



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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

July/August 2010

Please join us for our annual

## Summer Cocktail Reception & Spelling Bee



presented by the  
Lawyers for Literacy Committee

**Thursday, August 19**

**5:30 p.m. to 7:30 p.m.**

### Bear Lakes Country Club

1901 Village Blvd  
West Palm Beach

Cost: \$25.00 for members;  
complimentary for judges;  
spouses are welcome for \$35.00

#### Sponsored by:

Gunster; LexisNexis; MetLife; Sabadell  
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Proceeds benefit local literacy programs  
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## Newly installed officers and directors having some fun!



Seated left to right: Michael Napoleone, president; The Honorable Patricia Seitz performed the swearing-in; and John Howe, president-elect.

#### Standing left to right:

Jason Guari, director; Ned Reagan, NCS president; Jill Weiss, director; Grier Pressly, director, Allison Kapner, YLS president; Adam Rabin, director; Michelle Suskauer, immediate past president; John Whittles, director; Robin Bresky, director and Theo Kypreos, director. (C. Wade Bowden, director – not pictured)

More pictures can be found on page 7.

## Mark your calendar for upcoming Membership Meetings

**Annual Membership Happy Hour & Spelling Bee**  
August 19, 5:30 – 7:30 p.m.

**Employment Law Seminar**  
September 30, 1:30 – 5:00

**Family Picnic**  
October 23

**Annual Holiday Party & Silent Auction**  
December 9, 5:30 – 7:00

**Second Annual Lawyer Variety Show**  
January 22, 2011

**Bench Bar Conference**  
March 4



## CLE CLASSES NOW BEING OFFERED ONLINE

We are very pleased to bring you another way to obtain your CLE credit. In addition to the CD's that we currently sell, these same programs are now being offered for purchase online to either download to your MP3 player or to listen to right on your computer. That means when your CLER reporting period is approaching, you can go right online and download seminars any time of the day or night. To view a full listing of the seminars available, be sure to log on to our website at [www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php)

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THE  
**BULLETIN**

**PALM BEACH COUNTY  
BAR ASSOCIATION**

MICHAEL J. NAPOLEONE  
*President*

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

PATIENCE A. BURNS, CAE  
*Executive Director*

**Officers**

Michael J. Napoleone, *President*  
John M. Howe, *President-elect*

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Jason J. Guari  
Theodore S. Kypreos  
James "Grier" Pressly III  
Adam T. Rabin  
Jill G. Weiss  
John R. Whittles

Michelle R. Suskauer, *Immediate Past President*  
Allison L. Kapner, *Young Lawyers Section  
President*  
Edward D. Reagan, *North County Section President*  
Theodore L. DiSalvo, *Ex Officio, South County  
Bar President*

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**FL Bar Young Lawyers Division**

**Board of Governors Members**

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Matthew T. Ramenda  
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**1601 Belvedere Road, Suite 302E**

**West Palm Beach, FL 33406**

(561) 687-2800

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**Advertising Information:**

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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

**Re: Annual Lawyers vs. Judges Softball Game**

Friends:

I read in the June Bulletin the sad report of the annual softball game. I wish to volunteer for 2011.

I will be 65 years old next April. I have a heart murmur, flat feet, high blood pressure, hay fever, vertigo, two wonky knees (one surgically repaired many years ago) and arthritis in my hands that sometimes prevents me from gripping a pencil, let alone a baseball bat. The distance vision in my right eye qualifies me for a pension in several European countries.

It is only natural, therefore, that I offer my services to the Lawyers' team for next year's game. I understand my addition to the team might be seen as "sandbagging". I suppose I could offer to "hold back", maybe bat wrong-handed or play with a blindfold, but that would not be sporting.

I must say here that I have a fear, stemming from an unfortunate Little League mishap, of being hit by ground balls – so any spot in the Lawyers' team infield should be just about right.

If I am still alive next April, and assuming I am not then using any appliances (walker, cane, electric scooter) that violate any of the ground rules, I will be ready.

Prosthetically yours,

/s/ William Manikas

**HAVEN'T PAID YOUR PBCBA DUES YET?**

**This will be your last issue of the *Bulletin***

PBCBA dues statements were mailed in April.

If you have not already paid, we hope you will renew today.

**You won't want to miss any of our great benefits**

\*Discounted Live CLE Seminars and Seminar CD's\*

\**Bulletin* every month\* \* Weekly eNewsletters containing important court information and news of upcoming events\* \*Networking and Committee involvement\* \*Free *Bulletin* advertising\* \*Discounted movie and theme park tickets\* \*Discounts to Brooks Brothers, Daily Business Review \* **And much more!**

**RENEW TODAY! Contact Shoshanah Spence at 687-2800**

**or renew online at [www.palmbeachbar.org](http://www.palmbeachbar.org)**

**Young Lawyers Fish For A Good Cause**

Close to 80 members recently participated in The Young Lawyers first KDW Fishing Tournament held at the Palm Beach Yacht Club & Marina. The day included awards, live music, drinks and food.

The largest Dolphin was caught by John Koenig on Empty Pockets at 29.46 lbs. The largest King fish was 42.7 lbs. caught by Dustin Demmery on the boat sponsored by Timothy Kenney, P.A. Dustin's boat also won the Overall Winning Boat. But, the biggest winner was AMI Kids Palm Beach who were the beneficiary and received a check for \$7,500.00.

A special thank you to YLS member Melissa Devlin for putting this event together.



**Tim Grice, Lindsay Demmery, Theo Kypreos, Melissa Delvin and AMI Palm Beach Kids representative Michael Anheil.**



## Helping Families Keep Their Homes

By *Michael J. Napoleone*

I am truly honored to begin my term as the 85th president of the Palm Beach County Bar Association. As we start the year, I want to thank our past president, Michelle Suskauer, for all of her dedication and energy she devoted to the Bar last year. I hope to equal her enthusiasm and passion for our Bar.

Every Bar year typically starts with a message from the new president as to the hopes and goals for the coming year. This message will be similar in format but different in substance. The continued success of our Bar is directly attributable to the dedication and commitment of our members in planning and implementing the Bar's programs. This year, in addition to the outstanding programs you have grown accustomed to like the Bench Bar Conference (March 4, 2011), the annual Spelling Bee (August 19), and Joint Luncheon of the PBCBA, FAWL, FMCBA and Hispanic Bar Association (October 19), as well as new traditions, such as the hugely successful and entertaining Lawyer Variety Show (January 22, 2011 - start practicing now!) and the Bar's first Family Picnic (October 23), the Bar has taken on a project to assist with the current mortgage foreclosure crisis that is overwhelming our court system.

The Bar has been appointed by Chief Judge Peter Blanc to work with the 15th Judicial Circuit in administering the Florida Supreme Court ordered Residential Mortgage Foreclosure Mediation Program (RMFMP). The RMFMP, mandated statewide, is the result of an administrative order issued by the Court that requires all foreclosures on homestead property to be referred to mediation, and is designed to bring residential mortgage lenders and borrowers together for an honest exchange and assessment of financial

information in conjunction with a specially trained, certified mediator.

Since the start of 2010, there have been nearly 6,000 foreclosure filings on homestead properties in Palm Beach County that would qualify for foreclosure mediation. As the program manager, the Bar is charged with operating the foreclosure mediation program, which includes helping borrowers to obtain foreclosure credit counseling, creating and maintaining a secure web portal for the lenders, borrowers and mediators to share confidential financial information prior to the mediation session, providing specialized training to those interested in serving as foreclosure mediators, assigning mediators to cases, hosting the mediation sessions, and reporting the outcome of each mediation to the court.

This is a program on a scale unlike anything previously undertaken by the Bar, and I am confident that we are up to the challenge.

We are hopeful that this program will prove to be a viable and cost effective way to enable lenders and homeowners to meet and find ways to avoid foreclosure. Mediation can be a win for both sides: the lenders avoid adding another house to an ever expanding real estate portfolio, and families can find a way to keep their homes. I am excited about the opportunities this program presents and that the Bar has an integral role in helping to assist with the current foreclosure crisis.

Thank you again for this tremendous opportunity to serve our Bar. I look forward to a wonderful year.

probate litigation

pankauski

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support@pankauskilawfirm.com



# Historical Committee

## Who are they?

Can you guess who these members are? Answers can be found on page 12. If you have old pictures of yourself or other members that you'd like featured, please send them to Patience Burns at the Bar Office.



## North County Section selects Judge Edward Fine as Jurist of the Year



Judge David Crow (right) congratulates Judge Edward Fine for receiving the North County Section's 8th Annual Jurist of the Year award. The award was recently presented at Ruth's Chris Steak House in North Palm Beach.



Judges Glenn Kelley, David French, Sandra Bosso-Pardo and August Bonavita



Judge Don Hafele, Dolores Buck and Larry Buck



Mitch Beers and Ron Bornstein



Judges Debra Stephens, Peter Blanc and Sheree Cunningham



Bard Rockenbach, 4th District Court of Appeals Judge Robert Gross and Richard Slawson

## Lawyer Variety Show – Save the Date

Plans for our **Second Annual Lawyer Variety Show** are well underway with some new and exciting acts! Join us on **Saturday, January 22, 2011** at the Eissey Theatre in Palm Beach Gardens for this fun night of cocktails, food and great entertainment. We're expecting 750.

Tickets go on sale November 1. If you're interested in auditioning for the show, please contact Lynne Poirier at the Bar Office at 687-2800 or by email at [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org). A portion of the proceeds will benefit the Legal Aid Society's new Armed Services Advocacy Project (ASAP).

ASAP provides free legal advice, representation and advocacy to military personnel who are serving or have served in Operation Enduring Freedom and/or Operation Iraqi Freedom and their families in Palm Beach County.



The Legal Aid Society of Palm Beach County recently held their Pro Bono Recognition Evening and the following individuals were honored.



Back row: Alan Crane (Bankruptcy Law Award), Tammy Fields (Non-Profit Award), C. Debra Welch (Family Law Award), Hosts for the evening: Scott Murray, Jamie Murray, Robin Bresky, Ken Bresky, Terry Resk (Appellate Law Award), Allen Tomlinson (Civil Litigation Award), and David Begley (recipient of the 2nd Annual Suzanne Foley "Serving Justice" Award.)

Front row: Matthew Stohman (Special Service Award), Michael Stern (Emeritus Award), Christine Hanley (Firm Award), Victoria Vilchez ("And Justice for All" Award), Gary Kovacs (Real Property Award), and Executive Director Bob Bertisch. The first Corporate Counsel Award was presented to Florida Power & Light Group. Not pictured is Moria Rozenson (Juvenile Law Award).

Please join us in congratulating  
**Shepard P. Lesser** for his  
continuing service to the  
Palm Beach County community  
the last 50 years.



Shepard Lesser with his father, Joseph H. Lesser,  
in Downtown West Palm Beach, circa 1975.



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**LEGAL AID SOCIETY OF PALM BEACH COUNTY, INC.**

Presents

**BASIC JUVENILE LAW FOR THE PRO BONO ATTORNEY  
"HELPING THE HELPLESS"**

This seminar is designed for all attorneys interested in learning about representing children in dependency and family court. **No prior experience is necessary.** (CLE pending approval)

**FACULTY**

William Booth, Esq.  
Elisha Roy, Esq.

**When:** Friday, August 27, 2010

**Where:** The Palm Beach County Bar Association  
1601 Belvedere Rd. Ste#302E  
West Palm Beach, FL 33401

**Time:** Registration: 11:45- Noon  
Lunch Noon - 12:30 p.m.  
Seminar 12:30 p.m. - 4:00 p.m.

**Cost:** Free\*

**Registration Deadline**

Friday, August 20<sup>th</sup>

----- Cut Along Dotted Line -----

Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_  
Address: \_\_\_\_\_  
Firm \_\_\_\_\_ Telephone No. \_\_\_\_\_

- \_\_\_ I will attend the **BASIC JUVENILE LAW FOR THE PRO BONO ATTORNEY HELPING THE HELPLESS** and \*accept at least one pro bono case from the Legal Aid Society of Palm Beach County, Inc. in the coming year.
- \_\_\_ I cannot attend the seminar but would like to assist the Legal Aid Society of Palm Beach County, Inc. Please send me information.

Return to: Kimberly Rommel-Enright, Esq.  
Phone: (561) 822-9769; Fax: (561) 655-5269  
Legal Aid Society of Palm Beach County, Inc.  
423 Fern Street, Suite 200  
West Palm Beach, FL 33401  
[kenright@legalaidpbc.org](mailto:kenright@legalaidpbc.org)

**The Legal Aid Society of Palm Beach County provides malpractice insurance on all pro bono cases.**



## A Remainder Interest in Property Can Qualify as Homestead Exempt

Submitted by: Marc P. Barmat

The issue of whether a debtor who owns a remainder interest in a house in which he resides is entitled to claim the house as exempt homestead pursuant to the Florida Constitution was recently decided by Middle District of Florida Bankruptcy Court Judge, Paul M. Glenn. In the case of In re James B. Williams, Jr., 2010 WL 1553456 (Bankr. M.D. Fla.), the debtor’s mother executed a Warranty Deed transferring her house to the debtor, subject to a life estate reserved for herself. Subsequently, the debtor and his wife moved into the house, and resided there with the debtor’s mother. In the debtor’s chapter 7 bankruptcy, the trustee objected to the debtor’s claimed homestead exemption. In the objection, the trustee asserted that the debtor’s interest in the house is a remainder interest and since persons who hold a remainder interest have no present right of possession, the property does not qualify for homestead exemption. Id. at 2.

The Court overruled the trustee’s objection and found that the debtor is entitled to claim his remainder interest in the house as exempt homestead pursuant to the Florida Constitution<sup>1</sup>. The Court concluded that because the debtor permanently occupied the family home, the debtor had a “present right of possession” sufficient to qualify the

house as exempt homestead. The Court found that the house is the “residence” of the debtor within the meaning of the Florida Constitution. Id. at 6. The Court further found that the debtor held a vested remainder in the house and a vested remainder is “property owned by a natural person” within the meaning of the Constitutional exemption. Id. at 3.

In further support of the Court’s ruling, the Court relied upon earlier holdings stating that the purpose of the homestead exemption “is to promote the stability and welfare of the state by securing to the householder a home, so that the homeowner and his or her heirs

may live beyond the reach of financial misfortune and the demands of creditors.” Id. at 7 citing Snyder v. Davis, 699 So.2d 999, 1002 (Fla.1997).

In this case, like most interpreting Florida’s Constitutional homestead exemption, the court liberally construed the exemption in favor of protecting the family home and those whom it was designed to protect.

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

<sup>1</sup> Article X, section 4(a) of the Florida Constitution provides:

(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and assessments thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following *property owned by a natural person*:

(1) *a homestead*, if located outside a municipality, to the extent of one hundred sixty acres of contiguous land and improvements thereon, ...; or if located within a municipality, to the extent of one-half acre of contiguous land, upon which the exemption shall be limited to the residence of the owner or the owner’s family.



### W. JAY HUNSTON, JR. Mediator/Arbitrator

- J.D. Stetson Univ. College of Law (1976)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2003)
- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)

- Florida Certified:  
Circuit Civil Mediator (1991-Present)  
Family Mediator (1998-Present)
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website: <http://www.hunstonadr.com>



## Installation Banquet

More than 400 members, friends and guests attended the Annual Installation Banquet at The Breakers Hotel for a fun night of cocktails, dinner and dancing.



Kristy and Grier Pressly



Greg and Stacy Margre



Cyndi, Christopher and Michael Napoleone



Laura and Judge August Bonavita



Gerry Richman, Michael Napoleone, Judge Patricia Seitz, Jay White and Scott Hawkins



Manny Farach and Michael Gelfand



Phil Hutchinson with his son Elijah and Grasford and Ana Smith



Kathleen van Wieringen, Richard Schuler, Deborah Martin, and Evie Houston



Mike Dixon and Nan Ellen Nelson



Judge Nancy Perez and her husband Paul Scala



John McCracken and Tim Gaskill were recognized as 40-year members of the PBCBA. Others who weren't able to attend were: Tom Kingcade, Ron Fick, Richard Holt, Larry Murphy and Robert Shapiro.





Join the North County Section for its first  
**SUMMER CLE & COCKTAIL RECEPTION**



Thursday, July 29

4:00 pm to 6:00 pm

Abacoa Golf Club, 105 Barbados Drive, Jupiter

**PRIVACY LEGISLATION AND ITS IMPACT ON ATTORNEYS**

Presented by Mark J. Murnan, CLI, CFE

Attorneys know how valuable witness testimony is to the success of their client's case. Proposed privacy legislation is threatening attorneys' ability to locate witnesses, judgment debtors, co-workers and physical assets in a cost-effective time and manner. This legislation will make it illegal to sell or have possession of personal identifiers (Social Security number dates of birth, driver license numbers), the means by which electronic data bases distinguish between individuals with similar names, addresses or dates of birth.

Attend this course and learn:

- \*Growing concerns about identity theft
- \*Legislation restricting access to SSN and personal identifiers
- \*Trending toward European-style (EU) privacy environment
- \*Electronic data bases impact and restricted
- \*Dramatic increase in costs to locate witnesses, defendants, co-workers, assets, etc.
- \*Need for lobbying effort to ensure that exemption language exists for "business purposes"

*Sponsored by:*



This course has been approved for 1.0 General CLE and 1.00 Civil Trial from The Florida Bar.

The cost is just \$25.00 for NCS members and includes CLE credit, plus the cocktail reception.

Non-section members are welcome for \$35.00 and judges are complimentary. Register before 5pm on 7/26 to avoid a \$5.00 late fee.

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

<b>HOW TO REGISTER</b>		<b>MAIL</b> the completed form w/check		<b>FAX</b> the completed form to 561/687-9007		<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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**NCS SUMMER CLE & RECEPTION**

Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_  
 Address: \_\_\_\_\_ Email: \_\_\_\_\_  
 Credit Card # \_\_\_\_\_ Visa \_\_\_\_\_ AmEx \_\_\_\_\_ Mastercard \_\_\_\_\_  
 Name on Card: \_\_\_\_\_ Exp: \_\_\_\_\_  
 Amount to Charge: \_\_\_\_\_ Signature: \_\_\_\_\_

Mail payment along with this form to: The Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406.

## Attorneys that closed pro bono cases in March, April & May of 2010

**Abedon, Richard; Acosta-Castriz, Miriam; Bedard, Benjamin; Beebe, Abigail; Buck, Lawrence; Coenson, Douglas; Crane, Alan; Cullen, Mark; Duffey, Brian; Duncan, Melissa; Goldberg, Steven; Gora, Michael; Hall, Stephen; Henderson, Kelly; Kleid, Richard; Kleinfeld, Mark; Kovarik, John; Layton, Chadwick; Loren, Bruce; Lux, Andrea; Merten, Dean; Mahathey, Ryland; Moncrief, Lawrence; Mulcahey, Catherine; Porter, Elisabeth; Roy, Elisha; Simpson, Cynthia; Stern, Michael and Vianale, Kenneth.**

**Total Number of Pro Bono Hours: 726.50**

## HELPING THE HELPLESS

### Be An Advocate for a Child in Need!

The Legal Aid Society's Pro Bono Program is soliciting volunteer attorneys to represent children as attorney ad litem in dependency and family court. There are overwhelming numbers of children involved in dependency cases and in family matters who need a voice. As attorney ad litem you can be a voice for that child. A training has been scheduled for **August 27, 2010** from Noon to 4:00 p.m. (Lunch will be provided) at the Palm Beach County Bar Association offices. This training will orient the volunteer attorneys to the basics of representing children in dependency and family cases. The training and CLE is provided free of charge if the attendee agrees to accept at least one juvenile case from Legal Aid during the upcoming year. For more information about this volunteer opportunity, please contact Kimberly Rommel-Enright at 561-822-9769 or kenright@legalaidpbc.org.

## Legal Aid Announces Emeritus Project "Second Act"

Beginning in the fall, the Legal Aid Society of Palm Beach County will be launching a new program for retired, retiring and non-practicing lawyers called Second Act. This program is modeled after the ABA Second Season of Service and seeks to recruit attorneys to meet the unmet civil legal needs in our community. Significant numbers of attorneys are expected to retire or modify their practices in the common years. The Second Act program offers these attorneys an opportunity to practice pro bono legal services and are a great way to reinvest in our civil justice system with their vast legal skills and experience. Under the Florida Bar Emeritus Rule certain retired attorneys can be certified to practice with a qualified legal aid organization on a pro bono basis. In addition to direct representation, there are many other opportunities available to retired attorneys such as assisting with client intake. To learn more about the Second Act program and the Emeritus Rule, the Legal Aid Society will be hosting an open house in the fall. This open house will also give attorneys an opportunity to speak with retired attorneys who are currently providing pro bono service through the Legal Aid Society. For more information please see the Legal Aid Society website [www.legalaidpbc.org](http://www.legalaidpbc.org) or contact Kim Rommel-Enright at 561-822-9769 or kenright@legalaidpbc.org

Earlier this summer, more than 100 members attended our Judicial Candidate Luncheon at the Crowne Plaza Hotel. All of the candidates running for Circuit and County seats participated.



Andrew Daire, Jaimie Goodman, Ken Lemoine and Lisa Small



Ted Decker is pictured with Liz Quirantes from Channel 12 who emceed the program



Marni Bryson, Laurie Cohen, Lloyd Comiter and Jane Sullivan



Judges Hanser, Blanc, Castor and Michael Gelfand



Debra Block, Matthew Lane and Sarah Shullman

*In Memoriam*

**John E. Baker**  
1917 – 2010

**Gerald A. Williams**  
1950 - 2010

**Dwight Miller**  
1945 - 2010





## Constructive Trust: Remedy, Cause Of Action, Or Both?

By David M. Garten, Esq.

A constructive trust is an equitable device with dual objectives: to restore property to the rightful owner and to prevent unjust enrichment. A constructive trust applies where there is a wrongful taking of the property of another or when a confidential relationship has been abused. The trust is 'constructed' by equity to prevent an unjust enrichment of one person at the expense of another as the result of fraud, undue influence, abuse of confidence or mistake in the transaction that originates the problem. *See Joseph v. Chanin*, 940 So. 2d 483 (Fla. 4th DCA 2006).

Florida cases conflict as to whether a constructive trust is a separate cause of action or a remedy. The First and Second Districts have held that a constructive trust is merely an equitable remedy which may only be imposed based upon an established cause of action. *See Collinson v. Miller*, 903 So. 2d 221 (Fla. 2d DCA 2005) and *Diamond "S" Dev. Corp. v. Mercantile Bank*, 989 So. 2d 696 (Fla. 1st DCA 2008). *Accord Wadlington v. Edwards*, 92 So. 2d 629 (Fla. 1957) (A constructive trust is a remedy for unjust enrichment).

In contrast, the Fourth District and the Southern District of Florida appear to hold that a constructive trust is a separate cause of action. *See Abele v. Sawyer*, 750 So. 2d 70 (Fla. 4th

DCA 1999); *Arral Industries, Inc. v. Touch Entertainment, Inc.*, 2000 U.S. Dist. LEXIS 2306 (S.D. Fla. 2000); and *Hugo Bernardele & Gelway SA v. Bonorino*, 608 F. Supp. 2d 1313 (S. D. Fla. 2009). Cf. *Palm Beach County Administrative Order 6.102-9/08* (Action seeking relief in the nature of a constructive and resulting trust shall be filed in the Civil Division). *But See Joseph v. Chanin*, supra (A constructive trust is an equitable remedy subject to the discretion of the court and traditional equitable defenses).

The elements of a constructive trust are: (1) a promise; (2) transfer of the property and reliance thereon; (3) a confidential relationship; and (4) unjust enrichment. *See Bergmann v. Slater*, 922 So. 2d 1110 (Fla. 4th DCA 2006), *Abele*, supra, *Arral Industries, Inc.*, supra, and *Hugo Bernardele*, supra. However, the Florida Supreme Court in *In re Estate of Tolin*, 622 So. 2d 988 (Fla. 1993) held that a confidential relationship is not a prerequisite to imposing a constructive trust on the assets of an estate that were intended to be conveyed by a defective codicil. Additionally, in *The Foundation For The Developmentally Disabled, Inc. v. Step by Step etc.*, 29 So. 3d 1221 (Fla. 2nd DCA 2010), the court held that as a prerequisite to imposition of a constructive trust, there must be evidence of fraud, undue influence, abuse of confidence or mistake in the transaction.

Litigants seeking the remedy of a constructive trust are subject to the defenses of statute of limitations, laches, and estoppel. *See Provence v. Palm Beach Taverns, Inc.* 676 So. 2d 1022 (Fla. 4th DCA 1996), *Palmland Villas I Condominium v. Taylor*, 390 So. 2d 123 (Fla. 4th DCA 1980), and *Wadlington*, supra.

Renew your Bar dues today to  
take advantage of all our benefits!

### Circuit Court Report CIVIL DIVISIONS • May 2010

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A KELLEY	10/10	10/10	07/10	1741
B HAFELE	11/10	11/10	09/10	1840
D FRENCH	10/10	10/10	07/10	1741
E MCCARTHY	04/11	04/11	07/10	2152
F MARX	10/10	10/10	07/10	1640
G CROW	10/10	08/10	08/10	1949
H FINE	10/10	10/10	07/10	1766
I GARRISON	10/10	08/10	06/10	899
J ROSENBERG	11/10	11/10	07/10	1374
N COX	11/10	11/10	08/10	1958
O BARKDULL	11/10	09/10	07/10	2085

Of all the banks in South Florida,  
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Adam Rabin and Jessica Callow



Judge Tom Barkdull, Miriam Acosta-Castriz and Bob Bertisch



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## Welcome New Members!

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

**BRANDON ARKIN** – Florida; 2010; Sole Practitioner, Palm Beach Gardens

**RACHEL K. BEIGE** – New York; Brooklyn Law School, 2005; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**RITA M. BURDO** – Paralegal Member; Gunster Yoakley & Stewart, P.A., West Palm Beach

**JONATHAN CHANE** – Stetson University, 1997; Greenberg Traurig, P.A., West Palm Beach

**LISA CLARK** – Wisconsin; University of Florida, Levin College of Law, 2009; Associate in Roberts, Reynolds, Bedard & Tuzzio, P.A., West Palm Beach

**ELLEN COHEN** – Syracuse University, 1988; Associated with United States Attorneys' Office, West Palm Beach

**JOSHUA D. FRACHTMAN** – Florida; Nova Southeastern University, 2007; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**BRANDY GALLER** – University of Pennsylvania 2008; Associated with United States Attorneys' Office, West Palm Beach

**JOSHUA A. GOLDSTEIN** – New York; University of Baltimore School of Law, 2009; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**ROY HARRIS** – New Jersey; Nova Southeastern University, 2000; MDVIP, Boca Raton

**MICHELE HAFT HUDSON** – New York; Georgetown University Law Center, 1987; Sole Practitioner, Michele Haft Hudson, P.A./Mediation works, LLC, Cooper City

**JOSEPH W. JANSSEN III** – Delaware; University of Miami, 1998; Partner in Rosenbaum, Mollegarden Janssen & Siracusa, P.A., West Palm Beach

**DANIEL JONES** – Georgia; University of Alabama, 2008; Office of the Attorney General, West Palm Beach

**RIAN KINNEY** – Nova Southeastern University, 2009; Associate in the Kinney Firm, P.A., Wellington

**LISA LARMOND** – Jamaica; Florida State University College of Law, 2009; Associated with Statewide Guardian ad Litem Program, West Palm Beach

**TRACY LIZZA** – New York; University of Florida, 2009; Associated with Next Era Energy, Juno Beach

**ANDREA J. LUX** – Michigan; Florida Coastal School of Law, 2009; Associate in Pratt & Radford P.L., West Palm Beach

**DOUGLAS H. MACLAUGHLIN** – Wisconsin; University of Miami, 1978; South Florida Water Management District, West Palm Beach

**MARK NICHOLS** – Florida; University of Florida, 2008; Associate in McCabe Rabin, P.A., West Palm Beach

**MARLA B. NEUFELD** – Florida; University of Miami School of Law, 2008; Associate in Ruden McClosky P.A., West Palm Beach

**GARY D. O'NOLAN** – Florida; University of Florida, 1997; Associate in Gunster, Yoakley & Stewart, P.A., West Palm Beach

**ROBERT OSTROV** – Fordham Law School, 2010; Wellington

**STEPHANIE B. PARTLOW** – Florida; Nova Southeastern University, 2006; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**RICHARD PEARCE** – Jamaica; University of Florida, 2006; Sole Practitioner, West Palm Beach

**JOHN S. PENTON, JR.** – Alabama; University of Memphis, 1994; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**GARRETT ROBERTS** – Florida Coastal School of Law, 2010; Associate in Law Offices of Drake Ozment, West Palm Beach

**MARSHALL ROSENBACH** – Florida; University of Florida, 2004; Sole Practitioner, West Palm Beach

**CHRISTOPHER RYAN** – Massachusetts; Law Student Membership, Jacksonville

**MATTHEW SARELSON** – New York; George Mason University, 2004; Sole Practitioner, Sarelson Law Firm, P.A., Miami

**JAY A. SCHWARTZ** – New York; Nova Law School, 1978; Partner in Sachs, Sax, Caplan, Boca Raton



**RICHARD A. SCHWARTZ** – New York; University of Miami School of Law, 1971; Sole Practitioner, Richard A. Schwartz, P.A., Boca Raton

**SHERRY SCHWARTZ** – Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**COURTNEY SIDERS** – Iowa; DePaul College of Law, 2010; Sole Practitioner, Boynton Beach

**ELIZABETH SMITHERMAN** – Florida; Stetson University College of Law, 2008; Elizabeth A. Smitherman, P.A., Palm Beach Gardens, FL 33410

**LISA SZULGIT** – Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**MARIO THEODORE** – Illinois; The John Marshall Law School, 2007; Sole Practitioner, The Law Office of Mario R. Theodore, West Palm Beach

**MILTON THURM** – New York; Brooklyn Law School, 1975; of counsel with McIntosh, Sawran, Peltz & Cartaya, West Palm Beach

**ROBERT S. WINESS** – Connecticut; The Capital University, 2002; Robert S. Winess, P.A., West Palm Beach

**DONNA WOLFE** – Widener University School of Law, 1001; Associate in Waterman & Wolfe, P.A., West Palm Beach



### Who Are They?

From Page 4

Chief Judge Peter Blanc,  
Jack Goldberger and  
Scott Richardson





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# Florida Bar Board of Governors Meeting Summary

At its May 28 meeting in Key West – the final meeting for the 2009-10 Bar year – The Florida Bar Board of Governors:

- After an extensive discussion including concerns it may be impractical, approved proposed amendments for advertising rules governing attorney and law firm websites, as ordered by the Supreme Court. The approval included requesting a delay on the July 1 effective date on website rules until the court acts on the amendments. The proposed amendments require website visitors to take an affirmative action by clicking a link or similar action before they can view sections of the websites that contain testimonials, refer to past results, or characterize the quality of the lawyer or firm’s legal services, or otherwise do not comply with lawyer advertising rules.
- Made no changes to the proposed 2010-11 Bar budget, which now goes to the Supreme Court.
- Approved a proposed rule change regarding hiring law firms to resolve medical liens in personal injury cases. The change would allow hiring such firms in some cases, but the fees paid would still be limited by contingency fee restrictions in Rule 4-1.5 and referral fees could not be paid by the hired firm.
- Approved, as amended, a Standing Board Policy on public reprimands. The policy says that all reprimands do not have to be administered in person, but those that are will be done by the Bar President at Board of Governors meetings. The designated reviewer in the case, with advice from Bar staff, will decide which reprimands will be personally administered.
- Approved to be sent to the Supreme Court a rule amendment prohibiting: attorneys from signing blank trust account checks; nonlawyers from signing trust account checks; or using a signature stamp on trust account checks. Board members

acknowledged the rule could pose problems for small and solo firms, but said those would be no more difficult than complying with other rules that require lawyers to personally sign pleadings, motions, or other legal documents. They also said the benefits of the improved check procedures would outweigh the drawbacks.

- Requested the Professional Ethics Committee to prepare an ethics opinion on the proper ways to handle hard drives from discarded computer equipment to protect confidential client information. President-Elect Mayanne Downs noted that recent news reports have found that hard drives from high speed scanners and other like computer equipment keeps records of scanned documents that can be accessed after the equipment is discarded. That, she said, raises concerns about protecting client information.
- Approved several rule and regulation changes for the Clients’ Security Fund.
- Approved a resolution that the Bar strongly supports the implementation of a mandatory e-filing system for state courts.
- Heard a recommendation from the Communications Committee that attorneys not be allowed to include any rating from an attorney rating service on their profile page on the Bar’s website. Currently, attorneys are allowed to list their Martindale Hubbell rating. Committee Chair Juliet Roulhac noted that Avvo.com had requested that attorneys be allowed to include their Avvo ratings on the profile pages – and other rating services could make the same request – and that no other state bar allows ratings to be listed on their bar websites. The board will vote on the recommendation in July.

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



 Edward Rodgers *	 Walter Colbath, Jr *	 Cathleen Scott, Esq.	 Michael Gelfand, Esq.			
 Deborah Baker, Esq.	 Thomas Schwartz, Esq.	 Steven Rubin, Esq.	 Brendan Heneghan, Esq.	 John W. Gary III, Esq.	 David Horvath, Esq.	 John Henneberger, Esq.
 Michelle Berg, Esq.	 Louis Pfeffer, Esq.	 Michael Weeks, Esq.	 Edward B. Deutsch, Esq.	 Richard Meehan, Esq.	 Maura Curran, Esq.	 Frederick W. Ford, Esq.
 Kolleen Bycliw, Esq.	 Terry Watterson, Esq.	 Gary S. Costales, Esq.	 Donna Melise, Esq.	 Micheal A. Edwards, Esq.	 Judith A. Ripps, Esq.	 Jane Socoloff, Esq.
 Connie Kerwick, Esq.	 Lawrence Newman, Esq.	<b>Your Full Service Firm of Mediators &amp; Arbitrators</b>		 Ryan Copple, Esq.	 Thomas Kingcade, Esq.	

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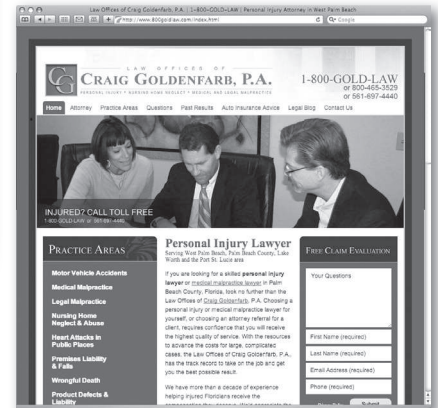
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## Liability for Negligent Subsequent Treatment

by Ted Babbitt

Stuart v. Hertz Corp., 351 So. 2d 703 (Fla. 1977) is the primary case on the responsibility of a tortfeasor for subsequent medical treatment which is negligently performed and thereby increases the injury to the plaintiff. That case held:

“Where one who has suffered personal injuries by reason of the negligence of another exercises reasonable care in securing the services of a competent physician or surgeon, and in following his advice and instructions, and his injuries are thereafter aggravated or increased by the negligence, mistake, or lack of skill of such physician or surgeon, the law regards the negligence of the wrongdoer in causing the original injury as the proximate cause of the damages flowing from the subsequent negligent or unskillful treatment thereof, and holds him liable therefor.”

In Nason v. Shafranski, 35 Fla. L. Weekly D943 (Fla. 4th DCA, April 28, 2010) the Fourth District was faced with a case where the application of the Stuart v. Hertz doctrine was necessary in that case. In this case a jury verdict which was deemed by the plaintiff to be inadequate was appealed alleging error by the trial court in allowing a defendant’s medical expert to testify that the surgeries performed by plaintiff’s treating doctor were unnecessary and worsened his condition and refusing to give a jury instruction outlining the Stuart v. Hertz doctrine. Defendant’s medical expert testified that plaintiff merely suffered a sprain in the automobile accident that should have been treated with medication and that surgery was not appropriate. In fact, the plaintiff received a discogram, a nucleoplasty, the removal of two herniated discs and the performance of two fusions. Plaintiff’s medical bills alone totaled over \$300,000.00 and he was facing an operation for a two level disc replacement. Defendant argued to the jury that the surgeries performed by the treating physician had made the plaintiff worse, that he didn’t need the surgery to begin with and that no future surgery was indicated.

While the jury was deliberating, they sent a note to the Judge asking “if the jury felt a provider of medical treatment to the plaintiff was unscrupulous, does that relieve the defendant under the law from liability for the consequences of that treatment?”

The Court refused to give any instruction regarding Stuart v. Hertz either before deliberations or after the jurors sent the above note. The appellate court reversed pointing out that while traditional negligence principals provide that a tortfeasor is responsible for the reasonably foreseeable consequences of the tortfeasor’s actions and that the foreseeability of intervening cause is usually a jury question there is an exception with respect to purported medical negligence of a treating physician. Citing Stuart v. Hertz the Court held:

“It has long been the law in Florida that when one who is negligent injures another causing him to seek medical treatment, negligence in the administration of that medical treatment is foreseeable and will not serve to break the chain of causation.”

The Court cited Emory v. Florida Freedom Newspapers, 687 So. 2d 846 (Fla. 4th DCA 1997) and Dungan v. Ford, 632 So. 2d 159 (Fla. 1st DCA 1994) both of which support the giving of the requested instruction under these circumstances. The Court rejected defendants’ arguments that they never claimed the treating physician was negligent and were merely questioning the reasonableness of the medical charges pointing out that the same arguments had been rejected in Emory and Dungan, *supra*. The Court cited with approval Dungan, *supra*, to the effect that reasonableness and necessity as it relates to medical treatment can be established by lay testimony and thus involves a question of necessity from the standpoint of the injured party rather than a medical expert. Thus a defense that attacks the reasonableness of medical treatment on a medical basis is clearly violative of the Stuart v. Hertz doctrine since such a proposition flies in the face of the law enunciated in Stuart v. Hertz that even if medical treatment was ill advised, it still is the responsibility of the initial tortfeasor.

There is no standard jury instruction on this subject and the concurring opinion of Judge Farmer recommends a plain English draft of an appropriate instruction until one is approved by the Supreme Court.

“The next issue for your consideration is the claim that (defendant) is liable for the negligence of (doctor) (hospital) (nurse) in treating (claimant) for injuries he claims to have suffered in (event). A person responsible for negligently injuring another may also be further liable for the ensuing negligence of any health care provider treating the injured party if:

1. injuries caused by the negligence of (defendant) reasonably required medical care or treatment by a health care provider;
2. a health care provider gave (claimant) medical care or treatment for injuries caused by (defendant) in (event); and
3. (Claimant) did not unreasonably fail to comply with that health care provider’s medical advice and instruction.”

A tortfeasor is responsible for injuries directly caused by negligence if the plaintiff reasonably seeks medical care and that medical care results in an exacerbation rather than alleviation of the plaintiff’s injuries. The law of Florida is that the initial tortfeasor remains responsible for the entire injury including any such aggravation.

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.



# Lisa SMALL

FOR CIRCUIT COURT JUDGE · GROUP 33

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## Motions for Summary Judgment

Panelists: Judge Melanie May (Fourth District Court of Appeal)  
Judge Meenu Sasser (Circuit Court of the 15th Judicial Circuit)  
Judge Donald Hafele (Circuit Court of the 15th Judicial Circuit)

Moderator: Joseph Ianno, Esq.

On April 27, 2010, the Judicial Relations Committee hosted its third judicial lunch of the year. The topic of this lunch concerned motions for summary judgment and Judge May, Judge Sasser, and Judge Hafele provided the following very instructive comments:

1. Review of an Order granting summary judgment is de novo. The Appellate Court looks to determine if there are genuine issues of material fact. Do not forget that the focus in reviewing a summary judgment is on genuineness and materiality - - not all factual issues preclude summary judgment.
2. Follow the letter of Florida Rule of Civil Procedure 1.510 in scheduling a hearing on a motion for summary judgment. The 20-day rule is mandatory.
3. The timing of a motion for summary judgment can be critical.
  - a. If one schedules a hearing on a motion for summary judgment prior to an answer being filed, the movant must show the opponent cannot plead an issue of material fact.
  - b. The status of discovery also is an important consideration of the court in evaluating a motion for summary judgment. If you are opposing a motion for summary judgment on the basis that discovery remains to be done, you should advise the Court specifically what discovery must be done, what you expect that discovery to show, and to what factual issues the discovery relates.
  - c. The procedural status of the case is important. For example, if there are affirmative defenses that can be challenged, you might consider moving to strike those affirmative defenses before a motion for summary judgment.
  - d. Sometimes early motions for summary judgment are good to familiarize the court with the issues in the case, and to narrow issues early in the case.
  - e. Often, it is helpful if dispositive motions like motions for summary judgment are dealt with prior to mediation. Clients should be invited to the hearing on motions for summary judgment.
4. Partial motions for summary judgment are under-utilized. They are particularly effective in narrowing the issues in the case and eliminating counts. In commercial cases, motions for partial summary judgment should be used as much as possible.
5. In drafting and presenting your motion for summary judgment to the court, remember the following:
  - a. There is no need to cite extensively to the standard on motions for summary judgment.
  - b. Big binders and very lengthy memos present a challenge for most trial court judges given their extensive case loads. Only give the judge what he or she needs to make the ruling. For example, if deposition transcripts have been filed and are part of the record, you should only submit the cover page and the relevant pages of the transcript with your summary judgment motion.
  - c. A table of contents and copies of tabbed cases are very helpful.
  - d. Consider using the Federal Court format in your motion for summary judgment. Use a separate section with separately numbered paragraphs for material issues of fact not in dispute. If you are opposing the motion, statements of material fact should correspond with the numbering scheme

- used by the movant and any additional disputed facts should be placed at the end.
- e. When detailing the issues of fact, always cite to the record (pleadings, depositions, answers to interrogatories and admissions on file). The undisputed facts establishing the basis for a summary judgment must be supported by the record, and if a movant wants to rely on something in the record, he must cite that record evidence in his papers. In Riggs v. Aurora Loan Services, LLC, 2010 Westlaw 1561873 (Fla. 4th DCA), a summary judgment was reversed in a foreclosure case where the Plaintiff failed to provide evidence of an assignment.
  - f. If you can stipulate to any facts with opposing counsel, it is helpful to put this into the motion. The more you can narrow the facts and issues, the more likely it is that your motion will be granted.
  - g. At oral argument, you do not need to spend a lot of time introducing the case, particularly if the judge has indicated that he or she has read your materials. Answer all questions from the judge. It is always a good idea to ask the judge before starting whether he or she has any questions, particularly if the judge has read the materials.
6. Think strategically about motions for summary judgment and motions for partial summary judgment. For example, if a single count carries an award of attorneys' fees, consider filing a motion with respect to that count as early as possible.
  7. Be careful with the form of counter-affidavits. See 770 PPP, LLC v. TJC Land Trust, 2010 Westlaw 785864 (Fla. 4th DCA) on the appropriate form of counter-affidavits. Also, Rule 1.510(g) addresses an award of fees for bad faith affidavits.
  8. Always refrain from gamesmanship and cheap shots in the written motion and at oral argument.
  9. If you file multiple motions for summary judgment, each motion should be on a different issue unless something new comes up. Do not file repetitive motions concerning the same issue without any new facts or argument.

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

Thursday, September 30, 2010 - 1:30pm—5:00pm

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



## Program Schedule

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

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

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

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

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

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

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

5:00 p.m. **Happy Hour:** *Share a Martini with colleagues compliments of ARC Mediation*

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## Demonstrative Aids and Technology in the Courtroom

On March 30, 2010, the Palm Beach County Bar Association Judicial Relations Committee hosted a judicial panel discussion on the topic of demonstrative aids and technology. The panelists were Judge Miller, Judge Barkdull, Judge Cox and Judge Rosenberg and the moderator was Eric Gordon from Akerman Senterfitt. The following comments were made by the Judges:

### Demonstrative Aids and Technology are Generally Useful

- They focus jurors on the important issues.
- They help jurors to better understand complex issues.
- Some jurors are better “visual learners” and demonstrative aids can help them
- Demonstrative aids are great ways to establish and simplify relationships – i.e. how corporations are related to each other, how items are related to each other in size / scale, etc.
- Demonstrative aids are also great for showing damages.
- If demonstrative aids and technology are used well, it makes the attorneys look well-prepared and organized.
- Demonstrative aids can be helpful in bench trials as well as jury trials.

### Planning Ahead for Use of Demonstrative Aids and Technology

- Practice with the demonstrative aids or technology well in advance of the trial or hearing, so that they can be woven seamlessly into your presentation.
- If you plan to use a demonstrative aid in your opening statement, provide it to opposing counsel in advance, so any objections can be dealt with in advance.
- Call the Court’s IT department in advance of your trial or hearing, to see what equipment might be available at the courthouse for your use.
- If you have a complicated set-up – such as individual video screens in front of each juror seat – coordinate with the court in advance. Not all courtrooms are large enough to accommodate large set-ups, so a larger courthouse may need to be scheduled for your trial, which will require lead-time.
- If you coordinate with the court in advance, some judges will allow you to come into the courtroom on a Friday afternoon to set up your system, so you can have everything ready when you

start trial on the following Monday.

- It is also advisable to find out the judge’s procedures for demonstrative aids, computer systems, and other technology in advance. Call the JA in advance of trial to find out these procedures, which may vary from judge to judge.
- Make sure that your demonstrative aids do not block pathways in the courtroom, and do not block courtroom security cameras. Also, make sure that your materials do not block the courtroom deputy’s view of what is going on in the courtroom or pose security hazards (e.g. cords that trip people).
- If you are going to set up a complicated system, you need to talk to the opposing attorney in advance, to make sure that you can both work with the same system. You need to coordinate in advance, so that both sides don’t show up with a complicated system. There is not room in the courtroom for two systems.

### Tips for Most Effective Use of Demonstrative Aids and Technology

- If you enlarge something, make sure the words are large enough for the jury to see.
- If you are pulling something up on a computer screen, it is very possible the jury won’t be able to see it.
- If you want to focus the jury’s attention on one portion of a document, highlight that portion or pull that portion of the text out into a box which is emphasized and in larger font.
- DVDs / CDs are great (better than videotapes) because they have edit programs that allow you to remove objected-to materials, but still have the testimony flow seamlessly without having to stop the tape during objections. DVDs / CDs are also easier than videotapes to use in playbacks.
- If you have the damages you are seeking listed on a demonstrative aid, make sure to leave the board or slide up long enough for the jurors to write down information listed on that board or slide.
- It is often effective to blow up a verdict form and fill it out in front of the jury in the manner you would like the jury to fill it out.
- It can also be effective to blow up a certain jury instruction you feel is important for the jurors to understand.

### Avoid Problems with Demonstrative Aids and Technology

- Let the judge know in advance if you plan to use a demonstrative aid or technology that requires set-up.
- Plan to use your technology right after a break in the proceedings. That way, you can stay in the courtroom during a morning break or lunch break and test out your equipment when the judge and jury are not there, so you can make sure everything is working properly and hopefully work out any bugs.
- Always have a back-up plan. For example, if you are going to use a power-point presentation, you should also bring hard-copy boards of your slides in case the power-point system does not work. Be prepared to verbally make your points if your technology doesn’t work.
- If you are experiencing a problem with your technology, don’t delay too long, and don’t ask for a recess (which may annoy jurors). Just move on in your presentation as if you didn’t need the technology to make your point.
- It is best to bring a second person with you to trial, who can deal with the technology, so you don’t have to.
- Remember that, unless they are admitted into evidence, demonstrative aids cannot go into the jury room with the jurors.
- You can “overdo” demonstrative aids; you can lose the jury if you show them too many things. It is better to focus on a finite number of important issues in your demonstrative aids.

### Practice Tips

- If you are using a system in your direct examination (i.e. Elmo, power point, videotapes, etc.), you need to allow the opposing side to use the same materials on the same system in their cross examination. It is fair to let the opposing side use the materials in the same manner and format as they were presented by the other attorney.
- When showing a trial board or a blown-up image on an Elmo to the jury, you may also want to hand the judge a hard-copy, page-sized version of the image as well. Sometimes boards are placed in a way that the jury can see them, but the judge cannot.
- When jurors are leaning forward to look, this is a sign that they like the demonstrative aid.

*Continued on next page*

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### Demonstrative Aids that Have Been Effective in Trial

- Video showing an accident site, including foliage that was near the site that allegedly blocked the driver's view.
- Aerial photographs. These can be obtained from websites like Google Earth.
- Using clips of an opposing party's videotaped deposition can be used very effectively in cross examination for impeachment. It can be more effective than reading from a transcript. But you need to give the opposing party the page and line you are reading from, and you need to make sure that your DVD is cued up to the correct place as you ask your question, so you can seamlessly flow into the video clip.

### Demonstrative Aids and Technology Used the Most Frequently

- Elmos
- Trial Boards
- Elmos and trial boards are relatively inexpensive, and anyone can use.
- Use of Elmos and trial boards is more effective than publishing documents to a jury – which can delay the proceedings, and which can distract jurors who are trying to read a document at the same time they are trying to listen to the attorney.
- Use of Elmos helps with storage issues for the clerk's office. Instead of trying to store large boards, the clerks can file the paper-sized version of the materials.
- Animation is not seen often.
- Videos can be used very effectively, such as surveillance videos in personal injury cases.
- Remote testimony of witnesses at trial is not favored, because there are logistical issues such as having a person authorized to administer oaths at the witness' location. It is preferable to have the person live at the proceedings or to show his videotaped deposition at trial.



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**GREGORY TENDRICH, Esq.:** FINRA Arbitrator, Certified County Court Mediator & Former Series 7 licensed VP & Asst. General Counsel to Wachovia Securities and other local NYSE/FINRA brokerage firms, is accepting referrals and is available to co-counsel, provide trial/arbitration consultation or assistance in stock loss and investment related disputes, including prudent-investor, suitability, churning and misrepresentation claims in addition to SEC, FINRA, NYSE and other regulatory enforcement matters. Please call (561) 417-8777 or visit [www.yourstocklawyer.com](http://www.yourstocklawyer.com).

**GREY TESH:** "Criminal Law is not black & white, it's Grey." Board certified criminal trial specialist. President, Palm Beach Association of Criminal Defense Lawyers. Federal and State cases. [www.aaacriminaldefense.com](http://www.aaacriminaldefense.com) (561) 686-6886.

**VICTORIA CALEBRESE** is pleased to announce the opening of her firm, Victoria Calebrese, P.A., located at 3300 PGA Blvd., Suite 500, Palm Beach Gardens, FL 33410. Phone (561) 624-2110. Email [Vicky@vclawfirm.net](mailto:Vicky@vclawfirm.net). Specializing in the areas of Marital & Family Law for over 26 years, AV Rated, Board Certified and a Fellow of AAML and IAML.

## OFFICE SPACE:

### PROFESSIONAL OFFICE SPACE

**FOR LEASE:** First floor in Downtown West Palm Beach. Room for two professionals and staff. Walk to courthouse, off street parking. Move-in-ready. Many built-in features. Flexible lease terms. Call Steven at (561) 659-7009.

## EXECUTIVE SUITES/OFFICE

**SPACE:** WPB, Forum Area, east of I-95, single office available. Office set up with conference rooms, library, parking, full kitchen and reception area. Available immediately, no lease required. For more information call (561) 389-3468.

**BOCA RATON-** Best location. Glades Road near I-95. Luxurious "inside" office in newly renovated suite. Secretarial space, telephone, DSL, conference room, copier and facsimile. Reasonable rent. Contact: Barbara (561) 361-8300.

**WEST PALM BEACH:** Office space located minutes from courthouse and close to I-95. Beautiful 10th floor office with great views and professional and tranquil décor. Own secretarial area and use of conference rooms, copier, fax and kitchen/break area. Great for solo professional. Opportunity for referral cases from other attorneys. Call (561) 491-1200 or email [craig@kelleylawoffice.com](mailto:craig@kelleylawoffice.com)

## REAL ESTATE/SPACE SHARING:

Downtown Delray Beach – October 1, 2010- Share office space with three attorneys in an exceptional building. Space includes executive and secretarial offices along with use of conference rooms, photocopiers, fax machines, kitchen, telephone, postage machine, internet access and receptionist. Potential referral base from other attorneys in office. Contact Patti (561) 276-2900.

## FIRST CLASS OFFICE SPACE IN

**WEST PALM BEACH:** Minutes from courthouse, marble floors, elegant décor, conference room, waiting/reception areas, flexible lease terms. Two offices available. Call (954) 567-9939.

**LIVE/WORK LAW OFFICE:** Three story, 3 bed/4 bath, live/work townhouse on Main Street, Abacoa in Jupiter. 2,319 sq. ft. First floor office space is ADA compliant. Walk to spring training and golf. \$1750/month. Call Mike (561) 310-3648.



## Bulletin Board

**FOR RENT:** Gardens law firm on Prosperity Farms Road. 2 large offices (secretary and attorney or 2 attorneys). 520 sq. ft. Front space, includes conference room, receptionist, phones and internet. Please call Val Rodriguez (561) 622-8100 for rates. Available July 1st.

**PBG Law Firm** in prime PGA Boulevard location has two furnished offices and secretarial space to sublease. Reception, kitchen and conference room privileges included. Please call (561) 478-5353 for more information or email [wsilverstein@visabank.com](mailto:wsilverstein@visabank.com)

**FURNISHED OFFICE SPACE IN LAW FIRM:** Palm Beach Gardens impressive Class "A+" office w/ water views. Rent includes receptionist, phone system, electric, DSL, Wi Fi, full kitchen/break room accommodations, conference room, use of 2 outdoor veranda decks to host meetings & business parties to entertain clients & associates. \$1,800/ month. Call Marissa Garone-Blatz (561) 315-2214, (561) 578-5000 x 17 or email [magarone@WallstreetFL.com](mailto:magarone@WallstreetFL.com)

**WEST PALM BEACH:** Multiple law offices with secretarial areas available in prestigious lakefront office building. Rent includes receptionist, use of conference room(s), telephone system, DSL service and kitchen facilities. Copier/scanner and garage parking available. Call (561) 659-6457.

**EAST BOCA RATON OFFICE SPACE FOR RENT:** Shavitz Law Group, P.A. has space to rent for 1-3 attorneys. Up to 5 cubicle spaces for staff. Conf. rms, copy centers, kitchen facilities, office equipment rms. Prestigious office building, café, gym, covered parking, security. Move in ready. Perfect for small law firm or satellite office for a larger firm. Opportunity for referrals for a co-tenant as law office handles large volume of Wage and Hour Claims. (561) 447-8888.

**EAST LAKE WORTH LAW OFFICE** has space available for a solo practitioner. Everything included, phone, fax, copier, conference room and full-time secretary. Referrals available. \$1,000 per month. Email [agdlaw@bellsouth.net](mailto:agdlaw@bellsouth.net).

**OFFICE SPACE FOR LEASE IN BOCA RATON:** Offices are perfect for professionals such as attorney's, title companies, accountants, consultants, realtors, investment advisors, etc! Beautiful prime location in Boca Raton. Three large office areas, 2 offices have private outside entrance, plus storage room and bathroom. Call (561) 338-8443 or email [Bernice@fugazytravel.com](mailto:Bernice@fugazytravel.com)

**CLEMATIS ST - PRIME LOCATION – OFFICE SPACE:** Retail & Corporate offices with 24/7 access, Executive Suite (from \$399/month), Mediation Conference Center, Virtual Offices, starting at \$25/month. Convenient parking, close to courthouse. For more info call Angela at (561) 832-4732 or [gics@irean.com](mailto:gics@irean.com). Visit us at [www.galleria-international.com](http://www.galleria-international.com)

### HEARSAY

Kirwan & Spellacy is pleased to announce that **Charles R. Crispell** has joined the firm in the Jupiter office.



Fox Rothschild LLP is pleased to announce **Carina Leeson** was installed as the 2010-2011 Sponsorship Director of the board of directors of the Palm Beach County Chapter of the Florida Association of Women Lawyers (FAWL).

**Clerk Sharon R. Bock** was recently elected to a two-year term on the Executive Council of the Florida Clerks of Court Operations Corporation, the agency created by the Florida Legislature to review and certify court-related budgets for the state's 67 clerks. Bock is currently serving her second four-year term as Clerk & Comptroller of Palm Beach County, the third-largest clerk's office in Florida.

**Lewis Kapner** and his daughter, **Allison L. Kapner**, are pleased to announce that they are carrying on the tradition of the original Kapner & Kapner, P.A. law firm founded in 1965 by Lewis Kapner and the late Norman Kapner (his brother) and have renamed their firm Kapner & Kapner, P.A.



**Jason A. Brodie** of the boutique-size family law practice Brodie & Friedman, P.A. was recognized by his peers as a "Rising Star" in the 2010 edition of Florida Super Lawyers.

Rutherford Mulhall, P.A. is pleased to announce that **Kenneth N. Johnson** has been re-elected as Treasurer of the Palm Beach Association of Criminal Defense Lawyers, 2010-2011.

**Christine D. Hanley & Associates, P.A.** received the Legal Aid Society of Palm Beach County's Pro Bono Firm Award for 2010. Also, **Christine D. Hanley**, Principal of the firm received The Chamber of Commerce of the Palm Beaches 2010 Small Business Person of the Year award.



**Stephen G. Fischer** has joined MATRIX Mediation in Palm Beach County. Mr. Fischer is a Florida Supreme Court Certified Circuit Civil Mediator and a Certified Federal Court Mediator in the Southern & Middle Districts of Florida. He mediates cases in Palm Beach County, statewide and nationally.

**James D. Sweet, Jr.** of James D. Sweet, Jr. P.A. is pleased to announce his new location to 1601 Belvedere Road, Suite 402 South, West Palm Beach, FL 33406. Phone (561) 687-8046 Fax (561) 687-7892 Email [JDS@sweetlawpa.com](mailto:JDS@sweetlawpa.com)

Jones, Foster, Johnston & Stubbs, P.A. announces that **C. Wade Bowden** was recently sworn in to practice before the United States Supreme Court. The firm also announces that **Allen R. Tomlinson** received the Legal Aid Society's Civil Litigation Award at the annual Pro Bono Recognition Evening.



Managing Partner Wendy Sartory Link is pleased to announce

that **Celia E. Henry** and **Devon Bennett-Ward** have joined the law firm of Ackerman Link & Sartory, P.A. Ms. Henry practices in the areas of business litigation and securities arbitration. Ms. Bennett-Ward practices in the areas of business and commercial litigation.



PALM BEACH COUNTY BAR ASSOCIATION  
**BULLETIN**

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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

## July/August 2010

Tuesday, July 27,  
 Noon – 1:00pm  
**Diversity & Inclusion  
 Committee Meeting**  
 Bar Association Office

Wednesday, July 28,  
 3:30pm – 4:30pm  
**Corporate Counsel  
 Committee Meeting**  
 Bar Association Office

Thursday, July 29,  
 4:00pm – 6:00pm  
**NCS CLE Happy Hour**  
 Abacoa Golf Club

Friday, July 30,  
 11:00am – 1:00pm  
**Committee Chair Meeting**  
 Bar Association Office

Thursday, August 5,  
 6:00pm -8:00pm  
**Christian Legal Society  
 Women's Gathering**  
 Panera Bread, Village Blvd.,  
 WPB

Friday, August 6  
**RPPTL Legislative Update**  
 The Breakers Hotel

Wednesday, August 11,  
 Noon – 1:00pm  
**Business Law  
 Committee Meeting**  
 Bar Association Office

Thursday, August 12,  
 Noon – 1:00pm  
**NCS Board of Directors  
 Meeting**  
 Office of Michael Slavin

Thursday, August 19,  
 5:00pm – 7:30pm  
**Spelling Bee and  
 Membership Cocktail  
 Reception**  
 Bear Lakes Country Club

Wednesday, August 25,  
 3:30pm – 4:30pm  
**Corporate Counsel  
 Committee Meeting**  
 Bar Association Office

Wednesday, August 25,  
 5:00pm – 6:00pm  
**PBCBA Board of Directors  
 Meeting**  
 Bar Association Office

Thursday, August 26,  
 6:00pm – 7:30pm  
**PBJA Barrister's Bash**  
 Contact Kathy Baloga  
 790-5833

Friday, August 27,  
 Noon – 4:00pm  
**Legal Aid Juvenile  
 Law Training**  
 Bar Association Office

Tuesday, August 31,  
 5:30pm – 6:30pm  
**Legal Aid Board Meeting**  
 Bar Association Office

