



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

May 2015

YLS to Host Fishing Tournament June 20

The Young Lawyers Section will be hosting its fifth annual fishing tournament on Saturday, June 14 to benefit Legal Aid's Educational Advocacy Project. The entry fee is \$300 per boat and all activities will be held at the Palm Beach Yacht Club. For more information, go to the Bar's website at www.palmbeachbar.org



Congratulations to Adam Rabin - recipient of the Sidney Stubbs Professionalism Award and John Howe -recipient of the Judge Edward Rodgers Diversity Award. Pictured here are Chief Judge Jeff Colbath, Adam Rabin, John Howe and PBCBA President Theo Kypreos.

Mark your calendar for upcoming Membership Events

May 1:

Law Day Luncheon with guest speaker Mark Curriden, attorney and award-winning legal journalist. Senior writer for the ABA Journal

May 9:

Legal Aid's Pro Bono Recognition Evening

June 6:

Annual Installation Banquet
at the Breakers Hotel

September 22:

Membership Luncheon with guest speakers Florida Bar President Ramon Abadin and Immediate Past Florida Bar President Greg Coleman "The Future of the Practice of Law: Challenges and Opportunities"

Grier Pressly to be sworn in as President June 6

Please join us on Saturday, June 6 for our special Installation Banquet at the beautiful Breakers Hotel in Palm Beach. You'll enjoy an evening of dinner, dancing and networking with more than 500 guests including members and judges. Dress is black-tie optional.

Join us by returning your reply card, which you recently received by mail. **(being mailed out on April 29)**



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THE
BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

THEODORE S. KYPREOS
President

www.palmbeachbar.org

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Executive Director

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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



THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT
OF FLORIDA

CHAMBERS OF
JEFFREY J. COLBATH
CHIEF JUDGE

PALM BEACH COUNTY COURTHOUSE
205 NORTH DIXIE HIGHWAY
WEST PALM BEACH, FLORIDA 33401
(561) 355-7845

March 9, 2015

Patience Burns, Executive Director
Palm Beach County Bar Association
1507 Belvedere Road
West Palm Beach, FL 33406

Dear Patience:

I attended the retirement lunches for our retiring judges and Magistrate Weaver hosted by the Palm Beach County Bar Association. What a wonderful gathering and a wonderful group of attendees.

Thank you so very much for honoring the retiring judges and Magistrate Weaver the way you did. What a wonderful gathering and a wonderful group of attendees. The Palm Beach County Bar Association spoils the local judiciary. Not every county has such a wonderful, vibrant, energetic and professional Bar Association as we have here in Palm Beach County. It is my pride and privilege to be associated with the Palm Beach County Bar Association.

Thank you so very much.

Sincerely,

Jeffrey J. Colbath

JJC: dlj



palm beach county
find a lawyer.org



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President's Message



A Mother's Day Story

by Theo Kypreos

May is upon us, which means later this month many of us will be celebrating Mother's Day with the very special women in our lives. Whether it's with your mother, wife, grandmother, aunt, mother-in-law, or the like, it's that time of the year when we reserve a day (or more) to say a special thank you to the women who do so much for us, and who make our lives complete and enjoyable. In our family, it means celebrating my wife, Jennifer, who aside from being the smartest attorney in the family, is a great mother, spouse and friend. It's always fun seeing how excited my 4-year old gets on Sunday morning to shower her mother with a handmade card and other Mother's Day surprises. This year will be particularly special in the Kypreos house as we welcome another child to the festivities.

On the other hand, Mother's Day can be somewhat bittersweet for those of us who have lost our own mothers along the way. It's been 16 years since I celebrated Mother's Day with my mother and, as a result, Mother's Day is always a dedicated time to remember and reflect on the many ways she influenced and shaped my life for the better. In fact, my mother, through her life and her passing, led me to my path as an attorney. As I embarked on my college journey, she encouraged me to consider a career in the law after I concluded my undergraduate studies in accounting. Her older brother was an appellate judge in Tallahassee and, in her early life, she worked as a court-reporter. Thus, she had an extremely high regard for the legal profession and knew a law degree could open many doors for me down the road. I agreed without any hesitation or objection. Frankly, it sounded a lot better than being an accountant!

As my years in college passed and the start of law school neared, the natural question arose... what type of attorney should I be? Well, my mother had the perfect idea . . . a tax attorney! Now, she would never admit this, but I am fairly certain it wasn't just happenstance that her epiphany coincided with the popularity of John Grisham's novel (and the release of the Tom Cruise film) "The Firm." Who knew that the life of a tax attorney could be so exciting and dangerous! Regardless, that was the plan, or at least her plan, as I prepared for law school. Unfortunately, my mother would never see me become an attorney. After being diagnosed with pancreatic cancer the prior winter, she lost her fight to the disease during my second week of law school. As you might expect, that first year of law school was full of distractions. But ironically, it was the aftermath of my mother's passing and the administration of her estate and affairs that steered me to choose the career I enjoy today. In dealing with her affairs, I received a firsthand education in the pitfalls and frustrations known as the probate and trust laws. This education, coupled with my own epiphany that I enjoyed being in a courtroom more so than confined to an office, led me to pursue a career in probate and trust litigation, which is (only slightly) more exciting than being a tax attorney, or at least so I'm told by my tax partners.

Although no longer with me, I am certainly thankful to my mother for the direction she gave me during our time together and the many life lessons she taught me. I carry and rely on them on a daily basis. Without her support and encouragement in my early life, I might not be writing this president's message today!

Happy Mother's Day to all of you and yours!

Theo

tkypreos@jonesfoster.com

Board Meeting Attendance

	JUL	AUG	SEP	OCT	NOV	DEC	JAN	FEB	MAR
Barnes	x	x	x	Phone	Phone	x	x	x	x
Demmery	x	x	x	x	x	x	x	x	x
Huber	x	x	x	x	x	x	x	x	x
Kypreos	x	x	x	x	x	x	x	x	x
Mason	x	x	x	x	x	x	x	x	x
McElroy	x	x	x	Phone	Phone	x	x	x	Phone
Pressly	x	x		x	x	x	x	x	x
Reagan	x	x	x	x	x	x	x	x	x
Weiss	x	x	x	x	x	x	x	x	x
Whittles	x	x	x	x	x	x	x	x	x
Wyda	x	x	x	x	x	x	x	x	x
Xenick	x	x	x	x	x	x	x	x	x
Yaffa	x		Buck	x	x	x	x	Phone	x

Membership Benefits – New Year Begins July 1



Our new fiscal year begins July 1.

Did you pay your dues?

Be sure to take advantage of all your membership benefits including CLEs, savings on office supplies, networking events and so much more. For a complete list of membership benefits be sure to check out our website at www.palmbeachbar.org and click on the Membership Benefit tab.

Bench Bar Conference

Thank you to all of our wonderful volunteers who organized this year's conference and to all those who attended.



Nichole Segal and 4th DCA Judge Robert Gross



Kalinthia Dillard, Phil Hutchinson and Byrnes Guillaume



Tim Gaskill, Joyce Conway and Judge Edward Garrison



Poorad Razavi and Jennifer Feld



Kai Li Fouts and Greg Huber



(Ret.) Judge Ken Stern, Judges Jaimie Goodman, Kirk Volker and James Martz



PBCBA President Theo Kypreos and Bench Bar Conference Co-Chairs Rebecca Vargas and Lawrence Rochefort



Marsha Bunn and Carl Wald



Judge Lisa Small, Jay White and Judge Marni Bryson



Dena Forman and Cynthia Dienstag



Raul Novoa, Federal Judge Robin Rosenberg and Jessica Rosenthal



Jennifer Lipinski and Olivia Liggio

The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:



MAKING TIME FOR WHAT MATTERS - Time Management and Practice Development for Lawyers

Thursday, May 21, 11:45 a.m. - 1:00 p.m.
Palm Beach County Bar Association
1507 Belvedere Road, West Palm Beach



Program Schedule

11:45 a.m. - 12:00 p.m. **Lunch / Late Registration and Check In**

12:00 p.m. - 12:05 p.m. Welcome - Opening Remarks - Kelly Hyman, Esq.

12:05 p.m. - 1:00 p.m. Speakers: Mark Powers and Shawn McNalis of Atticus
Atticus™ is for attorneys who want to dramatically increase revenues, reduce their stress, and create a huge competitive advantage in their marketplace.

Seminar topics:

- * Managing interruptions
- * Juggling Priorities
- * Strategic Planning
- * Staff Development
- * Process Management
- * Practice Development
- * Financial Management
- * Other critical skills for success

Lunch sponsored by:



This course has been granted 1.0 **CLER** from The Florida Bar. **Early Registration** cost is **\$25** for PBCBA members/paralegals; **\$65** for non-PBCBA members/paralegals if registered by **5/14/15**. Add \$15 late fee 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



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

Webinar

If you can't leave the office, you can attend via live webinar by registering at <http://www.palmbeachbarde.org>

Name: _____

Address: _____

Email Address: _____ Phone: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (5/21/15 PI) 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



Non-Consensual, Non-Debtor Releases In The Eleventh Circuit

by Jason S. Rigoli

The Eleventh Circuit has once again spoken on the issue of non-debtor bar orders in *In re Seaside*

Engineering & Surveying, Inc., – F.3d –, 2015 WL 106718 (11th Cir. 2015); holding that non-consensual, non-debtor bar orders are permissible, under certain circumstances. *Id.*

In *Seaside*, the Eleventh Circuit recognized its earlier, controlling decision, *In re Munford*, which approved a bar order in favor of a non-debtor. *Seaside*, at *3 (citing *In re Munford*, 97 F.3d 449 (11th Cir. 1996)). The *Seaside* Court reaffirmed its position in *Munford* that 11 U.S.C. § 105(a) gives the bankruptcy courts authority to issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code, including the bar order in that case.” *Id.*

The factual circumstances of *Munford* are different from those in *Seaside*. In *Munford*, a defendant in an adversary proceeding with a debtor, offered to settle the claims conditioned upon the bankruptcy court’s issuance of a bar order enjoining non-settling defendant from pursuing any claims

against the settling defendant. *Id.* (citing *Munford* at 452). The *Munford* Court approved the bar order “because the settling defendant ‘would not have entered into the settlement agreement’ without the bar order and because the bar order was ‘integral to settlement in an adversary proceeding.’” *Id.* (quoting *Munford*, at 455).

In *Seaside*, in contrast to *Munford*, the release of the non-debtors was not part of a settlement. Rather, the release was a part of the plan of reorganization and the non-debtor releasees would be the key employees of the reorganized entity and vital to its continued existence.

The *Seaside* Court considered the minority position of the Fifth, Ninth, and Tenth Circuits that prohibit such non-debtor releases, which rely, at least in-part, on the language of 11 U.S.C. § 524(e), stating that the “discharge of a debtor does not affect the liability of any other entity on, or property of any other entity for, such debt.” The *Seaside* Court rejected this position, siding with the majority position that such non-debtor releases are permissible but “should be used ‘cautiously and infrequently,’ and only where essential, fair, and equitable.” *Id.* (internal

citations omitted). Furthermore, the *Seaside* Court went on to adopt the *Dow Corning* factors when analyzing a non-consensual, non-debtor release, *Id.* at *4-5 (quoting *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002)), although, the *Dow Corning* factors are non-exhaustive and should be applied flexibly. *Id.*

The *Seaside* Court found that the non-debtor bar order was permissible in this case, satisfying the *Dow Corning* factors. A significant factor in this decision was that the non-debtor releasees constituted the “key employees” of the reorganized entity. If these non-debtor releasees were forced to focus on litigation rather than the day-to-day operations of the newly organized entity’s business, no reorganized entity could, or would, exist. If the reorganized entity filed it would result in a diminished or no payout to other creditors and unemployment for the employees of the bankrupt corporation, all of which run contrary to policies sought to be achieved in bankruptcy. *Id.*

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

Upcoming YLS Events

Thursday, May 20, 12:00 – 1:00 p.m.
Sidebar Series: “Voir Dire”
Chambers of Judge Meenu Sasser

Thursday, May 21, 5:30 – 7:00 p.m.
Wine & Cheese Reception and
Backstage Tour of the Kravis Center

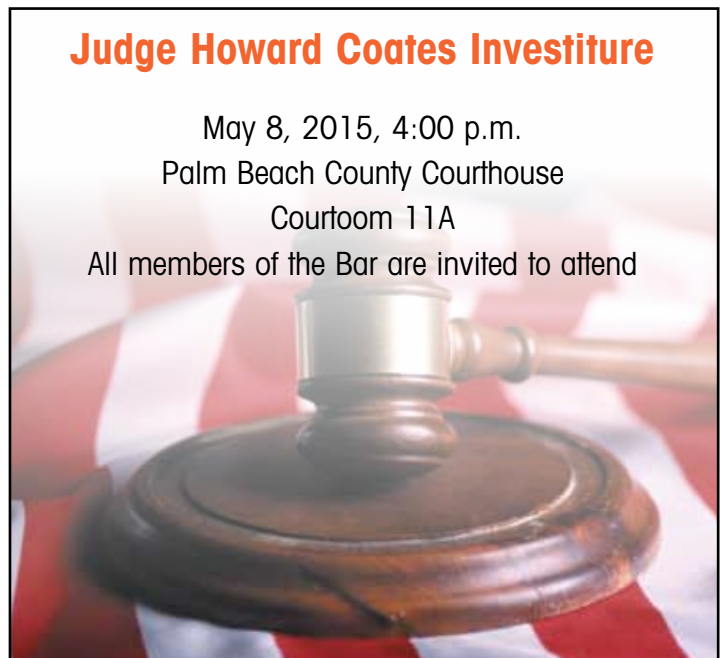
RSVPs required for both events
by registering online

Judge Howard Coates Investiture

May 8, 2015, 4:00 p.m.

Palm Beach County Courthouse
Courtroom 11A

All members of the Bar are invited to attend





The Palm Beach County Bar Association's Family Law CLE Committee Presents:

Friday, May 8, 2015 - 8:15 a.m. – 6:00 p.m.
Bar Association Office - 1507 Belvedere Road, WPB, FL 33406

THE BASICS OF FAMILY LAW YOU THOUGHT YOU ALREADY KNEW

Whether you are a newly licensed attorney who wishes to practice family law or are simply new to the practice of family law, this CLE will be beneficial, as it will address the basics every family law practitioner needs to know. Various procedural matters will be addressed and a mock Uniform Motion Calendar ("UMC") hearing will be presented which will show you what is proper and improper. You will have the opportunity to hear from some of our local highly experienced family law practitioners as well as Judges. This is a CLE you do not want to miss!

- 8:15am - 8:30am LATE REGISTRATION/CHECK-IN
8:30am - 8:45am WELCOME, Introduction of Program Committee, and Opening Remarks - C. Debra Welch, Esq., The Law Firm of C. Debra Welch, P.A., Family Law CLE Committee Chair
8:45am - 9:00am KNOW YOUR JUDGE; KNOW THE RULES - Cynthia M. Pyfrom, Esq. of Cynthia M. Pyfrom, P.A.
9:00am - 10:00am UMC HEARINGS vs. EVIDENTIARY HEARINGS - Magistrate Sara Alijewicz, *Martin L. Haines, III, Esq. of The Law Office of Martin Haines, III Chartered, and Andrea Reid, Esq. of Isaacs & Reid, P.A.
10:00am - 10:10am BREAK
10:10am - 11:10pm DISCOVERY BASICS - What do you need and how do you get it? - Andrea Reid, Esq. of Isaacs & Reid, P.A.
11:10pm - 12:10pm PRACTICE AND PROCEDURE - HOW TO MAKE HAPPEN WHAT YOU ACTUALLY WANT TO HAPPEN - *Jeffrey Weissman, Esq. of Gladstone & Weissman, P.A.
12:10pm - 1:10pm LUNCH (provided)
1:10pm - 2:10pm DEPOSITIONS - How to Take Them & How to Use Them in Court - *Ralph T. White, Esq. of Schutz & White, LLP
2:10pm - 3:10pm FAMILY LAW APPEALS - Julia Wyda, Esq. of Brinkley Morgan
3:10pm - 3:20pm BREAK
3:20pm - 3:50pm INCOME WITHHOLDING ORDERS & FLORIDA ADDENDUM - *Magistrate Diane Kirigin
3:50pm - 4:30pm PROFESSIONALISM & PRACTICAL TIPS - *Jorge Cestero, Esq. of Sasser, Cestero & Sasser, P.A., C. Debra Welch, Esq. of The Law Firm of C. Debra Welch, P.A., and *Stuart R. Manoff, Esq. of The Law Offices of Stuart R. Manoff & Associates, P.A.
4:30pm - 5:00pm A VIEW FROM THE BENCH - Honorable Charles Burton, Honorable John Phillips and Honorable Amy Smith
5:00pm Happy Hour

*Board Certified Marital and Family Law Attorney



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This course has been granted 8.5 CLER / 6.5 Marital & Family Law Certification credits from The Florida Bar.

Early Registration cost is \$175 for PBCBA member/paralegals 0-5 years experience; \$210 for PBCBA members/paralegals w/5+ yrs. experience; \$250 for non-PBCBA attorney members/paralegals. After 5/1/15 add \$25 late fee to registration. LEGAL AID ATTORNEY cost is \$175. PBCBA member Legal Aid attorney may register on line; non-PBCBA member Legal Aid attorney should mail in \$175 check to PBCBA, 1507 Belvedere Rd., WPB., FL 33406. After 5/1/15 add \$25 late fee to registration. 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 BY CREDIT CARD CLE Materials will now be emailed to all registrants prior to the seminar

Webinar If you can't leave the office, you can attend via live webinar by registering at http://www.palmbeachbar.org

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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) (5/8/15 Family Law) 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 Rd., West Palm Beach, FL 33406



Requesting Hospital Records Under Hitech

by Ted Babbitt

Hats off to Attorney Maxwell S. Kennerly of The Beasley Law Firm, LLC, for a blog on defeating the medical records paper copy scam. Pat Malone of Patrick Malone & Associates, P.C., Suite 400, 1111

16th Street N.W., Washington, D.C., 20036, pointed this blog out to me.

HITECH is a part of the Affordable Care Act and requires hospitals to provide an electronic copy of records requested by a patient at the hospital's actual cost of putting it on a CD or making it available on a secure website. This should cost tens of dollars rather than the hundreds or thousands that hospitals charge lawyers for paper copies. Hospitals charging on a per page basis is illegal under HITECH if you ask for the records in the right way. Here is a sample letter used by our firm based upon the HITECH Act.

Dear Sir or Madam:

Please be advised that this firm is privileged to represent _____.

Enclosed is a properly executed medical authorization signed by _____.

Pursuant to the HITECH Act, 42 U.S.C.A. 17935(e) (1), and its implementing regulations, 45 CFR 164.524(c)(40)(i) we are requesting, in an electronic format only, an accurate and complete copy of the above referenced patients medical records from [insert date] to [insert date]. Please be aware that the HITECH Act applies to requests by third-parties, like our law firm, just as it applies to requests by patients: "if requested by an individual, a covered entity must

transmit the copy of protected health information directly to another person designated by the individual." (see Federal Register January 25, 2013 Vol. 78 No. 17, Page 5634). We are not requesting paper copies. The HITECH Act and its regulations do not allow you to bill for paper copies when an electronic copy has been requested. I will not hesitate to file a complaint with the Department of Health

& Human Services (HHS) if you violate the law by improperly applying the paper copy rate for electronic records. Please also provide a copy of your statement of charges. This request includes all records obtained from and correspondence to and from other health care providers or sources.

Please be advised that this request is made pursuant to Florida Statutes §766.204(1), (2) and (3).

Thank you for your cooperation and prompt attention to these requests.

The threat to report the hospital to HHS is not an empty one. The HHS Office for Civil Rights will act on your complaint under 45 C.F.R. Parts 116 and 164, subparts A, C, and E, the Privacy and Security Rules. If the hospital attempts to bill for more than a reasonable fee for providing the electronic copy, the violation is of 45 C.F.R. § 164.524(c) (4) (Access of Individuals to Protected Health Information – Fees). The Office for Civil Rights will tell the hospital that an individual has the right to access their records under 45 C.F.R. § 164.524(a)(1) and that the hospital is required to provide an electronic copy under 164.524(c)(2)(i) and (ii). Those records must be provided no later than thirty days after the request under 45 C.F.R. 164.524(b)(2). Fees must be reasonable and cost based and they must be provided to individuals or their representatives. The fee can only include the cost of copying including supplies, labor and postage. The fee cannot include costs associated with searching or retrieving the information under 45 C.F.R. 164.524(c)(4). The hospital must provide a copy to any person designated by the patient including a lawyer under 45 C.F.R. 164.524(c)(3)(iii).

As you can see by the letter, the Federal Register, January 25, 2013, Vol. 78, No. 17, Page 5634, takes away the usual response by the hospital that HITECH only applies by individuals, not lawyers. Nevertheless to avoid even that excuse it is simple enough to have your client make the request directly. Just be sure that the client asks for electronic format only and not paper copies.

Hospitals have made a cottage industry out of charging thousands of dollars for copies of medical records. This benefit of the Affordable Care Act should reduce the cost of obtaining records to a small fraction of what is being charged currently.

Young Lawyers March Happy Hour



YLS Board Members Scott Perry and Nicole Barna and YLS President Lindsay Demmery

Jeff Collier and Bill Abel

Sophie Rothstein, Bailey Fore, Sarah Jeck Hulsberg and Krista Downey



Elective Share Made Easy – Part V (Apportionment)

by David M. Garten

If the assets the surviving spouse received from the decedent or will receive from the decedent on death do not completely satisfy the spouse's elective share, the unsatisfied balance is allocated into categories/classes and "apportioned" among the direct recipients of the remaining elective estate according to a priority system. The direct recipients are liable to "contribute" their share of the remaining elective estate toward satisfaction of the elective share in an amount equal to the value of their proportional liability in each category/class. Contribution will be discussed in Part VI.

APPORTIONMENT [§732.2075(2)-(7)]

Subsection (1): This subsection consists of the assets the surviving spouse received from the decedent or will receive from the decedent on death. Refer to Part IV of this series.

Subsection (2): If, after the application of subsection (1), the elective share is not fully satisfied, the unsatisfied balance shall be allocated entirely to one category/class of "direct recipients"¹ of the remaining elective estate and apportioned among those recipients, and if the elective share amount is not fully satisfied, to the next category/class of direct recipients, in the following order of priority, until the elective share amount is satisfied:

(a) Class 1. - The decedent's probate estate and revocable trusts. §732.2075(2)(a), F.S. Comment: The personal representative can use these funds toward satisfaction of the elective share without seeking contribution from the direct recipients.

(b) Class 2. - Recipients of property interests included in the elective estate under §732.2035(2), (3), or (6) and, to the extent the decedent had at the time of death the power to designate the recipient of the property, property interests, included under §732.2035(5) and (7). §732.2075(2)(b), F.S. Exception: protected charitable interests.²

(c) Class 3. - Recipients of all other property interests included in the elective estate. §732.2075(2)(c), F.S. Exception: protected charitable interests.

Subsection (3): If, after the application of §732.2075(1) and (2) the elective share amount is not fully satisfied, the additional amount due to the surviving spouse shall be determined and satisfied from property described in §732.2075(1)(a) and (b) which passes or which has passed in

¹ "Direct recipient" is defined in §732.2025(1), F.S. Comment: The term includes both the decedent's probate estate and the trustee (as opposed to trust beneficiaries) of any property held in trust.

² "Protected charitable interest" is defined in §732.2075(2)(c), F.S. Comment: The term encompasses outright charitable transfers as well as transfers to charitable remainder or lead trusts, provided in each case, that the transfer qualified for the gift tax (as opposed to the estate tax) charitable deduction at the time it was made.

a trust in which the surviving spouse has a beneficial interest. Exception: elective share trusts and qualified special needs trusts. §732.2075(3), F.S.

Subsection (4): If, after the application of §732.2075(1), (2), and (3) the elective share is not fully satisfied, any remaining unsatisfied balance shall be satisfied from direct recipients of "protected charitable lead interests"³, but only to the extent and at such times that contribution is permitted without disqualifying the charitable interest in that property for a deduction under the United States gift tax laws. §732.2075(4), F.S. Comment: Essentially, this category includes inter vivos transfers to a charitable lead trust. Contribution can be required from such a trust, but only after the expiration of the lead interest.

Subsections (5)-(7): These subsections provide that the payment of the unsatisfied balance, which may be paid in cash or in kind, is to be charged against the interests of the beneficiaries of the probate estate and revocable trust under the normal rules of abatement, subject to the added proviso that all estate and trust beneficiaries are to be viewed as taking under a common instrument. In this way, payment of the unsatisfied balance will be charged against specific and general devisees under the will and trust only if the residuary portions of both are inadequate to meet the full elective share contribution.

³ "Protected charitable lead interest" is defined in §732.2075(4), F.S.

Estate & Probate Seminar

May 15, 8:00 am – 12:00 pm
Bar Association Office
Register Today!

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The Estate and Probate Law Continuing Legal Education Committee presents:

“The 32nd Annual Estate and Probate Seminar—Part 2”

Friday, May 15, 2015 - 8:00 a.m. - 12:00 noon

Palm Beach County Bar Association Office
1507 Belvedere Road, WPB



Program Schedule

- 8:00a.m. - 8:25a.m. **Breakfast / Late Registration and Check In**
- 8:25a.m. - 8:30a.m. **Welcome & Opening Remarks - Matt Triggs, Esq., Proskauer Rose LLP, Committee Chair**
- 8:30a.m. - 9:00a.m. **Fiduciary Liability in Management of Securities - Jamie Pressly, Jr., Esq., Pressly & Pressly, Florida Bar Board Certified in Wills, Trusts & Estates**
- 9:00a.m. - 9:30a.m. **Renunciation in Will and Trust Contests: Effects on Accounting and Financial Discovery**
Jack Falk, Jr., Esq., Dunwoody White & Landon, Fellow of the American College of Trust and Estate Counsel
- 9:30a.m. - 9:40a.m. **BREAK**
- 9:40a.m. - 10:10a.m. **Protecting Digital Assets – Eric Virgil, Esq., The Virgil Law Firm**
- 10:10a.m. - 10:40a.m. **When Death Does Us Part: Estate Planning to Avoid Conflict in Blended Families**
Catrina Sveum, Esq., Proskauer Rose LLP
- 10:40a.m. - 10:50a.m. **BREAK**
- 10:50a.m. - 11:20a.m. **Petulant Pete’s Probate Peeves and Protests—Practice Pointers and Proposals for the Principled Probate (and Trust and Guardianship) Litigator**
Peter Sachs, Esq., Jones, Foster, Johnston & Stubbs, Florida Bar Board Certified in Civil Trial and Business Litigation Law
- 11:20a.m. - 12:00 noon **What’s Hot in Florida—A Florida Law Update -**
Elaine Bucher, Esq., Gunster, Florida Bar Board Certified in Wills, Trusts & Estates
Nicklaus Curley, Esq., Gunster

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estate & trust litigation

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North County Section Monthly Highlights

Networking is part of your membership benefits and our North County Section aims to please by offering its members something each month! The most recent program was a happy hour held at the Yard House in Palm Beach Gardens with members of the Palm Beach County Justice Association. The evening was well attended with close to 100 members who enjoyed cocktails, conversation, and plenty of hors d'oeuvres. Thank you all for joining us!



PBCBA member (and PBCJA President) Greg Zele with NCS Director Rosemarie Guerini

4th DCA Judge Alan Forst, Debra Jenks, Colleen Farnsworth and Bob Harvey



Mark Greenberg and NCS President Greg Yaffa



Dean Xenick, Sia Baker-Barnes and Jordan Hammer



Judge Daliah Weiss, Maureen Martinez, Jill Weiss and Danielle Croke

13th Annual Jurist of the Year Award Presented by the North County Section

Which Judge will be recognized?
It's a surprise!

Thursday, May 14, 2015

5:30 p.m. Cocktail Reception

6:30 p.m. Dinner and Award Presentation

Ruth's Chris Steak House
661 U.S. Highway One
North Palm Beach

Cost: \$60.00 for NCS Members
Judges are complimentary
PBCBA Members who are not Section members are welcome for \$75.00

Previous recipients of this award include Judges Mary Lupo, Roger Colton, Peter Blanc, Thomas Barkdull, Barry Cohen, Jonathan Gerber, David Crow, Edward Fine, Jack Cook, Ron Alvarez, Richard Oftedal and Lucy Chernow Brown.

Sponsored by Alpine Jaguar, Grand Bank and Trust of Florida, Sabadell United Bank, Visual Evidence and the law firms of Fox Rothschild and Klett, Mesches and Johnson, P.L.



Ken Ehrlich, NCS Director Erskine Rogers, Joyce Conway and Jonathan Wald



The Business Litigation CLE Committee presents:

Securities Arbitration

Tuesday, May 19, 2015

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

Bar Offices, 1507 Belvedere Road, West Palm Beach

Program Schedule

11:30am—11:55pm Lunch / Check In / Late Registration

11:55—12:00pm **Welcome—Opening Remarks** — David Steinfeld, Esq.,
Law Office of David Steinfeld, P.L., Board Certified Business
Litigation Attorney, Business Litigation CLE Committee Chairperson

12:00—1:00 pm **Presenter: Matthew N. Thibaut, Esq.,**
Partner, Ciklin Lubitz & O'Connell

Arbitration v. Court: Is there an enforceable arbitration agreement?
General Pros and Cons of each forum?

How to File a Claim: Know your audience.
You are not drafting a pleading for a Judge

How to Select Arbitrators: What sources of information may I access?
What's material to my case?

Discovery & Motions: Discovery in a typical arbitration case; What about depositions?
What about electronic discovery? Are discovery sanctions available and enforced? Limited Motions.

Trying My Case: Formality of the Proceeding: Order of witnesses? Applicability of
the Rules of Evidence? Appellate Review? How is decision rendered?

Lunch Sponsored by:



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Judicial Profile: Jessica Ticktin

By Tina M. Talarchyk on behalf of the Judicial Relations Committee

Judge Ticktin, one of the newly invested Palm Beach Circuit Court Judges, is not only experienced in litigation, but is also a multi-tasker with two young children, who not only managed a home but also a multi-office firm prior to joining the bench. Jessica first decided to go to law school when she was very young, and as her father noted when he spoke at her investiture, Judge Ticktin has always been decisive as well as determined. Believing she had the right approach and qualifications to translate her legal experience to the bench, she made the decision to seek a judgeship. Realizing an appointment to the bench at her age could be difficult, Ticktin instead chose perhaps the more challenging path by running a judicial election campaign. While the political process proved to be trying at times, she appreciated the opportunity to meet so many interesting people. As Ticktin noted, the election was both exciting and a bit daunting, but the end result is the election of a judge who is extremely energetic and determined and who truly cares about the citizens of Palm Beach County. In the short time that Judge Ticktin has been on the bench, it is clear that her decisiveness and determination are allowing her to effectively handle the many cases crowding her docket. Ticktin was actually pulled out of a jury trial just as the jury was returning a verdict, in order to be sworn in by Chief Judge Colbath.

Judge Ticktin was elected to the Circuit Court in 2014 for the term beginning on January 6, 2015, and expiring on January 4, 2021. Judge Ticktin received her B.S. in criminology, with honors, from Florida State University and her J.D. degree from the Stetson University College of Law; a member of various bar associations and admitted to practice in three federal courts as well as the Florida Supreme Court. For four years she was managing partner of The Ticktin Law Group but stepped back from the managing role after her first son was born. Her career before joining the bench includes 2013-2014: Partner, The Ticktin Law Group; 2009-2013: Managing Partner, The Ticktin Law Group; 2009: Partner, Nugent Ticktin; 2006-2008:

Attorney, Law Office of Matthew Nugent; 2005-2006: Associate Attorney, Law Office of Mark Maynor; 2004-2005: Associate Attorney, Peter Ticktin & Associates.

Judge Ticktin, who is a member of Congregation B'Nai Israel, met her husband at the local car wash he owns, and was courted by his making sure that she had a *very* clean car in addition to becoming good friends, and eventually, a married couple. Her focus at home is on their two young sons, who are both under four (4) years old. Judge Ticktin and her husband enjoy traveling and spending time with their immediate and extended family when they find time outside their demanding careers.

It is clear that Judge Ticktin is passionate about children and children's rights issues and as a result has spent much of her career handling family law



cases. Judge Ticktin acknowledged the need to control her courtroom, but believes that treating people with respect is a priority. Judge Ticktin admires judges who find creative ways to resolve difficult situations. Her focus, in addition to treating each case with the care and concern that being a judge requires, also wants to bring focus to improving *pro bono* issues, as well as decorum and professionalism in the courtroom.


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Welcome New Members!

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

Sacha A. Boegem: Tulane University, 2005; Associate in Fox Rothschild, LLP, West Palm Beach.

Michael A. Bryan: Law Student Membership, Jupiter, Wellington.

Cynthia J. Dienstag: University of Miami, 1988; Solo Practitioner, Miami.

Mark Fereg: Law Student Membership, Jupiter.

Oscar D. Florez Jaramillo: University of Florida, 2014; Associate in Schwed, Adams, Sobel & McGinley, P.A., Palm Beach Gardens.

Amanda R. Kapur: Law Student Membership, Boynton Beach.

Steven A. Lessne: University of Florida, 1997; Partner in Gunster Yoakley & Stewart, P.A., West Palm Beach.

Catryn Mitchell: University of Florida, 1988; Partner in Cathryn A. Mitchell Law Offices, LLC, Boca Raton.

Sophie R. Rothstein: University of Florida, 2014; Associate in Kelley Kronenberg, West Palm Beach.

Suzanne Schachter: Nova Southeastern University, 2013; Associate in Plasencia and Associates, West Palm Beach. .

Stephanie M. Spritz: Chicago-Kent College, 2104; City of Delray Beach.

Sarah Weber: Hofstra University, 2007; Associate in Laufer & Laufer, P.A., Boca Raton



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The Palm Beach County Bar Association's Real Estate CLE Committee presents:

“Preparing Your Real Estate Practice for an Evolving Marketplace”

Friday, May 29, 8:15a.m. - 12:05p.m.
Bar Association Offices



Program Schedule

- 8:15am - 8:25am **Late Registration/Check In**
- 8:25am - 8:30am **Welcome and Opening Remarks** - *Sandra R. B. Wallace, Esq., Wallace Law, P.A., Real Estate CLE Committee Chairperson*
- 8:30am - 9:45am **Marketing Legal Services to Consumers in Real Estate Transactions**
Gregory R. Cohen, Esq., Cohen Norris, Wolmer, Ray, Telepman & Cohen Board Certified Real Estate Attorney
- 9:45am - 11:00am **Landlord/Tenant Issues, including Post-Foreclosure Remedies**
Cary Sabol, Law Offices of Cary Sabol
- 11:00am - 11:15am **BREAK**
- 11:15am - 12:05pm **Representing Clients Purchasing New Construction**
Brooke Estren, Esq., Estren & Associates, PLLC

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Oops! You made a mistake. Now what?

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



“Even the most careful craftsman occasionally overlooks an important step in the logical development of a legal argument. When I make that kind of mistake, I sometimes send a message to my law clerk titled ‘Oops.’ I then explain the obvious point that I overlooked while preparing my first draft.”

An excerpt from Justice Stevens’ recent remarks at the 2014 Levanthal Lecture.

If a U.S. Supreme Court Justice, who has a staff of law clerks and research assistants, can make a mistake, what hope is there for the rest of us? Recognizing that mistakes are inevitable, the question you will undoubtedly face at some point is what should you do upon learning that you made a mistake?

Many clients, judges and lawyers will forgive mistakes -- if they are promptly brought to their attention and corrected. There is no substitute for the moral compass that will lead you to that conclusion. This article discusses the lawyer’s obligations under Florida’s professional conduct rules and offers practical suggestions on how to handle this difficult situation.

Take Remedial Actions. Protecting your client’s interests comes first. Upon learning of a mistake, you should immediately assess the situation to determine whether something can be done to correct or minimize the consequences. Keep in mind that the Florida Rules of Civil Procedure foresee that mistakes will be made and Rule 1.540, in addressing “excusable neglect” presumes that someone has made a mistake, been careless or been negligent. Most errors can be fixed and it is a gross abuse of a trial court’s discretion not to find excusable neglect “where inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry or any other of the foibles to which human nature is heir, [which is followed by] timely application accompanied by a reasonable and credible explanation.” *Somero v. Hendry General Hospital*, 467 So.2d 1103, 1106 (Fla. 4th DCA 1985). *See also*, for example, *Elliot v. Aurora Loan Services, LLC*, 31 So.3d 304 (Fla. 4th DCA 2010) (a reasonable misunderstanding between attorneys regarding settlement negotiations constitutes excusable neglect sufficient to vacate default); and *Gibraltar Service Corp. v. Lone & Associates, Inc.*, 488 So.2d 582 (Fla. 4th DCA 1986) (attorney’s misinterpretation of own notation of filing deadline as date of original service).

As a practical matter, many good lawyers will file a notice of correcting a mistake in pleading or motion. The filing can simply be called “Notice of Correcting Motion or [Pleading]”. The point of the notice is to correct the mistake, not make any new argument. We would bet that most judges would appreciate a simple notice of correcting something that has been filed.

Don’t Make Mistakes Into “Gotcha” Cases. There is a shared responsibility among counsel to correct mistakes and not make them worse. In a recent decision, a trial court had ordered certain statements and medical records about the cause of a slip and fall to be redacted. Through a clerical error, some of the information was not redacted. Instead of calling that mistake to the attention of counsel and the court, defense counsel made it a feature of his closing argument. The 2nd DCA Panel was not happy:

“But instead of drawing the court’s attention to the error so that it could be corrected, Mr. Dawson capitalized on the error and compounded it by commenting on it and allowing the incomplete redaction to go to the jury. The trial court should not have rewarded this “gotcha” tactic, and we will not do so here.”

Andreus v. Impact Pest Management, Inc., Florida Law Weekly, D357, (Fla. 2nd DCA February 6, 2015).

As we have written before in this column, we are big believers in the power of professional advocacy. Imagine how much better the case would had gone had defense counsel notified the court so the matter could have been corrected. Being professional is simply good advocacy.

Inform The Client. Being honest and coming clean to your client may make you feel better, but more importantly, you will have complied with your ethical duty to keep your client reasonably informed about the status of their matter. Florida Rule of Prof’l Conduct R. 4-1.4. Explain the mistake and its possible implications to your client to the extent necessary to allow your client to make informed decisions regarding the representation. This being said, keep in mind that not all mistakes (e.g. typos) have to be disclosed to the client, as a matter of professional responsibility, particularly if the client is not harmed and the case has not been prejudiced or unduly delayed.

Rule 4-1.4 has been consistently interpreted by the Florida Supreme Court as requiring lawyers to inform clients whenever the lawyer makes a serious error in the course of the representation. *See, e.g., The Florida Bar v. Rotstein*, 835 So. 2d 241, 246 (Fla. 2002)(attorney violated Rule 4-1.4 because “[i]nstead of being truthful and admitting his mistake from the start, he engaged in the extremely dishonest and fraudulent misconduct of creating a backdated letter to his client.”); *The Florida Bar v. Varner*, 780 So. 2d 1, 5 (Fla. 2001)(“[W]e find the most troubling aspect [to be that] an error [was] made in the representation of a client, but instead of the error being admitted, an attorney develop[ed] a deception to cover up the error so that it [would] go undetected.”); and *Florida Bar v. Morse*, 587 So.2d 1120 (Fla.1991)(holding attorney violated Rule 4-1.4 by, after discovering his error, failing to inform the client “of the fact that the firm had committed possible malpractice by letting the statute of limitations run...”).

In some cases, you should suggest that the client seek independent counsel because sometimes a mistake can lead to a conflict under Rule 4-1.9 between the lawyer’s own interest and the interest of a client. In other words, it is in the lawyer’s own interest to protect herself and her firm from exposure.

Continued on page 13

My Selma Experience

by Kathy Clark

In the sixties most people of color experienced the world in a very different manner from which we know today. My roots begin in Meridian, Mississippi where I was born; however, I grew up in a small South Mississippi town called Ellisville. Ellisville is located in Jones County and has a notable history of its own. During my formative years teachers were the only African American professionals, other a single doctor, located about ten miles away. The only African American attorney I ever knew or saw was a female that practiced 65 miles north in Meridian.

In my community I was considered a pioneer because as an African-American I was the first in many significant areas. As a fourth grader I was one of three kids of color to integrate the local elementary school. While there, I managed to become friends with many of the white children and I don't think we really saw our relationship as anything different. We were kids and we enjoyed our time together. I was never afraid and found school for the most part to be a good experience. A single incident sticks out in my mind where I was the only person not invited to a classmate's birthday party. My classmate reported "my mama said you can't come because you're black".

My family always strived to make sure that I knew I was "equal to" others. As a result, I managed to forge friendships with some of my former classmates and some of those relationships still exist today. Looking back, I would say that my classmates were probably the first white people that I ever knew, and I'm sure I was the first black person most of them had ever encountered. I hope I was a good ambassador for people of color in my community. Schools were fully integrated two years later and our transition was without incident.

In addition to being one of the first to integrate the local schools, I was the first black person to work downtown as a cashier, the first to own a business in town, and in later years, the first black President of a Mississippi Jaycee Chapter.

While my experiences were a bit different, I was aware of the struggles and atrocities that were going on in society. Because African Americans were denied the right to vote, my grandmother, Lou E. Whitlock a business woman in Meridian, Mississippi, turned her efforts towards being an activist for Civil Rights. I recall riding with her in her florist van, finding and soliciting black people to become registered voters. I can still hear her calling out to some individuals, "young man, young man, are you registered to vote?" Many would quickly move about their way, because prior to the 1965 March at Selma, many African Americans were afraid to attempt voter's registration. A person making such an attempt could often anticipate repercussions ranging from threats, job loss, beatings, cross burnings or even being hanged. Across the country, many tactics were used against African Americans to derail their voting efforts. One such ploy was alleging that one must know the Constitution, in order to vote. Once this ploy was implemented, it inspired my grandmother to become part of the solution. Having attended Jackson State University to be trained

as a teacher, she did what was natural and started teaching the Constitution and commandeered other family members to assist.

My grandmother and other local civil rights leaders were

so determined to have the basic right to vote that they employed their own tactics. I recall them once sending blacks that could "pass for whites" (likely biracial), to the courthouse to register, so they could find out the requirements for white citizens to register. These types of investigations revealed that citing the constitution and excessive poll taxes were not requirements for voter's registration.

NAACP Field Secretary, Medgar Evers was a frequent overnight guest in my grandmother's home. James Chaney, Andrew Goodman and Michael Schwerner (see Mississippi Burning), were close co-conspirators in my grandmother's quest for civil rights. It was through her florist business that the three were warned by the Klan not to go to Philadelphia, Mississippi. The Klan placed a floral order with my grandmother for one dozen black roses to be delivered to Rita Schwerner, Michael's wife.

Fast forward fifty years to the commemorative crossing of the Edmund Pettus Bridge in Selma, Alabama. There was no way that I could miss walking across that bridge. That day brought out much emotion. I couldn't stop thinking of my grandmother, and so many others that were willing to risk their lives, so that one day I might have the freedom to cross any bridge on my path to success. I was hot and tired, but humbled as I paid homage to those who made that initial trip across the Edmund Pettus Bridge and later journeyed to Alabama's capital in Montgomery. I imagined them and their bravery; walking across a bridge, named after a Klan leader and knowing full well that they could encounter beatings, tear gas, jail and even death. All of that so I could have a basic right to vote.

I returned from Selma inspired. I'm inspired to teach youth about the urgent need to become registered voters and I'm inspired to push, pull and drag the apathetic adults to the ballot box.

Editor's note: Kathy Clark is an Administrative Assistant with the Palm Beach County Bar Association



Kathy Clark at the commemorative crossing at the Edmund Pettus Bridge in Selma



The Palm Beach County Bar Association's
Community Association Law Continuing Legal Education Committee presents:

THE 27th ANNUAL COMMUNITY ASSOCIATION LAW SEMINAR

Friday, June 5, 2015 8:00 a.m. – 1:00 p.m.
Bar Association Office - 1507 Belvedere Rd., WPB



Program Schedule

7:45am - 8:00am	Breakfast / Late Registration and Check In
8:00am - 8:05am	Welcome - <i>Tanique G. Lee, Esq., Committee Chairperson, Gelfand & Arpe, P.A.</i>
8:05am - 8:50am	What's New at the Office of Equal Opportunity and Ethical Implications - <i>Pamela Guerrier, Esq., Director, Palm Beach County Office of Equal Opportunity</i>
8:50am - 9:40am	Bankruptcy: Interesting Updates in Bankruptcy and Ethical Implications - <i>Malinda Hayes, Esq; Frank, White-Boyd & Hayes, P.A.</i>
9:40am - 10:30am	Let's Talk About Turnover - <i>G. Steven Brannock, Esq., G. Steven Brannock, P.A.</i>
10:30am - 10:45 am	Break
10:45am - 11:35 am	Case Study in Termination of a Condominium - <i>Joseph Hernandez, Esq., and Joshua D. Krut, Esq. Weiss Serota Helfman Cole Bierman & Popok, P.L.</i>
11:35am - 12:30pm	"Watch what you send" emails and ethical implications - <i>Chioma R. Deere, Esq., Law Office of Salesia V. Smith-Gordon, P.A.</i>
12:30pm - 1:00 pm	Perspective from the Bench: The Honorable Jaimie Goodman, Fifteenth Judicial Circuit

This course has been granted 5.5 CLER / 5.5 Real Estate Certification credits from The Florida Bar.

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(26th Annual Community Association Seminar 6/5/15)

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



by *Hank Jackson*

When a party seeks privileged documents directly from another party, the procedure is fairly clear. In such circumstance, the party raising the privilege may initially withhold producing the documents, but must make the claim of privilege expressly and describe the nature of the documents in a manner that,

without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection. Fla. R. Civ. P. Rule 1.280(b)(6). This is accomplished through the trial court requiring the objecting party to create a privilege log. *Gosman v. Luzinski*, 937 So.2d 293, 295 (Fla. 4th 2006).

Now to the rub – Rule 1.280(b)(6) by its terms does not cover subpoenas to non-parties. Instead, the Rule is limited to discovery directly between parties. So what happens if potentially privileged documents of a party are sought from a non-party such as accountant-client documents from a party's accountant? This was precisely what happened and was the issue that arose recently before the Fourth District Court of Appeal in *Lyons v. Lyons*, ___ So.3d ___, 2015 WL 543106 (Fla. 4th DCA Feb. 11, 2015). In that litigation concerning the control of a family trust, one party subpoenaed documents directly from the other party's accountant.

The Fourth District in *Lyons* reaffirmed the long established tenet that “any claim of privilege must be ruled upon and *in camera* inspection conducted prior to production of such documents.” *Id.* at 3 (quoting *Bennett v. Berges*, 84 So.3d 373, 374-75 (Fla. 4th DCA 2012)). The Court also acknowledged that Rule 1.351, which governs subpoenas to non-parties, contains no provision for a privilege log, unlike when the request is directed to a party. Indeed, it would be a substantial burden on a non-party – more than already exists in having to produce the documents - to also require a non-party to prepare a privilege log. On the other hand, the Court in *Lyons* also recognized the burden on the trial court in reviewing all documents without the culling process or assistance of a privilege log. As a result, the Fourth District held that the trial court has some discretion to create a process to deal with reviewing such documents.

In reviewing the procedure ultimately devised by the trial court in *Lyons* to deal with the documents requested from the accountant, the Fourth District concluded the procedure was sufficient. In connection with a motion for protective order actually filed by the accountant, the trial court had ordered that:

- 1) the non-party accountant must gather the documents responsive to the subpoena,
- 2) the party objecting to production based on potential privilege is entitled to review the documents and segregate those it claims are privileged, and
- 3) the trial court will hold an evidentiary hearing regarding the documents that are claimed privileged and conduct an *in camera* review where necessary.

Id. Although this approach is not necessarily novel and is probably a method that many practitioners have used pursuant to agreement or without objection, it has now been determined a reasonable and sufficient procedure by the Fourth District.

The Court in *Lyons*, however, was clear that this procedure

is not the exclusive method to deal with the issue. For example, the Court stated that the trial court could have in response to an objection to the intent to subpoena documents from a non-party, under Rule 1.351, required the requesting party to proceed under Rule 1.310, which provides for a deposition in connection with requested documents. This would not obviate the need for an eventual *in camera* inspection, but is simply a different method to frame the privilege issues for the trial court.

The challenge of dealing with privileged documents – whether accountant-client or attorney-client and whether the documents are requested from parties or non-parties – will continue to be a thorny problem. This is in large part because of the sheer volume of privilege documents that can be involved in complex litigation and the burden it places on the parties, non-parties and the trial judge. Although the fundamental requirement of an *in camera* inspection will probably remain a steadfast requirement of Florida law, the procedure surrounding that *in camera* inspection will likely have to adapt to the particular situation. In the context of potentially privileged documents in the hands of a non-party accountant, the Fourth District has in *Lyons* approved a procedure, but also indicated the trial court has some discretion.

Author: Hank Jackson is a Board Certified Business Litigation Attorney with Shutts & Bowen LLP

Professionalism Corner

Continued from page 11

Many lawyers find that interest to be overly distracting and it can prevent them from serving the best interest of the client. Lawyers should recognize that potential and that will, in most cases, call upon the lawyer to withdraw and recommend that the client obtain independent and new counsel. *See, e.g., The Florida Bar v. Jordan*, 705 So. 2d 1387, 1389-90 (Fla. 1998)(suspending lawyer that not only “had no explanation for the dismissal of client’s case other than to say that ‘it just slipped through his desk’” but also “never advised [client] that she should seek independent representation in connection with a claim for professional malpractice.”).

While insurance reporting is beyond the scope of this article, it is reasonable to consult your malpractice policy to see whether a duty to notify the carrier is triggered by a mistake. Many policies provide that errors that are not timely disclosed can be foreclosed.

Overall, keep in mind that when you make a mistake -- which is inevitable -- do not panic. Your priority should be fixing the error to the extent possible. Keep in mind your duties to both your client and your professional liability carrier. And remember, making a mistake is not the end of the world.

** Mr. Ackerman is a shareholder with the law firm of Ackerman, Link & Sartory, P.A.*

*** Ms. Foster is counsel with the law firm of Ackerman, Link & Sartory, P.A.*

Solo and Small Firm Practitioners Committee presents

LAW FIRM PARTNERSHIP: STRUCTURE, FORMING & DISSOLVING

Wednesday, May 13, 2015

11:45 a.m. to 1:00 p.m.

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Legal Aid Gift Gathering Galas

Legal Aid wishes to thank the individuals who hosted various gift gathering galas these past few months. Gifts collected at these events will be auctioned at the May 9th silent auction during Legal Aid's 27th Annual Pro Bono Recognition Evening to be held at the Palm Beach County Convention Center.



Family Event at Schoolhouse Children's Museum

The South Palm Beach County Bar Association and the law firm of Isaacs Reid, P.A. hosted over 50 adults and children at the Schoolhouse Children's Museum and Learning Center in Boynton Beach. Families enjoyed yoga, Disney characters, games, storytelling and delicious sandwiches and treats.

Parker and Grier Pressly

Scott & Molly Smith opened their home for more than 80 attendees in Old Marsh for a cocktail reception in support of Legal Aid. The evening included poolside cocktails, hors d'oeuvres, music and tours of the Smith's beautiful new home.



Scott Smith, Patience Burns, Sarah Cortvriend & Tom Burns



Kim & Bill Abel and Adam & Jennifer Rabin

Decadent Desserts Highlight Legal Aid's Gift Gathering Gala



David & Kim Ackerman, Hostess Christine Hanley and Julianna Blanc

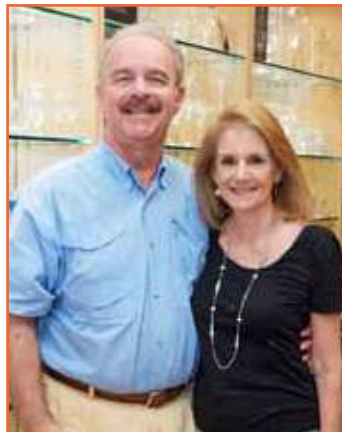
On Valentine's Day, over 85 friends and supporters of Legal Aid gathered at the home of Christine & Michael Hanley to enjoy an evening of decadent desserts, all baked by the hostess, and delicious drinks. A renowned employment lawyer and expert baker, Christine prepared over 25 amazing confections. All guests left with delectable goody bags.

Photo by Tracey Benson Photography

Sunday Brunch at Gardens Mall Benefits Legal Aid

Williams-Sonoma and Pottery Barn at the Gardens Mall hosted a brunch and cooking demonstration for over 50 friends of the Legal Aid Society of Palm Beach County. Mimosas, delicious frittatas and other wonderful breakfast treats were served.

Photos by Tracey Benson Photography



Jerry & Katie Beer



Scott & Molly Smith

What are a Qui Tam Whistleblower's Rights When an Employer Retaliates Against the Whistleblower for Reporting Government Fraud?



by Adam Rabin

A. What is a Qui Tam Whistleblower Retaliation Claim under the Federal False Claims Act?

One of the realities of a whistleblower reporting or filing a qui tam claim against his or her employer is the potential retaliation against the whistleblower. Retaliation may include the whistleblower getting fired, demoted, suspended, a reduction in pay, denial of a bonus, a job transfer, harassment, a change or reduction of job duties, among other examples. Fortunately, the False Claims Act, 31 U.S.C. 3730(h), protects the whistleblower from this type of retaliation with significant remedies for any adverse action taken.

To win a whistleblower retaliation case under the False Claims Act, the whistleblower must prove the following:

The whistleblower brought an action, reported a false claim to the federal government, or took some other action in furtherance of reporting fraud on the government;

That the employer knew about the whistleblower's actions in reporting false claims that were submitted to a government program; and

That the employer discriminated against the whistleblower as a result of the whistleblower's actions or reports of the fraud.

Notably, the whistleblower may receive protection against employer retaliation even if the whistleblower has not yet filed a qui tam action in court. Indeed, a whistleblower's investigation or research into an employer's false claims is sufficient to merit protection under the anti-retaliation provisions of the False Claims Act, if the whistleblower's actions were performed "in furtherance of" a qui tam action. It does not matter the whistleblower ultimately filed the qui tam action; it only matters that the whistleblower was acting in furtherance of bringing an action or reporting fraud.

The remedies available to the whistleblower are significant and a powerful deterrent to employer retaliation. These remedies to the whistleblower include:

- Double back pay;
- Interest on the back pay;
- Reinstatement of seniority status at the same position the whistleblower maintained before reporting the fraud;
- Any special damages, including but not limited to possible lost commissions, bonuses, raises, vacation pay, or other fringe benefits; and
- Recovery of attorney's fees and costs.

B. Proving a Qui Tam Retaliation Claim

If an whistleblower is concerned about retaliation for bringing a qui tam claim against his or her employer, the best thing the employee can do is keep a detailed diary, notes or calendar of the employer's pattern and actions of retaliation.

Here are some suggestions to the whistleblower for recording facts that will support a retaliation claim under the False Claims Act:

List how the employee's job duties have changed or been reduced after the employee reported the false claims to a supervisor(s);

Take contemporaneous notes of the reaction of the employee's supervisor when he or she reported the false claims, including the dates, persons met with, and substance of each conversation on the topic;

Keep a hard-copy or electronic calendar (not on the employee's work computer) of important meetings, conversations, and developments that occurred after the employee reported the false claims;

Keep copies of any performance reviews, including reviews given both before and after you reported the false claims;

Gather payroll, bonus, and/or commission records, including both before and after the employee reported the false claims;

Document how the employee has been excluded from certain meetings, projects, duties, conversations, information, documents, or e-mails in which you formerly participated or had access;

Identify any promotions for which the employee was in line and a less qualified person received the promotion after you reported the false claims; and

Prepare a notebook to keep all records, notes, e-mails, calendars, and reviews organized and in one place.

C. Hiring a Lawyer for the Retaliation Claim

If the whistleblower has a retaliation claim against his or her employer, it is important to consult, and if necessary, retain competent counsel with federal-court experience in this area. Often the retaliation from an employer for reporting government fraud is significant and may jeopardize a whistleblower's job or career. As such, utilizing counsel that can navigate the choppy waters will better the whistleblower's claim and may safeguard his or her future.

Adam Rabin is a partner with McCabe Rabin in West Palm Beach and practices business, securities and whistleblower litigation. He is Florida Bar Board Certified in Business Litigation and may be reached at arabin@mccaberabin.com.

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Upcoming CLE Seminars

Your CLE Committee Chairs have been very busy at work planning live CLE seminars for our membership for this year. For more information about these seminars, please visit the Bar's website: palmbeachbar.org and click on the calendar icon at the bottom of the page. Also, don't forget, most of these seminars are also held live via webinar if you are not able to leave your office to attend in person.

May 8:
Family Law
Seminar

May 11:
Employment Law
Webinar

May 15:
Estate & Probate Seminar

May 19:
Business Litigation
Luncheon Seminar

May 21:
Personal Injury Lunch &
Learn Seminar

May 29:
Real Estate Seminar

June 5:
Community Association
Law Seminar

June 12:
Employment Law Seminar
& Reception

June 19:
Business Litigation
Luncheon Seminar

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MISCELLANEOUS

Missing Files: Anyone knowing the whereabouts of the client files for Bonnie Willis Hutton, deceased, please contact Frank DiVencenzo, State Attorney Investigator for the 19th Judicial Circuit, (772) 216-2872 or via email at fdvincenzo@sao19.org

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HEARSAY



David C. Prather, a partner at the West Palm Beach law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, was recently honored with the F. Malcolm

Cunningham Sr. Bar Association’s Presidential Award. Prather is a Board certified civil trial attorney with nearly 25 years of experience who specializes in the areas of personal injury, medical malpractice and products liability litigation. He currently serves on the Florida Bar’s Board of Governors, and is also past president of the Palm Beach County Trial Lawyers Association.

The Law Office of Vastola & Kirwan, P.A., is pleased to announce that attorney **Kate Watson** has joined the firm after three years at the Legal Aid Society of PBC. Ms. Watson will focus her practice on immigration and family law.

The 2015 edition of the *South Florida Legal Guide* names Jones, Foster, Johnston & Stubbs, P.A. as a “Top Law Firm.” Additionally, it names twelve Jones Foster lawyers as “Top Lawyers”: Larry B. Alexander, David E. Bowers, Margaret L. Cooper, Mark Dahlmeier, Tasha K. Dickinson, Scott G. Hawkins, Thornton M. “Tim” Henry, Joanne M. O’Connor, John C. “Skip” Randolph, Sidney A. Stubbs, Jr., Roberto M. Vargas and H. Adams Weaver. The SoFL Legal Guide uses a process of peer nomination to determine which attorneys have the most experience and distinguished records of achievement to be named as the most well-regarded in South Florida’s legal profession.





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CALENDAR

May 2015

- | | | | |
|--|---|--|---|
| <p>Friday, May 1, 11:45- 1pm
 Law Day Luncheon
 West Palm Beach Marriott Hotel</p> | <p>Wednesday, May 13, 12 – 1pm
 PBC FAWL Board Installation Luncheon
 Cohen Pavilion at the Kravis Center</p> | <p>Wednesday, May 20
 FL Bar Board of Governors Meeting
 Key West</p> | <p>Tuesday, May 26, 5:30 – 7pm
 Legal Aid Board Meeting
 PBCBA office</p> |
| <p>Thursday, May 7, 5:30 – 7pm
 PBC FAWL Happy Hour with PBC Justice Association
 Roxy's Rooftop</p> | <p>Thursday, May 14, 11:45 – 1pm
 South PBC FAWL luncheon
 La Cigale, Delray Beach</p> | <p>Wednesday, May 20, 11:45 – 1pm
 YLS Sidebar Series: Voir Dire
 Chambers of The Hon. Meenu Sasser</p> | <p>Wednesday, May 27, 5 – 6:30pm
 PBCBA Board of Directors Meeting</p> |
| <p>Friday, May 8, 8:15 – 6:30pm
 CLE Seminar: The Basics of Family Law You thought you Already Knew
 PBCBA office</p> | <p>Thursday, May 14, 12 – 1pm
 Transaction Law Committee Meeting
 PBCBA office</p> | <p>Thursday, May 21, 11:45 – 1pm
 CLE: Making Time for What Matters: Time Management & Practice Development for Lawyers
 PBCBA office</p> | <p>Thursday, May 28, 11:45 – 1pm
 CLE: Marketing and Business Structure for Law Firms
 PBCBA office</p> |
| <p>Monday, May 11, 11:55 – 1pm
 CLE Seminar: DOL Update: Directives, Initiative and Regs
 PBCBA office</p> | <p>Thursday, May 14, 5:30 – 8pm
 NCS Jurist of the Year Dinner
 Ruth Chris Steak House, NPB</p> | <p>Thursday, May 21, 5:30 – 7:30pm
 YLS Wine & Cheese Reception & Backstage Tour
 Kravis Center</p> | <p>Thursday, May 28, 5:30 – 7:30pm
 PBA Criminal Defense Lawyers Cohen Award Reception & Cocktail Hour
 Lake Pavilion</p> |
| <p>Tuesday, May 12, 11:30 – 1pm
 Judicial luncheon
 North end of cafeteria - Main Courthouse</p> | <p>Friday, May 15, 8am - 12pm
 CLE: Estate and Probate Law: Part 2
 PBCBA office</p> | <p>Friday, May 22, 12 – 1pm
 Federal Bar Association Luncheon
 Cohen Pavilion at the Kravis Center</p> | <p>Friday, May 29, 8 – 12pm
 CLE: Preparing Your Real Estate Practice For an Evolving Marketplace
 PBCBA office</p> |
| <p>Tuesday, May 12, 12:00 – 1pm
 YLS Board Meeting
 PBCBA office</p> | <p>Friday, May 15, 12 – 1pm
 F. Malcolm Cunningham, Sr. Bar Assn. General Meeting – Elections
 Law Library – Main Courthouse</p> | <p>Tuesday, May 26, 12 – 1pm
 CDI Committee Meeting
 PBCBA office</p> | <p>Saturday, May 30, 7 – 12pm
 South County Bar Association Installation Gala
 St. Andrews Country Club
 Contact: lisa@southpalmbeachbar.org</p> |
| <p>Wednesday, May 13, 11:45 – 1pm
 CLE: Solo & Small Firm Law Firm Partnership: Structure, Forming & Dissolving</p> | <p>Tuesday, May 19, 11:30 – 1pm
 CLE: Business Litigation "Securities Arbitration"
 PBCBA office</p> | | |



The Business Litigation CLE Committee presents:

Effective Jury Communication - VoiR Dire and Beyond

Friday, June 19, 2015

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



Bar Offices, 1507 Belvedere Road, West Palm Beach

Program Schedule

11:30am—11:55pm Lunch / Check In / Late Registration

11:55—12:00pm **Welcome—Opening Remarks — David Steinfeld, Esq.,**
Law Office of David Steinfeld, P.L., Board Certified Business
Litigation Attorney, Business Litigation CLE Committee Chairperson

12:00—1:00 pm **Speaker: Joseph G. Galardi, Beasley Kramer & Galardi, P.A.**

- **“Getting to Know You”** – Connecting with jurors during jury selection
Florida law on voir dire
Techniques for finding favorable jurors
- **“Pixel Persuasion”** – Do’s and don’ts for using courtroom technology during opening and closing
De-cluttering your demonstratives
Computer-aided exhibit presentation
- **“The Art of Examination”** – Refine your presentation of fact and expert witnesses to the jury
Formulating the flow of the fact witness
Can the jury understand your expert?
- **“Jury Instructions – The Good, the Bad, and the Ugly”**
Standard Contract and Business instructions – two years in the trenches
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The Palm Beach County Bar Association's Employment Law Committee Presents:

BROWN BAG LUNCH SERIES



Monday, May 11, 2015, 11:55—1:00 p.m.

Bar Association Offices

1507 Belvedere Rd., West Palm Beach, FL 33406

“DOL UPDATE: Directives, Initiatives and Regs”

Program Schedule

11:55 am -12:00 pm **Moderator - Sally Still,**
Ward Damon Posner Pheterson & Bleau, P.A.

12:00 pm -1:00 pm **U.S. Department of Labor**
District Director Will Garnitz

** Please e-mail your questions to lwagner@csapalaw.com **

This course has been granted 1.0 CLER / 1.0 Labor and Employment Law Certification credits from the Florida Bar.

Early registration cost for the seminar is \$25 for PBCBA member attorneys/paralegals;

\$65 for non-PBCBA member attorneys/paralegals if registered by 5/4/15; add \$15 late fee after that date.

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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406

The Palm Beach County Bar Association's Employment Law Committee Presents:



Labor and Employment Law Committee Annual Half Day Seminar

June 12, 2015 - 12:00 p.m. - 6:00 p.m.
1507 Belvedere Road, West Palm Beach, FL



Program Schedule

12:00 pm - 12:25 pm	Late Registration / Lunch
12:25 pm - 12:30 pm	Welcome - Cathleen A Scott, Board Certified Labor and Employment Law; Cathleen Scott & Associates, P.A.
12:30 pm - 1:15 pm	Case Law Update: Tanya M. Reed, Esq., Assistant General Counsel, Office Depot
1:15 pm - 2:00 pm	Top things I've learned as an Employment Attorney in my first years of Practice & things I am still Learning/Mentoring young Employment Attorneys, including Ethical Considerations: Margaret L. Cooper, Esq., Jones, Foster, Johnston & Stubbs, P.A.
2:00 pm - 2:10 pm	BREAK
2:10 pm - 3:00 pm	FLSA Hot Topics/Exemptions: Sally Still Esq., Board Certified Labor & Employment Law; Ward Damon Posner Pheterson & Bleu, P.A.
3:00 pm - 4:00 pm	Trial Tactics: Joseph B. Landy, Esq., Board Certified in Civil Trial Law; Lesser, Lesser, Landy & Smith, PLLC
4:00 pm - 5:00 pm	Judicial Panel on Employment Law Issues: The Honorable Jamie R. Goodman and The Honorable Dave L. Brannon
5:00 pm - 6:00 pm	Happy Hour



This course is expected to receive **5.0 CLER** including **1.0 Ethics Credits / 4.0 Labor & Employ Law Certification credits** from The Florida Bar. Enjoy an **"Early Bird"** discounted registration cost of **\$140** for PBCBA members/paralegals; **\$180** for non-PBCBA members/paralegals. After **6/5/15**, add \$25 late fee.

Can't leave your office? Attend this via live **WEBINAR**: register here <http://www.palmbeachbar.org/>

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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406.

The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:



Marketing and Business Structure for Law Firms

Thursday, May 28, 11:45 a.m. - 1:00 p.m.
Palm Beach County Bar Association
1507 Belvedere Road, West Palm Beach



Program Schedule

11:45 a.m. - 12:00 p.m. **Lunch / Late Registration and Check In**

12:00 p.m. - 12:05 p.m. Welcome - Opening Remarks - Kelly Hyman, Esq.

12:05 p.m. - 1:00 p.m. Speaker: Craig Goldenfarb, Esq.
Law Offices of Craig Goldenfarb, P.A.

This presentation will cover the basics of law firm marketing, regardless of firm size, covering areas such as identifying your target client and utilizing various types of marketing strategies. The presentation will also provide advice in business structure in order to efficiently maximize resources.

- I. Common Lawyer Excuses for not Marketing
- II. How do I start? Have a business structure and a clear vision
- III. Developing a marketing plan including avoiding unethical marketing practices and complying with The Florida Bar Ethical rules
- IV. Marketing channels to consider
- V. Marketing Focus: Referral source marketing

The Tate Group at

Lunch provided by:

Morgan Stanley

This course is expected to receive 1.0 **CLER** from The Florida Bar. **Early Registration** cost is **\$25** for PBCBA members/paralegals; **\$65** for non-PBCBA members/paralegals if registered by **5/21/15**. Add \$15 late fee 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, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800



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LUNCH, PLUS 1.5 CLE CREDIT FROM THE FLORIDA BAR FOR JUST \$10.00!

presented by our Solo and Small Firm Practitioners Committee

Wednesday, June 10 – 11:45 a.m. to 1:00 p.m.

Bar Office, 1507 Belvedere Road, West Palm Beach



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Transitioning to a paperless office involves more than just scanning incoming documents; it requires a strategic approach and sustained commitment. Attorneys need to develop good “digital workflow” procedures to insure that the transition to a paperless environment is successful and how sustaining a paperless law office can better serve your clients. This session will offer a practical approach to scanning, digital file organization, digital workflow, elimination of unnecessary printing (e.g. electronic faxing and use of digital signatures), as well as, electronic document review, bates numbering and more.

- Best Practices for Automating Paper-to-Digital Workflows
- Prevent Digital and Paper Files From Getting Lost or Misfiled
- Scanners – Choosing The Right Model/s for Your Practice
- Scan & Redact: Apply Redactions as Documents Are Scanned & Sent To Users' Desktops
- Why Connecting to Matter-Centric DMS's is Important

Speaker: Adriana Linares, President and CEO of LawTech Partners

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