



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

February 2010



The YLS Board recently hosted a holiday party for about 60 children in foster care. Pictured above with Santa are Allison Kapner, Timothy Grice, Julia Wyda, Theo Kypreos, Miles McGrane, Keri-Ann Baker and Luis DelGado. Back: Musical entertainers John Whittles and Grey Tesh, Tim Stevens, Noelle Page, Rebecca Frieden, Melissa Devlin, Bill Lazarchick and Lee McElroy.

## Mark your calendar for upcoming Membership Meetings

**Bench Bar Conference**  
February 19, 2010  
Palm Beach County Convention Center

**Joint Luncheon with South County Bar Association**  
March 16, 11:45 – 1:00 p.m.  
Guest Speaker: FL Bar President Jesse Diner and FL Bar Foundation President Adele Stone

**Annual Judicial Reception**  
May 5, 5:30 – 7:00 p.m.  
The Harriett at City Place

**Law Day Luncheon**  
May 7, 11:45 – 1:00 p.m.  
Speaker: Hon. Helen Shores Lee

**Annual Installation Banquet**  
June 12, 7:00 p.m.  
The Breakers Hotel, Palm Beach



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THE  
**BULLETIN**

**PALM BEACH COUNTY  
BAR ASSOCIATION**

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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



**Appellate Law Seminar**



The Palm Beach, South Palm Beach and Broward County Bar Associations recently hosted its bi-annual Appellate Law Seminar. Pictured at left are PBCBA Chair Robert Hauser with guest speaker 1st DCA Judge Phillip Padavano.

**Judge Jonathan Gerber,  
law clerks Lisa Ellison-  
Cherny and Lonn  
Weissblum and Nichole  
Johnston Segal.**



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Polen and  
Robert  
Sheres**



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# President's Message



## We've Come a Long Way Baby!

By Michelle R. Suskauer, President

On February 19th, we will hold our annual Bench Bar Conference at the Palm Beach County Convention Center. This conference provides an opportunity for attorneys and judges to meet informally in a roundtable atmosphere and this year, we are expecting over 1,000 attendees. The conference is bigger and better every year, with eighteen breakout sessions covering more topics and incredible moderators to facilitate communication between the bench and the bar and improve the practice in Palm Beach County. We have come a long way, baby!

Our very first Bench Bar Conference was held on December 1, 1979 at The Breakers. The Bar had only 950 members, including 25 judges! If you were practicing at that time, you did not have a cell phone, fax machine or a laptop. President Jimmy Carter was faced with a relatively new hostage crisis in Iran, Bob Graham was the Governor of Florida and the #1 song that week was No More Tears (Enough is Enough) by Barbra Streisand and Donna Summer.

A Bench-Bar Conference? Unheard of. It had never been done by any bar association in Florida. However, a lawyer named Barbara Pariente (now a Justice on the Florida Supreme Court) and a Fourth DCA Judge named Dan Hurley (now a senior judge with U.S. District Court) understood the importance of open communication between members of the Bench and Bar and wanted to provide a forum for these

discussions.

The First 15th Judicial Circuit Bench Bar Conference was chaired by Barbara Pariente. She assembled quite a steering committee: Jack Ackerman, Judge Rosemary Barkett, Judge Dan Hurley, Judge Thomas Sholts, Sid Stubbs, Judge John Wessel and Tom Yeager. There were only four "workshops": Domestic Relations, Criminal, Civil I and Civil II. The Conference was quite formal: speakers had to be recognized by the Chair and were limited to three minutes. Resolutions were offered in writing, were voted upon, and a court reporter was brought in to record the proceedings.

Initially, the Bench Bar Conference was held every other year, but as the Bar grew, so did the popularity of the Conference. In the last 10 years, the Bench Bar Conference has been held every year and is the Palm Beach County Bar Association's most well-attended event.

I think that the original steering committee would be very

*"I can think of nothing more important to the administration of justice than communicating with one another about what we can do to improve the way that cases are handled – communicating about problems and coming up with solutions. The key is to have a respectful dialogue so as to try to see the justice system from each other's perspectives – as judges and lawyers."*

– FL Supreme Court Justice Barbara Pariente

## Board of Directors Meeting Attendance

	June Retreat	Aug	Sept	Oct	Nov.	Dec.
<b>Bowden</b>	x	x	x	x	x	x
<b>Guari</b>	x	x	x	x	Phone	x
<b>Howe</b>	x	x	x	Phone	x	x
<b>Jenks</b>	x	x	x		x	x
<b>Kypreos</b>	x	x	x	x	x	x
<b>Martinez</b>	x	x	x	x	x	x
<b>Napoleone</b>	x	x	x	x	x	x
<b>Pressly</b>	x	x	x	Phone	x	x
<b>Rabin</b>	x	x	x	x	x	x
<b>Schuler</b>	x	x	x	x	x	x
<b>Suskauer</b>	x	x	x	x	x	x
<b>Weiss</b>	x	x	Phone	x	x	x
<b>Whittles</b>	x	x	x	x	x	x

proud of the 2010 Bench Bar Conference: A morning session for attorneys and judges on topics such as "Making a Good Name for Yourself as a Lawyer"; Federal Practice and a new session for Solo and Small Firm Practitioners entitled "The Basics of Practicing Before the 15th Circuit". The breakout sessions are varied: Appellate, County Civil, Circuit Civil, Family, Juvenile, Criminal, Appellate, Commercial Litigation, Workers Compensation and for the first time, we will have a breakout session on Foreclosures. We will also continue to have a morning session for judicial assistants and legal secretaries/paralegals. Your staff should not miss this opportunity.

Space in all of these sessions is limited, so be sure to register today! I am looking forward to seeing you all there.



## Who are they?

Can you guess who these members are? Answers can be found on page 25. 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.



## Florida Bar Board of Governors Report

At its December 11 meeting in Amelia Island, The Florida Bar Board of Governors:

- Approved a new legislative position at the recommendation of the Legal Needs of Children Committee. It includes that children in the dependency system have a right to a paid or pro bono attorney and that certain "critical categories" of children in the state's care should get publicly provided lawyers. The position also stipulates that any funding for those lawyers should not come at the expense of the court system or the state's Guardian ad Litem Program.
- Heard a report that the Board Review Committee on Professional Ethics has voted to draft amendments to Florida Ethics Opinion 07-3, which addresses outsourcing. The amendments would require the informed consent of clients before outsourcing confidential information and amendments to the Rules Regulating The Florida Bar addressing either notice to third parties or redaction before outsourcing sensitive financial or medical information.
- The board voted to again table an appeal from a staff ethics opinion on medical lien negotiations. The staff opinion held it would likely result in an excessive fee if a lawyer working on a contingency fee hired another lawyer under a reverse contingency fee to handle medical lien negotiations. The board voted to refer it to the appropriate committee to consider an amendment to the Rules Regulating The Florida Bar addressing the subject.
- The board voted to place a six-month moratorium, beginning January 1, 2010, on the enforcement of the new Bar advertising rules affecting Web sites in order to give Bar members time to comply with the rules. The board also approved a policy on attempted voluntary filings of lawyer Web sites that Bar staff will not review the entire contents of a Web site even if a lawyer files that voluntarily, but will respond to specific questions involving a specific phrase or image to be included on a Web site.
- The board voted to approve the six goals set out by the Board Review Committee on Professional Ethics for lawyer advertising, which will assist in the ongoing review of advertising rules. Those goals function under the overall policy that the primary

purpose of lawyer advertising is to benefit the public by providing information about the need for and availability of legal services.

- Heard a report from board member Murray Silverstein on the ongoing efforts on e-filing for the state court system and the efforts to establish an Internet portal for electronic filing. He said that clerks and the courts were trying to work out their differences over who would run the portal, and the Bar was working to help that along and push for a filing system that will be uniform statewide.
- Approved a recommendation from the Program Evaluation Committee to create the Special Committee to Study the Decline of Jury Trials, as requested by President-elect Mayanne Downs. The panel will study the decline of jury trials at both the state and federal level, and determine the impact that has on the justice system and whether any action is needed.
- Heard a report from board member Greg Coleman that the Clients' Security Fund Review Committee II will be proposing several rule changes to the CSF rules and regulations and is looking at the issue of loss prevention to see if there is anything the Bar can proactively do to prevent lawyers from stealing from clients.

**Should you have any questions, please contact one of the Circuit's four representatives: Greg Coleman, Scott Hawkins, Lisa Small or David Prather**



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

## Board of Governors Candidate Statements

There are two candidates running for the 15th Circuit Florida Bar Board of Governors Seat 13, Ted Leopold and Michelle Suskauer. Below are their candidate statements:



### **Ted Leopold**

Firm: *Leopold ~ Kivin*

Year Admitted to The Florida Bar: *1987*

Law School: *Cumberland School of Law*

I am running for the Florida Bar Board of Governors – 15th Judicial Circuit – Seat 3, because of my strong commitment to serving our legal community statewide.

My experience, character, and ability to lead make me well qualified to meet the challenges I will face as the 15th Judicial Circuit's representative on the Board of Governors.

For over 20 years, I have seen the changes and challenges the practice of law has had to offer. The issues facing the Florida Bar are numerous, ranging from budget issues affecting access to courts to the need for uniform electronic filing in the courts. We must also continue to address issues of professionalism and diversity among our members.

My background and experience make me uniquely qualified to tackle the difficult issues facing The Florida Bar and develop solutions by working constructively with the other members of the Board of Governors. I have years of experience being involved with The Florida Bar, the Palm Beach County Bar Association, and various community charitable organizations. I am a current member of The Florida Bar's Professional Ethics Committee and a past member of its committees on Professionalism, Advertising, and Long Range Planning. I am also the Past President of the Palm Beach County Bar Association and the Palm Beach Justice Unit of B'nai B'rith.

If elected, I will be a strong and powerful voice in advocating for you and the entire Florida Bar on the issues that affect and concern us all. I would greatly appreciate your vote in support of my election as the next representative to hold Seat 3 for the 15th Judicial Circuit on the Florida Bar Board of Governors.



### **Michelle Suskauer**

Firm: *The Suskauer Law Firm, P.A.*

Year Admitted to The Florida Bar: *1991*

Law School: *American University*

Throughout my 18 year career, I have been dedicated to improving our Bar by promoting professionalism and diversity, increasing pro bono participation and forging relationships with community partners. If elected to The Florida Bar Board of Governors, I will use my energy, creativity and leadership experience to be a strong advocate for all members of our circuit.

My broad practice experience will ensure your concerns are heard, understood and well represented. I am AV-rated and Florida Bar Board Certified in Criminal Trial Law. I began my career as an assistant public defender, spent several years practicing personal injury law at a mid-sized firm and have been at my own firm since 1997 focusing on state and federal criminal defense. I can relate to the every day challenges all lawyers face, regardless of the size of their firm or area of their practice.

As current President of the Palm Beach County Bar Association and Past President of Florida Association for Women Lawyers, Palm Beach County Chapter, I created meaningful programs like the "Adopt-A-Case" program and the nationally recognized "Breakfast and Books" mentoring program. Under my leadership, our Bar Association has created a Facebook site and a Twitter page, and held the first countywide diversity symposium.

If elected to the Board, I will work to (1) implement innovative programming aimed at improving the image of lawyers; (2) enhance communication amongst all voluntary bars; (3) expand the use of technology to improve all practice areas; and (4) increase the diversity of the Bar and its leadership on a state-wide level. Most important, I will make sure your voice is heard.

I would be honored to have your support.

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## Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.



## Fraudulent Conveyance, Solvency and Savings Clauses

Submitted by: Marc P. Barmat

On October 30, 2009, Bankruptcy Judge John K. Olson rendered a decision in the case of Official

Committee of Unsecured Creditors of Tousea v. Citicorp, et al. (In re Tousea, Inc., et al.) 2009 WL 3519403 (Bankr. S.D. Fla.) which avoided as fraudulent transfers \$500 million of secured guaranties provided by debtor subsidiaries with respect to their parent company's secured debt. Judge Olson also avoided \$420 million of prepetition settlement payments. The decision is on appeal to the district court.

While the lengthy written decision contains significant analysis and a comprehensive set of factual findings, the lynchpin to the Judge Olson's decision was his finding that the lenders knew or should have known that their borrowers were insolvent, or would be rendered insolvent, by the transactions at issue. Judge Olson rejected the lenders' good faith defense, finding that the lenders' due diligence and acquisition of a third-party solvency opinion could not overcome the "overwhelming evidence" otherwise available to the lenders of the debtors' financial distress.

In avoiding the transfers, Judge Olson rejected the lenders arguments that the fraudulent conveyance "savings clauses" contained in the loan documents prohibited the transfers' avoidance. The relevant loan documents contained the following provision:

Each Borrower agrees if such Borrower's joint and several liability hereunder, or if any Liens securing such joint and several liability, would, but for the application of this sentence, be unenforceable under applicable law, such joint and several liability and each such Lien shall be valid and enforceable to the maximum extent that would not cause such joint and several liability or such Lien to be unenforceable under applicable law, and such joint and several liability and such

Lien shall be deemed to have been automatically amended accordingly at all relevant times

The Court found that fraudulent conveyance savings clauses were unenforceable for the following reasons: (1) The conveying subsidiaries received no benefit for the guaranties and settlement payment; (2) The savings clauses were "inherently indeterminate," and therefore it was impossible to determine the obligations that resulted from their operation; (3) Enforcement of the savings clauses would effectively require amendment to the relevant loan documents and the proper steps to amend had not been taken; and (4) Savings clauses are a frontal assault on the protections that section 548 provides to other creditors. They are, in short, entirely too cute to be enforced.

Judge Olson's decision serves as a reminder that the determination of


insolvency is a key element in any fraudulent conveyance analysis. Accordingly, lenders and distressed company investors should be aware of Judge Olson's decision and closely follow the appellate process.

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

<sup>1</sup> 11 U.S.C. §548(a)(1)(b) permits the avoidance of any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred within 2 years before the date of filing of the petition, if the debtor voluntarily or involuntarily received less than a reasonably equivalent value in exchange for such transfer or obligation and (A) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation, (B) was engaged in a business or transaction, or was about to engage in a business or transaction, for which any property remaining with the debtor was an unreasonably small capital; or (C) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured.

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## Legal Malpractice Statute of Limitations

by Ted Babbitt

The recent opinion of the Florida Supreme Court in Larson & Larson, P.A. v. TSE Industries, Inc., 34 Fla. L. Weekly S591 (Fla. Nov. 5, 2009) is interesting both for its holding and the procedure utilized for reversing the Second District in the underlying case of TSE Industries, Inc. v. Larson & Larson, P.A., 987 So. 2d 687 (Fla. 2nd DC 2008).

Larson & Larson were sued for alleged legal malpractice arising out of a patent infringement suit. The jury returned a verdict in favor of the defendants finding that the plaintiff's patent was invalid. Final judgment was entered and the case was not appealed. At the time of the entrance of the final judgment, the federal judge also found that sanctions were appropriate and retained jurisdiction for the purpose of assessing the amount of attorney's fees due under his sanctions ruling. Several months later the parties settled the sanction issue and more than two years after the judgment but five days before the date of the settlement, the lawyers were sued for legal malpractice relative to both the final judgment in the underlying case and the sanctions ruling which resulted in the settlement. The trial court entered a final summary judgment based upon the statute of limitations both with respect to the final judgment and the sanctions settlement and the Second District reversed concluding that because the sanctions claim remained outstanding, the case was not final and a legal malpractice action could be brought so long as it was brought less than two years after the date of the sanction settlement.

95.11(4)(a) Fla. Stat. (2002) states that a legal malpractice action must be brought within two years "from the time the cause of action is discovered or should have been discovered with the exercise of due diligence."

The seminal case on when the statute of limitations runs in a legal malpractice action is the Florida Supreme Court case of Silverstrone v. Edell, 721 So. 2d 1173 (Fla. 1998). In that case at 1175, the Florida Supreme Court held:

"[W]hen a malpractice action is predicated on errors or omissions committed in the course of litigation, and that litigation proceeds to judgment, the statute of limitations does not commence to run until the litigation is concluded by final judgment. To be specific, we hold that the statute of limitations does not commence to run until the final judgment becomes final.

To be liable for malpractice arising out of litigation, the attorney must be the proximate cause of the adverse outcome of the underlying action which results in damages to the client. Since redressable harm is not established until final judgment is rendered, a malpractice claim is hypothetical and damages are speculative until the underlying action is concluded with an adverse outcome to the client.

...

We therefore hold, *in those cases that proceed to final judgment, the two-year statute of limitations for*

*litigation-related malpractice under section 95.11(4)(a), Florida Statutes (1997), begins to run when final judgment becomes final. This bright-line rule will provide certainty and reduce litigation over when the statute starts to run. Without such a rule, the courts would be required to make a factual determination on a case by case basis as to when all the information necessary to establish the enforceable right was discovered or should have been discovered."* (Emphasis by the Court.)

The case came up for review before the Florida Supreme Court as a result of a certified conflict with the Fourth District's opinion in Integrated Broadcast Services, Inc. v. Mitchell, 931 So. 2d 1073 (Fla. 4th DCA 2006). In Mitchell the facts were nearly identical to the issues in TSE Industries, Inc., *supra*. A final summary judgment was rendered in favor of the defendants and was affirmed on appeal but while the case was on appeal the defendants moved for sanctions and two months after the final judgment the Court awarded sanctions which was also appealed. The legal malpractice action was brought more than two years after the final summary judgment was final on appeal but less than two years after the sanction judgment became final. The Fourth District held that the underlying legal malpractice action was barred but a legal malpractice action with reference to the sanctions was not barred.

In Larson & Larson, *supra*, the majority followed the lead of the Fourth District in Mitchell, *supra*, and concluded that there were two different accrual dates for the statute of limitations. One based upon the final judgment and the other based upon the settlement of the sanctions action. At S592 the Court concludes:

"The statute of limitations requires that a legal malpractice action on a litigation-related claim be brought within two years after the cause of action is or should have been discovered. 95.11(4)(a), Fla. Stat. (2002), and in Silverstrone we drew the line of accrual at the time final judgment was final to 'provide certainty and reduce litigation over when the statute starts to run.' Silverstrone, 721 So. 2d at 1176. Until a final judgment is final, the outcome of the case and the occurrence of harm to the client remains uncertain, and it cannot be said that the cause of action was discovered or should have been discovered. *See id.* at 1175. Before that point is reached, the 'malpractice claim is hypothetical and damages are speculative.' *Id.* But once a judgment adverse to the client has reached the point of finality, 'the last element constituting the [malpractice] cause of action occurs,' 95.031(1), Fla. Stat. (2002) – that is, the element of 'loss to the client,' Law Office of David J. Stern, P.A., 969 So. 2d at 966 – and the cause of action is or should be 'discovered.' 95.11(4)(a), Fla. Stat. (2002).

The crux of Silverstrone's reasoning is that it cannot be known with sufficient certainty that the client has suffered *any loss* caused by the lawyer's negligence until the finality of a judgment adverse to the client.

*Continued on page 8*

### Board seats open for North County Board of Directors

Elections for the North County Section's Board of Directors will take place next month.

Petitions will be available beginning March 2 for five (5) director positions (for a two year term), plus president-elect.

The Board meets once a month from noon to 1:00 p.m. to plan various networking events for its 650 members.

To apply for a position, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Friday, March 26. If there is a contested election, voting will take place online in April and winners will be announced online in May.

The current Board includes President, Debra Jenks; President-Elect, Ned Reagan; Secretary, Ron Ponzoli; and Immediate Past President Ryon McCabe.

Directors are Jerry Beer, Larry Buck, Keith Campbell, Ken Johnson, Spencer Kuvin, Scott Smith, Todd Stewart, Dante Weston and Greg Yaffa.

### North County to host BBQ & Casino Event

Wednesday, February 10

5:30 pm to 8:00 pm

Bonnette Hunt Club, Palm Beach Gardens

The evening includes blackjack, roulette, craps tables, plus drinks, live music and prizes.

The cost is \$45.00 for NCS members; \$55.00 for lawyers who are not NCS members and \$55.00 for spouses. Judges are complimentary. Please register online by 2/5 to avoid a \$5.00 late fee.

(\*tables are for entertainment purposes only)



## Legal Malpractice

*Continued from page 7*

A favorable result for the client in the lawsuit – which could be the result of appellate proceedings – would, of course, mean that the client had suffered no loss.

*Silverstrone's* rule thus merely establishes a bright line for establishing when the client has suffered *some loss* as a consequence of the attorney's negligence. It does not require that there be a determination of the *full extent* of all losses suffered by the client due to the lawyer's negligence." (Emphasis by the Court.)

Part of the reasoning of the Second District was that since the sanctions action was still outstanding the client still had to rely upon the lawyer's advice and under the "continuing representation doctrine" the statute of limitations did not begin to run until the lawyer's work was done and the client could seek other counsel. The majority relied on Perez-Abreu Zamora & De Le Fe, P.A. v. Taracido, 790 So. 2d 1051 (Fla. 2001), which rejected the continuing representation doctrine in an architectural malpractice action and thus rejected that doctrine in legal malpractice cases as well, relying instead upon the practical meaning of when a client should reasonably be held to have discovered legal malpractice, the majority concluded that once a final judgment has been entered and the appeal period has ended or it has been affirmed on appeal, there can be no doubt in the client's mind that the client faces potential execution on the judgment and, thus, as a matter of law, will be held to have discovered the harm caused by the lawyer's negligence.

On the other hand, since this action was brought less than two years after the sanctions issue became final and since a judgment imposing sanctions would be independently appealable, the Court held along with the Fourth District that the legal malpractice action based upon the entrance of sanctions was not

barred by the statute of limitations since until the settlement agreement existed, the plaintiff was unable to determine with sufficient certainty what its damages were and the limitations period, therefore, could not have commenced.

Thus where there are two severable issues, an underlying judgment in the main case and a final finding in a subsequent sanctions action, the statute of limitations begins to run independently of each other and an action must be brought within two years of each action in order to avoid being barred.

While this case ends the controversy created by the Second and Fourth District opinions discussed above, it is also interesting because it results in reversal of the Second District even though only three Justices joined in the majority opinion. Justice Perry concurred with the majority that the underlying action was barred but would have affirmed the ruling of the trial court that the summary judgment entered barring both the underlying action and the sanctions issue was correct. Three additional Justices dissented in agreement with the Second District that neither action was barred. There was, thus, no true majority voting for reversal of the Second District's opinion or any explanation as to why such a fractured opinion should stand as an opinion of the majority and result in reversal. Chief Justice Quince was among the dissenters so it is not clear as to how the tie was broken. Nevertheless, apparently the law of Florida is now settled on this issue.

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.



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## Professionalism

### Twenty Things to Avoid Doing in County/Circuit Court Civil Division

*(Originally titled Ten Things To Do Which Are Guaranteed To Irritate The Judge)  
Submitted by Judge Jack Cox on behalf of the Professionalism Committee*

Some years ago the Palm Beach County Bar Association Professionalism Committee sent out a Questionnaire to the Judges of the 15th Judicial Circuit (Civil Divisions) and asked for a list of 10 things that really irritated them. Most Judges sent in a list of 2 or 3 things. However, Justice Labarga (then Circuit Court Judge Labarga) sent in a list of 156 things. Because *The Bar Bulletin* was not big enough to accommodate all of them, back then we synthesized the number down to 10. The Committee thought we would try it again and in honor of Justice Labarga we've moved the number up to 20 things to avoid doing in the County Civil Division and the Circuit Civil Division.

1. Never "negligently" misrepresent facts. (If you're not sure of the facts ... say nothing)
2. Never intentionally and never negligently misstate the law. (Does this need an explanation?)
3. Interrupting another lawyer. (If you do, you better have a great reason.)
4. Interrupting the judge. (If you do, you better have a greater reason.)
5. Wearing a Bluetooth cell phone in your ear in the Courtroom. (It goes without saying, do not take a phone call on your Bluetooth in your ear while you're in the Courtroom...this actually happened.)
6. Once the judge has ruled, do not continue to argue your point (even though the judge, in your mind is so clearly wrong.)
7. Writing, calling, or faxing the judge directly for purposes of an ex-parte communication. (Set a hearing and give notice.)
8. Setting a hearing, then settling the issue or the case but not calling the judges office to free up the date. (We have lots of people who want your time slot.)
9. Showing up any time before 9:30 for an 8:45 Uniform Motion Calendar and thinking you're not late. Local Rule 4 provides the failure to appear at the time set for commencement (at 8:45) shall not prevent a party from proceeding who is present.
10. Showing up for a jury trial without having a copy of your jury instructions and verdict form.
11. After a jury trial, not sending in the Final Judgment within 72 hours. (Pursuant to Local Rule 3 it is required that you submit the Final Judgment within 72 hours after the verdict is rendered... Hey, we don't just make this stuff up, it is in the Rule.)
12. Coming to Uniform Motion Calendar without a proposed Order, copies and self-addressed stamped envelopes. (Local Rule 2 makes it clear that you must have those things. If you do not, you are going to make a trip down to the Law Library and buy envelopes and return to the Courtroom.)
13. At Uniform Motion Calendar, asking the judge to be allowed to submit an Order and mail it in. (By the time your Order gets to the Court 3 days later, the judge has probably heard and ruled on 50 other matters and probably in reality doesn't remember what your case was about.)
14. Motions for Rehearing, Motions for Clarification, Motions for Explanation, or my favorite, Motions for Enlightenment are controlled under Local Rule 6, so do not set them for hearing. (Pursuant to the Rule, the Court will grant you oral argument at a specially set hearing or it will deny your motion without a hearing...kind of like Federal Court.)
15. Failure to comply with a Pretrial Order. (A Pretrial Order is not recommended behavior or suggested behavior or discretionary. It is, in fact, an Order of the Court.)... When was the last time you actually read one?
16. Memorandums of Law sent advance of a hearing are encouraged. However, most Memorandums of Law show up without a cover letter and never mention the date or time of the hearing. Give us a hint, tell us the date and time of the hearing.

*Continued on page 24*

## SAVE THE DATES

Mark these dates on your calendar; invitations are forthcoming. All events benefit the Legal Aid Society and help to meet the growing demand for legal services this year.

**Saturday, April 17, 2010**

### **Gift Gathering Gala**

at the home of Lisa McNelis and Richard Roselli in Boca Raton

**Saturday, April 24, 2010**

### **Gift Gathering Gala**

at the home of Dr. Stuart Graham and Marjorie Gadarian Graham in Jupiter Island

**Saturday, May 8, 2010**

### **Musical Magic**

### **22nd Annual Pro Bono Recognition Evening and Auction**

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For more information about upcoming events, please contact

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Wednesday, March 3  
Topic: TBA

Thursday, April 15  
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Presented by FindLaw  
11:45 am to 1:00 pm  
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Thursday, May 20  
**Marketing: TV, Radio & Print  
What works & what doesn't**  
11:45 am to 1:00 pm  
Bar Office

## Judicial Profile — August A. Bonavita

By Kevin L. McNamara

Spend some time with newly appointed county court judge August Bonavita, and you will come away with a sense that this man is well suited to the task of serving on the bench. Judge Bonavita is presently serving in the criminal division of county court, where he is able to immediately apply his knowledge and experience with criminal law. He has experience on the defense side, having served as an Assistant Public Defender in Tampa, as well as on the side of the prosecution, having served in the Office of the Attorney General's appellate section, here in Palm Beach County, where he wrote and argued criminal appeals for many years. Judge Bonavita draws upon his experience on both sides of a criminal case, and sees his job as "riding a center line" and considering "each case on its own merits." One challenge for a new judge, he concedes, is "learning to take off your lawyer's hat and just listen." But the judge is committed to his changed role and enjoys the new challenges. In addition to his criminal law experience, Judge Bonavita also has private practice experience, has taught as an adjunct professor of law and still currently teaches at Palm Beach Community College, and served as a judicial law clerk following law school.

Judge Bonavita decided to attend law school after being unfulfilled in the work of finance, having worked for AT&T Bell Labs for several years after college. Despite the professional track job, and his bachelor's degree in finance (Seton Hall, 1985), Judge Bonavita wanted to do something where he could work with people and make an impact. Returning to his alma mater, Judge Bonavita earned high marks, participated in moot court, family law clinic program, and won an award for his appellate advocacy brief. He earned his juris doctorate in 1992.

Judge Bonavita was born August Anthony Bonavita on November 5, 1963. He was the youngest child of four (two sisters and a brother) second generation Italian Americans. Although he grew up in New Jersey, his family often traveled to Florida, so when he had the chance to take the Florida bar examination after law school, in addition to New Jersey, he eagerly took the opportunity, thinking that it might be nice to go South someday. He also relished the idea of easier entry and exits from buildings, along with being able to simply go down the sidewalk any time of year. You may not know, but Judge Bonavita requires the use of a wheel chair for mobility. However, he seems to take this in stride, having dealt with physical impairment from the age of eight, when a play time accident resulted in his electrocution, and later amputation, of both legs and his right arm. While this may have limited his physical options, it likewise provided him a greater dependence on his mental skills, which of course, have developed into a keen legal mind. Despite his physical limits, his personal life has flourished, as he is supported by his lovely wife, Laura, and ten year old daughter, Julia. They are very proud of him, not for becoming a judge, although that is nice too, but for simply being the great guy that he is. Judge Bonavita cherishes his family time, and his role as a father. They love to travel, as they still have family up North, and he likes to unwind at home by playing piano, which his daughter is also starting to learn. If you ask him about his family, his face will light up and you will be greeted with a broad smile. No, Judge Bonavita is not disabled, he is just challenged. But he has met his challenges and is enjoying life. Judge Bonavita is clearly an asset to Palm Beach County.





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“Michelle’s demonstrated commitment to equal access to justice is an inspiration to all members of the legal community. Her energy, enthusiasm and ability to motivate others to achieve any goal or champion any cause is unparalleled. Her legal knowledge, integrity and professionalism will make her an outstanding addition to the Florida Bar’s Board of Governors.”

**BOB BERTISCH, Executive Director, Legal Aid Society of Palm Beach County**

“Michelle doesn’t just show up; she participates because she cares. She is never afraid to speak her mind, even if that view is not the popular view, and she is never afraid to think outside the box for innovative solutions to difficult problems lawyers encounter every day. As Michelle is fond of saying, ‘what you see depends on what you are looking for.’”

**JERRY BEER, Past Member, Florida Bar Board of Governors; Past President, Palm Beach County Bar Association**

“Michelle approaches everything that she does with creative energy that seems boundless. She would bring that same innovative spirit and inspiration to the Florida Bar Board of Governors.”

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“Michelle Suskauer has demonstrated by her extraordinary vision, enthusiasm, and dedication while serving in positions of local bar leadership, that she is committed to all members of our profession and to their ability to serve their clients and the public. She will be a devoted and effective representative of the lawyers of this circuit on the Board of Governors.”

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## YLS Update

By Theo Kypreos, YLS President

It's been a busy six months for the Young Lawyers Section. We kicked off the 2009-2010 year with our annual summer intern happy hour at O'Shea's Irish Pub on July 16, which was followed by another happy hour with the Federal Bar Association on August 13 at Kona Grill. On October 1, more than 100 YLS members gathered for a reception at Morton's in West Palm Beach in honor of past-president John Whittles. Most recently, on November 11 our members enjoyed cocktails and hors d'ouvres at Café Saporì.

While we all enjoy mingling with friends and colleagues, the YLS is not all about happy hours. The YLS executive board has also been busy planning and coordinating the various YLS-sponsored service projects for the year. We held our first project on August 26, when members of the YLS executive board visited Pleasant City Elementary School to deliver a year's worth of school supplies purchased by the YLS for the school's students and teachers. During the morning visit, YLS members Eric Severson, Bill Lazarchick, Melissa Devlin, Julia Wyda, Adam Langino and I visited each classroom and spent a few minutes delivering supplies and discussing the upcoming year with the students. The school supply distribution was the first of three charitable projects the YLS holds for its adopt-a-school partner, Pleasant City. Later this year, the YLS will be coordinating a career day for the school as well as a Saturday field trip for the entire 5th grade class.

This year's Annual Holiday Party and Silent Auction on December 10 at Frenchman's Reserve was also a huge success.

Over 400 people attended the event, and the silent auction raised close to \$15,000 for the North County and Young Lawyers Sections' respective charitable projects. The YLS put its share of the silent auction proceeds to quick use when it hosted 59 foster children and their adoptive families for a holiday party at the Crowne Plaza Hotel on December 17. Pizza, soft drinks and cookies were served during the party while YLS members John Whittles and Grey Tesh entertained our guests and their families with guitar playing and singing of holiday songs. During the party, we treated our young guests to a surprise visit from Santa, who then mingled with the children and delivered the gifts purchased for them by our YLS executive board members.

On February 12, 2010, YLS members will volunteer at Café Joshua at the Lord's Place. For the third year in a row, YLS members will work in Café Joshua's kitchen and will serve the restaurant's patrons during the restaurant's lunch service. After lunch, the YLS will offer a legal seminar to the restaurant's patrons covering such topics as criminal law and bankruptcy.

The YLS will also hold a Habitat for Humanity service project the morning of Saturday, March 6, 2010. All YLS members are encouraged to attend and contribute a few hours of their time to this very worthwhile cause. If you would like to participate and/or have any questions about this project, please contact Patience Burns (pburns@palmbeachbar.org) or project co-chairs Julia Wyda (jwyda@sasserlaw.com) and Luis Delgado (Ldelgado@sa15.state.fl.us). If you'd like to get involved with the YLS in some of our other projects, drop me an email at tkypreos@jones-foster.com.

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## Bar offers online traffic and parenting courses

The Palm Beach County Bar Association continues to look for non-dues sources of revenue to assist in keeping the cost of Bar dues down. Accordingly, we offer online courses in Business & Personal Services and Traffic Safety such as: Basic Driver Improvement Course, First Time Driver Course, Mature Driver Course, Florida Notary Service and Florida Internet Parenting Course (approved course by the State of Florida). These are all approved courses through the American Safety Council. The Palm Beach County Bar Association will receive a small stipend for each course that is taken through a link on our website. Please help us by remembering to refer your clients to this link if they are in need of taking any of these courses. For more information, visit [www.palmbeachbar.org/online\\_courses.php](http://www.palmbeachbar.org/online_courses.php)

# Thinking of Making a Move?

## Office space available for lease.

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Janet was formerly Assistant General Counsel (Rinker Materials Corporation) and General Counsel (New Line Transport, L.L.C.) where she was responsible for the management of all litigated and potential claims throughout the United States and managed a 7 person Risk Management Group. Janet participated in the company's corporate insurance team.

Janet is Chair of the Firm's Construction litigation group and was formerly with Greenberg Traurig.



**Donna M. Greenspan**, AV-rated by Martindale Hubbell, focuses her practice on insurance coverage disputes and bad faith, employment law, business torts, and intellectual property litigation. Donna counsels and represents clients in complex commercial litigation in state and federal courts at both the trial court and appellate court level. Donna is Board Certified by the Florida

Bar as a Specialist in both Business Litigation and Appellate Practice. After graduating from law school at the top of her class, she clerked for the Honorable Barbara J. Pariente, now a Florida Supreme Court Justice.

Donna is the Chair of the Firm's Insurance and Appellate Law groups and was formerly with Edwards Angell Palmer & Dodge LLP.

## We proudly welcome Jeffrey C. Pepin to our firm as an associate



Areas of practice include complex commercial litigation, insurance litigation, probate litigation, corporate litigation, construction litigation, real estate litigation, and business torts. Jeff graduated with honors from the University of Florida with a B.S. in Finance in 1996 and later received his Juris Doctorate from the Notre Dame School of Law. Jeff has over 9 years of extensive trial experience, the past 7 as an associate with Burman, Critton, Luttier & Coleman. He has been selected by the South Florida Legal Guide as a "Top Up and Comer" for six consecutive years and

has also been listed in "Who's Who of Professionals." Jeff's community activities include the Notre Dame Club of the Palm Beaches and the Palm Beach County Gator Club.



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# 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.*

**NELSON E. BAEZ** – Connecticut; Stetson College of Law, 2009; Office of the State Attorney, 15th Judicial Circuit, West Palm Beach

**MICHAEL J. GORE** – Florida; New York Law School, 2009; Associated with Law Clerk for Casey, Ciklin, Lubitz, Martens & O'Connell, West Palm Beach

**ROBYN B. FEIBUSCH** – Arizona; Nova Southeastern University, 1987; Associate in Powers, McNalis, Torres & Teebagy, West Palm Beach

**STEVEN G. HEMMERT** – Kentucky; Boston University, 2002; Associate in Gunster, West Palm Beach

**LAUREN M. MALONE** – Ohio; Stetson University, 2009; Office of Public Defender, West Palm Beach

**BENJAMIN K. MCCOMAS** – Indiana; University of Michigan; Associate in Akerman Senterfitt, Fort Lauderdale

**NOAH B. TENNYSON** – Florida; University of Florida, 2009; Office of State Attorney, 15th Judicial Circuit, West Palm Beach

# WELCOME

## Annual Holiday Party

The annual Holiday Party and Silent Auction was held at Frenchman's Reserve in Palm Beach Gardens for 400 guests. The Young Lawyers and North County Section's once again put on a great auction and raised close to \$15,000 for charity.



Judge Ted Booras, Judge Laura Johnson and Richard Wennet



Carol Ann Plowman and Scott Wortman



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\*List in progress as of publisher's deadline of 12/15/09.

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## How Do You Know When A Securities Financial Advisor is Breaching His or Her Duties to a Client?

By Adam T. Rabin

Customers at securities brokerage firms often assume a financial advisor will invest the client's assets in a manner that is safe and in the client's best interests. But what many clients do not know is that they may be exposing their accounts to unnecessary risk or even abuse. Whether through intentional misconduct, negligence, or inadequate supervision, the mismanagement of customer investment accounts can lead to unwarranted financial losses.

### A Financial Advisor's Duties to His or Her Clients

A financial advisor owes the following duties, among others, to his or her clients:

- to recommend only suitable investments;
- to put the client's interests above the advisor's;
- to disclose and not misrepresent all material facts about the recommended investments; and
- to buy or sell securities only after receiving the client's consent.

An advisor's failure to comply with these duties may have serious financial consequences for the client.

### The Advisor's Duty to Recommend Only Suitable Investments

The "Know Your Customer" rule (Rule 405 of the New York Stock Exchange) and the "Suitability" rule (Rule 2310 of the National Association of Securities Dealers) require a broker to learn certain "essential facts" about a client before recommending an investment. This information includes the client's age, income, net worth, investment experience, risk tolerance, and investment objectives (the "investor profile"). A broker has a duty to recommend only investments that are consistent with the client's investor profile. Recommendations that are inconsistent with the client's investor profile are considered unsuitable.

### An Advisor is Required to Put the Client's Interests Above the Advisor's

"Churning" occurs when a broker makes trades for the primary purpose of generating commissions. Repeated securities purchases and sales within a short period of time, i.e., turnover of securities, are indicia of churning. The commissions charged for these trades can make it difficult for the client to profit in his or her account because the commissions will impinge upon any increase in asset value.

### The Advisor Must Disclose All Material Facts About Recommended Investments

Advisors are required to provide accurate information about recommended investments. Securities laws prohibit brokers from misrepresenting or omitting material information when recommending an investment to a client. Information is "material" if a reasonable investor would consider it important in making an investment decision. Misrepresentations and omissions frequently involve inadequate disclosure of risk.

### An Advisor is Required to Obtain Client Consent to Purchase or Sell Securities

An advisor is required to obtain the client's consent before purchasing or selling a security on behalf of the client. Brokerage firms require a client to provide the broker with written trading authority to waive this requirement. Even a written agreement that provides trading discretion to an advisor, however, does not obviate an advisor's duty to purchase only suitable investments for the client.

### When a Client Believes an Advisor Has Breached His or Her Duties

If a review of the client's account statements or other documents shows a possible breach of duty, the client should contact the advisor for an explanation. If the client is not satisfied with the response, the client should address the

issue with a manager or a compliance officer. The firm should remedy the problem immediately.

When clients believe that they have been taken advantage of, they often are inclined to try to recover their investment losses on their own. This often proves unsuccessful. Brokerage firms have skilled attorneys (in-house and outside) who may deny any wrongdoing. And in the limited circumstances where a brokerage firm will offer money to settle a dispute, the offer usually is inadequate to remedy the losses.

If a client believes that an advisor has breached his or her duties to the client, the client should seek the advice of a lawyer who has expertise in the area of securities arbitration. Many lawyers handle these cases on a contingency fee and will offer a free client consultation.

*Adam T. Rabin is a shareholder with McCabe Rabin, P.A., where he practices in the areas of plaintiff-side securities arbitration and business litigation.*



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### Breskys & Murrays to Co-Chair "Musical Magic" Fundraiser for Legal Aid

The Legal Aid Society is pleased to announce that Robin and Ken Bresky together with Jamie and Scott Murray will be co-chairing the 22nd Annual Pro Bono Recognition Evening.

The event will be held on Saturday evening, May 8, 2010 at the Palm Beach County Convention Center.

The event will honor all the attorneys, law firms and other professionals in the community who provided pro bono services in 2009. Special recognition will be given to those firms and individuals whose volunteer services in 2009 went "above and beyond" all expectations.

The theme of the evening will be "Musical Magic" and will include a silent auction, cocktail reception, dinner buffet, awards ceremony and entertainment from students at the Dreyfoos School of the Arts.

For information regarding how to participate in the recognition evening, call Harreen Bertisch, Director of Development at (561) 655-8944 x 257.



Murray's

### Richard Abedon receives the Florida Bar President's Pro Bono Service Award

The Fifteenth Judicial Circuit Pro Bono Committee Chair Lisa Small, Esq. is pleased to announce that Richard Abedon was awarded the 2010 Florida Bar President's Pro Bono Service Award for the Fifteenth Judicial Circuit. The award is given at a ceremony before the Florida Supreme Court in January.

This year's recipient, Richard Abedon, a retired attorney, served twenty two years as a Probate Judge in Rhode Island. Earlier in his legal career he was a lawyer with Holland & Knight LLP.

Richard is worthy of this award by virtue of his innumerable hours of dedication to the Legal Aid Society and the underprivileged community through his outreach work at the Urban League of Palm Beach County. Richard serves as Director of a joint project between the Legal Aid Society of Palm Beach County and the Urban League of Palm Beach County. Richard started this project over 5 years ago. He currently dedicates at least two days a week to interviewing clients in West Palm Beach and Belle Glade/Pahokee. He assesses their legal problem and screens them for eligibility for Legal Aid's services. In addition, if the client has a problem that he feels he can assist them in resolving he will make every attempt to try to settle the problem himself. Over the past five years Richard has assisted literally hundreds of indigent individuals and provided well over 2000 hours of pro bono service.



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Joe Galardi, Patti Leonard and Kristy and Grier Pressly

100 young professional friends of the Legal Aid Society of Palm Beach County mingled, partied and shopped at the Brooks Brothers store in the Gardens Mall to benefit Legal Aid's Children's Advocacy Projects.

The event raised over \$3000 to provide legal services to abused, neglected, disabled and foster children.



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## Twenty Things to Avoid

*Continued from page 9*

17. Sealing Records at an 8:45 hearing. Now- a-days it is hard to seal records under Florida Rule of Judicial Administration 2.215 and the Palm Beach County Administrative Rule, which is even more stringent. However, sealing records requires an evidentiary hearing and if the records you want to seal are evidence, then it is likely they come in as an exception to the sealing rule for purposes of publication and notice. In any event it is not an 8:45 hearing, most likely.
18. Objecting to setting aside a Clerk's Default after an Answer has been filed by the other party. *Carillon v. Devick*, 554 So.2d 9630 (Fla. DCA 1989) suggests that once an Answer is filed prior to the hearing requesting a Final Default Judgment, the Court is without authority to enter the judgment.
19. Not sending a Final Disposition Form, Rule 1.100 when a case is resolved.
20. Last and most importantly, doing anything that irritates a Judicial Assistant.

The foregoing was a partial list of things you may wish to consider and avoid. For \$99.95 and a stamped, self-addressed envelope the Committee will send you the entire list from Justice Labarga from several years ago. (Yes, it is in both English and Spanish.)



The Lawyers for Literacy Committee recently collected hundreds of books for the Wood Memorial Holiday Book Drive. All of the books will be donated to underprivileged children through the Palm Beach County Literacy Coalition.

Pictured from left to right:

Cyndi Spall, Chair; Laurie Gildan, Melynda Melear, Phil DiComo, Georgina Jimenez-Orosa, Peggy Wood and Glory Ross. Pictured center is Christina Wood who established the fundraiser many years ago in memory of her parents who loved to read.

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## The Decanter Side-Step. A Primer On Powers Of Appointment

By David M. Garten, Esq.

A power of appointment is a delegation of one's right to dispose of property and is usually exercised through a will or trust. This power is primarily used to address unforeseen changes in family circumstances. The terms "power of appointment" and "power" are used interchangeably in this article.

The rules governing powers of appointment are less stringent than Florida's new decanting statute [§736.04117, Fla. Stat.]. There are few, if any, restrictions on the donee's authority to control the distribution of assets. Additionally, since the donee is not a fiduciary, she may have no fiduciary responsibility (or liability) to the named beneficiaries of the power. Refer to Restatement (Third) of Trusts §50 (2003).

### DEFINITIONS:

- The term "Power of appointment" means an authority, other than as an incident of the beneficial ownership of property, to designate recipients of beneficial interests in property. Refer to §731.201(30), Fla. Stat.
- The donor is the person who creates the power.
- The donee (or holder/appointee of the power) controls the distribution of the assets subject to the power. Title to the property concerned remains with the donor until the power has been effectively exercised by the donee, at which time the title passes through the donee as a conduit to the beneficiary. Estate tax issues aside, a power of appointment does not vest ownership of the property in the donee of the power; the property remains the property of the donor of the power, and the donee in execution of the power is considered to be a mere agent of the donor. See Smith v. Bank of Clearwater, 479 So.2d 755 (Fla. 2nd DCA 1985); In re Estate of Wylie, 342 So. 2d 996 (Fla. 4th DCA 1977).
- The beneficiary (or object of the power) is the person in whose favor the power is exercised.
- A special (or nongeneral) power of appointment authorizes the donee to appoint the property among members of a class of beneficiaries designated by the donor. See Phipps v. Palm Beach Trust Co., 196 So. 299 (Fla. 1940). A special power does not create a property interest in the donee because the donee can never appoint the property subject to the power to herself. See Estate of Stewart v. Caldwell, 271 So.2d 754 (Fla. 1972). Therefore, the trust assets are *not* included in the donee's estate upon death. See Estate of Wylie, 342 So.2d 996 (Fla. 4th DCA 1977).
- A general power of appointment is defined under Florida's elective share statute as "a power of appointment under which the holder of the power, whether or not the holder has the capacity to exercise it, has the power to create a present or future interest in the holder, the holder's estate, or the creditors of either. The term includes a power to consume or invade the principal of a trust, but only if the power is not limited by an ascertainable standard relating to the holder's health,

education, support, or maintenance." Refer to §732.2025(3), Fla. Stat. This definition is contained in I.R.C. §2041(b)(1)(A). Additionally, the Florida Trust Code defines a general power of appointment as "a power of appointment exercisable in favor of the holder of the power, the power holder's creditors, the power holder's estate, or the creditors of the power holder's estate." Refer to §736.0103(7), Fla. Stat.

### RULES GOVERNING POWERS OF APPOINTMENT:

- A power is "personal" to the donee when the document creating the power refers to the donee by name and may be exercised only by that person and no other. In contrast, when the power is conferred on a person in her fiduciary capacity (i.e., PR or trustee), the power may be exercised by any person holding that position at the time the power is to be exercised. See Estate of Serrill, 159 So.2d 246 (Fla. 2nd DCA 1964).
- If the instrument creating the power sets forth the manner in which the power is to be exercised, the donee must exercise the power in the prescribed manner. Failure to comply with the donor's requirements for exercising the power defeats the power. See Talcott v. Talcott, 423 So.2d 951 (Fla. 3rd DCA 1982). A general residuary clause in a will, or a will making general disposition of all the testator's property, does not exercise a power held by the testator unless specific reference is made to the power or there is some other indication of intent to include the property subject to the power. Refer to §732.607, Fla. Stat.
- Partial invalidity of the power: If one part of the power is ineffective and another part, if standing alone, would be effective, the effective part is given effect, except to the extent the donee's scheme of disposition is more closely approximated by allowing some or all of the effective part to pass in default of appointment. See Vetric v. Keating, 877 So. 2d 54 (Fla. 4th DCA 2004) citing Section 23.1 of the Restatement (Second) of Property.
- If a donee fails to exercise a power, and the instrument that created the power specifies who the takers shall be in the event of a default, the property subject to the power passes in accordance with the default rules. See DePass v. Kansas Masonic Home, 181 So. 410 (Fla. 1938).
- The power vested in a donee to create an estate in fee includes the power to create or appoint any estate less than a fee unless the donor clearly indicates a contrary intent. See Phipps v. Palm Beach Trust Co. As a result, the donee has the power to appoint in trust (or in further trust) and if appropriate, select her own trustee to administer that trust. See Vetric v. Keating and §736.0401, Fla. Stat.
- The Florida Uniform Statutory Rule Against Perpetuities applies to power of appointments. Refer to §689.225, Fla. Stat.
- The rules regarding release of a power of appointment over property are contained in §§709.02 through 709.07, Fla. Stat.



Who Are They? From Page 4

1. Judge Roger Colton
2. Conrad DeSantis
3. Judge Rosemary Barkett
4. Mike Easley
5. Tim Gaskill

# Bulletin Board

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Downtown West Palm Beach. Furnished office space complete with computer and telephone. Walking distance to the courthouse and downtown restaurants. Also comes with secretarial station. Ready to move in. Contact Kim or Jennifer (561) 820-0010.

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**SPACE FOR LEASE:** First floor office space in bank building close to Gardens Mall, very attractive with conf. rooms, ideal for single practitioner of bankruptcy or litigation. Call (561) 478-1566, ask for Linda.

## HEARSAY

The law firm of Jones, Foster, Johnston & Stubbs, P.A. announces that **Harry A. Johnston II** recently received the R.H. Norton Award for Distinguished Service.



**Michael “Mickey” S. Smith**, a partner in Lesser, Lesser, Landy & Smith, PLLC (LLL&S), has been peer-elected Vice President of the Palm

Beach Chapter of the American Board of Trial Advocates (ABOTA).



Butzel Long attorney **Guy E. Quattlebaum** has been reappointed to the Palm Beach County Sports Commission Board of Directors for another two-year term.



**Laura Fortney Gross** has joined the West Palm Beach office of Gunster as an associate. She will concentrate her area of practice in Business

Litigation.



## Missing Bar Events? Be Sure to Read Your eNewsletters

Is your current email address on file with our office? If not, please be sure to send your current information to us. As postage rates continue to rise, the Bar is sending notices of all of its functions – membership luncheons, free happy hours, judicial receptions and important court information – to its members via email. Don’t be left out of the loop! Send your email address to us today and make sure your email provider accepts our emails. You can send your updated information to [sspence@palmbeachbar.org](mailto:sspence@palmbeachbar.org)



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- Trial Bar of the U.S. District Court, Southern District of Florida
- Trial Bar of the U.S. District Court, Middle District of Florida



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PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

1601 Belvedere Road, Suite 302 East, West Palm Beach, FL 33406

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\*\*\*\*\* DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE

# CALENDAR

## February 2010

Thursday, February 4,  
11:45am – 1:00pm  
**Business Law  
Lunch Seminar**  
Bar Association Office

Thursday, February 4,  
5:30pm – 7:00pm  
**YLS Happy Hour**

Monday, February 8,  
8:30am – 5:00pm  
**ADR CLE Seminar  
“ADR in 2010”**  
Bar Association Office

Tuesday, February 9,  
11:45am – 1:00pm  
**SPBCBA Membership Lunch**  
Boca Marriott

Tuesday, February 9,  
Noon – 1:00pm  
**NCS Board Meeting**

Tuesday, February 9,  
Noon – 1:00pm  
**YLS Board Meeting**  
Bar Association Office

Wednesday, February 10,  
5:30pm – 8:00pm  
**NCS BBQ & Casino Night**  
Bonnette Hunt Club

Thursday, February 11,  
Noon – 1:00pm  
**SPBC FAWL Luncheon**  
Bogart’s

Monday, February 15  
**Court Holiday –  
President’s Day**  
Bar Office Closed

Thursday, February 18  
**TFB “Practicing with  
Professionalism”**

Friday, February 19  
**Bench Bar Conference**  
Palm Beach County  
Convention Center

Tuesday, February 23,  
11:45am – 1:00pm  
**Judicial Luncheon**  
North end of Cafeteria,  
Main Courthouse WPB

Tuesday, February 23,  
5:30pm – 6:30pm  
**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, February 24,  
6:30pm – 8:00pm  
**Small Claims &  
Mediation Clinic**  
Royal Palm Beach Library

Thursday, February 25,  
5:00pm – 7:00pm  
**PBCBA Board of Directors  
Meeting**  
Bar Association Office

Thursday, February 25,  
5:30pm – 6:30pm  
**SPBC FAWL Reception**  
Old Calypso Restaurant

Thursday, February 25,  
6:00pm –  
**Federal Bar Cocktail  
Reception**

Thursday, February 25,  
6:00pm – 7:00pm  
**PBJA Meeting**

Friday, February 26, 8:30am  
– 9:30am  
**ADR Committee Meeting**  
Bar Association Office

Friday, February 26,  
11:30am – 2:00pm  
**Bankruptcy Law CLE  
Lunch Seminar**  
Bar Association Office



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

# "Second Annual Martinis and Migraines"

Employment Law Update, Getting Paid and Paying Out,  
Issues with Solvency, Bankruptcy & Sanctions

Friday, March 19, 2010 - 1:30pm—5:00pm

Bar Association office- 1601 Belvedere Rd., Suite 302 East West Palm Beach, FL



## Program Schedule

1:00 - 1:30pm - Late registration check-in

1:30 - 1:35pm - **Welcome & Opening Remarks** - *Cathleen A. Scott, Esq., Employment Law CLE Committee Chairperson, Cathleen Scott, P.A.*

1:35 - 2:20pm - **FLSA Update & Hot Topics** - *Matthew N. Thibaut, Esq., Casey Ciklin Lubitz Martens & O'Connell*

2:20 - 3:10pm - **Insolvency, Bankruptcy, & How to Enforce Employment Law Judgments** - *Alan R. Crane, Esq., Furr & Cohen PA*

3:10 - 3:20pm - **BREAK**

3:20 - 4:10pm - **The New Employment Reality, Sanctions & Rule 57.105** - *Richard E. Johnson, Esq., Board Certified Labor & Employment Law Attorney*

4:10 - 5:00pm - **Listen and Learn - Judicial Round Table Discussion With Judges:** *Honorable Judge Glenn D. Kelley, 15th Judicial Circuit, Honorable Judge Edward A. Garrison, 15th Judicial Circuit, and Honorable Judge Jonathan D. Gerber, 4th District Court of Appeal*

5:00 p.m. **Happy Hour With the Judiciary** . *Share a Martini with colleagues and the judges compliments of ARC Mediation*

**Sponsored By:**



*Please drink responsibly*

This course is pending **4.0 CLER / 1.0 Ethics credits; Labor & Employ Certification credits are pending** from The Florida Bar. Seminar cost is \$115 for PBCBA members/paralegals; \$155 for non-PBCBA members/paralegals if registered by 3/12/09; add \$25 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.

<b>HOW TO REGISTER</b>	 <b>MAIL</b> the completed form w/check	 <b>FAX</b> the completed form to 561/687-9007	 <b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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\_\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (3/19/10 Employ) Cost is the same as listed above, in addition to \$10 for shipping and handling.





The Palm Beach County Bar Association's Elder Law Affairs Committee presents:

# "The 10th Annual View From The Bench"

Thursday, March 18, 2010 6:00pm - 8:30pm  
The Colony Hotel, Palm Beach, 155 Hammon Avenue

## Program Schedule

6:00pm - 6:30pm Registration and Cash Bar

6:30pm - 8:30pm Dinner and Presentation:

- *Honorable Martin H. Colin*
- *Honorable Jack H. Cook*
- *Honorable Sandra K. McSorley*
- *Honorable Richard L. Oftedal*



This course has been granted **2.0 CLER hours / 1.5 Elder Law Certification credits** from The Florida Bar. The cost of the seminar is \$60 for PBCBA members/paralegals; \$100 for non-PBCBA members/paralegals if registered by 3/11/10; add \$25 to registration fee after that date.

*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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\_\_\_ I will not be able to attend the seminar but would like to order the CD Rom. (allow 2 weeks for delivery) Cost is the same as listed above, in addition to \$10 for shipping and handling. (Elder Law 3/18/10)



The Palm Beach County Bar Association's  
Commercial Litigation CLE Committee Presents:

**"Practical and Ethical Considerations in eDiscovery"**

**Friday, March 5, 2010 9:00 a.m. – 1:00 p.m.**

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



**Program Schedule**

- 8:45 a.m. - 9:00 a.m. **Late Registration/Check In**
- 9:00 a.m. - 9:15 a.m. **Welcome & Opening Remarks** - *Phillip A. Hutchinson, Esq., Greenberg Traurig, P.A., Commercial Litigation Committee Chairperson*
- 9:15 a.m. - 10:45 a.m. **Practical and Ethical Considerations in E-Discovery** - *John Scarola, Esq., Florida Bar Board Certified Business Litigation and Civil Trial Attorney, Searcy Denney Scarola Barnhart & Shipley, West Palm Beach*
- 10:45 a.m. - 11:00 a.m. **BREAK**
- 11:00 a.m. - 11:45 a.m. **Managing Critical Elements of E-Discovery** - *Speaker TBA, Credence Corp., Ft. Lauderdale*
- 11:45 a.m. - 12:00 p.m. **Lunch Buffet**
- 12:00 p.m. - 1:00 p.m. **Lunch With The Judiciary: Open Panel Discussion on eDiscovery, Ethics and Sanctions** - *Fourth District Court of Appeal Judges Jonathan D. Gerber and Dorian K. Damoorgian*

**SPONSORED BY:**



This course has been granted **4.0 CLER including 4.0 Ethics credits / 3.0 Business Litigation; 3.0 Civil Trial Certification credits from The Florida Bar**. The cost of the seminar is **\$100(includes lunch)** for PBCBA members/paralegals; **\$140** for non-PBCBA members/paralegals if registered by **2/26/10**; 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.

<b>HOW TO REGISTER</b>	<b>MAIL</b> the completed form w/check	<b>FAX</b> the completed form to 561/687-9007	<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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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) (3/5/10 Commercial Lit. Seminar.) Cost is the same as listed above., in addition to \$10 for shipping and handling

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



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

## **“Real Estate Issues in Bankruptcy Cases”**

**Friday, February 26, 2010 - 11:45pm - 2:00p.m.**

Bar Offices - 1601 Belvedere Rd., Suite 302E, 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 **Real Estate Issues in Bankruptcy Cases -**  
*Julianne R. Frank, Esq., Frank, White-Boyd, P.A., Eric A. Rosen, Esq., Rosen & Winig, P.A., and Norman L. Schroeder, Esq., Norman L. Schroeder, P.A. - Moderated by Brian K. McMahon, Esq., Brian K. McMahon, P.A.*

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

The cost of the seminar, **including lunch**, is **\$40** for PBCBA members/legal assistants, **\$80** for non-PBCBA members/legal assistants. Register now to save \$10.00. **After 2/19/10, add \$10.00.**

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.

<b>HOW TO REGISTER</b>		<b>MAIL</b> the completed form w/check		<b>FAX</b> the completed form to 561/687-9007		<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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**Please register me for the February 26, 2010 Bankruptcy Law CLE Seminar:**

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\_\_\_ I will not be able to attend the seminar but would like to order the CD Rom. (allow two weeks for delivery) (Bankruptcy Law 2/26/10) **Cost is the same as listed above, in addition to \$10 for shipping& handling.**

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





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

# "The Impact of the Current Economy on Personal Injury/Wrongful Death Cases"

Friday, April 16, 2010 - 8:00 a.m. – 12:00 p.m.

Bar Association Office, 1601 Belvedere Road, Suite 302E, WPB, FL

**This Program is open to all Attorneys and Paralegals, Plaintiff and Defense**

## Program Schedule

7:45 a.m. – 8:00 a.m.	<b>Late Registration/Check In</b>
8:00 a.m. – 8:10 a.m.	<b>Welcome &amp; Opening Remarks</b> - <i>Sia Baker-Barnes, Esq., Searcy Denney Scarola Barnhart &amp; Shipley, P.A., Committee Co-Chair</i>
8:10 a.m. – 9:00 a.m.	<b>Outcomes of Personal Injury/Wrongful Death Trials/Settlements During the Economic Downturn</b> - <i>(Florida Jury Verdict Reporter, presenting a comparison of verdicts pre and post recession)</i>
9:00 a.m. - 9:50 a.m.	<b>Do and Don'ts for Mediation in the Current Economy</b> - <i>Rodney G. Romano, Esq., Matrix Mediation, Inc.</i>
9:50 a.m. - 10:10 a.m.	<b>Strategies for Success at Trial in the Current Economy and Ethical Considerations</b> - <i>David C. Prather, Esq., Board Certified Civil Trial, Lytal, Reiter, Clark Fountain &amp; Williams</i>
10:10 a.m. - 11:00 a.m.	<b>Insurance Coverage Issues and Bad Faith: Impact of the Recession, Coverage Exclusions, and Strategies for Finding Coverage</b> - <i>Jeffrey M. Liggio, Esq., Board Certified Civil Trial, Liggio, Benrubi, P.A.</i>
11:00 a.m. - 11:10 a.m.	<b>BREAK</b>
11:10 a.m. - 12:00 p.m.	<b>Demonstration of High Impact Opening Statement - How to get the jury on your side from the beginning in the current economy</b> - <i>Plaintiff: Darryl L. Lewis, Esq., Searcy Denney Scarola Barnhart &amp; Shipley, P.A.</i> <i>Defendant: Benjamin L. Bedard, Esq., Roberts Reynolds Bedard &amp; Tuzzio, P.A.</i>
12:00 p.m.	<b>Closing Remarks/Adjournment</b> - <i>Edrick E. Barnes, Esq., Liggio, Benrubi, P.A., Committee Co-Chair</i>

**SPONSORED BY:**



This course is expected to receive **4.5 CLER / Ethics credits and Certification credits are pending** from The Florida Bar.

The cost of the seminar is **\$125.00** for PBCBA members/paralegals;

**\$165.00** for non-PBCBA members/paralegals if registered by 4/9/10; 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.**

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\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (04/16/10 PI Wrongful Death) Cost is the same as listed above, in addition to \$10 for shipping and handling.

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