.C. §1408 which provides that venue is proper in the state where the debtor's domicile, residence principal place of business was located for the longer portion of 180 days. When analyzing which exemption would be beneficial to your client to use, typically, federal and other state exemptions allow a debtor to exempt more personal property than Florida exemptions. Conversely, Florida exemptions are typically more generous in exempting the homestead than the federal exemptions.

A client who recently moved to Florida and has not resided here for at least 730 days, must be advised that they are unable to claim Florida exemptions pursuant to 11 U.S.C. §522(b)(3).

However, the bankruptcy attorney should not automatically assume that the prior state's exemptions are applicable as there are many states which require that only residents of that state can claim their exemptions. For example, Colorado law states that its exemptions only apply to residents of Colorado. In re Underwood, 342 B.R. 358 (Bankr.N.D.Fla.2006). In such cases, the federal exemptions would apply. Therefore, when advising a new Florida resident the issue becomes whether the client should file bankruptcy before the expiration of the 730 days so they can take advantage of the exemptions under federal law or wait the 730 days in order to take advantage of Florida exemptions.

Another situation which may arise involves a potential bankruptcy client who is planning on moving outside of Florida. In that scenario, the bankruptcy attorney will need to advise the client whether they should file before or after they move outside of Florida. Pursuant

to Florida law, Florida's exemptions only apply to residents of Florida. In re Camp, 631 F.3d 757 (5th Cir. 2011). Therefore, if the client does not have a homestead but has significant personal property, then they may want to take advantage of more generous personal property exemptions provided for under federal law. If they want to file in Florida, then they should do so after they have moved, but before the expiration of the first 90 days after their move.

In summary, if you have a potential bankruptcy client who has recently moved to Florida or is planning on moving to another state, you need to understand which exemptions will apply. Your advice as to when and where to file will depend upon, in part, what type of assets your client is trying to protect.

*This article was submitted by Alan Crane, Furr and Cohen, P.A., One Boca Place, Suite 337 West, 2255 Glades Road, Boca Raton, FL 33431; acrane@furrcohen.com*

### Board Meeting Attendance

	Retreat	Aug	Sept	Oct
Barnes	x	x	x	x
Bowden	x	x	x	x
Bresky	x	x	x	x
Guari	x	x	x	x
Howe	x	x	x	x
Kypreos	x	x		x
Lazarus	x	x	x	x
Napoleone	x	x	x	x
Ponzoli	x	x	x	Buck
Pressly	x	x	x	x
Rabin	x	x	x	x
Weiss	x	x	x	x
Whittles	x	x	x	



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The Bankruptcy Law CLE Committee of the Palm Beach County Bar Association  
presents:



## ***“The View From the Local Bench”***

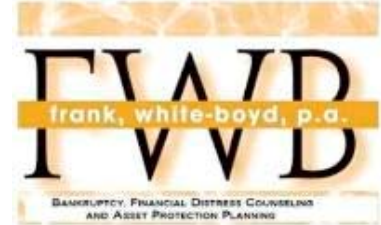
**Wednesday, February 22, 2012 - 11:45a.m. - 2:00p.m.**

Bar Offices - **NEW LOCATION:** 1507 Belvedere Rd., WPB

### **Program Schedule**

11:45am - 12:00pm **Check In / Late Registration**

12:00pm - 12:25pm **Buffet Lunch - Sponsored by:**



12:25pm - 12:30pm **Welcome - Opening Remarks** - *Julianne R. Frank, Esq.,  
Frank, White-Boyd, P.A., Bankruptcy CLE Committee Chair*

12:30pm - 2:00pm **The View From the Bench: The Words and Wisdom of  
Our Bankruptcy Judges** - *Honorable Paul G. Hyman and  
Erik P. Kimball, United States Bankruptcy Court -  
Moderated by Julianne R. Frank, Esq.*

**This course has been granted 2.0 CLER from The Florida Bar.**

The cost of the seminar, **including lunch**, is **\$40** for PBCBA members/paralegals, **\$80** for non-PBCBA members/paralegals. **After 2/15/12, add \$10.00 late fee.**

**All refund requests must be made no later than 48 hours prior to the date of the seminar.**

\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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**Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406.**

# Real Property and Business Litigation Report

## October 2011 Summary

Submitted by Manuel Farach



**Paul v. Wells Fargo Bank, N.A.**, --- So.3d ---, 2011 WL 3862091 (Fla. 2d DCA 2011).

Compassion, difficult personal circumstances, and failure to timely secure counsel are not grounds for defending foreclosures, but may be reasons why a default or sale may be vacated under Rule 1.540. A trial court retains jurisdiction after the foreclosure sale to vacate the sale.

**Bucky's Barbeque of Fort Lauderdale, LLC v. Millennium Plaza Acquisition, LLC**, --- So.3d ---, 2011 WL 3820182 (Fla. 4th DCA 2011).

A landlord's use of the premises after retaking of premises determines its rights as such use determines whether landlord retook the premises for its own purposes or for the account of the tenant. Accordingly, a trial court must make factual findings as to the use of the premises in order to direct remedies such as accelerated rent.

**Sol Melía, S.A. v. Fontana**, --- So.3d ---, 2011 WL 3820376 (Fla. 3d DCA 2011).

A party seeking to serve a parent corporation through service on a subsidiary corporation must demonstrate the parent corporation entirely controls the subsidiary.

**Knights Armament Co. v. Optical Systems Technology, Inc.**, --- F.3d ---, 2011 WL 3889156 (11th Cir. 2011).

A claim of trade secret theft under the Florida Uniform Trade Secrets Act must be brought within three years of learning of theft or the time one should have known of the theft. An owner of a descriptive mark without secondary meaning has no protectable right in the mark.

**Jackson Hewitt, Inc. v. Kaman**, --- So.3d ---, 2011 WL 3962886 (Fla. 2d DCA 2011).

A franchisor has no general duty to prevent criminal or fraudulent conduct by its franchisee.

**Glarum v. LaSalle Bank Nat. Ass'n**, --- So.3d ---, 2011 WL 3903161 (Fla. 4th DCA 2011).

A witness testifying under Fla. Stat. § 90.803 (6) (a), the Business Records Exception to the Hearsay Rule, must have personal knowledge or be otherwise qualified to testify with regard to the following:

(1) the record was made at or near the time of the event; (2) was made by or from information transmitted by a person with knowledge; (3) was kept in the ordinary course of a regularly conducted business activity; and (4) that it was a regular practice of that business to make such a record.

**Medellin v. MLA Consulting, Inc.**, --- So.3d ---, 2011 WL 4102290 (Fla. 5th DCA 2011).

A subjective "good faith" belief that lienor is entitled to file a construction claim of lien is no defense to a fraudulent lien claim under Fla. Stat. § 713.31 (2) (b) where there is no basis under law for filing the lien. The "good faith" defense is primarily applicable to mistakes in amounts owed, and does not apply when the underlying claim does not support a construction lien in the first instance.

**Ortmann v. Bell**, --- So.3d ---, 2011 WL 4104908 (Fla. 2d DCA 2011).

Documentary stamps on a deed are not conclusive indication of the value of the transferred real estate.

**MB Plaza, LLC v. Wells Fargo Bank, Nat. Ass'n**, --- So.3d ---, 2011 WL 4413859 (Fla. 2d DCA 2011).

An order appointing receiver may not grant the receiver the right to sell or otherwise dispose of the property.

**Fidelity Warranty Services, Inc. v. Firststate Ins. Holdings, Inc.**, --- So.3d ---, 2011 WL 4577530 (Fla. 4th DCA 2011).

An owner can testify as to the value of his business, but his testimony becomes expert testimony when he offers an opinion based on special knowledge,

skill, experience or training. Any of the three different methods used for valuing a business (income, market or asset based) must be based on non-speculative evidence, and using prior years' sales to determine market value is speculative. "Pure opinion" is not actionable as defamation.

**TRG Brickell Pointe NE, Ltd. v. Gravante**, --- So.3d ---, 2011 WL 4809209 (Fla. 3d DCA 2011).

A contract for sale of real estate does not need to be dated and witnessed in order to be enforceable.

**Lower Fees, Inc. v. Bankrate, Inc.**, --- So.3d ---, 2011 WL 4949835 (Fla. 4th DCA 2011).

A "merger and integration" or "no reliance" clause does not bar a claim for rescission based on fraudulent inducement into a contract unless the clause itself explicitly waives fraud in the inducement claims. Accordingly, the following contract provision does not bar a fraud in the inducement claim:

This Agreement and the Ancillary Agreements constitute the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior agreements, understandings and negotiations, both written and oral, between the Parties with respect to the subject matter of this Agreement. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made or relied upon by the Parties. None of the provisions of this Agreement and the Ancillary Agreements is intended to confer upon any Person other than the Parties to this Agreement any rights or remedies under the Terms of this Agreement.

The full weekly Case Law Updates can be found at [www.richmangreerblog.com/author/manuelfarach](http://www.richmangreerblog.com/author/manuelfarach) or by emailing [mfarach@richmangreer.com](mailto:mfarach@richmangreer.com)

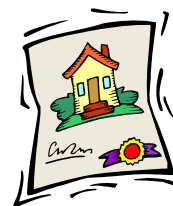


The Palm Beach County Bar Association's Real Estate CLE Committee presents:

## ***"Real Estate in Tough Times - The New Norm"***

**Friday, January 27, 2012 - 8:00a.m. - 12:15p.m.  
Bar Association Offices**

### **Program Schedule**



- 8:00am - 8:20am **Late Registration/Check In**
- 8:20am - 8:30am **Welcome and Opening Remarks - Gerald R. Pumphrey, Esq., Gerald R. Pumphrey, P.A., Real Estate Committee Chairperson**
- 8:30am - 9:30am **Foreclosures, Short Sales and Loan Modifications -**  
**From the Borrower's and Purchaser's Perspectives - Gregory Cohen, Esq.,**  
*Cohen, Norris, Wolmer, Ray, Telepman & Cohen, Board Certified Real Estate Attorney*  
**From the Lender's Perspective - Speaker TBA**
- 9:30am - 10:30am **Foreclosure Law Update - Manuel Farach, Esq., Of Counsel, Richman Greer P.A., Board Certified Real Estate Law and Business Litigation Attorney**
- 10:30am - 10:45am **BREAK**
- 10:45am - 11:45am **Outlook for the Near Future— James Merola, Esq., James Merola, P.A. and Professor of Law at Strayer University**
- 11:45am - 12:15pm **Ethics and Professionalism: A Cut Above the Ordinary – Representatives from the Professionalism Committee of the Palm Beach County Bar Association**
- 12:15pm **LUNCH - SPONSORED BY:**



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All refund requests must be made no later than 48 hours prior to the date of the seminar.

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**Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800**



## Failure To Include A Residuary Clause In Your Client's Will May Result In Partial Intestacy

By David M. Garten, Esq.

The case of *Basile v. Aldrich*, 2011 Fla. App. LEXIS 13243; 36 Fla. L. Weekly D 1868 (Fla. 1st DCA 8/23/11) is a good example of why your clients should not purchase a form Will.

In 2004, the decedent, Ann Aldrich ("Ann"), wrote her will on an "E-Z Legal Form" and directed that certain specific property go to her sister, Mary, and that if Mary predeceased her, that the specific property went to her brother, James. The will did not contain a residuary clause.

In 2007, Mary died leaving Ann certain cash and real estate located in Putnam County. Neither the cash nor the real estate were referenced in Ann's Will.

Ann passed away in 2009 and James was appointed the personal representative of her estate. After a court order authorized him to sell the Putnam County real property, James filed a petition for construction of the will. The petition asked the court to decide who should receive the proceeds of the sale of the Putnam County real property and the cash Ann had inherited from Mary. In his petition, James took the position that the most reasonable and appropriate construction of the will was that Ann intended her entire estate, including what she had inherited from Mary, to pass to him, citing: (1) the will itself, which names only Mary and James as beneficiaries, and which devised all of the property then owned by Ann; (2) §732.6005(2), Fla. Stat. which provides that a will is to be construed to pass all property that a testator owns at death, including property acquired after the execution of the will; and (3) the legal presumption that in making a will a testator intended to dispose of her entire estate, as well as the legal presumption against a construction that results in partial intestacy.

The appellate court held that where a will fails to dispose of all of a decedent's property (Ann's will has no residuary clause), "partial intestacy" results; and that property Ann owned at the time of her death not disposed of by her will passes to her intestate heirs, in the manner prescribed by sections 732.101 - .111, Fla. Stat. The court reasoned:

Section 732.6005(2) is, after all, a rule of construction. Rules of construction are to be resorted to only if the testator's intent cannot be ascertained from the will itself. [Citations omitted]. The presumption against partial intestacy is designed to resolve ambiguities where they exist. The presumption should not be applied to create ambiguities in a will where none would otherwise exist.

In the present case, Ann's will makes her intent when she executed it crystal clear. "There are simply no conflicting provisions of the... will [in any way concerning the disputed property] which require construction." *Barker*, 448 So. 2d at 31. "If the terms

of a will are such as to permit two constructions, one of which results in intestacy and the other of which leads to a valid testamentary disposition, the construction is preferred which will prevent intestacy." [Citations omitted]. The terms of Ms. Aldrich's will do not dispose of any property other than the property the will specifically identifies, and cannot fairly be construed otherwise.

**PRACTICE TIPS:** If Ann had a prior will which contained a residuary clause, the residuary beneficiaries under the prior will could argue that they are entitled to take under the doctrine of "dependent relative revocation". See *Carey v. Rocke*, 18 So. 3d 1266 (Fla. 2nd DCA 2009).

Would the outcome have been different if §732.615, Fla. Stat. (effective 7/1/11) had been in effect at the time of Ann's death? Sec.732.615 reads: "732.615 Reformation to correct mistakes.-Upon application of any interested person, the court may reform the terms of a will, even if unambiguous, to conform the terms to the testator's intent if it is proved by clear and convincing evidence that both the accomplishment of the testator's intent and the terms of the will were affected by a mistake of fact or law, whether in expression or inducement. In determining the testator's original intent, the court may consider evidence relevant to the testator's intent even though the evidence contradicts an apparent plain meaning of the will."

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## Rule 1.442: Proposals for Settlement

By Matt Triggs and Jonathan Galler

Decades ago, The Godfather taught us about the offer you can't refuse. Last summer, the Fourth District Court of Appeal taught us about the offer you can't accept.

Rule 1.442 provides the procedural framework for making and accepting proposals for settlement. Under the rule, a proposal may be accepted in writing within 30 days after service of the proposal unless the proposal is withdrawn prior to its acceptance.

However, in *Kroener v. Florida Insurance Guaranty Association* (FIGA), the Fourth District held that the trial court's entry of final summary judgment in favor of FIGA automatically terminated FIGA's otherwise pending settlement offer and precluded the claimants' ability to accept it.<sup>1</sup>

The *Kroener* case involved an insurance coverage dispute. The Kroeners were homeowners who commenced their lawsuit against FIGA when the company declined coverage for hurricane damage. FIGA asserted various affirmative defenses and moved for summary judgment. The day before the summary judgment hearing, FIGA served a proposal for settlement of \$32,000.00. After hearing argument on the motion, the trial court granted summary judgment in favor of FIGA and entered final judgment several days later.

Having lost their case, the Kroeners attempted to accept FIGA's pre-summary judgment settlement offer. Their written acceptance of the offer came well within the 30-day window and, at the time, FIGA had not yet served any notice withdrawing its offer. (FIGA served a withdrawal of its offer the day after the Kroeners' acceptance.) Nevertheless, because the Kroeners written acceptance of the offer came several days after the trial court entered final judgment, the trial court ruled that the acceptance of the offer was a nullity.

On appeal, the Fourth District called the issue one of first impression in Florida and affirmed the trial court's ruling. Relying primarily on two Arizona state court cases, as well as federal cases from Pennsylvania and Tennessee, the Court reasoned that "to allow acceptance of an offer after entry of summary judgment would defeat the purposes for which the rule was designed – to encourage settlement and avoid protracted litigation."<sup>2</sup>

For example, if a defendant were to be held to its offer of judgment even after a final judgment is entered in its favor, no defendant would want to make such an offer when summary judgment motions are pending. "This could cause litigation to continue where it could have ended and cause the Court to unnecessarily spend time and resources resolving a motion that would not need to be resolved if the case settled."<sup>3</sup>

<sup>1</sup>63 So. 3d 914, 920 (Fla. 4th DCA 2011).

<sup>2</sup>*Id.* at 919 (citations omitted).

<sup>3</sup>*Id.* at 920 (citation omitted).



The Court highlighted and adopted at least two additional grounds for the conclusion reached by courts in other jurisdictions. First, the Court noted that entry of a final judgment renders moot any need for settlement and that permitting an offer of judgment to be accepted would be akin to overriding a final judgment.

Second, the Court noted that summary judgments serve the same purpose as a trial verdict and that Florida courts have already decided that a settlement offer cannot be accepted after a trial begins. Indeed, Rule 1.442(b) provides that: "No proposal shall be served later than 45 days before the date set for trial or the first day of the docket on which the case is set for trial, whichever is earlier."

In distinguishing a handful of cases that have reached the opposite conclusion, the Fourth District emphasized a difference between Rule 1.442, on the one hand, and the rules governing settlement offers in other jurisdictions, on the other hand. Specifically, the Court stated that "the courts which permit acceptance of an offer after a court has entered summary judgment rely on the proposition that the offer is absolutely irrevocable." By contrast, Rule 1.442(e) authorizes the withdrawal of a proposal for settlement at any time prior to its acceptance by the offeror.

*Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation.*

### Circuit Court Report CIVIL DIVISIONS • October 2011

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	03-12	03-12	12-11	1524
AB HAFELE	04-12	04-12	01-12	1673
AD FRENCH	02-12	02-12	01-12	1748
AE MCCARTHY	06-12	06-12	01-12	1914
AF KEYSER	05-12	05-12	12-11	1574
AG CROW	04-12	03-12	12-11	1838
AH BROWN	04-12	04-12	11-11	1519
AI SASSER	02-12	02-12	11-11	1130
AJ ROSENBERG	04-12	04-12	12-11	1209
AN COX	04-12	04-12	01-12	1666
AO BARKDULL	03-12	03-12	12-11	1651



## What Are Your Jurors Doing on the Internet?

By Christopher Hopkins, Chair, Law Practice Technology Committee

In 2010, the Florida Supreme Court approved a new jury instruction prohibiting venire panel members from searching the internet, “to find out anything related to any cases in the courthouse.” If picked for trial, a juror is further prohibited from “tweeting, texting, blogging, e-mailing, [or] posting information on a website or chat room.”

But that prohibition only exists during voir dire and trial. Depending upon the type of case, it may be important for lawyers to know how jurors generally use the internet. An old trial lawyer technique to obtain insight into potential jurors was to ask if anyone brought a book to jury duty; the concept was that simply bringing a book hinted at the juror’s personality while the type of book further exposed their interests. In our modernized approach, a juror’s internet usage may tell you something about how the person obtains information, interacts with the world, and maintains interpersonal connections. This might provide subtle intelligence as to who to pick and how to best present your case.

In the recent book, *The Shallows: What the Internet is Doing to Our Brains*, author Nicholas Carr explains that the neuroplasticity of our brains physically changes because of the way we more frequently skim information on the internet; this leads to less information passing from short to long-term memory. If your panel is a group of frequent internet-users with skimming habits, a long trial (or the fact that your argument is presented last) may require consideration as to which jurors to pick or how to argue your case. The sites which jurors use to obtain news (e.g., Huffington Post vs. Fox News) may betray their politics. How savvy a person researches (“I’ve used Google Maps Street View to check out if a hotel looks good” or “You can find that on Thomas.gov”) might suggest how detail-oriented and persistent they are. There is an infinite number of internet usage questions which could be tailored to your case.

Years ago in law school, a professor suggested that trial-lawyers-to-be should pay attention to the small graphic on the bottom of the front page of the USA Today which provide quirky statistical information about our society. Keeping tabs on what people in the “real world” were thinking would help the trial lawyer, who is isolated in the office, remain connected. The theory was that you cannot persuade if you do not know your audience (hint: the USA Today graphic is on the free iPad app).

As a recap of 2011, here are some of the more noteworthy statistics about how your jurors stay connected and what they may be doing on the internet.

### Connectivity

- 1 in 5 Americans have never used the Internet.
- Those with internet access use it daily (61%) more so than TV (54%), radio (36%) or newspapers (32%).
- 95% of Americans in households making \$75,000 or more

use the internet at least occasionally compared to 70% below \$75,000.

- 83% of adults in the U.S. have a cell phone.
- 76% of Americans own a PC; 47% have an MP3 device; 42% own a home gaming device.
- The average 18-24 year old sends 50 text messages per day.
- Over half of us reported a preference for a voice call versus a message or email – but that preference is reversing in every age group under 54 years old.
- All age groups use a blend of TV, newspapers, and internet for news. TV is the most popular for breaking news (55% over Internet’s 16%) whereas the Internet is the source for restaurant reviews (28%).
- 28% of cell owners get directions or recommendations based upon their current location.
- Nearly 90% of first year law students in a small survey “always or usually” bring a laptop to class for note-taking but nearly all admit to being distracted by email or surfing.
- 32% of wi-fi users admitted to trying to access unsecured wi-fi networks.
- 47% of people with a wireless device check email before bed. 40% kiss spouse or significant other.
- 37% of at-work internet users visited at least one x-rated site; 70% of pornography is streamed between 9 a.m. – 5 p.m.
- Despite our stated concern about online child safety, CNN reports 92% of U.S. two year olds are pictured somewhere on the internet.

### Social Media

- 42.3% of all Americans had a Facebook account as of March 2011.
- 65% of online adults use social networking sites.
- Minority internet users are twice as likely to use Twitter than Caucasian internet users.
- 42% of LinkedIn users “regularly” update their profile.
- A survey of women found 83% were annoyed at Facebook friends whose posts involved (in this order) complaining, political talk, and bragging.
- 18% of people use Facebook to find dates whereas 17% go out and meet people in real life (13% use online dating services).
- As of December 2009, Facebook is cited in 1 of 5 U.S. divorces with 81% of matrimonial lawyers reporting an increase in social networking evidence in the last 5 years.
- 4% of Americans use location-based services (e.g., Foursquare).
- 80% of regular internet users were active in “real world” volunteer groups compared to 56% of non-internet users.

*Christopher B. Hopkins is a shareholder at Akerman Senterfitt. He spends 100% of his online time avoiding internet surveys but occasionally will check his email at [christopher.hopkins@akerman.com](mailto:christopher.hopkins@akerman.com).*

The Palm Beach County Bar Association's Alternative Dispute Resolution Committee Presents:

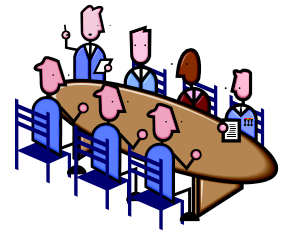
## "ADR in 2012: The Solution to Resolution"

Monday, February 13, 2012 8:30a.m. – 4:40p.m.

Bar Association Offices

**NEW ADDRESS:** 1507 Belvedere Road, WPB

### Program Schedule



- 8:00a.m. – 8:30a.m. **Late Registration/Check In**
- 8:30a.m. – 8:40a.m. **Welcome & Opening Remarks** - *W. Jay Hunston, Jr., Esq., Certified Circuit Civil and Family Mediator, Board Certified Civil Trial Lawyer Emeritus, Committee Chair*
- 8:40a.m. – 9:40a.m. **Mediator Intruders? Does the Judiciary have the right to inquire of mediation under any circumstances?** - *Melvin A. Rubin, Esq.*
- 9:40a.m. – 10:20a.m. **Understanding the Mediation Process** - *Dr. Bernard H. Shulman, Certified Circuit Civil and Family Mediator*
- 10:20a.m. – 10:35a.m. **BREAK**
- 10:35a.m. – 11:35a.m. **Diversity Issues in Mediation—Language, Race, Gender & More** - *Robin Carol Shaw, Esq., Of Counsel to Shapiro Blasi Wasserman & Gora, P.A..*
- 11:35a.m. – 12:15p.m. **Negotiation Tactics—What Works; What Doesn't?** - *Theodore A. Deckert, Esq., Theodore A. Deckert P.A.*
- 12:15p.m. – 1:05p.m. **LUNCH Provided by Sponsor**
- 1:05p.m. – 2:05p.m. **ADR Ethics: Recent Case Law & MEAC Opinion Update** - *W. Jay Hunston, Jr., Esq., Certified Circuit Civil and Family Mediator, Board Certified Civil Trial Lawyer Emeritus*
- 2:05p.m. – 2:55p.m. **Marketing an ADR Practice in a Crowded Field - Panel Discussion**
- 2:55p.m. – 3:10p.m. **BREAK**
- 3:10p.m. – 3:40p.m. **Update on Mandatory Mediation - 2 Years Later** - *Speaker TBA*
- 3:40p.m. – 4:40p.m. **Ethical Dilemmas in Mediation - Panel Discussion**  
*Moderator: Amber Elizabeth Borum McMichael, Esq., Certified Circuit Civil and Family Mediator*

### SPONSORED BY:

***W. Jay Hunston, Jr., P.A.—"Effective Dispute Resolution"***

This course is expected to receive **8.0 CLER hours including 2.5 Ethics credits / Certification credits are pending from the Florida Bar.**

The cost of the seminar is \$225 for PBCBA members/paralegals; \$265 for non-PBCBA members/paralegals if registered by 2/6/12; add \$25 to registration fee after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

**"This course is eligible for up to 8.0 CME hours including 2.5 Ethics credit; 1.0 Cultural Diversity credit. Mediators are required to self report those hours applicable to their areas of certification at the time of their renewal. For more info on the CME requirement, visit, [www.flcourts.org](http://www.flcourts.org), select Alternative Dispute Resolution/Mediation."**

\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>	<b>BY CHECK</b> Return this form	<b>BY CREDIT CARD</b> For security purposes, you must register online at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>	<b>CLE</b>	Materials will now be emailed to all registrants prior to the seminar
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Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/13/12 ADR) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.** Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406.

## Welcome New Members!

The following represents each new member's name, hometown, law school, and date of admission to the Florida Bar and law firm association.

**Deaina Brown**, University of Florida, 2002; Office of Criminal Conflict and Civil Regional Conflict, West Palm Beach.

**Courtnie Copeland**-Florida; Stetson University College of Law, 2011; Ft. Pierce.

**Phillip Edwin DeBerard**, IV- Florida; Stetson University College of Law, 2010; Sole Practitioner, Stuart.

**Frank P. Delia**-New York, Nova Southeastern University, 2004; Associate with Kubicki Draper, West Palm Beach.

**Adisada Dudic** - Bosnia and Herzegovina; Cornell Law School, 2011; Associate in Derrevere, Hawkes, Black & Cozad, West Palm Beach.

**Lorelei Fiala** - New Jersey; St. Thomas University, 2003; Jupiter.

**Lauren Fallick** - Massachusetts; Nova Southeastern University, 2006; Associate in Leopold-Kuvin, P.A.

**Katherine M. Goldberg**, University of Baltimore, 2010; Associate in Shochet Law Group, Greenacres.

**Allan Hutensky** - Connecticut; University of Connecticut, 1961; Boca Raton.

**Laura Mason** - Belgium; Florida International University, Law Student Membership; Adventura.

**Agnes Mombrun** - Haiti; Florida Coastal School of Law, 2009; Law Office of Mark S. Guralnick, Boca Raton.

**Eric Pendergraft**, Florida State University, 2011; U.S. Bankruptcy Court, West Palm Beach.

**Ashlee Richman** - Florida; American University, 2011; Jones Foster Johnston & Stubbs, Palm Beach Gardens.

**David Rolling** - Florida; St. Thomas University, 2008; Sole Practitioner, Riviera Beach.

**Diea Schum** - Michigan; Thomas Cooley Law School, 2006; Associate in Tobin & Reyes, P.A., Boca Raton.

**Emily Slosberg**, Nova Southeastern University, 2011; Sole Practitioner, Boca.

**Mark S. Soloman** - New York; Nova Southeastern University, 1979; Sole Practitioner, Ft. Lauderdale.

**Alcolya St. Juste**, Nova Southeastern University, 2002; Sole Practitioner, Boynton Beach.

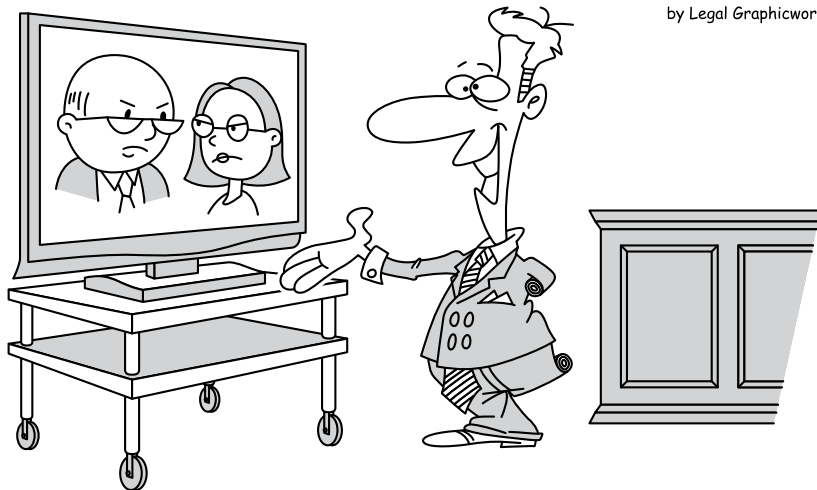
**Theodore Stevens** - Florida; Florida Coastal School of Law, 2011; Associate in Derrevere, Hawkes, Black & Conzad, West Palm Beach.

**Jonathan Szabo** - Ohio; Nova Southeastern University, 2010; Associate in Adams Coogler, P.A., West Palm Beach.

**Christine Wang** - California; University of Florida, 2011; Associate in Ward, Damon, Posner, Pheterson & Bleau, Lake Worth.

**Donald Jack Ward** - Virginia; University of Notre Dame, 2011; Associate in Searcy, Denny, Scarola, Barnhart & Shipley, P.A., West Palm Beach.

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## Music, Comedy & Dancing

Join us for the **Lawyer Variety Show** on Saturday, January 21 at the Eissey Campus Theatre in Palm Beach Gardens. The evening begins with a cocktail reception at 6:30 pm followed by the performance at 7:30 pm. Don't miss this evening of great entertainment provided by colleagues. Tickets are \$30.00 for Orchestra seating and \$20.00 for the Balcony. Buy your tickets now online @ [www.palmbeachbar.org](http://www.palmbeachbar.org).



Richard Monescalchi on the piano



Robert Rubin on the guitar and harmonica



Dave Aronberg on the guitar

*“The event was 10 times better than I ever expected it to be. I am truly amazed at the talent every single act displayed. Will definitely be going next year.”*

*Shannon Sagan, Esq.*

*“The show was AWESOME!!!! Thanks for making sure I went. I would never have guessed it would be that much fun!”*

*Ryon McCabe, Esq.*

## Florida Bar Board of Governors Meeting Summary

At its October 21, 2011, meeting in Charleston, SC, The Florida Bar Board of Governors:

- Approved a communications plan to help keep Bar members informed about Bar-related legislative activities. Communications Committee Chair Greg Coleman said the plan calls for a communication from the Bar president to all members before the start of a legislative session. The letter, which will be printed in the Bar News, sent electronically to all members, and posted on the Bar's website, will explain what the Bar can and cannot do legislatively and have a general discussion of what the Bar expects to happen in the session. During the session, there will be a page on the Bar's website updated every Friday on what is happening in the session.
- Heard a report from Legislation Committee co-chair Ray Abadin that so far the Bar does not anticipate the wide ranging efforts to change the court system and the Supreme Court that occurred in the previous session. What is expected, though, is an effort to “reform” the judicial nominating process. Part of that reform could be an effort to remove the Bar from the process of appointing JNC members.
- Approved, on the recommendation of the Budget Committee, the hiring of a new disciplinary staff counsel to work on mortgage related grievance cases. Budget Committee Chair Bill Schiffino said the new counsel will work on foreclose loan modification, mortgage fraud, and mortgage foreclosure related cases.
- Heard Program Evaluation Committee Chair Jay Cohen report that the committee will make a recommendation to the board at its December meeting on a non-voting board seat for a government lawyer.
- Approved the PEC recommendation to change the name of the Judicial Independence Committee to the Constitutional Judiciary Committee. Cohen said the change underscores that the judiciary is a constitutionally created branch of government.
- Recommended approval of an amendment to a form in the Juvenile Procedure Rules, out-of-cycle rule amendments for the family law rules that mirror changes made to civil procedure rules and a rule on mediations involving parties not represented by lawyers, and on changes recommended by the Traffic Court Rules Committee, Criminal Procedure Rules Committee, and Rules of Judicial Administration Committee on protecting confidential information, such as birthdays and Social Security numbers.
- Heard a report from Lawyer Referral Service Special Committee Chair Grier Wells on the committee's activities, including two public hearings. Wells said much of the problems related to private referral services appear to be related to getting PIP benefits for people injured in auto accidents.
- Heard board member Laird Lile, a member of the Florida Courts Technology Commission, report on electronic court filing activities. He noted the Supreme Court had asked for and the FCTC had provided a suggested schedule for mandatory e-filing in Florida courts. That would have mandatory filing of all civil cases no later than March 1, 2013, and mandatory filing for all criminal cases no later than September 30, 2013.

*Should you have any questions, please contact one of our circuit's four representatives: Greg Coleman, Michelle Suskauer, Gary Lesser or David Prather, or Florida Bar President Scott Hawkins.*

The Palm Beach County Bar Association's Commercial and Business Litigation CLE Committee presents:



**Substantive Law and Practical Advice  
from the Masters  
in the Litigation and Trial of Business Disputes -  
A Lunchtime Seminar Series**

January 18, 2012

March 1, 2012

April 4, 2012

May 9, 2012

11:45 a.m.—1:00 p.m.

Judicial Conference Room, Main Courthouse, WPB

**Lunches Sponsored By: BankAtlantic**

**January 18, 2012** - "The Use of ADR in Business Litigation" - *L. Louis Mrachek, Board Certified Civil Trial and Business Litigation Lawyer, Page, Mrachek, Fitzgerald & Rose, P.A.*

(This course has been granted 1.0 CLER/1.0 Business Litigation Certification Credits by the Florida Bar)

\*\*BRING YOUR BUSINESS CARDS - DRAWING AT LUNCH FOR FLORIDA PANTHERS HOCKEY TICKETS\*\*

**March 1, 2012** - "Proving and Defending Against Damage Claims in Business Litigation" -

*James W. Beasley, Jr., Beasley, Hauser, Kramer & Galardi, P.A.*

(This course has been granted 1.0 CLER/ 1.0 Civil Trial Certification Credits by the Florida Bar)

\*\*BRING YOUR BUSINESS CARDS - DRAWING AT LUNCH FOR FLORIDA PANTHERS HOCKEY TICKETS\*\*

**April 4, 2012** - "Commercial Consultants, LLC v. BBA US Holdings, Inc.: A Case Study In Fee-Shifting Issues" - *John "Jack" Scarola, Board Certified Civil Trial and Business Litigation Lawyer, Searcy, Denney, Scarola, Barnhart & Shipley, P.A.*

(This course has been granted 1.0 CLER/ 1.0 Business Litigation Certification Credits by the Florida Bar)

**May 9, 2012** - "View from the Bench" - *Judges TBA*

(This course has been granted 1.0 CLER by the Florida Bar)

The cost of each seminar is \$25 for PBCBA members/paralegals, \$65 for non-PBCBA members/paralegals if registered 7 days before each seminar; Add \$15 to registration fee after that date.

All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

**HOW TO REGISTER**



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**Materials will now be emailed to all registrants prior to the seminar**

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**Please register me for the following (checked) seminar(s):**

\_\_\_\_ January 18, 2012

\_\_\_\_ March 1, 2012

\_\_\_\_ April 4, 2012

\_\_\_\_ May 9, 2012

Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery). (Commercial/Business). Cost is the same as listed above, in addition to \$10 for shipping and handling.

**PAYMENT BY CHECK ONLY WITH THIS FORM.**

Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800

## Second Annual Family Picnic

The Membership Committee recently hosted its Second Annual Family Picnic at Dreher Park in West Palm Beach. More than 200 members and their families enjoyed the fall festivities including BBQ, beer, ice cream, bungee jump, face painting and many other fun activities.



**Congratulations to our Bake-Off Winners (left to right) Maria Patullo, 3rd place; Carla Glover, 2nd place and Tracy Vaspoli, 1st place. Winners received a gift certificate to Williams & Sonoma.**



**Membership committee - Jon Mann, Lindsay Demmery, Tonya McCormick, Robyn Weiss, Pat DeRamus (Bake-Off Chair); Ferris Solomon, and Curt Sanchez (Membership Chair)**



**Jim Sweet and his children**



**Judge Frank Castor and his family**



**Scott Smith and his son Charlie**



**Michael Napoleone and his son Christopher on the gigantic double slide**



**Rosemarie Guerini with Tessa Marie, Jeffrey Jr. and Marcus D'Amore**



**Bungee Jump!**

Additional pictures can be found on the Bar's Facebook page at [www.palmbeachbar.org](http://www.palmbeachbar.org)



The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:

# “Medical School 101 for Lawyers”

Tuesday, February 7, 2012 - 8:50 a.m. – 5:00 p.m.

Bar Association Office, **NEW LOCATION:** 1507 Belvedere Road, WPB, FL

## Program Schedule

- 8:30 a.m. - 8:50 a.m.      **“Hot” Breakfast / Late Registration and Check In**
- 8:50 a.m. - 9:00 a.m.      **Welcome & Opening Remarks** - *Daniel A. Zuniga, Esq., Lytal, Reiter, Smith, Ivey & Fronrath, LLP*
- 9:00 a.m. - 9:45 a.m.      **Back to Basics: The Anatomy and Physiology of Trauma** - *Dr. Jon Ehrich - Physiatrist*
- 9:45 a.m. - 10:30 a.m.      **Diagnostic Testing - Reading a Cervical and Lumbar MRI: What is the difference between bulges, protrusions, herniations?** - *Dr. Andrew Walker - Neuroradiologist*
- 10:30 a.m. - 10:45 a.m.      **BREAK**
- 10:45 a.m. - 11:30 a.m.      **Diagnostic Testing - Reading a Cervical and Lumbar MRI and DTI: How do you know if the patient is suffering from a pre-existing condition or aggravation of one?** - *Dr. Michael Raskin - Neuroradiologist*
- 11:30 a.m. - 12:15 p.m.      **Pain: What is it? How is it treated and how can it be measured?**  
*Dr. Fred Cohen - Neurosurgeon & Trial Lawyer*
- 12:15 p.m. - 1:15 p.m.      **LUNCH**
- 1:15 p.m. - 2:15 p.m.      **Treatment Options: What are some of the cutting edge surgical techniques available to the patient?** - *Dr. Pasqual Montesino - Orthopedic Surgeon*
- 2:15 p.m. - 3:00 p.m.      **Traumatic Brain Injuries: What are the different types of brain injuries, how can they be diagnosed, what are the patient’s treatment options?** - *Dr. Jose Zuniga - Neurologist*
- 3:00 p.m. - 3:15 p.m.      **BREAK**
- 3:15 p.m. - 4:00 p.m.      **Joints: What are the different types of injuries to these areas, how can they be diagnosed, what are the patient’s treatment options?** - *Dr. Lawrence Gorfine - Anesthesiologist*
- 4:00 p.m. - 4:45 p.m.      **Extremities: What are the different types of injuries to these areas, how can they be diagnosed, what are the patient’s treatment options?** - *Dr. Rajen Naidoo - Orthopedic Surgeon*
- 4:45 p.m. - 5:00 p.m.      **Medical Illustrations: Making the patient or other layperson understand medical information through visual aids** - *Michael Downey - Visual Evidence*

**SPONSORED BY: Sabadell United Bank**



This course is expected to receive 8.0 CLER credits from The Florida Bar. The cost of the seminar is \$200 for PBCBA members/paralegals; \$240 for non-PBCBA members/paralegals if registered by 1/31/12; add \$25 to registration fee after that date. All refund requests must be made no later than 48 hours prior to the date of the seminar.

<b>HOW TO REGISTER</b>	<b>BY CHECK</b> Return this form	<b>BY CREDIT CARD</b> For security purposes, you must register online at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>	<b>CLE</b>	<b>Materials will now be emailed to all registrants prior to the seminar</b>
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Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

\_\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/7/12 PI) Cost is the same as listed above, In addition to \$10 for shipping and handling. . **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

**Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800**



Got an iPad? You need these apps.



By Nora Riva Bergman

Whether you already have an iPad or are thinking of getting one, you’ve no doubt seen the ads for them. iPads are cool. They are neat “toys” for grown-ups. All that’s true, but what you may not know is that iPads are incredible business tools that can help you get organized, manage your cases, and even help you present your case at trial. Many of the apps listed below are free. Others range in price from

a couple of dollars to just under \$90. Also, be sure to check out the iPad cases from Zagg.com. They’re made from aircraft-grade aluminum. Get the Logitech Keyboard Case with a wireless Bluetooth keyboard and you’ll be the talk of the courthouse.

**General**

**Roboform:** Excellent free password manager

**Skyfire:** Web browser for iPad allows you to watch videos, including flash videos.

**Kindle:** I couldn’t live without this one! If you love to read, it’s a must.

**Brushes:** This is just for fun. Turn your photos into works of art. Easy to learn, but used by the pros, too. Illustrations made with Brushes have graced several New Yorker covers!

**Netflix:** Watch streaming movies right on your iPad.

**Productivity**

**GoToMyPC:** Allows you to connect to your office right from your iPad.

**iTeleport:** Similar to GoToMyPC, and supports VPN-based encryption.

**Dropbox:** Free cloud-based file storage. - A must for all iPad users.

**Penultimate:** Cool note-taking app for iPad. Great for quick notes, very easy to use.

**Notes Plus:** Another great note taking app allows you to mix drawings/text & move them around.

**Dragon Dictation:** This free app lets you dictate to your iPad. - Then with a couple of taps email, tweet or post to Facebook.

**AudioNote:** Note taking app that is also a voice recorder. Use this app during interviews; record the interview while taking note; the sound syncs with the text.

**Evernote:** This app was inducted into the Apple “App Hall of Fame.” Save everything from photos to web pages to written and audio notes in one place and easily sync everything with your computer.

**iAnnotate:** Allows you to annotate PDFs on your iPad & create your own custom toolbars. Syncs with Dropbox.

**Line 2:** Turn your iPad into a second phone with Line2. Line2 is designed as an iPhone app, but it works on the iPad as well, and features call waiting, hold, transfer and conferencing.

**TruPhone:** Another phone app designed for the iPad.

**QuickOffice Connect:** This app allows you to open and edit documents and spreadsheets on your iPad. Very easy to use.

**Legal**

**Court Days Pro** – Check out CourtDaysPro-rule based calendaring program you can customize. Very cool.

**FastCase HD:** As a member of The Florida Bar, you have free access to Florida case law through Fastcase. Make the most of your subscription with this free app.

**TrialPad:** At \$89.99 this is one of the pricier apps out there. But if you’re in the courtroom a lot it’s worth checking out. It allows you to organize and present evidence right from your iPad.

**LawBox:** Free app that contains the Federal Rules of Civil Procedure and other Federal resources, as well as the Florida Statutes.

**Florida Evidence Code:** Tekk Innovations created this app, together with Florida Rules of Civil Procedure, Florida Rules of Criminal Procedure and the Florida Family Law Rules of Procedure.

**Travel**

**Gate Guru:** Want to know where to eat in Concourse B at the Denver International Airport? Gate Guru will give you a complete list of restaurants with reviews.

**Flight Track:** Get live flight status from virtually all major airlines.

**Kayak:** Excellent search engine for flights and hotels.

**WeatherBug:** Very cool weather app.

That ought to get you started. Now grab that iPad and have some fun!

*Nora is a business coach and certified practice advisor with Atticus. She has practiced as an employment law attorney and certified mediator and has served as an adjunct professor at both Stetson University College of Law and the University of South Florida. She has also served as the Executive Director of the St. Petersburg Bar Association. Nora is a graduate of the Leadership Development Institute at Eckerd College, and is certified in the Conflict Dynamics Profile® developed by Eckerd to help individuals and organizations learn how to deal with conflict constructively. She is also certified in the DISC Behavioral Style Assessment. Visit Nora online at [www.reallifeppractice.com](http://www.reallifeppractice.com) and [www.atticusonline.com](http://www.atticusonline.com).*

**DIVORCE QUESTIONS?**



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# Which Quarter is the One You're Entitled to?

(the quarter represents your 25% referral fee, of course)



**OR**



**Do you know how much the Personal Injury case you referred really settled for? You should!**

At the Law Offices of Craig Goldenfarb, we want you to ask yourself these questions about the current personal injury lawyer you send cases to:

- Do I get to sign the client's settlement / closing statement, showing me exactly how much the case settled for?
- Will the lawyer or his staff meet the client at my office or the client's home?
- Do I sign the client contract, as required by the Florida Bar Rules?
- Does the lawyer keep me informed about the status of the case I referred?
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## Does a “Finder” of Corporate Financing Need to Register Under the Securities Laws to be Compensated?



By *Evan H. Frederick*

When a business seeks to raise capital, many use third parties to find investors and serve as an intermediary between investors and the company, as an issuer of securities. Such intermediaries are generally referred to as “finders.” In this scenario, both the company and finder need to be wary of whether the finder meets the definition of a “broker,” such that he or she may be required to register with the U.S. Securities and Exchange Commission (“SEC”).

Section 15 of the Securities Exchange Act defines a broker as “any person engaged in the business of effecting transactions in securities for the account of others.” See 15 U.S.C. § 78c(a)(4). A so-called “finder’s exemption” has evolved out of the SEC’s “no-action letters,” generally determining that a finder is not a “broker” in certain situations. These no-action letters involve a case-by-case factual analysis involving numerous factors, including the extent of the finder’s role in setting up the transaction, how the finder was paid, and how the transaction was structured.

The factor the SEC looks most heavily towards in determining registration questions is whether the person received transaction-based compensation, i.e., a commission, in connection with the sale of securities. “[A]s a general matter, a person that receives a percentage of a commission or transaction-based compensation would be required to register as a broker-dealer.” See John M. McGivney Sec., Inc., SEC No-Action Letter (May 20, 1985). The SEC has explained that, “[t]hose persons engaged in effecting securities transactions for the account of others, and particularly those persons who receive a commission for their efforts based on the cost of the exchange of securities or the amount of securities placed, are brokers or dealers in securities.” See Securities Investor Protection Corp., SEC No-Action Letter (July 14, 1973).

Indeed, the SEC in recent years has taken a stricter approach in requiring

finders to register as a broker when receiving commissions based on their role in a sale of securities. See John W. Loofbourrow Associates, Inc., SEC No-Action Letter (Jan. 29, 2006)(SEC refused to issue no-action relief when fee paid to finder would be commission-like arrangement tied to size of securities offered and then placed); Brumberg, Mackey & Wall, SEC No-Action Letter (May 17, 2010)(SEC denied finder’s no-action request, finding that the receipt of transaction-based compensation is “a hallmark of broker-dealer activity.”).

On the other hand, the SEC occasionally has found that even a commission-based fee will not require a finder to register, in particular, in the absence of any role whatsoever in the negotiations between the parties introduced by the finder. See Paul Anka, SEC No-Action Letter, 1991 WL 176891 (July 24, 1991). In this case, the SEC did not require the finder’s registration because, despite the clear use of transaction-based compensation, the finder only provided to a particular issuer the names of potential investors with whom he had a pre-existing business or personal relationship. *Id.* The SEC determined that the finder was not required to register as a broker-dealer because the finder did not participate in any negotiations, did not provide other services to facilitate the transactions such as underwriting or preparing sales literature, and did not make recommendations to enter into the transactions. *Id.*

A finder of financing for a business may also argue that he did not sell “securities,” but instead acted more like a business broker, i.e., he sold a controlling interest in an entire business as opposed to merely an issuance of securities. The SEC, however, generally finds that “business brokers” are required to register as a “broker,” unless they meet a myriad of factors beyond simply structuring the transaction as a sale of a business rather than a transfer of securities. See Victoria Bancroft, SEC No-Action Letter (Aug. 9, 1987); Int’l Business Exchange Corp., SEC No-Action Letter (Dec. 12, 1986); Country Business, Inc., SEC No-Action

Letter (Nov. 8, 2006). The factors include, but are not limited to, the following:

- the finder will have a limited role in negotiations between the seller and potential purchasers;
- the finder will only advertise and/or offer for sale the business’ assets;
- the finder will not advise the two parties whether to issue securities, or otherwise to effect the transfer of the business by means of securities, or assess the value of any securities sold; and
- the finder’s compensation will be determined prior to the decision on how to effect the sale of the business and based upon the consideration received by the seller, regardless of the means used to effect the transaction and will not vary according to the form of conveyance (i.e., securities rather than assets).

### See id.

In sum, a finder’s registration is largely a case-by-case, fact-specific determination that appears to involve a considerable degree of discretion by the SEC. As such, finders accepting transaction-based compensation must be wary of the above factors so that they do not unknowingly fall prey to the SEC’s registration requirements.

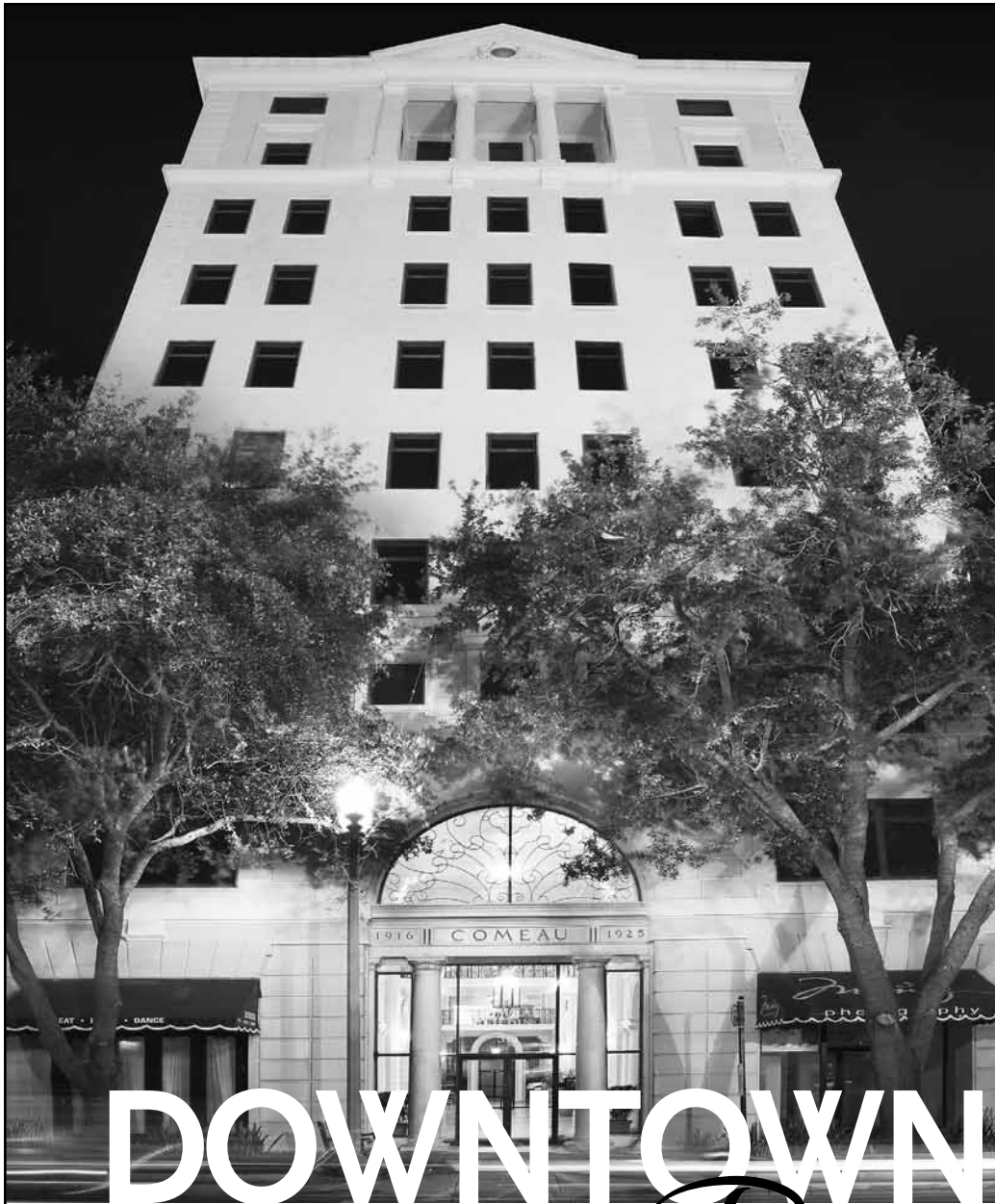
*Evan H. Frederick is an associate with McCabe Rabin, P.A. in West Palm Beach. He practices in the areas of business, securities and whistleblower litigation.*



### Who Are They?

From Page 4

1. Bob Bertisch
2. H. Irwin Levy
3. J. Ralph Mabie
4. Tom Mettler
5. Phil O’Connell, Jr.



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By Mark Greenberg, Lawyers for Literacy Chair

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## 15th Judicial Circuit 2012 Court Holiday Schedule

The following holidays will be observed by the Fifteenth Judicial Circuit in 2012:

New Year's Day .....	Monday, January 2, 2012
Martin Luther King Jr. Birthday .....	Monday, January 16
President's Day .....	Monday, February 20
Good Friday .....	Friday, April 6
Memorial Day .....	Monday, May 28
Independence Day (observed) .....	Wednesday, July 4
Labor Day .....	Monday, September 3
Rosh Hashanah .....	Monday, September 17
Yom Kippur .....	Wednesday, September 26
Columbus Day .....	Monday, October 8*
Veteran's Day .....	Monday, November 12
Thanksgiving Day .....	Thursday, November 22
Friday after Thanksgiving .....	Friday, November 23
Discretionary Holiday .....	Monday, December 24
Christmas (observed) .....	Tuesday, December 25
New Year's Day (observed).....	Tuesday, January 1, 2013

\* Monday, October 8, 2012 is a County holiday and County buildings will be closed. Therefore, court hearings cannot be scheduled on that day. The Court will hold an in-service training for all 15th Judicial Circuit employees.

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## HEARSAY

The law firm of **McCabe Rabin** recently hosted its annual Constitution Day celebration, where over 40 participants read the U.S. Constitution aloud. Readers included the Palm Beach County Superintendent of Schools, the State Attorney, judges, teachers and bar association officials. Nearly 200 people attended the event including winners of an essay contest for middle school students who wrote about which amendment to the Constitution is the most important.

Board Certified litigation attorney **Gerald F. Richman**, President of the law firm of Richman Greer, P.A., has won the National Masters in Trial Award from the American Board of Trial Advocates (ABOTA). Mr. Richman was specifically recognized for his efforts promoting jury trials worldwide, advancing the legal profession and his contributions to the non-profit organization on a national and local level spanning the last 23 years.





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CALENDAR  
December 2011

Thursday, December 1,  
5:30pm – 8:00pm  
**Holiday Party & Silent Auction**  
Frenchman’s Reserve, PBG

Friday, December 2,  
4:00pm -5:00pm  
**Investiture of Judge Robin J. Scher**  
Courtroom 11A

Monday, December 5,  
Noon – 1:00pm  
**Hispanic Bar Assn. Meeting**  
**Judicial Conference Room,**  
Main Courthouse  
Contact dzuniga@lytalreiter.com

Tuesday, December 6,  
Noon – 1:00pm  
**PI Wrongful Death CLE Committee Meeting**  
Bar Association Office

Wednesday, December 7 – 10  
**The Florida Bar Board of Governors Meeting**  
Ritz Carlton, Amelia Island

Wednesday, December 7,  
Noon – 1:00pm  
**NCS Board Meeting**  
Office of McHale & Slavin, P.A.

Thursday, December 8,  
11:00am - 1:00pm  
**FAWL Holiday Party for PACE Center for Girls**  
1225D Military Trail, WPB  
Contact pbcfawl@att.net for more information

Thursday, December 8  
**SPBCBA - Holiday Party and Toys for Tot’s Toy Drive**  
Ruth’s Chris, Boca Raton  
Contact southcounty@southpalmbeachbar.org

Thursday, December 8,  
Noon – 1:00pm  
**Law Related Education Committee Meeting**  
Bar Association Office

Saturday, December 10  
**Cunningham Bar Elder Law Event**  
Hurst Chapel, 1671 Silver Beach Rd, Riviera Beach, FL  
Contact LDS@lynnsolomonpa.com for more information

Tuesday, December 13,  
Noon – 1:00pm  
**YLS Board Meeting**  
Bar Association Office

Wednesday, December 14,  
Noon – 1:30pm  
**Bench Bar Conference Committee Meeting**  
Bar Association Office

Wednesday, December 14,  
Noon – 1:00pm  
**Professionalism Committee Meeting**  
Bar Association Office

Wednesday, December 14,  
5:00pm – 7:00pm  
**YLS Holiday Toy Distribution**  
Crowne Plaza Hotel

Thursday, December 15,  
Noon – 1:00pm  
**Real Estate CLE Committee Meeting**  
Bar Association Office

Friday, December 16,  
8:30am – 2pm  
**Elder Law Affairs Committee CLE Seminar “14th Annual Elder Law Update”**  
Bar Association Office

Monday, December 19,  
5:00pm – 6:00pm  
PBCBA Board of Directors Meeting

Tuesday, December 20,  
Noon – 1:00pm  
**Committee for Diversity & Inclusion Committee meeting**  
Bar Association Office

Monday, December 26 – 30  
**Court Holiday – Bar Office Closed Christmas Holiday**

Monday, January 2, 2012  
**Court Holiday - New Year’s Day Bar Office Closed**

