



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

www.palmbeachbar.org

June 2012



## Dues Statements Mailed

Annual membership dues statements have been mailed to all PBCBA members for fiscal year 2012-2013, which begins July 1. If you did not receive a bill, contact Shoshanah at the Bar Office (687-2800) or [sspence@palmbeachbar.org](mailto:sspence@palmbeachbar.org)

## Get Involved with Your Bar

The North County Section has two director seats available for a two year term beginning July, 2012. These seats will be filled by appointment in August. If you're interested in serving on the Board, please let us know by August 1 by sending an email to [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org)

## Mark your calendar for upcoming Membership Events

**Annual Installation Banquet**  
June 2, 7:00 - midnight  
The Breakers Hotel, Palm Beach

**Young Lawyers Section Fishing Tournament**  
June 30  
Palm Beach Yacht Club

**Diversity Luncheon**  
October 19, 11:45 - 1:00  
Marriott West Palm Beach  
Speaker: FL Bar President-elect Gwynne Young

**Joint Luncheon with the Forum Club**  
November 16, 11:30 - 1:00  
Cohen Pavilion at the Kravis Center  
Speaker: Retired U.S. Supreme Court Justice John Paul Stevens

**Annual Holiday Party & Silent Auction**  
December 6, 5:30 p.m.  
Frenchman's Reserve



## Cheers!

The Palm Beach County Association's Board of Directors recently celebrated the opening of its first permanent location with a ribbon cutting ceremony and champagne toast. The evening included a private reception for room donors followed by an open house for close to 200 members. Since the building was originally a Denny's Restaurant, our guests were treated to mimosas and breakfast foods like bacon and french toast sticks. The office is located at 1507 Belvedere Road in West Palm Beach with 6,000 square feet under air including a state of the art classroom for continuing legal education seminars. The next time you're in the area stop by and say hello! See page 5 for more photos from the event.

**Pictured front left to right: Theo Kypreos, Jill Weiss, Adam Rabin, John Howe, Patience Burns, Executive Director; Michael Napoleone, Michelle Suskauer and Robin Bresky. (Back row left to right) Richard Schuler, 2008-09 president; Jason Guari, C. Wade Bowden and John Whittles.**

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THE  
**BULLETIN**

PALM BEACH COUNTY  
BAR ASSOCIATION

JOHN M. HOWE  
President

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

PATIENCE A. BURNS, CAE  
Executive Director

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John M. Howe, President  
Adam T. Rabin, President-elect

**Directors**

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C. Wade Bowden  
Robin I. Bresky  
Jason J. Guari  
Theodore S. Kypreos  
James "Grier" Pressly III  
Jill G. Weiss  
John R. Whittles

Michael J. Napoleone, Immediate Past President  
Jason D. Lazarus, Young Lawyers Section President  
Ronald P. Ponzoli, Jr., North County Section President  
Jay A. Schwartz, Ex Officio, South County Bar Assn. President

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West Palm Beach, FL 33406  
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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  
1507 Belvedere Road  
West Palm Beach, FL 33406



**Teaching Civics Education to Adults in our Community**



More than 35 attorneys and judges recently attended the first Raising the Bar on Civics Education seminar, which was presented by the Law Related Education Committee.

The purpose of the program was to

train our members to proactively promote civics awareness and participation by going out into the community to conduct interactive learning sessions for community associations, civic clubs, schools and religious organizations.

The presenters included Annette Pitts Boyd, Executive Director of the Florida Law Related Education Association and Richard H. Levenstein of Kramer, Sopko & Levenstein, P.A. In addition, Judge Jonathan Gerber spoke regarding the Justice Teaching Project, which calls on judges and lawyers to serve as resources for the teachers and students in every elementary, middle and high school in Florida.

The Law Related Education Committee is chaired by Kalinthia Dillard who says "those who understand and appreciate the role of civics in their lives are more likely to vote the entire ballot; volunteer; understand the rights and responsibilities of citizenship; appreciate the role of the courts; understand the fundamental principles of our system of government; and be employed.



**W. Jay Hunston, Jr.  
Mediator/Arbitrator**

Since 2001, limiting his practice to all forms of effective dispute resolution, including mediation, arbitration, special master, and private judging services.

- J.D., Stetson Univ. College of Law (1976)
- Fla. Bar Bd. Cert. Civil Trial Lawyer (1983 - 2003)
- Fla. Bar Bd. Cert., Emeritus, Civil Trial Law (2003 - Present)
- Fla. Certified Circuit Civil Mediator (1991 - Present)
- Fla. Certified Family Mediator (1998 - Present)
- Fla. Certified Appellate Mediator (2012 - Present)
- Qualified Fla. Arbitrator (2000 - Present)
- FINRA Approved Mediator
- Hourly and Per Diem Rates Available Upon Request

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(772) 223-4092; (866) 748-6786 - Fax  
Email: [wjh@hunstonadr.com](mailto:wjh@hunstonadr.com)  
Website/Online Calendar: [www.hunstonadr.com](http://www.hunstonadr.com)



## Where Did All the Time Go?

By John M. Howe

As I write this, my last president's message, I cannot stop asking myself that question. It seems it was only a

couple of months ago that I was installed as president. But alas, June is here again. It has been an honor and a privilege serving as president this year, and I thank all of you for your support of the Bar.

My foremost goal this year was to deliver an improved Bar, and our successes this year were many. This was an exciting and amazing year. Our greatest and most obvious success was moving the Bar into its new home in February. Owning our own building had been a long-time dream and goal because of the security and stability it would represent for future decades. When I was installed last June, the building, a former Denny's restaurant, was a dilapidated wreck, haunted by the stale smelling ghosts of Grand Slams past. Over the next several months, we watched as the building was resurrected to become a comfortable, state-of-the-art office and meeting space for members and staff. This would not have been possible, but for the vision, teamwork, stewardship and leadership of our past and present boards. I am extremely proud to have played a role in the realization of this goal. If you have not had an opportunity to visit the building, I would invite you to drop by for a visit. However, the new building was just one of the year's successes.

This year, the Diversity Internship Program (DIP), under the strong leadership of our Committee for Diversity and Inclusion (CDI) Co-Chairs, Sia Baker-Barnes and Laurie Cohen, and DIP sub-committee Co-Chairs, Edrick Barnes and Jessica Callow, over 20 diverse law students were placed at several local firms and government agencies. This was over a threefold increase in the number of internships filled in previous years. In October, the CDI also presented the 2nd Biennial Diversity Summit featuring Florida Supreme Court Justice James Perry as keynote speaker, followed by panel and

roundtable discussions. The program was a success, highlighting progress made over the past two years and identifying areas needing improvement. These successes did not, however, happen in a vacuum. They came about only with the combination of persistence and hard work of all of the CDI sub-committee chairs and members, as well the "buy-in" of individual and firm members.

Every year, the Bar relies heavily on the hard work and dedication of its members who volunteer to serve on or chair our 36 committees. This year, our committees again stepped up and delivered another spectacular year of programs and CLE opportunities. Our CLE committees planned and presented over 30 seminars this year - an outstanding achievement. Our newly formed Law Related Education Committee, chaired by Kalinthia Dillard, did a fabulous job in presenting the Bar's first "Raising the Bar on Civics Education" seminar to train lawyers and judges to actively promote public awareness of the workings of our democracy and courts. It also organized presentations to grade school students and co-hosted a luncheon with the Palm Beach Economic Council featuring Florida's Education Commissioner, Gerard Robinson. I cannot thank all of our committee chairs and committee members enough for their leadership and hard work.

Congratulations are also in order for Young Lawyers Section President, Jason Lazarus, and North County Section President, Ron Ponzoli, for outstanding leadership of their respective sections. The YLS had another activity packed year which featured a school supply distribution, career day and reading is fundamental program for underprivileged elementary school students, having the Easter bunny visit sick children at the Quantum House, lunch with the Judges program, a Habitat for Humanity homebuilding project and an upcoming Fishing Tournament. The NCS also had an exceptional year which featured several networking happy hours, donations of \$126,000 to 21 different non-profit organizations, and its first

ever family Caribbean beach event.

In January, the Bar joined FAWL, the F. Malcolm Cunningham, Sr. Bar Association and the Hispanic Bar Association of Palm Beach County to present "Road to the Bench" which featured many distinguished panelists and speakers. It was well-attended and provided an excellent opportunity for attendees to have their questions answered and receive valuable insight into the judicial merit selection process.

In March, the Bar hosted its annual Bench Bar Conference (BBC) attended by over 900 lawyers and judges. Kudos go to this year's BBC co-chairs, Wade Bowden and Greg Huber. This year's Professionalism Award went to our Public Defender, Carey Haughwout. The Bar also awarded the first Judge Edward Rodgers Diversity Award to Greenberg Traurig's West Palm Beach office for its demonstrated commitment to diversity. The keynote speaker, distinguished litigator and law professor, Bruce Rogow, delivered a moving address detailing feats of five lesser known individuals who exhibited heroic courage during our country's Civil Rights Movement.

In May, we had another terrific Law Week culminating with our Law Day Luncheon. This year's luncheon featured nationally known kidnapping survivor, Elizabeth Smart, who shared her story of survival, hope, faith and courage and in the face of adversity. It was a truly moving and inspirational story.

Last, but not least, I thank our Bar staff and Board of Directors for their unwavering commitment to excellence and preservation of our Bar's reputation as one of the best bar associations in the state and nationally. This year, I made a point of highlighting each member of our board to give our members a better idea of who represents them and to thank their families for graciously sharing them with us. Our Bar also has a team of dedicated staff whose efforts serve as the oil that allows it to run smoothly. Whenever you are in the Bar office, or when you see them at events, please take a moment to thank our staff. I also congratulate and welcome our newly-elected and returning board members, Jessica Callow, Greg Huber, Theo Kypreos, Ned Reagan and John Whittles. Our Bar was definitely

*Continued on page 5*



# 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.



## Board Meeting Attendance

	Retreat	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	April
Barnes	x	x	x	x	x	x	x	x	phone	x
Bowden	x	x	x	x	x	x	x	x	x	x
Bresky	x	x	x	x	x	x		x	x	x
Guari	x	x	x	x	x	x	x	x	x	phone
Howe	x	x	x	x	x	x	x	x	x	x
Kypreos	x	x		x	x	x	x	x	x	phone
Lazarus	x	x	x	x	x	x	x	x	x	x
Napoleone	x	x	x	x	x	x	x	x	x	x
Ponzoli	x	x	x	Buck	x	x	x	x	x	x
Pressly	x	x	x	x	x	x	x	x	x	x
Rabin	x	x	x	x	x	x	x	x	x	x
Weiss	x	x	x	x	x	x	x	x	x	x
Whittles	x	x	x		x	x	x	x	x	



## It's Time...

...to renew your Palm Beach County Bar Association Membership Dues. Statements were mailed in early April. Only members can take advantage of these:

### Discounts

- CLE - live seminars plus a large library of CD's to help meet those last-minute CLER requirements (savings of \$40 per seminar)
- Movie Tickets (savings of \$2 per ticket)
- Theme Park Tickets
- Brooks Brothers (savings 15%)
- Daily Business Review
- One free classified ad in Bulletin (value of \$50)
- Office Supplies
- Credit Card Processing
- Disability Insurance
- Free Happy Hours (\$25 per event)
- Paychex Payroll and HR Service (savings 15%)
- Members only events (such as luncheons with U.S. Supreme Court Justices)

### Professional Benefits

- Mentor Program
- Public service opportunities
- Annual printed pictorial directory as well as an on-line membership directory
- Weekly eNewsletters
- Monthly Bar Bulletin newsletter
- Lawyer Referral Service
- North County Section
- Young Lawyers Section

Renew your Bar Association Dues Promptly  
It pays to be a member!

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

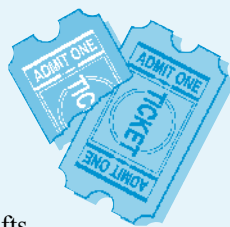
## Enjoy the Dog Days of Summer — Go To The Movies!

### Discount Movie Tickets

The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff and clients. Savings are available for the following theaters:

- \* Muvico Theater - \$8.00 each
- \* Regal Theaters - \$8.00 each

Come by the office and pick up your tickets today (**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number. **PRICES ARE SUBJECT TO CHANGE**





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



**"iPhone and iPad Apps for Lawyers"  
(learn over 50 apps for your law practice)**

**Friday, June 15, 2012 - 11:30a.m. – 2:00p.m.  
Bar Association Offices  
NEW LOCATION 1507 Belvedere Road, WPB, FL**

**Program Schedule**

- 11:30 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 12:00 p.m. - 12:05 p.m. **Welcome & Opening Remarks** - *Christopher B. Hopkins, Esq.,  
Committee Chair, Akerman Senterfitt*
- 12:05 p.m. - 2:00 p.m. **iPhone and iPad Apps for Lawyers**—*Christopher B. Hopkins, Esq.,  
Akerman Senterfitt*

**SPONSORED BY:**



**Akerman Senterfitt, LLP**

This course has been granted **2.5 CLER** from **The Florida Bar**.

The cost of the seminar is **\$60.00 (includes lunch)** for PBCBA members/paralegals;  
**\$100** for non-PBCBA members/paralegals if registered by **6/8/12**; add \$25 to registration fee after that date.

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

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

**HOW TO REGISTER**



**BY CHECK**  
Return this form



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



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

Credit card registration payment not accepted by Fax to comply with PCI regulations.

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

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

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (6/15/12 Technology.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

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

## Open House Highlights



David Tadros, Jay White and Kurt Wyland



Odette Bendeck and Jeff Fisher



Irwin Levy and Larry Alexander



Kalinthia Dillard, Alexcia Cox, and Phil Hutchinson

Additional pictures can be seen on the Bar's Facebook page.



Dave Aronberg, Zulma Labarga and Florida Supreme Court Justice Jorge Labarga



Ned Reagan and Steve Brannock try the french toast. A menu appropriate for a building that was a former Denny's Restaurant.



Robin Scher is greeted with a mimosa



Mickey Smith and Richard Schuler

## President's Message

*Continued from page 3*



improved over the last year. I know the trend of improvement will continue with our incoming president, Adam Rabin, and new board. It was a pleasure serving as your president this year, and I again thank you for giving me the opportunity to serve.

### Featured Board Member

This month's featured board member is John Whittles. John is a graduate of Nova Law Southeastern Law School. For the last 13 years, he has practiced in the area of Business Litigation at Richman Greer in West Palm Beach. Last September, he got married to Shannon

Mahoney, who is a solo practitioner in West Palm Beach and a fellow Nova Law grad. John and Shannon are expecting their first child (a daughter) on July 28 – Congratulations!!! The Whittles Family includes three dogs, Frank (Great Dane), Vanilla Bean (Yellow Lab), and Maher (Jack Russell). When not in the office or in trial, John rocks the guitar in an all-lawyer band. He also enjoys cooking. John's personal creed is: "Take your work seriously and yourself unseriously." And, did I mention? - He makes a "serious" 20lb. lasagna!



# Judicial Profile of Judge Burton C. Conner



*By: Evan H. Frederick on behalf of the Judicial Relations Committee*

Since he was five or six years old, Judge Burton C. Conner knew he wanted to be a lawyer. He ultimately achieved that dream and more, as he is the newest judge of the Fourth District Court of Appeal.

Judge Conner was raised by a single mom in the Sarasota/Bradenton area, the fourth out of five kids. He attended Duke University where he received a BA in History and English. He then went on to the University of Florida College of Law, where he got his first taste of public service: serving as an intern in the Public Defender’s office during his last year of law school.

Upon graduation, Judge Conner moved to Fort Pierce, where he started as an Assistant Public Defender for the Nineteenth Judicial Circuit. After a little over a year at the PD’s office, in 1979 he joined Conely & Conely, P.A., in Okeechobee, where he practiced civil litigation.

In 1984, Judge Conner was appointed as a County Judge for Okeechobee County, where he served for approximately five years. It was these first few years presiding over Juvenile Court as an Acting Circuit Judge that made the most profound impact on Judge Conner. Indeed, he believes that working with children in the Juvenile Court is the most important duty a judge has because they are directly impacting (and hopefully helping) the lives of children, who can then pay it forward in raising their own kids.

In 1988, Judge Conner returned to private practice, forming his own firm that focused on all areas of civil litigation and transactional work. In April 1997, he was appointed to the Circuit bench for the Nineteenth Judicial Circuit. Judge Conner served for approximately fourteen years, presiding over various divisions in Indian River, St. Lucie, and Okeechobee Counties, including the juvenile, criminal, civil, probate, guardianship, and family divisions.

Judge Conner’s other judicial passion – besides working with kids in Juvenile Court – is working with juries, as he believes that America’s system of a trial by a jury of our peers is the ultimate implementation of “government of the people, by the people, for

the people.” He echoed these beliefs when giving his welcoming speeches to juries that he presided over. In these speeches, Judge Conner emphasized that the jury members were “fellow judges” when deciding the facts of the case and applying the law and that the importance of their work could not be overstated.

In 2001, the Florida Supreme Court appointed Judge Conner to its Committee on Alternative Dispute Resolution Rules and Policy. This Committee includes a cross-section of judges, mediators and ADR professors, who then make recommendations to the Supreme Court as to mediation and arbitration rules, certifications, training, etc.

In 2009, the Chief Justice of the Supreme Court appointed Judge Conner to the Mortgage Foreclosure Task Force, which lasted six months and included judges, lawyers, real estate professionals, and bankers. The Task Force was responsible for drafting Florida’s mortgage mediation program.

It was his enjoyment of the collaborative decision-making process on the Committee on Alternative Dispute Resolution Rules and Policy and the Mortgage Foreclosure Task Force – along with sitting as an associate judge on the Fourth DCA in 2001 and 2008 – that led Judge Conner to apply for the vacancy on the Fourth DCA bench. In February 2011, Governor Scott appointed Judge Conner to the Fourth DCA, thereby becoming the second judge from the Nineteenth Judicial Circuit currently sitting on the Court (after a span of twenty-two years since the appointment of Judge Martha Warner). Although he misses being in the trial courtroom and working with juries, he loves collaborating and discussing the law with the other Fourth DCA judges in making a ruling.

Off the bench, Judge Conner has worked with several civic organizations geared toward children’s issues. One such organization is the St. Lucie County Executive Roundtable, where he has served as a board member since 1998. The Executive Roundtable is comprised of local business and community leaders whose sole task is to implement plans and programs to improve children’s lives in St. Lucie County. Judge Conner has also served on, among others, the St. Lucie County Children’s Services Council and the Exchange Club Center for the Prevention of Child Abuse.



In his free time, Judge Conner enjoys physical exercise, yoga, and performing yard work. He has four children – daughters Seyward, Courtland, Doanyelle, and son Burton II– and three grandchildren.

*Evan H. Frederick is an associate with McCabe Rabin, P.A. in West Palm Beach. He practices in the areas of business, securities and whistleblower litigation.*

## Circuit Court Report CIVIL DIVISIONS • As of April 25, 2012

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	10-12	10-12	05-12	1388
AB KASTRENAKES	10-12	10-12	08-12	1582
AD FRENCH	08-12	08-12	07-12	1729
AE MCCARTHY	02-13	02-13	05-12	1827
AF KEYSER	10-12	10-12	05-12	1620
AG CROW	10-12	09-12	06-12	1814
AH BROWN	09-12	09-12	05-12	1429
AI SASSER	08-12	06-12	05-12	1145
AJ ROSENBERG	09-12	09-12	08-12	1272
AN McSORLEY	10-12	10-12	07-12	1679
AO BRUNSON	09-12	07-12	06-12	1616

# Capital Campaign – Thank You to Those Who Have Contributed!

## Personalized Bricks Purchased (As of 4/30/12)

**Akerman**  
**Adams, Coogler, Watson, Merkel, Barry & Keller, P.A.**  
**Babbitt, Johnson, Osborne & LeClainche, P.A.**  
**Beer, Jerald**  
**Bertisch, Robert & Harreen**  
**Breton, Lynch, Eubanks & Suarez-Murias, P.A.**  
**Brewer, Carol McLean**  
**Burns, John L.**  
**Burns, Tom & Patience**  
**Casey, Patrick**  
**Clark, Fountain, LaVista, Prather, Keen & Littky-Rubin**  
**Coleman, Greg & Monica**  
**Colton, Roger B.**  
**Cortvriend, Sarah**  
**Deckert, Ted**  
**Downey, Edward**  
**Dunwoody White & Landon, P.A.**  
**F. Malcolm Cunningham, Sr. Bar Assn.**  
**Farrell, John**  
**Fine, Edward**  
**Fox Rothschild**  
**FPL**  
**Gamot, Melinda**  
**Gerber, Jonathan & Tracy**  
**Glickman, Garry**  
**Glickman, Witters & Marell**  
**Gordon & Doner, P.A.**  
**Hispanic Bar Association**  
**Howe, John**  
**Hunston, Jay and Jane**  
**Jenks, Debra & Robert Harvey**  
**Jones Foster Johnston**  
 (In memory of John McCracken)  
**Kenwood, Joel**  
**Klett, Stan**  
**Koehler, Dennis, In Memory of**  
**Kreusler-Walsh Compiani & Vargas, P.A.**  
**Kypreos, Theo & Jennifer**  
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**Law Offices of Irwin J. Block PLLC**  
**Law Offices of Robin Bresky**  
**Lazarus, Jason**  
**Legal Aid Society of Palm Beach County**  
**Leopold Law**  
**Levine, Spencer & Judith**  
**Maschler, Matthew H.**  
**Massa, Patrick**  
**McBane, Louis R.**  
**McCabe Rabin**  
**McCall, Wallace**  
**McClosky, D'Anna & Dieterle, LLP**  
**McHale & Slavin**  
**Murray & Guari**  
**Murrell, Donnie**  
**Napoleone, Michael**  
**Neal, Ginny R.**  
**Palm Beach Spine & Diagnostic Institute**  
**Pateman, Mark**  
**PBC Chapter of Paralegal Association**  
**Pineiro Byrd PLLC**  
**Pressly & Pressly**  
**Prior, Ted**  
**Proskauer Rose LLP**  
**Rock Legal Services & Investigations**  
**Royce, Catherine S.**  
**Royce, Raymond W.**  
**Rutherford Mulhall, P.A.**  
**Sabadell United Bank**  
**Sasser, Tom & Meenu**  
**Schutz & White LLP**



The Bar Association has moved to its first permanent home located on Belvedere Road in West Palm Beach. The building is a state-of-the-art facility for our legal community to enjoy for many years to come. You can be a part of history by naming a room or buying a brick.

We sincerely thank the following firms and members who have contributed as of 11/25/11:

Searcy Denney Scarola Barnhart & Shipley .....	Classroom
Richman Greer, P.A.....	Executive Director's Office
Schuler, Halvorson, Weisser & Zoeller, P.A.....	Small Conference Room
Holland & Knight LLP.....	Member Services Office
North County Section & Young Lawyers Section .....	Communication Director's Ofc
Lesser, Lesser, Landy & Smith .....	Front Bench
Lytal Reiter Smith Ivey & Fronrath .....	Reception Area
Jones, Foster, Johnston & Stubbs.....	LRS Office
Gunster.....	Landscape
Fisher & Bendeck .....	Landscape
Wyland & Tadros .....	Workroom
H. Irwin Levy.....	Visiting Attorney's Office
In Memory of Bob & Sandy Rogers .....	Lounge
Brian Scher & Debbie Meltzer .....	Women's Lounge
Greenberg Traurig.....	Admin. Asst. Workstation

*Additional rooms are still available!*

### Would you like to have a permanent place in the Bar's new building?

For further information regarding naming rights or to purchase a brick, please contact Lynne Poirier at the Bar Office or scan the QR Code here with your Smartphone or go to [palmbeachbar.org/capital\\_campaign.php](http://palmbeachbar.org/capital_campaign.php)



**Shalloway & Shalloway**  
**Shutts & Bowen LLP**  
**Signature Court Reporting**  
**Small, Michael, Lisa Small & J.D. Small**  
**Smith, Amy**  
**Smith, D. Culver**  
**Smith, Scott & Molly**  
**Sojka, Cindy**  
**Sorgini & Sorgini, P.A.**  
**South Palm Beach County Bar Association**  
**Stewart, Todd**

**Stuart Manoff & Associates**  
**Stubbs, Sidney**  
**Suskauer, Michelle**  
**U.S. Legal Support**  
**Walsh, Michael P.**  
**Weiss, Jill**  
**Weissman, Joel & Alexandra**  
**Wennet, Richard I.**  
**Whittles, John**  
**Wroble, Art & Mary Ellen**  
**Zele Huber**





## Death Before Execution

By David M. Garten, Esq.

Is an attorney liable for negligent delay in completing and furnishing estate planning documents for execution by the client? The answer may depend on the intended beneficiaries' standing to bring a malpractice action.

In *Babcock v. Malone*, 760 So. 2d 1056 (Fla. 4th DCA 2000), Plaintiffs filed suit alleging that defendant lawyer was negligent in failing to timely prepare a new will for their uncle. As a result, their uncle died before executing the new will under which plaintiffs would have inherited, and instead they were left nothing. The complaint alleges that the defendant, in March, had been retained to prepare a new will for the decedent. Defendant was advised that the decedent wanted to change his prior will and make his nine nieces and nephews, who were not beneficiaries under the prior will, beneficiaries under the new will. It was further alleged that defendant knew that the decedent's health was failing and that time was of the essence, but by the time a draft of the will had been prepared in May, the decedent's health had deteriorated, and he died without executing it. Plaintiffs attached to their complaint an unexecuted copy of the new will as well as defendant's statements for services rendered showing a conference with the decedent, as well as a letter dated May 6 enclosing a revised draft of the will for decedent to execute if it met with his approval. The trial court dismissed the complaint for failure to state a cause of action. The appellate court affirmed. The court reasoned that because plaintiffs were not named in decedent's prior will, they did not qualify as intended third-party beneficiaries and therefore, could not bring a legal malpractice case.

In *Ryde v. Morris*, 381 S.C. 643; 675 S.E.2d 431 (S.C. 2009), approximately a month before her death, the decedent engaged an attorney to prepare her estate plan. Before the completion of the plan, the decedent became incapacitated and was placed on a respirator and in a drug-induced sleep.

She subsequently died without having signed her estate planning documents. Because a will was not prepared for execution prior to the decedent's death, her estate passed through intestacy. The prospective beneficiaries contended that the attorney's alleged negligent failure to timely draft a will and arrange for its execution permitted them to maintain a cause of action for legal malpractice against the attorney. The trial court dismissed the action because the attorney owed no duty to the prospective beneficiaries of the nonexistent will. The appellate court, in affirming the lower court, reasoned in part as follows:

The Connecticut Supreme Court was presented with this issue in *Krawczyk v. Stingle*, 208 Conn. 239, 543 A.2d 733 (Conn. 1988). While acknowledging its precedent permitting a cause of action against an attorney who failed to draft a will in conformity with a testator's wishes, the *Krawczyk* court addressed "whether such liability should be further expanded to encompass negligent delay in completing and furnishing estate planning documents for execution by the client." *Id.* at 735. The Connecticut Supreme Court concluded "that the imposition of liability to third parties for negligent delay in the execution of estate planning documents would not comport with a lawyer's duty of undivided loyalty to the client." *Id.* at 736. *Krawczyk* advanced the following policy rationale for its decision, with which we concur:

A central dimension of the attorney-client relationship is the attorney's duty of "[e]ntire devotion to the interest of the client." This obligation would be undermined were an attorney to be held liable to third parties if, due to the attorney's delay, the testator did not have an opportunity to execute estate planning documents prior to death. Imposition of liability

would create an incentive for an attorney to exert pressure on a client to complete and execute estate planning documents summarily. Fear of liability to potential third party beneficiaries would contravene the attorney's primary responsibility to ensure that the proposed estate plan effectuates the client's wishes and that the client understands the available options and the legal and practical implications of whatever course of action is ultimately chosen. These potential conflicts of interest are especially significant in the context of the final disposition of a client's estate, where the testator's testamentary capacity and the absence of undue influence are often central issues.

In *Miller v. Mooney*, 431 Mass. 57, 725 N.E.2d 545 (Mass. 2000), plaintiffs were the children and heirs of decedent who alleged that, prior to her death, decedent wished to change her will to leave some money to plaintiffs. They sued defendant, decedent's lawyer. The court affirmed summary judgment in defendant's favor because there was no enforceable agreement on which plaintiffs could maintain a contract action. Plaintiffs would only have been incidental beneficiaries to any contract between defendant and decedent. Defendant owed a duty only to decedent and not to plaintiffs because a conflict of interest would have ensued. The court reasoned in part as follows:

We have previously noted that "in preparing a will, attorneys can have only one client to whom they owe a duty of undivided loyalty." A client who engages an attorney to prepare a will may seem set on a particular plan for the distribution of her estate, as here. It is not uncommon, however, for a client to have a change of heart after reviewing a draft will. Confronting a last will and testament can produce complex psychological demands on a client that may require considerable periods of reflection. An attorney frequently prepares multiple drafts of a

Continued on next page



The Palm Beach County Bar Association's Employment Law Committee Presents:  
**"Third Annual Martinis and Migraines"**

Wednesday, June 13, 2012 - 1:00pm—5:00pm  
Bar Association office



Program Schedule

12:45 - 1:00pm - Late registration check-in

1:00 - 1:10pm - **Welcome & Opening Remarks** - *Cathleen A. Scott, Esq., Board Certified Labor & Employment Law Attorney, Employment Law CLE Committee Chairperson, Cathleen Scott & Associates, P.A.*

1:10 - 2:00pm - **Case Law Update & Hot Topics** - *Steven L. Schwarzberg, Esq., Schwarzberg & Associates*

2:00 - 2:50pm - **Litigating Non Competes & Other Restrictive Covenants** -  
*Gerard Joseph Curley, Jr., Esq., Board Certified Business Litigation Law Attorney, Gunster*

2:50 - 3:00pm - **BREAK**

3:00 - 3:50pm - **Handling Class and Collective Actions** - *Daniel R. Levine, Esq., Shapiro Blasi Wasserman & Gora PA, Board Certified Labor & Employment Law Attorney*

3:50 - 4:20pm - **Tax Implications of Severance and Settlement Agreements from Employment Practitioner** -  
*Michael Tomberg, Esq., Tomberg Law Firm, P.L.*

4:20 - 5:00pm - **Agency Update from EEOC, NLRA, and New Legislation Regarding Public Employee Cases** -  
*Cathleen A. Scott, Esq., Board Certified Labor & Employment Law Attorney, Cathleen Scott & Associates, P.A.*

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YLS President Jason Lazarus, President-elect Lee McElroy, Brian Bull and Secretary Julia Wyda



Andrei Korotkov, Jordon Wiegler and Matthew Konecky

## Death Before Execution

*Continued from page 8*

will before the client is reconciled to the result. The most simple distributive provisions may be the most difficult for the client to accept. Considerable patience and compassion can be required of attorneys drafting wills, especially where the client seeks guidance through very private and sensitive matters. If a duty arose as to every prospective beneficiary mentioned by the client, the attorney-client relationship would become unduly burdened. Attorneys could find themselves in a quandary whenever the client had a change of mind, and the results would hasten to absurdity. The nature of the attorney-client relationship that arises from the drafting of a will necessitates against a duty arising in favor of prospective beneficiaries.

In Hodge v. Cichon, 78 So. 3d 719 (Fla. 5th DCA 2012), the decedent retained a tax and estate planning specialist to prepare documents to implement a family limited partnership (FLP). However, prior to the execution thereof, the decedent deeded certain

property to the estate beneficiaries (EBs) and executed wills that named them as beneficiaries, which altered the estate as it existed when the specialist's plan was prepared. The decedent was subsequently deemed partially incompetent and guardians were appointed. At the guardians' request, the probate court entered an order directing the implementation of the specialist's plan in an effort to, among other things, reduce the estate's tax liability. When the decedent died some two and one-half years later, the plan had not been fully implemented. The EBs filed a negligent action against the guardian's attorneys alleging they were the intended beneficiaries of the decedent's estate because they were beneficiaries under the wills. The attorneys filed a motion for summary judgment and argued to the trial court that the EBs lacked standing because no attorney-client relationship existed between them and the EBs. Further, they posited that an attorney-client

relationship could not have existed due to the adversarial nature of the parties' positions. The trial court granted summary judgment to the lawyers. The appellate court reversed and remanded the matter for further proceedings. The court found in part that genuine issues of material fact existed as to the status of the EBs and whether they were intended beneficiaries given the fact that the actions of retained counsel and the direction of the court in ordering the implementation of the estate plan were intended to benefit the EBs.



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## Towards a More Professional Discovery Response

By: *David P. Ackerman and Dana E. Foster*

Most of us respond to discovery requests in ways that appear evasive and uncooperative. We don't mean it, but that is the way it appears in writing.

We have handy boilerplate objections we use for any discovery request, no matter how reasonably framed. (This is the sin of forms: when you have a form nearby, you feel compelled to use it.) Then, after asserting all the general objections imaginable, we respond to each specific discovery request by again repeating boilerplate objections. Most of these objections are justified only by the most hypertechnical or legalistic reading of the request or interrogatory.

Some of the objections traditionally recited are completely unnecessary or meaningless. Consider these objections:

The Requests attempt to impose obligations extending beyond those authorized by the Florida Rules of Civil Procedure.

- The Requests seek documents that are not in Defendant/Plaintiff's possession, custody or control.
- The Requests are irrelevant, overly broad, vague and ambiguous.
- The Requests seek the production of documents that are neither relevant to any claim or defense, nor reasonably calculated to lead to the discovery of admissible evidence.
- The Requests seek the production of documents that are unreasonably cumulative, that are otherwise publicly available or that are available from another source that is less burdensome or less expensive.

Or these objections to interrogatories:

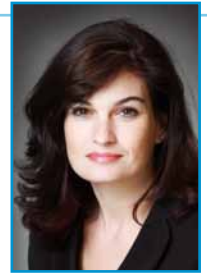
- The Interrogatories exceed the requirements in Florida Rule of Civil Procedure 1.350.
- The Interrogatories define the term "document" in a manner that is overly broad, vague and includes information which would be unduly burdensome to locate.

You know these are no fun to read, so imagine how a judge must feel when we put this gobbledygook in front of her. Again, we mean no harm. We had the objections in our computer and this is how we have been doing it for years. They mean nothing to us or, for that matter, opposing counsel.

We have been unable to find a *single case* where *any* court anywhere has ever held that the failure to recite these boilerplate objections was at all important to a discovery decision. We have only found cases where courts criticize them. One of the strongest examples is in *St. Paul Reinsurance Co., Ltd. v. Commercial Financial Corp.*, 198 F.R.D. 508 (N.D. Iowa 2000), where the court *sua sponte* reviewed a party's boilerplate objections to a discovery request and found them wholly unsupported. The court then sanctioned the objecting attorney by ordering him to write and publish an article on why the objections were improper. The opinion explains:

[T]he litany of plaintiffs' boilerplate objections are unsubstantiated because they fail to show specifically how each discovery request is burdensome, oppressive or any of the other grounds upon which they base their objections by submitting affidavits or offering evidence revealing the nature of the objections. Moreover, this is not a case where one, or even two, of the six objections asserted by plaintiffs are obstructionist, boilerplate

and improper. Rather, every single objection is obstructionist, boilerplate, frivolous and contrary to federal law. This court will not countenance such abusive discovery tactics.



This is not the only judge annoyed by this practice. *See also Hy-Ko Prods. Co. v. Hillman Group, Inc.*, No. 5:09MC32, 2009 WL 3258603, at \*2 (E.D.N.C. Oct. 8, 2009) ("In the usual instance, objections to discovery which simply recite stock phrases are not colorable."); *Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 364 (D.Md.2008) ("[B]oilerplate objections... are improper unless based on particularized facts."); *PLX, Inc. v. Prosystems, Inc.*, 220 F.R.D. 291, 293 (N.D.W.Va.2004) ("The mere recitation of the familiar litany that an interrogatory or document production request is overly broad, burdensome, oppressive and irrelevant will not suffice.").

We should address this clear source of pain for our courts by assuming our objections will one day be read by a judge and that we will want that judge to think we have behaved reasonably. So throw out those old boilerplate objections and let's try something like this in the preface to our response:

- We have interpreted each request in a reasonable fashion in a good faith effort to endeavor what is being asked for. We have not given any hypertechnical or overly expansive meanings to the requests.
- We will endeavor to produce the hard copies of documents maintained in the ordinary course of their business. We propose to produce those files in that fashion in accordance with Rule 1.350(b).
- We have not undertaken a search of all possible places for electronically stored information. We expect that the parties will reach an agreement on the mode and format of production of electronically stored information, as well as a cost sharing method. If the parties are unable to do so, we reserve the right to object on the basis of cost and proportionality.
- If, after our production of responsive documents, the opposing party believes that a more extensive search is warranted, we believe the parties should discuss and if need be, seek a court conference to address the specifics of an additional search.

Then, for each specific response, let's remember: The purpose of a discovery response is to communicate objections based upon specific facts and circumstances, preserve privilege positions and to communicate information about the manner in which the documents or information will be produced. The idea is to distinguish those documents and information which will be provided from those which will not and for those that will not, to articulate a reasonable and provable basis for objecting. We should leave the door open for a later discussion with opposing counsel. The discussion will fulfill the prehearing conference requirement which all courts require before hearing a discovery motion. It will also allow us to manage the costs and volume of information produced, as well as to revisit what seemed like a valid objection at the time.

In conclusion, give it a try and see if this approach does not reduce your discovery headaches.

# Real Property and Business Litigation Report

## May 2012 Summary

Submitted by Manuel Farach



**Heiderich v. Florida Equine Veterinary Services, Inc.**, --- So.3d ----, 2012

WL 1057631 (Fla. 5th DCA 2012).

An unambiguous restrictive covenant in an employment agreement that prohibits establishing an office within a certain radius is not violated by establishing an office outside the radius but serving clients located within the radius.

**Read v. MFP, Inc.**, --- So.3d ----, 2012 WL 1058876 (Fla. 2d DCA 2012).

The federal Fair Debt Collection Practices Act requires a debt collector to identify themselves, but the Florida Consumer Collection Practices Act does not.

**Osorto v. Deutsche Bank Nat. Trust Co.**, --- So.3d ----, 2012 WL 1020022 (Fla. 4th DCA 2012).

Summary judgment on a foreclosure is not proper if discovery remains outstanding.

**Bridgeview Bank Group v. Callaghan**, --- So.3d ----, 2012 WL 1020044 (Fla. 4th DCA 2012).

Conveyance of real property to a husband and wife conclusively creates a tenancy by the entireties; the rebuttable presumption of Beal Bank, SSB, v. Almand and Assocs., 780 So. 2d 45 (Fla. 2001), applies to personal property but not real property.

**Castelo Development, LLC v. Aurora Loan Services LLC**, --- So.3d ----, 2012 WL 1020171 (Fla. 4th DCA 2012).

A foreclosure sale conducted without a Notice of Sale being published in advance of the sale is not valid.

**Swope Rodante, P.A. v. Harmon**, --- So.3d ----, 2012 WL 1020184 (Fla. 2d DCA 2012).

An attorney may sue another attorney for tortiously interfering with the first attorney's contract and relationship with his client.

**Schwartz v. Bloch**, --- So.3d ----, 2012 WL 1108408 (Fla. 4th DCA 2012).

A party seeking to recover attorneys' fees from a defendant under the Wrongful Act Doctrine does need not present independent, corroborating evidence from an expert regarding attorneys' fees.

**Ziadie v. Feldbaum**, --- So.3d ----, 2012 WL 1108419 (Fla. 4th DCA 2012).

A proposal for settlement which conditions the proposal upon releases, indemnity and confidentiality agreements, but fails to attach the proposed agreements, is ineffective.

**Talel Corp. v. Shimonovitch**, --- So.3d ----, 2012 WL 1108437 (Fla. 4th DCA 2012).

An arbitrator may, after adopting the rules of civil procedure, default a party for continued failure to follow arbitration orders. Moreover, a party in arbitration is not entitled to all the "niceties" that a party is entitled to in court proceedings. However, parties in arbitration are still entitled to a fundamentally fair process, and accordingly, are entitled to a hearing on unliquidated damages.

**Empire Developers Group, LLC v. Liberty Bank**, --- So.3d ----, 2012 WL 1232618 (Fla. 2d DCA 2012).

The correct formula for determining a deficiency judgment is the total debt (as set forth in the final judgment of foreclosure) minus the fair market value of the property (as determined by the court) on foreclosure sale date. The party seeking a deficiency has the burden of proving the fair market value of the foreclosed property was less than the judgment amount.

**Griswold Ready Mix Concrete, Inc. v. Reddick**, --- So.3d ----, 2012 WL 1216268 (Fla. 1st DCA 2012).

A construction contract indemnification provision under Fla. Stat. § 725.06 must contain a monetary limitation as set forth in the statute otherwise it is void.

**Clark v. Bluewater Key RV Ownership Park**, --- So.3d ----, 2012 WL 1192089 (Fla. 3d DCA 2012).

An association may not impose fees on lot owners' rights to lease to third parties if the Declaration of Restrictive Covenants permits on "reasonable regulations" on leasing.

**Orange County Property Appraiser v. Sommers**, --- So.3d ----, 2012 WL 1365061 (Fla. 5th DCA 2012).

A landowner is not entitled to a simultaneous homestead exemption/tax cap and non-homestead tax cap for the same piece of real property.

**Gonzalez v. Deutsche Bank Nat. Trust Co.**, --- So.3d ----, 2012 WL 1366727 (Fla. 2d DCA 2012).

Whether plaintiff owns and holds the note on suite date, not the date of an assignment of mortgage, is the relevant inquiry for determining standing for foreclosure suit. If, however, the issue of standing has been placed at issue, the lender must establish through evidence it had standing on suit date.

**Khodam v. Escondido Homeowner's Ass'n, Inc.**, --- So.3d ----, 2012 WL 1315327 (Fla. 4th DCA 2012).

Even though a jury awards no damages for the breach, a party that proves the other party breached a contract is the "prevailing party" for purposes of attorneys' fee awards.

**Mullne v. Sea-Tech Const. Inc.**, --- So.3d ----, 2012 WL 1315864 (Fla. 4th DCA 2012).

Fla. Stat. § 713.12 (joint interests of spouses in property can be liened and foreclosed as long as one spouse signs contract) does not permit an in personam judgment against the non-signing spouse.

**Filarsky v. Delia**, --- S.Ct. ----, 2012 WL 1288731 (2012).

A person temporarily hired by a governmental unit to carry out a governmental function is entitled to the qualified immunity of 42 U.S.C. § 1983. Accordingly, attorney hired by city to assist municipality in investigating wrongdoing in municipality is entitled to qualified immunity.

*Continued on page 12*

## 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.

**Alan Baseman** - Philadelphia, PA; New York Law School, 1980; Partner in Comiter, Singer, Baseman & Braun, LLP, Palm Beach Gardens.

**Larry Corman** - New York, New York; Harvard Law School, 1983; Partner in Greenspoon Marder, LLP, Boca Raton.

**Kenneth Cote** - Arecibo, Puerto Rico; University of Puerto Rico, 1976; Sole Practitioner, Palm Beach Gardens.

**Natasha Coyle** - Houston, TX; Depaul University College of Law, 2008; Sole Practitioner, Palm Beach Gardens.

**Jennifer M. Cunha** - Miami, FL; Florida International University, 2007; Associate in the Law Office of Paul Krasker, West Palm Beach.

**Christopher Thomas Immel** - Michigan; Florida State University, 2008; Associate in ICE Legal, P.A., Royal Palm Beach.

**Juan Mejia** - Medellin, Colombia; Florida International University, 2009; Associate in Jay Steven Levine Law Group, Palm Beach Gardens.

**Michael D. Panella** - Hollywood, FL; University of Florida; Law Student Membership Deerfield Beach.

**Pablo Perhacs** - Pittsburgh, PA; Florida State University, 1973; Associated with Searcy, Denney, Scarola, Barnhart & Shipley, West Palm Beach.

**Sebastian K. Poprawski** - Hartford, CT; Florida State University, 2006; Associate in St. John Rossin Burr Lemme, PLLC., West Palm Beach.

**Thomas M. Prestia** - N.J.; Barry University School of Law, 2009; Associate in ICE Legal, Royal Palm Beach.

**Andrew Schwartz** - New York, New York; George Washington University, 2011; Boca Raton.

**Brandon Tomlinson** - Florida State University, 2011; West Palm Beach.

**Jo Wilensky** - Florida State University, 2011; Government Attorney with Office of the State Attorney, Palm Beach County, West Palm Beach.



## April 2012 Summary

*Continued from page 3*

**Miller v. Chase Home Finance, LLC**, --- F.3d ---, 2012 WL 1345834 (11th Cir. 2012).

The federal Home Affordable Modification Program (HAMP) does not create an implied private cause of action on behalf of homeowners against their lenders.

**Roach v. Totalbank**, --- So.3d ---, 2012 WL 1414275 (Fla. 4th DCA 2012).

The defense of Statute of Frauds to a purported oral agreement to extend a loan may be barred by acts of estoppel occurring after written contracts are executed.

**Continental Florida Materials v. Kusherman**, --- So.3d ---, 2012 WL 1414280 (Fla. 4th DCA 2012).

While clauses indemnifying parties for their own negligence are disfavored, a subcontractor may indemnify a general contractor for the subcontractor's negligence.

**West Const., Inc. v. Florida Blacktop, Inc.**, --- So.3d ---, 2012 WL 1414304 (Fla. 4th DCA 2012).

Unless an offeree agrees in

advance, an offer cannot define the manner of acceptance of the offer. Accordingly, a contractor's use of subcontractor's estimate in formulating its bid to the owner does not accept the subcontractor's estimate either by contract language to that effect or by action.

*A weekly version of the Update can be received by sending an email to mfarach@richmangreer.com and writing "Request Weekly Update in the subject line."*



### Who are they?

From page 4

1. Valerie Kanouse
2. Jill Kaufman
3. Judge Mark Klingensmith
4. Bill Johnson
5. Elaine James



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## Dischargability of Debt for “Willful and Malicious Injury”

By Marc P. Barmat

A central purpose to the filing of a bankruptcy is to provide an individual debtor with the opportunity to discharge their debts and obtain a fresh start. However, not all debts are dischargeable under the Bankruptcy Code. One category of debt which is not dischargeable is a debt “for willful and malicious injury by the debtor to another entity or to the property of another entity...” 11 U.S.C. § 523(a)(6). The requirements of “willfulness” and “maliciousness” are distinct requirements and are treated as such by the courts.

The Eleventh Circuit has held that proof of willfulness requires “a showing of an intentional or deliberate act, which is not done merely in reckless disregard of the rights of another.” *In re Walker*, 48 F.3d 1161 (11th Cir. 1995) (quoting *In re Ikner*, 883 F.2d. 986 (11th Cir 1989). “[A] debtor is responsible for a ‘willful’ injury when he or she commits an intentional act the purpose of which is to cause injury or which is substantially certain to cause injury.” *Id.* The actor is required to intend the injury, not just the act that leads to the injury. *Kawaauhau v. Geiger*, 525 U.S. 57 (1998). Recklessly or negligently inflicted injuries are not excepted from discharge under § 523(a)(6). *Id.*

“Malicious” is defined as “wrongful and without just cause or excessive even in the absence of personal hatred, spite or ill-will.” *In re Walker*, 48 F.3d 1161 (11th Cir. 1995). To establish malice, “a showing of specific intent to harm another is not necessary.” *In re Ikner*, 883 F.2d. 986 (11th Cir 1989).

In a recent Eleventh Circuit case, the court addressed the issue whether a debt resulting from a fraudulent transfer of property by a co-conspirator constituted a willful and malicious injury under § 523(a)(6). *In re Jennings (Maxfield v. Jennings)*, 2012 WL 555875 (11th Cir.). The *Jennings* case originated when a seven year old boy was accidentally shot and rendered a permanent quadriplegic. As a result, a lawsuit was filed against the gun manufacturer and distributor as well as Bruce Jennings, the individual who controlled the gun manufacturer and distributor. A complaint was also

filed against Janice Jennings, an ex-wife of Bruce Jennings, alleging claims for fraud, conspiracy and fraudulent transfer. The allegations were that Janice Jennings knowingly participated in the transfer of real property held by entities created by Bruce and Janice Jennings.

Ultimately, a jury found Bruce Jennings liable for damages. However, before a determination could be made on Janice Jennings’ liability, she filed a Chapter 11 bankruptcy, which was later converted to a Chapter 7. The state court case against Janice Jennings was transferred to the bankruptcy court. The bankruptcy court concluded that Janice Jennings knew of Bruce Jennings’ intent to transfer the property in order to keep it out of the hands of the creditors and therefore found that Janice Jennings was a co-conspirator with Bruce Jennings in the fraudulent transfer of the property. *Id.* Therefore, Janice Jennings was held to be jointly and severally liable for certain damages. Thereafter, the

injured boy filed an adversary proceeding seeking to have the damages against Janice Jennings deemed non-dischargeable pursuant to 11 U.S.C. § 523(a)(6). *Id.* The bankruptcy court dismissed the adversary complaint concluding that a conspiracy claim was not the sort of intentional tort required under § 523(a)(6). *Id.* at 2. The district court reversed the bankruptcy court and found that under certain circumstances, a co-conspirator could inflict a “willful and malicious” injury. *Id.* at 3. The district court concluded that Janice Jennings active participation in the fraudulent transfer satisfied the requirements of § 523(a)(6). On appeal, the Eleventh Circuit affirmed the district court and found that the injured boy satisfied the elements of § 523(a)(6) by showing that Janice Jennings willfully and maliciously injured his property.

*This article was submitted by Marc P. 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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# Family Fun at the NCS Caribbean Beach Party!

The North County Section recently hosted its first Caribbean Beach Party at the Hilton on Singer Island. The event was great fun for the entire family beginning with a sand castle contest on the beach. Check out the pictures from the afternoon.



Ron Ponzoli and his family



Adam and Brandon Doner



Greg & Jillian Yaffa



These girls show off their shell necklaces and face (and arm) painting. Who could ask for anything more!?



Steel drums add to the flavor of the afternoon



Drew Lovell and his family take home first place in the sand castle contest



George and Victoria Bush watch their daughter getting her hair braided – island style!



Greg and Bettina Weiss with their children Noah and Rebecca



Patricia Reagan, Marina Petillo and Magistrate Diane Kirigin

For additional pictures, go to the Bar's Facebook page at [www.palmbeachbar.org](http://www.palmbeachbar.org)



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## Corporate Shield Doctrine

by Ted Babbitt

Florida's long-arm statute, sec. 48.193, allows Florida Courts to exercise jurisdiction over negligent corporations and individuals under certain circumstances.

The landmark case setting up the procedure to determine whether long-arm jurisdiction extends to a non-resident defendant is Venetian Salami Co. v. Parthenais, 554 So. 2d 499 (Fla. 1989). In that case the Florida Supreme Court set up a two step inquiry for the determination of whether long-arm jurisdiction applies to a defendant. The first step is that the plaintiff must allege sufficient jurisdictional facts to bring the case within the long-arm statute. If the Court determines that the first step is satisfied, the next question is whether the defendant has sufficient "minimum contacts" with Florida to satisfy Fourteenth Amendment due process requirements. The issue is whether the defendant's conduct in connection with Florida is such that the defendant should reasonably anticipate that he could be "hauled into court" in Florida because of that conduct. World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286 (1980).

The corporate shield doctrine stands for the proposition that when acts are performed by an individual, exclusively in a corporate capacity outside of Florida, the actor may not be brought into Florida to defend those acts because the state simply does not have jurisdiction over the individual personally.

In Kitroser v. Hurt, 37 Fla. L. Weekly S237 (Fla. March 22, 2012), the Supreme Court was faced with the question of whether the corporate shield doctrine applied to a corporate employee whose negligent acts occurred within the State of Florida. The trial court found the corporate shield doctrine was inapplicable and that jurisdiction was appropriate but the Fourth District Court of Appeals reversed certifying to the Supreme Court the following questions as one of great public importance.

Whether an individual, non-resident defendant commits negligent acts in Florida on behalf of his corporate employer, does the corporate shield doctrine operate as a bar to personal jurisdiction in Florida over the individual defendant?

In this case, plaintiff's decedent died as a result of an automobile collision with the corporate defendant's truck driven by a driver whom plaintiff alleged was clearly unfit to drive and had been trained and supervised in Florida by the individual defendants whom plaintiff sought to sue. It was assumed by the appellate courts that plaintiff's allegations of negligence were true and there was no dispute but that those acts had occurred in Florida. The individual defendants filed affidavits establishing that they had absolutely no connection with Florida other than the performance of those negligent acts and the question was whether, solely by performing those negligent acts in Florida, they were subject to Florida jurisdiction.

The Supreme Court, relying upon Fla. Stat. 48.193(1) found that jurisdiction against the individuals was appropriate. That statute states:

(1) Any person, *whether or not a citizen or resident of this state, who personally or through an agent does any of the acts enumerated in this subsection* thereby submits himself or herself... to the jurisdiction of the courts of this state for any cause of action arising from the doing of any of the following acts:

(b) *Committing a tortious act within this state.* (Emphasis supplied by the Court.)

A unanimous Florida Supreme Court answered the certified question in the negative as follows:

Where an individual, nonresident defendant commits negligent acts in Florida, whether on behalf of a corporate employer or not, the corporate shield doctrine does not operate as a bar to personal jurisdiction in Florida over the individual defendant. Jurisdiction properly applied to "any person" who commits torts "within this case." Sec. 48.193, Fla. Stat. (2011). To hold otherwise would be tantamount to providing corporate employees with a form of diplomatic immunity and would abolish the legislative goal inherent in adopting a long-arm jurisdictional statute: to provide an in-state forum to hold those responsible who commit negligent acts in Florida. Florida courts have personal jurisdiction over nonresident defendants whose alleged negligent acts occur in-state irrespective of whether these acts occurred for the benefit of a corporate employer. Kitroser, supra, at 239.

This case is important because it clarifies the jurisdictional issue as to when a corporate employee can be sued in Florida for negligent acts.

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*Per Administrative Order No. 2.105/9-10, In Re: Fifteenth Circuit Professionalism Council, when an attorney appears before the Council because of conduct inconsistent with the Standards of Professional Courtesy or the Ideals and Goals of Professionalism, a summary of that meeting is to be published in the Bar Bulletin with the name(s) redacted.*

Re: Fifteenth Judicial Circuit Professionalism Council session,  
March 14, 2012

Dear [Name]:

On March 14, 2012, the Fifteenth Judicial Circuit Professionalism Council met with you to discuss a written referral by the Administrative Office of the Court, Fifteenth Judicial Circuit, to the Council dated January 19, 2012. This letter summarizes the Council's discussions with you on March 14, 2012.

You are a solo practitioner who has been practicing law in Florida for less than one year. The referral by the Administrative Office raised issues regarding e-mail correspondence between you and a judge's judicial assistant ("JA") regarding a divorce proceeding pending before that judge in which you represent the wife. You had filed a motion for temporary relief, seeking to obtain child support on behalf of the wife, and had set that motion for hearing on a Monday. The husband/father had been avoiding service of the counterpetition filed by you on behalf of the wife and had failed to attach certain financial records to his own petition. In advance of the hearing, opposing counsel informed you that his client would not attend the hearing or produce the absent records.

The JA first invited you to submit a proposed order by e-mail. On the Thursday before the hearing, however, you sent several e-mails to the JA throughout the day without copying opposing counsel. Those communications sought, among other things, the JA's opinion on whether the judge would permit you to address opposing counsel's misconduct at the temporary-relief hearing. Your communications detailed, in an informal and somewhat stream-of-consciousness fashion, your belief that opposing counsel had engaged in misconduct and that you intended to file a motion for sanctions and report counsel to The Florida Bar. You conceded to the JA that you were "a little angry about it" and felt that the judge needed to hear your version of events. The JA informed you that she was not a lawyer and could not answer your questions and that the judge requested that only motions be sent by e-mail. The next day you nevertheless e-mailed the JA, again without copying opposing counsel, and asked the JA to have the judge sign an order on a motion for default. The JA requested that you cease e-mail contact except to forward copies of pleadings or request hearing dates. Approximately one week later, you sent an extremely lengthy e-mail to the JA, this time copying opposing counsel. That e-mail effectively sought clarification or rehearing of an order.

The Council reminded you that a judicial assistant is an arm of the court and that ex-parte communications with a JA, as with the court, must be limited to scheduling or clerical matters and may not address substantive matters. The Florida Bar Ideals and Goals of Professionalism ("Ideals") provide in section 1.1 that "[a] lawyer should at all times avoid the appearance of impropriety." Recognizing the ideal that all lawyers adhere to a fundamental sense of honor, integrity, and fair play, "[a] lawyer should notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling or clerical matters." Ideals § 2.5 (emphasis added). The Palm

Beach County Bar Association Standards of Professional Courtesy ("Standards") adds in Section IV(2) that "[c]opies of any submissions to the court (such as correspondence, memoranda or law, case law, etc.), should simultaneously be provided to opposing counsel by substantially the same method of delivery by which they were provided to the court." (Emphasis added.) The Council thus suggested that you include opposing counsel on all e-mails to the court in order to avoid any appearance of impropriety.

The Council also discussed with you its concern regarding the tone, informality, and content of your communications with the JA. Section C(2) of The Florida Bar's *Guidelines for Professional Conduct* instruct that "[n]either written submissions nor oral presentations [submitted to a court] should disparage the intelligence, ethics, morals, integrity or personal behavior of one's adversaries, unless such things are directly and necessarily in issue." Section J(4) of The Florida Bar's *Guidelines for Professional Conduct* adds that "[a] lawyer should be courteous and may be cordial to a judge but should never show marked attention or unusual informality to a judge, uncalled for by their personal relations."

When the Council met with you, you expressed frustration with what you considered an obstreperous opposing counsel. The Council was troubled to hear you say that you felt you had been the subject of "hazing" by senior lawyers who took note of your date of admission and then sought to take advantage of your inexperience. The Council reminded you that all of your communications with the court are discoverable pursuant to Florida's broad public records. The Council recommended that you temper your communications with opposing counsel and strive to avoid taking personally your clients' disputes, reminding you that clients will come and go but that it is your good reputation that will be the key to a successful legal practice.

The Standards add in Section III(5) that "[a]ttorneys should be selective in inquiries posed to judicial assistants to avoid wasting their time" and "should be knowledgeable about the court administrative orders, local rules and each judge's published or posted practices and procedures." The Council thus reminded you to take time to familiarize yourself with the administrative orders and local rules available on the website of the Fifteenth Judicial Circuit, <http://15thcircuit.co.palm-beach.fl.us>. We also encouraged you to reach out, at the outset of any case, to mentors and other attorneys to inquire as to the particular practices of the judge before whom you are appearing.

The Council was pleased to learn that following your referral to the Council, you had sought out at least one senior lawyer who had readily agreed to mentor you. The Council informed you that the Palm Beach County Bar Association's Mentoring Program is available to assist young lawyers like you. The Council also encouraged you to join bar committees with relevance to your practice areas, such as the Family Law Practice Committee and the Solo & Small Firm Practitioners Committee, and to take advantage of networking opportunities and other resources available through the bar.

We wish you much success in your continued practice in Palm Beach County.

Yours very truly,

D. Culver Smith III

*Co-Chairperson, Professionalism Committee, Palm Beach County Bar Association*

*On behalf of the Fifteenth Judicial Circuit Professionalism Council*



The Palm Beach County Bar Association's  
Workers' Compensation Committee Presents:

## "The Nuts and Bolts of the Heart and Lung"

Friday, July 13, 2012

12:00pm - 4:00pm

Bar Association Offices - **NEW ADDRESS** - [1507 Belvedere Road, WPB, FL 33406](#)

### Program Schedule

- 11:50a.m. - 12:50a.m.      **Late Registration / Check In / LUNCH**
- 12:50a.m. - 1:00p.m.      **Welcome & Opening Remarks** - *Honorable Timothy Basquill, Office of the Judges of Compensation Claims, West Palm Beach District Office*
- 1:00p.m. - 4:00p.m.      **3-hour presentation given by: -**

**Honorable Gerardo Castiello, Judge of Compensation Claims**  
**Geoffrey Bichler, Esq.**  
**George A. Helm, III, Esq.**  
**Alan D. Kalinoski, Esq.**

This course is expected to receive **3.5 CLER / 3.5 Worker's Compensation Certification credits from the Florida Bar.**

The cost of the seminar, lunch included, is **\$35.00 PBCBA Member/Non-Member** if registered by **7/6/12**; add **\$15** late fee after that date.

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

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25.  
\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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

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\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Worker's Comp. 7/13/12))  
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## PROFESSIONAL ANNOUNCEMENTS:

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

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**GREGORY TENDRICH, Esq.:** "AV" rated, FINRA Arbitrator, Certified County Court Mediator & Former Series 7 licensed VP & Asst. General Counsel to national

and regional NYSE & FINRA stock brokerage firms, is accepting referrals and is available to co-counsel, provide trial/arbitration consultation or assistance in matters involving the recovery of losses due to stock broker fraud, unsuitability, churning and misrepresentation, 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).

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## HEARSAY



**Nancy La Vista**, a Board Certified Civil Trial Attorney and a partner at the law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has earned Board Certification as a Medical Malpractice Lawyer by the American Board of Professional Liability Attorneys (ABPLA). *Only 14 Lawyers in Florida have this special designation.*

**Christopher Sotillo** has joined Rosenthal, Levy, Simon & Ryles, P.A. as an associate in the Workers' Compensation department. Mr. Sotillo received his law degree from St. Thomas University.

Fox, Wackeen, Dungey, Beard, Sobel, Bush & McCluskey, LLP is pleased to announce that **George W. Bush, Jr.** was reappointed to the Federal Court Practice Committee.



Rutherford Mulhall, P.A. is pleased to announce that **Larry M. Mesches** has recently joined RM in our Palm Beach Gardens office.



**Bradley G. Harper** of Olds, Stephens & Harper, P.A. has been selected as a "Man of Excellence" by the West Palm Beach Alumnae Chapter of Delta Sigma Theta Sorority, Inc. for his commitment to education.

**Gary S. Lesser**, Managing Partner of Lesser, Lesser, Landy & Smith, PLLC (LLL&S), received the University of Miami School of Law Alumni Leadership Award.



Announcing the opening of the **Law Office of David Steinfeld, P.L.** 4400 Northcorp Parkway, Suite 122, Palm Beach Gardens, FL 33410 (561) 316-7905; www.

[davidsteinfeld.com](http://davidsteinfeld.com); Board Certified in Business Litigation Law; AV- Preeminent Peer Review Rated; Fellow, Litigation Counsel of America; Member, Association of Certified E-Discovery Specialists; Former U.S. Army JAG Attorney.

**Andrew Thomka-Gazdik** has now joined The Law Offices of Morris & O'Malley, P.A. Thomka-Gazdik practices in the areas of real estate, family matters and corporate law.



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	HCBA	Attorneys Fees Update	2.5	2.5	\$95	\$135	08/09/12
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 RICHARD D. SCHULER  
 MICHELLE SUSKAUER  
 MICHAEL J. NAPOLEONE

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

# CALENDAR

## June 2012

<p>Friday, June 1, 8:00am – 12:15pm <b>Real Estate CLE Seminar</b> Bar Association Office</p>	<p>Tuesday, June 12, Noon – 1:00pm <b>YLS Board Meeting</b> Bar Association Office</p>	<p>Friday, June 15, 11:30am -2:00pm <b>Law Practice Technology CLE Seminar</b> <b>“iPhone and iPad Apps for Lawyers”</b> Bar Association Office</p>	<p>Wednesday, June 20 – 23 <b>The Florida Bar Annual Meeting</b> Gaylord Palm Resort, Orlando</p>
<p>Saturday, June 2, 7:00pm – 11:30pm <b>PBCBA Installation Banquet</b> The Breakers Hotel, Palm Beach</p>	<p>Wednesday, June 13, 1:00pm – 6:00pm <b>Employment Law CLE Seminar</b> Bar Association Office</p>	<p>Friday, June 15, Noon – 1:00pm <b>Cunningham Bar General Member Meeting/Social</b> info @www.cunninghambar.org</p>	<p>Thursday, June 21, 8:30am – 12:30pm <b>Personal Injury/Wrongful Death CLE Seminar</b> Bar Association Office</p>
<p>Thursday, June 7, 11:45am – 1:00pm <b>Judicial Relations Committee Meeting</b> Judicial Conference Room, Main Courthouse</p>	<p>Thursday, June 14, 11:45am – 1:00pm <b>FAWL Awards Luncheon</b> info @ www.pbcfawl.org</p>	<p>Tuesday, June 19, 11:45am – 1:00pm <b>Unified Family Practice Committee Meeting</b> Law Library, Main Courthouse</p>	<p>Tuesday, June 26, 5:30pm – 6:30pm <b>Legal Aid Board Meeting</b> Bar Association Office</p>
<p>Thursday, June 7, 5:30pm – 7:30pm <b>FAWL Membership Reception</b> Info @ www.pbcfawl.org</p>	<p>Thursday, June 14, Noon – 1:30pm <b>South County FAWL Elections and Installation Luncheon</b> info @ www.fawl.org</p>	<p>Tuesday, June 19, Noon – 1:00pm <b>CDI Committee Meeting</b> Bar Association Office</p>	<p>Saturday, June 30 <b>YLS Fishing Tournament</b> Palm Beach Yacht Club</p>
<p>Friday, June 8, 8:30am – Noon <b>Community Assn. Law CLE Seminar</b> Bar Association Office</p>	<p>Thursday, June 14, 5:30pm – 7:30pm <b>CDI Happy Hour</b></p>		