



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

February 2015



15th Circuit Chief Judge Jeffrey Colbath and FL Supreme Court Chief Justice Jorge Labarga congratulate Linda Sims on her retirement as Law Librarian for 30 years.



Kudos to our awesome Young Lawyers Section board members on another successful holiday party! The YLS hosted 75 foster children for a pizza party and a visit from Santa to distribute gifts purchased especially for them. Thanks also go to our members who so generously bid on items at our membership holiday party/silent auction that enabled us to purchase these toys. Lastly, a big **thank you to the West Palm Beach Marriott** for generously donating the space for us to host our party. For more pictures from the event, see page 4.



## Mark your calendar for upcoming Membership Events

### February 2:

Joint Luncheon with Forum Club  
with guest speaker U.S. Supreme Court Justice  
Sonia Sotomayor

### February 26:

Judicial Recognition Luncheon  
for Retiring Judges

### March 27:

Bench Bar Conference

### April 28:

Judicial Reception

### May 1:

Law Day Luncheon with guest speaker Mark  
Curriden, attorney and award-winning legal  
journalist. Senior writer for the ABA Journal

## Bench Bar Conference scheduled for March 27

This year's Bench Bar Conference has been scheduled for Friday, March 27 at the Palm Beach County Convention Center in West Palm Beach. The conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. The registration form can be found online at [www.palmbeachbar.org](http://www.palmbeachbar.org) More than 1,000 people are expected to attend. Don't be left out. Sponsorship opportunities are available to assist in the underwriting of this year's conference in the following amounts:

\$575 for law firms of 11 or more attorneys

\$375 for law firms with 3-10 attorneys

\$250 for law firms with 1-2 attorneys

Checks should be made payable to the PBCBA and mailed to: Patience Burns,  
1507 Belvedere Road, West Palm Beach, FL 33406.

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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:  
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# President's Message



## Where Does Professionalism Start?

by Theo Kypreos

It's almost like a broken record. Whether it's at a judicial relations committee meeting, bench bar planning session, professionalism committee meeting, or during other bar practice committee meetings and activities, we discuss the topic of professionalism and attorney conduct with concern. For example, members of our local judiciary have noted a trend of declining professionalism among attorneys and toward the judiciary in recent years, particularly in the Uniform Motion Calendar environment. There are reports of attorneys routinely interrupting and talking over judges, attorneys speaking derogatively toward one another, and attorneys threatening judges with appeals if they do not immediately reconsider a ruling. Perhaps not coincidentally, referrals to our local professionalism panel have increased this year. Much time has been spent at local bar committee meetings discussing this reported trend and what, if anything, we as a profession could do to improve the situation. After all, Palm Beach County has historically been a leader in Florida when it comes to promoting and fostering professionalism within the legal profession. The Palm Beach County Bar Association was the first voluntary bar association in the state to adopt Standards of Professional Courtesy over 20 years ago. And in 1997, the Fifteenth Judicial Circuit created its Professionalism Council to enforce the PBCBA Standards of Professional Courtesy, again the first among Florida judicial circuits. More recently, in 2013, the PBCBA and 42 other voluntary bar associations in South Florida signed a joint resolution and committed to promoting the Florida Supreme Court's amended Oath of Attorney and adherence to accepted standards of professional courtesy and civility throughout South Florida.

During these discussions, many of our colleagues have asked for a solution. Jokingly, some have suggested that certain parts of our profession need to be rehabilitated. Of course, that is a little extreme. As we all know, the unwise actions of few should not be attributed to everyone. But, as a collective group, can we use some improvement? Of course we can. We should always strive to be at the forefront when it comes to professional behavior among Florida attorneys.

In order to find a "solution," you first have to focus on the

## Board Meeting Attendance

	JUL	AUG	SEP	OCT	NOV	DEC
Barnes	x	x	x	Phone	Phone	x
Demmery	x	x	x	x	x	x
Huber	x	x	x	x	x	x
Kypreos	x	x	x	x	x	x
Mason	x	x	x	x	x	x
McElroy	x	x	x	Phone	Phone	x
Pressly	x	x		x	x	x
Reagan	x	x	x	x	x	x
Weiss	x	x	x	x	x	x
Whittles	x	x	x	x	x	x
Wyda	x	x	x	x	x	x
Xenick	x	x	x	x	x	x
Yaffa	x		Buck	x	x	x

process, which begs the question... where does professionalism start? Is it when you take your first professionalism class in law school, or when you study for the MPRE exam? Maybe it's when you pass the bar exam and take the Oath of Attorney? Surely, everyone has their own point of view. To me, professionalism doesn't start at any point along a timeline. Instead, it starts with each of us in everything we do as attorneys. The actions we take as attorneys, and more importantly the traits we pass on to others who observe us, will dictate the level and manner of professionalism that develops in our legal community.

When I began practicing law in Palm Beach County, I was fortunate to have mentors and colleagues within my law firm to advise me regarding how to deal with the most difficult ethical or professional dilemmas. As helpful as those attorneys within my firm were and continue to be to me, much of what I learned as a new attorney came from observing other attorneys in the courtroom, at depositions, and in other professional settings outside of my law office. As a novice probate litigation attorney, I learned how to properly address and interact with the Court by observing attorneys like Jamie Pressly and Edward Downey at contested hearings. When it came to dealing with opposing counsel who were "loose" with the facts and the law in front of a judge, I considered how Bill Hennessey handled similar situations without casting insults and derogative terms in open court. Truly, the traits and habits I carry with me today are not attributable to where I was born, where I went to law school, or from anything I read preparing for the bar exam. Instead, I am a product of my environment. I learned from the attorneys that surrounded me when I cut my teeth and became an attorney. I am thankful to these colleagues, both inside and outside my law firm. They embraced me as a new attorney and offered me guidance by example. I continue to look to these colleagues for guidance when new and difficult situations arise. I also recognize that the learning process does not end with my journey. We should continue to teach and set examples for today's new attorneys, particularly within our practice areas. Through our interaction with new colleagues, we can learn from and build upon the fresh perspective and ideas they bring to our profession, while jointly developing and practicing professional conduct.

My experience in our local probate bar is not unique in its ability to foster and teach professionalism between new and seasoned attorneys. Through my bar service, I have personally observed similar camaraderie among members of the trial bar, the criminal law bar, the family law bar, and other practice areas in our legal community. I am certain that, collectively, we can improve the level of professionalism in Palm Beach County. If you are taking the time to read this article you are likely not part of any perceived professionalism "problem" within our legal community... but you can be part of the "solution." The next time you find yourself in a crowded courtroom and emotions are running high, try to remember that there is likely someone in that same courtroom who is going to learn, either positively or negatively, from the way you handle the situation. If you are a new attorney, I encourage you to identify several attorneys in your field who maintain positive reputations. Take the time to observe how those attorneys conduct themselves before the Court and with other attorneys. Conversely, if you are an experienced attorney and you see a new colleague act in a way that may be deemed unprofessional, please take the time to constructively offer advice and suggestions. Most of all, remember that new attorneys look to their senior colleagues to set examples, so set a good example of professionalism through your own conduct. In the end, if we all work together, continue the learning process, and practice in a professional manner, the reputation of Palm Beach County attorneys and judges will continue to earn high regard.

tkypreos@jonesfoster.com



# Young Lawyer's Section Foster Children's Holiday Party



Rachel Belcher, Christine Bialczak, Ed Walker, Lisa Kohring, Nicole Barna and Andrea Robinson pass out pizza to the children and their families

Thank you to our carolers, past YLS President John Whittles, Kevin & Trish Carrico Armstrong, Rodney Trice, Colleen Farnsworth and Stephanie Cagnet



Santa (past YLS President Julia Wyda) talking to two of the foster children



## 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 [sspence@palmbeachbar.org](mailto:sspence@palmbeachbar.org)



Just some of the toys that were distributed that night.

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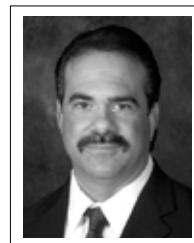
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Florida Certified Circuit Civil Mediator  
Palm Beach County Bar ADR Committee Member





## “ADR - Making it Work!”

**Monday, February 9, 2015 - 8:00a.m. – 4:30p.m.**  
**Bar Association Offices, 1507 Belvedere Rd., WPB 33406**

### Program Schedule

8:00a.m. – 8:30a.m.	<b>Late Registration/Check In</b>
8:30a.m. – 8:40a.m.	<b>Welcome &amp; Opening Remarks</b> - <i>Amber E. B. McMichael, Esq., Clarfield, Okon, Salomone &amp; Pincus, PL., Certified Circuit Civil, and Family Mediator, Committee Chair</i>
8:40a.m. – 9:30a.m.	<b>Domestic Violence</b> - <i>Eunice I. Baros, Esq., Certified Circuit Civil Mediator</i>
9:30a.m. – 10:20a.m.	<b>Cultural Diversity</b> – <i>Najah N. Adams; Esq., Adams &amp; Griggs, P.A.</i>
10:20a.m. – 10:30a.m.	<b>BREAK</b>
10:30a.m. – 11:20a.m.	<b>Trench Warfare - Arbitration Pitfalls and Opportunities</b> - <i>Rodney G. Romano, Esq., Matrix Mediation, LLC, Certified Circuit Civil Mediator</i>
11:20a.m. – 12:10p.m.	<b>Panel of Attorneys Q&amp;A</b> - <i>Panel Moderated by Amber E. B. McMichael, Esq., Clarfield, Okon, Salomone &amp; Pincus, PL</i> <i>Panel: Adam T. Rabin, Esq., McCabe Rabin, P.A., Certified Business Litigation and Business Law Attorney; Scott G. Hawkins, Esq., Jones, Foster, Johnston &amp; Stubbs, P.A.; Certified Business Litigation and Business Law Attorney; Jill G. Weiss, Esq., Dimond Kaplan &amp; Rothstein P.A.</i>

### **\*\*\*LUNCH SPONSORED BY: MATRIX MEDIATION, LLC\*\*\***

12:10p.m. - 1:00p.m.	<b>LUNCH</b>
1:00p.m. - 1:50p.m.	<b>Case Law/Ethics Update</b> - <i>W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., P.A., Certified Circuit Civil and Family Mediator, Board Certified Civil Trial Lawyer Emeritus</i>
1:50p.m. - 4:30p.m. (includes break at 2:40p.m. - 2:50p.m.)	<b>Comparative Techniques for Various Practice Areas:</b> <b>Personal Injury</b> - <i>Louis L. Williams, Esq., Matrix Mediation, LLC, Certified Circuit Civil Mediator</i> <b>Commercial</b> - <i>Theodore A. Deckert, Esq., Matrix Mediation, LLC, Certified Circuit Civil and Family Mediator</i> <b>Family</b> - <i>Victoria S. Calebrese, Esq., Victoria Calebrese, P.A., Certified Marital and Family Law Attorney, and Certified Family Mediator,</i> <b>Construction</b> - <i>William J. Cea, Esq., Becker &amp; Poliakoff P.A., Certified Circuit Civil Mediator, Board Certified Construction Law Attorney</i> <b>Workers Comp</b> - <i>Michael H. Imber, Esq., Office of the Judges of Compensation Claims, State Mediator</i> <b>Probate/Trust/Guardianship</b> - <i>Michael D. Mopsick, Esq., Shapiro, Blasi, Wasserman &amp; Gora, P.A., Certified Circuit Civil Mediator</i>

This course has been granted **8.0 CLER including 1.0 Ethics credits**/Certification credits include **6.0 Civil Trial** from the Florida Bar.

**Early registration** cost is **\$200** for PBCBA members/paralegals; **\$240** for non-PBCBA members/paralegals if registered by 2/2/15; 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 8.0 CME hours; Diversity and Domestic Violence credits are pending. Mediators are required to self report those hours applicable to their areas of certification at the time of their renewal. For more info on the CME requirement, visit, [www.flcourts.org](http://www.flcourts.org), select Alternative Dispute Resolution/Mediation.”**

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

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If paying by credit card, please go to our secure website to register: [www.palmbeachbar.org](http://www.palmbeachbar.org)



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.



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

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

Telephone: \_\_\_\_\_

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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) (2/09/15 ADR) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**



## Empty Claim Assignments

by Jason S. Rigoli

There are a number of entities out there ready and willing to purchase claims in bankruptcy estates. These can

be welcomed sources of immediate cash for creditors, who are otherwise in need of liquidity or would like to forego the uncertainty and delay in waiting for the full administration of a bankruptcy estate. These purchasers should beware, however, as some of these claims may be disallowed.

In the last few years the Third Circuit and the Southern District of New York have addressed the issue of whether a purchaser takes these claims subject to the same rights and infirmities of the original claim holder.

Section 502(d) of the Bankruptcy Code states, in relevant part:

Notwithstanding subsections (a) and (b) of this section, *the court shall disallow any claim of any entity ... that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 11 U.S.C. § 553 of this title.*

11 U.S.C. § 502(d) (emphasis added).

In *In re KB Toys, Inc.*, 470 B.R. 331 (Bankr. D.Del. 2012) *aff'd* 736 F.3d 247 (3d. Cir. 2013), the Bankruptcy Court interpreted Section 502(d) to apply to the “claim” rather than the “claimant”. 470 B.R. at 335. Therefore, an objection to the claim purchased by the third-party was sustained because the original holder had not returned the preference payment. *Id.* at 343. In reaching its conclusion the bankruptcy court looked to pre-code decisional law made under the predecessor to § 502(d), §57(g) of the Bankruptcy Act, including a decision by the United States Court of

Appeal for the Eighth Circuit where it held: “The disqualification of a claim for allowance created by a preference inheres in and follows every part of the claim, whether retained by the original creditor or transferred to another, until the preference is surrendered.” *KB Toys*, at 336 (quoting *Swarts v. Siegel*, 117 F. 13, 15 (8th Cir.1902)).

The Bankruptcy Court for the Southern District of New York has also issued opinions on this issue, twice coming to the same conclusion of the Courts in *KB Toys*. See, *In re Metiom, Inc.*, 301 B.R. 634 (Bankr. S.D.N.Y. 2003) (finding that an objection to claim held by a purchaser shall be sustained because the original holder was the recipient of an avoidable transfer that had not been returned); *In re Enron Corp.* (“*Enron I*”), 340 B.R. 180 (Bankr. S.D.N.Y. 2006) (Same).

The District Court for the Southern District of New York, however, overturned the *Enron I* decision stating that a purchaser of a claim stood in a position different from that of the original holder of the claim. *In re Enron Corp.* (“*Enron II*”), 379 B.R. 425, 436-437 (S.D.N.Y. 2007). Relying on New York’s Uniform Commercial Code, the District Court distinguished between a “purchaser” and an “assignee”. *Id.* at 436 (citing N.Y. U.C.C. §§ 3-104; 8-202(d)). Finding that while an assignee stands cannot obtain more than that of the original claim holder; in some circumstances, a purchaser may obtain more. *Id.* (citing N.Y. U.C.C. § 8-202(d), “stating that all defenses of the issuer of a security with enumerated exceptions, are ‘ineffective against a purchaser for value who has taken the security without notice of the particular defense’”). The District Court eventually came out to the opposite conclusion, stating that the infirmity under section 503(d) of the Bankruptcy Code runs with the claimant and not the claim. *Id.* at 436.

### Conclusion

Depending on which party you may represent the issues implicated in these decisions have wide ranging

effects. If you represent a potential claim purchaser, the purchase or assignment agreement should contain a provision by which the purchaser may rescind the purchase and recover its funds in the case where there is the potential for the claim to be disallowed. For those who represent trustees or debtors in possession, it is important to keep this in mind when doing your claims analysis. It may be an often-missed basis through which the claims base in an estate may be reduced.

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

## In Memoriam



**Eugene Brandt**  
1946 – 2014



**Daniel Downey**  
1922 – 2014



## Membership Holiday Party Highlights



**Theo Kypreos and his wife Jennifer**



**Ret. Judge Roger Colton and Tama Kudman**

Our annual holiday party is one of our largest and most well attended events. This year's gathering at Frenchman's Reserve Country Club in Palm Beach Gardens was no exception with close to 400 members and a huge silent auction. Thanks to our hard working members from our Young Lawyers and North County Sections who solicited our silent auction items, and to our members who bid on them, we raised over \$15,000 for local charity.



**Adam Rabin, Judge Jaimie Goodman and Bruce Harris**



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## Elective Share Made Easy – Part II (Elective Estate)

by David M. Garten

To determine the surviving spouse's elective share, the first step is to determine the value of the "elective estate". Unless stated otherwise, the valuation of each of the following categories is the fair market value on the date of the decedent's death. The following nine categories of property are included in the elective estate:

**1. The decedent's probate estate.** §732.2035(1), F.S. The probate estate includes all of the decedent's property wherever located that is subject to estate administration in any state of the United States or in the District of Columbia. *See* §732.2025(7), F.S. Exceptions: The probate estate does not include claims against the estate (including funeral expenses), mortgages, liens, and security interests. *See* §732.2055(4), F.S.

**2. Joint bank accounts and similar arrangements.** §732.2035(2), F.S. This category includes the decedent's ownership interest in bank/brokerage accounts and securities registered in "Pay On Death," "Transfer On Death," "In Trust For," or co-ownership with right of survivorship form. The term "decedent's ownership interest" means, in the case of accounts or securities held in tenancy by the entirety, one-half of the value of the account or security, and in all other cases, that portion of the accounts or securities which the decedent had, immediately before death, the right to withdraw or use without the duty to account to any person.

**3. Joint tenancies and tenancy by entireties.** §732.2035(3), F.S. This category includes the decedent's fractional interest in real and personal property (exclusive of categories 2 and 7) held by the decedent in joint tenancy with right of survivorship or in tenancy by the entirety. The term "fractional interest" means the value of the property divided by the number of tenants; it is immaterial whether the decedent contributed some, all or none of the consideration for the property. *See* §732.2035(3), F.S.

**4. Revocable trusts.** §732.2035(4), F.S. This category includes property (exclusive of category 2) transferred by the decedent to the extent that at the time of the decedent's death, the transfer was revocable by the decedent alone or in conjunction with any other person. This category includes revocable trusts as defined in §732.2025(9), F.S. Exception: This subsection does not apply to a transfer that is revocable by the decedent only with the consent of all persons having a beneficial interest in the property.

**5. Irrevocable transfers by and for the decedent.** §732.2035(5), F.S. This category includes that portion of property (exclusive of categories 3, 4 and 7) transferred by the decedent to the extent that at the time of the decedent's death:

a) The decedent possessed the right to, or in fact enjoyed the possession or use of, the income or principal of the property. Typical examples include a transfer to: **(i)** a personal residence trust, or **(ii)** a pooled income fund, or **(iii)** a trust where the decedent retained an annuity or unitrust interest. The

amount included is the value of the portion of the property to which the decedent's right or enjoyment related, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate;<sup>1</sup> or

b) The principal of the property could, in the discretion of any person other than the spouse of the decedent, be distributed or appointed to or for the benefit of the decedent. It is the possibility that the decedent might receive the principal, rather than the right or actuality, that causes inclusion. The amount included is the value of the portion subject to the discretion, to the extent the portion passed to or for the benefit of any person other than the decedent's probate estate.<sup>2</sup>

Exceptions: This category does not apply to any property if the decedent's only interests in the property are that: **(i)** the property could be distributed to or for the benefit of the decedent only with the consent of all persons having a beneficial interest in the property; or **(ii)** the income or principal of the property could be distributed to or for the benefit of the decedent only through the exercise or in default of an exercise of a general power of appointment held by any person other than the decedent; or **(iii)** the income or principal of the property is or could be distributed in satisfaction of the decedent's obligation of support; or **(iv)** the decedent had a contingent right to receive principal, other than at the discretion of any person, which contingency was beyond the control of the decedent and which had not in fact occurred at the decedent's death.

**6. Life insurance.** §732.2035(6), F.S. This category includes the decedent's beneficial interest in the net cash surrender value immediately before death of any policy of insurance on the decedent's life. *See* §§732.2035(6) and 732.2055(1), F.S.

**7. Retirement plans.** §732.2035(7), F.S. This category includes amounts payable to or for the benefit of any person by reason of surviving the decedent under any public or private pension, retirement, or deferred compensation plan, or any similar arrangement. Exceptions: This category does not apply to: **(i)** benefits payable under the federal Railroad Retirement Act or the federal Social Security System; and **(ii)** in the case of a defined contribution plan as defined in s.

*Continued on page 13*

<sup>1</sup> Example - Retained Income for Life. D creates an irrevocable trust, providing for the income to be paid annually to D for life, then for the corpus of the trust to go to X. Subsequently D dies, survived by S and X. Since D retained the right to all of the income, the entire value of the trust is in the elective estate. Had D retained only half of the income, only half of the trust would be included in the elective estate.

Example - Retained Annuity. D creates an irrevocable trust providing for a fixed dollar amount to be paid annually to D for life, after which time the remaining corpus is to go to X. The amount of the annuity payment exceeds the annual income earned on the trust property. D dies six years after the trust is created, survived by S and X. D's retained annuity is treated as a retained right to income. Accordingly, the entire value of the trust (determined as of D's death) is included in the elective estate.

<sup>2</sup> Example - Discretionary Trust. D creates an irrevocable trust giving trustee, T, the discretion to distribute income or principal to a group consisting of D and other named members of D's family, with any income not distributed to be added to principal. At the death of the last of D and his children, the trust principal is to be distributed to D's descendants. D dies, survived by S and several children and grandchildren. The entire value of the trust is included in D's elective estate. Had D named S as trustee, nothing would be included.





## Trade Secrets

by Ted Babbitt

In almost every products liability case and in many other types of cases, defendants often insist upon a confidentiality order based upon the assertion that each and every document that has been requested constitutes a trade secret. Very often the plaintiff accedes to the request for such an order for the sake of expediency. Rarely do the defendants meet their burden of establishing that documents constitute trade secret. The recent opinion of the Florida Supreme Court in *Bainter v. League of Women Voters of Florida*, 39 Fla. L. Weekly S689 (Fla. Nov. 13, 2014) highlights the nature of the defendant's burden.

This case related to the failure to produce documents from a political consulting firm, based on a challenge to the constitutional validity of the Florida Legislature's 2012 Congressional Redistricting Plan. The trial court rejected the nonparties' objection on the basis of an alleged trade secret privilege. The First District held the matter to be of great public importance requiring immediate resolution by the Supreme Court. The Supreme Court accepted jurisdiction.

The term trade secret is defined by Fla. Stat. 688.002(4) as (4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process that:

(a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and

(b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Unfortunately, the determination of whether requested documents constitute a trade secret is dependent upon the labor intensive job of a trial court doing an in camera review of all of the disputed documents. An in camera review is mandated virtually every time the trade secret privilege is raised. See *American Express Travel Related Servs., Inc. v Cruz*, 761 So. 2d 1206 at 1210 (Fla. 4th DCA 2000) and *Salick Health Care, Inc. v. Spunberg*, 722 So. 2d 944, at 947 (Fla. 4th DCA 1998). The Court quotes from *American Express Travel Related Servs.*, supra, that "The burden is on the party resisting discovery to show 'good cause' for protecting or limiting discovery by demonstrating that the information sought is a trade secret or confidential business information and that disclosure may be harmful."

The burden to depart from normal discovery rules is substantial. When an order of confidentiality is issued, the trial court must make natural findings supporting its conclusions. See *eg.*, *KPMG LLP v. State Dep't. of Ins.*, 833 So. 2d 285, 286 (Fla. 1st DCA 2002).

*Lovell Farms, Inc. v. Levy*, 641 So. 2d 103 (Fla. 3rd DCA 1994) p. 104 – 105 holds that in order to prove that the documents they are shielding are, in fact, trade secrets, defendants

must establish... (a) [that] the process is a secret; the extent to which the information is known outside of the owner's business; (c) the extent to which it

is known by employees and others involved in the owner's business; (d) the extent of measures taken by the owner to guard the secrecy of the information; (e) the value of the information to the owner and to his competitors; (f) the amount of effort or money expended by the owner in developing the information, and (g) the ease or difficulty with which the information could be properly acquired or duplicated by others.

It makes no sense to issue a protective order to prevent a plaintiff from sharing documents with counsel in other litigation. To the contrary, judicial economy would be served by sharing information among counsel.

See Marcus, *Myth and Reality in Protective Order Litigation*, 59 Cornell L. Rev. 1, 41 (1983); see also *Cipollone v. Liggett Group, Inc.*, 106 F.R.D. 573 (D.N.J. 1985) at Page 585-586.

The court cannot ignore the might and power of the tobacco industry and its ability to resist the individual claims asserted against it and its individual members. There may be some claimants who do not have the resources or such able and dedicated counsel as in this case to pursue the thorough investigation which these cases require. To require that each and every plaintiff go through the identical long and expensive process would be ludicrous. Even from the point of view of the defendants (though they resist), it would seem that they would benefit by avoiding repetition of the same discovery in each and every case. *Cipollone*, 106 F.R.D. at 577.

It could also be argued that allowing the public to know when documents show that a product is dangerous promotes safety. *United States v. Hooker Chemicals & Plastics Corp.*, 90 F.R.D. 421 (W.D.N.Y. 1981). (The Court "must consider the need for public dissemination, in order to alert other consumers to potential dangers posed by the product").

In affirming the trial court's order requiring the production of the documents, the Supreme Court rejected the claim of privilege on the basis of an alleged trade secret. The Court concluded

We simply do not countenance and will not tolerate actions during litigation that are not forthright and that are designed to delay and obfuscate the discovery process. As this Court has long stated, full and fair discovery is essential to the truth-finding function of our justice system, and parties and non-parties alike must comply not only with the "technical provisions of the discovery rules," but also with "the purpose and spirit of those rules in both the criminal and civil context." *Scipio v. State*, 928 So. 2d 1138, 1144 (Fla. 2006) (citing *Binger v. King Pest Control*, 401 So. 2d 1310, 1314 (Fla. 1981)).

This opinion is consistent with the statutory and case law requiring a defendant to show that documents alleged to be trade secrets are, in fact, privileged and that the Court's in camera inspection supports a deviation from full and open discovery.

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.



## The Monster in the Closet: Trust-Account Responsibility

by D. Culver Smith III

*Once the toothpaste is out of the tube, it's hard to get it back in.*

– H. R. Haldeman, White House Chief of Staff under President Nixon (referring to Watergate)<sup>1</sup>

A high-profile disciplinary case pending against two lawyers at the time of this writing demonstrates the fragility of entrusting others with trust-account compliance. Lawyers Able and Baker were law partners and best friends. Note the past tense. A firm employee called to The Florida Bar's attention several improper transfers of trust funds to the firm's operating account. The two former partners and best friends now are pointing their fingers at each other.

Alas, this sort of ugliness is not rare. A new rule regarding trust-accounting responsibility may deter such scenarios. The rule went into effect on June 1, 2014. It reads as follows:

### Responsibility of Lawyers for Firm Trust Accounts and Reporting.

(1) Every law firm with more than 1 lawyer must have a written plan in place for supervision and compliance with this rule for each of the firm's trust account(s), which plan must be disseminated to each lawyer in the firm. The written plan must include the name(s) of the lawyer(s) who sign trust account checks for the law firm, the name(s) of the lawyer(s) who are responsible for reconciliation of the law firm's trust account(s) monthly and annually and the name(s) of the lawyer(s) who are responsible for answering any questions that lawyers in the firm may have about the firm's trust account(s). This written plan must be updated and re-issued to each lawyer in the firm whenever there are material changes to the plan, such as a change in the lawyer(s) signing trust account checks and/or reconciliation of the firm's trust account(s).

(2) Every lawyer is responsible for that lawyer's own actions regarding trust account funds subject to the requirements of chapter 4 of these rules. Any lawyer who has actual knowledge that the firm's trust account(s) or trust accounting procedures are not in compliance with chapter 5 may report the noncompliance to the managing partner or shareholder of the lawyer's firm. If the noncompliance is not corrected within a reasonable time, the lawyer must report the noncompliance to staff counsel for the bar if required to do so pursuant to the reporting requirements of chapter 4.

R. Regulating Fla. Bar 5-1.2(c).<sup>2</sup>

The purported purposes of this rule are twofold: (1) the Bar's disciplinary counsel will avoid the burden-of-proof hurdle posed by the Able-Baker type of finger-pointing, and (2) lawyers who have not been designated as responsible can avoid what too often has amounted to vicarious responsibility for trust-account violations – a lawyer now is responsible for his or her "own actions." Herewith some observations, especially for smaller-firm practitioners:

1. Selecting the lawyer or lawyers who will be responsible for compliance is no routine decision and should not default to whoever officially or unofficially is recognized as the firm's managing partner. The designated lawyer must be willing to provide more than superficial review or mere rubber-stamping of a staff person's actions. He or she should either perform each reconciliation or verify each employee-performed reconciliation, including reviewing the underlying documents. Reliability and accountability are crucial.

2. Notwithstanding the apparent safe harbor of responsibility only for one's own actions, a nondesignated partner faces a dilemma: Should he or she permanently drop anchor in the safe harbor, trusting in the Sergeant Schultz defense if something goes awry, or should he or she occasionally venture out to confirm that the responsible partner is not dipping into the trust account or otherwise fiddling while Rome burns? In the Able-Baker case the firm's CFO was Able's brother-in-law and was directly involved in the improper transfers. Able says that Baker was the "Managing Partner" and responsible for trust-account oversight. Baker says that notwithstanding the "Managing Partner" label, Able was in charge of the firm's finances, that she trusted her longtime friend Able, and that the transfers were made at Able's direction and without her knowledge. One of them is fibbing. Regardless of which, friendship and trust proved to be inadequate safety nets. The new rule may protect a nondesignated partner from disciplinary exposure but not clients or the firm from financial loss caused by a trusted employee's or designated partner's raiding the trust account.

Each firm's individual circumstances will inform these decisions. Checks and balances would seem advisable, however, even if they oblige a nondesignated partner periodically to review the trust-account activity or independent audits of that activity. Short of gaining actual knowledge of a problem and doing nothing about it, the nondesignated partner likely will continue to enjoy an anchorage safe from the disciplinary storm.

<sup>1</sup> H.R. Haldeman, 1972, in Lois and Alan Gordon, *American Chronicle* (1987), reprinted in THE NEW YORK PUBLIC LIBRARY BOOK OF TWENTIETH-CENTURY AMERICAN QUOTATIONS 230 (Stephen Donadio, Joan Smith, Susan Mesner & Rebecca Davison eds., 1992).

<sup>2</sup> A basic form for the type of plan required by the rule appears on The Florida Bar website at [http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/6920C0E15F753D9E85257CEF006226BD/\\$FILE/Trust%20Account%20Plan%20Form.pdf?OpenElement](http://www.floridabar.org/TFB/TFBResources.nsf/Attachments/6920C0E15F753D9E85257CEF006226BD/$FILE/Trust%20Account%20Plan%20Form.pdf?OpenElement).

## Rule 1.550: Execution and Final Process

by Matt Triggs and Jonathan Galler

We think it's fair to say that the parties in the case of *Charter Schools USA, Inc. v. John Doe No. 93*<sup>1</sup> were quite determined to determine the meaning of the word "determined."

The plaintiff brought suit on behalf of a minor child who alleged that he was sexually abused by a fellow student at a Miami charter school. The jury awarded \$5,250,000 in damages against the school. The judgment was recorded, and the school subsequently filed a timely post-trial motion for a new trial or remittitur. The trial court heard and denied the motion, and signed an order to that effect the same day.

The next day, the plaintiff filed motions for issuance of writs of garnishment, and the writs were issued over the course of the two days after that. Two more days later, the order denying the school's post-trial motion was docketed by the clerk, and the school filed a notice of appeal and posted a supersedeas bond. The school also filed an emergency motion to dissolve the writs of garnishment and to enforce the supersedeas bond. That motion was denied and the appeal followed.

Rule 1.550 provides that a judgment is subject to execution at any time during its life after the judgment has been recorded. However, the rule also provides that a party may not execute on a judgment "within the time for serving a motion for new trial or rehearing, and if a motion for new trial or rehearing is timely served, until it is determined."

As the Third District noted, the word "determined" as used in Rule 1.550 is not defined in the rules of civil or appellate procedure. The school argued that "determined" means rendered – i.e., when the order is docketed by the clerk. Under that theory, the motions for issuance of writs of garnishment were premature and, thus, erroneously granted. The plaintiff, however, argued that "determined" simply means decided – i.e., when the court signed the order denying the post-trial motions. Under that theory, the writs were properly and timely issued.

The Third District sided with the plaintiff in this definitional battle for a variety of reasons, but the Court suggested that the most significant reason might be that defining the term as "'having reached a decision' is the best way to protect the party in whose favor a judgment has been entered."<sup>2</sup> It allows the party to execute on the judgment until its rights are otherwise secured by a bond. The Court also pointed out that the school could have sought a brief stay from the trial court pending its posting of a bond.

In an extensive dissenting opinion siding with the school's definition, Justice Salter pointed out, among other concerns, that the majority opinion puts defendants in a precarious position. The form for the supersedeas bond that is approved by the Supreme Court recites that the debtor has "entered an appeal." This suggests that a bond cannot be posted until after the filing of a notice of appeal, which, if done prior to the rendition of an order on a post-trial motion, constitutes an abandonment of that motion. For that reason, a defendant likely would not want to file a notice of appeal and post a supersedeas bond until after the *rendition* of the order on a post-trial motion.

<sup>1</sup> 2014 WL 5836146 (Fla. 3d DCA Nov. 12, 2014).

<sup>2</sup> *Id.* at \*3.



Yet, under the majority opinion, the judgment becomes sufficiently final, for purposes of execution, immediately upon the decision of the trial court, even if the order is not actually rendered until several days later. Taking strong issue with that result – and invoking what any Yankees fan would surely consider persuasive authority – Justice Salter wrote: "It ain't over 'til it's over. That's the way it should work with authorized post-trial motions."<sup>3</sup>

The dissenting opinion raised an additional point. It turns out that the plaintiff failed to serve the school with his motion for issuance of writs of garnishment. Writing that "'[p]ost-trial by ambush' is no more acceptable than trial by ambush," Justice Salter argued that the writs of garnishment should have been quashed on that basis alone.<sup>4</sup>

In discussing the plaintiff's failure to serve, Justice Salter also offered, in a footnote, the following interesting commentary regarding service by e-mail:

"Before the pertinent rules on [service by] e-mail were added, it was permissible for an attorney for a judgment creditor to file a motion for garnishment, obtain the writ, and serve the motion by regular mail, thus allowing two or more days to serve the writ on a bank before a judgment debtor 'woke up.' The element of surprise, permissible years ago but no longer, reduced the possibility that the judgment debtor would change banks or clear out an account."<sup>5</sup>

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

<sup>3</sup> *Id.* at \*8.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at \*7 n.13.

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### Use of Drone-Acquired Evidence in Civil Cases

by Christopher B. Hopkins

As the year 2014 draws to a close, holiday gift-giving is abuzz with the sounds of quadcopters since drones have landed on many wish lists. Legal issues are poised to take flight over models which can top

\$1,000 or more, such as the Parrot BeBop or DJI Phantom II, which can fly outside of the pilot's line-of-sight, stream in-flight video or photos, and even automatically return "home" via GPS. Will 2015 be the year where lawyers obtain and submit drone-acquired evidence in court?

According to a December 2014 article in the *New Jersey Law Journal*, at least one firm outside of Florida has purchased a drone to shoot overhead video of a fire casualty and, in another instance, a parking lot in a premises liability case. Would that type of evidence be admissible in Florida?

Florida has a drone statute but it appears to carve out an exception allowing drone evidence in civil cases. Florida Statute 934.50 prevents law enforcement from gathering evidence (except in limited circumstances) and disallows drone evidence "in a criminal prosecution in any court of law in this state." Notably, the statute does not prevent: (a) non-law enforcement agencies from using drones; (b) private companies or citizens from using drones; nor (c) admission of drone evidence in non-"criminal prosecution" matters such as administrative and civil suits.

Before taking to the air, law firms should be aware of *Michael Huerta, Admin., FAA v. Raphael Pirker*, a November 2014 decision by the NTSB which held that drones fall into the broad definition of "aircraft" and that the FAA prohibits careless and reckless operation. In the *Pirker* case, the operator was shooting commercial video and flew in a manner that the FAA deemed in violation of airspace rules. Once aloft, drone operators need to be aware that certain locations and flying techniques may violate federal law.

Additionally, drone-equipped law firms should be cognizant of the FAA Modernization and Reform Act of 2012 which specifically prohibits the commercial use of drones absent an exemption. In short, a law firm which flies a drone to acquire evidence would likely be alleged to be operating the drone for commercial purposes, not unlike the situation in *Pirker* (of note, *Pirker* was a pre-Act case). The FAA is not expected to provide additional "drone rules" until 2016-2017 which means current regulations may be unclear and are subject to overhaul in the coming months.

So what steps would a lawyer consider for admitting drone-acquired evidence? Under Florida Rule of Evidence 402, all relevant evidence is admissible, except as provided by law. To that end, drone-operators will want to protect against challenges that the evidence was obtained contrary to law. Obviously, in the appropriate context, parties have certain Fourth Amendment rights and, under the Florida Constitution, practitioners need to consider the broader rights in Article I, sections 12 and 23 (these provisions may have limited practical application given F.S. 934.50). In *U.S. v. Javis*, the U.S. Supreme Court held that

improperly-obtained evidence in a criminal case could, however, be admitted in a subsequent civil case. Similarly, in *State v. Scarlet*, the Florida Supreme Court confirmed that illegally-obtained evidence could be used in non-criminal, administrative hearings.

In approaching how to admit drone evidence, counsel should review *Lorraine v. Markel American Ins.*, 241 F.D.R. 534 (D. Md. 2007) which provides a near step-by-step analysis for admitting several forms of electronic evidence.

Interesting questions arise whether evidence obtained illegally – such as a drone trespassing, invading privacy, or violating FAA regulations – would be admissible in civil cases. Case law regarding the use of private investigators who obtain evidence while trespassing could provide persuasive guidance.

Lawyers using or relying on drones need to be especially mindful not to intercept communications in violation of state and federal wiretapping laws (consider muting or disabling the drone's microphone). An instructive criminal case is *McDade v. State*, where the Florida Supreme Court threw out incriminating recordings which violated the wiretapping statute. In *O'brien v. O'brien*, the Fifth District held that a former spouse's interception of email was illegal and refused to admit such evidence (note the discussion in *O'brien* of a possible defect in Chapter 934). Outside of Florida, in *Collins v. Collins*, a spouse was illegally recorded however the Texas wiretap statute, unlike Florida's, does not prohibit admissibility. Nonetheless, the *Collins* court held that the statute's prohibition against dissemination, alone, made the recording inadmissible. The dissent in the Third District case, *Burgmann v. State*, includes some discussion of privacy as well as the distinctions between the Florida and federal wiretap laws.

Lawyers also should be aware that evidence obtained in violation of the Rules of Professional Conduct may be stricken as a sanction. In *Golden Door v. Lloyds*, the District Court (S.D. Florida) confirmed that a violation of Rule 4-3.4 warranted the exclusion of tainted evidence. Likewise, the mis-use of drones may lead to tort liability.

Looking ahead, drones may re-write privacy laws much like other technology advancements have influenced the "what society is prepared to recognize" test for privacy. Recent examples include *U.S. v. Jones*, where GPS data was inadmissible because the Supreme Court revived a dormant "physical intrusion" test (see also *Florida v. Jardines*). In *State v. Gibson*, the Third District held that it was not a privacy violation while a person submitted a DNA sample to be ruled out as a suspect in one crime but law enforcement then placed his genetic code in a permanent, nationwide CODIS database.

**Christopher B. Hopkins** is a partner at *Akerman LLP*. Congratulate him for avoiding the quip "Game of Drones" at [christopher.hopkins@akerman.com](mailto:christopher.hopkins@akerman.com).

## 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.

**David R. Bennett:** New York Law School, 1979; Partner in David R. Bennett, Esq & Associates, P.A., West Palm Beach.

**Samuel Aaron Bryant:** University of Florida, 2014; Associate in Wicker Smith O'Hara McCoy and Ford, P.A., West Palm Beach.

**Jeremy Harris:** Florida State University, 2007; Associate in Morris, Laing, Evans, Brock & Kennedy, West Palm Beach

**Keith Regan Hedrick:** University of Miami, 2014; Associate in Roberts Reynolds Bedard & Tuzzio PLLC, West Palm Beach.

**Daniel C. Jensen:** University of Florida, 2014; Office of the State Attorney, West Palm Beach.

**Brianna L. Jones:** Nova Southeastern University, 2014; Boca Raton.

**Spencer S. Keyser:** Nova Southeastern University, 2014; Associate in Wicker Smith O'Hara McCoy and Ford, P.A., West Palm Beach.

**Sandra K. Koslin:** Samford University, 2014; Associate in Schutz & White, LLP, West Palm Beach.

**Todd M. Kurland:** Touro College, 2008; Associate in Law Office of Paul J. Burkhart, LLC, Palm Beach Gardens.

**G. Barrington Lewis:** Touro College, 1987; Solo Practitioner, Loxahatchee.

**Ricardo J Marengo:** Rutgers University, 2014; Associate in Squire Sanders (US); LLP, West Palm Beach.

**Katherine A. Moum:** University of Florida, 2011; Associate in Sachs Sax Caplan, Boca Raton.

**Terence M. Mullen:** Boston College, 1992; Associated with Atherton Law Group, P.A., West Palm Beach.

**Jennifer Lynn Parker:** Florida Coastal, 2009; Associate in Cathleen Scott & Associates, P.A., Jupiter.

**Caitlin Saladrigas:** University of Miami, 2012; Associate in Akerman, LLP, West Palm Beach.

**John Edward Schwencke:** University of Florida, 2011; Associate in Nugent Zborowski & Bruce, North Palm Beach.

**Tabitha A Taylor:** University of Florida, 2014; Associate in Gilbert | Yarnell, Palm Beach Gardens.

**Kelly Christina Wicker:** University of Florida, 2014; Associate in Wicker Smith O'Hara McCoy and Ford, P.A., West Palm Beach.



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## Anne Hinds Receives The Florida Bar President's Pro Bono Service Award

The Fifteenth Judicial Circuit Pro Bono Committee Chair Ron Ponzoli is pleased to announce that Anne Hinds was awarded the 2015 Florida Bar President's Pro Bono Service Award for the Fifteenth Judicial Circuit. The Florida Bar President's Pro Bono Service Award was established in 1981. Its purpose is twofold: "to further encourage lawyers to volunteer free legal services to the poor and to communicate to the public a sense of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees." The award was given at a ceremony before the Florida Supreme Court in January.

Since joining Boies, Schiller & Flexner LLP in 1998, Anne Hinds has worked on a wide variety of significant

litigation, including securities matters, shareholder derivative suits, anti-trust litigation and class actions. Prior to joining the firm, Anne served in the public sector and held positions as both an Assistant Public Defender and Assistant District Attorney for the State of Florida. Anne received her J.D. from Nova Southeastern University, Shephard Broad Law Center and a B.A. in Psychology and Sociology from State University of New York at Albany. In addition to being a member of the Florida Bar, Anne is admitted to practice in the United States District Courts for the Southern, Northern and Western Districts of Florida. Anne was nominated for this award for her diligent work and representation in the area of juvenile law. Over the past four years

Anne has spent countless hours helping children in need in the dependency system. She has represented over 15 children and provided over 300 hours of pro bono work representing primarily teenagers in all aspects of legal issues including housing, education and delinquency. She becomes a stable figure in the lives of the children and takes personal calls from them day or night. She works tirelessly to obtain successful outcomes for these children.

Anne is worthy of this recognition by virtue of her innumerable hours of dedication to the children of Palm Beach County. For her consistent dedication Anne is the deserving recipient of The Fifteenth Judicial Circuit Florida Bar President's Pro Bono Service Award.

## Elective Share Made Easy

*Continued from page 7*

414(i) of the Internal Revenue Code of 1986, as amended, the excess of the proceeds of any insurance policy on the decedent's life over the net cash surrender value of the policy immediately before the decedent's death.

**8. Near death transfers.** §732.2035(8), F.S. This category includes the following two distinct categories relating to transfers by the decedent within the one year period immediately preceding death:

a) The first category includes the value of any property transferred as a result of the termination of a right or interest in, or power over property that would have been included in the elective estate under categories 4 or 5 if the right, interest, or

power had not terminated until the decedent's death;<sup>3</sup> and

b) The second category includes any transfer of property to the extent not otherwise included in the elective estate, made to or for the benefit of any person. **Exceptions:** (i) any transfer of property for medical or educational expenses to the extent it qualifies for exclusion from the United States gift tax under s. 2503(e) of the Internal Revenue Code, as amended; and (ii) after the application of exception (i), the first annual exclusion amount [i.e., the amount of one annual exclusion under s. 2503(b) or (c) of the Internal Revenue Code] of property transferred to or for the benefit of each donee during the 1-year period, but only to the extent the transfer qualifies for exclusion from the United States gift tax under s. 2503(b) or (c) of the Internal Revenue Code, as amended.<sup>4</sup> **Valuation:** Fair market value (net of liens, mortgages, etc.) as of the date of the transfer rather than the date of the decedent's death. *See* §732.2055(4), F.S. **Comments:** This category only pertains to "transfers"; terminations of otherwise includible interests or powers won't qualify. However, a discretionary distribution from a trust is treated as a transfer by the decedent and not as a termination of any interest or power in the trust. *See* §732.2095(1)(a)1., F.S.

**9. Elective Share Trust.** §732.2035(9), F.S. This category includes transfers to an elective share trust as defined in §732.2025(2), F.S. *See* §732.2025(10), F.S.

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**We are pleased to announce that Rebecca L. Brock has been named as President-Elect of the University of Florida College of Law Alumni Council**

<sup>3</sup> Example - Near Death Assignment. D creates an irrevocable trust, providing for the income to be paid annually to D for life, then for the corpus of the trust to go to X. Two months before his death, D assigns his income interest in the trust to X. D dies, survived by S and X. Had D not assigned his income interest, the value of the property in this trust would have been included in the elective estate under the rule relating to transfers with a retained right to income.

<sup>4</sup> Example - Distribution from Revocable Trust. In January, D creates a revocable inter-vivos trust. In June, D directs the trustee of the trust to pay child, C's \$12,000 college tuition bill. In December and again in January of the following year, D directs the trustee to distribute \$10,000 to C. D dies two months after the final distribution, survived by C and S. Although distributions from a revocable trust are treated as transfers, of the \$32,000 distributed in the year preceding D's death, only \$10,000 is included in the elective estate. The distribution for college tuition and one of the \$10,000 distributions to C are excluded.





## Expanding Our Workforce By Empowering Employees With Disabilities

by Lisa Kohring

Why are employees with disabilities disproportionately underrepresented in the legal workforce? It is commonplace for individuals with disabilities to begin their days thinking critically, problem solving or fighting for their rights; characteristics intrinsic to the legal profession. Understanding how employees with disabilities are represented in the broader context of the workforce, as a whole, can shed some light on the staggering numbers yielded when focusing in on, and examining, these statistics in the limited context of the legal workforce. Statistics from February show that individuals with disabilities had an unemployment rate of 14.3% (about twice that of the nondisabled population).<sup>1</sup> Individuals with disabilities are also more than three times less likely than other workers to be in the labor force at all, according to the Bureau of Labor Statistics.<sup>2</sup> Said differently, the labor pool consisting of employees with disabilities is significantly limited from the get-go. It is therefore, by no stretch of the imagination unreasonable to deduce that this scarcely populated labor pool is at least one reason for the disproportionate underrepresentation of employees with disabilities in the legal workforce.

Another likely reason for the underrepresentation may be the strong disability-poverty correlation, which statistically demonstrates it's less likely that these individuals will: (1) obtain financing for law school; (2) apply and be admitted to law school; or (3) be able to repay the sizeable debt.<sup>3</sup> Still, other factors contributing to the disproportion include the lack of quantifiable data collected on the subject, a probable result of the fact that only three of the fifty-four American jurisdictions that license attorneys collect information on attorneys with disabilities, as well as the reluctance of employees in the workforce to self-identify as "disabled" when asked.<sup>4</sup>

If you are not impressed enough by the statistics and the disparity in the numbers to understand the importance of empowering employees with disabilities, then set aside fifteen minutes this week to watch the TEDx talk with Haben Girma. Ms. Girma is a deafblind graduate of the Harvard Law School Class of 2013; the White House recently named her a 'Champion of Change,' in part, for her advocacy on behalf of deafblind individuals. During Ms. Girma's TEDx talk, she recounts how her struggle to obtain regular access to the choices on the cafeteria lunch menu inspired her to become an attorney. Her story is awe-inspiring, uplifting, and witty. Her struggles as an individual with multiple disabilities in the workforce are real and relatable. If the numbers don't convince you of the importance of empowering individuals with disabilities, Ms. Girma's story will.

<sup>1</sup> Lauren Weber, *Are You Disabled? Your Boss Needs to Know, New Regulations Require Federal Contractors to Ask Employees if They Have a Disability*, WSJ, (March 18, 2014), <http://www.wsj.com/articles/SB10001424052702303287804579447450295914372>.

<sup>2</sup> *Id.*

<sup>3</sup> ABA Disability Statistics Report of 2011, *A Compilation of Statistics on Individuals and lawyers with disabilities, their employment, and the legal profession*, [http://www.americanbar.org/content/dam/aba/uncategorized/2011/20110314\\_aba\\_disability\\_statistics\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/uncategorized/2011/20110314_aba_disability_statistics_report.authcheckdam.pdf).

<sup>4</sup> Arlene S. Kanter and Beth A. Ferri, *Righting Educational Wrongs: Disability Studies in Law and Education*, 2013.

We may never be able to pinpoint exactly why employees with disabilities are underrepresented in our profession, but we can do our part to narrow the gap in our profession between the number of employees with disabilities and those without disabilities. We can focus on making workplaces more accessible, creating job opportunities for employees with disabilities and empowering our employees to speak out about their disabilities instead of disassociating from them. We can educate our firms and our employees about the laws protecting employees with disabilities, including the American's With Disabilities Act, we can update our policies and procedures on reasonable accommodations, and we can familiarize ourselves with the technological and other tools available to help employees with disabilities adapt and compete in the workforce.

Some of the technological and other tools available to help employees with disabilities include:

1. Providing speech recognition software to employees with impaired eye sight or reading disabilities;
2. Using optical character recognition software or providing pens that read text for employees with learning or reading disabilities including dyslexia;<sup>5</sup>
3. Providing hearing aids;
4. Providing checklists to help employees remember job tasks or flowcharts to describe steps to complete complicated tasks for employees with memory deficit disabilities;
5. Allowing employees to telecommute if their disability restricts travel;
6. Providing electric wheelchairs to employees with physical disabilities;
7. Providing ergonomically designed chairs and book stands for employees with disabilities involving back and neck injuries.

Hiring employees with disabilities can positively affect your business by, among other things, showing that as an employer, you are committed to ideals such as diversity, helping to counteract the shrinking workforce, increasing retention and reducing turnover by tapping into the labor pool of skilled employees with disabilities,<sup>6</sup> and you may also be able to benefit from tax credits, including the Disabled Access Tax Credit.<sup>7</sup>

Let's empower our employees with disabilities by providing them with the necessary tools and resources to compete in the workforce and we'll be that much closer to achieving our goal of remaining a leader at the forefront of diversity in our legal community.

*Lisa Kohring practices with Schwarzberg & Associates. She focuses her practice on civil litigation and employment law and compliance and can be reached at [lkohring@schwarzberglaw.com](mailto:lkohring@schwarzberglaw.com)*

<sup>5</sup> JAN, Job Accommodation Network, *Accommodation and Compliance Series, Employees with Learning Disabilities*, (March 1, 2013), <https://askjan.org/media/downloads/LDA&CSeries.pdf>

<sup>6</sup> United States Department of Labor, *Diverse Perspectives: People with Disabilities Fulfilling Your Business Goals*, <http://www.dol.gov/odep/pubs/fact/diverse.htm>.

<sup>7</sup> Equal Opportunity Commission, *Facts About Disability-Related Tax Provisions*, <http://www.eeoc.gov/facts/fs-disab.html>.

# Real Property and Business Litigation Report



by Manuel Farach

**Azco Realty, Inc. v. Village at Culfstream Park**, – So.3d –, 2014 WL 6465540 (Fla. 3d DCA 2014).

Summary judgment for seller is proper in suit for real estate commission when claimant fails to hold a valid real estate agent or broker's license at time of sale.

**Clay County Land Trust No. 08-04-25-0078-014-27, Orange Park Trust Services, LLC v. Clay County Land Trust No. 08-04-25-0078-014-27, Orange Park Trust Services, LLC v. JPMorgan Chase Bank, Nat. Ass'n**, – So.3d –, 2014 WL 6478787 (Fla. 1st DCA 2014).

Only a party to a mortgage may claim defenses that arise from the mortgage. Additionally, a party need not have a formal assignment of note and mortgage so long as it can prove it had possession (and therefore standing) at time of filing suit.

**Finnegan v. Compton**, – So.3d –, 2014 WL 6460627 (Fla. 4th DCA 2014).

Florida Rule of Civil Procedure 1.525 is satisfied by one of two scenarios: a final judgment granting entitlement to attorney's fees to one party or the filing of a motion for fees within thirty days of the judgment. A settlement agreement which provides for fees upon enforcement does not create an exception to Rule 1.525's requirements.

**Jelic v. CitiMortgage, Inc.**, – So.3d –, 2014 WL 6460763 (Fla. 4th DCA 2014).

Claiming affirmative defenses of "everything but the kitchen sink" is not sufficient, the defenses (including unclean hands) must be factually and legally sufficient.

**Racetrac Petroleum, Inc. v. Sewell**, – So.3d –, 2014 WL 6465509 (Fla. 3d DCA 2014).

It is not error for a trial court to allow further Florida Rule of Civil Procedure 1.310(b)(6) depositions if the person designated as the company representative testifies in deposition that others in the company have knowledge regarding the 1.310(b)(6) issues.

**Zaki Kulaibee Establishment v. McFliker**, – F.3d –, 2014 WL 6434857 (11th Cir. 2014).

Consignment agreement imposes fiduciary obligation to account for sale of sold goods.

**Anakarli Boutique, Inc. v. Ortiz**, – So.3d –, 2014 WL 6674727 (Fla. 4th DCA 2014).

The time period for a covenant not to compete will be extended if the covenant was not enforced during its contracted time period due to an appeal necessitated by the trial court improperly ruling that no enforceable covenant existed.

**Medco Data, LLC v. Bailey**, – So.3d –, 2014 WL 6677204 (Fla. 2d DCA 2014).

A court reviewing a covenant not to compete under Florida Statute § 542.335 must apply the statutory presumption of irreparable injury once it finds the covenant to be valid.

**Cassedy v. Hofmann**, – So.3d –, 2014 WL 6611749 (Fla. 1st DCA 2014).

Whether a party has waived the right to arbitrate a matter is for the trial court, not the arbitrator, to decide.

**Beltway Capital, LLC v. The Greens COA, Inc.**, – So.3d –, 2014 WL 6834331 (Fla. 5th DCA 2014).

A successor first mortgage (by assignment or transfer from the

original first mortgagee) is entitled to the "safe harbor" provisions of Florida Statute § 718.116(1)(b).

**In re Standard Jury Instructions in Civil, Criminal, Contract & Business Cases-Jurors' Use In re Standard Jury Instructions in Civil, Criminal, Contract & Business Cases-Jurors' Use of Electronic Devices**, – So.3d –, 2014 WL 6802557 (Fla. 2014).

The standard jury instructions regarding juror use and maintenance of cell phones and other electronic devices are revised.

**Medytox Solutions, Inc. v. Investorshub.com, Inc.**, – So.3d –, 2014 WL 6775236 (Fla. 4th DCA 2014).

Interactive website operators are immune from claims of defamation under section 230 of the Communications Decency Act, 47 U.S.C. § 230.

**Stein v. Buccaneers Ltd. Partnership**, – F.3d –, 2014 WL 6734819 (11th Cir. 2014).

Offer of full relief to individual class plaintiffs does not moot a putative class action under the Telephone Consumer Protection Act, 47 U.S.C. § 227(b)(1)(C).

**In re Amendments to Florida Rules of Civil Procedure**, – So.3d –, 2014 WL 6977929 (Fla. 2014).

New rules of procedure for foreclosures are adopted, including new Florida Rule of Civil Procedure 1.115 regarding pleading requirements for foreclosure complaints.

**Moskalenko v. Israel**, – So.3d –, 2014 WL 6910660 (Fla. 4th DCA 2014).

A contemnor may not be held in custody indefinitely if he has no ability to purge, even if his inability to purge is due to his own actions.

**Suntrust Mortg. v. Torrenza**, – So.3d –, 2014 WL 6910693 (Fla. 4th DCA 2014).

Missing a trial because of a calendaring error is excusable neglect as it constitutes "inaction [that] results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir."

**Jonas v. Jonas**, – So.3d –, 2014 WL 6910820 (Fla. 4th DCA 2014).

A party may not attack a foreign judgment that has been domesticated in Florida based on the operation of the foreign judgment; collateral attacks only go judgment's validity.

**Nikooie v. JPMorgan Chase Bank, N.A.**, – So.3d –, 2014 WL 6911148 (Fla. 3d DCA 2014).

The Third District distinguishes itself from the Fourth District and holds that failure to pay documentary stamp and intangible taxes under Florida Statute § 201.08(1)(b) prohibits enforcement of the mortgage (and not just future advances under the mortgage). The Third District additionally held a lender may subrogate to its own loans so long as third parties are no prejudiced, and a plaintiff may bring in a new party by amendment and by doing so, amend its lis pendens (even if the amendment is beyond the thirty days of Florida Statute § 48.23).

**Harris v. Schonbrun**, – F.3d –, 2014 WL 6957937 (11th Cir. 2014).

Requiring a borrower to sign loan documents and post-dated waiver of right to rescind transaction at loan closing violates the Truth In Lending Act, and entitles the borrower to statutory damages, attorney's fees and costs.



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## 12th Annual Holiday Bookfest Benefits Legal Aid's 27th Annual Pro Bono Evening

The Palm Beach County Chapter of the Florida Association for Women Lawyers (FAWL) together with the F. Malcolm Cunningham Bar Association, the Hispanic Bar Association and the law firm of Lesser, Lesser, Landy & Smith, PLLC, hosted the 12th Annual Holiday Bookfest at Barnes & Noble at Legacy Place in Palm Beach Gardens to benefit the Legal Aid Society of Palm Beach County's silent auction. Attendees were treated to entertainment provided by some of the Second Stage Players from KWP Productions.

Over 75 members of these organizations and their guests donated over 100 children's books and gifts for Legal Aid's silent auction to be held on Saturday, May 9, 2015 at the Palm Beach County Convention Center as part of the 27th Annual Pro Bono Recognition Evening. This event honors those attorneys and other professionals in our community who performed outstanding volunteer work for Legal Aid in 2014.



Michelle Suskauer and Bob Bertisch with actors from KWP Productions



Jill Weiss and Patience Burns

## Legal Aid Save The Dates

**Saturday, February 14, 2015**  
**Valentine's Day Gift Gathering Gala**  
at the home of Christine & Michael Hanley  
West Palm Beach

**Friday, February 20, 2015, 5-9 PM**  
**Pankauski Pour Wine Tasting Event**  
Downtown West Palm Beach

**Sunday, February 22, 2015, 11-2 PM**  
**Family Fun Gift Gathering Gala**  
at the Schoolhouse Children's Museum  
Boynton Beach

**Sunday, March 8, 2015, 9:30-12 Noon**  
**Gift Gathering Gala at the Gardens Mall**

**Saturday, April 11, 2015**  
**Gift Gathering Gala**  
at the home of Scott & Molly Smith  
Palm Beach Gardens

**Be sure to put on your calendar today...**

**Saturday, May 9, 2015, 6-10 PM**

**Cirque: 27th Annual Pro Bono  
Recognition Evening & Auction**

Tickets: \$150

Palm Beach County Convention Center

For more information or to RSVP for any of the above events,  
please contact Harreen Bertisch at 561-822-9763.

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  - o Holiday Party for Kids
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#### **EDUCATION**

- University of Florida Levin College of Law, J.D.
- University of Florida, B.A.



## Upcoming CLE Seminars

Your CLE Committee Chairs have been very busy at work planning live CLE seminars for our membership for this year. For more information about these seminars, please visit the Bar's website: [palmbeachbar.org](http://palmbeachbar.org) and click on the calendar icon at the bottom of the page. Also, don't forget, most of these seminars are also held live via webinar if you are not able to leave your office to attend in person.

<b>February 5:</b> Technology Luncheon Seminar	<b>April 22:</b> Securities Law Seminar
<b>February 9:</b> ADR Seminar	<b>April 29:</b> Technology Luncheon Seminar
<b>February 11:</b> Personal Injury Lunch & Learn Seminar	<b>May 8:</b> Family Law Seminar
<b>February 18:</b> Employment Law Webinar	<b>May 11:</b> Employment Law Webinar
<b>February 20:</b> Family Law Seminar	<b>May 15:</b> Estate & Probate Seminar
<b>February 24:</b> Business Litigation Luncheon Seminar	<b>May 19:</b> Business Litigation Luncheon Seminar
<b>March 11:</b> Technology Luncheon Seminar	<b>May 21:</b> Personal Injury Lunch & Learn Seminar
<b>March 24:</b> Business Litigation Luncheon Seminar	<b>May 29:</b> Real Estate Seminar
<b>April 9:</b> Employment Law Webinar	<b>June 5:</b> Community Association Law Seminar
<b>April 15:</b> Business Litigation Luncheon Seminar	<b>June 12:</b> Employment Law Seminar & Reception
<b>April 16:</b> Elder Law Annual Dinner Seminar	<b>June 19:</b> Business Litigation Luncheon Seminar
<b>April 17:</b> Bankruptcy Law Seminar	

## Rewarding Volunteer Opportunity: Done in 1 Hour

Looking for a rewarding volunteer opportunity that won't take long? Please help our Lawyers for Literacy Committee grade essays from adults learning English. The authors are thankful for the opportunities presented in America - their stories will inspire you!

For your convenience, you can volunteer during one of our two upcoming sessions - on Wednesday, February 25 from 8:45 a.m. to 10:00 a.m. or on Friday, February 27 from 11:45 a.m. to 1:00 p.m. at the Bar Office.

Light snacks and drinks will be provided.

If you're able to volunteer, please let us know by calling Lynne at the Bar Office at 687-2800 or email [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org)

A+

## Elections for North County Section Board of Directors

Here's a great opportunity to get involved with our Bar and network with colleagues by running for the North County Section's Board of Directors.

How do you apply? Petitions for five Director seats, plus president-elect will be available starting on Monday, March 2.

The Board meets once a month to plan various networking events for its members.

To be considered, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Tuesday, March 31. If there is a contested election, voting will take place online in April and winners will be posted on the Bar's website on April 17.

The current Board includes President, Greg Yaffa; President-Elect, Larry Buck; and Immediate Past President Todd Stewart.

Directors serving terms ending June 2015 are Eunice Baros, Rosemarie Guerini, W Mason, Erskine Rogers and David Steinfeld.

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## Court Clarifies When Shareholders and Members May File Direct Actions for Damages



by Rob Glass

In closely held corporations and limited liability companies, the distinction between a direct and a derivative action is not always clear. When a company has three shareholders or members, and only one of the three owners is harmed by the majority's malfeasance, is the injury a direct injury to the minority owner or an indirect injury that derives from the injury to the entity itself? The Third District Court of Appeal sought to bring clarity to this inquiry in its recent opinion in *Dinuro Investments, LLC v. Camacho*, 141 So. 3d 731 (Fla. 3d DCA 2014).

In general, Florida courts have required that the individual shareholder or member sustain an "injury" that is both direct and peculiar to the shareholder. For instance, in *Karten v. Woltin*, 23 So. 3d 839 (Fla. 4th DCA 2009), the Fourth District Court of Appeal held that "[s]hareholders may bring a direct suit only 'in their own right to redress an injury sustained directly by them individually.'" *Id.* at 840 (citation omitted). In addition to being a "direct" injury, that injury must be "separate and distinct" from injuries suffered by fellow shareholders or members. *Id.*

Despite these general statements of the direct/derivative distinction, the Third District Court of Appeal concluded that the "current Florida doctrine explaining which actions should be maintained directly and which must be brought derivatively is incredibly opaque." *Dinuro*, 141 So. 3d at 739. The court examined a series of cases from the various district courts and noted, however, that some courts looked only for a "direct harm," while others sought evidence of a "special injury." *See id.* at 739.

The court sought to reconcile these divergences by reformulating the direct injury test as follows:

In our view, the only way to reconcile nearly fifty years of apparently divergent case law on this point is by holding that an action may be brought directly only if (1) there is a direct harm to the shareholder or member such that the alleged injury does not flow subsequently from an initial harm to the company and (2) there is a special injury to the shareholder or member that is separate and distinct from those sustained by the other shareholders or members.

*Id.* at 739-40. a

The sole exception recognized by the Third DCA is that a "shareholder or member need not satisfy this two-prong test when there is a separate duty owed by the defendant(s) to the individual plaintiff under contractual or statutory mandates." *Id.* at 740. For instance, when a shareholder is a party to a shareholder's agreement, that shareholder may sue for breach of the agreement "even if he has not suffered an injury separate and distinct from that suffered by other shareholders." *Harrington v. Batchelor*, 781 So. 2d 1133, 1135 (Fla. 3d DCA 2001) (citation omitted).

Notwithstanding the Third DCA's recognition of its prior holding in *Harrington*, the court in *Dinuro* found that the LLC member plaintiff in that case *could not* sue other members directly for breach of the operating agreement. Noting that the "precise terms of the agreement are critical," the court reasoned that the agreement at issue lacked "any provision stating that the members shall be directly liable to each other for breaches of the terms of the operating agreement." *Dinuro*, 141 So. 3d at 742.

The court applied a presumption that "individual members are **not** liable for obligations or decisions of the company, as limited liability is one of the paramount reasons for forming an LLC." *Id.* In other words, unless the agreement expressly creates a duty between members, the member must bring a derivative action.

The usefulness of the direct and derivative distinction in closely held entities has been questioned for years. *See* Allan B. Cooper et al., *Too Close for Comfort: Application of Shareholder's Derivative Actions to Disputes Involving Closely Held Corporations*, 9 U.C. Davis Bus. L.J. 171, 182-86 (discussing the majority and minority views in the U.S. regarding the distinction for closely-held entities). Nevertheless, Florida retains, for the most part, the majority position that all business entities should be treated the same for the purpose of shareholder or member disputes. In fact, the Revised LLC Act, enacted in 2013, sets forth a similar test to the one crafted in *Dinuro*. In order to file a direct action, the member must show a duty arising out of the operating agreement or arising "independently of the membership relationship," and the member must "plead and prove an actual or threatened injury that is not solely the result of an injury suffered... by the limited liability company." § 605.0801(1)-(2), Fla. Stat.

As such, it appears the *Dinuro* test will be guiding the direct/derivative analysis for the foreseeable future. When representing a client with a dispute over a closely-held entity, counsel should be mindful of the duties and injuries involved in the dispute, in order to select the proper type of action.

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

## BROWN BAG LUNCH SERIES

February 18, 2015 - 11:55 a.m. - 1:15 p.m.

Bar Association Offices

1507 Belvedere Rd., West Palm Beach, FL 33406

### "National Labor Relations Board's 2014 Hot Topics"

Can an employer terminate an employee for a social media post about work? Can an employer enforce a policy prohibiting employees from discussing pay? This topic of the Brown Bag Lunch Series will examine regulations employers need to know, and protections to employees, when it comes to the National Labor Relations Act.

#### Program Schedule

11:55 am - 12:00 pm **Welcome** - *Lindsey B. Wagner, Esq., Cathleen Scott & Associates, P.A., Employment and Labor Law CLE Committee Chair*

**Moderator** - *Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and Employment Law Attorney*

12:00 pm - 1:00pm **Presenter:** *Marinelly Maldonado, Esq., Field Attorney, National Labor Relations Board, Region 12 Miami Resident Office*

**\*\* Please e-mail your questions to: [lwagner@csapalaw.com](mailto:lwagner@csapalaw.com) \*\***

This course has been granted 1.0 CLER / 1.0 Labor and Employment Law Certification credits from the Florida Bar.

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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.



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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) (Employment Law CLE Seminar 2/18/15) 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**

The Business Litigation CLE Committee of the Palm Beach County Bar Association  
presents:



## “Taking Effective Depositions”

**Tuesday, February 24, 2015 - 11:30am - 1:00p.m.**  
Bar Offices - 1507 Belvedere Road, WPB

### Program Schedule

- 11:30am - 11:55am     **Lunch / Check In / Late Registration**
- 11:55am - 12:00pm     **Welcome - Opening Remarks** - *David Steinfeld, Esq.,  
Law Office of David Steinfeld, P.L., Board Certified Business  
Litigation Attorney, Business Litigation CLE Committee Chairperson*
- 12:00pm - 1:00pm     Speaker: *Steven H. Meyer, Esq., Board Certified in Business and  
Civil Litigation*

**Understanding Your Goals:** Defining What You Want to Achieve; “The Rules of the Road” for Your Case; Deposing the Corporate Representative; Deposing an Expert Witness

**Preparation:** Background on the Witness; The Applicable Law for Your Case

**Effective Techniques:** Open Ended Versus Leading Questions; Locking Down the Witness; Advantages of Videotaping the Deposition; Eliminating Complexity, Confusion and Ambiguity

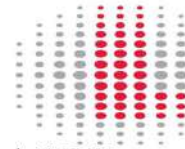
#### **Handling Objections**

Jim Lucas  
President

**Lunch Provided by:**




mail: 2475 Mercer Ave., Ste 201, West Palm Beach, FL 33401  
office: 561-655-0678 cell: 561-436-5259  
email: Jim@legalgraphicworks.com



**This course has been granted 1.0 CLER / 1.0 Bus. Litigation Certification credits from The Florida Bar.**  
**Early registration** cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;  
**\$65** for non-PBCBA member attorneys/paralegals if registered by 2/17/15; add \$15 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.

#### **PAYMENT OPTIONS:**

 If paying by credit card, please go to our secure website to register: [www.palmbeachbar.org](http://www.palmbeachbar.org)



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

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

Name: \_\_\_\_\_ 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) (Business Litigation CLE Seminar 2/24/15. 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**

# FIVE TECH TIPS TO HELP YOU WORK SMARTER

PRESENTED BY THE SOLO AND SMALL FIRM PRACTITIONERS COMMITTEE

Do You Use Blinkist? How About Expensify?

In just one hour learn five easy to use apps that can help  
grow your business and organize your time



**Thursday, March 5**

11:45 a.m. to 1:00 p.m.

Bar Office

- How to manage your time more effectively
- What and how should you post to social media?
- How video can boost your search and intake?
- Apps that you need to start using now.

Presented and sponsored by:



Your early registration fee is just \$10.00 includes CLE Credit from The Florida Bar, plus lunch.

Attorneys who are not PBCBA members are welcome for \$20.00.

Add \$5.00 if registered after 5:00 p.m. on 3.3.15



**HOW TO  
REGISTER**



**BY CHECK**  
Return this  
form



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

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

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



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



## "SOCIAL MEDIA FOR LAWYERS"

Wednesday, March 11, 2015 - 11:45a.m. – 1:05p.m.

Bar Association offices  
1507 Belvedere Road, WPB, FL

### Program Schedule

- 11:45 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 12:00 p.m. - 12:05 p.m. **Welcome & Opening Remarks** - *Edwin M. Walker, III, Esq., Walker Law Firm, P.A. Committee Chair*
- 12:05 p.m. - 1:05 p.m. **Social Media for Lawyers**  
*Amanda Kleinrock, Esq., Fair Housing Project Legal Aid Society of Palm Beach County*

- I. The Benefits of Social Media in Legal Practice
  - A. Networking
  - B. Source of information about clients, witnesses, and opposing parties for evidentiary hearings and depositions
- II. Marketing Uses of Social Media
- III. The Risks for Lawyers and Judges in Social Media
  - A. Security and Confidentiality
  - B. Compliance with Rules of Legal Ethics
- IV. Inventory of Laws affecting Social Media

**SPONSORED BY:**



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

The **early registration** cost of the seminar is **\$25.00 (includes lunch)** for PBCBA members/paralegals; **\$65.00** for non-PBCBA members/paralegals if registered by **3/5/15**; add \$10 to registration fee after that date.

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

**PAYMENT OPTIONS:**



If paying by credit card, please go to our secure website to register: [www.palmbeachbar.org](http://www.palmbeachbar.org)



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.

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\_\_\_\_ 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.

The Business Litigation CLE Committee of the Palm Beach County Bar Association  
presents:



**“Getting Paid from Your Own Client:  
To Sue or not to Sue”**

**Tuesday, March 24, 2015 - 11:30am - 1:00p.m.**  
Bar Offices - 1507 Belvedere Road, WPB

**Program Schedule**

- 11:30am - 11:55am    **Lunch / Check In / Late Registration**
- 11:55am - 12:00pm    **Welcome - Opening Remarks** - *David Steinfeld, Esq.,  
Law Office of David Steinfeld, P.L., Board Certified Business  
Litigation Attorney, Business Litigation CLE Committee Chairperson*
- 12:00pm - 1:00pm    **Panel Discussion with:**  
*Garry W. O'Donnell, Esq., Greenspoon Marder Law  
James H. Ryan, Esq., Gary, Dytrych, & Ryan, P.A.  
Gordon A. Dieterle, Esq., McClosky, D'Anna & Dieterle, LLP*

Best Retainer Agreement provisions  
Best practices to avoid disputes  
Florida Bar fee arbitration  
Charging and Retaining liens  
Suing your former client for payment; the pros and cons

Lunch provided by:




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**This course has been granted 1.0 CLER / 1.0 Business Litigation Certification credits from The Florida Bar.**  
**Early registration** cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;  
**\$65** for non-PBCBA member attorneys/paralegals if registered by 3/17/15; add \$15 late fee after that date.  
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**PAYMENT OPTIONS:**

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**CLE** 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**



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

## BROWN BAG LUNCH SERIES

Thursday, April 9, 2015 - 11:55 a.m. - 1:15 p.m.

Bar Association Offices

1507 Belvedere Rd., West Palm Beach, FL 33406

### "Public Employee Showcase"

#### Program Schedule

11:55 am - 12:00 pm      **Welcome and Moderator** - *Dana Spader, Esq.*  
*Reid Burman Lebedeker*

12:00 pm - 1:00pm      **Public Employee Relations Commission (PERC):**  
  
*Speakers: Steve Meck, Esq. and Gregg Morton, Esq.*

**\*\* Please e-mail your questions to Committee member Dana Spader:  
[dls@reidburmanlaw.com](mailto:dls@reidburmanlaw.com)\*\***


This course has been granted 1.0 CLER / 1.0 Labor and Employment Law Certification credits from the Florida Bar.  
**Early registration** cost for the seminar is **\$25** for PBCBA member attorneys/paralegals;  
**\$65** for non-PBCBA member attorneys/paralegals if registered by 4/2/15; add \$15 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.


\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Employment Law CLE Seminar 4/9/15) 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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Name: \_\_\_\_\_

Telephone: \_\_\_\_\_

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

City/Zip \_\_\_\_\_

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# Bulletin Board

## \*\*\* Ad Rates \*\*\*

**CLASSIFIED ADVERTISING RATES:**  
TO PLACE AN AD: 1) Please fax all ads to 561/687-9007. 2) Upon receipt you will be notified of cost. 3) Send payment by the 25th of the month. 4) Cost: 50 words or less \$50, 50-75 words \$65, up to 75 words with a box \$75. 5) Members receive 1 free classified ad per year (excluding professional announcements). Ads will only be re-run by re-faxing ad to 561/687-9007. Web-site advertising is also available for a cost of \$75 for a three week run. Payment must be received prior to publication and renewable only upon receipt of next payment.

**The Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. The PBCBA is committed to equal employment opportunity and does not accept employment ads which imply a preference based on race, color, sex, religion, national origin, disability, familial status, sexual orientation, age, marital status and gender identity or expression.**

## PROFESSIONAL ANNOUNCEMENTS:

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

**SCOTT SUSKAUER:** "AV" rated, Board Certified Criminal Trial Lawyer. Over 20 years of experience. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI, juvenile and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; (561) 687-7866. [www.suskauerlaw.com](http://www.suskauerlaw.com).

## CHRISTOPHER B. HOPKINS:

Need help on technology, e-discovery, ESI, defamation, social media, bitcoin, computer crime or other internet issues? Christopher can be your consultant, expert, or neutral. Also can host iPad or tech seminars tailored to your firm. [Christopher.Hopkins@Akerman.com](mailto:Christopher.Hopkins@Akerman.com) 561-671-3668

**GREY TESH:** "Law is not black or white, it's Grey." Passionate, caring, truthful, prepared. Soul (sic) practitioner. Criminal Defense (Board Certified in Criminal Trial) and Personal Injury. Over 100 jury & non-jury trials to verdict. Federal & State | 515 N. Flagler Drive | [greytesh.com](http://greytesh.com) (561) 686-6886.

**GREGORY TENDRICH, Esq.:** "AV Preeminent" rated, FINRA Arbitrator and Mediator, Certified County Court Mediator and former Series 7 licensed VP & Asst. General Counsel to national and regional stock brokerage firms. All securities & investment related matters involving the recovery of losses due to stock broker fraud, misrepresentation, churning and unsuitable recommendations, in addition to representation of advisors in SEC, FINRA, regulatory enforcement, contract and employment matters. (561) 417-8777 or visit [www.yourstocklawyer.com](http://www.yourstocklawyer.com).

## OFFICE SPACE

### SHARED PROFESSIONAL

**OFFICES:** Class A newly renovated office suite available to share with established life insurance firm. Off of Glades just west of I-95. Offering one to three window offices (one corner) and one administrative workstation. Includes use of reception area, conference room, phone system, copier/fax, internet, utilities and kitchen. Friendly environment. Available January. For more information call (561) 807-8544 and leave message.

**BOCA RATON LAW FIRM:** Class A building sublease of one or more fully furnished windowed offices. 3 office suite also for rent. Small kitchen and conference room use available. Secretarial cubicle use may be included. Rent negotiable. Must install own telephone line and internet. Please call (561) 999-9925.

**COMMUTE DOWNSTAIRS!** Unique work/live opportunity. Go from your townhome via elevator to 20 x 40 square foot ground level office. Located in Juno Beach on US1 and Olympus Drive with southbound cut in median for easy access. Monument signage on US1. 2008 Key West Style townhome w/many custom finishes. 3 BD/3.5 BA/2 Car garage with private pools. Generators and impact glass. 2 units for sale. \$888,000; \$898,000. Juliette Miller. Platinum Properties. (561) 310-7761.

**BOCA RATON:** Palmetto Park Rd and 5th Avenue - One large (15x12) private windowed office with intracoastal/ocean view, furnished/unfurnished, secretarial station available. Rent includes use of conference room, telephone system, DSL and kitchen; Covered parking garage. Share office expenses; Referrals likely. Call (561) 392-6090.

## HEARSAY

**Timothy McCarthy**, former Judge in Palm Beach County and **Eunice Baros**, former Assistant Attorney General, have joined ARC Mediation.

**McLaughlin & Stern, LLP** one of New York's oldest law firms continues to expand its Florida footprint. The firm currently has offices in West Palm Beach, Naples, Estero, Fort Lauderdale and Miami. We are currently inviting small firms and solo practitioners with significant portable business to discuss with us the possibility of partnership in our West Palm Beach office located at CityPlace Office Towers. Contact Allen Samuels [asamuels@mclaughlinstern.com](mailto:asamuels@mclaughlinstern.com).

Lewis, Longman & Walker, P.A. is pleased to announce that **Michelle Diffenderfer** has been named President of the firm, effective January 1, 2015. Michelle, the firm's first female President, brings many years of experience in managerial and leadership roles both within the firm and in the community.





**PALM BEACH COUNTY BAR ASSOCIATION**  
**BULLETIN**

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

# CALENDAR

## February 2015

- |   |   |   |   |
|---|---|---|---|
| <p>Monday, February 2, 11 – 1pm<br/> <b>Joint Luncheon with Forum Club</b><br/> <b>Speaker: U.S. Supreme Court Justice Sonia Sotomayor</b></p> <p>Tuesday, February 3, 12 – 1pm<br/> <b>North County Section Board of Director's Meeting</b><br/>       Duffy's, North Palm Beach</p> <p>Friday, February 6, 11:45 – 1pm<br/> <b>NCS Annual CLE Luncheon</b><br/> <b>"Gavel Tossing, Snide Talking, Rule Breaking And Other Unwelcome Lawyer Antics"</b><br/>       Palm Beach Gardens Marriott</p> <p>Friday, February 6, 4 – 5pm<br/> <b>Investiture Ceremony for Judge Samantha Schosberg Feuer</b><br/>       Palm Beach County Courthouse, Courtroom 11A</p> <p>Monday, February 9, 8 – 4:30pm<br/> <b>ADR CLE Seminar – "Making It Work!"</b><br/>       PBCBA office</p> <p>Tuesday, February 10, 11:45 – 1pm<br/> <b>Unified Family Practice Committee Meeting</b><br/>       Judicial Conference Room, Main Courthouse</p> | <p>Tuesday, February 10, 12 – 1 pm<br/> <b>Young Lawyers Section Board meeting</b><br/>       PBCBA office</p> <p>Wednesday, February 11, 11:45 – 1pm<br/> <b>PI CLE Seminar: The Litigator's Guide to Using Daubert Experts: "How to keep yours in and theirs out"</b><br/>       Main Courthouse – North end of cafeteria</p> <p>Wednesday, February 11, 5:30 – 7pm<br/> <b>PBC FAWL Judicial Reception</b><br/>       Norton Museum</p> <p>Thursday, February 12, 11:45 – 12pm<br/> <b>SPBC FAWL – Membership Luncheon</b></p> <p>Thursday, February 12, 12 – 1pm<br/> <b>Transaction Law Committee Meeting</b><br/>       PBCBA office</p> <p>Thursday, February 12, 2015 12 – 1pm<br/> <b>Professionalism Committee Meeting</b><br/>       PBCBA office</p> <p>Thursday, February 12, 3 – 5pm<br/> <b>Solo Mixer with CLE and Vendor Displays</b><br/>       Abacoa Country Club</p> | <p>Thursday, February 12, 5:30 – 7pm<br/> <b>Federal Bar Association Cocktail Reception</b><br/>       Location: TBA</p> <p>Friday, February 13, 10 – 11:30am<br/> <b>New Attorney February Seminar: The Art of Uniform Motion Calendar</b><br/>       PBCBA office</p> <p>Tuesday, February 17, 12 – 1pm<br/> <b>Judicial Relations Committee Meeting</b><br/>       Main Courthouse – Judicial Conference Room</p> <p>Tuesday, February 17, 5:30 – 7:30pm<br/> <b>The Craig S. Barnard American Inn of Court</b><br/>       Main Courthouse – North end of cafeteria</p> <p>Wednesday, February 18, 11:30 – 1:30pm<br/> <b>Employment Law CLE Seminar: NLRB 2014 Hot Topics</b><br/>       PBCBA office</p> <p>Thursday, February 19, 12 – 1pm<br/> <b>Bench Bar Conference Committee</b><br/>       PBCBA office</p> | <p>Thursday, February 19, 5:30 – 7pm<br/> <b>Young Lawyers Section Happy Hour</b></p> <p>Thursday, February 19, 5:30 – 7:30pm<br/> <b>SPBC FAWL Judicial Reception</b></p> <p>Tuesday, February 24, 11:30 – 1pm<br/> <b>Business Litigation CLE Lunch Seminar: Taking Effective Depositions</b><br/>       PBCBA office</p> <p>Wednesday, February 25, 11:45 – 12pm<br/> <b>CDI Road to Bench Seminar</b><br/>       Main Courthouse – North end of cafeteria</p> <p>Wednesday, February 25, 12 – 1pm<br/> <b>PBACDL Judicial Meet &amp; Greet</b><br/>       Main Courthouse – Judicial Conference Room</p> <p>Wednesday, February 25, 5 – 6:30pm<br/> <b>Board of Directors Meeting</b><br/>       PBCBA office</p> <p>Thursday, February 26, 11:30 – 1pm<br/> <b>Judicial Recognition Luncheon</b><br/>       WPB Marriott Hotel</p> <p>Saturday, February 28, 1 – 5pm<br/> <b>ABOTA's Annual Judicial Reception BBQ</b></p> |
|---|---|---|---|