



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

January 2016



The Board of Directors and Bar Staff wish you and your families a Happy New Year!

U.S. Supreme Court Justice Breyer to Speak February 12



The Palm Beach County Bar Association, along with the Forum Club of the Palm Beaches, is proud to announce that U.S. Supreme Court Justice Stephen Breyer will be the guest speaker at a

joint luncheon to be held on **February 12**. The luncheon will be held at the Cohen Pavilion at the Kravis Center from 11:15 – 1:00 p.m. Copies of his new book, *The Court and the World: American Law and the New Global Realities* will be available for purchase. Associate Justice Breyer served as a law clerk to Justice Arthur Goldberg of the U.S. Supreme Court during the 1964 Term; as an Assistant Special Prosecutor of the Watergate Special Prosecution Force in 1973; and as Special Counsel of the U.S. Senate Judiciary Committee. President Clinton nominated him and he took his seat August 3, 1994. This event will be limited to PBCBA members by prepayment. Visit our website at www.palmbeachbar.org to buy your ticket.



The Young Lawyers Section hosted their first No Shave November event and, thanks to our headliners, raised over \$12,000 for the Legal Aid Society of Palm Beach County and Cancer Alliance for Help & Hope. Headliners shown above after being shaved are (l-r) Jay White, Bob Shalhoub, Ari Goldberg, Charlie Fischer, Paul Shalhoub and Bob Bertisch (not pictured is Greg Coleman). Many thanks to Duffy's Downtown West Palm Beach and Emily Kaczur from One XI Salon. For more photos, please see page 10.

Mark your calendar for upcoming Membership Events

February 4:

North County Section BBQ and Casino Night

February 12:

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

February 19:

Bench Bar Conference

May 3:

Annual Judicial Reception

May 5:

Law Day Luncheon

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. **Petitions for President-elect will be available on Friday, December 11 and are due back in the office by 5 p.m. on Tuesday, January 12 . Petitions for director-at-large seats will be available on Friday, December 18 and are due back in the Bar office by 5 p.m. on Wednesday, January 20.** Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it to pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

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THE
BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

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

LETTERS TO THE EDITOR

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



Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
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Palm Beach County's Iconic Early Courthouse Turns 100!

by Grier Pressly

While our Bar Association was founded 94 years ago, Palm Beach County's legal roots date back more than a century. The building that is most closely associated with the genesis of the Palm Beach County legal community - the historic 1916 courthouse - turns 100 this year. The stately Neoclassical designed courthouse was hidden from view for decades after it was "wrapped"

Palm Beach County was formed in 1909 (breaking away from Dade County), the new county had an immediate need for courthouse space. The first county courthouse landed in an old school house located on the southwest corner of Clematis Street and Poinsettia Avenue (now Dixie Blvd.) until the new courthouse was constructed two blocks north seven years later.

- The land on which the 1916 courthouse sits was donated by Henry Flagler's Model Land Company.
- The architect of the 1916 courthouse

building housed the county jail and all county government offices.

- Among the handful of attorneys who were practicing law at the historic courthouse when it opened its doors in 1917 were H.L. Bussey (who a decade later joined forces with Harry Johnston, Sr. to form the firm that would ultimately become Jones Foster) and Charles Curtis Chillingworth (whose son, Curtis Eugene Chillingworth, became the youngest circuit judge in Florida history at the age of 27 and who, in 1955, would along with his wife become the victims of one of the



Courthouse in 1916



1916 Courthouse Today

by a nondescript modern structure in 1972 in an effort to provide space for more courtrooms and county offices. In 2007, the iconic architectural gem reemerged when the county commission approved an ambitious project to "unwrap" the structural shell and restore the courthouse to its original glory. As the courthouse celebrates its centennial birthday in 2016, let's take a look back at the history of the building and the era of its birth.

Did you know?

- While the courthouse construction was largely completed in 1916, and the first county official moved into the new building in August, 1916, the county didn't dedicate the courthouse until April, 1917.
- The parade and other festivities planned for the courthouse dedication were reported to have been delayed a week by the U.S. declaration of war against Germany in World War I on April 6, 1917.
- The 1916 courthouse was actually not the county's first courthouse. When

was Wilber Burt Talley, who also designed the Duval County courthouse, the Desoto County courthouse, and several other prominent government buildings in Florida.

- The contract to build the courthouse was awarded to the same builder (Evert Maule) three different times. The first contract was invalidated by the Florida Supreme Court in 1914 because the county commission did not properly advertise for bids on the project, and the second contract was rescinded by the county commission due to another bidding error. The final construction cost was \$122,000. Upon the completion of the construction, the West Palm Beach newspaper "The Tropical Sun" declared the courthouse "the handsomest in the state."
- When it opened for county business in 1917, the courthouse's single courtroom hosted all cases for the county's 18,000 residents (Palm Beach County is home to more than 1.4 million residents today) and the

most famous murders in Palm Beach County history).

- Among the early businesses that had sprouted up in the near vicinity of the courthouse by 1916 were The Pioneer Bank (formerly the Dade County State Bank), Pioneer Grocery operated by pioneer brothers Louis and Henry Burkhardt, Pioneer Linens (still family run and in business on Clematis St.), Anthony's Ladies Apparel (the county's second oldest business is still family run and in business locally; the flagship building still stands on Clematis St.), and Sewell's Hardware (still family run and in business locally).
- The 1916 courthouse predates all of the signature, historic buildings that add to the character of downtown West Palm Beach today - the Guaranty Building (1922), the Citizens Bank Building (1923), the Comeau Building (1925), the Wagg Building (1926), and the Harvey Building (1927).
- The 1920's land boom caused

Continued on page 4

Awards to be presented at Bench Bar Conference – Nominations Requested

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

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

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

1. Demonstrates a consistent pattern of commitment to the recruitment, retention and promotion of individuals of underrepresented populations;
2. Cultivates and promotes diversity and gender initiatives that establish and foster a more inclusive and equitable work environment;
3. Promotes and facilitates education, community outreach and social engagement with and between people of varying ethnic or religious backgrounds, gender, socioeconomic status, sexual orientation, and/or physical and mental capabilities so that persons of diverse background can enter and prosper in the legal field;
4. Exhibits visionary and insightful

leadership to confront and resolve inequities through strategic decision-making, allocation of resources, and establishment of priorities;

5. Outlines defined goals, action steps and accomplishments toward achieving a work environment that recognizes, promotes and encourages a diverse workforce at all levels throughout an organization;
6. Implements and carries out best practices that support diversity and inclusion goals.

The deadline to submit nominations will be January 8.

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

Courthouse turns 100

Continued from page 3

county government to swell, and more space was needed at the courthouse for government offices. The same architect, Talley, was commissioned to design a new courthouse annex that would mirror the original building and be built east of the existing courthouse, connected by hallways on each floor. The 1927 annex, the younger "twin" to the 1916 courthouse, was unfortunately unable to be salvaged during the 2007 restoration project. However, many of the materials from the annex were able to be used in the restoration of the 1916 courthouse, including wooden windows and mosaic floor tiles.

- The courthouse served as a hurricane shelter during the massive hurricane of 1928. Photographs from that time show the courthouse standing tall among the rubble of the surrounding buildings which had been flattened by the hurricane.
- During the 2007 restoration process, the original courthouse columns were recovered from the nearby Hillcrest Cemetery in West Palm Beach, where the columns had been sitting for decades, patiently waiting to be returned to their rightful location. Even more good fortune aided the restoration effort when the contractor was able to locate limestone from the same vein from the same Indiana quarry used in the construction of the courthouse in 1916.
- Today, the 1916 historic courthouse is home to Palm Beach County's history museum and the offices of the Historical Society of Palm Beach County.

Happy New Year! I wish you and your families a healthy and prosperous 2016! The Bar is looking forward to another great year in its 94th year of service to the Palm Beach County legal community. May we all age this year with the same beauty and grace as our historic county courthouse!

Phone: (561)659-4040

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Board Meeting Attendance

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

The New “Florida Bar Professionalism Expectations” – What Now?

by D. Culver “Skip” Smith III



On September 10, 2015, the Supreme Court of Florida amended the Code for Resolving Professionalism Complaints (which it established in 2013) by deleting references to “The Florida Bar Ideals and Goals of Professionalism” and replacing them with “The Florida Bar Professionalism Expectations.” *In re Amends. to Code for Resolving Prof'lism Complaints*, No. SC15-944 (Sept. 10, 2015). The Professionalism Expectations were authored by The Florida Bar Standing Committee on Professionalism in 2014 and approved by the Board of Governors on January 30, 2015. Given their significance, they are required reading, but they should be viewed with caution.

The Code for Resolving Professionalism Complaints provides that “[m]embers of The Florida Bar shall not engage in unprofessional conduct.” It defines *unprofessional conduct* as “substantial and repeated violations of the Oath of Admission to The Florida Bar, The Florida Bar Creed of Professionalism, *The Florida Bar Professionalism Expectations*, The Rules Regulating The Florida Bar, or the decisions of The Supreme Court of Florida.” (Emphasis added.) It provides a mechanism by which a complaint of unprofessional conduct as so defined is to be processed, including possible referral to a circuit’s Local Professionalism Panel. The process also contemplates possible referral for Florida Bar disciplinary proceedings.

The former Ideals and Goals of Professionalism consisted exclusively of aspirational guidelines for practicing with professionalism. They contained no pretense of ethical imperative. The Professionalism Expectations, on the other hand, consist not only of aspirational recommendations (“should” or “should not”), but also of mandates (“must” or “must not”) said to be “coextensive with a lawyer’s ethical duty.”

The Professional Expectations list ninety-five “Expectations.” Sixty-five are framed as recommended conduct that most lawyers would endorse. The remaining thirty are cast as imperatives. Each imperative cites one or more of the Florida Bar Rules of Professional Conduct. The injection of imperatives and their incorporation in the Code raise the question of whether they are intended to be a basis for disciplinary sanctions – even though they are not contained in the Rules of Professional Conduct. The drafters may have intended simply that the rules citations direct the reader to the rules themselves for accurate and complete statements of the obligations in question, but they risk ill-founded assurances that the statements themselves are accurate and complete.

Further complicating the issue, several of the imperatives misstate or conflict with existing ethical principles and the propositions for which the cited rules stand. Three examples:

1. Expectation 1.8 provides that a lawyer “must maintain and preserve the confidence [sic] and private information of clients,” citing Rule Regulating The Florida Bar 4-1.6. This is an overly narrow statement of the ethical obligation of confidentiality. Rule 4-1.6(a) requires that a lawyer “not

reveal information relating to representation of a client” – any information, regardless of its source, not just confidences and private information.

2. Expectation 2.17 provides that a lawyer “must *ensure* that the use of electronic devices does not impair the attorney-client privilege or confidentiality” (emphasis added), citing Rule Regulating The Florida Bar 4-1.6. As a statement of existing ethical duty, that is incorrect. Rule 4-1.6(e) provides that a lawyer “must *make reasonable efforts* to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.” (Emphasis added). The use of electronic devices does not transform the obligation into a guarantee.
3. Expectation 1.11 provides that a lawyer “must *routinely* keep clients informed” (emphasis added), citing Rule Regulating The Florida Bar 4-1.4. This, too, is inaccurate as a statement of existing ethical mandate. Rule 41.4(a)(3) requires a lawyer to keep the client *reasonably* informed. There is a significant difference, especially in the disciplinary context. “Reasonably” depends on the circumstances. *Routinely* means “habitually” or “regularly” or “in accordance with established procedure.” An obligation of “routine” communication invites subjective and inconsistent interpretation and application.

The new Professionalism Expectations also assert that a lawyer “should avoid the appearance of impropriety.” This long-discredited rubric disappeared from Florida’s ethical rules nearly thirty years ago with the adoption of the Rules of Professional Conduct. It was omitted from the ABA Model Rules of Professional Conduct, on which the Florida rules are based, because the concept all too often was applied subjectively and even whimsically as a basis for disqualification of counsel or as a standard of care in malpractice actions. It begs the question whether an impropriety actually exists. The Rules of Professional Conduct contain specific provisions regarding conflicts of interest and other ethical issues, and lawyers should be able to rely on those rules for guidance.

Heightening professionalism among the bar is a worthy cause, and the new Professionalism Expectations should be consulted for professional guidance. Still, a lawyer must continue to look to the Rules of Professional Conduct for the fundamental ethical principles that govern the profession and for the benchmarks for professional discipline.¹

D. Culver “Skip” Smith III focuses his practice on the law of lawyering, including grievance defense, ethics consultation, and expert-witness services. He can be reached at 5615986800 or csmith@culversmithlaw.com.

¹ As of this writing, one can find The Florida Bar Code for Resolving Professionalism Complaints and The Florida Bar Professionalism Expectations on The Florida Bar’s website (www.flabar.org) by clicking on the “Professionalism” link at the top of the home page, then scrolling down to the section on “Regulating Professionalism.”

Judicial Profile: The Honorable Scott Suskauer

by *William B. Lewis*

You do not have to speak with newly appointed Circuit Court Judge Scott Suskauer for long in order to recognize that he is the type of judge that lawyers will want to practice before. In his more than twenty-five years spent in the courtroom, Judge Suskauer has tried over a hundred cases and litigated before a wide range of personalities. Building on that experience, he now seeks to run a courtroom imbued with professionalism, where all litigants and attorneys are treated fairly.

Growing up in Long Beach, New York, Judge Suskauer learned the importance of treating others with respect and the value of hard work from his father, John Suskauer, who sold wallets to support his wife and three children. After excelling academically at Woodmere Academy in Woodmere NY, Judge Suskauer enrolled at Northwestern University, where he studied political science and became a fervent fan of the Wildcats football team. In 1985, Judge Suskauer graduated from Northwestern and enrolled at the University of Miami School of Law to be closer to his parents – who had retired and moved to Florida.

After his first year of law school, still unsure of which area of law he wished to pursue, Judge Suskauer spent the summer clerking for a Circuit Court judge and working with a criminal defense lawyer in Miami. For the first time, he saw lawyers arguing in court and was immediately drawn to the excitement of trial practice. From that point forward, Judge Suskauer knew he would spend his career in the courtroom.

Upon graduating from law school in 1988, Judge Suskauer accepted a job as an attorney in the West Palm Beach Public Defender's Office. From day one at the Public Defender's office, Judge Suskauer was in court, meeting with clients (often at the jail), and handling jury trials. After only two years, he was promoted to chief of a felony division. Managing hundreds of files at one time, Judge Suskauer learned the importance of organization and time management to a successful law practice.

Practical experience was not the only

valuable benefit Judge Suskauer received from his time at the Public Defender's Office; in 1991, he met another young Assistant Public Defender, Michelle Rosenkranz, who he soon began dating. In 1994, Judge Suskauer and Michelle were married and both left the Public Defender's Office. Judge Suskauer started his own criminal defense firm and Michelle joined him soon thereafter. For more than twenty years, until he accepted an appointment to the bench, Judge Suskauer teamed with his wife to run a highly-regarded criminal defense firm in West Palm Beach.

In addition to practicing law together, the Suskauers also found time to raise two wonderful daughters, Talia and Rebecca. Despite Judge Suskauer's early efforts to share his passion for sports with his children – he is a diehard Mets, Knicks, Jets, and Rangers fan – they were drawn, instead, to the performing arts. Judge Suskauer has dedicated himself to fostering his daughters' interests in the arts, spending many of his non-working hours driving them to voice and dance lessons and watching recitals. Thanks to his children, Judge Suskauer even finds himself listening to the Broadway Channel on XM radio on his way to work.

Judge Suskauer tries to attend as many of his daughters' performances as his schedule will allow. In fact, he happened to be in New Hampshire this summer watching his eldest daughter in summer stock theatre when the Governor called to offer him an appointment to the bench. The call came somewhat as a surprise to Judge Suskauer – not only because the Governor does not usually call his cell phone – but also because it is rare for a criminal defense attorney to receive a judicial appointment. It had been twenty-five years since a criminal defense attorney had been appointed directly to the Circuit Court bench in Palm Beach County. This is a detail not lost on Judge Suskauer, who appreciates the opportunity he has been given and believes it is important to have a bench made up of attorneys with diverse career experiences.

When asked about the challenges of transitioning from a criminal defense



attorney to the bench, Judge Suskauer says, matter-of-factly, that, “the most difficult part has been not being able to work with Michelle every day.” But if there was any question as to whether Michelle Suskauer – a former President of the Palm Beach County Bar and current member of the Florida Bar Board of Governors – supported her husband's career change, it was answered at the memorable Investiture she organized for him. The festive event included congratulatory video-cameos by sports figures from some of the Judge's favorite teams, including Northwestern University football coach Pat Fitzgerald, former New York Mets All-Star Daryl Strawberry, ESPN's Mike Greenberg, and others. Of particular significance to Judge Suskauer was a moving musical performance from his daughters and being able to share the recognition with his parents, who sacrificed so much so he could pursue his career.

After more than twenty-five years as a criminal practitioner, Judge Suskauer is enjoying the exposure to a different area of the law in Family Division “FC.” Ruling on child custody matters and other serious family disputes, however, have been some of the most challenging decisions of his career. Fortunately, the attorneys and citizens of Palm Beach County can rest assured that they have an experienced and thoughtful new judge assessing these significant matters.

We congratulate Judge Suskauer on his appointment and welcome him to the Fifteenth Judicial Circuit bench!

William B. Lewis practices commercial and securities litigation in the West Palm Beach office of the Morgan & Morgan Business Trial Group.

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



“Speed Dating - Appellate Style”

Round Table Discussions with the Judiciary
Judges of the Fourth District Court of Appeal will engage in an
Informal question and answer session and discussion about appellate
practice at the Fourth District



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

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

11:30am - 11:55am

Lunch and Check-In

11:55am - 12:00pm

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

12:00pm - 1:00pm

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

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

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Law in Product Liability Cases

by Ted Babbitt

Aubin v Union Carbide Corp., 40 Fla. L. Weekly S596 (Oct. 29, 2015) is a product liability case in which the plaintiff claimed that he had contracted mesothelioma as a result of using a Union

Carbide product called Calidria. The Third District Court of Appeal in *Union Carbide Corp. v Aubin*, 97 So. 3rd 866 (Fla. 3rd DCA 2012) reversed a jury verdict holding Union Carbide close to 50% responsible on the theories of negligence, strict liability, defective design and failure to warn. In reversing the jury verdict, the Third District adopted the Restatement (Third) of Torts which in turn adopts the “risk utility” test in a design defect case. The risk utility test requires that a plaintiff prove that a reasonable alternative design exists which would not have caused plaintiff’s damages.

The Supreme Court reversed the Third District finding that the application of the Third Restatement conflicted with its holding in *West v Capital Tractor Co.*, 336 So. 2d 80 (Fla. 1976) as well as with the Fourth District Court of Appeals decision in *McConnell v Union Carbide Corp.*, 937 So. 2d 148 (Fla. 4th DCA 2006). Both of those cases applied the Restatement (Second) of Torts and utilized the “consumer expectations test” rather than the risk utility test in determining whether a design defect existed. The consumer expectation test holds that a product is unreasonably dangerous in design when it fails to perform as safely as an ordinary consumer would expect when used as intended in a reasonably foreseeable manner.

In *West*, *supra*, the intent of the Supreme Court was to adopt a theory of strict liability, holding at S600:

In other words strict liability should be imposed only when a product the manufacturer places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being. The user should be protected from unreasonably dangerous products or from a product fraught with unexpected dangers. In order to hold a manufacturer liable on the theory of strict liability in tort, the user must establish the manufacturer’s relationship to the product in question, the defect and unreasonably dangerous condition of the product, and the existence of a proximate causal connection between such condition and the user’s injuries or damages.

The strict liability aspect in the *West* opinion further stated at Page S600:

We therefore hold that a manufacturer is strictly liable in tort when an article he places on the market, knowing that it is to be used without inspection for defects, proves to have a defect that causes injury to a human being.

In *Force v Ford Motor Co.*, 879 So. 2d 103, 106 (Fla. 5th DCA 2004), the Fifth District held that:

[u]nder the consumer-expectation theory a product

is defectively designed if the plaintiff is able to demonstrate that the product did not perform as safely as an ordinary consumer would expect when used in the intended or reasonably foreseeable manner. *McConnell*, 937 So. 2d at 151 (quoting *Force*, 879 So. 2d at 106).

The *Aubin* court finds that the very purpose of its opinion in *West* was to establish strict liability on the part of the manufacturer in design defect cases and that application of the Third Restatement and its test requiring a reasonable alternative design puts the burden on the plaintiff to show negligence which was never the intent of *West*. At S601, the Court holds:

By introducing foreseeability of the risk to the manufacturer as part of the calculus for design defect and requiring proof of a “reasonable alternative design.” The Third Restatement reintroduces principles of negligence into strict liability.

The Court finds that the consumer expectation test, instead of shifting the burden to the plaintiff, more reasonably applies a standard that recognizes that manufacturers have the principle responsibility for the way its product is perceived by consumers and thus induced consumers to purchase or utilize the product. At S602, the Court holds:

The consumer expectations test intrinsically recognizes a manufacturer’s central role in crafting the image to a product and establishing the consumers’ experience for that product – a portrayal which in turn motivates consumers to purchase that particular product.

In this case, Florida joins the overwhelming majority of state courts which have refused to apply the Third Restatement and have retained the Second Restatement and its consumer expectation test in determining responsibility for a defective product. At S603, the Court holds:

In considering which approach is in line with our prior strict liability jurisprudence, we are in accord with those state supreme courts that have thoughtfully considered this issue and determined that the Third Restatement’s new approach is inconsistent with the rationale behind the adoption of strict products liability. The Third Restatement is, in fact, contrary to this state’s prior precedent. Decades ago, this Court recognized that the reason behind adopting strict products liability was based in part on the policy that “[t]he manufacturer, by placing on the market a potentially dangerous product for use and consumption and by inducement and promotion encouraging the use of these products, thereby undertakes a certain and special responsibility toward the consuming public who may be injured by it.” *West*, 336 So. 2d at 86. Thus, in approaching design defect claims, we adhere to the consumer expectations test, as set forth in the Second Restatement, and reject the categorical adoption of the Third Restatement and its reasonable alternative design requirement...

Increasing the burden for injured consumers to prove their strict liability claims for unreasonably dangerous products that were placed into the stream of commerce

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Five Tips in 30 Minutes for Marketing with Little to no Budget

Presented by the Solo and Small Firm Practitioners Committee



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

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

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

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

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3. How to move away from the wall
4. The importance of follow up
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Procedure for Terminating an Irrevocable Trust

by David M. Garten

What is the proper procedure for terminating an irrevocable trust after the settlor's death?

A trust terminates to the extent the trust expires, or is revoked, or is properly distributed pursuant to the terms of the trust.

See §736.0410(1), F.S.; *Schwarzkopf v. American Heart Asso.*, 541 So. 2d 1348 (Fla. 3rd DCA 1989) (the trust instrument may provide how long the trust shall continue. In such a case the trust will be terminated at the expiration of the period fixed by the terms of the trust).

On termination of the trust, the trustee shall provide a final trust accounting to each qualified beneficiary. The final accounting must include a plan of distribution for any undistributed assets. See, §§736.0813(1)(d) and 736.08135(2)(f), F.S.

Assuming all beneficiaries agree to the final accounting, to the plan of distribution, and to sign the Receipt, Release, & Refunding Agreement, the trust may be terminated without court authorization. Alternatively, it may be necessary to obtain a court order to approve the accountings and terminate the trust.

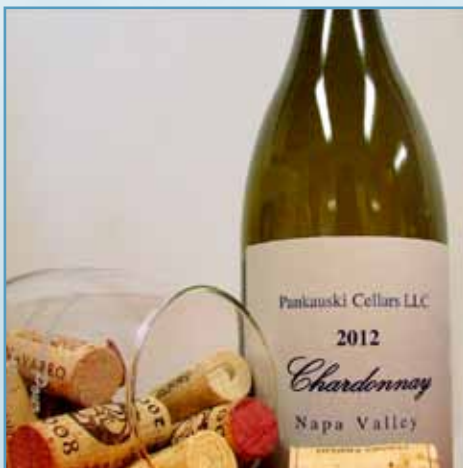
In addition, although a trust instrument directs termination of the trust and distribution of the principal to the beneficiaries upon the settlor's death, the trustee cannot make complete distribution until provision has been made for all the expenses, claims, and taxes the trust may be obligated to pay, including the expenses and obligations of settlor's estate, and certainly not before those amounts have been fully ascertained. See, §736.05053; *First Union Nat'l Bank v. Jones*, 768 So. 2d 1213 (Fla. 4th DCA 2000); *Sheaffer v. Trask*, 813 So. 2d 1051 (Fla. 4th DCA 2002); *Parker v. Shullman*, 983 So. 2d 643 (Fla. 4th DCA 2008). Compare, §736.0817, F.S. which reads:

Distribution on termination. – Upon the occurrence of an event terminating or partially terminating a trust, the trustee shall proceed expeditiously to distribute the trust property to the persons entitled to the property, subject to the right of the trustee to retain a reasonable reserve for the payment of debts, expenses, and taxes. The provisions of this section are in addition to and are not in derogation of the rights of a trustee under the common law with respect to final distribution of a trust.

Failure to provide complete and accurate accountings and a 6 month limitation notice [§736.1008(4)(c)] can substantially delay the termination process. Pursuant to §736.1008(4)(a), F.S., an accounting adequately discloses a matter if the document provides sufficient information so that a beneficiary knows of a claim or reasonably should have inquired into the existence of a claim with respect to that matter. The limitation period on all claims by a beneficiary against a trustee for breach of trust is extended to four years for: **(a)** all matters adequately disclosed in a trust disclosure document without a 6 month limitation notice, and **(b)** all matters not adequately disclosed in a trust disclosure document if the trustee has issued a final trust accounting and has given written notice to the beneficiary of the availability of the trust records for examination and that any claims with respect to matters not adequately disclosed may be barred unless an action is commenced within the applicable limitations period provided in chapter 95. See, §736.1008(1), §95.11(3)(o), and *Patten v. Winderman*, 965 So. 2d 1222 (Fla. 4th DCA 2007). In addition, a beneficiary can extend any existing applicable statute of repose by 30 years if he shows by clear and convincing evidence that a trustee actively concealed facts supporting a cause of action, i.e. fraudulent concealment. See, §736.1008(6)(b), F.S.

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Law in Product Liability Case

Continued from page 7

is contrary to the policy reasons behind the adoption of strict liability in *West*.

Adopting the definition of design defect advanced by the Third Restatement would frustrate these policy concerns...

Further, a manufacturer plays a pivotal role in crafting the image of a product and establishing the consumers' expectations for that product, a portrayal which in turn motivates consumers to purchase that particular product. The consumer expectations test thus rightly focuses on the expectations that a manufacturer creates. The Third Restatement's risk utility test shifts away from this focus and, in fact, imposes a higher burden on consumers to prove a design defect than exists in negligence cases – the exact opposite of the purposes of adopting strict products liability in the first place.

This opinion does not mean that evidence cannot be admitted by either side on the question of an alternative design. The plaintiff can utilize an alternative design to show the feasibility of a safer design and a defendant can utilize the lack of an alternative design to show that the utility of its product outweighs the risk.

This opinion also discusses the rule of the learned intermediary defense in product liability cases and sets forth factual elements of that defense. At S605 the Court holds:

The manufacturer may be able to rely on an

intermediary to relay the warnings to the end user but the intermediary must be “learned”; that is, “one who has knowledge of the danger and whose position vis-à-vis the manufacturer and consumer, confers a duty to convey the requisite warnings to the consumer.” *Kavanaugh*, 879 So. 2d at 44 (quoting *Brito v. Cty. of Palm Beach*, 753 So. 2d 109, 111 n. 1 (Fla. 4th DCA 1998)). However, as the Third District has recognized the “learned intermediary doctrine” is not a complete defense and explained that the “intermediary’s level of education, knowledge, expertise, and relationship with end-users is informative, but not dispositive, on the issue of whether it was reasonable for the manufacturer to rely on that intermediary to relay the warning to end users.” *Aubin*, 97 So. 3d at 900.

The Second and Third Restatement both recognize that a manufacturer may be able to rely on an intermediary to relay warnings to the end user, but the critical inquiry is whether the manufacturer was reasonable in relying on the intermediary to fully warn the end user and whether the manufacturer fully warned the intermediary of the dangers in its product.

This landmark decision provides a learned treatise on the application of the law in product liability cases, rejects the use of the Third Restatement to apply the risk utility test and reinforces the holding in *West v. Caterpillar Tractor* adopting the consumer expectations test.

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Greg Coleman celebrates after his goatee of 15 years is shaved off



Bob Shalhoub allows his sister, Debra Welch, to shave off half of his mustache. His son Paul shaved off the other half



Bob Shalhoub's wife, Bernadette, reacts to seeing him without his mustache for the first time in their 43+ years of marriage!



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

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

12:00 p.m. - 1:00 p.m. **Speakers:**
Tara L. Kopp, Esq., Schuler, Halvorson, Weisser, Zoeller & Overbeck
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Bankruptcy and the Debtor's Tort Claims

by Jason S. Rigoli

Bankruptcy can have a tremendous impact on tort claims held by a debtor, which if not handled properly can result in the loss of a discharge and/or the loss of the right to assert the claim.

Is The Claim Or Cause Of Action Property Of The Estate?

Section 541 of the Bankruptcy Code¹ reveals that upon the filing of a petition, an estate is created, comprised of all "legal and equitable interests of the debtor."² A tort claim or cause of action may be included in the bankruptcy estate; it is dependent on the accrual of the claim and the Chapter under which the petition was filed.

In a Chapter 7 bankruptcy case, the tort claim is property of the bankruptcy estate as long as the claim accrued prior to the petition date.³ In a Chapter 11 or Chapter 13 bankruptcy case, tort claims that accrue after the petition date but prior to the case being closed, dismissed, or converted, are also included in the bankruptcy estate.⁴

Section 101(5) of the Bankruptcy Code defines the term "claim."⁵ The next question is when does a claim accrue? Under Florida law, a cause of action accrues "when the last element constituting the cause of action occurs."⁶ "[T]he test[,] for Section 541,] is whether all of the elements of a cause of action have occurred [prior to the filing of the petition, such] that the cause of action is sufficiently rooted in the debtor's pre-bankruptcy past."⁷

The Effect of Bankruptcy

The filing of a bankruptcy can significantly affect claims owned by the debtor depending upon the Chapter filed.

In Chapter 11 and Chapter 13 bankruptcy cases, the tort claim or cause of action must be addressed in the Chapter 11 or 13 plans. In a Chapter 7 bankruptcy, the trustee becomes the debtor-plaintiff and is the party with decision-making authority regarding the prosecution and resolution of the cause of action. In all Chapters of bankruptcy, if prepetition, the debtor hired counsel and instituted a lawsuit, then that counsel must be retained by the Trustee⁸ to continue to represent the trustee in prosecuting the matter and is subject to approval of the bankruptcy court. In addition, the debtor has obligations to satisfy when filing a bankruptcy. First, it is the debtor's duty to disclose the cause of action. Failure to disclose the claim or

cause of action on the petition could result in the loss of the debtor's discharge in bankruptcy and in some cases precludes the debtor from continuing the prosecution of the cause of action under a theory of judicial estoppel.⁹ Furthermore, the debtor's failure to disclose the cause of action or failure to cooperate with the trustee in prosecuting this lawsuit (i.e., providing information or documents material to the lawsuit) may result in the debtor losing his or her discharge.¹⁰

Conclusion

Bankruptcy affects debtor-owned tort claims depending on when the claim accrued and under which chapter the debtor files his or her bankruptcy. Improper handling of these claims can have serious consequences for the debtor. Bankruptcy affects: (1) the authority of counsel to represent the debtor-plaintiff in prosecuting these actions; (2) debtor's ability to obtain a discharge; and (3) the viability that of the lawsuit to be prosecuted. In bankruptcy, the best way to avoid pitfalls surrounding these claims is through full disclosure. Disclosure allows all interested parties to move forward and preserve or protect their interests, including the debtor's right to a discharge.

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

⁹ Compare, *Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282 (11th Cir. 2002) (finding judicial estoppel precluded prosecution); *Berger v. City of Cartersville, Ga.*, 348 F.3d 1289 (11th Cir. 2003) (same) with *Ajaka v. Brookamerica Mortg. Corp.*, 453 F.3d 1339 (11th Cir. 2006) (finding failure to disclose did not result in judicial estoppel of debtor asserting TILA claim).

¹⁰ 11 U.S.C. § 727(a)(2).

¹ 11 U.S.C. §§ 101 *et seq.*

² 11 U.S.C. § 541(a)(1).

³ *Id.*

⁴ See, 11 U.S.C. §§ 1115(a)(1), 1306(a)(1).

⁵ 11 U.S.C. § 101(5) (The term "claim" means— (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.)

⁶ Fla. Stat. § 95.031.

⁷ *In re Alipour*, 252 B.R. 230, 235 (Bankr. M.D. Fla. 2000).

⁸ For brevity, I am referring to a trustee, but it includes a debtor in possession in a chapter 11 or chapter 13 bankruptcy. See 11 U.S.C. §§ 327, 328.

Upcoming CLE Seminars:

- **January 8th:** Appellate: Speed Dating – "Appellate Style" Round Table Discussions with the Judiciary
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- **January 29th:** Real Estate Practice Update
- **February 8th:** ADR
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The following represents each new member's name, law school, date of admission to The Florida Bar, and law firm association.

Linda A. Ansaldo: Florida Registered Paralegal Membership, Barbuto Law & Associates, P.A., West Palm Beach.

Helene K. Baxter: Florida State University, 1995; Palm Beach County School Board, West Palm Beach.

Aaron Bernstein: Nova Southeastern University, 2014, Wellington.

Lyneda Cles: St. Thomas University, 2014; Solo Practitioner, Boynton Beach.

Chelsea Furman: Florida State University, 2015; Associate in Elisha D. Roy, P.A., West Palm Beach.

Marjorie E Gallagher: Northwestern University, 2014; Associate in Comiter, Singer, Baseman & Braun, LLP, Palm Beach Gardens.

Meryl Hoffman: Nova Southeastern University, 2012; Associate in Peterson Bernard, West Palm Beach.

Nicole A Johansson: Nova Southeastern University, 2015; Boynton Beach.

Matthew J. Kasl: Law Student Membership, Loxahatchee.

John Jesse Kendrick, III: University of Miami, 2005; Automotive Management Services, Inc, West Palm Beach.

Chelsea Koester: University of Florida, 2015; United States District Court, West Palm Beach.

Scott Aldo Lombardo: University of Florida, 2015; Associate in Ciklin Lubitz & O'Connell, West Palm Beach.

Lin Luo: Florida A&M University, 2015; Associate in the Law Offices of Kermit Waters, West Palm Beach.

Matthew Dietrich Miller: California Western University, 2015; Tequesta.

Brian Todd Pakett: New York Law School, 2011; Solo Practitioner, Palm Beach Gardens.

Daniel R. Sagiv: University of Miami, 2014; Associate in Florida P.I.P. Law Firm, P.A., Boca Raton.

Christopher P. Salamone: St. Thomas University, 2009; Associate in Prince Law, LLC, Plantation.

Steven G. Schwartz: Washington & Lee University, 1978; Partner in Schwartz Law Group. Boca Raton.

Monique Wilson: University of Florida, 2015; Office of the State Attorney, West Palm Beach.

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Kids Invited to Court

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

LREC to Put On Youth Law Day at the South County Courthouse on January 9th

Thanks to the Office of the State Attorney and the Palm Beach County Bar Association, area young people will have an opportunity to experience the legal system first-hand on Saturday, January 9th, 2016, when the South County Courthouse in Delray Beach opens its doors to all preregistered students for a special all-day event.

Youth Law Day will begin at 9:00 a.m. and will teach children about civics and the law throughout the day, including a grand finale mock trial to conclude at 3:00 p.m.

Participants will hear presentations from judges, attorneys, and community members on a variety of topics, including the rights and responsibilities of citizenship, the jury system, famous historical trials, and careers in government and other law-related fields.

This exciting event, which will satisfy requirements for Boy Scouts and Girl Scouts seeking to earn Law Merit Badge and Junior or Cadette Legacy badges, is recommended for all children ages 11 to 18. Registration is \$10 per student, which will cover all of the day's activities and lunch will be provided.

Youth Law Day is being organized by the Law Related Education Committee (LREC) of the Palm Beach County Bar Association. LREC seeks to inform our local communities about civics and the law. You can be a part of this event by volunteering to give two 15 minute presentations on an area of law or government about which you are passionate. If you want to be a positive presence for your community's youth on January 9th or would otherwise like to get involved with LREC, please see our website at www.palmbeachbar.org/law-related-education-committee/ and contact Chair Amy Shayne Levenberg Terwillegger at aterwillegger@gunster.com.

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

Diversity Intern Program

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- There is a Diversity Law Internship Program available to you for placement of a summer intern with a diverse background.
- For several years now, law firms in Palm Beach County have participated in the Diversity Law Internship Program, a program committed to diversity.
- The Diversity Law Internship program has even resulted in diverse law clerks being offered permanent positions based upon the quality of the clerk's work and the firms' hiring needs. Over 10 interns have gone on to practice law here in Palm Beach County.
- Each year, more corporations and businesses are refusing to do business with law firms that do not reflect the diversity of their patrons, customers and clients.

DON'T MISS OUT AGAIN ON THIS OPPORTUNITY TO BE INVOLVED AND PARTICIPATE

Join us! You can enrich your firm and support the diversity of the Palm Beach County Bar by:

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2. Making a contribution to the program to fund a governmental internship position. Please contact Jean Marie Middleton for details on participation at 561-434-8750.

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Real Property and Business Litigation Report



by **Manuel Farach**

HFC Collection Center, Inc. v. Alexander, – So.3d –, 2015 WL 6554404 (Fla. 5th DCA 2015).

A defendant who prevails on her defense that the contract sued upon was never properly assigned to plaintiff establishes that there is no contract between her and plaintiff, and as a result, is not entitled to contractual prevailing party attorneys' fees.

Ensler v. Aurora Loan Services, LLC, – So.3d –, 2015 WL 6496304 (Fla. 4th DCA 2015).

General testimony of a prior business's record-keeping practices, without describing details, is not sufficient to lay the predicate for the Business Records Exception to the Hearsay Rule. However, the proponent of the evidence may testify as to the prior business records if the proponent has sufficient procedures in place to check the accuracy of the prior business's records.

100 Lincoln Rd SB, LLC v. Daxan 26 (FL), LLC, – So.3d –, 2015 WL 6499331 (Fla. 3d DCA 2015).

Review of orders regarding *lis pendens* is by certiorari, and a recorded declaration of condominium is a "duly recorded instrument" under Florida Statute section 48.23.

RREF SNV-FL SSL, LLC v. Shamrock Storage, LLC, – So.3d –, 2015 WL 6446074 (Fla. 1st DCA 2015).

Under Florida Statute section 56.29 (proceedings supplementary), it is the judgment debtor's burden to prove transfers to third party for no consideration were not done in an attempt to hinder, delay or defraud creditors.

5730 Lake Underhill, LLC v. Smith-Horner, LLP, – So.3d –, 2015 WL 6757518 (Fla. 5th DCA 2015).

A party claiming a prescriptive easement must demonstrate the use was adverse; use of another's land is presumed to be with the consent of the owner and subordinate to the rights of the owner and use by patrons is not adverse if pursuant to a written lease.

Joseph B. Doerr Trust v. Central Florida Expressway Authority, – So.3d –, 2015 WL 6748858 (Fla. 2015).

Florida Statute section 73.092(2), not the straight "benefits achieved" method of section 73.092(1), is employed to determine the landowner's attorneys' fees when the condemning authority engages in excessive litigation.

Rogers v. U.S., – So.3d –, 2015 WL 6749915 (Fla. 2015).

The estate conveyed by a deed and the actual property conveyed is determined by the intent of the grantor, and not by whether the consideration was nominal or whether "strips and gores" are created.

Florida Digestive Health Specialists, LLC v. Colina, Case No. 2D14-4561 (Fla. 2d DCA November 4, 2015).

A court may not consider factors outside of Florida Statute section 542.335 in determining whether to enforce restrictive covenants, and specifically may not consider whether the harm to the restricted party outweighs the benefit to the restricting party.

Deutsche Bank Trust Co. Americas v. Frias, – So.3d –, 2015 WL 6735332 (Fla. 4th DCA 2015).

A prior servicer's business records are admissible so long as the witness has some knowledge of how the prior records were maintained and created.

Jelic v. BAC Home Loans Servicing, LP, – So.3d –, 2015 WL 6735353 (Fla. 4th DCA 2015).

An undated indorsement that appears for the first time after suit is filed is insufficient, by itself, to confer standing on the holder of the note.

Bank of New York Mellon v. Nunez, – So.3d –, 2015 WL 6735856 (Fla. 3d DCA 2015).

Parties need only substantially comply with conditions precedent in mortgages.

Straub v. Wells Fargo Bank, N.A., – So.3d –, 2015 WL 6738732 (Fla. 4th DCA 2015).

For purposes of claiming surplus foreclosure proceeds under Florida Statute section 45.031, a foreclosure sale is completed upon the issuance of the certificate of title by the clerk of the court. Thus, a claim for surplus proceeds filed more than sixty days after judicial sale but less than sixty days after issuance of certificate of title is timely.

Parnell v. CashCall, No. 4:14-cv-00024-HLM (11th Cir. October 28, 2015).

A party seeking to challenge the validity of a "delegation provision" in an arbitration agreement (the arbitrator decides challenges to arbitration) must challenge the delegation provision directly.

Pottinger v. City of Miami, Case No. 14-13287 (11th Cir. November 10, 2015).

A settlement agreement which provides for an award of prevailing party attorneys' fees for the enforcement of the settlement agreement does not entitle movant to attorney's fees for successfully opposing the modification of the settlement agreement.

Zander v. Cima, Case No. 2D14-5866 (Fla. 2nd DCA November 13, 2015).

The balloon mortgage statute (Florida Statute 697.05) does not apply to seller-financed mortgages and typically not to first mortgages.

Nationstar Mortg., LLC v. Prine, – So.3d –, 2015 WL 7008151 (Fla. 3d DCA 2015).

A presumption of good service arises from a certificate of service on a court order, but the presumption is rebuttable where there is an error on the email address on the court order and there is no evidence that the recipients received the order.

Hicks v. Wells Fargo, – So.3d –, 2015 WL 7017440 (Fla. 5th DCA 2015).

A subsequent and different default allows a lender to file a new suit on a mortgage foreclosure so long as within the statute of limitations.

YLS NFL Survivor Pool

The Young Lawyer's Section of the Palm Beach County Bar Association held their inaugural NFL Survivor Pool where attorneys competed for their chance to win \$500.00 for the charity of their choice. After ten grueling weeks, Leslie Arsenault Metz, an attorney with Richman Greer, P.A., was crowned the champion. When choosing her charity, Leslie picked one close to home:

"I selected L.E.A.F., which is the Law Enforcement Assistance Foundation. L.E.A.F. is founded and based in Palm Beach County to provide assistance to local law enforcement officers and their families that have either been seriously injured or killed in the line of duty. My husband has been in law enforcement for nine years and is currently a Deputy for the Palm Beach County Sheriff's Office. I pray every day that my husband and I have never have to be recipients of an organization such as L.E.A.F., but I am proud to support this worthy cause for those that are enduring the unimaginable."

– Leslie Arsenault Metz

Leslie edged out runner up, Santo DiGangi, of Critton, Luttier & Coleman,

who unfortunately watched his final pick, the Cincinnati Bengals, lose their first game of the season.

Overall, thirty attorneys took part in this year's inaugural NFL Survivor Pool, wherein participants were asked to pick an NFL team to win each week, with the caveat that each team could only be picked once during the course of the season. Leslie can thank the Pittsburgh Steelers for securing her the victory in week 10 of the NFL season. The YLS looks forward to continuing this new tradition next year.



Kudos to our members for donating canned goods for the Transaction Law Committee's Food Drive as part of WPTV's Food for Families. Pictured here is Committee Chair Marilyn Perez-Martinez along with committee members Marjorie Desporte, Arletys Rodriguez and Erica Francis



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



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



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

Program Schedule

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

Use of Social Media in Cases and Litigation

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How Jurors Use Technology in 2016

by Christopher B. Hopkins

In 2011 and 2014, I wrote in this column about how jurors were using technology. Viewpoints have shifted since then. Five years ago, the concern was all about social media: how were jurors using Facebook?

Could we keep them off the site during trial? But the discussion has broadened. Now lawyers need to know how jurors feel about other technologies which pervade our lives. Jurors have passionately strong fears and contrasting hopes about technology. Trial lawyers cannot just ask whether a juror uses technology – we have to explore the person’s attitudes about technology’s application, impact on privacy, and reliability.

Five years ago, only 42% of jurors were on Facebook and a slightly higher percent checked their email before going to bed. Unquestionably, those figures are higher now. Seems quaint, doesn’t it? Florida Bar members were equally nascent in their tech-ways. As of 2014, one-third of Florida lawyers were computing... with Windows Vista. That’s not quaint, that’s *antiquated*. Even now, nearly a quarter of us are still mired in Windows XP and Vista. Yet, and perhaps aptly so, nearly half of Florida lawyers agree that technology CLEs should be mandatory. If lawyers are not using technology properly, we cannot possibly grasp how potential jurors feel about new devices and trends.

We need to explore society’s relationship – *meaning your jurors’ relationship* – with technology. That relationship has deepened because we are surrounded by Dropcams in our homes, Bluetooth in our appliances, and devices poised to respond to our voice. It’s a confusing stage in our courtship with tech. We are fearful of hackers getting our “PII” yet we remain haphazard in defining privacy and distracted in our commitment to secure passwords. We have achieved a comfort level where we give names to our devices (admittedly, odd ones) like Siri, Alexa, or Cortana. Yet we are confused about whether these devices listen and speak with us as tools, friends, or aggregators of our habits. In some aspects, the tech-savvy and the tech-scared share both a wonderment and a paranoia of the connected world which is hard for a lawyer to detect through generic *voir dire* questions. Select, or *de-select*, your jurors carefully.

We Want to Shop By Drone – 66% of shoppers expect to receive purchases delivered via drone within the next five years and 80% would pay drone delivery charges (*Walker Sands*).

But We’re Afraid of Drones – 30% of Americans agree with private ownership of drones while 42% are opposed to anyone but experts or government operating drones. 73% of people think there should be regulations (*Reuters*). The FAA, meanwhile, has missed several deadlines to set those standards.

We Text and Drive – 70% of us admit to using cell phones while driving: 40% use social media, 30% search the web, and 10% video chat (*AT&T/Braun*). Cell phone use is now a factor in 27% of car crashes (*Natl Safety Council*). That said, in late 2015, the first driver-less Google car was pulled over by police.

We Post a Lot of Kid Pictures – Parents of children

under 5 years old post an average 195 photos online every year (typically on Facebook). But parents are careless about security – less than 20% of parents check their privacy settings (*knowthenet*).

We Delete Apps – 36% of all apps are deleted within a month after downloading. Half are deleted because they take up too much storage. Excessive ads (41%), errors (34%), privacy (30%), and difficulty using (27%) are other top reasons. Strangely, less than 4% of apps get deleted due to lack of use.

Snowden Disclosures Made Us More Careful – 34% of Americans have taken at least one step to shield their information on the internet. But, less than half of us actually use non-tracking search engines, email encryption, Tor, or privacy-enhancing plug-ins (*Pew*).

But Snowden Hasn’t Scared Us About the NSA – People who think favorably of the NSA: under 30 years old (61%), 30-49 years old (55%), and 65+ (40%) (*Pew*).

Being Anonymous on the Internet Isn’t That Popular – 43% of people do not believe that anyone should be able to use the internet anonymously (or don’t know). But nearly 25% of us have given fake or misleading names, email addresses, and information – or have avoided sites which require verification (*Pew*).

Few People Use the Dumbest Password – While “123456” was the most frequently used password in 2014, that represented less than 1% of all passwords (*SplashData/Ars Technica*).

But We Don’t Care About Security At Work – 64% of workers would stay quiet about a security breach if they noticed it (*Daisy Group*).

Cash on Hand – 60% of us have less than \$20 cash on us right now (*Walker Sands*).

Millennials vs. Banks – Less than half of all millennials use a credit card and 33% think they will not need a local bank in five years (*Bitcoin Foundation*).

What’s a Bitcoin? – 65% of people are “not at all familiar” with bitcoin (*CoinCenter*).

Conspiracy? 69% of us believe the simplest explanation is usually the most accurate yet 65% believe advertisements have hidden messages; 24% believe an alternative explanation to 9/11; and 14% believe the moon landing was fake (still?). Barely 30% believe Kennedy was killed by Oswald yet this is the most popular explanation (*Vanity Fair*).

Religion Declining – Percentage of reported Christians is down to 71%. One in three millennials have no religious affiliation (*Pew*).

Cleaning House vs. Watching TV – Women average nearly 50 minutes a day preparing food/cleaning up whereas men spend less than 20 minutes/day. Both sexes admit to 2.5 - 3 hours of television per day (*Bureau Labor Statistics*).

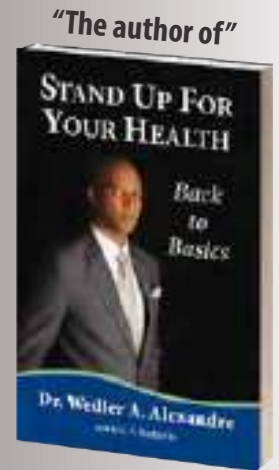
Christopher B. Hopkins is a member with McDonald Hopkins LLC. He’s a complicated guy who owns a C64 but eschews the fax. Reach him at chopkins@mcdonaldhopkins.com.



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Judgment Void When Case Set For Trial With Insufficient Notice

by Matt Triggs and Jonathan Galler

You just know that an appellate opinion is likely to be steeped in the rules of civil procedure when, as in the recent case of *Torres v. One Stop Maintenance & Management, Inc.*,¹ the opinion comes right out and says that “[t]he underlying dispute is irrelevant to our discussion.”

In this case, summary judgment was entered against defendants, and a damages award was subsequently awarded to the plaintiff after an evidentiary hearing to determine the amount of unliquidated damages.

The problem was that the defendants, who were *pro se*, contended that they never received any notice of a damages trial until the day after that trial. They did, however, receive a copy of the final judgment, and they moved to vacate that final judgment about five months later, pursuant to rule 1.540(b).

The trial court denied the motion to vacate, holding that the judgment at issue was voidable, not void, and that the defendants inexcusably took no action for a period of five months to set aside the judgment, seek rehearing, or file an appeal.

The opinion devotes a fair amount of space recounting the trial court’s discussion of the parties’ factual argument pertaining to whether the defendants did or did not receive notice of the damages trial. But the Fourth District ultimately reversed, and set aside the judgment, solely on the basis of rule 1.440(c).

Rule 1.440(c) provides, in relevant part, as follows:

If the court finds the action ready to be set for trial, it shall enter an order fixing a date for trial. Trial shall be set not less than 30 days from the service of the notice for trial. By giving the same notice the court may set an action for trial.

Here, even according to the plaintiffs, this thirty day notice requirement was not met because they contended that the notice of hearing was served on February 25, 2013, and the trial took place on March 4, 2013. The dispositive question, therefore, was not whether the defendants received the notice before or after trial but, rather, whether the failure to comply with the thirty day notice requirement of rule 1.440(c) renders the judgment void or voidable.

Fortunately, this was a question that the Fourth District answered just a few months prior to its issuance of this opinion. In *Vercosa v. Fields*, the appellate court held that “it is well-settled that a defaulting party is entitled to notice and an opportunity to be heard when the damages are unliquidated.

¹ 2015 WL 6161178 (Fla. 4th DCA Oct. 21, 2015).

A judgment entered without such notice and opportunity to be heard is void.”²

In *Torres*, the Court elaborated on this principle. The Court wrote that “[d]ue process is precisely why Florida Rule of Civil Procedure 1.440(c) mandates that the parties to litigation are entitled to an order setting a case for trial and the order setting the case for trial shall give at least thirty days notice from the entry of that order to the trial date itself.”³ That protection was especially applicable in this case because “Florida law guards due process rights for unliquidated damages claims.”⁴

Because the judgment at issue was void, not voidable, relief under rule 1.540(b) was available to the defendants. “A void judgment may be attacked at any time under rule 1.540(b)(4).”⁵ Accordingly, the Fourth District reversed and remanded the case to the trial court for a new trial on damages.

The Florida Supreme Court also recently addressed the distinction between a void and voidable judgment, but in a different context.⁶ The Supreme Court held that a default judgment arising from a complaint that fails to state a cause of action is voidable, not void, and therefore a rule 1.540(b) motion to vacate such a judgment is barred if filed more than one year after the judgment was entered. Interestingly, the Supreme Court held that mere irregularities in a proceeding will not render a judgment void, but specifically noted – as the Fourth District’s *Torres* opinion highlights – that this is not so where there has been an “illegal deprivation of opportunity to be heard.”⁷

In short, the public policy favoring finality does not outweigh a party’s right to due process.

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

² 174 So. 3d 550, 552 (Fla. 4th DCA 2015).

³ 2015 WL 6161178, at *4 (citing *Mourning v. Ballast Nedam Constr., Inc.*, 964 So.2d 889, 892 (Fla. 4th DCA 2007)).

⁴ *Id.*

⁵ *Vercosa*, 174 So. 3d at 552.

⁶ See *New York Mellon v. Condominium Assoc. of La Mer Estates, Inc.*, 2015 WL 5445645 (Fla. Sept. 17, 2015).

⁷ *Id.* at *2.



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How Can We Increase the Number of Women Lawyers Who Are Board Certified?



Introduction

The Florida Bar confirms that a significant gender gap exists in the number of board certified lawyers in Palm Beach County and statewide. In Palm Beach County, women comprise only 17% of board certified lawyers. Throughout Florida, women comprise 21% of board certified lawyers. In certain litigation areas, the gender gap is even more pronounced. For example, only 6% of the lawyers who are board certified in Civil Trial and 7% who are board certified in Business Litigation statewide are women. So how can we increase the number of women lawyers who are board certified and narrow this significant gender gap?

First, we need to promote more awareness of The Florida Bar's board certification program, speak openly about the gender gap, and actively recruit women to apply for board certification. Second, we need to host more educational seminars and programs that educate women lawyers on the benefits of board certification and the criteria for board certification. Third, we need to provide more mentoring to female lawyers who may qualify for board certification within a few years, but could also benefit from the guidance of a lawyer who already has gone through the application process and passed the exam.

Ways to Increase the Number of Women Lawyers Who are Board Certified

A. Promoting Awareness of the Board Certification Program, Speaking Openly About the Gender Gap, and Actively Recruiting Women to Apply

The Florida Bar's Board Certification program began in 1982 and remains one of the most objective ways to validate a lawyer's competency and professionalism. The board certification program currently includes 25 substantive areas of certification and only 5% of the lawyers statewide are board certified. Because it is difficult to attain, the achievement of board

by Adam Rabin and Adrienne Rabinowitz

certification is widely recognized as a significant, prestigious accomplishment.

In Palm Beach County, which now has over 7,300 lawyers, only 105 women are board certified. On a percentage basis, the men to women ratio across all areas of board certification is 83/17, even though for years women have been entering the legal profession at the same rate as men. The attrition rate for women who remain practicing law, however, is higher than men.

When it comes to recruiting more women to apply, the goal is to educate women lawyers about the criteria for certification several years in advance so they can plan to meet the criteria down the line. In the litigation areas, for example, it is difficult to say "I'm going to get all my trials this year." In reality, it often takes a few years of planning and availing oneself of opportunities to meet the trial requirements, including seeking out opportunities to co-counsel cases, broadening case selection, or accepting pro bono cases.

B. Hosting Educational Seminars and Programs to Promote Board Certification

Creating an educational foundation that promotes board certification in a consistent manner and planting the seed for lawyers to plan in advance to meet the criteria. This educational foundation consists of hosting a series of seminars and programs designed to teach women lawyers about the different facets of board certification, including the application process, peer review, continuing legal education, securing final matter credits, and exam preparation.

C. Pairing Applicants with Mentors

Pair applicants with someone who has "already walked the woods." Board certification poses a variety of challenges. Having a mentor who already has gone through the process successfully can make a huge difference for an applicant to become board certified.

Having a mentor carries with it several benefits. A mentor can help with



exam preparation especially if there is no exam-preparation course or study materials designed for the specific area of certification. Second, there are certain tricks of the trade that an applicant may learn about the application process; for example, The Florida Bar often will give double or triple CLE credit for writing an article or lecturing compared with mere attendance at a seminar. Third, an applicant may learn certain specific areas on which to focus her study time and techniques for answering essay questions. Fourth, there is a psychological benefit to having a mentor who can guide an applicant during the challenging process of balancing work, studying, and family life.

Conclusion

The large board-certification gender gap surprises many when women are entering the legal profession at the same rate as men. We can, however, encourage more women lawyers to apply for board certification by creating awareness as to its value, promoting early planning to meet the criteria, and by offering educational programs and mentoring opportunities. By becoming more proactive, we can succeed in increasing the number of women lawyers who become board certified and help narrow the gap.

Adam Rabin is Florida Bar Board Certified in Business Litigation and is a past president of the Palm Beach County Bar Association and past co-chair of the Committee for Diversity and Inclusion who can be reached at arabin@mccaberabin.com.

Adrienne Rabinowitz is an Assistant United States Attorney in the United States Attorney's Office for the Southern District of Florida and can be reached at adrienne.rabinowitz@usdoj.gov.

If you are interested in the Board Certification Boot Camp program offered by PBC FAWL, e-mail arabin@mccaberabin.com and adrienne.rabinowitz@usdoj.gov.



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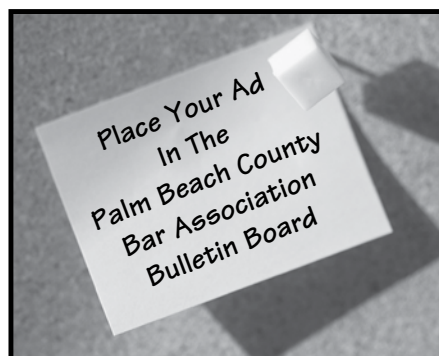
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2016 Real Estate Practice Update



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Program Schedule

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



SPONSORED BY:



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

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

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

___ 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



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



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



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

Name: _____

Telephone: _____

Address: _____

City/Zip _____

Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (1/29/16 R/E) Cost is the same as listed above, in addition to \$10 for shipping and handling.

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


ARE YOUR CLIENTS COMPETENT TO SIGN THAT WILL, TRUST OR CONTRACT?

THE EFFECTS OF ALZHEIMER’S AND DIMINISHED CAPACITY ON OUR CLIENTS

Members of our **North County Section** are invited to a special presentation featuring Dr. Ronald Davis, Founding Chair of Neuroscience at The Scripps Research Institute in Jupiter. Learn about the exciting research taking place in our own backyard! Meet Dr. Davis, along with other local scientists, during our cocktail reception. Space is limited. **RSVP today!**



Dr. Ronald Davis, Founding Chair
Neuroscience - Scripps Institute


THE SCRIPPS RESEARCH INSTITUTE®
TUESDAY, FEBRUARY 23, 2016
5:00 P.M. TO 7:00 P.M.
SCRIPPS INSTITUTE OF TECHNOLOGY
120 SCRIPPS WAY (BUILDING B)
JUPITER
1 GENERAL CLE & 1 ELDER LAW CLE

RONALD DAVIS is one of the nation’s leading experts on the molecular biology of learning and memory. He completed his doctorate in genetics at the University of California, Davis, in 1980. As a postdoctoral Fellow with Norman Davidson at the California Institute of Technology, he began to use molecular biological tools to approach the problem of learning and memory. His basic research has broad implications for many psychiatric and neurological diseases, including schizophrenia, autism, Alzheimer’s disease, attention deficit hyperactivity disorder and mood disorders. He has received numerous awards for his pioneering research, including the prestigious Jacob Javits Award.

Sponsored by:



HOW TO REGISTER



BY CHECK

Return this form



BY CREDIT CARD

For security purposes, you must register online at www.palmbeachbar.org

NAME: _____ PHONE: _____

- NCS Member Price: \$20.00
- Judges are complimentary: - 0 -
- Non section members and spouses are welcome for \$30.00



Medical School for Lawyers



Thursday, February 25, 8:15 a.m. – 5:00 p.m.
PBCBA - 1507 Belvedere Road, WPB, FL 33406

- 8:15am - 8:40am **Late registration / Check in / Breakfast**
- 8:40am - 8:50am **WELCOME, Introduction of Program Committee, and Opening Remarks** - Timothy Murphy, Esq., Personal Injury of Florida and Matthew Lane, Esq., Matthew Lane and Associates, PI/Wrongful Death Co-Chairpersons
- 8:50am - 9:40am **Diagnostic Testing, MRIs of Cervical and Lumbar - How to read and what to look for**
Speaker TBA
- 9:40am - 10:30am **TBI - Symptoms to look for. Diagnostics/Treatment** - Andrew Walker, M.D., Beaches Open MRI, LLC
- 10:30am - 10:40am **BREAK**
- 10:40am - 11:30pm **Non-Invasive Procedures and Enriched Platelet Therapy** - Lawrence S. Gorfine, M.D., Palm Beach Spine Diagnostics Institute
- 11:30pm - 12:20pm **Spine Injury and Surgery** - Alexander N. Leonard, M.D., Orthopaedic Care Specialists
- 12:20pm - 1:20pm **LUNCH** (provided)
- 1:20pm - 2:10pm **Lower extremities, Common Trauma Injuries, Affected Anatomy/Treatment** - Joseph B. Chalal, M.D., Performance Orthopedics
- 2:10pm - 3:00pm **Upper Extremities, Common Trauma Injuries and Affected Anatomy/Treatment**
Rajen Nadioo, MD, Orthopedic Special Surgery of the Palm Beaches
- 3:00pm - 3:10pm **BREAK**
- 3:10pm - 4:00pm **Life Care Plans - What they Are, How They Work and Separating the Wheat from the Chaf** - Craig H. Lichtblau, M.D.
- 4:00pm - 5:00pm **Happy Hour**

Sponsor:



This course is expected to receive 7.0 credits from The Florida Bar. Early registration cost for the seminar is \$ 175 for PBCBA members/paralegals, \$ 225 or non-PBCBA members/paralegals if registered by 2/18/16; add **\$20** late fee to registration if after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

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

HOW TO REGISTER	BY CHECK Return this form	BY CREDIT CARD For security purposes, your must register online at www.palmbeachbar.org		Materials will now be emailed to all registrants prior to the seminar
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If you can't leave the office, you can attend via live webinar by registering at <http://www.palmbeachbar.org>

Name: _____

Address: _____

Email Address: _____ Phone: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/25/16 PI) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY WITH THIS FORM.**

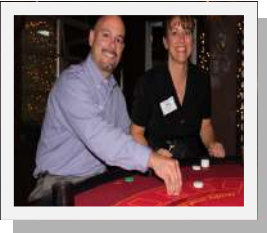


After a 4 year hiatus, the North County Section
brings back its

BBQ & CASINO NIGHT



THURSDAY FEBRUARY 4, 2016
5:30 p.m. to 8:00 p.m.
BONNETTE HUNT CLUB
5309 Hood Road
Palm Beach Gardens



Your Night Includes
Two Complimentary Cocktails,
Dinner, Dessert,
Live Music, Black Jack, Roulette
and Craps tables,
plus Prizes too!



Everyone eligible for prizes whether you play or
just attend the dinner



Dress is business casual



Register online @ www.palmbeachbar.org (or) Mail a check, along with this portion of the form to: Palm Beach County Bar Association, 1507 Belvedere Road, WPB 33407
Attention: NCS BBQ & Casino Night

- NCS Member (\$25) _____
- Judges: (complimentary) _____
- PBCBA Members & Spouses, but Not NCS Section Member (\$35) _____
- Attorney, but not a member of PBCBA (\$70) _____

Price increases by \$10.00 after 5:00 p.m. on February 1, 2016



D'Amore Law Firm, P.A.



Bob Greenberg, CLTC
Insurance Services

ADR in 2016 - Challenging Old Paradigms

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

8:00am – 8:30am **Late Registration/Check In**

8:30am – 8:40am **Welcome & Opening Remarks** - Theodore A. Deckert, Esq., Matrix Mediation, LLC; Certified Circuit Civil, Family and County Mediator; Florida Supreme Court Qualified Arbitrator; Committee Chair

8:40am – 10:10am **What do ADR Consumers Want? Q&A** - Moderated Panel of attorneys, Insurance adjustors, public and private risk managers will share what they want from ADR Professionals

Moderator: Theodore A. Deckert, Esq., Matrix Mediation LLC. **Panelists:** Plaintiff Attorney Jack Scarola, Esq. - Searcy, Denny, Scarola, Barnhart & Shipley, PA; Insurance Defense Attorney Gregory T. Anderson, Esq. - Anderson Mayfield Hagan & Thron, P.A.; Insurance Adjustor Cindy M. Ruehl, CLA - Geico Insurance Company; Risk Manager Julie Sassa - Palm Beach County School Board; Family Attorney Victoria A. Calebrese, Esq. - Victoria Calebrese PA; Commercial Litigation Attorney Patricia A. Leonard, Esq. - Shutts & Bowen, LLP; Corporate Counsel Gregory S. Tendrich, Esq. - Gregory Tendrich, PA

10:10am - 10:20am **Break**

10:20am – 11:10am **Arbitration Under Revised Ch. 682** - Donna Greenspan Solomon, Esq., Solomon Appeals, Mediation & Arbitration; Certified Circuit Civil, Appellate and Family Mediator; FL Supreme Court Qualified Arbitrator

11:10am – 12:00pm **ADR Case Law & Ethics Update (E)** - W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., PA; Certified Circuit Civil, Appellate and Family Mediator; Florida Supreme Court Qualified Arbitrator

12:00pm - 12:40pm **Lunch topic/speaker: Effectively Using Social Media in Mediation Marketing** - David Steinfeld, Esq., Law office of David Steinfeld PL. *****LUNCH Sponsored by: Matrix Mediation, LLC*****

12:40pm – 1:30pm **Dealing with High Emotions in Mediation** - Psychologist Sheila Cohen Furr, Ph.D., A.B.N., Board Certified in Clinical Neuropsychology by the American Board of Professional Neuropsychology; Certified Family Mediator

1:30pm – 2:20pm **What??? DV in Non-Family Law Cases???. (DV)** - Robin Caral Shaw, Esq., Robin Caral Shaw, PA; Certified Circuit Civil, Family and Appellate Mediator; Amy S. Wolsky, Esq., Amy S. Wolsky Mediations; Certified Circuit Civil, Family, Appellate and County Mediator

2:20pm - 3:10pm **"It's Legal Now, But Not That Simple. LGBT ADR Issues Under Current Law"(CD)** - Elizabeth F. Schwartz, Esq., Elizabeth F. Schwartz PA; Certified Family Mediator

3:10pm – 3:20pm **BREAK**

3:20pm – 5:00pm **Challenges of Mediating Outside The Box But Inside the Ethics Rules Q&A (E)**- Interactive discussion between attendees and panel of experienced mediators

Moderator: W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., PA. **Panelists:** Rodney G. Romano, Esq., Matrix Mediation LLC; Certified Circuit Civil Mediator; Jeffrey Grubman, Esq., JAMS; Certified Circuit Civil Mediator; Kim Nutter, Esq., Brinkley Morgan; Certified Family Mediator ; R. William Rutter, Jr., Esq., Sonneborn Rutter Cooney & Smith PA; Certified Circuit Civil Mediator

This course has been granted **9.5 CLER including 3.0 Ethics credits from The Florida Bar**. Early registration cost is **\$260** for PBCBA members/paralegals; **\$310** for non-PBCBA members/paralegals if registered by 2/1/16; add \$25 late fee after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.** "This course is eligible for up to 8.5 CME hours. Mediators are required to self report those hours applicable to their areas of certification at the time of their renewal. For more info on the CME requirement, visit, www.flcourts.org, select Alternative Dispute Resolution/Mediation."

____ 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.

Register by check or credit card (For security purposes, you must register online at www.palmbeachbar.org. If you can't leave the office, you can attend via live webinar by registering at <http://www.palmbeachbar.org>

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/8/16 ADR) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.** PBCBA, 1507 Belvedere Road, West Palm Beach, 33406

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



Pre-Trial Issues in Business Litigation Cases



Thursday, March 3 - 8:00am - 12:00pm
PBCBA, 1507 Belvedere Road, W. Palm Beach

Program Schedule

8:00am - 8:25am **Late Registration / Check In / Breakfast**

8:25am - 8:30am **Welcome and Opening Remarks** - *Kent Frazer, Esq., Akerman; Business Litigation CLE Committee, Chair*

8:30am - 9:20am **Engagement and valuation: Who is Your Client and Does He/She/It Have Authority to Retain? Pros, Cons and Ethical Considerations of Hourly, Hybrid and Contingency Fee cases. Assessing damages or valuation based on nature of engagement. The Engagement Agreement: how to protect the lawyer and the firm.** *Brian S. Bull, Esq., Scott, Harris, Bryan & Jorgensen, P.A.; Board Certified in Business Litigation*

9:20am - 10:10am **Discovery and E-Discovery in Business Litigation Cases** - *David Steinfeld, Esq., Law Office of David Steinfeld, P.L.; Board Certified Business Litigation*

10:10am - 10:20am **BREAK**

10:20am -12:00pm **Judicial Roundtable: View from the Bench and with Seasoned Business Trial Lawyers on Hot Topics in Business Litigation** - *Judges and attorneys TBA*

Sponsored by:



This course has been granted **4.0 CLER and 1.0 Ethics credit, including 4.0 certification credits in Business Litigation** from The Florida Bar. Early registration cost for the seminar is \$115 for PBCBA members/paralegals, \$165 for non-PBCBA members/paralegals if registered by 2/25/16; Add \$15 to registration fee after that date.

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

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PAYMENT OPTIONS:



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



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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: _____

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) (3/3/16 Bus. Lit) Cost is the same as listed above, in addition to \$10 for shipping and handling.

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

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

**“Appellate Practice in the Electronic Age:
Electronic Records, Clerk’s Office Procedures, and Privacy Rules”**
A panel discussion and question and answer session



Friday, March 4 - 11:30am - 1:00p.m.
PBCBA Offices - 1507 Belvedere Road, WPB



Program Schedule

- 11:30am - 11:55am **Lunch and Check-In**
- 11:55am - 12:00pm **Welcome - Opening Remarks** - Nichole J. Segal, Esq.,
Burlington & Rockenbach, P.A.
- 12:00pm - 1:00pm **Panel Discussion**

- * Lonni Wiessblum, Clerk, 4th District Court of Appeal
- * Judges from the 4th District Court of Appeal
- * Clerks from County Court

Lunch Sponsored By:





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


Early registration cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;
\$75 for non-PBCBA member attorneys/paralegals if registered by 2/26/16; add \$20 late fee after that date.
All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.


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PAYMENT OPTIONS:

 If paying by credit card, please go to our secure website to register: 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.palmbeachbar.org/>. **PLEASE NOTE: If you register for the webinar, you cannot attend the live version.**

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

Name: _____ Telephone: _____

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) (Appellate Practice CLE Seminar 3/4/16. Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK ONLY, WITH THIS FORM.**



IN NEED OF CLER CREDIT? WE CAN HELP!

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audio CD's recorded at previously held live seminars of the Association. We also have copies of audio CD's of live seminars from the Orange Co. Bar Assoc. (OCBA), Clearwater Bar Assoc.(CBA), Hillsborough Co. Bar Assoc.(HCBA), and the Dade Co. Bar Assoc.(DCBA). Members and non-members alike can benefit from this simple way of acquiring CLE and Ethics hours.

This is just a sampling of the courses that we have available for either download or on CDs that can be mailed to you.

To order, please go online at <http://www.palmbeachbar.org/continuing.php>

CLE content is now available to purchase to download either to your computer or your iPod

✓	Sponsor	Course Title	Credit Gen'l	Ethics Hours	PBCBA Member	Non Member	Expires
	PBCBA	Crash Course on Auto Negligence Cases+++1.0 Civil Trial Cert.	1.0		\$25	\$65	01/25/16
	PBCBA	Getting to Basics of Bankruptcy	3.0	1.0	\$90	\$130	03/12/26
	PBCBA	Art of Motion Calendar	1.0		\$25	\$65	03/24/16
	PBCBA	A Mediator's Secrets to Mediating Business Disputes ++++ 1.0 Business Law	1.0		\$25	\$65	03/16/16
	PBCBA	Ethics of Technology Assisted Review	1.0	1.0	\$40	\$80	04/22/16
	PBCBA	The 32 nd Annual Estate and Probate Seminar	4.5	1.0	\$130	\$170	05/07/16
	PBCBA	2014 Update: A Panel Discussion of E-discovery for Comm. Lit.+++1.0 Business Law	1.0		\$25	\$65	05/10/16
	PBCBA	How to Ethically Perform e-Discovery	1.0	1.0	\$40	\$80	06/08/16
	PBCBA	The Elder Law Practice: Policy, Procedure and Protocol+++4.5 Elder Law	6.0	2.0	\$180	\$220	06/10/16
	PBCBA	Real Estate Lessons for the Real World	4.0	1.0	\$115	\$155	07/16/16
	PBCBA	What is an e-Neutral	1.0		\$25	\$65	07/21/16
	PBCBA	ESI Discovery for the Technically Challenged	1.0		\$25	\$65	07/26/16
	PBCBA	The Ever-Changing Landscape of Worker's Compensation	5.5		\$140	\$180	7/30/16
	PBCBA	The Ever Changing Landscape of Workers' Compensation	5.5		\$125.00	165.00	07/30/16
	PBCBA	The Litigator's Guide to Using Daubert Experts	2.0		\$50	\$90	8/11/16
	PBCBA	National Labor Relations Board's 2014 Hot Topics	1.0		\$25	\$65	8/18/16
	PBCBA	Taking Effective Depositions+++1.0 Bus. Lit	1.0		\$25	\$65	8/24/16
	PBCBA	Five Tech Tips to Help You Work Smarter	1.5		\$45	\$85	9/5/16
	PBCBA	Social Media for Lawyers	1.0		\$25	\$65	9/11/16
	PBCBA	The Basics of Family Law You Thought Your Already Knew+++6.5 Family Law	8.5		\$210.00	\$250.00	11/8/16
	PBCBA	DOL Update: Directives, Initiatives and the Regs+++1.0 General	1.0		\$25.00	\$65.00	11/11/16
	PBCBA	32 nd Annual Estate & Probate Part 2+++3.0 Estate & Probate	4.0		\$100.00	\$140.00	11/15/16
	PBCBA	Securities Arbitration+++ 1.0 Business Law	1.0		\$25.00	\$65.00	11/19/16
	PBCBA	Making Time for What Matters	1.0		\$25.00	\$65.00	11/21/16
	PBCBA	Marketing & Business Structure for Law Firms	1.0		\$25.00	\$65.00	11/28/16
	PBCBA	Preparing Your Real Estate Practice for Evolving Marketplace	4.0		\$100.00	\$140.00	11/29/16
	PBCBA	The 26 th Annual Community Association Law Seminar	5.5		\$140.00	\$180.00	12/5/16
	PBCBA	Labor and Employment Law Committee Annual Half Day Seminar	5.0	1.0	\$140.00	\$180.00	12/12/16
	PBCBA	Law Firm Partnership: Structure Forming & Dissolving	1.5		\$35.00	\$75.00	11/13/16
	PBCBA	Effective Jury Communication: Voir Dire and Beyond	1.0		\$25.00	\$65.00	12/19/16
	PBCBA	Impact of Bankruptcy on Personal Injury / Tort Based Claims	1.0		\$25.00	\$65.00	12/24/15
	PBCBA	Amended Local Rule 4 – Art of Uniform Motion Calendar	1.5		\$35.00	\$75.00	03/16/17
	PBCBA	Digital Preparation & Presentation (Technology)	1.0	0.0	\$25.00	\$65.00	5/3/17
	PBCBA	It's All Your Fault, Maybe Not...+++Marital & Family 4.5	4.5	.5	\$135	\$175.00	5/13/17
	PBCBA	Workers Comp – Carving Out Comp Issues +++5.0 WC	5.0	0.0	\$125.00	\$165.00	5/19/17
	PBCBA	Proposals for Settlement +++1.0 CT	1.0	0.0	\$25.00	\$65.00	7/30/17

+++Indicates Certification credits available; **CME credits.



PALM BEACH COUNTY BAR ASSOCIATION
BULLETIN

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1507 Belvedere Road, West Palm Beach, FL 33406

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

CALENDAR

January 2016

- | | | | |
|--|--|--|---|
| <p>Wednesday, January 6,
12:00 pm - 1:00 pm
Transaction Law Committee Meeting
Bar Association Office</p> <p>Friday, January 8,
8:30 am - 9:30 am
ADR Committee Meeting
Bar Association Office</p> <p>Tuesday, January 12,
12:00 pm - 1:00 pm
YLS Board Meeting
Bar Association Office</p> <p>Wednesday, January 13,
10:00 am - 11:30 am
New Attorney Seminar Differences Between Local Rules, Administrative Orders & Division Instructions
Bar Association Office</p> <p>Wednesday, January 13,
12:00 pm - 1:00 pm
FAWL Board Meeting
Bar Association Office</p> | <p>Wednesday, January 13,
12:00 pm - 1:00 pm
Professionalism Committee
Bar Association Office</p> <p>Thursday - Saturday,
January 14 - 16,
YLD Board of Governors & AOC Conference
St. Augustine</p> <p>Thursday, January 14,
11:45 am - 1:00 pm
FAWL Membership Lunch
Cohen Pavilion</p> <p>Thursday, January 14,
12:00 pm - 1:00 pm
Circuit Civil Practice Committee
Judicial Conference Room</p> <p>Thursday, January 14,
12:00 pm - 1:00 pm
Solo and Small Firm Luncheon
Bar Association Office</p> <p>Friday, January 15,
8:00 am - 5:00 pm
PI CLE Seminar
Bar Association Office</p> | <p>Friday, January 15,
12:00 pm - 1:00 pm
Federal Bar Luncheon
Kravis Center</p> <p>Monday, January 18,
MLK Day Observed
Bar Office Closed</p> <p>Tuesday, January 19,
12:00 pm - 1:30 pm
NCS Board Meeting
Duffy's (North Palm Beach)</p> <p>Wednesday, January 20,
11:30 am - 1:30 pm
Employment Law CLE Seminar
Bar Association Office</p> <p>Wednesday, January 20,
12:00 pm - 1:00 pm
BBC Committee Meeting
Bar Association Office</p> <p>Thursday - Saturday,
January 21 - 23
TFB Winter Mtg Hilton Orlando</p> <p>Wednesday, January 20,
5:30 pm - 7:00 pm
YLS Happy Hour
Roxy's Rooftop,
Downtown West Palm Beach</p> | <p>Friday, January 22,
11:30 am - 2:00 pm
NCS CLE
Bar Association Office</p> <p>Saturday, January 23
YLS 5K Run/Walk</p> <p>Wednesday, January 27,
11:30 am - 1:00 pm
Technology CLE Seminar
Bar Association Office</p> <p>Wednesday - Friday,
January 27 - 29
TFB Board of Governors
Tallahassee</p> <p>Wednesday, January 27,
5:00 pm - 6:00 pm
Board Meeting
Bar Association Office</p> <p>Thursday, January 28,
12:00 pm - 1:00 pm
Judicial Lunch; Sanctions
North County Courthouse</p> <p>Friday, January 29,
8:00 am - 1:00 pm
Real Estate CLE Seminar
Bar Association Office</p> |
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