



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

March 2010

Bar elections will be online

This year's election for the Board of Directors will once again be conducted electronically. An email will be sent to all members in good standing. **Please be sure to set your spam filters to preapprove anything from ballotboxonline.com** For those members that we do not have an email address, a paper ballot will be sent. Voting will take place beginning on April 15 and ending on April 26 at 5 p.m. Winners will be announced via e-mail and will be posted on the Bar's website.

A contested election will take place for the position of director. There are eight members running for five seats: Robin Bresky, Jason Guari, Hampton Keen, Theo Kypreos, Tanique Lee, Maureen Martinez, Jill Weiss and John Whittles.

Mark your calendar for upcoming Membership Meetings

YLS Habitat for Humanity Day
Saturday, March 6, 8:00am -3:00pm

Joint Luncheon with South County Bar Association
March 16, 11:45 – 1:00 p.m.
Guest Speaker: FL Bar President Jesse Diner and FL Bar Foundation President Adele Stone

Annual Judicial Reception
May 5, 5:30 – 7:00 p.m.
The Harriett at City Place

Law Day Luncheon
May 7, 11:45 – 1:00 p.m.

Joint Luncheon with Forum Club
May 14, 11:30 – 1:00 p.m.
Guest Speaker: U.S. Supreme Court Justice Anthony Kennedy
Cohen Pavilion at the Kravis Center

Young Lawyers Section Fishing Tournament
Saturday, June 5

Annual Installation Banquet
June 12, 7:00 p.m.
The Breakers Hotel, Palm Beach

Joint Luncheon with South County Bar March 16



Jesse H. Diner, is a shareholder in Atkinson, Diner, Stone, Mankuta & Ploucha in Fort Lauderdale, where he has an active commercial and construction litigation practice.

Diner has been a member of The Florida Bar Board of Governors since 1996, serving three times as chair of the Budget Committee, twice, as chair of the Legislation Committee and one year as chair of the Communications Committee. He is past president of the Broward County Bar Association and a past president of the Legal Aid Service of Broward County.



The Florida Bar's 62nd president, Jesse Diner, along with FL Bar Foundation President Adele Stone, will address the 7th annual joint luncheon of the Palm Beach and South Palm Beach County Bar Associations on **March 16**. The meeting will be held from 11:45 - 1:00 p.m. at the Marriott Boca Raton. Cost to attend the luncheon is \$35 for members of either organization if registered before March 12, after that date, the cost will be \$45; judges complimentary. Registration is available online at www.palmbeachbar.org/register.php.

After attending South Broward High School in Hollywood, Diner attended Gettysburg College, where he majored in political science and minored in economics and history. He serves on the college's Board of Trustees. Diner received his law degree from St. John's University, becoming a member of The Florida Bar in 1973.

After graduating with high honors from the University of Florida in 1975, Ms. Stone earned her JD from the University of Miami, School of Law in 1978. The Florida Supreme Court appointed her to a seat on the Board of Directors of the Florida Bar Foundation and she now serves as its President through June 30, 2010. She is a past Chairman of Legal Aid Services of Broward County, Inc. and the founder of the Broward County Legal Aid Advisory Board. She also chairs the steering committee of the Florida Attorneys Saving Homes ("FASH") program of the Florida Bar, a statewide effort to assist homeowners who are in default of their home mortgage loans.

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THE
BULLETIN

**PALM BEACH COUNTY
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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

Contributions sought for 2010 law week judicial reception

The Law Week Committee is beginning its efforts to request contributions from law firms to underwrite the cost of the annual judicial reception honoring the local judiciary to be held on May 5, 2010. Sponsors will be recognized on the email notices, on a sign at the reception and in the Bar Bulletin.

Those interested in making contributions should send a check no later than March 1 to the Palm Beach County Bar Association, ATT: Patience Burns, 1601 Belvedere Road, Ste. 302E, WPB, FL 33406. Sponsorships have been set as follows: \$225 for firms with 1-2 attorneys; \$375 for firms with 3-10 attorneys; and \$575 for firms with 11 or more attorneys. Thank you for your consideration!

**THE PALM BEACH COUNTY BAR ASSOCIATION'S FAMILY LAW
CLE COMMITTEE AND UNIFIED FAMILY COURT PRACTICE COMMITTEE
INVITE YOU TO LUNCH AND LEARN THIS YEAR....**

**OBTAIN CLE CREDIT, INTERACT WITH JUDGES AND FELLOW PRACTITIONERS
AND HAVE LUNCH ON US!**

11:45 AM - 1:00PM

**COST: \$35/Member per seminar; \$75/Non-members
(add \$10 late registration fee if not registered 7 days before seminar date)**

Date	Topic	Speaker	Location
March 24, 2010 <i>Lunch Sponsored By: Complete Legal Investigations</i>	Presenting a Temporary Relief Case	Roundtable Judicial Panel	Main Courthouse North End of Cafeteria
May 21, 2010 <i>Lunch Sponsored By: Complete Legal Investigations</i>	Client Intake and Consultation... Getting the Best Client	Jeffrey A. Weissman, Esq., Gladstone & Weissman	Palm Beach County Bar Offices



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President's Message



Legal Aid

By Michelle R. Suskauer, President

As I write my President's message, several weeks have passed since the series of earthquakes with magnitudes ranging from 6.5 to 7.3 devastated Haiti. It is estimated that at least 100,000 people lost their lives. The photographs and videos, the interviews of survivors, in the aftermath of this tragedy, show such intense suffering. I find myself thinking about the Haiti's smallest survivors, the children who have lost their parents, who are alone. I reach for my two girls and hold them. I don't want to let them go. I think about the parents who were helpless in saving their own children during the quakes. It is an unimaginable tragedy. The infrastructure of the country is gone as well as the rule of law. The survivors are in desperate need of food, water and basic medical supplies.

What can we do to help, both as citizens of the world and lawyers? We have an opportunity to make a difference in the lives of the people of Haiti. The International Law Section of The Florida Bar is asking for the help of every Bar member. Any assistance is appreciated but the section is requesting that members donate the equivalent of one billable hour. With over

87,000 members, Florida attorneys could make a tremendous difference in this effort. An account has been set up with the American Red Cross to receive donations from Florida Bar members that will be directed to emergency relief and development efforts in Haiti. Go to <http://american.redcross.org/floridabar.emp>

The Secretary of Homeland Security has designated Haiti for temporary protected status (TPS) for 18 months. Haitian nationals who have continuously resided in the United States since January 12, 2010 and who remain in continual physical presence in the United States from this date may apply for TPS within the 180 day registration period. The Palm Beach County Bar Association is working with the Legal Aid Society of Palm Beach County to assist Haitians in our community in obtaining TPS. Additionally, the American Bar Association has provided resources on assisting clients in obtaining TPS. Go to <http://www.abanet.org/disaster/haiti.html>, we could provide true legal aid.

Please do what you can to help.



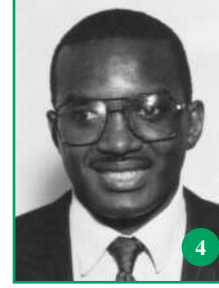
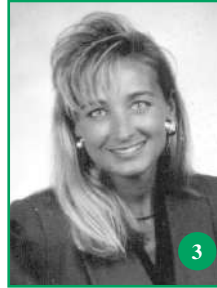
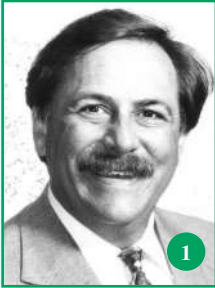
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Who are they?

Can you guess who these members are? Answers can be found on page 15. 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.



Judicial Profile of Glenn Kelley

by *Lawrence P. Rochefort, Esq.*
on behalf of *Judicial Relations Committee*

After just a few minutes with Judge Kelley, it was evident that “family” is the most important thing to him.

Judge Kelley was born in Brownsville, Pennsylvania and, at the ripe age of 18 months, his Mom and Dad moved to Palm Beach County, specifically Indiantown. Judge Kelley’s Dad worked at Pratt Whitney as a foreman in the machine shop for 28 years. After a couple of years, Judge Kelley and his parents moved to West Palm Beach.

Judge Kelley will soon be celebrating 30 years of marriage with his wife, Karen. Believe it or not, Judge Kelley and Karen were high school sweethearts and continued to date through college. During Judge Kelley’s last year of law school, he married Karen and they lived in married housing.

Judge Kelley is very proud of his 2 children. His son, Bryan, is a civil engineer working at a local firm and his daughter, Michelle, received an undergraduate degree in the biological sciences and is now applying to graduate school. Both kids attended the University of Florida. Judge Kelley also is very proud of his grandchildren. His granddaughter, Lorelei, is 20 months old and his grandson, Donavon, is only a month old. Donavon was born the week before Thanksgiving. Judge Kelley recounted to me numerous memories he had coaching his kids in baseball and flag football. The photographs in Judge Kelley’s office tell how much those times meant to him.

Judge Kelley attended Berkshire Elementary, Jefferson Davis Junior High School (now renamed Palm Springs Middle School) and Forest Hill High School. After attending Palm Beach Junior College for a period, Judge Kelley transferred to the University of Florida where he received an undergraduate degree. Judge Kelley loved Gainesville so much, he stayed and attended law school at the University of Florida.

Judge Kelley was admitted to the Florida Bar in 1982. During



his last year of law school, he clerked at what was formerly Gunster Yoakley Criser & Stewart. Judge Kelley fondly remembers his mentor, Judge Rapp, during his early years at Gunster Yoakley. Judge Kelley started a solo practice and eventually became partners with Bill Broome, Peter Aldrich, and Richard Warren. Judge Kelley’s practice always focused on commercial and business disputes and, in particular, securities law.

In 2007, Judge Kelley ascended to the Bench. Judge Kelley was one of Governor Jeb Bush’s last appointments and he received word of his appointment the week before Christmas. What a Christmas present! Judge Kelley had aspired to be a judge for quite some time and when I asked him if he enjoys being a judge, he responded “I believe I was meant to do this.”

In their spare time, Judge Kelley and his wife, Karen, enjoy boating and spending time with their grandchildren. Of course, in keeping with his ties to the University of Florida, his boat is named “Sea Gator.”

We are very lucky to have Judge Kelley.



**VOLUNTEERS NEEDED FOR LAW WEEK:
MOCK TRIALS & SPEAKER PROGRAMS
May 3 – 7, 2010**

We need volunteers to present Mock Trials and be guest speakers in schools throughout the county. In return for your support, you'll receive pro bono credits. If you can help, please fill out the form below and mail it back to Sherry Ingram, Palm Beach County Attorney's Office, 300 North Dixie Highway, Suite 359, West Palm Beach, FL 33401.

----- Clip and Mail -----



JUDGE/ATTORNEY NAME: _____

FIRM ADDRESS & PHONE: _____

E-MAIL ADDRESS (REQUIRED): _____

AREA(S) OF SPECIALTY: _____

PREFERRED DAY (please circle) Monday Tuesday Wednesday Thursday Friday

EVENT PREFERENCE: MOCK TRIAL SPEAKER'S BUREAU

SCHOOL PREFERENCE (if any): _____

SCHOOL LEVEL PREFERENCE: Elementary Middle High School

GEOGRAPHICAL PREFERENCE:

- | | | | |
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| <input type="checkbox"/> Palm Beach | <input type="checkbox"/> Lake Worth/Lantana | <input type="checkbox"/> Jupiter/Tequesta | <input type="checkbox"/> Riviera Bch/Lake Park |
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Profit Sharing Plans Do Not Need to Comply with ERISA to Qualify for Florida Exemptions

Submitted by: Marc P. Barmat

The Eleventh Circuit Court of Appeals recently issued its decision in Baker v. Tardif, 2009 WL 4942422 (11th Cir. 2009) holding that a debtor’s profit-sharing plan did not have to comply with the Employee Retirement Income Security Act (ERISA) to qualify for exemption under Florida statutes.

In Baker, the Chapter 7 debtor was the sole participant in and beneficiary of a Keogh1 plan managed by Fidelity Investments. In her bankruptcy, the debtor claimed her Keogh plan as exempt under Florida Statute section 222.21(2)(a)(1)2, as the Keogh plan was a qualified plan under section 401(a) of the Internal Revenue Code. The chapter 7 trustee objected to the debtor’s exemption claim. The bankruptcy court sustained the chapter 7 trustee’s objection and concluded that the debtor could not claim the exemption under section 222.21(2)(a)(1) because she was the “sole shareholder and sole ‘participant’ in the Keogh plan.” The district court affirmed the bankruptcy court’s decision. However, as explained herein, the Eleventh Circuit reversed.

In the Eleventh Circuit’s de novo review, the court analyzed Florida Statute §222.21 which “exempts from the bankruptcy estate money, assets, and any interest in a plan in which the debtor is an owner, participant, or beneficiary and that has been preapproved by the Internal Revenue Service as exempt from taxation under section 401(a) of the Internal Revenue Code.” Id. at 1. The court then looked to section 401(a) of the Internal Revenue Code which exempts from taxation profit-sharing plans created by an employer for the exclusive benefit of his employees or their beneficiaries. Further, the court looked to 26 U.S.C. § 401(c)(1)(A) which includes a “self-employed individual” in its definition of an “employee.” Id. at 2. Finally, the Eleventh Circuit noted that in 2005, the Florida

Legislature amended section 222.21 to provide that an exempt plan does not have to comply with the Employee Retirement Income Security Act.

Based upon the above analysis, the Eleventh Circuit reversed the bankruptcy and district court’s judgment and found that the debtor’s Keogh plan did not have to be maintained under the ERISA to qualify for Florida exemptions.

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

¹ A designation for retirement plans available to self-employed tax payers.

² . . . (2)(a) . . . any money or other assets payable to an owner, a participant, or a beneficiary from, or any interest of any owner, participant, or beneficiary in, a fund or account is exempt from all claims of creditors of the owner, beneficiary, or participant if the fund or account is: 1. Maintained in accordance with a master plan, volume submitter plan, prototype plan, or any other plan or governing instrument that has been preapproved by the Internal Revenue Service as exempt from taxation under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, s. 409, s. 414, s. 457(b), or s. 501(a) of the Internal Revenue Code of 1986, as amended, unless it has been subsequently determined that the plan or governing instrument is not exempt from taxation in a proceeding that has become final and nonappealable;

probate litigation



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The Bankruptcy Law CLE Committee of the Palm Beach County Bar Association
presents:



“View From The Panel - Local Trustees”

Friday, April 9, 2010 - 11:45pm - 2:00p.m.

Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

11:45am - 12:00pm **Check In / Late Registration**

12:00pm - 12:25pm **Buffet Lunch - Sponsored by:**



12:25pm - 12:30pm **Welcome - Opening Remarks -** *Julianne R. Frank, Esq.,
Frank, White-Boyd, P.A., Bankruptcy CLE Committee Chair*

12:30pm - 2:00pm **View from the Panel - Local Trustees -**

- Moderated by Julianne R. Frank, Esq., Frank, White-Boyd, P.A.

This course is pending 2.0 CLER from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$40** for PBCBA members/legal assistants, **\$80** for non-PBCBA members/legal assistants. Register now to save \$10.00. **After 4/2/10, add \$10.00.**

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$15. 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



MAIL the completed form w/check



FAX the completed form to 561/687-9007



ON-LINE at www.palmbeachbar.org

Please register me for the April 9, 2010 Bankruptcy Law CLE Seminar:

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___ I will not be able to attend the seminar but would like to order the CD Rom. (allow two weeks for delivery) (Bankruptcy Law 4/9/10) **Cost is the same as listed above, in addition to \$10 for shipping& handling.**

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Offer of Judgment for Non-Monetary Claims

by Ted Babbitt

In Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Property Owners Assoc., Inc., 22 So. 3d 140 (Fla. 4th DCA 2009), the appellate court was faced with a

case of first impression as to whether an offer of judgment which seeks to settle both monetary damage claims and non-monetary claims can be effective.

In this case, the defendant owned a private road and the plaintiff owned a piece of landlocked property which was accessible by that road. Plaintiff brought suit alleging entitlement to 300 votes in the election of the Board of Directors of the defendant's property owner's association, a tortious interference action with respect to plaintiff's attempts to sell the landlocked property because defendant had denied it access to the road and a declaratory judgment action asking that the defendant recognize the plaintiff's right to an implied grant of way of necessity to use the private road.

In a bench trial the circuit court ruled in favor of the defendant on all counts. The case went up on appeal and was affirmed without opinion. Defendants then sought attorney's fees under the offer of judgment statute because it had filed multiple offers of judgment to "settle all claims" for the sum of a little over \$1,000.00. The trial court granted the motion and assessed a judgment for attorney's fees and the Fourth District reversed.

The Court pointed out that the offer of judgment statute is only applicable to an action for damages and at 143 the Court framed the issue as follows:

"In the instant case, the complaint contained two independent, significant claims, such that it could be characterized only as an action for both damages and non-monetary, declaratory relief. In order to determine whether the trial court erred in finding that the defendant is entitled to attorney's fees pursuant to the offer of settlement, it must be determined whether a general offer applying to an entire case that includes both claims for damages and other claims can be binding upon the unsuccessful party. This issue has not yet been addressed by this court. (Emphasis by the court).

The Court reviewed a number of cases which went both ways on the issue of whether the offer of judgment statute applies with respect to potential non-monetary claims. The deciding factor in those cases centered on whether or not the "real issue" in the cases was for damages or for non-monetary awards.

The Court seems to create a bright line rule that under no circumstances can the offer of judgment statute apply to non-monetary claims. At 144 the Court holds:

Similarly, strict construction of the statute and rule should not allow application of a general offer of settlement, sought to be applied to claims seeking non-monetary relief as well as actions for damages. In this case, each offer of settlement filed was general, such that it applied to all claims contained within the complaint which, of course, included both a claim for damages and non-economic claims. Strict construction of the statute leads to the conclusion that when an action seeks non-monetary relief, such as a pure declaration of rights or injunctive relief, then the fact that it also seeks

damages does not bring it within the offer of judgment statute. (Emphasis supplied by the Court.)

That seemingly clear holding could be questioned by the remainder of the Court's holding. The Court reviewed cases in which the offer of judgment was unclear and relying on those cases seemed to conclude that the language of the offer of judgment in this case was deficient because it didn't clearly indicate whether the defendant was willing to accept an injunction or declaratory judgment requiring plaintiff's non-economic relief. At 145, the Court states:

Here, the proposals for settlement did not state whether the association was agreeing to entry of any injunctions, or declaration of Palm Beach Polo's grant of way of necessity, yet it claimed to be a proposal to settle all claims. If the statute were read to permit a proposal for settlement to apply to a case in which there were claims for non-economic relief as well as for damages, the offeree would be forced either to accept the proposal and continue to litigate the request for injunctive and non-economic relief or to give up their non-damage claims. The purposes of section 768.79 include the early termination of litigation. A proposal for settlement in a case such as this one does not satisfy that purpose, as it is acceptance would not terminate the litigation nor resolve those claims not seeking damages. Because the proposals for settlement addressed a complaint that included non-damages claims, they do not comply with the statute, and we find them invalid and reverse the trial court's order awarding fees.

While the holding in this case still seems arguable, the lesson to be learned is that in any offer of judgment a party must be mindful that the statute is going to be strictly construed in derogation of the common law and every "i" must be dotted and every "t" must be crossed if there is any hope of attorney's fees to be awarded. In all likelihood, an offer of judgment in a case seeking non-monetary relief is invalid.

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.

<p>A BETTER COPY CENTER</p> <p>supports the</p> <p>Palm Beach County Bar Association</p> <p><i>"You know us... we do all the event signs!"</i></p> <p> 919 North Dixie Highway West Palm Beach, FL 33401</p> <p><i>"Celebrating our 21st year!"</i> (561) 655-4944</p> <p>www.bettercopycenter.com</p>		<p>• All Litigation Support Services Including but not limited to...</p> <p>• Trial Exhibit Enlargements Color and Black & White - Documents & Photos - Xrays/MRI</p> <p>• Document Scanning Summation - Concordance - Sanction iPRO - Tiff - PDF to Disk</p> <p>• Document Production Copying - Color Copying - Print Documents from Files Binding - Digital Photo Printing - Blueprints Copied Video / Audio Tapes / DVDs / CDs Duplicated</p> <p>Video tapes Converted to DVD Audio Cassette Tapes Converted to CD</p> <p>Free Pickup & Delivery (in our extensive delivery area)</p>
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The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:

"The Impact of the Current Economy on Personal Injury/Wrongful Death Cases"

Friday, April 16, 2010 - 8:00 a.m. – 12:00 p.m.

Bar Association Office, 1601 Belvedere Road, Suite 302E, WPB, FL

This Program is open to all Attorneys and Paralegals, Plaintiff and Defense

Program Schedule

7:45 a.m. – 8:00 a.m.	Late Registration/Check In
8:00 a.m. – 8:10 a.m.	Welcome & Opening Remarks - <i>Sia Baker-Barnes, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., Committee Co-Chair</i>
8:10 a.m. – 9:00 a.m.	Outcomes of Personal Injury/Wrongful Death Trials/Settlements During the Economic Downturn - <i>(Florida Jury Verdict Reporter, presenting a comparison of verdicts pre and post recession)</i>
9:00 a.m. - 9:50 a.m.	Do and Don'ts for Mediation in the Current Economy - <i>Rodney G. Romano, Esq., Matrix Mediation, Inc.</i>
9:50 a.m. - 10:10 a.m.	Strategies for Success at Trial in the Current Economy and Ethical Considerations - <i>David C. Prather, Esq., Board Certified Civil Trial, Lytal, Reiter, Clark Fountain & Williams</i>
10:10 a.m. - 11:00 a.m.	Insurance Coverage Issues and Bad Faith: Impact of the Recession, Coverage Exclusions, and Strategies for Finding Coverage - <i>Jeffrey M. Liggio, Esq., Board Certified Civil Trial, Liggio, Benrubi, P.A.</i>
11:00 a.m. - 11:10 a.m.	BREAK
11:10 a.m. - 12:00 p.m.	Demonstration of High Impact Opening Statement - How to get the jury on your side from the beginning in the current economy - <i>Plaintiff: Darryl L. Lewis, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A.</i> <i>Defendant: Benjamin L. Bedard, Esq., Roberts Reynolds Bedard & Tuzzio, P.A.</i>
12:00 p.m.	Closing Remarks/Adjournment - <i>Edrick E. Barnes, Esq., Liggio, Benrubi, P.A., Committee Co-Chair</i>

SPONSORED BY:



This course has been granted **4.5 CLER including .50 Ethics credits / 3.5 Civil Trial Certification credits** from The Florida Bar.

The cost of the seminar is **\$125.00** for PBCBA members/paralegals;

\$165.00 for non-PBCBA members/paralegals if registered by 4/9/10; 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	 MAIL the completed form w/check	 FAX the completed form to 561/687-9007	 ON-LINE at www.palmbeachbar.org
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____ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (04/16/10 PI Wrongful Death) Cost is the same as listed above, in addition to \$10 for shipping and handling.

North County Section seeks Board Members

Elections for the North County Section's Board of Directors take place this month.

Petitions will be available beginning March 2 for five (5) director positions (for a two year term), plus president-elect.

The Board meets once a month from noon to 1:00 p.m. to plan various networking events for its 650 members.

To apply for a position, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Friday, March 26. If there is a contested election, voting will take place online in April and winners will be announced online in May.

The current Board includes President, Debra Jenks; President-Elect, Ned Reagan; Secretary, Ron Ponzoli; and Immediate Past President Ryon McCabe.

Directors are Jerry Beer, Larry Buck, Keith Campbell, Ken Johnson, Spencer Kuvin, Scott Smith, Todd Stewart, Dante Weston and Greg Yaffa.

North County Section seeks nominations for its 8th Annual Jurist of the Year Award

The North County Section is seeking nominations for its *Jurist of the Year* Award. If you're a North County Section member, please take a minute and send us a recommendation as to which local judge you feel deserves to be honored for his or her dedication to the Bench and to our community. The letters of recommendations will be reviewed and discussed by the section's Board of Directors. A winner will be selected based upon the following criteria: The judge should be one with an excellent reputation for sound judicial decisions and an unblemished record of integrity as a lawyer and as a judge; is generally recognized by Bar members as highly qualified; and active in Bar related activities. He or she should be respectful of the law and understanding of cases. Who is eligible? Any judge who currently presides over cases in Palm Beach County will be eligible to win the award.

Send your nomination to the Bar Office no later than Friday, March 26 or, email your recommendation to lpoirer@palmbeachbar.org. The winner's name will be announced during the section's end-of-the-year dinner at Ruth's Chris Steak House in North Palm Beach on Thursday, May 13.

Previous *Jurist of the Year* winners have been Judge Mary Lupo, Judge Roger Colton, Judge Peter Blanc, Judge Thomas Barkdull, Judge Barry Cohen, Judge Jonathan Gerber and Judge David Crow.

North County Section members recently enjoyed a Happy Hour at Brio Tuscan Grille.



Judge Edward Garrison with NCS President Debra Jenks and Julianne Frank



Cathy Kamber and Magistrate Tom Baker



Brett Richman and Tama Kudman



Lisa Small and David Glatthorn



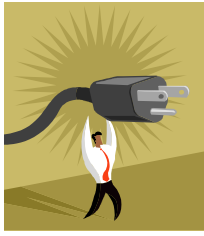
NCS Board members Keith Campbell, Michael Slavin and Ken Johnson



Nadine White-Boyd and Steve Fischer



Judges Richard Oftedal, Sandra Bosso-Pardo and John Phillips



The North County Section

Presents:

“ETHICAL CONSIDERATIONS IN AN ONLINE WORLD”

Friday, April 23, 2010

11:30 a.m. to 1:00 p.m.

Abacoa Golf Club
105 Barbados Drive, Jupiter

Program presented by FindLaw

TOPIC: The borderless world of the Internet creates unique ethical challenges for attorneys in determining which rules apply and what types of online content are covered. This seminar cuts through the complexity to give you the best practices and guidelines for staying in compliance with ABA Model Rules and state rules. Special emphasis is given to recent changes to the ethics rules governing online activities in specific states, and to key resources you can turn to for more information.

CLE CREDIT: This course has been approved for 1.0 General CLER and 1.0 Ethics from The Florida Bar.

COST: The price is \$35.00 for NCS Members and \$45.00 for non-section members, which includes your CLE credit, plus lunch.

RSV P: Register online @ www.palmbeachbar.org. To avoid a \$5.00 late fee, please RSVP no later than 5:00 pm on 4/20.

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Professionalism

The 4th DCA Speaks on Professionalism: Proposed Orders and “Emergencies”

By: David P. Ackerman and Glory P. Ross

1. Introduction

Two recent decisions from the 4th DCA teach us ways in which we can exhibit professionalism. First, trial lawyers can do a better job in submitting proposed orders to the trial court, so that the appellate record is clear and the court is spared the labor of deciphering the trial court’s ruling from a lengthy transcript. Second, something we already knew, emergencies are real emergencies and appellate counsel should not attach the title “emergency” to a motion which is not really an emergency.

2. Submitting Proposed Orders to the Trial Judge that Accurately Represent the Trial Court’s Rulings

Every judge requires the moving party to come to a hearing prepared with a proposed order. In many cases, the proposed order will not fit the rulings which the court ultimately makes after the events of the hearing unfold. One technique (let’s be honest) we have all used for dealing with this was criticized in *Prosser v. Proudfoot Consulting Co.*, 34 Fla. L. Weekly D2168 (Fla. 4th DCA Oct. 21, 2009). After what must have been a complex and well argued matter, the trial court made “clear and precise rulings” on the transcribed record. The trial court then entered a one-page order adopting the rulings in the transcript. On appeal, the 4th DCA wrote:

We note that our review of this case was immensely complicated by the form of the trial court’s order, which is a one-page order that adopts a 194-page transcript of the hearing on the underlying motions. We understand the pressures on a trial judge in a busy civil division. Here, the judge made clear and precise rulings. *Professionalism dictates that the lawyers for the parties should be able to cull out the rulings of a court from a hearing and present them to the court in a one or two page proposed order. Orders taking the form of the one in this case are difficult to review and enforce. An order in a lawsuit should be worth at least as much as the paper it is printed on.*

Id. (Emphasis added). We actually do have a standard which addresses proposed orders:

Attorneys should draft proposed orders promptly and the orders should fairly and adequately represent the ruling of the court.

Standards of Professional Courtesy, Palm Beach County Bar Association, Standard IV. 3.

Frankly, what is going through the trial lawyer’s mind at the end of the hearing is expediency, both for the sake of having the ruling in hand when exiting the courtroom and also believing that it will benefit the trial court to get the ruling off the judge’s desk. This opinion teaches us that there is more to the conclusion of the hearing than the expedient rendition of an order – there is a possibility of appellate review.

Now, let’s not go too far to the other extreme: appellate courts have been critical of detailed orders drafted by counsel which are adopted verbatim by the trial court. *See, for example, Corporate Mgmt. Advisors, Inc., v. Boghos*, 756 So. 2d 246, 248 (Fla. 5th DCA 2000) (“It is well established that trial courts are admonished for the verbatim adoption of proposed orders drafted by litigants.”) This line of case law was developed as a result of lawyers providing the court with overreaching orders that did not accurately reflect the court’s precise ruling. This has been a particularly sensitive issue in situations, such as family law cases, where the orders contain detailed findings of fact. *See Perlow v. Berg-Perlow*, 875 So. 2d 383 (Fla. 2004) (Pariente, J. concurring) (reversing order which characterized the husband’s behavior as “horrible” and characterized the wife as “one of the most exemplary persons that the Court has seen in a very long time.”).

Keeping those concepts in mind, what are some practical things we, as trial lawyers, can do to arrive at this next stage of professionalism?

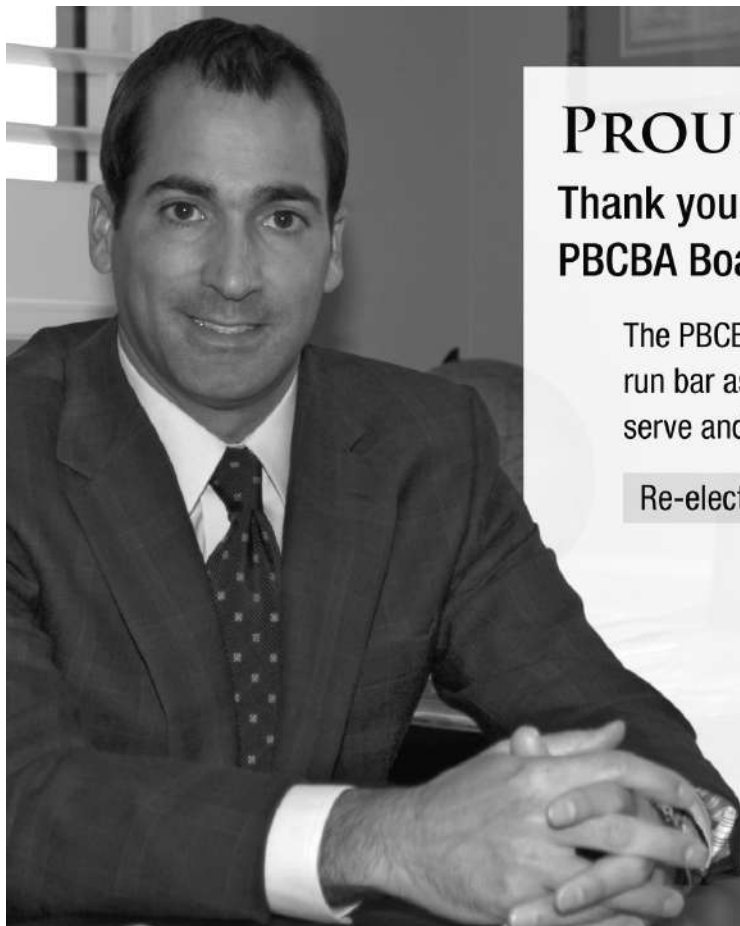
- The party prevailing at a hearing should offer to draft the order to resemble the

Continued on page 18

Judicial Lunch on 11/16/09 – Evidentiary Foundations and Objections

On November 16, 2009, the Palm Beach County Bar Association conducted its monthly judicial lunch and covered the topic “Evidentiary Foundations and Objections.” The panelists for the lunch were Judge Gerber from the Fourth DCA and Circuit Court Judges Lewis, French, and Maass. The lunch was moderated by attorney Skip Smith from Fox Rothschild. The following are some suggestions provided by the panel concerning evidentiary foundations and objections:

1. One of the most important reasons to make objections is to preserve the record for appeal. Every trial lawyer has an obligation to protect the record.
2. For every objection, a lawyer should state the legal basis or ground. Speaking objections should not be made. Use three words or less to state the legal basis for the objection.
3. Every lawyer should have a list of objections with them at trial.
4. The most common evidentiary issue on appeal occurs when evidence is excluded. When a judge excludes evidence, it is important that the appellate court understands what evidence was excluded, hence proffers become very important.
5. On the issue of proffers, judges often try to do it on a break right at the end of the day to keep the progress moving. Obviously, one exception is if an expert has been called to testify and there is a need to determine if qualified. Judges can leave a bench during a proffer – the reason for this is the judge has ruled the evidence is inadmissible and the proffer is being given to preserve the error for appeal.
6. Lack of foundation or insufficient predicate also are common evidentiary objections. These objections are intended to develop the source of a witness’ knowledge. You should voir dire a witness to test his or her knowledge.
7. On a lack of foundation objection, the judge can ask an objecting party what is missing from the foundation.
8. Usually, judges don’t like standing objections.
9. Judges will generally instruct jurors that lawyers make objections for legal reasons.
10. Undisclosed summaries are a problem. Need prior disclosure under the Florida Rule of Evidence 90.956. A summary is different than a demonstrative exhibit.
11. Improper impeachment is an objection often overlooked. Make sure to impeach only when there is a clear inconsistency.
12. A motion to strike an answer as unresponsive is different than a curative instruction. Judges will not give curative instructions unless a lawyer requests it.
13. A lawyer can move to strike their own witness’ answer as unresponsive.
14. Do not overuse leading question objections. Judges will allow leading questions to establish a predicate.
15. Judicial notice of items under Florida Rule of Evidence 90.202 shall occur under Florida Rule of Evidence 90.203 if advance notice is given and the Court is given sufficient information. Otherwise, it becomes discretionary under the provisions of Florida Rule of Evidence 90.204.
16. Boilerplate motions in limine (e.g., to adhere to the rules of evidence) are a waste of time.



PROUD TO SERVE OUR BAR

Thank you for the privilege to serve on the
PBCBA Board these past two (2) years.

The PBCBA continues to lead the way as one of the best run bar associations in the state. I would like to continue to serve and help keep our bar association strong.

Re-elect **Jason Guari** for the PBCBA Board of Directors



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The Palm Beach County Bar Association's
Commercial Litigation CLE Committee Presents:

"Practical, Legal, and Ethical Considerations in *the* Use of Experts"

Friday, May 14, 2010 9:00 a.m. – 1:00 p.m.

Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL

Program Schedule



- 8:45 a.m. - 9:00 a.m. **Late Registration/Check In**
- 9:00 a.m. - 9:15 a.m. **Welcome & Opening Remarks** - *Phillip H. Hutchinson, Esq., Greenberg Traurig, P.A., Commercial Litigation Committee Chairperson*
- 9:15 a.m. - 10:00 a.m. **Practical, Legal, and Ethical Considerations in *the* Use of Experts** - *Barry S. Balmuth, Esq., Board Certified Civil Trial and Business Litigation Lawyer, Barry S. Balmuth, P.A.*
- 10:00 a.m. - 10:15 a.m. **BREAK**
- 10:15 a.m. - 11:00 a.m. **Expert Testimony From the Expert's Perspective** - *James P. Robinson, CPA/ABV, CFF, Edward D. Deppman, CPA/ABV, CFF, and Melisse G. Burstein, CPA/ABV, CFF, Gerson, Preston Robinson & Company, P.A.*
- 11:00 a.m. - 11:45 a.m. **Scientific Evidence Under *Frye* and *Daubert*** - *Fourth District Court of Appeal Judge Gary M. Farmer*
- 11:45 a.m. - 12:00 p.m. **Lunch Buffet**
- 12:00 p.m. - 1:00 p.m. **Lunch With The Judiciary: Roundtable Discussion with** - *Honorable Gary M. Farmer, Fourth District Court of Appeal; Honorable Judges David F. Crow, and Donald W. Hafele, 15th Judicial Circuit*

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This course is expected to receive **4.0 CLER including 4.0 Ethics credits / Certification credits are pending from The Florida Bar**. The cost of the seminar is **\$100(includes lunch)** for PBCBA members/paralegals; **\$140** for non-PBCBA members/paralegals if registered by **5/7/10**; 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.

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Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800

Wine Tasting Event



The Bar recently held its first wine tasting event at the Phillips Point Club in West Palm Beach. This sold out event was a lot of fun and educational too as Virginia Philip, Master Sommelier at the Breakers spoke to the group about the various wines being served. Virginia became the ninth woman in the world to pass the Court of Master Sommeliers Diploma exam in London.



Event organizers Grier Pressly and Michael Napoleone



Lindsay Hanson, Cathleen Scott and Brian Mangines



Adam Rabin, Michelle Diffenderfer, Andrea McMillan, Richard Carey and Joe Galardi



Rand Hoch, Mimi McAndrews and Jerry Sotelo



Grier and Kristy Pressly, Lisa Small and Michelle Suskauer



Rob Hauser and Jack Aiello

Elect

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Theo Kypreos

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PBCBA Young Lawyers Section

- President (2009 – 2010)
- Former President-Elect, Secretary & Treasurer
- Executive Committee Member since 2002

Palm Beach County Bar Association

- Board of Directors (2009 – 2010)
- Bench Bar Conference Subcommittee Member
- Probate/Guardianship Practice Committee Member
- Estate/Probate CLE Committee Member

The Florida Bar

- Probate Rules Committee Member
- Probate and Trust Litigation Committee Member

Chamber of Commerce of the Palm Beaches

- Board of Directors (2006 – 2009)
- Trustee since 2009
- Leadership West Palm Beach (2006)

University of Florida College of Law

- Law Alumni Council Member since 2002

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Attorneys that Closed Pro Bono Cases in November and December 2009

The following attorneys closed their pro bono cases in November and December 2009:

Richard Abedon	Tanya McConnell
John Baker	Kathryn L. McHale
Susan Ball	Brian McMahon
Jayne Regester Barkdull	Kevin McNamara
Genny Bernstein	Judith B. Migdal-Mack
Irwin Block	Lawrence Moncrief
William W. Booth	Brian Moskowitz
Bennett Bovarnick	C. Annelies Mouring
Donald L. Brooks	Dario Muleris
Lawrence P. Buck	Timothy J. Murphy
Carl M. Collier	Charles W. Musgrove
Amy Cosentino	Tequisha Myles
Ronald E. Crescenzo	Thomas G. O'Brien, III
John David Dickenson	Kathryn Oleksy
Catherine S. Eaton	Kimberly Ouellette
Lauren Feingold	Steven Parrish
Gina M. Fraga	Robert Pasch
Marjorie G. Graham	Michelle Reichler
Mary Alice Gwynn	Kimberly Rommel-Enright
Michelle Hankey	Bruce S. Rosenwater
Andrew Helgesen	Peggy Rowe-Linn
Kirsten Herndon	M. Richard Sapir
Antonia L. Hulme	C. Shalloway
Elaine Johnson James	Scott Skier
Georgina Jimenez-Orosa	Michael Stern
Kristin Johnson	David C. Tassell
Robert D. Jones	Victoria A. Vilchez
Ira D. Karmelin	Shelly Wald
Michael A. Lampert	Colin White
Darren Leiser	

Total number of hours: 1,162.56

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SATURDAY, MAY 8, 2010
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Florida Supreme Court Recognizes Local Attorneys for Pro Bono Work

Florida Supreme Court Chief Peggy Quince and the Florida Pro Bono Coordinators Association in collaboration with the Legal Aid Society of Palm Beach County and with the support of the Young Lawyer's Division of the Florida Bar are proud to recognize the efforts of local attorneys who provide pro bono service through a legal services organization. Attorneys to be recognized will receive a lapel pin designating their level of pro bono activity. Three levels will be recognized:

Bronze level - 20 to 49 hours

Silver level - 50 to 99 hours

Gold Level - 100 or more hours

All hours are based on cases closed in the year 2009. The pins, along with a letter of recognition from the Chief Justice of the Florida Supreme Court, will be distributed this spring through the Legal Aid Society. The attorneys will be recognized at the 22nd Annual Pro Bono Recognition Evening, additional local recognition for these attorneys is anticipated. A list of the award recipients follows:

BRONZE

Jayne Regester Barkdull
Lawrence Buck
Antonia L. Hulme
Georgina Jimenez-Orosa
Kristin Johnson
Ira D. Karmelin
Richard Kleid
Deena McNamara
Stephanie McQueen
Sarajane Marell
Annelies C. Mouring
Timothy J. Murphy
Michelle Reichler
Kimberly Rommel-Enright
Stephanie Serafin
Brooke Sharmin
William G. Shofstall Jr.
Colin White
Julia Wyda

SILVER

John Baker
Bennett Bovarnick
Amy Cosentino
Mary Alice Gwynn
Peter Jannis
Judith Migdal-Mack
Laura Noble
Thomas G. O'Brien III
Victoria Vilchez

GOLD

Richard Abedon
Caitlin Dale
Kirsten Herndon
Merry E. Lindberg
Jonathan Mann
Lawrence Moncrief
Terry E. Resk
Michael Stern
Barry Weiss
Bruce Zeidel

Who knew lawyers had so much talent?

By Lynne Poirier

Our first Lawyer Variety Show was awesome! Held at the Eissey Campus Theatre in Palm Beach Gardens, on the coldest Saturday night of the year, our members performed like rock stars to a packed theatre of close to 500 and raised more than \$15,000 for the Legal Aid Society of Palm Beach County and the North County Section Scholarship Fund at PBCC.

A huge thank you to those who auditioned, practiced and performed. The end result was a seamless show featuring 13 acts including music, singing and comedy. Check out a few minutes of the performance @ <http://www.youtube.com/watch?v=4vmpeOKXtG4>.

The event was so much fun plans are already underway for next year's show, which is scheduled for Saturday, January 22, 2011. Save the date! To audition, or to purchase an Ad in the Playbill, please give me a call at 687-2800. It's not too soon. Spots are filling up.



Iola Mosley (who sang Route 66) and her husband Emmett Mosley



Lloyd and Meryl Comiter



Ted and Roslyn Leopold



The Weekend Update, with Roseanne Roseannadanna (AKA: Michelle Suskauer) and Jane Curtin (AKA: Tracy Gerber). This was funny!



Chief Judge Peter Blanc with his wife Juliana and son Ethan



Darren Shull sang *When I Wish Upon A Star* to his daughter

Band members John Whittles, Grey Tesh, Brian Denney and Jeremy Slusher



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Robert Norvell on the electric violin

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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.

IAN ALI – Trinidad & Tobago; American University; Sole Practitioner, West Palm Beach

GAIL D. BAKER – New York; Nova Law School, 1987; Associate in Kelley Kronenberg, Glimartin, Fichtel & Wander, P.A., Plantation

ARI S. BARGIL – Florida; Florida State University College of Law, 2009; 15th Judicial Circuit, West Palm Beach

JASON A. BRODIE – Maryland; University of Miami, 2000; Partner in Brodie & Friedman, P.A., Boca Raton

JORDAN E. BUBLICK – Michigan; Ohio State University, 1983; Sole Practitioner, Jordan E. Bublick, P.A., West Palm Beach

ANDREW B. CARRABIS – University of Florida; Law Student Member, Gainesville

CHRIS D. CONNALLY – Florida; Nova Southeastern University, 2001; Associated with Law Offices of Patricia Garagozlo – Nationwide Trial Division, West Palm Beach

CAROL L. DUTRA – Florida State College of Law, 1998; Sole Practitioner, Law Offices of Carol D. Ellis, Palm Beach

KIMBERLEE A. FOWLER – Michigan; Thomas Cooley Law School, 2005; Associate in Tiller Law, Palm Beach Gardens

JOSHUA K. FRIEDMAN – New York; New York Law School, 2000; Partner in Brodie & Friedman, P.A., Boca Raton

ROBERT S. GLUCKMAN – New York; St. Thomas University School of Law, 1999; Partner in Hurley Rogner Miller, Cox, Waranch & Westcott, P.A., Ft. Pierce

THOMAS A. HEDLER – Florida; Florida State University, 2002; Associate in Sternberg & Hedler Law, P.A., West Palm Beach

AMANDA B. HOFFMAN – Florida; Barry University School of Law, 2007; Associate in Allan L. Hoffman, P.A., West Palm Beach

NICHOLAS C. JOHNSON – Jamaica; St. Thomas University, 2007; Office of Public Defender, West Palm Beach



MARTIN B. KOFSKY – New York; St. Thomas University School of Law, 1992; Partner in Ward, Damon, Posner, Pheterson & Bleau, West Palm Beach

SCOTT L. LAMPERT – New York; Nova Southeastern, 1996; Sole Practitioner, Scott L. Lampert, Esq., Delray Beach

ANDREW M. LOEWENSTEIN – Indiana; University of Miami, 2009; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

NICHOLAS MANIOTIS – Florida; Nova Southeastern University, 1985; West Palm Beach

JOSHUA H. MARKS – New Jersey; University of Florida, 2009; Associate in Anderson, Mayfield, Hagan, and Thron, P.A., West Palm Beach

JOE MARYUMA – Florida; Florida International University, 2006; Palm Beach Public Defender's Office, West Palm Beach

DIANA J. MCCLUSKEY – Florida; Law Student Member, Jupiter

KRISTIN J. MENTZER – California; University of Florida, 2008; Associate in McClosky, D'Anna & Dieterle, LLP, Boca Raton

THOMAS F. MEYER – New York; University of Miami, 1991; Sole Practitioner, 4 Disputes, Delray Beach

LAWRENCE NEWMAN – New York; St. Johns University, 1974; Sole Practitioner, Boca Raton

BERTHA E. PENENORI – Miami; St. Thomas University School of Law, 2003; Associate in Kelley Kronenberg Gilmartin Fichtel & Wander, P.A., Greenacres

EDWARD N. PORT – Thomas Cooley Law School, 1993; Sole Practitioner, The Port Law Firm, PA, West Palm Beach

VINCENT P. ROLLO – Massachusetts; New England Law School, 1995; Sole Practitioner, Vincent P. Rollo, Jr., Palm Beach Gardens

MELISSA SCHLUTOW – Associate in Law Office of Christina M. Sanabria, Ft. Lauderdale

ANDREA C. SHWAYRI – Massachusetts; University of Florida, 2008; Associate in Greenberg Traurig, P.A., West Palm Beach

MATTHEW B. WEISSBERG – Florida; Nova Southeastern University, 2009; Associate in Sternberg & Hedler Law, P.A., West Palm Beach



Elect **TANIQUE LEE** to the Board of Directors of the Palm Beach County Bar Association

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- Committee for Diversity and Inclusion Member, Internship Program
- Past Chair: Diversity and Gender Sensitivity Committee
- Young Lawyers Section, Member

FLORIDA ASSOCIATION FOR WOMEN LAWYERS

- Past Chair: Judicial Reception Committee Co-Chair; Newsletter Committee

PALM BEACH ASSOCIATION OF CRIMINAL DEFENSE LAWYERS

- Past Member

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- Past Board Member, CLE Chair
- Past Group Leader

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the success of our Bar Association.**





Effective Use Of A Power of Appointment To Cure An Otherwise Invalid Testamentary Disposition (The “Jewish Clause”)

By David M. Garten, Esq.

The Illinois case, *In re Estate of Max Feinberg*, 2009 Ill. Slip Op. 106982 (Ill. Supreme Court 9/24/09) has drawn national attention and raises thorny issues, including how an individual’s testamentary freedoms should be interpreted in a post-civil rights world. The Illinois Supreme Court upheld the validity of a clause that disinherited any grandchild who married outside the Jewish faith or whose non-Jewish spouse did not convert to Judaism within one year of marriage. Although this clause was arguably defective, the settlor’s spouse exercised her power of appointment and reformed the bequest thereby making it a valid condition to receipt of the bequest.

FACTS: Max Feinberg died in 1986. He was survived by his wife, Erla, two adult children, Michael and Leila, and five grandchildren. Prior to his death, Max executed a will and created a trust. Max’s will provided that upon his death, all of his assets were to pour over into the trust.

Upon Erla’s death, the assets in the trust were to be distributed to Max’s descendants in accordance with a provision the court called the “beneficiary restriction clause.” This clause directed that 50% of the assets be held in trust for the benefit of the then-living descendants of Michael and Leila during their lifetimes. However, any such descendant who married outside the Jewish faith or whose non-Jewish spouse did not convert to Judaism within one year of marriage would be “deemed deceased for all purposes of this instrument as of the date of such marriage” and that descendant’s share of the trust would revert to Michael or Leila.

The trust instrument gave Erla a limited testamentary power of appointment over the trust assets. Erla exercised the power of appointment by directing that, upon her death, each of her two children and any of her grandchildren who were not deemed deceased under Max’s beneficiary restriction clause receive \$250,000. In keeping with Max’s original plan, if any grandchild was deemed deceased under the beneficiary restriction clause, Erla directed that his or her share be paid to Michael or Leila. By exercising her power of appointment in this manner, Erla revoked the original distribution provision and replaced it with her own plan.

ANALYSIS: The Court found that the grandchildren did not receive a vested interest in the trust upon Max’s death. By creating a power of appointment in Erla, Max created a situation in which the interests of the grandchildren were contingent on whether and in what manner she would exercise her lifetime and testamentary powers of appointment. Thus, the grandchildren had a mere expectancy that they might receive some portion of the remainder at the conclusion of Erla’s life estate. No one had a vested interest in the remainder of the trust assets until Erla’s death resolved all contingencies.

Under Max’s plan, the grandchildren who were not “deemed deceased” at the time of Erla’s death would receive distributions from the trust for life, subject to termination if they should violate the marriage restriction (i.e., a condition subsequent). Erla’s scheme, however, does not operate prospectively to encourage the grandchildren to make certain choices regarding marriage. It operated on the date of her death to determine which, if any, of the grandchildren qualified for distribution on that date. The condition was either met or it was not met. There was nothing any of the grandchildren could have done at that time to make themselves eligible or ineligible for the distribution (i.e., a condition precedent).

Because no interest vested in any of the grandchildren until Erla’s death, her appointment created a condition precedent. Thus, the Court held, this is not a case in which a donee, will retain benefits under a trust only so long as he continues to comply with the wishes of a deceased donor. As such, there is no “dead hand” control or attempt to control the future conduct of the potential beneficiaries. Whatever the effect of Max’s original trust provision might have been, Erla did not impose a condition intended to control future decisions of their grandchildren regarding marriage or the practice of Judaism; rather, she made a bequest to reward, at the time of her death, those grandchildren whose lives most closely embraced the values she and Max cherished.

HOLDING: The Court held that the beneficiary restriction clause does not violate public policy because no grandchild had a vested interest in the trust assets and because the distribution plan adopted by Erla has no prospective application.

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Who Are They? From Page 4

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Maureen Martinez is an attorney at Williams, Leininger & Cosby where she is engaged in the defense of governmental agencies, insurance carriers, and their insureds in personal injury and coverage litigation. She began her career as an Assistant State Attorney at the Office of the State Attorney for the 15th Judicial Circuit, Florida. She was also a partner at Romano Law Group (formerly Romano, Eriksen & Cronin) where she maintained a successful trial practice in the areas of Criminal Defense, Personal Injury and Construction Defects.

Maureen is actively involved in the legal community and participates in the following organizations:

- Palm Beach County Bar Association, Board of Directors, 2008-2010
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Proposed Orders and “Emergencies”

Continued from page 9

court’s ruling as close as possible. The parties should work together to agree on an order that accurately reflects the ruling. A proposed order should never be submitted to the court without an attempt to confer with opposing counsel on the language of the order. We all know that many losing parties will not agree to any order other than that which the court strictly stated. In those cases, perhaps an order attaching the specific pages of the transcript containing the court’s ruling would suffice.

- Many judges prefer having orders submitted in electronic format or on a disk in addition to hard copy. (To find this out, I suggest checking the court’s website. Many judges have their own individual preferences listed on their website.) Consider bringing your proposed order on a Word compatible disk so that the court can make changes to your draft language to fit the ruling better.

3. Emergencies

In the same week of the *Prosser* case, the 4th DCA entered an Order in *USAA Casualty Ins. Co. v. Pembroke Pines MRI, Inc.*, 34 Fla. L. Weekly D2169 (Fla. 4th DCA Oct. 21, 2009), in which it condemned the over use of the term “emergency.” In a helpful behind the scenes description on how courts respond to “emergencies,” the panel warned about what happens when a pleading comes in with a caption mis-styled as an “emergency”:

Pleadings filed as emergencies disrupt court procedures and interrupt work on cases that were already pending.

Consequently, an attorney who seeks “emergency” review immediately loses credibility if this court discovers there is no true emergency.

Id.

In *USAA Casualty*, the petitioner filed an emergency petition for certiorari review of an order denying a motion for protective order. The 4th DCA dismissed the petition, in large part, based on a finding that there was no emergency. The trial court had not departed from the essential requirements of law and had not compelled any premature bad faith discovery. The petitioner had reasonable grounds available to object to the discovery and could appeal the entry of sanctions had it failed to make the discovery. *Id.*

The lesson, of course, is that the term “emergency” should apply only to such items as termination of parental rights or issues dealing with children, personal health or safety. The closer call is when the imminent production of highly sensitive and confidential information – not a feature of the *USAA Casualty* case – is required. Lawyers should carefully consider whether the order being appealed presents a true emergency based on a possibility of irreparable harm. If it does not, calling it an emergency is not only unprofessional but damages the merits of your client’s position and your own credibility.

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Program Schedule

- 9:00 a.m. - 9:20 a.m. **Late Registration/Check In**
- 9:20 a.m. - 9:30 a.m. **Welcome & Opening Remarks** - *Craig D. Stein, Esq., Committee Chair, Stein & Stein, P.A. Attorneys and Counselors*
- 9:30 a.m. - 10:20 a.m. **Securities Litigation and Criminal Review Panel** -
Michael F. McAuliffe, Esq. - State Attorney for the 15th Judicial Circuit, Palm Beach County
Rolando Garcia, Esq. - Deputy Chief, Criminal Division, US Attorney's Office, Southern District of Florida
Bruce E. Reinhart, Esq., Bruce E. Reinhart, P.A.
Moderator: *Jeffrey L. Cox, Esq. - Sallah & Cox, LLC*
- 10:20 a.m. - 10:30 a.m. **BREAK**
- 10:30 a.m. - 11:20 a.m. **Securities Litigation Civil, SEC and FINRA** -
Jonathan B. Butler, Esq., Shareholder, Fowler, White & Burnett, P.A.
Kerry A. Zinn, Esq., Assistant General Counsel, UBS
Representative from the Securities Exchange Commission, Southeast Region
Moderator: *Charles C. Harper, Esq., Charles C. Harper, P.A.*
- 11:20 a.m. - 11:35 a.m. **Lunch Buffet**
- 11:35 a.m. - 12:35 p.m. **Lunch With The Judiciary: Open Panel Discussion - Ethics Issues:**
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The Palm Beach County Bar Association's Employment Law Committee Presents:

"Second Annual Martinis and Migraines"

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

Friday, March 19, 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*

Sponsored By:



Please drink responsibly

This course is pending **4.0 CLER / 1.0 Ethics credits; Labor & Employ Certification credits are pending** from The Florida Bar. Seminar cost is \$115 for PBCBA members/paralegals; \$155 for non-PBCBA members/paralegals if registered by 3/12/09; add \$25 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		MAIL the completed form w/check		FAX the completed form to 561/687-9007		ON-LINE at www.palmbeachbar.org
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____ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (3/19/10 Employ) Cost is the same as listed above, in addition to \$10 for shipping and handling.

Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406 Telephone: (561) 687-2800

Bulletin Board

*** Ad Rates ***

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

The Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised.

PROFESSIONAL ANNOUNCEMENTS:

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

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

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.

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 (561) 686-6886.

HEATHER M. RUDA: Announces that she has opened her own practice specializing in all commercial, real estate and family law matters. Over 20 years experience. Also available for research and drafting on a contract basis. 809 N. Dixie Hwy., Suite 202, WPB, FL 33401; (561) 429-4001; hmr@rudalaw.com.

STEPHEN M. LEWEN, ESQ: Social Security Disability Insurance. 30 years representing the injured and disabled from Orange County to Dade. Main office Palm City. Member-National Organization of Social Security Claimants Representatives – Martin and Palm Beach County Bars. (772) 288-1300.

MARINA D. PETILLO: Completed all Parenting Coordinator requirements established by Florida Statute 61.125(4)(a)(2)(c) and is now available as a private Parenting Coordinator. Also available as a Family Law Mediator, and Guardian/Attorney Ad Litem. Reasonable rates for all services. 800 Village Square Crossing, Suite 105, Palm Beach Gardens, FL 33410. (561) 656-2015 or email mpetilloesq@gmail.com

OFFICE SPACE:

PBG LAW FIRM: In prime PGA Blvd. 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.

JUPITER: Solo Practitioner- PI and Medical Malpractice. Interested in sharing space/merging firm with experienced lawyer. Please call Wally McCall (561) 746-7073.

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.

EXECUTIVE SUITES/OFFICE SPACE: WPB, Forum Area, east of I-95, single offices available with or without secretarial area. 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.

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.

OFFICE SPACE FOR LEASE: Inside established law firm. Perfect for solo practitioner. Approx 300 sq.ft. built out and ready to go. Reasonable rates. Contact Gary at (561) 655-2028.

HEARSAY



Nicole C. Morris was appointed to the Board of Directors of the Palm Beach County Chapter of the Nova Law Alumni Association. She will be serving as their Treasurer.



Senate President Jeff Atwater has appointed Palm Beach County Clerk & Comptroller **Sharon R. Bock** to the Executive Council of the Florida Clerks of Courts Operations Corporation (CCOC). The CCOC reviews and certifies clerks' court-related proposed budgets that fund the operations of the 67 clerk of court offices in the state of Florida.



Tana Sachs Copple has been named co-chair of the KOLOT Coalition, an outreach branch of the Alpert Jewish Family & Children's Service that works to raise awareness about domestic abuse in the Jewish Community. Ms Sachs Copple is a partner at Maynor Sachs Copple.



The law firm of Leopold~Kubin, P.A. is pleased to announce that **Gregory S. Weiss** and **Leslie M. Kroeger** recently have been made partners in the firm.

Peter L. Breton, Francis X.J. Lynch, John R. Eubanks, Jr and **Marta Suarez-Murias**, formerly shareholders of Moyle, Flanigan et al, proudly announce the formation of The Law Offices of Breton, Lynch, Eubanks and Suarez-Murias, P.A. in West Palm Beach.



www.palmbeachbar.org



Jonathan T. Levy Elected President Palm Beach County Justice Association Saluting Your Commitment to Justice

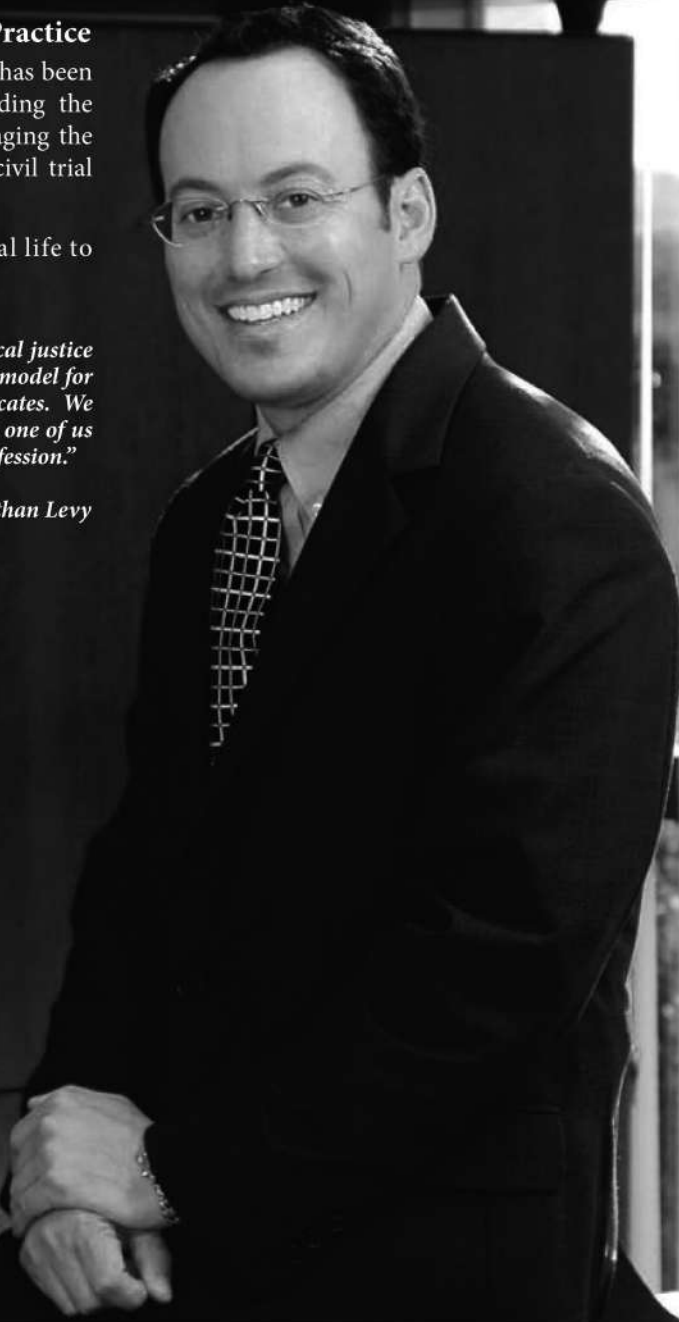
A Mission to Enhance the Standards of Trial Practice

Since 1985, the Palm Beach County Justice Association has been dedicated to inspiring excellence in advocacy, upholding the honor and dignity of the legal profession, and encouraging the highest standards of ethical conduct and integrity of civil trial lawyers in Palm Beach County.

Jonathan T. Levy has devoted his entire professional life to *Fighting for the Injured.*

"I am honored to have been elected president of the finest local justice association in Florida. I'm proud that we are looked to as a model for other local associations. Ours is a unique group of advocates. We selflessly share information and trial strategies, making each one of us an even more powerful advocate for our clients and this profession."

-Jonathan Levy



Fighting for the Injured

Rosenthal, Levy & Simon, P.A.

ATTORNEYS AT LAW

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Gerald A. Rosenthal ♦ Jonathan T. Levy ♦ Steven C. Simon



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
March 2010

Wednesday, March 3,
11:30am – 1:00pm
Solo Lunch
Bar Association Office

Wednesday, March 3,
12:00pm – 1:00pm
**Judicial Relations
Committee Meeting**
Judicial Dining Room,
Main Courthouse

Thursday, March 4,
5:30pm – 7:00pm
YLS Happy Hour

Friday, March 5,
9:00am – 1:00pm
**Commercial Litigation
CLE Seminar**
Bar Association Office

Saturday, March 6,
8:00am -3:00pm
YLS Habitat for Humanity Day

Tuesday, March 9,
Noon – 1:00PM
YLS Board Meeting
Bar Association Office

Wednesday, March 10,
Noon – 1:00pm
NCS Board Meeting

Thursday, March 11,
8:30am– 4:45pm
**TFB CLE Seminar
“Basic Probate &
Guardianship & Elder Law”**
Bar Association Office

Thursday, March 11,
Noon – 1:00pm
SPBC FAWL Luncheon
Bogart’s

Tuesday, March 16,
11:45am – 1:00pm
Joint Meeting with SCBA
Marriott, Boca Raton

Tuesday, March 16,
Noon – 1:00pm
**Professionalism Committee
Meeting**
Bar Association Office

Thursday, March 18,
5:00pm – 8:30pm
**Elder Law CLE
Dinner Seminar**
The Colony Hotel, Palm Beach

Friday, March 19,
Noon – 5:00pm
**Employment Law
CLE Seminar**
Bar Association Office

Friday, March 19,
Noon – 1:00pm
**Federal Bar Ryskamp
Award Lunch**

Tuesday, March 23,
5:30pm – 6:30pm
Legal Aid Board Meeting
Bar Association Office

Wednesday, March 24,
11:45am – 1:00pm
**Family Law CLE Luncheon
“Presenting a Temporary
Relief Case”**
Main Courthouse,
north end of cafeteria

Wednesday, March 24,
6:00pm – 8:00pm
Christian Legal Society Meeting
Panera Bread, 771 Village
Boulevard, West Palm Beach

Thursday, March 25,
5:00pm – 7:00pm
**PBCBA Board of Directors
Meeting**
Bar Association Office

Thursday, March 25,
6:00pm – 7:00pm
PBJA Meeting

Tuesday, March 30,
11:45am – 1:00pm
Judicial Luncheon
Main Courthouse,
north end of cafeteria