



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

December 2015

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 Friday, December 11 and are due back in the office by 5 p.m. on Tuesday, January 12 . Petitions for director-at-large seats will be available on Friday, December 18 and are due back in the Bar office by 5 p.m. on Wednesday, January 20.** Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it to 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 that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.



Members of the North County Section, along with members of FAWL, hosted their third annual PINK PARTY to raise money for Smiley Wiley Breast Cancer Foundation. The foundation provides financial assistance to local women and men with breast cancer who cannot meet their own costly health insurance deductibles and treatments. The event was held at Brio's in Palm Beach Gardens and raised \$1,630.00 for a total donation over the past three years of \$6,575.00! Pictured presenting the check is North County Section President Larry Buck (second from left); FAWL President Lindsay Demmery (Third from left); along with Ashley Peyton (far left) and Lindsay Mesches (far right) from Smiley Wiley. For more photos of this event, please see page 13.

Mark your calendar for upcoming Membership Events

December 6:

YLS Annual Dolphins Game Road Trip

December 10:

Annual Holiday Party and Silent Auction

January 23:

YLS 5K Run/Walk

February 12:

Joint Membership Luncheon with Forum Club with Guest Speaker U.S. Supreme Court Justice Stephen Breyer

February 19:

Bench Bar Conference

Inside...

President's Message	3
Professionalism Corner.....	5
Bankruptcy Corner.....	6
Personal Injury Corner.....	7
Probate Corner	8
ADR Corner.....	9
Diversity and Inclusion Luncheon....	10

Diversity Corner	11
New Members.....	12
North County News	13
Legal Aid Society	14
Real Property	15
Lawyers for Literacy.....	16
It's Your Civic Duty	17
YLS October Happy Hour.....	19
Bulletin Board.....	21

THE

BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

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President

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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
1507 Belvedere Road
West Palm Beach, FL 33406

2016 COURT HOLIDAY SCHEDULE

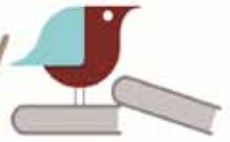
New Year's Day	Friday, January 1
Martin Luther King Jr. Birthday	Monday, January 18
Good Friday	Friday, March 25
Memorial Day.....	Monday, May 30
Independence Day (Observed)	Monday, July 4
Labor Day	Monday, September 5
Rosh Hashanah.....	Monday, October 3
Yom Kippur.....	Wednesday, October 12
Veteran's Day	Friday, November 11
Thanksgiving Day	Thursday, November 24
Friday after Thanksgiving.....	Friday, November 25
Day before Christmas	Friday, December 23
Christmas Day (Observed).....	Monday, December 26

PLEASE NOTE:

Monday, February 15, 2016, and Monday, October 10, 2016 are not court holidays. However, both are County holidays and County buildings will be closed. Therefore, court hearings cannot be scheduled on those days.



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President's Message



Holiday Shopping? Give the Gift of the Present.

by Grier Pressly

Balancing your mind's velocity with your body's real-world inertia is what makes being present so difficult and needed.

– John Maeda

Billable hours. Ubiquitous deadlines. Trial preparation. Bar committee meetings. Civic duties. Lawyers have always been a busy breed. But the modern day lawyer, confronted with the modern day client who expects prompt action and 24/7 access, is even busier. And in those hours that we aren't practicing law, we are bombarded by all flavors of digital distractions - Facebook updates, chiming text messages, Instagram posts, and the list goes on and on. In our desperate effort to maintain work-life balance, we are left to multi-task and to frantically juggle responsibilities.

Unfortunately, life's most important relationships often fall victim to the lawyer's balancing act. And such collateral loss too – lost memories, lost experiences, lost opportunities to parent, lost laughs. We're all guilty of tuning out family and friends when our minds are on work or social media is occupying our attention. It's not intentional; it just happens. When was the last time your spouse's question to you was met with silence because you were thinking about that closing argument? Or you responded with a dismissive "Mmm hmm" when your child was excitedly telling you about her day at school because you were

busy updating your Facebook profile? Or you hung up with your best friend because your client was calling you on your cell phone with "urgent" news? If true balance is only achieved by being fully present in the moment, how does the imbalanced lawyer get there? Fortunately, there is a solution that simply requires self-awareness and self-discipline.

It is past time that we take control of the present. We owe it to ourselves and to our important life relationships to be fully engaged when we're off the clock. But to make a commitment to being present more than just an abstract pledge, the lawyer must make concrete efforts. That means listening with intention at home the same way we do at a deposition, catching ourselves before we give the "Mmm hmm" response, protecting family time from work interference, valuing the family dinner and the casual lunch to catch up with a good friend as much as the networking breakfast, powering off the cell phone when walking into the house from work, and "sucking the marrow" out of even the routine time spent with loved ones. All in, all the time.

The mindset of being truly present

in our relationships outside of our law practice won't make us any less effective as lawyers, but it will make us far more effective in life's non-lawyer roles. Our clients won't appreciate us any less, but our family and friends will appreciate us a whole lot more.

During this holiday season, let us all rededicate ourselves to being present with our spouses, children, parents, friends, and loved ones. What gift could be greater than giving our genuine presence? What act could be more generous? What better time than the holidays to make that commitment?

I hope to see you at the Bar's annual holiday party on Thursday, December 10 at Frenchman's Reserve Country Club. It's a highlight of the Bar calendar every year! If you haven't already registered, you may do so on the Bar website. On the subject of a more tangible holiday gift, please donate an item for the silent auction, and knock off some of your holiday shopping at the auction. Contact Lynne Poirier at the Bar office if you have an auction gift to donate. All auction proceeds go to local charities, including the Friends of Foster Children's Association of Palm Beach County.

I wish everyone a healthy and joyful holiday season!

Phone: 659-4040

E-mail: gpressly@presslyandpressly.com

Reciprocity Issue Update #3

Fellow Bar Members:

On October 16, The Florida Bar Board of Governors rejected the proposal to allow admission by motion/reciprocity. The unanimous vote by the Board of Governors followed three months of robust debate on the issue. A number of voluntary bar associations around the state, including the Palm Beach County Bar Association, submitted formal resolutions in opposition to the proposal. While reciprocity is not coming to Florida any time soon, the practice of law in the state remains a shifting landscape. I would encourage our members to continue to engage in the dialogue surrounding the many other important issues addressed by The Florida Bar Vision 2016 study because future proposals involving Legal Education, Legal Technology, Bar Admissions, and Access to Legal Services are likely. More information about Vision 2016 may be found at www.floridabar.org/vision2016.

Grier Pressly, President

December 2015

Board Meeting Attendance

	August	September	October
Barnes	X	X	X
Buck	X	X	
Delgado	X		X
Huber	X	X	X
Kypreos	X	X	X
Mason	X	X	X
McElroy	X	X	X
Pressly	X	X	X
Reagan	X	X	X
Smith	X	X	X
Whittles	X	phone	X
Wyda	X	X	X
Xenick	X	X	phone



The YLS recently hosted one of its Sidebar Series with Judge Meenu Sasser, Alison Percy, Scott Perry, Judge Scott Suskauer, Michelle Suskauer, Judge Don Hafele, Judge Samantha Feuer and Rebecca Brock. They presented to a sold out group of young lawyers on cross examination. (Not pictured, but participants were Judges Lisa Small, Ed Artau and Cheryl Caracuzzo.) Thanks to all that participated!



Find Colleagues Online!

PBCBA Online Membership Directory
 Always available – always current!
 Easy to access (members only)
 If your information is incorrect or you'd like to update your photo, please send information to mjohnson@palmbeachbar.org

Need a holiday gift? Buy Movie Tickets!

As one of your member benefits, you can purchase discount movie tickets at the Bar Office. These tickets make great holiday gifts for family, babysitters, staff, clients and teachers. Savings are available for the following theaters:

- * Muvico Theater - \$7.50 each
- * Regal Theaters \$8.50 each

Come by the office and pick up your tickets Monday – Friday anytime between 9:00 a.m. and 5:00 p.m. (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



Awards to be presented at Bench Bar Conference – Nominations Requested

Two awards will be presented at the February 19, 2016 Conference: the 5th Annual **Judge Edward Rodgers Diversity Award** and the 17th Annual **Sidney A. Stubbs Professionalism Award**. Members are encouraged to nominate a member or organization for either of these prestigious awards.

Criteria for the **Professionalism Award** are individual members of the Palm Beach County Bar Association. The Professionalism Award recognizes an attorney that has demonstrated or promoted outstanding professionalism in Palm Beach County, as defined by exemplary ethical conduct, character and integrity, respect for the legal system and all of its participants, commitment to maintaining the highest levels of professional competence, courtesy and civility, and commitment to serving clients, the community and the public good **The deadline to submit nominations will be January 8.**

Criteria for the **Diversity Award** requires that the recipient should be a person (must be a PBCBA member) or organization who:

1. Demonstrates a consistent pattern of (either the individual or organization)'s commitment to the recruitment, retention and promotion of individuals of underrepresented populations;
2. Cultivates and promotes diversity and gender initiatives that establish and foster a more inclusive and equitable work environment;
3. Promotes and facilitates education, community outreach and social engagement with and between people of varying ethnic or religious backgrounds, gender, socioeconomic status, sexual orientation, and/or physical and mental capabilities so that persons of diverse background can enter and prosper in the legal field;
4. Exhibits visionary and insightful leadership to confront and resolve inequities through strategic decision-making, allocation of resources, and establishment of priorities;
5. Outlines defined goals, actions steps and accomplishments toward achieving a work environment that recognizes, promotes and encourages a diverse workforce at all levels throughout an organization;
6. Implements and carries out best practices that support diversity and inclusion goals.

The deadline to submit nominations will be January 8.

Applications for either of these awards can be found on the Bar's home page at palmbeachbar.org.



Addressing Unprofessional Deposition Conduct

by Patricia A. Leonard, On Behalf of the Professionalism Committee

Complaints of deposition misconduct are unfortunately frequent in Palm Beach County. These complaints include, but are not limited to, conduct such as speaking objections, coaching, improper instructions not to answer, misstating facts or law to a deponent, bullying, yelling, interrupting witnesses, and similar behaviors. Below are some tips to address, and hopefully resolve, this type of conduct:

1. **Come Prepared:** Make sure that you are well-versed in the rules and law governing depositions, including those in the Florida Rules of Civil Procedure, Palm Beach County Bar's *Standards of Professional Courtesy and Civility* ("Standards") and The Florida Bar's *Professionalism Expectations* ("Expectations") so you can recognize and appropriately react to unprofessional conduct in depositions.
2. **Try to Resolve at the Deposition:** Start by asking opposing counsel politely to cease the improper conduct. As an example: "I object to the improper speaking objections and ask that they stop." If opposing counsel does not agree that the conduct is improper, cite relevant case law and rules and provide copies to opposing counsel. Upon review, opposing counsel may agree with your position and the issue will be resolved.
3. **Make a Record:** If opposing counsel's conduct does not stop upon request, make a clear record of the conduct, to make it easier for the court to review. If opposing counsel is yelling, behaving inappropriately, or knowingly misstating facts or law, note it on the record with a statement such as "please stop raising your voice". If opposing counsel wrongfully instructs the deponent not to answer proper questions, certify those questions.
4. **Terminate if Necessary:** If opposing counsel is conducting herself in "bad faith, or in such a manner as unreasonably to annoy, embarrass, or oppress the deponent or party" or is providing "instruction to a deponent not to answer" in violation of Fla.R.Civ.P. 1.310(c), it is appropriate to terminate the deposition, and to thereafter seek relief from the court. See Fla.R.Civ.P. 1.310(d).
5. **File a Motion:** A motion to compel or motion for protective order should contain specific examples of the conduct supported by deposition excerpts, and should cite relevant authority. Such a motion can be particularly effective when there is a pattern of unprofessional conduct across depositions. Relief requested can include reopening the deposition at the opposing party's expense under certain specified conditions, limiting areas of inquiry at a deposition, directing the deponent to answer questions he improperly refused to answer, appointing a special master to attend remaining depositions, and/or precluding further deposition of certain deponents. A court may also award fees and costs under Rule 1.380(a) or 1.280(c) in connection with such a motion.
6. **Videotape Depositions:** In situations with repeated instances of misconduct, you may want to consider videotaping depositions. A videotape will capture tone and volume, and will avoid "he said, she said" arguments that can occur in a

printed transcript (such as a request to "please stop raising your voice" met with an untruthful response that "I'm not raising my voice"). Instruct the videographer to record the deponent and the attorneys, to capture both verbal and non-verbal misconduct (such as facial expressions or gestures). Sometimes, the mere fact of being videotaped will keep opposing counsel on his best behavior. You should decide whether the conduct is so disruptive that the extra cost of videotaping is warranted.

7. **Call the Judge During the Deposition:** This is a "last resort" option, and is recommended only in situations where the deposition is out-of-state and reconvening would be prohibitively expensive, when the discovery cutoff is imminent, or when the deponent may not be available again. Obviously, there is no guarantee that the judge will be available to take your call. Further, it is difficult for a judge to make a ruling on deposition conduct without the benefit of a motion or transcript.
8. **Referral to the 15th Judicial Circuit Professionalism Panel:** If you observe deposition conduct that is inconsistent with the *Standards* and/or *Expectations*, consider referring the conduct to the 15th Judicial Circuit Professionalism Panel. Making improper objections, asking irrelevant personal questions or questions designed to embarrass a deponent and directing a deponent not to answer when no legal privilege applies can implicate unprofessional conduct. *Expectations* at 3.9, 3.10, 3.11; *Standards* at II(1), V(1). Violations may also arise when a lawyer short notices depositions, fails to request enough time to permit all parties to examine the deponent, or schedules depositions to generate income or harass deponents or opposing counsel rather than to ascertain material facts. See *id.* at 3.2, 3.12, 6.2; *Standards* at I(1), (2), III(3). While the Panel is not a disciplinary body with powers to sanction, like The Florida Bar, it strives to counsel attorneys to avoid future and more serious misconduct.
9. **Report Conduct to The Florida Bar:** Referrals to the Professionalism Panel and The Florida Bar should be carefully considered and certainly not undertaken to gain any tactical advantage in ongoing litigation. With that in mind, there are times when an attorney's deposition conduct rises to the level of violating the Rules of Professional Conduct, such as: disruption of a tribunal; use of means that have no substantial purpose other than to embarrass, delay or burden a third person; engaging in conduct that is prejudicial to the administration of justice, including to knowingly, or through callous indifference, disparage, humiliate, or discriminate against litigants, witnesses, or other lawyers; making false statements of material fact or law; unlawfully obstructing another party's access to evidence or failing to comply with a legally proper discovery request; or otherwise violating or attempting to violate the Rules of Professional Conduct. The Florida Supreme Court has disciplined attorneys for engaging in deposition misconduct. See, e.g., *The Florida Bar v. Ratiner*, 46 So.3d 35 (Fla. 2010).

Patricia A. Leonard is a partner with Shutts & Bowen, LLP where her practice includes business litigation, employment litigation defense and counseling, pharmaceutical and nutraceutical litigation and other litigation matters. Patti has been practicing law in Palm Beach County for almost 20 years, in which time she has taken and defended numerous depositions.



Amendments to the Bankruptcy Form, Rules of Procedure, and Local Rules

by Jason S. Rigoli

On December 1, 2015, new rules of procedure and official forms promulgated by the various rule and advisory committees came into effect. This round of revisions brought substantial change in the bankruptcy forms and some corresponding changes to the local rules.

The New Bankruptcy Forms

Most of the Official Bankruptcy Forms have been replaced with substantially revised, reformatted, and renumbered Official Forms (the “Revised Forms”). As the Administrative Office’s website states: “The new forms are easier for debtors to understand and complete and are designed to work with scheduled enhancements to the federal courts’ case opening and electronic case management system.” One significant change to the Revised Forms is the differing versions of the case opening forms for individual and non-individual debtors. An excellent resource for information on the new forms is www.uscourts.gov. Rule 1007 of the Federal Rules of Bankruptcy Procedure has been amended as well to reflect the titling of the new forms.

The Revisions to the Local Rules

Because of the Revised Forms, a number of revisions to the local rules for the Bankruptcy Court of the Southern District of Florida (the “Local Rules”) went into effect on December 1, 2015. A significant number of technical amendments have been made to the Local Rules in order to conform with the Revised Forms.

In addition to these conforming amendments, there are a myriad of other revisions implemented to facilitate the bankruptcy process in the Southern District of Florida. Some of the procedures affected by the Local Rule changes are Joint

Administration, Transfer, and Substantive Consolidation (L.R. 1015-1); Applications to Employ Professionals (L.R. 2014-1); Changes in Attorney of Record (L.R. 2091-1); and the Sale of Property (L.R. 6004-1).

The Revisions to the Federal Rules of Civil Procedure

Finally, for those practitioners involved in bankruptcy litigation, there have been revisions made to Rules 1, 4, 16, 26, 30, 31, 33, 34, 37, 55, and abrogation of 84 of the Federal Rules of Civil Procedure.

Many of these revisions give effect to the purpose of rules of civil procedure as stated in Rule 1: “They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”¹ To begin, Rule 4 was amended to attempt to waive service and the corresponding expense through proper notice as required under the Rule, and if a defendant fails to agree to such waiver, the defendant may be required to cover the expense incurred in serving the complaint. The revisions to the rules focus on discovery, specifically electronically stored information (ESI), and conferences. All of these areas promote civility and increase the speed at which cases can be resolved. One point to note, the Local Rule 7016-1 of the United States Bankruptcy Court for the Southern District of Florida has not been amended; the United States Bankruptcy Court for the Southern District of Florida will still issue its pretrial order in adversary proceedings setting forth deadlines for discovery and other pretrial deadlines.

This article submitted by Jason S. Rigoli, Esq., Furr and Cohen, P.A., One Boca Place, Suite 337W, 2255 Glades Road, Boca Raton, FL 33431, jrigoli@furrcohen.com

¹ As amended on December 1, 2015.



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The Palm Beach County Bar Association's Community Law CLE Committee presents:



Collection and Bankruptcy for Community Associations - Information for Lawyers and Paralegals



Friday, December 4, 2015 - 9:00am - 12:00pm

Bar Association Offices
1507 Belvedere Road, WPB

Program Schedule

- 8:30am - 9:00am **Late Registration / Check In / Breakfast**
- 9:00am - 9:05am **Welcome and Opening Remarks** - *Ronald Kaniuk, Esq., Greenstein & Associates, LLP*
Community Association Law CLE Committee Chairperson
- 9:05am - 10:30am **Collection** - *K. Joy Mattingly, Esq., Becker & Poliakoff, P.A.*
- 10:30am - 10:40am **Break**
- 10:40am - 12:10pm **Bankruptcy** - *Ronald Kaniuk, Esq., Greenstein & Associates, LLP*
Community Association Law CLE Committee Chairperson

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___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (12/4/15 Condo). Cost is the same as listed above, in addition to \$10 for shipping and handling.

Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800



Medical Negligence or Not

by Ted Babbitt

It is not the purpose of an article such as this to criticize the reasoning of a Court in arriving at an opinion. Nevertheless, the recent en banc decision of the First District in *Shands Teaching Hospital and Clinics, Inc. v. The Estate of Ashley Lawson*, 48 Fla. L. Weekly D2000 (Fla. 1st DCA Aug. 27, 2015), left a portion of that Court and this writer perplexed. The facts of the case were simply that plaintiff's decedent was confined to the defendant's locked psychiatric facility because she was confused and suicidal. It was undisputed that such confinement was medically necessary and that the patient could not be left with the means of leaving the facility unattended. Two months after she was admitted, she took an employee of the hospital's unattended keys and badge, escaped and made her way to an interstate highway where she was struck by a semi-truck and killed.

The Estate sued the hospital based on ordinary negligence and the hospital moved to dismiss for failure to comply with Chapter 766 of the Florida Statutes claiming that the case sounded in medical negligence and not ordinary negligence.

Noncompliance with the Medical Malpractice Reform Act in a case involving medical malpractice has been held to impose material and irreparable harm to the medical defendants so as to require a grant of certiorari relief. See *Baptist Med. Ctr. of Beaches, Inc. v. Rhodin*, 40 So 3d 112 (Fla. 1st DCA 2010) and *Holmes Reg'l. Med/ Ctr., Inc. v. Dumigan*, 151 So. 3d 1282 (Fla. 5th DCA 2014).

The case initially resulted in a three way split between the members of the three judge panel and a resultant en banc analysis consideration ensued. The operable question was whether the allegations of the complaint sounded in ordinary negligence, thus avoiding the requirement of presuit screening, or medical negligence which would require presuit compliance. The question as stated by the Court at D2000 was

"The task for the courts is to "decide from [the allegations] whether the claim arises "out of the rendering of, or the failure to render, medical care or services."

The decision of the en banc panel of the First District varied widely and resulted in several dissents but the majority concluded at D2001 that

"The complaint alleges that Shands had a legal duty to confine Ms. Lawson within the locked unit, where she had been admitted because her psychiatric condition demanded the safety and security of a "locked unit"... we agree with Shands because under § 766.106(1) (a), the harm alleged in the Complaint arose from Shands' duty (and failure) to confine Ms. Lawson inside the hospital, which was the very service that the locked unit existed to provide. Because the breach arose from Shands' provision, and ultimate failure, to keep Ms. Lawson's confined within its locked unit, and was the service that Ms. Lawson's condition allegedly required, we conclude that the Estate's claim arises out

of the medical care, treatment, and services provided to her for purposes of § 766.106(1)(a).(emphasis in original)

The problem with this reasoning is that the conclusion of the First District does not seem to follow from the facts. It is hardly logical that the primary service that was being provided to plaintiff's decedent was keeping her locked up. Our society long ago concluded that simply locking up mental patients for the rest of their life was nothing more than imprisonment. We no longer simply imprison patients because of their mental status. It was undisputed and, therefore, testimony, let alone expert testimony, was unnecessary to prove that plaintiff's decedent needed to be confined in order to provide her medical treatment. The adequacy of that medical treatment was not in dispute nor questioned in the complaint. The operable question was, assuming that such confinement was necessary, were adequate precautions taken to ensure that the confinement was adequate. The Court gives several examples of what kind of medical expert testimony might be provided in this case. At Page 2002 the Court suggests

Medical experts might address questions like:

- In a locked hospital unit confining psychiatric patients against their will, must employees' keys and badges be kept "attended" on their person – perhaps pinned to a shirt or hanging around a neck – while caring for patients?
- If acceptable security policies allow for (or require) keys and badges to be stored away from patients and employees in a locked psychiatric unit, how are they to be stored given the wishes of some patients to escape?
- The complaint alleges that the keys and badge were left unattended for "an unreasonable" period of time; what is a reasonable period of time for an employee to leave keys and a badge unattended?
- Given Ms. Lawson's suicidal and impulsive condition and need for locked unit, psychiatric services, did Shands act acceptably in allowing her to move about the unit, where she could obtain keys, badges, and access to exits, or was confinement to her room or bed required?

It is hard to understand what kind of medical background or training would allow the answer to these questions to be given that is not within the ordinary knowledge of anyone without medical training. Where in medical school is there a discussion about where keys and badges should be kept or how to keep doors locked? The Court discusses two cases in an effort to differentiate medical malpractice standards from ordinary negligence. In *Robison v. Faine*, 525 So. 2d 903 (Fla. 3rd DCA 1987) an unsupervised psychiatric patient with a violent history attacked the plaintiff when she was alone in her room. There the Court found that the claim to be "in effect, a premises liability case arising out of a criminal attack by a third party" and emphasized that the harm was "independent of any medical diagnosis, treatment or care."

Continued on page 8



Resolution of the Statute of Limitations On A Claim of a Known Or Reasonably Ascertainable Creditor Who Is Not Served With the Notice to Creditors

by David M. Garten

ISSUE: In *Jones v. Golden*, 2015 Fla. LEXIS 2153 (Fla. 10/1/15), the Florida Supreme Court resolved the issue regarding whether the claim of a creditor who is not served with a copy of the notice to creditors but whose claim is known or reasonably ascertainable is barred under §733.702(1), F.S., if not filed within three months after the first publication of the notice to creditors absent an extension, or whether the claim is timely if filed within two years of the decedent's death under §733.710, F.S.

HOLDING: The claim of a known or reasonably ascertainable creditor who was never served with a copy of the notice to creditors is timely if filed within two years of the decedent's death. Further, because the limitations periods in §733.702 are inapplicable under such circumstances, it is not necessary for the creditor to seek an extension of time under §733.702(3) since that section applies only to claims that are untimely under §733.702. The court approved the decision of the Fourth District in *Golden v. Jones*, 126 So. 3d 390, 390 (Fla. 4th DCA 2013).

REASONING: Section 733.702(1), Florida Statutes, provides two distinct and different limitations periods for the filing of claims against an estate: one for creditors "required to be served with a copy of the notice to creditors," i.e., known or reasonably ascertainable creditors, and a second for unknown and not reasonably ascertainable creditors (hereinafter "unknown creditors"). The limitations period applicable to unknown creditors, set forth in section 733.702(1), begins to run upon publication of the notice to creditors and ends three months after the date of the first publication.

Creditors who are known or reasonably ascertainable need not rely on publication for notice of the pending administration of an estate. Section 733.2121(3)(a) requires a personal representative to "promptly serve a copy of the notice" on those creditors who are known or reasonably ascertainable after a diligent search. The limitations period applicable to known or reasonably ascertainable creditors does not begin to run until service is perfected. Once served with a copy of the notice, a known or reasonably ascertainable creditor must file any claim within the later of "3 months after the time of the first publication of the notice to creditors or... 30 days after the date of service on the creditor..." § 733.702(1), Fla. Stat.

Under the plain language of section 733.702(1), where a known or reasonably ascertainable creditor is never served with a copy of the notice to creditors, the applicable limitations period never begins to run and cannot bar that creditor's claim. "[A]s to any creditor required to be served with a copy of the notice to creditors," the limitations period can only be triggered by "service on the creditor" of the required notice. § 733.702(1), Fla. Stat. A known or reasonably ascertainable creditor is absolved from the limitations of section 733.702(1) by virtue of the fact that the personal representative failed to serve the creditor with the required notice. The only instance in which a known or reasonably ascertainable creditor is required to file any claims before the expiration of the three-month window after publication of the notice is where the last day of the three-month window occurs more than thirty days after service of the required notice.

Medical Negligence or Not

Continued from page 7

In *Joseph v. University Behavioral LLC*, 71 So. 3d 913 (Fla. 5th DCA 2011), a patient with a violent background attacked the plaintiff twice after the plaintiff had warned the facility about the patient's violent tendencies and asked to be protected. The Fifth District in that case concluded that that was a case of ordinary negligence because there was no evidence of the plaintiff's injuries having resulted from any psychiatric decision.

With all due respect to the First District, both of those cases require medical judgment as to the nature of the assailant's dangerous psychiatric tendencies certainly to a far greater extent than the issue of whether keys should be left unattended in a locked mental facility.

In the Shands case, on the other hand, there was no dispute about the necessity to confine the plaintiff's decedent. No one is going to testify about the extent of the necessary confinement. All of that is undisputed. The only question was whether leaving the means to elope easily accessible was negligent or not. How a jury of lay persons could not make that decision without expert medical testimony is perplexing at best.

This case contains a number of citations about the issue of whether a case sounds in ordinary negligence or medical malpractice. While a highly divided court concluded that these facts require expert testimony, the resulting opinion leaves little guidance on that subject.



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The Elder Law Affairs Committee of the Palm Beach County Bar Association presents:

"The 18th Annual Elder Law Seminar"

Thursday, December 10, 2015 - 8:00am - 1:10pm
Bar Association Offices - 1507 Belvedere Rd., WPB

Program Schedule

- 8:00am - 8:20am Late Registration / Check In / Hot Breakfast
- 8:20am - 8:30am Welcome - Opening Remarks - Eric R. Severson, Esq., Chair PBCBA Elder Law Affairs Committee, Burns & Severson, P.A.
- 8:30am - 9:20am Special Needs Trusts, Administration Issues - Melissa L. Barnhardt, Esq., Wells Fargo
- 9:20am - 10:10am Guardianships, Recent Developments - Carolyn Landon, Esq., Florida Bar Certified Elder Law Attorney, Carolyn Landon, P.A.
- 10:10am - 10:25am Break
- 10:25am - 11:15am Tax Law and Ethics Update - Michael A. Lampert, Esq., Michael A. Lampert, P.A., Florida Bar Board Certified Tax Attorney
- 11:15am - 12:05pm VA Benefits - Genny I. Bernstein, Esq., Florida Bar Board Certified Elder Law Attorney, The Karp Law Firm, P.A.
- 12:05pm - 12:20pm LUNCH
- 12:20pm - 1:10pm Securities Law and Exploitation of the Elderly - Matthew N. Thibaut, Esq., Ciklin, Lubitz & O'Connell

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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 - 1507 Belvedere Road, West Palm Beach, FL 33406



Pre-suit or Early Mediation in Commercial Cases – Good for Clients, Good for Attorneys and Not a Sign of Weakness

by *Theodore A. Deckert, Esq.*
Florida Supreme Court Certified Circuit Civil Mediator

Pre-suit mediation is becoming mandatory, by either contract or law, in many types of commercial disputes. More and more attorneys and sophisticated clients are recognizing the advantages of pre-suit and early mediation and no longer believe proposing early mediation is a sign of weakness.

In over 30 years as a trial attorney and now 15-plus years as a mediator, I have observed that in almost all cases I litigated or mediated what the clients appreciated most when the case ended was not the outcome, but that it was “the end of the case.” For clients, mediation offers the opportunity to achieve a less expensive, swifter, private and more flexible resolution to a dispute. Perhaps most importantly, clients have a say in the outcome.

Most litigation occurs because something went wrong and people want to do something about it. Most attorneys now recognize that lawsuits rarely go to trial. Statistics vary depending on jurisdiction, venue and type of case, but most reflect that more than 95% of suits are not resolved by verdict or judgment, but rather by settlement. In most cases, the earlier a settlement is reached, the better for both sides. Mediation is the best way to get to “the end of the case” sooner rather than later.

Mediation gives both sides in the dispute the opportunity to address with their lawyers the realities and risks of litigation. Attorneys understand that litigation takes time, money and energy. Most clients do not fully realize how much of their time, money and energy will be required. More sophisticated clients (corporations, insurance companies) do understand, and they are increasingly insisting on greater value for their legal dollars. Most trial attorneys will acknowledge that their time is more “financially productive” out of court than in court, so it is usually

good for the attorney if the case is resolved as quickly and inexpensively as possible.

It is important to remember a settlement agreement is simply a deal that all sides agree is a better choice than continuing the dispute. The further the litigation goes, the more invested financially and emotionally the clients become. The earlier clients can explore settlement options, the more open they are to appreciating the control, certainty and closure settlement provides, and the more flexible they will be regarding the difference between what they want and what they need.

In most cases, the litigation process does little to change the parties’ settlement perspectives. Some will argue they cannot “evaluate” their case without discovering all the facts and the validity of their opponent’s legal theories and evidence. Certainly, those cases occur. However, both sides in commercial disputes often already know enough about the facts and issues to be able to evaluate their strengths, weaknesses and potential outcomes of litigation.

For attorneys, particularly in commercial litigation, early mediation offers a special opportunity. Contingency fee attorneys can consider the time and money they must invest in the case to achieve an outcome that puts more money in the client’s pocket than the settlement offer. Most commercial litigation attorneys will agree it is better in the long run to have a client who feels they received an acceptable outcome and good value for their legal dollar. Although the hourly lawyer might miss “additional billing” if the case settles early, the client who feels they received good value will bring repeat business and referrals. Remembering most cases will not go to trial, commercial lawyers need to consider how likely they are to achieve an outcome for the client later in the case which the client will feel

was worth the additional expense and aggravation of further litigation.

Finally, litigation is one way to end a dispute, but not the only way. Pre-suit and early mediation enable clients to consider other and usually better ways to “end the case” than letting a judge or jury decide how it ends.

Theodore A. Deckert, Esq. is a full time Mediator and Third Party Neutral affiliated with Matrix Mediation LLC since 2008. A civil trial attorney since 1976, he was a Florida Bar Board Certified Civil Trial Lawyer for 25 years. He has been a Florida Supreme Court Certified Circuit Civil & Family Mediator since 2000 and has focused his practice on mediation since 2004. For more information email him at ted@matrixmediation.com Copyright © 2015, Theodore A. Deckert, all rights reserved.

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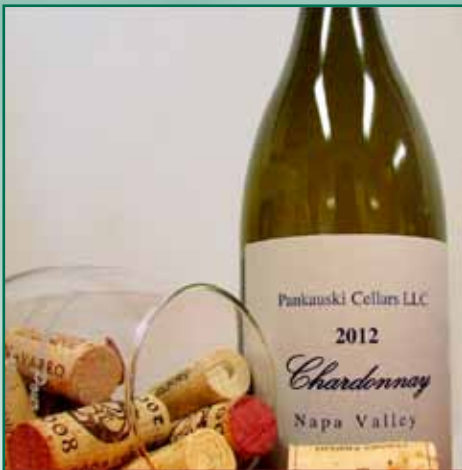
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Diversity and Inclusion Luncheon

This year's annual Diversity and Inclusion luncheon included an inspiring speaker by the name of Judge Herbert E. Phipps, a distinguished member of the Court of Appeals from Georgia. Judge Phipps told our members about his personal experiences growing up in the South and wanting to make a difference so the same injustices that happened to him would not continue happening to others. Judge Phipps spoke about civil rights and reminded our members to continue to fight for justice and equality. Joining our Bar in presenting this luncheon were the F. Malcolm Cunningham, Sr. Bar Association; FAWL and the Hispanic Bar Association.



Committee for Diversity & Inclusion co-chairs Lisa Kohring (far left) and Julia Wyda (far right) along with keynote speaker Judge Phipps and PBCBA President Grier Pressly



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Leanna Lalla and
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Aicolya St. Juste and
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Palm Beach County Ordinance Revised to Expand Its Protections

by Rand Hoch

Palm Beach County Commissioners recently amended the Palm Beach County Ordinance for Equal Opportunity to Housing and Places of Public Accommodation by expanding the definition of “places of public employment.”

Over the past 40 years, Palm Beach County has repeatedly added protected classes: race, sex, color, religion and national origin to the original 1973 ordinance. In 1984, physical handicap was added and in 1990, sexual orientation, marital status, familial status and age were included. In 2007, gender identity or expression was added and the term “physical handicap” was replaced by “disability”.

In the original ordinance, “places of public accommodation” were broadly defined to include any “place, store or other establishment... which supplies goods or services to the general public or which solicits or accepts the patronage or trade of the general public or which is supported directly or indirectly by government funds.” The 1973 ordinance also specifically excluded private clubs, membership organizations, beauty shops and barber shops.

While a majority of states have long prohibited discrimination of any kind in retail establishments, Florida has never been one of them. Therefore, it is incumbent on counties and municipalities to take steps to protect minorities from retail discrimination.

For some reason which no one involved cares to recall, when County Commissioners amended the ordinance in 1984, the definition of places of public accommodation was drastically narrowed. Almost all retail stores and other places of commerce were deleted, leaving only places offering lodging, food service or entertainment in the

ordinance. While the definition was amended in 1990 to include gas stations and places selling alcoholic beverages, the very narrow definition remained unchanged for 25 years.

The County Commissioners’ removal of most retail establishments from the law in 1984 was significant, as it eliminated the prohibition of consumer racism in retail establishments in Palm Beach County, a practice known as “shopping while black.”

The experience of people of color being refused service – or given poor service – is not uncommon. “Shopping while black” also includes black customers being followed by store clerks, wrongly detained, steered away from certain products and, asked for additional forms of identification regarding credit applications.

President Barack Obama, Oprah Winfrey, Condoleezza Rice, and other well-known Black Americans have publically discussed their humiliating experiences of shopping while black.

“There are very few African American men in this country who haven’t had the experience of being followed when they were shopping in a department store,” President Obama said after the 2012 shooting of Trayvon Martin. “That includes me.”

Last January, the Palm Beach County Human Rights Council, the county’s most prolific civil rights organization, asked County Commissioners to reinstate a broad, yet specific definition of public accommodation. The Council asked the County Commissioners to consider the definition used in Miami-Dade County since 1997.

“When I looked at the anti-discrimination ordinances that had been in effect in Palm Beach County over the years, it became clear that our law needed to be updated to better protect minorities,” said County Commissioner Mary Lou Berger. “In light of all that is happening with race relations across our nation, this is the appropriate time for

the County Commission to take a strong, proactive stand against discrimination.”

At the request of the Palm Beach County Human Rights Council, County Commissioners greatly expanded the definition of public accommodation in September to include retail stores, grocery stores, schools, day care and senior centers, medical offices, law offices, funeral homes, bakeries, laundromats, bowling alleys and virtually all other business throughout the county.

The new language may also have a significant impact on Palm Beach County’s gay and lesbian residents. Since same sex marriage has become legal, gay and lesbian couples planning their weddings have been refused service solely because of their sexual orientation in Colorado, Indiana, New Jersey, New Mexico, Oregon, Vermont and Washington.

Under the newly revised ordinance, if a bakery refused to provide a cake for a gay or lesbian couple’s wedding, or if a retail store requires additional forms of identification for its black customers, those businesses face exposure to civil litigation. Prevailing plaintiffs may also recover attorneys’ fees and court costs.

The new ordinance does take into account the special rights of churches and private clubs by exempting both religious and private membership organizations from the ordinance. Churches remain free to exclude people of other faiths and private clubs may continue to blackball prospective members based on race, religion and additional otherwise protected classifications.

Rand Hoch, a retired Judge of Compensation Claims, serves as President of the Palm Beach County Human Rights Council, an organization which he founded in 1988. Judge Hoch has been responsible for the enactment of more than 90 local civil rights laws and policies. Since he left the bench, Judge Hoch has been mediating employment and civil rights disputes statewide.

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



Hot Topics in Labor Law: Here Comes the "New" NLRB



December 11, 2015 - 1:00 p.m. - 5:30 p.m.
PBCBA, 1507 Belvedere Road, West Palm Beach

Program Schedule

- 1:00 pm - 1:25 pm **Late Registration**
- 1:25 pm - 1:30 pm **Welcome and Introductions** - Dana Spader, Esq., Reid Burman Lebedeker
Chair, Employment CLE Committee
- 1:30 pm - 2:30 pm **New Social Media and Other Conduct Policies under the NLRA/NLRB** -
Christin M. Russell, Esq., Kubicki Draper
- 2:30 pm - 3:30 pm **The NLRA and Confidentiality of Internal Investigations** -
Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and
Employment Law
- 3:30 pm - 3:45 pm **BREAK**
- 3:45 pm - 4:45 pm **NLRA/NLRB and new Developments/Case Law for the NLRA/NLRB** -
Resident Officer Shelley Plass, NLRB
- 4:45 pm - 5:30 pm **Happy Hour**

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This course has been granted 3.5 CLER and 3.5 Labor and Employment Law certification credits from The Florida. Enjoy an "Early Bird" discounted registration cost of \$75 for PBCBA members/paralegals; \$ 125 for non-PBCBA members/paralegals. After 12/4/15, add \$20 late fee.

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Welcome New Members!

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

Tyrone Adras: Washington University, 2013; Associate in Greenberg Traurig, P.A., West Palm Beach

Joy Bartmon: University of Miami, 1980; Solo Practitioner, Boca Raton.

Alexander T. Briggs: Seaton Hall University, 2015; Associate in Morris, Laing, Evans, Brock & Kennedy, West Palm Beach.

Joshua C. Carpenter: University of Kansas, 2013; Associate in Squire Patton Boggs, West Palm Beach.

Christopher William Cook: Nova Southeastern, 2013; Partner in Lions Den Attorney At Law, PLLC, Miami.

Robert L. Demoss, II: Harvard University, 1989; Associate in Devore Law Group, P.A.

Deidre DiBiaggio: University of Miami, 1990; Solo Practitioner, Boca Raton.

Josh Dockus: University of Michigan, 2013; Fifteenth Judicial Circuit, West Palm Beach.

Handel M. Edwards, II: Law Student Membership, Boynton Beach.

Scott J. Edwards: Florida State University, 2007; Solo Practitioner, Boca Raton.

James E. Fakhoury: University of Florida, 2015; Associate in Morgan and Morgan, P.A., West Palm Beach.

Christopher R. Fernandez: Florida International University, 2015; Miami Shores.

Matthew G. Frias: University of Florida, 2015; Associate in Jones Foster Johnston & Stubbs, West Palm Beach. .

Nora E. Gay: University of Texas, 2015; Office of the Public Defender, West Palm Beach.

Samuer R. Guelli: University of Dayton, 1993; Associate in Injury Law Offices of Brian J. Guralnick, West Palm Beach.

Gillian T. Irving Harris: University of Florida, 2013; West Palm Beach.

Ashley S. Hodson: Florida State University, 2009; Associate in Doane & Doane, P.A., North Palm Beach.

Kelli F. Lago: Nova Southeastern University, 2014; Billing, Cochran, Lyles, Mauro, & Ramsey, P.A., West Palm Beach.

Clinton Delano Lewis: University of Florida, 2014; Associate in Cunningham Whalen & Gaspari Palm Beach Gardens.

LeRonnie M. Mason: Howard University, 1987; Associate in Gary Williams, Parenti, Watson & Gary, Stuart.

Ryan J. McConnell: University of Florida, 2015; Associate in Jones Foster Johnston & Stubbs, Jupiter.

Shannon M. Montgomery: Stetson University, 2013; Delray Beach.

Pyra Murad: Loyola University of Chicago, 2015; Office of the Public Defender, West Palm Beach.

Francisco X. Novoa: St. Thomas University, 2004; Associate in Silver, Bass & Brams P.A., West Palm Beach.

Zachary M. Rothman: University of Florida, 2015; Associate in Ciklin Lubitz & O'Connell, West Palm Beach.

ReShaundra M. Suggs: University of Cincinnati, 2006; Associate in Clarfield, Okon, Salomone & Pincus, P.L., West Palm Beach.

Marisa Wilson: Florida International University, 2015; Associate in Horton Law Group, P.A., Boca Raton.



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Pink Party Pictures



North County Section President Larry Buck presents gift cards to winners of our Best Dressed in PINK contest - Nicole Hessen and Marc Dobin!



NCS Director David Steinfeld, Judge Laura Johnson and Ken Johnson



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Kelsey Burke and Adriana Lopez



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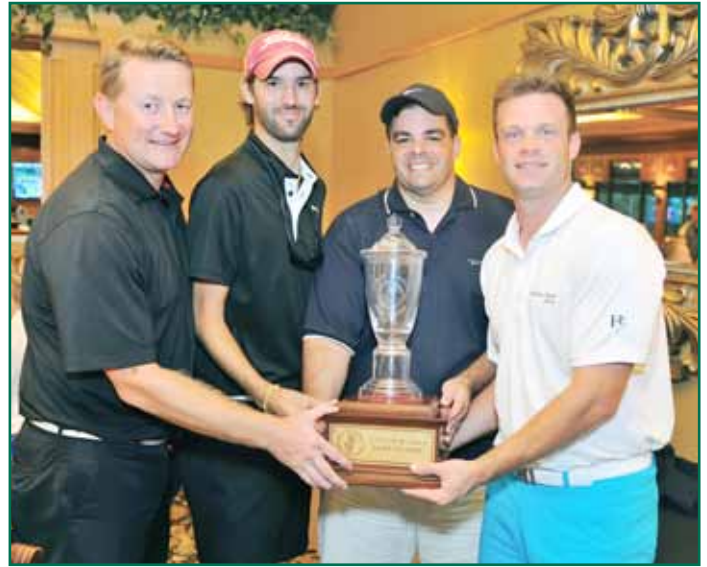
SAVE THE DATE!

After a 4 year hiatus, the North County Section brings back by popular demand its



Mark your calendar to join us Thursday, February 4th
Look for further details online and in January's Bar Bulletin.

Legal Aid's 15th Annual Cup of Justice Golf Classic



The Legal Aid Society of Palm Beach County's 15th Annual Cup of Justice Golf Classic raised \$50,000 to support its Educational Advocacy Project. The project's mission is to ensure positive educational outcomes for disabled children attending Palm Beach County schools.

Attorney Robert Shalhoub chaired the October 12th tournament at Bear Lakes Country Club. The presenting sponsor of the event was Sabadell United Bank.

The luncheon sponsor was Florida Crystals Corporation and the dinner sponsor was Dex Imaging, Inc. Other major sponsors included Caler, Donten, Levine, Cohen, Porter & Veil, P.A.; Daily Business Review; Dailey Janssen Architects, P.A.; Furr & Cohen, P.A.; Law Office of Benjamin T. Hodas, LLC; Legal Graphicworks; Moore, Ellrich & Neal, P.A.; Schwed, Adams, Sobel & McGinley, P.A., Morgan Stanley Smith Barney, LLC; Schwed, Kahle & Kress, P.A.; Christian D. Searcy, Jr; and Talenfeld Law, P.A.

The golf tournament committee members included Richard Benrubi, Esq.; Bob Bertisch, Esq.; Harreen Bertisch; Scott Bester; Rick Collier; Ben Hartman; Devin Krauss; Heidi LeRoy; David McClymont; Scott Murray, Esq.; Grier Pressly, Esq.; Paul Shalhoub, Esq.; Michael Spillane; Vicky Vilchez, Esq.; Gary Woodfield, Esq.; Colin White, Esq. and Robert A. Wight, Esq.

Esquire Bank was awarded the "Cup of Justice" trophy after an outstanding round of golf. Other winners included Sabadell United Bank (Flight A - 1st Place); Murray & Guari Trial Attorneys (Flight B - 1st Place); Shutts & Bowen, LLC (Flight C - 1st Place).

Jason Eagon won "Closest to the Pin" & Sean Denyse and Daniela Gordon won "Longest Drive".



The Tux Shop in Palm Beach Gardens celebrated the beginning of its premiere season with a trunk show featuring an array of classic designer suits and tuxedos. Over 50 guests attended the evening which benefitted the Legal Aid Society of Palm Beach County. Pictured are Greg Huber, Bob Bertisch, Lorie Gleim, Jerry Beer



Real Property and Business Litigation Report



by **Manuel Farach**

Jones v. Golden, – So.3d –, 2015 WL 5727788 (Fla. 2015).

The claim of a known (or reasonably known) creditor – which creditor is not served with a notice to creditors - is not barred notwithstanding creditor filed its claim more than three months after publication of the opening of the estate.

However, the claim must be filed within two years after publication under all circumstances otherwise it is barred.

YHT & Associates, Inc. v. Nationstar Mortg. LLC, – So.3d –, 2015 WL 5710054 (Fla. 2d DCA 2015).

A non-party in the trial court proceedings cannot appeal a judgment, even if the non-party is the property owner which purchased the property after the *lis pendens* was filed.

Wells Fargo Bank, N.A. v. Palm Beach Mall, LLC, – So.3d –, 2015 WL 5712341 (Fla. 4th DCA 2015).

Applying New York law, the Fourth District holds that a guarantee operative only when the mortgagor engages in “gross negligence or willful misconduct” requires a “deliberate act beyond a party merely acting out of its economic self-interest,” and that an intentional non-payment of the mortgage or the “de-leasing” (e.g., seeking short-term “Mom and Pop” stores instead of long-term credit-worthy tenants) is not sufficient to call into operation the guarantee. Moreover, New York law defines “insolvency” as inability to make payments when due and not “equity-insolvency” of the property.

Access Ins. Planners, Inc. v. Gee, – So.3d –, 2015 WL 5712568 (Fla. 4th DCA 2015).

An agreement to pay commissions at different times in the future is a divisible contract subject to a separate breach with a separate statute of limitations for each payment.

Teitelbaum v. South Florida Water Management Dist., – So.3d –, 2015 WL 3875464 (Fla. 3d DCA 2015).

“Condemnation blight” is not a taking and is relevant to the valuation of property that has already been taken but not to *de facto* takings claims; any diminution in value due to condemnation blight is awarded at the time of the actual taking.

Davidian v. JP Morgan Chase Bank, – So.3d –, 2015 WL 5827124 (Fla. 4th DCA 2015).

Returns of service are hearsay, but admissible under Florida Statute section 90.803 (8) - the public records exception to the hearsay rule. Moreover, a served party must be read the contents of the service only when it is substitute (and not personal) service.

Wright v. Guy Yudin & Foster, LLP, – So.3d –, 2015 WL 5827944 (Fla. 4th DCA 2015).

An agreement with a law firm to pay attorney’s fees that are already due is not a contingency fee agreement, even if payment is conditioned upon a triggering event.

Phoenix Asset Management LLC v. GCCFC 2005-GG5 Route 33 Indus., LLC, – So.3d –, 2015 WL 5829782 (Fla. 3d DCA 2015).

A broker licensed in a state other than Florida (but not licensed in Florida) may nonetheless enforce a Florida commission agreement if the non-Florida broker “co-brokers” with a licensed Florida broker.

CQB, 2010, LLC v. Bank of New York Mellon, – So.3d –, 2015 WL 5797617 (Fla. 1st DCA 2015).

An entire claim or defense must be “eviscerated” before an order denying discovery can be reviewed by certiorari. Standing to foreclose is determined by the plaintiff possessing the note at time of filing suit, so discovery of the chain of ownership of the promissory note prior to plaintiff filing suit is not necessary, and certiorari will not lie to review an order denying discovery under these circumstances.

Atlantica One, LLC v. Adragna, – So.3d –, 2015 WL 6023402 (Fla. 5th DCA 2015).

A trial court does not abuse its discretion by approving a special jury instruction for breach of contract based on *Johnson v. Davis* (instead of the standard contract jury instruction for breach of contract) when suit is based on misrepresentations arising out of a real estate sales contract containing a *Johnson v. Davis* disclosure requirement.

Florida Bankers Ass’n v. Florida Development Finance Corp., – So.3d –, 2015 WL 5996764 (Fla. 2015).

A litigant which is not one of the original parties in the dispute may not appear in the appeal of the dispute unless it successfully intervened in the trial court.

General Commercial Properties, Inc. v. State Dept. of Transp., – So.3d –, 2015 WL 5948530 (Fla. 4th DCA 2015).

A government authority with condemnation powers has the ability to purchase real property outside of the condemnation process, and if any offers it makes outside of the process are not considered written “first offers” for determining attorneys’ fees pursuant to Florida Statute section 73.015(1).

Kearney Partners Fund, LLC ex rel. Lincoln Partners Fund, LLC v. U.S., – F.3d –, 2015 WL 5944308 (11th Cir. 2015).

The Internal Revenue Service’s “Economic Substance” test holds that transactions that lack economic effect or substance (other than generating tax losses) or that have no business purpose will not be recognized. While both must be satisfied, the first prong—economic effects—is objective and the second prong—business purpose—is subjective.

Segalis v. Roof Depot USA, LLC, – So.3d –, 2015 WL 6160673 (Fla. 4th DCA 2015).

A notice of appearance by counsel does not waive the party’s objections to personal jurisdiction; the party must seek affirmative relief in order to consent to jurisdiction.

Members Participate in Roosevelt Rockets Reading Buddies — Join the Group Next Month!



Thank you volunteer readers!

Brad Avakian, Lawyers for Literacy Chair Andrew Kwan, Iola Mosley, Melynda Melear, Colleen Farnsworth and Judge Edward Artau

On the first Friday of every month, for just one hour during lunch, our Lawyers for Literacy Committee invites members of our Bar to join them and read to children at Roosevelt Elementary School in West Palm Beach as part of *Roosevelt Rockets Reading Buddies*.

“You’d be surprised at how excited kids are to read with an adult,” said Andrew Kwan, Lawyers for Literacy chair. “It’s a wonderful, one-on-one opportunity to make a difference in a child’s life.”

The school library provides a cart of first and second graders’ favorite books. The students work through levels of difficulty in books as the school year progresses, and last school year, the students improved their Lexile levels. This year, our Lawyers for Literacy Committee members have committed to serving as reading buddies throughout the academic year. If you would like to participate, the next reading programs are on Friday, December 4 and Friday, January 8, 2016 from 11:30 a.m. to 12:30 p.m. Please join Lawyers for Literacy for one or both! To register or for additional information, contact Andrew Kwan at kwan@beasleylaw.net

Join these volunteer readers next month!



“The children had lots of great questions about our courts and I really enjoyed the time we spent reading together. It was an extremely positive and rewarding experience.” *Judge Edward Artau*



“Thank you to the students for adding their laughter and smiling faces to my otherwise routine workday. And, if I’m able to promote a love of reading to young people in our city, then that’s a huge bonus.” *Brad Avakian*



“It’s a wonderful, one-on-one opportunity to make a difference in a child’s life.” *Andrew Kwan, Lawyers for Literacy Chair*

Upcoming CLE Seminars:

- **December 4th:** Collection and Bankruptcy for Community Associations – Information for Lawyers and Paralegals
- **December 10th:** Elder Law
- **December 11th:** Employment Law: Here Comes the “New” NLRB
- **December 14:** Technology Updates for Attorneys Practicing in Civil Division
- **January 8th:** Appellate: Speed Dating – “Appellate Style” Round Table Discussions with the Judiciary
- **January 15th:** PI: Billing and Lien Issues
- **January 20th:** Employment – Transgender Discrimination in the Workplace
- **January 27th:** Technology – Social Media: Use and Benefits to Law Firms & Applications in Litigation
- **January 29th:** Real Estate Practice Update



by Joseph Bilotta, On Behalf of the Law Related Education Committee

A recent survey of adults found that 35 percent could not name a single branch of the government, 21 percent think that a

5-4 Supreme Court decision is sent back to Congress for reconsideration and only 27 percent know it takes a two-thirds vote of the House and Senate to override a presidential veto. The goal of the Palm Beach County Bar Association Law Related Education Committee is to change these statistics. Committee members, including attorneys and judges, work to increase the public understanding of the judicial system, judicial elections and our government in general. We reach out to various community groups and present educational and interactive programs

about civics. James Madison endorsed “the great republican principle, that the people will have the virtue and intelligence to select men of virtue and wisdom. Is there no virtue among us? If there be not, we are in a wretched situation. No theoretical checks--no form of government can render us secure.” When significant numbers of our citizens do not know basic information about our government, we all suffer the consequences.

Members of the Law Related Education Committee have given civic presentations from Boca Raton to Jupiter and West Palm Beach to Belle Glade to various groups such as Kiwanis Club, Rotary Club, Citizens Association of Palm Beach, Florida Alliance of Retired Americans, American Business Woman’s Association, Loxahatchee Grove Landowners Association and senior living communities. Upcoming events include additional presentations, organizing and hosting our third mock trial competition

for students, and the State Attorney’s Office Scout Law Day on January 9, 2016 at the South County Courthouse.

Uniformed citizens are less likely to vote and less likely to support the court system. An informed public is the best defense of the rule of law and an impartial judiciary. Help the Law Related Education Committee to educate our citizens by joining our committee. If you cannot make that commitment then perhaps you can give a presentation to a community group. Contact the Law Related Education Committee Chair, Amy Levenberg Terwilleger, at 561-650-0695 or aterwilleger@gunster.com.

Joseph Bilotta is with the West Palm Beach law firm of Vassallo, Bilotta, Friedman & Davis. He was formerly with the Broward County State Attorney’s office, but since 1995 he has been practicing in Palm Beach County in the areas of personal injury, workers compensation and social security disability.



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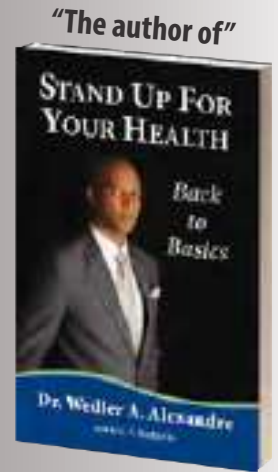


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YLS October Happy Hour



New Attorney Breakfast





Cathleen Scott & Associates, P.A.

*proudly announce that **Lindsey Wagner, Esq.**
has been named a partner of the firm and that the practice
of the firm will continue under the name of*

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Bulletin Board

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PROFESSIONAL ANNOUNCEMENTS:

The following announce their availability for referral, assistance and consultation.

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POSITIONS WANTED / DESIRED

Osborne & Associates, a Boca Raton law firm, seeks attorney for position and possible future partnership in the following practice areas: Products Liability, Medical and Pharmaceutical litigation, Medical Malpractice and Personal Injury litigation. Successful candidates will have at least 10 years' experience, portable book of business (litigation or other), be motivated, hardworking, and of the highest competence and integrity. Visit oa-lawfirm.com for information about the firm; e-mail letter of interest and resume to kaguilera@oa-lawfirm.com.

HEARSAY

Peggy Rowe-Linn, of Peggy Rowe-Linn, P.A., was recently recognized for showing dedication, leadership and excellence in family law. Ms. Rowe-Linn has practiced family law for three decades.



Ciklin Lubitz & O'Connell, a full service law firm in West Palm Beach, welcomes **David J. George** as Of Counsel in the areas of securities law, commercial litigation and consumer class actions. He was formerly a senior shareholder with Robbins Geller Rudman & Dowd LLP.



Luis A. Sosa, attorney with Rosenthal, Levy, Simon & Ryles, in the Port St Lucie office, has been appointed to the Palm Beach County Hispanic Bar Association's Board of Director at Large. As the Director at Large, Sosa will be responsible for the overall direction of the organization; recruiting new members; and organizing/executing specific projects.



Michael J. Gelfand, Senior Shareholder of the West Palm Beach condominium/homeowners' association law firm of Gelfand and Arpe, P.A. and Chair of the Real Property Probate And Trust Law Section of The Florida Bar, convened and chaired for the RPPTL Section a forum, including educational visits, in Berlin, Germany, addressing lawyers, practitioners and jurists responsibility to society. The RPPTL Section is the largest substantive Section of The Florida Bar with over 10,000 members

Christopher J. Ryan has been promoted to partner at the newly-renamed firm of Clyatt, Richardson & Ryan, P.A. in West Palm Beach. The firm's practice areas include business law, commercial litigation, family law, personal injury, probate/estate planning and real estate law.

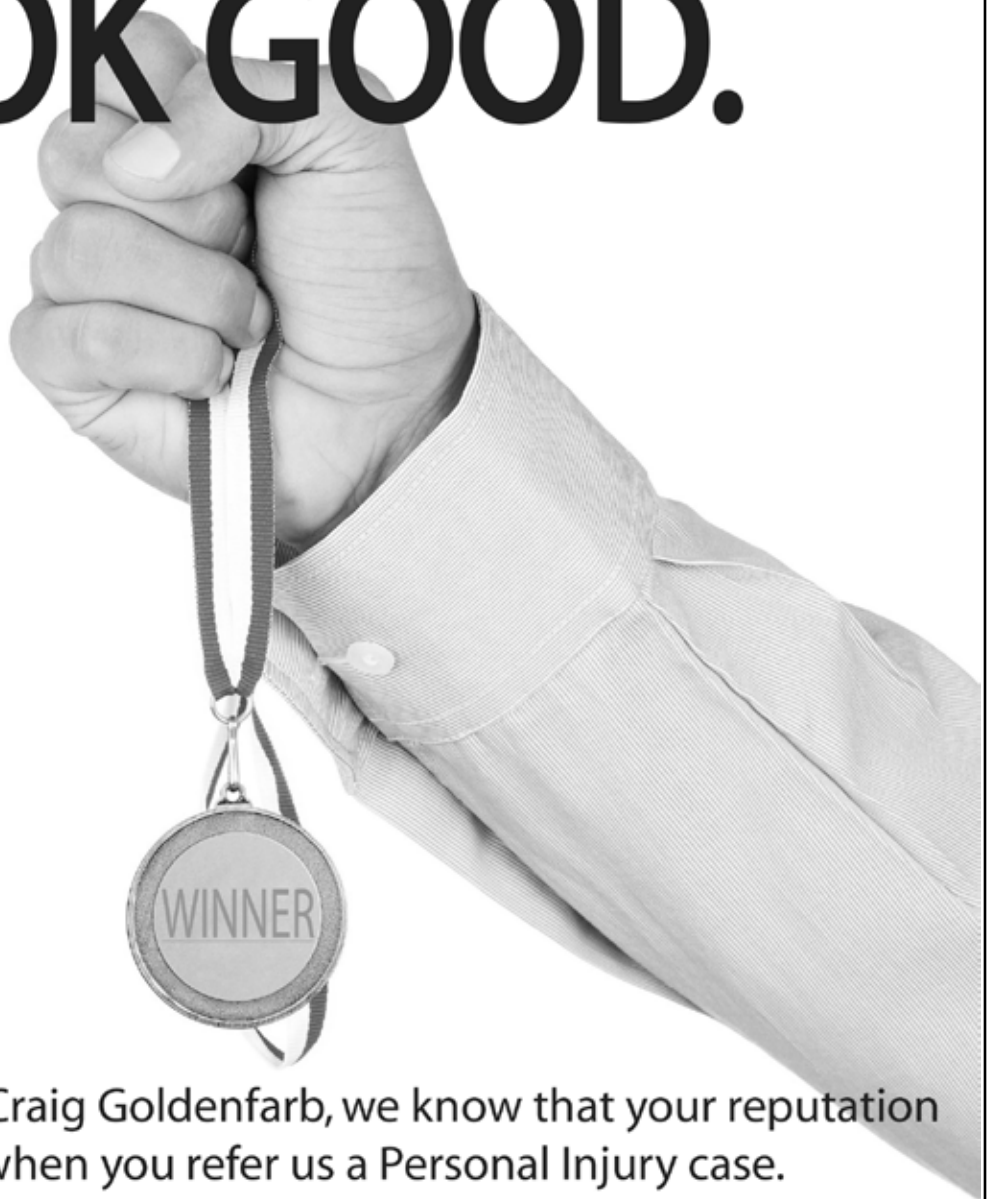
Diana Lewis has been certified by the Supreme Court of Florida as a Circuit Mediator.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Matthew G. Frias** and **Ryan J. McConnell** have joined the firm as associates. Frias focuses his practice on business litigation. McConnell is a member of the firm's real estate department and was previously a summer associate at Jones Foster



West Palm Beach trial attorney **Richard A. Ryles** of Rosenthal, Levy, Simon & Ryles, was recently elected Chairman of the Board to the West Palm Beach Housing by a unanimous vote of the board in the wake of the recent passing of longtime City of Housing Authority President Thyraa Echolls Starr.

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Presented by the Solo and Small Firm Practitioners Committee



THURSDAY, JANUARY 14, 2016
11:45 a.m. to 1:00 p.m.
Bar Office, 1507 Belvedere Road
West Palm Beach

Speakers: Laurie Glover, President, QSTS, Inc. and Paul Burkhart, Esq.

QSTS, Inc. is a consulting firm providing Business Development programs to attorneys including market research and analysis, strategic networking skills, presentation skills and marketing plans.

Paul Burkhart, Esq. is a member who will share marketing strategies which have worked well for his firm over the past 15 years.

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3. How to move away from the wall
4. The importance of follow up
5. Quick tips and techniques that you can use immediately and start getting results!



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CALENDAR

December 2015

- | | | |
|---|--|---|
| <p>Tuesday, December 1,
12:00 pm - 1:30 pm
Criminal Law Practice Committee Meeting
Judicial Conference Room, PBC Courthouse</p> <p>Wednesday, December 2,
12:00 pm - 1:00 pm
Transaction Law Committee Meeting
Bar Association Office</p> <p>Wednesday, December 2,
5:30 pm - 6:30 pm
Mentor Networking Event
Bar Association Office</p> <p>Thursday, December 3,
5:30 pm - 8:30 pm
South County Bar Holiday Party
The Addison, Boca Raton</p> <p>Friday, December 4,
8:00 am - 1:00 pm
Condo CLE Seminar
Bar Association Office</p> | <p>Friday, December 4,
8:30 am - 9:30 am
ADR Committee Meeting
Bar Association Office</p> <p>Friday, December 4,
12:00 pm - 1:00 pm
Judicial Relations Committee
JDR</p> <p>Sunday, December 6,
10:00 am - 10:30 pm
YLS Dolphins Game</p> <p>Tuesday, December 8,
11:45 am - 1:00 pm
Unified Family Practice Committee Meeting
Judicial Conference Room, PBC Courthouse</p> <p>Tuesday, December 8,
11:45 am - 1:00 pm
YLS Board Meeting
Bar Association Office</p> <p>Wednesday, December 9,
12:00 pm - 1:00 pm
FAWL Board Meeting
Bar Association Office</p> | <p>Wednesday, December 9,
12:00 pm - 1:00 pm
Professionalism Committee Meeting
Bar Association Office</p> <p>Thursday, December 10,
8:00 am - 1:10 pm
Elder Law CLE Seminar
Bar Association Office</p> <p>Thursday, December 10,
11:30 am - 1:30 pm
Federal Bar Association Orientation Program
Federal Courthouse</p> <p>Thursday, December 10,
5:30 pm - 8:00 pm
Holiday Party
Frenchman's Reserve</p> <p>Thursday, December 10,
6:30 pm - 7:00 pm
Landlord Tenant Public Seminar
Lantana Branch Library</p> <p>Friday, December 11,
12:00 pm - 6:00 pm
Employment Law Seminar
Bar Association Office</p> <p>Monday, December 14,
5:00 pm - 7:30 pm
Board Meeting</p> <p>Tuesday, December 15,
12:00 pm - 1:00 pm
Bench Bar Committee Meeting
Bar Association Office</p> <p>Thursday, December 17,
5:30 pm - 7:00 pm
Palm Beach County Justice Association Reception
Ruth Chris City Place</p> <p>Thursday, December 24 - January 1
Bar Association Office Closed</p> |
|---|--|---|

The Appellate Practice Committee of the Palm Beach County Bar Association
presents:

**“Speed Dating - Appellate Style”
Round Table Discussions with the Judiciary**

Judges of the Fourth District Court of Appeal will engage in an informal question and answer session and discussion about appellate practice at the Fourth District.

Friday, January 8, 2016 - 11:30am - 1:00p.m.

Fourth District Court of Appeal
1525 Palm Beach Lakes Blvd, WPB



Program Schedule

11:30am - 11:55am

Lunch / Check In / Late Registration

11:55am - 12:00pm

**Welcome - Opening Remarks - Nichole J. Segal, Esq., Burlington & Rockenbach, P.A.,
Chair Appellate Practice Committee**

12:00pm - 1:00pm

Judges from the Fourth District Court of Appeal will answer questions regarding practice and procedure in the Fourth District. The topics will include how the judges view the importance of oral argument and practical tips on what is, and is not, effective during oral argument. We also anticipate discussion relating to effective motion practice, and ethics and professionalism in the appellate arena. The session will be conducted in a “speed-dating” format where each Judge will sit at a different table speaking with, and answering questions from, a small group of attendees for 10-15 minutes before moving to a different table. This format will allow attendees to engage in a more intimate discussion with the Judges than what is possible at a standard Panel presentation. It will also allow for a more personalized experience for attendees.

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This course has been granted 1.0 CLER and 1.0 Appellate Practice Certificate credits from The Florida Bar.

Early registration cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;

\$75 for non-PBCBA member attorneys/paralegals if registered by 1/4/16; add \$20 late fee after that date.

All refund requests must be made in writing and 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.

“Credit card registration payment not accepted by Fax to comply with PCI regulations”

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



"ADR in 2016 - Challenging Old Paradigms"

Monday, February 8, 2016 - 8:00a.m. – 5:00pm.
Bar Association Offices, 1507 Belvedere Rd., WPB




Program Schedule

- 8:00a.m. – 8:30a.m. **Late Registration/Check In**
- 8:30a.m. – 8:40a.m. **Welcome & Opening Remarks** - *Theodore A. Deckert, Esq., Matrix Mediation, LLC; Certified Circuit Civil, Family and County Mediator; Florida Supreme Court Qualified Arbitrator; Committee Chair*
- 8:40a.m. – 10:10a.m. **What do ADR Consumers Want? Q&A** - *Moderated Panel of attorneys, Insurance adjustors, public and private risk managers (TBA) will share what they want from ADR Professionals*
- 10:10a.m. - 10:20a.m. BREAK
- 10:20a.m. – 11:10a.m. **Arbitration Under Revised Ch. 682** - *Donna Greenspan Solomon, Esq., Solomon Appeals, Mediation & Arbitration; Certified Circuit Civil, Appellate and Family Mediator; Florida Supreme Court Qualified Arbitrator*
- 11:10a.m. – 12:00p.m. **ADR Case Law & Ethics Update (E)** - *W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., PA; Certified Circuit Civil, Appellate and Family Mediator; Florida Supreme Court Qualified Arbitrator*
- 12:00p.m. - 12:40p.m. *****LUNCH Sponsored by: Matrix Mediation, LLC*****
- 12:40p.m. – 1:30p.m. **Dealing with High Emotions in Mediation** - *Psychologist Sheila Cohen Furr, Ph.D., A.B.N., Board-Certified in Clinical Neuropsychology by the American Board of Professional Neuropsychology; Certified Family Mediator*
- 1:30p.m. – 2:20p.m. **What??? DV in Non-Family Law Cases???. (DV)** - *Robin Caral Shaw, Esq., Robin Caral Shaw, PA; Certified Circuit Civil, Family and Appellate Mediator; Amy S. Wolsky, Esq., Amy S. Wolsky Mediations; Certified Circuit Civil, Family, Appellate and County Mediator*
- 2:20p.m. - 3:10p.m. **"It's Legal Now, But Not That Simple. LGBT ADR Issues Under Current Law"(CD)** - *Elizabeth F. Schwartz, Esq., Elizabeth F. Schwartz PA; Certified Family Mediator*
- 3:10p.m. – 3:20p.m. BREAK
- 3:20p.m. – 5:00p.m. **Challenges of Mediating Outside The Box But Inside the Ethics Rules Q&A (E)** - *Interactive discussion between attendees and panel of experienced mediators (TBA)*


This course is expected to receive **8.5 CLER** including **3.0 Ethics credits from The Florida Bar**. Early registration cost is **\$260** for PBCBA members/paralegals; **\$310** for non-PBCBA members/paralegals if registered by 2/1/16; add \$25 late 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 8.5 CME hours. 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, select **Alternative Dispute Resolution/Mediation.**"

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PAYMENT OPTIONS:

 If paying by credit card, please go to our secure website to register: www.palmbeachbar.org

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

 If you can't leave your office, you can attend this via live webinar by registering here <http://www.palmbeachbarcle.org/>. **PLEASE NOTE: If you register for the webinar, you cannot attend the live version.**

 If paying by check, please send payment, along with this form, to the Bar office.

Name: _____ Telephone: _____

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Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/8/16 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, 1507 Belvedere Road,

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



Billing and Lien Issues



Friday, January 15, 2016, 11:30 - 1:00pm
Palm Beach County Bar Association
1507 Belvedere Road, WPB

Program Summary: How to review bills to confirm the PIP adjustments are correct and what to do when they are not. How to prepare for and handle hospital and LOP liens.

Program Schedule

11:30 a.m. - 11:55 p.m. **Lunch / Late Registration and Check In**

11:55 p.m. - 12:00 p.m. **Welcome - Opening Remarks** - Timothy Murphy, Esq., Personal Injury of Florida and Matthew Lane, Esq., Matthew Lane and Associates, PI/Wrongful Death Co-Chairpersons

12:00 p.m. - 1:00 p.m. **Speakers:**
Tara L. Kopp, Esq., Schuler, Halvorson, Weisser, Zoeller & Overbeck
Michael D. Walrath, Esq., Medical Bill Clinic, P.A.

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This course is expected to receive 1.0 **CLE** from The Florida Bar. **Early Registration** cost is \$25 for PBCBA members/paralegals; \$75 for non-PBCBA members/paralegals if registered by **1/8/15**. Add \$15 late fee to registration fee after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

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HOW TO REGISTER	 BY CHECK Return this form	 BY CREDIT CARD For security purposes, you must register online at www.palmbeachbar.org		Materials will now be emailed to all registrants prior to the seminar
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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800

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



2016 Real Estate Practice Update



Friday, January 29, 2016 - 8:00am - 12:00pm
Bar Association Offices
1507 Belvedere Road, WPB

Program Schedule

- 8:00am - 8:25am **Late Registration / Check In / Breakfast**
- 8:25am - 8:30am **Welcome and Opening Remarks - Sandra R. B. Wallace, Esq., Wallace Law, P.A., Real Estate CLE Committee Chairperson**
- 8:30am - 9:20am **FR/Bar Contract Update - James A. Cioffi, Esq., Cioffi Law, P.A.**
- 9:20am - 10:10am **1031 - Tax Deferred Exchanges & Updates - Claudia M. Kiernan, Esq., Senior Vice President/Manager, Investment Property Exchanges Services, Inc. (IPX1031)**
- 10:10am - 10:20am **Break**
- 10:20am - 11:10am **E-Recording - Speaker TBA**
- 11:10am - 12:00pm **TRID Update – What's Changed Since Oct. 3? - Deborah (Deb) B. Boyd, Esq., Board Certified in Real Estate Law, Senior Underwriting Counsel / Assistant Vice President Fidelity National Title Group**
- 12:00pm - 1:00 pm **Lunch provided by BMO Bank**



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This course has been granted 4.0 CLER / Certification credits: 4.0 Business Litigation and 4.0 Real Estate.

Early registration cost for the seminar is \$100 for PBCBA members/paralegals, \$150 for non-PBCBA members/paralegals if registered by 1/22/16; Add \$20 to registration fee after that date.

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

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If paying by credit card, please go to our secure website to register: www.palmbeachbar.org



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Name: _____

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City/Zip _____

Email Address: _____

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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800

The Palm Beach County Bar Association's Technology Practice Committee Presents:



Social Media: Use and Benefits to Law Firms and Applications in Litigation



Wednesday, January 27, 2016, 11:30a.m. – 1:00p.m.
PBCBA, 1507 Belvedere Road, WPB

Program Schedule

- 11:30 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 11:55 a.m. - 12:00 p.m. **Welcome & Opening Remarks** - *Amanda Kleinrock, Esq., Legal Aid Society of Palm Beach County, Committee Chair*
- 12:00 p.m. - 1:00 p.m. **Social Media** - *David Steinfeld, Esq., Board Certified, Business Litigation Law Office of David Steinfeld, P.L.*

Use of Social Media in Cases and Litigation

Business Referrals
Social Media blunders
Connectivity

Social Media Application in Litigation

Obtaining/Getting Social Media
Preserving ESI
Using Social Media
Timeliness of Social Media/E-Discovery

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This course has been granted **1.0 CLER** from The Florida Bar.

The **early registration** cost of the seminar is **\$25.00 (includes lunch)** for PBCBA members/paralegals; **\$75.00** for non-PBCBA members/paralegals if registered by **1/20/16**; add \$20 to registration fee after that date.

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

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

PAYMENT OPTIONS:



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



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Telephone: _____

Address: _____

City/Zip _____

Email Address: _____

I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (1/27/16 Technology.) Cost is the same as listed above, in addition to \$10 for shipping and handling. PAYMENT BY CHECK ONLY, WITH THIS FORM.

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