



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

July/August 2009

Join us!

Summer Cocktail Reception & Spelling Bee

presented by the
Lawyers for Literacy Committee

Wednesday, August 19
5:30 p.m. to 7:30 p.m.
Bear Lakes Country Club
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Cost: \$25.00 for members;
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Proceeds benefit local literacy programs

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Members of the Board of Directors were recently sworn in at the 87th Annual Installation Banquet where more than 500 attended. After the ceremony, the Board had some fun with their formal photo. Seated in the front row are: John Howe, director; Jill Weiss, director; Michael Napoleone, president-elect; Justice Barbara Pariente, FL Supreme Court; Michelle Suskauer, president; and Richard Schuler, immediate past president. Back row: John Whittles, director; Theo Kypreos, Young Lawyers Section President; Adam Rabin, director; Maureen Martinez, director; Jason Guari, director; Debra Jenks, North County Section President; and Wade Bowden, director. Additional photos from the banquet can be found on page 17.

Mark your calendar for upcoming Member Events

Annual Membership Reception/ Spelling Bee

August 19, 5:30 p.m.
Bear Lakes Country Club

Second Annual Texas Hold 'Em Tournament

September 17, 5:30 pm
Crowne Plaza Hotel

Diversity Luncheon and Summit

September 24, 11:45 – 5:00
Luncheon Speaker: FL Supreme Court Justice Peggy Quince
Panel Members to include FL Supreme Court Justices Jorge Labarga, Barbara Pariente and former Justice Harry Lee Anstead
Marriott West Palm Beach

Inaugural Variety Show

November 14, 6:30 pm
Eissey Theater in Palm Beach Gardens

Annual Holiday Party

December 10, 5:30 p.m.
Frenchman's Reserve
in Palm Beach Gardens

Bench Bar Conference

February 19, 2010
Palm Beach County Convention Center

Don't miss the Bar's Inaugural Variety Show

Mark your calendar for Saturday, November 14th for our first Lawyer Variety Show at the Eissey Theatre in Palm Beach Gardens. Join us for cocktails and a fun night of musical performances, dancing and even comedy!

Proceeds from the event will benefit the Legal Aid Society of Palm Beach County and the North County Section's Scholarship Fund at Palm Beach Community College.

Tickets will go on sale soon. To participate in the show, or for sponsorship information including limited advertising in the program, please contact Lynne Poirier at 687-2800.



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THE
BULLETIN

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

LETTERS TO THE EDITOR

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



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



The Bar recently hosted its second Leadership Seminar which over 60 members attended. Pictured above are program chairs Robin Bresky and Michael Napoleone along with panel members Judge Peter Blanc, Atticus Advisor Nora Bergman, Federal Judge and former FL Bar President Patricia Seitz, Retired Judge Edward Rodgers and FL Bar Board of Governors Rep Scott Hawkins.

HAVEN'T PAID YOUR PBCBA DUES YET?

This will be your last issue of the *Bulletin*

PBCBA dues statements were mailed in April.

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RENEW TODAY! Contact Shoshanah Spence at 687-2800

or renew online at www.palmbeachbar.org



The Palm Beach County Bar Association once again partnered with the Hillsborough County and Clearwater Bar Associations by taking a group of attorneys to Washington, D.C. to be sworn in before the U.S. Supreme Court. Members from Palm Beach County pictured above are Robin Bresky, Jill Weiss, Lisa-Marie Lerner, Journey Beard, Keith Backer, William Sklar, Scott Wortman, Marilyn Moore, Vicky Vilchez and David and Kathleen King. Not pictured are: Nancy Banner, Hubert McGinley and Grace Murtada.

President's Message



It Takes a Lawyer to Make a Difference

By Michelle R. Suskauer, President

I am so honored to be writing to you as the 87th President of the Palm Beach County Bar

Association. Our association has grown to over 2900 members, practicing every imaginable specialty. We've had an increase in our public sector attorneys due in part to our new "Government Attorney Stimulus" package that was instituted in April. Stealing the stimulus idea from President Obama, we are offering government attorneys who have never been members or have allowed their membership to lapse, an opportunity to join the Bar Association at a reduced membership rate of \$35.00 for this year. As a former assistant public defender, I know that government attorneys bring an important perspective and should have a voice in our association.

We have some fantastic programs planned for the fall. Our annual Spelling Bee will be held on August 19th at The

Bear Lakes Country Club and will feature some of our members spelling challenging words; hopefully proving that they are "Smarter than a 5th grader"! Our top three spellers will participate on our team in the Great Grown Up Spelling Bee in September benefitting the Literacy Coalition of Palm Beach County. On September 24th, Chief Justice Peggy Quince of the Florida Supreme Court will be the keynote speaker at our first Diversity Symposium. To date, this important half-day program is being co-sponsored with the F. Malcolm Cunningham Sr. Bar Association, the Hispanic Bar Association, South Palm Beach County Bar Association and the Florida Association for Women Lawyers — Palm Beach County and South Palm Beach County Chapters.

Our Inaugural Variety Show will be premiering on Saturday, November 14 at the Eissey Theater in Palm Beach Gardens. This professional production will star our own members who will entertain you with their incredible talent,

astound you with their theatrical abilities, and display their artistic creations, all to benefit The Legal Aid Society of Palm Beach County. If you are interested in performing or in sponsoring this incredible event, contact Lynne Poirier at the Bar offices no later than August 17.

It is wonderful to go to events, to network and socialize, but as lawyers in this community, we have an obligation to make it better, to make a difference. Many of us do good work through charitable organizations. However, I will be calling on each of you help improve the Pro Bono efforts in this county and to join in our educational initiative with the school district.

A report issued by The Florida Bar's Standing Committee on Pro Bono Legal Service noted that the numbers of attorneys providing pro bono legal services for the poor has stagnated and that fewer attorneys are participating in organized pro bono programs. We must renew our passion for providing pro bono legal services. In partnership with The Legal Aid Society, we will be coordinating this effort with other voluntary bar associations and local law firms in order to change this trend. I will be looking to you to make this possible.

Most of us are familiar with an old African proverb that "It takes a village to raise a child". It has been the subject of many books, educational seminars, and argued in the media. Do we have the responsibility, the obligation to help "raise" other people's children? There are approximately 169,000 children in our "village" spread throughout 185 schools. Palm Beach County is the 5th largest school district in the State of Florida, the 12th largest district in the country. As attorneys and community partners, we have the power and the obligation to impact children, to make a difference in their lives. Our Bar has forged a partnership with the School District of Palm Beach County as part of our education initiative. I will be calling on you to get involved as a volunteer in our schools. Please watch your email for a volunteer survey. Please return it promptly as we will be matching up attorneys with different schools and programs. If it takes a village to raise a child, then we better get started.

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Bar's Twitter account
twitter.com/PBCBarPrez**

Who are they?

In continuing with a project started by the Historical Committee, we will continue to run old photos of some of our members. Can you guess who they are?

Do you have old pictures of yourself or your associate? If so, send them to Patience Burns at the Bar office for use in future issues.

Answers on page 10



Lawyers Have Heart 5K Run Update

Submitted by Al LaSorte



In case you've been living under a rock and missed the big announcement last month, please mark your calendars for Saturday, September 26, 2009 for the inaugural running of the Lawyers Have Heart 5K Run along beautiful Flagler Drive in West Palm Beach.

The PBC Bar Association is partnering with the American Heart Association on this run, which is exclusively for the legal community, including all lawyers, their staffs and families, and will take place on the same day as the AHA's 5K Start Heart Walk, which last year drew over 10,000 participants.

So far, the response from the legal community has been wildly enthusiastic, with several firms already committing to field teams of runners, with more signing up every week, including:

- Shutts & Bowen**
- Jones, Foster, Johnston & Stubbs**
- Greenburg Traurig**
- Casey Ciklin Lubitz Martens & O'Connell**
County Attorney's Office
- Scott Harris Bryan Barra & Jorgensen, P.A.**
- Searcy Denney Scarola Barnhart & Shipley**
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- McCabe Rabin, P.A.**
- The Suskauer Law Firm**
- Buckingham, Dootlitt & Burroughs, LLP**
- Clerk & Comptroller of Palm Beach County**
- Gunster**
- FAWL – Palm Beach County Team**

Based on this fast start, our goal of 500 runners is well within reach. If your firm hasn't yet been contacted about getting involved, don't wait, call Al LaSorte at 561-252-0909, or Mary Katherine Morales of the American Heart Association, 697-6617 and they'll take it from there!

SCALES OF JUSTICE CHALLENGE!



Meanwhile, as most of you know, as part of the roll out of the Lawyers Have Heart 5K Run, we also created a challenge to promote healthy lifestyle change among members of the PBC Bar, via a new and exciting program, The Scales of Justice Challenge. We chose two lawyers, one man and one woman, from more than

thirty applicants, to work one-on-one with personal heart rate trainer Michelle Kramer, and with nutritionist Dr. Maureen Sullivan, D.C. We selected Mike Kranz of Jones, Foster, Johnston & Stubbs and Julia Jennison of Lewis, Longman and Walker to go head to head! Mike and Julia already been hard at work with Michelle and Dr. Sullivan for the last six weeks.

Both Mike and Julia have committed to a sixteen week program, culminating with running the LHH 5K Run on September 26, so look for them on the course!

Every Tuesday, Mike and Julia meet Michelle for their weekly workouts, one-on-one. They follow a strict, six day training program each week on line, with daily accountability, and without excuses! Mike and Julia have both completed their detox program with Dr. Sullivan and are feeling incredible. They meet with Dr. Sullivan once a week in person. Both feel energized and are very excited about the changes they are already seeing. Keep up the great work, Mike and Julia!

We will fill you all in next time on who is ahead in this competition, so stay tuned!



Arbitration? Not So Fast

by Ted Babbitt

When a valid arbitration agreement exists, Courts favor its implementation, however, there are many reasons why an arbitration agreement may not be enforceable. In Curcio v. Sovereign Healthcare of Boynton Beach, LLC, 34 Fla. L. Weekly D719 (Fla. 4th DCA, April 8, 2009), a nursing home arbitration agreement that had been signed by the resident at the time of her admission was in issue. A motion to compel arbitration was made and plaintiff took the position that the arbitration agreement was unconscionable because the resident, who subsequently died, had no choice but to sign the arbitration agreement in order to obtain necessary medical care and that she was not competent to understand the agreement or the rights she was waiving by signing the agreement.

Fla. Stat. 682.03(1) provides that a court may compel arbitration only if the Court is satisfied that "no substantial issue exists as to the making of the agreement or provision." The Courts of Florida have interpreted this statute to require an expedited evidentiary hearing if any substantial disputed issue exists concerning the making of the

agreement. Linden v. Auto Trend, Inc., 923 So. 2d 1281, 1282 (Fla. 4th DCA 2006) (citing Merrill Lynch Pierce Fenner & Smith, Inc. v. Melamed, 425 So. 2d 127, 129 (Fla. 4th DCA 1982), Tandem Health Care of St. Petersburg, Inc. v. Whitney, 897 So. 2d 531, 532 (Fla. 2d DCA 2005).

The trial judge in the Curcio case refused to hear evidence concerning the agreement despite the existence of these cases. The Fourth District panel unanimously reversed holding at 719 that

"Here, plaintiff demonstrated through her written response in opposition to the motion to compel and her arguments at the non-evidentiary hearing on the motion that she disputed the 'making of' the arbitration agreement. The trial court implicitly acknowledged that there were issues in dispute regarding the making of the Agreement and 'retain[ed] jurisdiction to reconsider the dismissal of th[e] case pending the development of sufficient grounds during the arbitration process.' The court, however, was required by statute to conduct an evidentiary hearing to resolve the disputed issues before sending the case to arbitration. We therefore reverse the trial court's order compelling arbitration and remand for an evidentiary hearing. On remand, if, after holding an evidentiary hearing, the court decides to grant the

defendant's motion to compel arbitration, it should stay rather than dismiss the plaintiff's case." (citing cases).

Disputes about the making of an arbitration agreement are not the only reason why it may not be enforceable. The right to have an arbitration agreement enforced can be waived. If a defendant participates in the lawsuit before making a motion to compel arbitration, that defendant may well waive the right to compel arbitration. Raymond James Fin. Servs., Inc., v. Saldukas, 896 SO. 2d 707, 711 (Fla. 2005); Seifert v. U.S. Home Corp., 750 So. 2d 633, 636 (Fla. 1999), Marine Envtl. Partners, Inc. v. Johnson, 863 So. 2d 423, 426-27 (Fla. 4th DCA 2003). Filing and losing a motion to dismiss alone results in a waiver of arbitration. R.W. Roberts Constr. Co. v. Masters & Co., 403 So. 2d 1114, 1115 (Fla. 5th DCA 1981). As does actively conducting discovery. Mora v. Abraham Chevrolet-Tampa, Inc., 913 So. 2d 32, 34 (Fla. 2d DCA 2005).

Seifert v. U.S. Home Corp., supra, is the most significant case relative to the issue of compelling arbitration. That case makes it clear that the issues in the civil lawsuit must be the same issues that the parties had contractually agreed to arbitrate in order to grant a motion to compel arbitration. See also King Motor Co. of Ft. Lauderdale v. Jones, 910 So. 2d 1017, 1019-20 (Fla. 4th DCA 2005).

Continued on page 27

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Honoring Florida Supreme Court Justice Labarga



The Bar recently held a membership dinner honoring Justice Jorge Labarga for his appointment to the Florida Supreme Court. The event included a roast compliments of his good friends and colleagues. (at least, they were considered "good friends" before the jokes were told in front of 200 members!)



If you didn't think Judge Jonathan Gerber was funny, think again! Judge Gerber, Doug Duncan, Judge Sandra McSorley and Bill Pruitt told jokes, showed old pictures and had everyone laughing!



Special guest Florida Supreme Court Justice Jorge Labarga and Federal Judge Kenneth Marra



Earl Denney, Joan Williams and Jay White



Len Rubin and Julie Littky-Rubin



4th DCA Judge Fred Hazouri and Ruth and Ward Wagner



Justice Jorge and Zulma Labarga and Chris Searcy



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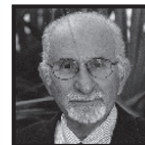
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"A Sustained Commitment to Diversity"

By John Howe and Adam Rabin



PBCBA Launches Diversity Task Force and Will Host Inaugural Diversity Summit with Keynote Luncheon Speaker FL Supreme Court Chief Justice Quince

Many reading this article will agree that in the last year, Americans have witnessed many historical events impacting issues of diversity and race relations in our society, including the election of our nation's first African-American President. This development and others may signal that we, as a society, may be improving our collective ability to discuss diversity and race issues in a productive manner. However, these issues still have the potential to evoke strong emotions in many when discussed.

Since the Presidential election cycle ended, we increasingly have heard references to something called the "post-racial era." This moniker may imply that there is less need to emphasize diversity and race issues now as we did before the election because a minority has been elected to the presidency. However, many believe that timing is right for our local, legal community to work towards the elimination of diversity or racial barriers that still carry over from the past.

On that note, many leaders and members within the Palm Beach County Bar Association ("PBCBA") recognize that there is still a need for focus on issues of diversity and what we can continue to do to improve it within our legal community. As such, the PBCBA Board of Directors has formed a Diversity Task Force, and the first order of business was to conduct a diversity survey of its membership, and based on the results, we have some to work to do to bring the numbers more in balance with the community as a whole. You may view the results at www.palmbeachbar.org/downloads/diversity.pdf

The results of the recent diversity survey did not come as a surprise to some. For decades before the last election cycle, issues of diversity in the Palm Beach County legal community have been raised by people of every race, gender and economic stratus. And, while much progress has been made (which

should be celebrated), progress, in the way of numbers, has been slow. Many of the pioneers who sought to address these issues have retired or are near retirement. Others grew tired of the tough challenges and gave up. Others died trying to effect change - literally. The reason progress has been so slow, in part, is that discussing issues of diversity and race makes people uneasy, and it is easier to just avoid the topic altogether.

Over the course of the last year, PBCBA's Board of Directors has sought to undertake the initiative to address issues of diversity, in both the PBCBA's membership and our legal community as a whole. PBCBA president, Michelle Suskauer, and immediate past president, Richard Schuler, designated the two of us to work together to form a Diversity Task Force. The Diversity Task Force is currently comprised of 36 leaders representing law firms of all sizes, the bench, PBCBA's board, Florida Association FOR Women Lawyers, F. Malcolm Cunningham. Sr. Bar Association and the newly rejuvenated Palm Beach County Hispanic Bar Association.

In just a matter of months, the Diversity Task Force has made marked progress in identifying and addressing diversity issues. The Task Force's focus will be centered on instituting four major, ongoing projects, each to be led by its own sub-committee:

- **PBCBA Inaugural Diversity Summit** with Chief Justice Quince on September 24, 2009 (Co-Chairs: Adam Rabin and Jessica Callow);
- **Law Firm Relations** (Co-Chairs: Manny Farach and John Whittles);
- **Minority Law Student Internship/Externship Program** (Co-Chairs: Bryan Poulton and Tanique Lee); and,
- **Marketing and Minority Recruitment** (Co-Chairs: John Howe and Laurie Cohen).

The ultimate goal is for our legal community to more closely reflect the community it serves. In creating these programs, we recognize that the only way to achieve our goal of improving diversity within the legal community is for us to make a sustained commitment to that goal.

PBCBA's Inaugural Diversity Summit on September 24, 2009

We are pleased to announce that the PBCBA will be hosting its inaugural *Diversity Summit* on September 24, 2009. FL Supreme Court Chief Justice Peggy Quince will be the keynote speaker for what promises to be a spectacular event. A membership luncheon will be hosted from 11:45 a.m. until 1:00 p.m. From 1 p.m. to 4:00 p.m., there will be panel and roundtable discussions comprised of representatives from the bench, bar, and possibly business community. A reception with Chief Justice Quince for summit attendees will follow.

The objective of the Summit is to celebrate progress, exchange practical ideas, and inform each other on how we can increase our legal community's diversity with productive initiatives.

Many reading this article may agree that meaningful diversity is good and is something that we should strive for. The real challenge, however, is mustering the will to discuss this issue openly, taking action and not allowing ourselves to become complacent. The PBCBA Board and Diversity Task Force are committed to structuring programs over the next year to build a healthy foundation on which we can build upon our commitment to "sustaining diversity" within our legal community, with measurable advances in the years to come. We invite your participation in the Summit and our other programs and welcome your input.

“Be a person of your word.”

By Kara Berard Rockenbach on behalf of the Professionalism Committee

A native South Floridian, Bob Bergin possesses the unassuming charm of a southern gentleman. His earliest memories are of living in Flavel Villages (student housing for married veterans) on the campus of the University of Florida. Bob has been a Gator ever since and is proud to be a double Gator graduate. After graduating from law school in December, 1976, Bob returned to Palm Beach County where he joined an insurance defense firm

then known as Brennan, McAliley, Albury & Hayskar where he received experience defending medical malpractice cases. Four years later, Bob decided to open up his own firm as a solo practitioner, continuing his legal experience and dedication to medical malpractice defense.

It was not until Bob experienced the “challenge” of an insurance company asking him to skate close to the edge of ethics that Bob had to decide just how important his integrity was to him. Taking the high road, Bob told the insurance company to “come pick up all your files.” Bob had no Plan B, but he knew his decision to maintain his integrity and professionalism was the right one. Bob

switched sides and has been representing plaintiffs in personal injury and medical negligence cases ever since.

When asked, Bob credits his moral compass to his upbringing, citing his parents and grandfather for molding his personal motto, “Be a person of your word.” Bob believes this applies to any profession. But, given our unique responsibility of helping people who trust us after a tragedy, he believes it is every lawyer’s duty to recognize the clients’ best interests as paramount. As Bob succinctly put it, “Clients are not commodities.”

On a great day, you will find Bob fishing or enjoying his boat with friends and family. On any given day, you will find Bob dispensing legal advice with integrity and practicing with professionalism. Kudos to Bob Bergin for being a leader in our legal community and practicing with professionalism.

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Use It or Lose It... Sign In and Sign On to New Court Technology

Submitted by Casey Jones, Technology Committee Chair

Lose what you ask. I'm talking about your easy access to a judge by email to set or cancel hearings. Most lawyers in our county are unaware of this capability. For the 18 people that have used the system you need to read no further. For the remainder I encourage you to finish this article and use the system.

Budget Crisis Affects Our Courts

We have all witnessed court employee positions not being filled, staff hours being cut, even judicial salaries have been cut by the legislature. The Clerk of Court has had to lay off many employees and close some offices due to cuts imposed by the Legislature. It will only be a matter of time before we feel these cuts in our practices. The civil filing fee is now \$401 for a circuit civil case whereas last year it was \$256. What did we get from the legislature in return for increasing the filing fee? Fewer employees and no new judges.

In June 2008 I proposed to Bar President-elect Richard Schuler that the PBC Bar do something to alleviate the fallout effect of the budget crisis in the 15th Judicial Circuit. More efficient technology between attorneys and the courts seemed to hold some answers. Technology has increased productivity in all sectors of our economy. What would life be like without your Blackberry, iphone, access to email and the internet? After lengthy discussions and brainstorming the Bar Association created the Judicial Technology Committee to work with the 15th Judicial Circuit to see what existing technology could be used to facilitate better and faster communication between attorneys and the court. Currently most judges' offices rely on the telephone for all communications. Many civil judges receive in excess of 100 calls a day. They have email but its use is restricted to court employees.

Our committee met with many judges, court personnel and the Clerk of Courts, to see what we could do to increase electronic communication. Other Circuits have adopted online scheduling, email communications and even e-filing. Unfortunately there is no one person that controls technology in our court system. Sharon Bock, our Clerk of Court is moving to a new computer system for all divisions that will lead to e-filing of pleadings in about 2 years.

However, progress is being made. Through our efforts all Judges now have efax type numbers that they can give out when needed. They have voicemail to email on their phones so they can get their messages anywhere they may be. We no

longer have collect phone calls being made to South Florida attorneys who appear by phone. We have experimented with Court Call and video appearances by phone and PC in Judge Phillips' division.

Four months ago with the cooperation of Judge Diana Lewis and Judge Robin Rosenberg we were able to create a Pilot Project that permitted email to be sent to their respective divisions to schedule special appointment hearings and cancel 8:45 UMC hearings. www.15thcircuit.com was updated to provide information about the pilot. Court Technology worked many hours to create email addresses and auto replies to all email. Spam filters on the county computers restrict some people. We tried to anticipate problems and deal with them before the pilot was implemented.

Beginning July 6 All Hearing Requests to Be Done By Email

Approximately 18 people utilized the system in the 90 day project. Admittedly it is easier the first time to pick up the phone but some day that phone will not be answered and we need to act now to have better communication with the court. Judge Lewis and Judge Rosenberg felt 18 emails really did not reflect a fair assessment of the pilot. Therefore, starting on July 6, 2009 all requests for special

appointment hearings in these two divisions must be done by email. Pro se litigants without email can still use the phone. This pilot will run for 90 days. At the conclusion of the pilot we will evaluate its use and hopefully it will be expanded to other divisions.

One of our former committee members, Judge Meenu Sasser, is running the newly created Foreclosure Division. She will be implementing many technology ideas in her division as well. Please note the Administrative Order (3.302 - 6/09 - Foreclosure Division - "AW") recently signed that outlines these changes. Change is coming. Changes have occurred around the state. The Technology Committee believes these changes will save the system (and us) money and time as well as being much more efficient.

Before you pick up your phone with questions, go to www.15thcircuit.com as most questions can be answered there. You can also read Chief Judge Kroll's administrative order in full.

If you have any comments or would like to serve on our committee please drop me an email.

Walter "Casey" Jones, IV
Chair, Technology Committee
wjones@gardenslaw.com
<http://gardenslaw.com>

THANK YOU PALM BEACH COUNTY LAWYERS from THE KIWANIS CLUB OF WEST PALM BEACH!!

Over the past several years, many firms have participated in our Fishing Tournament Raffle by purchasing one ticket for each of their employees, or in the small firms, a minimum of 10 tickets. In fact, 2 of the firms won the grand prize! The proceeds of the tournament and raffle go to college scholarships and ARC. These participating firms are listed below:

Ackerman Link & Sartory P.A.	Gaebe Mullen	Andrea D. McMillan P.A.	Paul B. Erickson Esq.
Adams Coogler Watson	The Gamot Law Firm P.L.	Moyle Flanagan	Thomas L. Spall P.A.
Babbitt Johnson	James C. Gavigan P.A.	Stanley J. Narkier P.A.	James M. Munsey P.A.
Robert T. Bergin Jr. P.A.	David J. Glatthorn P.A.	Peterson Bernard	Jeffrey C. Pepin Esq.
Billing Cochrane Lyles Mauro & Ramsey P.A.	Goodmark Goodmark	Powers McNalis & Torres P.A.	Valentin Rodriguez P.A.
Bobo Citioli	Gordon & Doner P.A.	William W. Price P.A.	Schuler & Halvorson P.A.
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Burman Critton Luttier & Coleman P.A.	Kirk Grantham P.A.	C. Brooks Ricca Jr & Associates P.A.	Paul M. Sullivan Jr. P.A.
John W. Carroll, P.A.	Grossman & Roth P.A.	Edward M. Ricci P.A.	Clyatt & Richardson P.A.
Patrick J. Casey Esquire P.A.	Haile Shaw & Pfaffenberger P.A.	Richman Greer	Terrence F. Dytrych P.A.
Christiansen & Jacknin P.A.	Phillip C. Houston P.A.	Rigell Ring	Edwards & Angell LLP
Coe Broberg & Austin LLP	Elaine Johnson James P.A.	Jose G. Rodriguez P.A.	Alan C. Espy P.A.
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Paul B. Erickson P.A.	Larmoyeux & Bone P.A.	Tracy R. Sharpe P.A.	Pallo Marks & Hernandez P.A.
Michael J. Ferrin P.A.	Lesser Lesser Landy & Smith P.A.	Slinkman & Slinkman P.A.	Silber & Valente P.A.
Fetterman & Associates	Lewis Longman & Walker P.A.	Sonneborn Rutter	Small & Small P.A.
Flanagan Maniotis	Lytal Reiter Clark	Eddie Stephens P.A.	Timothy Morell P.A.
Anne Desormier-Cartwright P.A.	The Cunningham Law Firm	Wiederhold Moses	Scher Kaplan & Hutinson, P.A.
Steinger Iscoe & Greene P.A.	Doane & Doane P.A.	Wiitala & Contole, P.A.	St. John Core & Lemme P.A.

Legal Aid Pro Bono Night

On May 9, the Legal Aid Society of Palm Beach County honored 10 attorneys, one child advocate and the Palm Beach County Bar Association for their outstanding pro bono contribution in 2008. Over 600 friends and supporters of Legal Aid gathered at the Palm Beach County Convention Center to attend the 21st Annual Pro Bono Recognition Evening. The theme of the evening was "College Craze: Capturing the Campus Spirit," and guests were dressed in apparel representing their undergraduate and graduate college days. All the proceeds raised from the annual event are used to provide free legal services to the disadvantaged children, families, elders and individuals living in Palm Beach County.



The attorneys honored at this year's celebration included:

- Bruce Alexander—Construction Law Award
- Ronald Bornstein—Family Law Award
- Elaine M. Bucher—Probate Law Award
- Ronald E. Crescenzo—Guardianship Law Award
- Thomas Dye—Civil Litigation Award
- Dennis Koehler—Administrative Law Award
- Adam Linkhorst—Construction Law Award
- Dean Morande—Civil Litigation Award
- Louis Silber—Real Property Law Award
- Gary Woodfield—"And Justice for All" Award

The Voluntary Bar Association Award was presented to the Palm Beach County Bar Association and the Child Advocate Award recipient was Dr. Ann Faraone, director of the Department of Student Intervention Services for the School District of Palm Beach County. The First Suzanne Foley "Serving Justice" Award, in memory of Legal Aid's Associate Director of Development, was presented to Shelley Garcia and Michelle Suskauer.

Entertainment was provided by the Suncoast Community High School Marching Band and by students from the Dreyfoos School of the Arts, under the direction of Garry Lewis. The Master of Ceremonies for the evening was Bill Bone.



Who Are They?

From Page 4

1. Brian Labovick
2. Nick Lioce
3. Manley Caldwell, Jr.
4. Judge Moses Baker
5. Judge James Downey

Workers' Comp Committee Sponsors Mock Trials



The Workers' Compensation Practice Committee held its 1st Mock Trial at the Offices of the Judge of Compensation Claims on May 1 in connection with law week. Approximately one hundred and fifty eighth graders attended this event from Emerald Cove Middle School and Palm Springs Middle School. Six mock trials were held in all based on a fact pattern related to an injury on the job. The students took their roles very seriously. All three Judges of Compensation Claims (Judges Timothy Basquill, Mary D'Ambrosio and Nancy Punancy) spent a great deal of time with the students at the conclusion of the trial answering questions. This event was chaired by Nicole Hessen from Rosenthal, Levy & Simon, P.A. and Co-Chaired by Angel Kirkconnell and Bertha Penenori from Kelly, Kronenberg, Martin and Fichtel. Thanks to the other volunteers as well who assisted in this event: Jane McGill, Venise Wilkinson, Yolando Hewling, Tom Hedler; Jane-Robin Wender; and Michelle Southen. Special thanks also to Philip Mancusi from Palm Springs Middle School and Douglas Battles for helping the students prepare and to all of the attorneys that met with students in the classroom which helped make this project such a huge success.

Adult Literacy Day – Volunteers Needed

The Lawyers for Literacy Committee needs attorneys to participate in its annual Adult Literacy Day event on Tuesday, September 15 from 8:30 a.m. to 10:00 a.m. at the Adult Education Center in West Palm Beach. You'll be talking to the students about your career, the legal system and the importance of an education.

Many of the students are from another country and speak Spanish or Creole, so if you speak either of these languages, your help is especially needed. To volunteer, please call Cindy Spall at 650-0563 or Lynne Poirier at 687-2800.

In Memoriam

K. Dian Fedak
1949 - 2009

Daniel Bakst
1938 - 2009



Florida Supreme Court Chief Justice Peggy A. Quince to be Keynote speaker

Lunch with Justice Peggy Quince followed by the
Diversity Summit & Cocktail Reception

Thursday, September 24, 2009

11:45 a.m. to 5:00 p.m.

Lunch: 11:45 to 1:15 - Summit: 1:30 to 4:00 - Cocktails: 4:00 to 5:00

The Marriott West Palm Beach

Presented by: The Palm Beach County Bar Association
with the support from

F. Malcolm Cunningham, Sr. Bar Association; Hispanic Bar Association; South Palm Beach County Bar Association; The Florida Association for Women Lawyers -Palm Beach & South Palm Beach County Chapters

What is the Diversity Summit? The Diversity Summit will be an open forum for law firm representatives, government agencies, members of the bench and the business community to discuss new programs to increase the diversity of our local legal community. Focus will be placed on new diversity initiatives and opportunities for firms and agencies to attract and retain diverse legal talent.

Some of the panelists to date include Florida Supreme Court Justices Peggy Quince; Barbara Pariente; Jorge Labarga; and Harry Lee Anstead (Ret.).

Law firm and business representatives who have an influential role in their organization's recruiting and hiring processes (for both inside and outside counsel) are strongly encouraged to attend and actively participate.

Sponsored to date by:



John M. Howe, P.A.



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RSVP TODAY! **This seminar is expected to receive 2.5 CLER from The Florida Bar.**

Register on line @www.palmbeachbar.org or fill out this form and mail it along with your payment of \$35.00 to the Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. To avoid a \$10.00 late fee, please register no later than 9/14/09. No refunds after that date. Diversity Summit

Enclosed you will find my check in the amount of \$_____ or charge my Visa MC Amex

Expiration date: _____ Name on Card _____

Name(s) _____

Address _____ City/Zip _____

Phone _____ Email: _____

Welcome New Members!

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

TIMOTHY L. BECKWITH – University of Florida, 1995; Associated with Palm Beach County State Attorney's Office, West Palm Beach

LAURA C. BURKHART – Texas; Nova Southeastern University, 2007; Associated with Palm Beach County State Attorney's Office, West Palm Beach

BARBARA J. BURNS – Missouri; St. Thomas University School of Law, 1990; Associated with Palm Beach County State Attorney's Office, West Palm Beach

JOHN R. BURTON – Indiana; Ohio Northern University, 1996; Associated with Palm Beach County State Attorney's Office, West Palm Beach

VRENDA T. CAIN – Georgia; University of Florida, 2007; Associate in Legal Aid Society of Palm Beach County, West Palm Beach

JENNY R. CAMACHO – New York; St. Thomas University School of Law, 2005; Associate in Louis P. Pfeffer PA, Jupiter, FL

RICHARD B. CAREY – University of Pittsburgh; Law Student Member

ALEXCIA L. COX – Florida; FSU College of Law, 2005; Associated with Palm Beach County State Attorney's Office, West Palm Beach

MICHAEL J. CRISTOFORO – New York; University of Miami School of Law, 2008; Associated with Vassallo, Bilotta, Friedman & Davis, West Palm Beach

LATRICE M. DEAN – Missouri; St. Louis University, 2006; Associate in Legal Aid Society of Palm Beach County, Inc., West Palm Beach

MITCHELL A. EGBER – University of Baltimore, 2007; Office of the Attorney General, West Palm Beach

ADRIENNE E. ELLIS – Florida; Nova Law School, 1997; Office of the Public Defender, West Palm Beach

LAURA J. FISHER – New Jersey; Nova Law School, 2000; Office of the Attorney General, West Palm Beach

EVAN FREDERICK – Florida; FSU College of Law, 2009; Associated with McCabe Rabin, P.A., West Palm Beach

DANIEL E. FUNK – Kansas; University of Iowa, 2002; Associated with Palm Beach County State Attorney's Office, West Palm Beach

LAUREN E. GODDEN – Florida; Florida State, 2005; Associated with Palm Beach County State Attorney's Office, West Palm Beach

CYNTHIA K. GREEN – Florida; Nova Southeastern University, 2008; Associated with Palm Beach County State Attorney's Office, West Palm Beach

WIENNA J. HAMILTON – Florida; Nova Southeastern University, 2007; Associated with Florida Identity Theft Attorney Services, P.A., Palm Beach Gardens

SUSAN L. HENDRICKS – West Virginia; Georgetown University Law Center, 2007; Associated with Legal Aid Society of Palm Beach County, West Palm Beach

NONI N. HEYWOOD – Pennsylvania; Nova Southeastern University; Law Student Member; Boynton Beach

RICHARD D. JOHNSON – Louisiana; Tulane University Law School, 2006; Associated with the City of Riviera Beach, Riviera Beach

CHRISTOPHER J. KELLER – Kentucky; Ohio Northern, 2008; Associated with Palm Beach County State Attorney's Office, West Palm Beach

STEVEN E. LAKE – Connecticut; California Western School of Law, 2008; Associated with School District Palm Beach County, West Palm Beach

STEVEN T. LAWSON – Illinois; Lewis U. College of Law, 1983; Associated with Palm Beach County State Attorney's Office, West Palm Beach

RICHARD LLERENA – Florida; University of Florida, 2005; Associate with Hicks, Motto & Ehrlich, West Palm Beach

TARA D. MCINTOSH – Florida; University of Florida, 1998; Associated with Palm Beach County State Attorney's Office, West Palm Beach

CHRICHET B. MIXON – Florida; Texas Southern University Thurgood Marshall School of Law, 2007; Associated with Palm Beach County State Attorney's Office, West Palm Beach

MICHAEL L. MORGAN – Pennsylvania; University of Miami, 1976; Associated with Palm Beach County State Attorney's Office, West Palm Beach

CARMEN MUNOZ ZOPE, CP, FRP – Paralegal Member; Clark Skatoff LLP, Palm Beach Gardens

JASON L. NAPARSTEK – Florida; Florida State University College of Law, 2009; Associated with Goldstein & Jette, P.A., West Palm Beach

ELIZABETH L. PARKET – Loyola University, New Orleans, 1998; Associated with Palm Beach County State Attorney's Office, West Palm Beach

JOHN J. PARNOFIELLO – Florida; University of Florida, 2007; Associated with Palm Beach County State Attorney's Office, West Palm Beach

ELISSA PEARL – Florida; University of Miami, 2000; Associated with Thomas & Pearl, P.A., Ft. Lauderdale

LYNN POWELL – Nova Law School, 1085; Associated with Palm Beach County State Attorney's Office, West Palm Beach

CYNTHIA QUIROZ – New York; Thomas M. Cooley Law School, 2001; Associated with Palm Beach County State Attorney's Office, West Palm Beach

RACHEL B. RUDENSKY – Rutgers School of Law, 2006; Associate with Akerman Senterfitt, West Palm Beach

LISA G. SATCHER – Florida Coastal School of Law, 2000; Associated with Palm Beach County State Attorney's Office, West Palm Beach

ROBERT L. SHEPHERD – New Jersey; Nova University, 1984; Associated with Palm Beach County State Attorney's Office, West Palm Beach

TONYA V. SHEPHERD – Vietnam; University of Florida, 1999; Associated with Palm Beach County State Attorney's Office, West Palm Beach

DANIELLE A. SHERRIFF – New York; Florida State University, 2008; Associated with Palm Beach County State Attorney's Office, West Palm Beach

ANDREW R. SLATER – New York; Nova University, 1978; Associated with Palm Beach County State Attorney's Office, West Palm Beach

TRISHA A. SMITH – University of Florida, 2004; Associated with Palm Beach County State Attorney's Office, West Palm Beach

CARRIE C. SODEN – New Jersey; Nova University, 1987; Associated with Palm Beach County State Attorney's Office, West Palm Beach

FERRIS G. SOLOMON, JR. – Florida; Florida Coastal School of Law, 2009; Associated with Legal Aid Society of Palm Beach County, West Palm Beach

TRAVIS J. SOUDER – Florida; Florida State University, 2007; Associated with Palm Beach County State Attorney's Office, West Palm Beach

LORENE L. TAYLOR – Wisconsin; Nova University, 1985; Associated with Palm Beach County State Attorney's Office, West Palm Beach

SHANE WEAVER – Florida; University of Miami, 2004; Associate in Legal Aid Society of Palm Beach County, West Palm Beach

JASON M. WHITEMAN – Maryland; Stetson University College of Law, 2003; Associate in Fox Rothschild LLP, West Palm Beach

LAURA YESILDAG – University of Florida, 2007; Associate in Novak Druce & Quigg LLP, West Palm Beach





Insuring Modifications of Mortgages in Florida – Part II – Premium Charges

By Katherine G. Stevens, Esq., on behalf of the Real Estate CLE Committee

Part I published in the last Bulletin discussed insuring modifications of insured mortgages.

As you may recall, there is a very short list of changes that can be made to the mortgage but which are exempt from any premium charges for issuing the endorsement to the policy. Otherwise, The Florida Administrative Code, Chapter 690-186.005(13) [otherwise referred to as “The Rule”] requires that a premium must be paid but at a discount based on the most recent effective date of the policy as it may have been amended.

For policies that are up to three (3) years old, the premium is 30% of the regular rate calculated on the unpaid balance of the loan at the time the endorsement insuring the modification. For policies over three(3) but less than four(4) years old, the rate is 40%; from four(4) but less than five (5) years old, the rate is 50%; less than ten (10) years old the rate is 60%; and once the policy is ten (10) years or older there is no discount. It is a good idea to get the title insurance underwriter to confirm your calculations and document your file. Most underwriters have proprietary computer programs that both perform and document the calculation.

To determine the applicability of the premium or exemption from it, there must be a careful comparison of mortgage terms to see how they are being modified. The note, loan agreement, or other evidence of the debt, and all other loan documents secured by the mortgage, are relevant to this comparison, as well as the recorded mortgage itself. It is important to approach this comparison by realizing that The Rule requires a premium to be paid for “any change in the mortgage” unless the changes are only those enumerated in a very short list of exempt changes such as extending the time for payment, changing the amortization terms, lowering the interest rate, releasing property, or correcting mistakes to make the mortgage conform to the original intent of the parties. Adding new land is

only exempt from the premium on the balance of the loan if the mortgage is a revolving construction loan. Even so, premium is due on the security interest in (or value of) the new land being added. Any other changes will cause a premium to be due without the discount allowed under the above cited section.

Here is an example to illustrate how this works:

Borrower and lender want to modify a recorded mortgage, insured by First American Title in 2003 but last updated by endorsement to May 15, 2006, with an existing balance of \$300,000.00. The mortgage is to be assigned to a new lender and modified after the assignment. In addition, the interest rate will change from a fixed rate of 6.5% to a variable rate of 5.8% with a cap over the life of the loan of 10%. The modification will add a future advance provision. The borrower will waive any defenses he may have had and affirm the validity of the mortgage.

In this example, there are a number of changes that trigger a premium. The interest rate is actually being raised because the cap on the new variable rate (10%) is greater than the amount of the existing fixed rate (6.5%). If the reverse were to occur – going to a fixed rate in a lower amount than the cap on the existing variable rate – then this change would not trigger any premium. The addition of the future advance is not an exempt change and would have triggered the premium even without the interest rate increase. But even if none of the above changes were being made, the new agreement between the borrower and the new lender, waiving defenses and affirming the validity of the loan, are not the same as in the original mortgage and, thereby, cause a premium to be due.

Even so, the premium should be calculated at the discount or substitution loan rate. In this example, the age of the coverage is measured from the last endorsement that extended the effective date of the coverage to May 15, 2006. If this modification closes after May 15, 2009, the premium due will be 50% of the regular

loan policy premium rates on \$300,000.00 which is the balance of the loan.

The title agent must approach insuring mortgage modifications with caution. Nothing in The Rule addresses whether a change in the mortgage constitutes a novation (new lien) which may impair the priority of the mortgage and subordinate the lien to intervening matters. The Rule only deals with the payment of premium; other underwriting requirements may apply to ensure that the lien priority of the mortgage is not affected. In other words, the premium may be due regardless of intervening matters, whether recorded or otherwise. If there are intervening matters, the underwriter should review the matter with you to determine what risks may be involved in insuring the mortgage modification and what other requirements must be satisfied.

Helpful tips:

Tip No. 1: When I used a premium calculator program, I found that it matters how you enter the age of the policy. For example, if I entered four (4) years, exactly, the calculator gave me a 30% premium rate. But, if I entered 4.1 years, the calculator I was using used a premium rate of 40%. Obviously, this follows The Rule exactly but make sure you are accurate when inputting the age of the loan. It makes a difference!

Tip No. 2: If the lender will allow it, no premium need be charged solely because the interest rate is increasing when the policy contains an exception to this change. Other changes made at the same time would have to be independently considered, however.

Tip No. 3: Other discounts may apply (although only one discount is permitted to be used at a time). Any modification made contemporaneously with a sale and the issuance of a new owner’s policy to the buyer may be issued at simultaneous issue rate instead of the substitution loan rate up to the amount of the sale.

Tip No. 4: What if the agent asked to close the modification is not an agent for

Continued on page 23

By *Diana L. Martin*
and *Christopher B. Hopkins*

By now you should have at least heard of Twitter, but do you know how to use it in your practice? While lawyers are notoriously slow when it comes to adopting new technology (how many of you are still using WordPerfect?), Twitter has become a social networking phenomenon that is here to stay (even Oprah is using it) and is being used by lawyers around the world. But it can be used for more than social networking; Twitter is also a serious business tool, and one that is free and takes only ten minutes to learn. Read below to learn about Twitter and how using it can improve your practice.

What is Twitter?

Twitter is commonly referred to as a micro-blogging service. After signing up for an account at twitter.com and obtaining a user name preceded by an @ sign, users can send messages (“tweets”) of up to 140 characters (about the length of this sentence). The messages are posted on the user’s twitter.com page and sent to every one of that user’s “followers.” At the beginning, even when a person has no followers, the message will go into the searchable “Twittersphere.” By using www.search.twitter.com, you can search all tweets by keywords (e.g., “Florida seatbelt law June 30”) or search all tweets coming from a specific location (e.g., all tweets within 10 miles of West Palm Beach). Other sites, such as twellow.com and twitterel.com provide alternative search methods. You can also search for other Twitter users by location by using tweetmondo.com or localtweeps.com.

To get the most functionality out of Twitter, some users turn to special software for sending and organizing tweets as well as searching by keyword. TweetDeck and Twhirl are two free programs for computers. Most users prefer to use Twitter on their smartphones using Twitterberry (Blackberry), Twitterfon (iPhone) and Twidroid (Android).

All of these software clients make it is easy to send normal tweets as well as reply to others’ tweets. Unlike a regular tweet, a reply is sent only to the intended recipient and users who follow both the sender and recipient (unless you access Twitter via computer, then all tweets and replies are visible). Additionally, you can send direct messages to specific users. These direct messages are private but, like emails, they can be forwarded to others. You can also “re-tweet” a message tweeted

by someone else by forwarding it to your followers. The original sender of the message will also receive your retweet, notifying the sender that the message was appreciated and forwarded.

Why Should Lawyers use Twitter?

How lawyers are using Twitter to improve their practices:

Micro-blogging—Many lawyers in our community have used blogging to develop their practices and their standing in the professional community. But not everyone has the time or inclination to maintain an effective legal blog. Twitter’s 140-character limit on messages allows users to “micro-blog.” You can send short messages relevant to your practice, or relay a recent success, and include a link to your law firm’s website or blog. Also sign up to be listed on wefollow.com and localtweeps.com for greater visibility. In short, Twitter can drive potential clients and attention to your firm.

- 1. Information gathering** – Using Twitter can be a great way to gather information about other lawyers and activities. For instance, you can follow the President of the Palm Beach County Bar Association, Michelle Suskauer (@PBCBarPrez), to keep apprised of information relevant to PBCBA members. You can follow other lawyers to see what cases or information they have discovered (e.g., @Martin_di or @CBHopkins). You can also follow larger legal information providers such as @westlaw, @fastcase or @ABAJournal. Or send out a tweet if you are looking for the name of a good place for dinner when you are out of town in the hopes that someone can make a recommendation.
- 2. News** – Most major news organizations tweet breaking news. Some good examples are @WPTV (Channel 5), @Palm_Beach_Post or @CNNbrk. Reporters and even lawyers may tweet from inside the courtrooms of notable trials, keeping followers apprised of developments (note: administrative rules prohibit tweeting from inside a courtroom in the Southern District of Florida). You might find it easier to keep up on current events when news is delivered in 140-character messages.
- 3. Marketing** – What lawyers will likely find most appealing is that Twitter can be used to market their practices. Distribute news about your accomplishments and those of your firm in 140-character messages and micro-blog about new developments in your area of practice. Building a presence on



Twitter might lead to new opportunities like speaking engagements, employment opportunities, or even client development.

- 4. Are they tweeting about me?** – Recent news stories have revealed instances where jurors are tweeting about their courtroom experience and developments during trial. Use www.search.twitter.com (by keyword and area) as described above to make sure the jury is not tweeting mid-trial. Or consider signing up on twilert.com to receive an email if someone tweets about you, your law firm, or other important keywords.

Happy Tweeting! @Martin_di is an associate with Leopold-Kuvin, P.A. and @CBHopkins is a shareholder with Butzel Long, P.C.

Be sure to follow the Bar on its Twitter and facebook pages. Go the the Bar’s homepage and click on the icons in the lower right hand corner, www.palmbeachbar.org



MOVING?

Be sure to send your updated address, phone, fax and email information to the Bar at 561/687-9007.

Dischargeability of Liability for Co-Obligors of Student Loans



By Mark P. Barmat

It is well known throughout the legal community that student loans are generally not dischargeable in a bankruptcy¹. Perhaps less well known is that the liability of a non-student, co-obligor of a student loan (such as the student's parent) is also generally not dischargeable under the Bankruptcy Code.

There are no Eleventh Circuit Court cases directly on point, however, the majority of bankruptcy court and district court opinions, as well as the only published circuit court opinion hold that 11 U.S.C. 523(a)(8) does not discharge a co-obligor from the liability of student loans. In *In re Pelikowski*, 990 F.2d 737 (3rd Cir. 1993), the Third Circuit Court held that an obligation incurred by a debtor for her children's education was an "educational loan," within meaning of statutory exception to discharge, and that the statutory exception applies both to debts of student borrowers and to obligations incurred by their nonstudent co-obligors. *Id.* at 741. The Third Circuit Court went on to find that section 523(a)(8) of the Bankruptcy Code does not refer to a "student debtor" but applies to limit discharge of any "individual debtor" from "any debt" for a covered educational loan. *Id.* See also, *In re Varma*, 149 B.R. 817, 818 (N.D.Tex.1992) ("The relevant inquiry into the applicability of [section 523(a)(8)] is the purpose of the loan, not the beneficiary of the education."); *In re Dull*, 144 B.R. 370, 372 (Bankr. N.D. Ohio 1992) ("the fact [that] a debtor received no educational benefit from the loans does not exclude him from [section 523(a)(8)'s] provisions"); and *In re Hammarstrom*, 95 B.R. 160, 162 (Bankr.N.D.Cal.1989) ("The language of section 523(a)(8) does not limit its application to educational loans in which the student is the borrower.").

Contrary to the vast majority of opinions throughout the country, a minority of courts have held that an "educational loan" includes only the debt incurred by the student for his or her own education. See, e.g., *In re Washington*, 41 B.R. 211, 214 (Bankr.E.D.Va.1984) (student loan is only an educational loan as to that party that received the benefits of the loan); *In re Kirkish*, 144 B.R. 367 (Bankr. W.D. Mich. 1992) (the exception to discharge for student loans did not apply to nonstudent parent who was co-maker on child's educational loan; exception was intended to apply only to students, not to co-makers).

Although there is no binding precedential authority in our circuit, clearly the majority view is that liability for non-student, co-obligors of student loans is non dischargeable. Accordingly, whether your client is the student or a co-obligor parent of the student, unless there is an argument that can get your client over the difficult undue hardship standard, the student loans will likely not be discharged in bankruptcy.

¹ 11 U.S.C. § 523(a)(8) restricts the dischargeability of educational benefits or loans which were insured or guaranteed by a governmental unit or under any program funded by a governmental unit or non profit institution. Further, as a result of BAPCPA, the discharge of any education loan that is qualified for a tax deduction is similarly restricted. A court can discharge an otherwise non-dischargeable student loan if excepting the debt from discharge will impose an undue hardship on the debtor or the debtor's dependents.

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



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We look forward to your involvement with the 2010 Judicial Reception January 27, 2010

Young Lawyers Section

Young Lawyers serve lunch and provide free legal information to the homeless

For the second year, the Young Lawyers participated in Café Joshua's lunch program. Lawyers took orders, served the meals and were table companions. At Café Joshua, a hot meal is provided five days a week for the homeless, including children. In addition to volunteering during lunch, the Young Lawyers also provided free legal information.

Kudos to Lily Chang and Julia Ledis for coordinating this great event!



On this day, Executive Chef Nickolas Manosis (center) and his staff prepared more than 100 lunches. All of which, the Young Lawyers served with a smile.



Allison Kapner was one of our gracious table companions



Grey Tesh



Magistrate Diane Kirgin and criminal defense lawyer Grey Tesh participated in the legal forum held immediately after lunch. The Legal Aid Society provided informational materials about fair housing and other legal topics.

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Brett Barner, Rebecca Frieden, Lindsay Demmery and Bill Lazarchick.



Installation Banquet Highlights

This year's banquet was held at The Breakers Hotel in Palm Beach for a record breaking 510 guests including 30 judges and two Florida Supreme Court Justices.



David & Glynetter Prather with Kim LaScala and Jay White



4th DCA Judge Cory Ciklin, 15th Circuit Chief Judge Peter Blanc and Florida Supreme Court Justice Jorge Labarga



Tim Leonard, Lauren Sapenoff, Patti Leonard, Cindy and Michael Napoleone



Ted Leopold, Lisa Small and Hampton Keen



Scott & Michelle Suskauer



Bruce Reinhart, Judge John Kastrenakes and Ryon McCabe



Michelle Suskauer and Richard Schuler after the champagne toast



Robert & Karen Sandler and Esther & Brian LaBovick



Leslie Kroeger, Maureen Martinez, Evelyn Hopkins, Joanne O'Connor and Tasha Dickinson



Ellen Malasky, Lisa Quarrie and Eric Hoecker

For additional pictures, check out the Bar's Facebook page at www.palmbeachbar.org



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Battery Backup; What Battery Backup?

By John Vighetto,
Vighetto Networking,
Inc.

Ever work on something for some length of time only to have the power die and you lose all of that work? I've been there, and it's not a good feeling. Now that summer is coming, we have a few things to concern ourselves with; more people turning on their air conditioners, tropical storms, and (the one we all dread the most) hurricanes.

The definition of a battery backup (thanks to Wikipedia) is, "An uninterruptable power supply (UPS), also known as a battery backup, provides emergency power and, depending on the topology, line regulation as well to connected equipment by supplying power from a separate source when utility power is not available. It differs from an auxiliary or emergency power system or standby generator, which does not provide instant protection from a momentary power interruption. A UPS, however, can be used to provide uninterrupted power to equipment, typically for 5-15 minutes until an auxiliary power supply can be turned on, utility power restored, or equipment safely shut down.

While not limited to safeguarding any particular type of equipment, a UPS is typically used to protect computers, data centers, telecommunication equipment or other electrical equipment where an unexpected power disruption could cause injuries, fatalities, serious business disruption or data loss. UPS units come in sizes ranging from units which will back up a single computer without monitor (around 200 VA) to units which will power entire data centers or buildings (several megawatts)." Additional information and detail can be found at http://en.wikipedia.org/wiki/Battery_backup.

Some of you may say, "I've had my workstation on an outlet strip and its worked just fine. Why do I need to

spend money on a battery backup?"

There are a few reasons to protect that piece of electronic equipment you use every day for storage, email, and the Internet. First, it doesn't do the equipment (your workstation) any good when its not turned off the proper way. By letting the workstation shut down abruptly, you're potentially creating bad clusters (and/or sectors) on that hard drive. Ever start up your workstation from one of these incidents and have it go directly to checking the hard disk's integrity before Windows starts up? And when this happens, how many of you let it finish rather than skipping this step so you can get back to work quickly? Not letting your workstation scan upon restarting is simply setting yourself up for the inevitable – a system crash. With proper preparation, this headache could have been avoided by simply having a battery backup.

Second, if you're working with a program that accesses data, whether a single workstation or connected to a server on a network, that database can

become corrupted. Unless you have a support or maintenance contract with your software vendor, then it's probably going to cost you some money to recover the damaged database. If you're on a network, then calculate how many people are down and not using this database, times their hourly rate (because that's how much money you'll be losing in addition to the cost of tech support to repair your database).

Third, by using a battery backup, you're actually extending the lifespan of your equipment. A reputable battery backup manufacturer's unit will also regulate the amount of electricity, thus maintaining a constant voltage to your equipment. Make sure that your telephone equipment is protected as well. With today's economy being what it is, I'm sure that you want to make your equipment last as long as possible.

Check with you're your IT staff to see what type of protection you currently (pardon the pun) have for your equipment, or if you're a smaller office,

Continued on page 24

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North County Section

North County Section names Judge David Crow *Jurist of the Year*.



Ryon McCabe, president of the North County Section, congratulated Judge Crow with the Section's 7th Annual Jurist of the Year award. The award was presented during a membership dinner at Ruth's Chris Steak House in North Palm Beach. The evening was graciously sponsored by Leopold-Kuvin, P.A. and Rutherford Mulhall, P.A.



Judges Cory Ciklin, Sandra Bosso-Pardo and Jeffrey Colbath



Sean Domnick, Bard Rockenbach, Judge Roger Colton, Judge Janis Keyser and Kara Rockenbach



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Premium Charges

Continued from page 13

the underwriter who insured the original mortgage? You may need to go back to the underwriter directly or one of its agents for an endorsement, especially if the proposed changes are exempt from a premium charge. However, if a premium is triggered by the proposed changes, then issuing a new policy on any underwriter to replace the existing policy, bringing the date forward to cover the modification, is a practical alternative if the same lender and same borrower (but if it is over \$250,000 it can be any lender) are involved. Whether the lender obtains an endorsement to the existing policy or a new policy covering the mortgage as modified, the same substitution rates apply, so no further costs are being triggered by writing it on a different underwriter. Of course, the lender’s consent should be obtained.

This article was written by Katherine G. Stevens, Esq., Board Certified Real Estate Lawyer, First American Title Insurance Company

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Battery Backup

Continued from page 19

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(http://www.apc.com/tools/ups_selector/index.cfm) to make sure you have sufficient protection. Remember that not only your office equipment needs protection; that large screen TV or expensive home audio equipment would be nice to keep for a long time.

I welcome any and all suggestions for future technology articles. I can be reached by email at john@vighettonetworking.com, or through my website at <http://www.vighettonetworking.com>. Vighetto Networking, Inc. has been providing network support for the Palm Beach County Bar Association for over 10 years.

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Does Florida Rule of Civil Procedure 1.525 Apply to Probate Proceedings?

By David M. Garten, Esq.

Florida Rule of Civil Procedure 1.525 states that “any party seeking a judgment taxing costs, attorneys’ fees, or both shall serve a motion no later than 30 days after filing of the judgment, including a judgment of dismissal, or the service of a notice of voluntary dismissal.”

In *Hays v. Lawrence*, 1 So. 3d 1176 (Fla. 5th DCA 2009), appellants filed a petition for administration, claiming, in part, that a handwritten document was the last will of the decedent. Appellants’ petition requested that the court admit the handwritten document to probate and appoint them as personal representatives of the estate. On the same day, appellants

filed a declaration that the proceeding was adversary. The lower court issued a final order denying Appellants’ petition for administration and refusing to admit the handwritten document to probate.

Appellants’ attorneys filed a petition for order authorizing the payment of attorney’s fees and expenses pursuant to section 733.106(2), Fla. Stat. Appellees moved to strike the petition, arguing, in part, that the petition for fees and costs was untimely because it was filed seven months after the final order was entered instead of within thirty days as required by rule 1.525. The trial court granted the motion to strike. The appellate court, in affirming the lower court, reasoned:

The central issue framed by the parties is whether the rules of civil procedure applied to the proceeding

below. The resolution of this issue turns on whether the underlying dispute in probate court was an adversary proceeding. In a probate action, if the case is determined to be an adversary proceeding, it “shall be conducted similar to suits of a civil nature and the Florida Rules of Civil Procedure shall govern, including entry of defaults.” Fla. Prob. R. 5.025(d)(2).

For an excellent discussion on this topic, refer to the following article: Jon Scuderi, Esq. and Rebecca Y. Zung-Clough, Esq., *Does Florida Rule of Civil Procedure 1.525 Apply to Probate and Trust Proceedings?* RPPTL ActionLine Winter 2009



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HEARSAY

Adam Rabin has been appointed as Co-Chair of the 2010 United States District Court Bench Bar Conference by S.D. Fla. Chief Judge Federico Moreno.

The personal injury law firm of Kogan & DiSalvo proudly announces that attorneys **Daniel Norton** and **John W. Willis** have become Shareholders in the firm.

Grey Tesh was elected President of the Palm Beach Association of Criminal Defense Lawyers.

John C. Randolph of Jones, Foster, Johnston & Stubbs, P.A. was presented with the 2009 "Ralph A. Marsicano Award" at a Florida Bar Seminar in Orlando.

Attorney **Genny Bernstein** has earned certification as an Elder Law Specialist by the Florida Bar. Ms. Bernstein is an Associate at The Karp Law Firm.



Kevin Lamb, a Shareholder at Gunster, has been appointed vice president of the Pam Beach Chamber of Commerce for a one-year term. **Robert Friedman**,

also a Shareholder was recently named to the Board of Directors of the Legal Aid Society of Palm Beach County.



The firm of Beasley Hauser Kramer Leonard & Galardi, P.A. announces that founding Shareholder **Robert J. Hauser** recently earned Florida Bar Board Certification in appellate practice. Also, James W. Beasley, Senior Shareholder was honored at the Best Lawyers 25th Anniversary Event in Georgia.

Stuart R. Manoff has been selected as a Super Lawyer for 2009 as a Board Certified Marital and Family law attorney.



Andrew J. Baumann, Shareholder at Lewis, Longman & Walker, P.A. has recently been elected to the Board of Governors for Leadership Palm Beach County.



Scott B. Smith of Smith, Ivey & Fronrath, P.L. has been recognized by The American Trial Lawyers Association as one of the Top 100 Trial Lawyers in Florida.



The law firm of J. Mark Maynor, P.A. has announced that **Tana Sachs Copple** has been named a partner in the firm. The firm's name has changed to Maynor Sachs Copple.

Adam J. Langino has joined the consumer justice law firm of Leopold-Kuvin, P.A. as an associate.

Katzman Garfinkel Rosenbaum recently added Yelizaveta A. Batres as an associate. Ms. Batres will join the Community Association Law- Litigation team, specializing in commercial litigation.



The American Trial Lawyers Association recently named **Darryl Lewis** and **David Sales** of

Searcy Denney Scarola Barnhart & Shipley, P.A. as two of the "Top 100 Trial Lawyers" in Florida.

Charles H. Damsel, Jr. has been awarded the status of Emeritus Diplomate in the American Board of Trial Advocates.

Adrian Alvarez, an associate attorney with the firm of Bruce Loren and Associates, was recently elected as the president of the Palm Beach County Hispanic Bar Association.

For the second year in a row, "Super Lawyers" named attorney **Chris Searcy** to its top 100 list in the state of Florida.

MISCELLANEOUS

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Arbitration?

Continued from page 5

If some of the issues in the lawsuit were the subject of an arbitration agreement and some were not, the issues that are not subject to arbitration can proceed in litigation. See Gail Group, Inc. v. Westinghouse Electric Co., 638 So. 2d 661, 663 (Fla. 5th DCA 1996), Ronback Const. Co. v. Savannah Club Corp., 592 So. 2d 344 (Fla. 4th DCA 1992).

While an arbitration agreement may, indeed, be an obstacle to continuation of a lawsuit there are obviously numerous issues which may need to be determined before arbitration can be compelled.

Note: Many of these citations were taken from the excellent brief of Rebecca Mercier-Vargas in Citigroup v. Abad, 925 So. 2d 327 (Fla. 4th DCA 2006).

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



PALM BEACH COUNTY BAR ASSOCIATION
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CALENDAR

July/August 2009

Saturday, August 8,
 8:00am-9:00am
Legal Aid
Back to School Bash

Monday, August 10,
 Noon-1:00pm
Bench Bar Conference
Committee Meeting
 Bar Association Office

Tuesday, August 11,
 Noon -1:00pm
Young Lawyers Section
Board Meeting
 Bar Association Office

Wednesday, August 12,
 Noon-1:00pm
North County Section
Board Meeting
 Bar Association Office

Thursday, August 13,
 5:30pm-6:30pm
YLS Happy Hour with
Federal Bar Association
 Location To Be Announced

Friday, August 14,
 11:00am-1:00pm
Committee Chair Meeting
 Bar Association Office

Wednesday, August 19,
 5:30pm-8:00pm
Summer Cocktail
Reception & Spelling Bee
 Bear Lakes Country Club

Thursday, August 20,
 6:00pm-8:00pm
Palm Beach County Justice
Association Reception
 Nick & Johnnies, Palm Beach
 Contact 471 -2807 for more
 information

Friday, August 21,
 4:00pm-5:00pm
Investiture Ceremony for
County Court Judge
Caroline Shepherd
 Courtroom 11A

Monday, August 24,
 7:00pm-9:00pm
Variety Show try-outs
 Palm Beach Community
 College

Tuesday, August 25,
 5:30pm-6:30pm
Legal Aid Board Meeting
 Bar Association Office

Wednesday, August 26,
 8:30am-9:30am
ADR Committee Meeting
 Bar Association Office

Wednesday, August 26,
 5:00pm-7:00pm
PBCBA Board of Directors
Meeting

Wednesday, August 26,
 7:00pm-8:30pm
Small Claims &
Mediation Clinic
 Hagen Ranch Library, Delray

Thursday, August 27
TFB Videotaped Seminar,
"Basic Family Law"
 Bar Association Office

Friday, August 28,
 3:00pm-4:00pm
Investiture Ceremony for
4th DCA Judge Spencer
Levine