



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

November 2010

Here Come The Holidays!

Join us for our Annual Holiday Party and Silent Auction on Thursday, December 9 from 5:30 pm to 8:00 pm at Frenchman's Reserve in Palm Beach Gardens.

The cost is \$35.00 and includes drinks, heavy hors d'oeuvres plus a chance to shop for holiday gifts at bargain prices. One hundred percent of the proceeds benefit charities sponsored by the Young Lawyers and North County Sections. We are looking for items to include in our silent auction, so if you or one of your clients has an item that you can donate, please contact Lynne Poirier at the Bar Office at 687-2800 or lpoirier@palmbeachbar.org.

Thank you to our sponsors to date: Rock Legal Services & Investigations, Visual Evidence, Brooks Brothers, Sabadell United Bank, Bob Greenberg CLTC, and LexisNexis.

To RSVP, register online @ www.palmbeachbar.org

Mark your calendar for upcoming Membership Events

Minority Mentoring Picnic

November 13
Hialeah

Leadership Seminar

December 3, 8:30 – 1:00 p.m.

Annual Holiday Party & Silent Auction

December 9, 5:30 – 8:00 p.m.
Frenchman's Reserve

Second Annual Lawyer Variety Show

January 22, 2011, 6:30 p.m.
Eissey Theatre at Palm Beach State College

Wine Tasting Event

February 3, 5:30 p.m.
The Phillip's Point Club

Bench Bar Conference

March 4, 8:00 – 5:00
Palm Beach County Convention Center

Joint Luncheon with South County Bar

March 22, 11:45 a.m. – 1:00 p.m.
Benvenuto's in Boynton Beach
Speaker: FL Bar President Mayanne Downs

Annual Judicial Reception

May 3, 5:30 – 7:00 p.m.
The Harriet at City Place

Law Day Luncheon

May 6, 11:45 – 1:00 p.m.



The Bar's spelling bee champs, David Prather, Claire Dumas and Michelle Suskauer, recently competed in the Literacy Coalition's Great Grown-up Spelling Bee. Thanks for a fine team effort!

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THE
BULLETIN

**PALM BEACH COUNTY
BAR ASSOCIATION**

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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



Minority Mentoring Picnic November 13

Join members of the Board and the Committee for Diversity & Inclusion at the 7th Annual Kozyak Minority Mentoring picnic to be held on Saturday, November 13 from 12-4 p.m. The event will take place at the Corporate Pavilion at Amelia Earhart Park, 401 East 65th Street in Hialeah. This event is a great networking event for minority law school students with fantastic food, music, children's play area and networking opportunities. For more information go to this



website: <http://www.kmmfoundation.org/picnic/>

**Speeding Ticket? First Time Driver in the Family?
Bar offers on-line traffic and parenting courses**

The Palm Beach County Bar Association continues to look for non-dues sources of revenue. Accordingly, we have begun offering online courses that include: Basic Driver Improvement Course, First Time Driver Course, Mature Driver Course, Florida Notary Service and Florida Internet Parenting Course (approved course by the State of Florida). These are all approved courses through the American Safety Council. The Palm Beach County Bar Association will receive a small stipend for each course that is taken through a link on our website. Please help us by remembering to refer your clients to this link if they are in need of taking any of these courses: www.palmbeachbar.org/online_courses.php



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President's Message



Work. Life. Balance?

By Michael J. Napoleone, President

In the few short months that I have been privileged to serve as your Bar president I have become acutely

aware of how hard it is to maintain an acceptable Work-Life-Bar balance. With 37 Bar committees, weekly if not daily Bar and networking events, client meetings, deadlines, depositions, hearings and, oh yeah, my family, it can all get overwhelming if you let it. As lawyers, we are taught that busy is good; it certainly beats the alternative. But when does "busy" become "buried"?

Most lawyers are conditioned to believe they need to be working (or billing) all the time. Ask yourself if achieving "balance" is even possible. Balance implies equality, that your time at work will equal that of your personal life. We all know that is not reality. The new reality is work-life blending. For that I blame technology. Technology is supposed to free us from the office, but what it does is inject work into our personal lives. I'm sure few can recall how they functioned without a cell phone or email, but, if you can, think back to that time before you got that first "crackberry" or iPhone, to when you were able to "unplug" at the end of the day. All these gadgets are just invisible chains that keep us linked to

the office around the clock. Because we think we need to always be connected and always working, we have conditioned our clients to expect that the email they send to us at 11 pm on a Friday night will be responded to in 15 minutes, if not sooner. You want your law practice to serve your life, not a life that serves your practice.

So how are you supposed to find time for everything? I have no idea. What works for me, may not work for you. There is no "one-size-fits-all" anything, especially time management. You need to start by accepting the fact that "time management" is a fiction: you can't manage time, you can only manage yourself, as the clock continues to run no matter what you do. What matters is what you can accomplish in the time you have. The goal is to find a way to work that fits how and where you work best.

It helps to have a supportive family and a supportive work environment that does not expect you to be "on call" 24/7. I'm fortunate to be blessed with both. What I have learned is the importance of being "present". By that I mean engaged in what you are doing and who you are with.

It is very easy to speed through life always looking to the next deadline or next event and losing sight of the present. We are misled into thinking multitasking makes us more efficient; it is actually the illusion of efficiency. Think about it, if you were having surgery, would you want your surgeon to be multitasking? Maybe updating his Facebook page or tweeting about how the procedure is going? I know that on more than one occasion I have been caught not paying attention on a phone call because I was also sending or reading an email or, yes, checking up on folks on Facebook. Is that fair to the person you are talking to?

Try this experiment: from the time you get home at night until you get up in the morning, don't look at your email. If you can manage it, I think you will find it quite liberating; not to mention that you may actually get to enjoy the time you have with your family. So try not to annoy them by checking your email during dinner.

A meaningful day should be one in which we achieve success at work and have time to enjoy our family and friends. One should not have to come at the expense of the other. If you figure that out, send me an email - but if you send it after 7:00 p.m., don't expect a response until the morning. mnapoleone@richmangreer.com

Board of Directors Meeting Attendance

	Retreat	Aug	Sept
Bowden	x	x	x
Bresky	x	x	x
Coleman			
DiSalvo		x	x
Guari	x	x	x
Hawkins			
Howe	x	x	x
Kapner	x	x	x
Kypreos	x	x	x
Napoleone	x	x	x
Prather	x		
Pressly	x	x	x
Rabin	x	phone	x
Reagan		x	Ponzoli
Small			
Suskauer	x	x	phone
Weiss	x	x	x
Whittles	x	x	x

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**The Professionalism Committee of the
Palm Beach County Bar Association
Presents:**



LEADERSHIP ACADEMY - THE ART OF LEADERSHIP

Friday, December 3, 2010

8:30 a. m. - 1:00 p.m.

Palm Beach County Bar Association Office,
1601 Belvedere Road, Suite 302E

The goal of this program is to train diverse lawyers in bar and community leadership, educating them in ethical, professional and community service. This seminar is designed to train diverse leaders, raising the overall professional standards of lawyers in the community.

Program Schedule

- 8:30am - 8:45am** **Late Registration**
- 8:45am - 9:00am** **Welcome and Opening Remarks** - *Michael J. Napoleone, Richman Greer, President Palm Beach County Bar Association and Past Chair*
- 9:00am - 10:30am** **Five Themes of Leadership: The Hard Science and Soft Skills You Need to be a Great Leader**
Great leaders know that leadership encompasses far more than mere technical or administrative expertise. And just like other skills, leadership skills must be constantly refined and improved to meet the challenges of a rapidly changing world. Great leadership involves communication and listening, coaching, giving feedback, team building, delegating, resolving conflict and self-management. You'll leave this presentation understanding what it takes to be a truly great leader. - *Nora Riva Bergman, Practice Advisor, Atticus, Inc.*
- 10:30am - 10:45am** **Break**
- 10:45am - 12:00pm** **Lead, don't follow:** Panel Discussion about the importance of taking on a leadership role, the benefits of leadership and involvement, addressing diversity issues, and building your reputation. - *Raoul G. Cantero, Former Supreme Court Justice of Florida; The Honorable Jonathan D. Gerber, 4th DCA; John M. Howe, President-Elect Palm Beach County Bar Association; Lisa S. Small, Board of Governors, Past President Palm Beach County Bar Association; John (Jay) G. White, III, Richman Greer, Past President The Florida Bar, Past Member of the Florida Bar Board of Governors, Past President Palm Beach County Bar Association*
- 12:00pm - 1:00pm** **Lunch and Dessert Reception**

This course has been granted 3.5 CLER from The Florida Bar.

Early Registration Fee: \$85 per person; \$50 for Government Attorneys if registered by 11/19/10;

Add \$25 to registration fee after that date.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. 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	 <p>BY CHECK Return this form with your check</p>	 <p>BY CREDIT CARD For security purposes, you must register online at www.palmbeachbar.org</p>
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Credit card registration payment not accepted by Fax to comply with PCI regulations.

Name: _____ **Telephone:** _____

Address: _____ **City/Zip** _____

Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) Cost same as listed above/in addition to \$10 for shipping and handling. (Leadership Seminar 12/3/10) **PAYMENT BY CHECK ONLY WITH THIS FORM.**

Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406.

Historical Committee

Who are they?

Can you guess who these members are? Answers can be found on page 13. 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.



Tickets for the Second Annual Lawyer Variety Show go on sale November 1

Make plans to join us for a fun evening on Saturday, January 22 from 6:30 pm to 9:00 pm at the Eissey Campus Theatre in Palm Beach Gardens.

Seating will be given on first come first serve basis. Tickets are \$35.00 for Orchestra and \$25.00 for Balcony. Tickets can be purchased online at palmbeachbar.org

A portion of the proceeds benefit the Legal Aid Society's new Armed Services Advocacy Project.

We wish to thank the following sponsors for their support:

- | | |
|---|--|
| ARC Mediation | Palm Beach Spine & Pain Institute |
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| Murray Guari Trial Attorneys | Smith Ivey & Fronrath |
| North County Section of the PBCBA | The Suskauer Law Firm |
| | USI Affinity |
| | Young Lawyers Section of the PBCBA |

Support National Adoption Day

It's not often you see smiles in a courthouse, but on Friday, November 19, the Palm Beach County Courthouse will be filled with happy people!

This year, children who are in dependency care who have been the victims of child abuse are expected to take part in National Adoption Day and we need your help. The Bar, along with the 15th Judicial Circuit, local agencies and volunteers, are planning a memorable day for the families. Please help us by making a donation of food, games and gifts.

Please make your check payable to the Palm Beach County Bar Association and mail it to: Attention Lynne Poirier, Palm Beach Co Bar, 1601 Belvedere Road, Suite 302E, West Palm Beach, 33406 no later than November 12.

Anyone who is interested in helping volunteer for the day please call Kitty Callan at 252-9240.



Join Us

for your Holiday Shopping &

Donate a children's book for Legal Aid's Pro Bono Auction!



Palm Beach County Chapter of FAWL's 8th Annual Holiday Bookfest and Luncheon

To benefit the Legal Aid Society of Palm Beach County

Friday, November 19th, 2010

11:00 am until 2:00 pm

Barnes and Noble CityPlace

Complimentary Lunch and Great Raffle Prizes!!!

Please RSVP by calling 561-655-8944 ext. 316

North County Section

Members of the North County Section recently enjoyed a complimentary cocktail reception at Brio's at the Gardens Mall.



NCS Director Dante Weston (center) and Adam Doner (right) welcome Vincent Rollo to his first North County Section event!



NCS Board members Ned Reagan, President; Ron Ponzoli, President-Elect and Todd Stewart, Director



Judge Nancy Perez and Jonathan Mann



Marina Petillo and Patricia Harris



Joyce Conway, Sally Benson and newly appointed NCS Director Rosemarie Guerini



Jerri Blaney, Erskine Rogers and Denise Dawson



Judge Edward Fine and Scott Suskauer

Ronald P. Ponzoli Jr.

Candidate for The Florida Bar Board of Governors

PROVEN COMMITMENT TO BAR SERVICE:

- Serves as President-Elect of the North County Section of the Palm Beach County Bar.
- Served six years as an elected member to The Florida Bar Young Lawyers Division Board of Governors; Service included managing the State Wide Moot Court Competition, chairing the Budget Committee and serving on the Executive Committee.
- Serves as the current Chair of the Palm Beach County Bar Professionalism Committee.
- Serves as an appointed member of the United States District Court for the Southern District of Florida Ad Hoc Advisory Committee on Rules and Procedures.
- Serves as an appointed member of The Florida Bar's Professional Ethics Committee.
- Emeritus member of the Craig S. Barnard American Inn of Court.

ENDORSED BY EIGHT PAST PRESIDENTS OF THE FLORIDA BAR:

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- Francisco R. Angones (2007)
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- Herman J. Russomanno (2000)
- Gerald F. Richman (1984)

Ronald can be reached at:
561-803-3519 or rponzoli@richmangreer.com

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Solo & Small Firm Practitioners Committee Presents: Networking & Learning Luncheon Series



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No more than 3 of whom work in the same practice area.



Join Us for Noon-time Networking Luncheons Every 6 Weeks at the Bar Office!

At each luncheon, every participant will have the opportunity to introduce themselves and give a 60-second presentation on their practice. Be sure to bring plenty of business cards!

Wednesday, December 1, 2010
Law Office Technology

Wednesday, January 19, 2011
Law Office Compliance

Thursday, February 24, 2011
Internet Marketing

Wednesday, March 30, 2011
Law Office Vendors A to Z

Wednesday, May 11, 2011
Accounting, Payroll & Staffing

The price is just \$10.00 for each lunch meeting. Most lunches include CLE credit from The Florida Bar. RSVPs are required and can be made online @www.palmbeachbar.org.

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File Your Claims on Time: When Excusable Neglect is Not Enough

Submitted by: Marc P. Barmat

The deadline for filing a proof of claim in a

bankruptcy varies depending upon under which chapter of the Bankruptcy Code the bankruptcy was filed. In a chapter 7, 12 or 13, the deadline is absolute, whereas in a chapter 9 or 11, the deadline can be extended for cause, including excusable neglect.

Federal Rule of Bankruptcy Procedure 3002 governs the filing a proof of claim in chapter 7, chapter 12 and chapter 13 cases. Pursuant to Bankruptcy Rule 3002(c), an unsecured creditor or equity security holder is required to file a proof of claim no later than 90 days after the first date set for the §341 meeting of creditors¹. Local Rule 3002-1 modifies Bankruptcy Rule 3002 in chapter 7 no asset cases and chapter 7 cases converted from chapter 13. Under each of these scenarios, a proof of claim must be filed 90 days after the chapter 7 trustee files a "Notice of Assets."

The time for filing a proof of claim fixed by Bankruptcy Rule 3002(c) works like a statute of limitations in that the holder of a late filed claim will not receive a distribution from the estate, absent a surplus. In re Coastal Alaska Lines, Inc., 920 F.2d 1428 (9th Cir. 1990). Accordingly, the United States Supreme Court has found that excusable neglect is not recognized as a basis to extend the bar date in chapter 7 case. Pioneer Services Co. v. Brunswick Associates Ltd. Ptshp., 507 U.S. 380 (1993). District Courts and Bankruptcy Courts in the Southern District of Florida have ruled consistent with Pioneer Services Co. when faced with the issue of extending the claims bar deadline in a chapter 7 case based upon excusable neglect. See, In re Ford Business Forms, Inc., 180 B.R. 294 (S.D.Fla.1994) (affirming bankruptcy court's denial of creditor's motion to allow proof of claim filed after the bar date deadline); In re DV8, Inc., 2010 WL 3393735 (Bankr. S.D. Fla.) (held that "excusable neglect" was not

legitimate basis for seeking claims bar deadline extension in chapter 7 case, even one that originally started out under chapter 11.)

Bankruptcy Rule 3003 governs the filing of a proof of claim in chapter 9 and chapter 11 cases. However, unlike Bankruptcy Rule 3002, Bankruptcy Rule 3003(c) does not set up an absolute statute of limitations leaving the court with no discretion to allow late-filed claims. Rather, Bankruptcy Rule 3003(c)(3) provides that the court "for cause shown may extend the time within which proofs of claim or interest may be filed." Such an extension may be sought and granted before or after the time has expired under the court's order fixing a bar date.

The different rules in chapter 7 and chapter 11 cases correspond with the differing policies of the two chapters. Whereas the aim of a chapter 7 liquidation is the prompt closure and distribution of the

debtor's estate, Chapter 11 provides for reorganization with the aim of rehabilitating the debtor and avoiding forfeitures by creditors. Pioneer Services Co., citing United States v. Whiting Pools, Inc., 462 U.S. 198 (1983). In overseeing this latter process, the bankruptcy courts are necessarily entrusted with broad equitable powers to balance the interests of the affected parties, guided by the overriding goal of ensuring the success of the reorganization. Id. citing NLRB v. Bildisco & Bildisco, 465 U.S. 513 (1984).

Therefore, if you are representing a creditor of a chapter 7, 12 or 13 bankruptcy estate, it is of the utmost importance that you or your client timely files a proof of claim. Failing to timely file a proof of claim can not only lead to your client's missing out of its pro rata share of a distribution, but potentially a malpractice action against you.

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

ALEXANDER "SANDY" MYERS, ESQUIRE

Mediator/Arbitrator



- J.D. Stetson University College of Law (1970)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2007)
- Florida Bar Board Certified Emeritus Specialist Civil Trial Lawyer (2007-Present)
- Florida Certified:
 - Circuit Civil Mediator (1998-Present)
 - Family Mediator (1998-Present)
- Florida Qualified Arbitrator (1991-Present)
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¹ Bankruptcy Rule 3002(c) provides six exceptions for specific situations where a court may extend the bar date.



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* Retired Circuit Judge



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Trustee's Duty To Pay Grantor's Guardianship Administration Expenses

By David M. Garten, Esq.

In *Covenant Trust Co. v. Ihrman*, 2010 Fla. App. LEXIS 13632 (Fla. 4th DCA 9/15/10), Lillian was adjudicated incapacitated and Guardian was appointed as her plenary guardian. The trial court granted the Guardian's motion to pay an additional retainer for his attorney from Lillian's Trust. The Trust provides as follows:

2.01 During the lives of the Grantors, or the survivor of them, the Trustee [Covenant] shall pay so much or all the net income of the trust to the Grantors, or the survivor of them, as they direct in writing, and the Trustee shall pay any part of the principal of the trust as the Grantors, or the survivor of them, direct in writing. However, during any period in which the Grantors, or the survivor of them, are in the opinion of a licensed physician incapable of managing their own affairs, the Trustee may in its discretion pay to or use for the benefit of the Grantors or the survivor of them, so much of the income and principal of the trust as the Trustee determines to be required for their health, support and maintenance, in their accustomed manner of living, or for other purposes the Trustee determines to be for their best interests. Any excess income shall be added to principal at the discretion of the Trustee.

On appeal, Covenant, as trustee successfully argued that the trial court erred in directing expenditures of trust funds because the court was without authority to order the trustee to pay the Guardian's attorney from the trust assets. The court reasoned:

Here, Lillian was adjudicated incapacitated and Guardian was appointed as her plenary guardian. This was enough to bring Lillian within the language of this trust provision, as Lillian is unable to manage her own affairs. Thus, the trust requires Covenant to act in its discretion to pay to Lillian that which she needs for her health, support, and maintenance, and for any other purposes within her best interests.

In *Cohen v. Friedland*, 450 So. 2d 905, 906 (Fla. 3d DCA 1984) (citing *White v. Bacardi*, 446 So. 2d 150, 155 n.5 (Fla. 3d DCA 1984)), the Third District explained that "[a] trustee, in the strictest sense, holds legal title to property which he administers for the named beneficiary in accordance with the terms of the instrument creating the trust." The trust agreement provided that the beneficiary would receive the trust income and the trustees had sole discretion to invade the trust principal for the beneficiary's maintenance, comfort, and welfare. *Id.* But "[i]n the absence of proof that the trustee has failed to perform, or has performed arbitrarily, a court is without authority to remove trust assets from control of the trustee to be administered by the court or other guardian." *Id.*

In *Giglio v. Perretta*, 493 So. 2d 470, 470 (Fla. 4th DCA 1986), we held the "trial court erred in requiring the trustee to

use trust assets to reimburse the guardian of the trust beneficiary for guardianship administration expenses, attorneys fees, and other costs." We explained that although paying some of these costs may have been allowed, in the trustee's discretion, these payments were "not legally mandated by the trust provisions," so the court had "no authority to compel the trustee to make such payments," nor any authority for the attorney's fees award. *Id.* (citing *Cohen*, 450 So. 2d 905).

Further, in *Johnson v. Guardianship of Singleton*, 743 So. 2d 1152, 1153 (Fla. 3d DCA 1999), the Third District, citing *Cohen*, held that there was "no statutory or other satisfactory legal justification for the award" of legal expenses, where the trial court ordered the trustee "to pay from trust assets the legal expenses incurred" by the guardian.

Here, Covenant, as trustee, was granted, within the trust provision, the discretion to make payments from the trust assets. There was no evidence that Covenant acted arbitrarily. Therefore, the court lacked the authority to order Covenant to remove trust assets. As explained in *Giglio*, these payments were not legally mandated in the trust terms. Further, as in *Johnson*, there was no statutory or other legal authority for the court to order the payments. Because the trust did not provide for the payment of attorney's fees, and Covenant could make payments in its discretion for Lillian's best interests, the court was without authority to order Covenant to pay Guardian's attorney \$ 10,000 from the trust assets.

Although not cited by the court, the following statutes may be helpful in determining the Trustee's duties when the Grantor is incapacitated: §736.0816 (21), F.S. (trustee's payment of an amount distributable to a beneficiary who is under a legal disability or who the trustee reasonably believes is incapacitated), and 736.0814 (1), F.S. (proper exercise of a trustee's discretionary powers).



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The Elder Law Affairs Committee of the Palm Beach County Bar Association presents:

“13th Annual Elder Law Update”

Thursday, December 16, 2010 - 8:20a.m. - 2:00p.m.
Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

- 8:00am - 8:20am Late Registration - Check In
- 8:20am - 8:30am Welcome - Opening Remarks - Seth A. Marmor, Esq., Shapiro Blasi Wasserman & Gora PA, Chair PBCBA Elder Law Affairs Committee, Florida Bar Board Certified Elder Law, and Wills, Trusts & Estates Attorney
- 8:30am - 9:20am The Role of Court-Appointed Counsel In Guardianship - Doing it Right & Doing it Ethically - Lawrence Levy, Esq., Law Office of Lawrence Levy, P A
- 9:20am - 9:50am Class Act Coverage - Bob Greenberg, CLTC, MetLife
- 9:50am - 10:00am Break
- 10:00am - 10:50am Annual Tax & Ethics Update - Michael A. Lampert, Esq., Michael A. Lampert, P.A., West Palm Beach, FL, Florida Bar Board Certified Tax Attorney
- 10:50am - 11:40am Medicaid Update - Leonard E. Mondschein, Esq., Chairman Elder Law Section of the Florida Bar, Florida Bar Board Certified Elder Law, and Wills, Trusts & Estates Attorney, Miami
- 11:40am - 12:00pm LUNCH (included in registration)
- 12:00pm - 12:30pm VA Aide & Attendance Benefits - Craig Carr, Palm Beach County Veterans Services Office,
- 12:30pm - 1:00pm Ethics and Professionalism: A Cut Above the Ordinary - Representative from the Professionalism Committee of the Palm Beach County Bar Association
- 1:00pm - 1:10pm Break
- 1:10pm - 2:00pm Legislative Update - Ellen S. Morris, Esq., Elder Law Associates, Legislative Chair Elder Law Section of the Florida Bar

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This course is expected to receive 6.0 CLER including 2.5 Ethics credit / Certification credits are pending from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$165** for PBCBA members/legal assistants, **\$205** for non-PBCBA members/legal assistants, if registered by 12/9/10. **Add \$25 to registration fee after that date.**

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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Please register me for the December 16, 2010 Elder Law Seminar:

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Members Celebrate Constitution Day



Guest speaker Professor Michael Allen from Stetson Law School, George Washington (AKA: Bryan Poulton) and Michael Napoleone, President

More than 150 members attended our Constitution Day Luncheon and Celebration honoring retiring Judges Edward Garrison, Paul Moyle & Ken Stern.



On behalf of the PBCBA, Michael Napoleone presented Judge Moyle, Judge Garrison and Judge Stern with a gift



Lewis Kapner and Allison Kapner



Judge Ted Booras and Donnie Murrell



Sia Baker-Barnes and Brian Denney




4th DCA Judges Melanie May and Dorian Damoorgian



These members were seated at Amendment Table # 8 and won the Constitution Quiz!

Circuit Court Report CIVIL DIVISIONS • September 2010




DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	02-11	02-11	11-10	1699
AB HAFELE	04-11	04-11	12-10	1770
AD FRENCH	02-11	02-11	11-10	1787
AE MCCARTHY	08-11	08-11	11-10	2003
AF MARX	03-11	03-11	12-10	1411
AG CROW	02-11	02-11	11-10	2054
AH FINE	04-11	04-11	10-10	1798
AI SASSER	02-11	02-11	11-10	995
AJ ROSENBERG	03-11	03-11	11-10	1198
AN COX	04-11	04-11	11-10	1797
AO BARKDULL	01-11	01-11	11-10	1806



Constitution Day Luncheon

Friday, September 17, 2010

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Amendment IX.....	D. Culber Smith III
Amendment X.....	Lytal Reiter Clark Fountain & Williams



Do Your Clients Know About Professionalism?

By David P. Ackerman

Any reasonably alert lawyer is aware of Palm Beach County's *Standards of Professional Courtesy*, and perhaps other similarly framed standards promulgated by The Florida Bar and other groups. Our judges have made it clear that they expect lawyers appearing before them to comply with these standards. Good lawyers know that behaving professionally makes them better advocates for the client's cause. A departure from professionalism standards makes the lawyer look ignorant or bad and by extension, the client's interests suffer. Some clients readily understand the need for a lawyer to act professionally on their behalf. Their personal moral character or organizational culture encourages those who act for them to behave courteously and to remain focused on the merits of the issue before them. They do not need the lawyer to call upon them in a contractually binding way to behave morally. So too, some lawyers do not need codes to influence their behavior. They know by following their own moral compass how to stay on the high road.

In The Florida Bar's *Ideals and Goals of Professionalism*, there is a standard which encourages lawyers to address litigation tactics with a client:

7.4 A lawyer should counsel the client against the use of tactics designed: (a) to hinder or improperly delay the process involved; or (b) to embarrass, harass, intimidate, improperly burden, or oppress an adversary, party or any other person and should withdraw from representation if the client insists on such tactics.

Another standard encourages lawyers to counsel other lawyers:

1.2 A lawyer should counsel and encourage other lawyers to abide by these ideals of professionalism.

Standards 7.4 and 1.2, *Ideals and Goals of Professionalism*, The Florida Bar.

But some lawyers complain that their clients insist that they litigate "aggressively" and then the standards fall by the wayside. Or other clients, when a lawyer is faced with opposing counsel's departure from the standards, insist that their lawyer respond in kind.

How do we make our clients aware of the *Standards and Ideals* and the need to adhere to them, even when opposing counsel misbehaves? One way is by asking a client to agree that they apply in an engagement letter.

Engagement agreements with clients usually cover the scope of work and the basis upon which legal fees and costs will be billed. Many engagement agreements contain the client's agreement that it is responsible for providing truthful and accurate information to the lawyer. Our firm's agreement also calls upon the client to take measures to preserve documents and electronically stored information. Some firms ask clients to acknowledge that the advice rendered is the result of judgment and experience and that there can be no guarantee that the lawyer will accurately foresee changes in the law.

Should we now ask clients to agree that we will follow

Palm Beach County's *Standards of Professional Courtesy* and The Florida Bar's *Ideals and Goals of Professionalism*? I posed this question to Brian F. Spector, an experienced litigator and adjunct professor at the Florida International University College of Law and the University of Miami School of Law whose classes include Professional Responsibility and Liability. He agreed that the *Standards and Ideals* "can and should be referenced in the engagement letter, with the express acknowledgement by the client that the lawyer's engagement will be bound by the principles contained in those documents." Brian goes further to advocate that a lawyer should also "seek an agreement from the opposing lawyer to likewise be bound" by the *Standards of Professional Courtesy*.

General Counsel for the Carlton Fields law firm, Peter J. Winders, agrees. Some clients "like a show" and enjoy seeing what appears to be their lawyer "beating up" the other side. Pete once conducted a survey of the lawyers in the firm's Tampa office to test this misconception. There was a lawyer with whom the Tampa lawyers often opposed who was routinely bombastic and combative, often violating standards of professional conduct. Pete's poll showed that none of the lawyers who had litigated with this particular lawyer had ever lost any significant matter to him. Pete concluded that smart and successful lawyers adhere to the standards of good conduct and that this conduct promotes their client's interests. "The object is not to win a shouting match; the object is to win the case."

So here is a possible provision to include in an engagement letter:

In our jurisdiction we are obligated not only to adhere to the *Rules of Professional Conduct* and the *Ideals and Standards of Professional Conduct* promulgated by The Florida Bar, but also the *Standards of Professional Courtesy* promulgated by the judges of this circuit and the Palm Beach County Bar. These standards, for example, provide that lawyers should agree to reasonable extensions of time and to provide opposing counsel with authorities on which we will rely at any hearing. It is sometimes the case that opposing counsel do not comply with these standards, but you agree and recognize that we will do so, even in the absence of compliance by opposing counsel. Experience has taught us that we will be better able to serve your interests in court if we stay on the high road at all times. It is good lawyering and good strategy to believe that all we do before the court and every paper we file creates an impression of your case. Our behavior has to be, both in reality and in perception, a genuine effort to provide the factual basis and the legal authority needed to allow the court to rule in your favor in the case.

If your client is driven mainly by a cost/benefit approach, you can cite Judge Middlebrooks' decision in *Lee v. American Eagle Airlines, Inc.*, 93 F. Supp. 2d 1322, 1334 (S.D. Fla. 2000). Judge Middlebrooks drastically reduced the hourly rate

Continued on page 12



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

Practical Aspects of Conducting Family Law Trials

Friday, December 10, 2010 9:50 a.m. – 4:45 p.m.

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

Program Schedule



- 9:30am - 9:50am **Late Registration and Check in**
- 9:50am - 10:00am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq., Matthew Lane & Associates, P.A., Committee Chair*
- 10:00am - 10:45am **Drafting Proposed Judgments and Orders** - *Benjamin T. Hodas, Esq., Law Office of Benjamin T. Hodas, LLC*
- 10:45am - 11:00am **BREAK**
- 11:00am - 11:45am **Preparation of Financial Affidavits** - *Matthew Stohlman, CPA, Moore, Ellrich & Neal, P.A.*
- 11:45am - 12:15pm **Ethics and Professionalism: A Cut Above the Ordinary** - *Representative from the Professionalism Committee of the Palm Beach County Bar Association*
- 12:15pm - 1:30pm **Lunch**
- 1:30pm - 2:15pm **Presentation of Parenting Plans** – *Elisha D. Roy, Esq., Sasser, Cestero & Sasser, P.A., Board Certified Marital & Family Law*
- 2:15pm - 3:00pm **Evidentiary Issues Pertinent to Relocation Cases** - *Erskine C. Rogers, III, Esq., Rutherford Mulhall, P.A., Board Certified Marital & Family Law*
- 3:00pm - 3:15pm **BREAK**
- 3:15pm - 4:00pm **Effective Cross Examination of Psychological Experts** - *Charles D. Jamieson, Esq., The Law Firm of Charles D. Jamieson, PA, Board Certified Marital & Family Law*
- 4:00pm - 4:45pm **Annual View from the Bench** - *The Honorables Catherine Brunson, Martin H. Colin, Elizabeth M. Maass, Sandra K. McSorley, Richard L. Oftedal, and Magistrates Thomas R. Baker, III, Diane M. Kirigin, and Joy B. Shearer, Fifteenth Judicial Circuit, Moderated by Matthew Jay Lane, Esq., Matthew Lane & Associates, P.A., Committee Chair*

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This course is expected to receive 6.0 CLER including .50 Ethics credits; Certification credits are pending from The Florida Bar. The cost of the seminar is \$160 (includes lunch) for PBCBA members/paralegals; \$200 for non-PBCBA members/paralegals if registered by 12/3/10; add \$25 to registration fee after that date.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. 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

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.

BRYAN ANDERSON – Ohio; University of Chicago; Affiliate Member; Associated with Florida Power & Light Company, Juno Beach

KRISTIN COOMBER – New Jersey; New England School of Law, 2002; Greenfield & Coomber, P.A., Boca Raton

MARK A. CULLEN – New York; Villanova Law School, 1981; Sole Practitioner, West Palm Beach

MARIBEL DE LA ROCHA – Puerto Rico; Boston College Law School, 1992; Wellington

MILLIE FAJES-ORRICO – St. Thomas University; Law Student Member; Tequesta

KAREN GOODELL – Florida Registered Paralegal Member; Akerman Senterfitt, West Palm Beach

ALICIA T. JACOBS – Florida State University; Law Student Member; Royal Palm Beach



SUSAN R. MARTIN – New York; University of Florida, 1983; Associated with South Florida Water Management District, Office of Counsel, West Palm Beach

DEBBIE SATYAL – Nepal; Boston College Law School, 2009; Associate in Greenfield & Coomber, P.A., Boca Raton

CHRISTOPHER SOTILLO – St. Thomas University School of Law, 2010; Lake Worth

MARY STOCKMAN – Washington DC; University of Miami, 1998; Sole Practitioner, Stockman Law Office LLC, Palm Beach Gardens

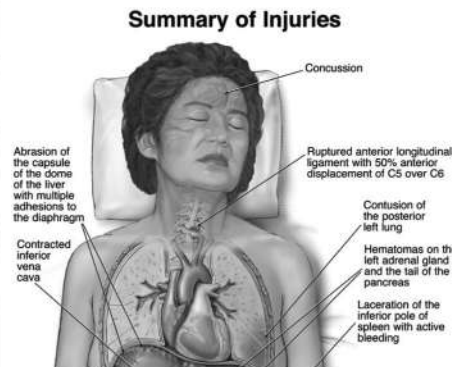


Professionalism

Continued from page 11

component of a legal fee claim by a plaintiff in an employment dispute. Judge Middlebrooks held, “[U]nprofessional and disruptive conduct of counsel which prolongs the proceedings and creates animosity which interferes with the resolution of a cause can be considered in determining an award of attorney’s fees.” As the trial got underway, one of the offending attorneys said loudly to his client, “Let’s kick some ass.” The court reduced one attorney’s hourly rate from \$300 an hour to \$150 an hour for his pretrial work and \$0 for his trial work; the other attorney’s rate for the case was reduced to \$0. The judge stated that the two attorneys’ conduct in the litigation of the case fell “far below acceptable standards” and was at odds with their claimed \$300 hourly rate. Unprofessional conduct cost this client real dollars.

Our job as lawyers requires us to help clients have realistic expectations. The engagement letter is a good place to start the process. But it is not enough: communication and education about how the standards are a part of successful litigation practice continue throughout the engagement.



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FPL Legal Department Receives Award for Pro Bono Service to the Legal Aid Society

Residential foreclosures have become all too common in Palm Beach County, resulting in increased workload for the local Legal Aid Society. Since January, Legal Aid and its three staff attorneys have been getting help from the Legal Department at NextEra



Energy and Florida Power & Light Company to help families facing foreclosure. At monthly clinics, 10 company attorneys each assist up to three families. In total, NextEra Energy and FPL attorneys have volunteered more than 200 hours and helped more than 140 Palm Beach County families, earning the company's 2010 "Outstanding Volunteer" award. The Legal Aid Society also awarded the company the first-ever Corporate Pro Bono Recognition Award in April for its innovative effort.

Photo: On Sept. 16, during a luncheon at the Juno Beach headquarters of NextEra Energy, Inc. and Florida Power & Light Co., employee volunteers were honored for their efforts with a visit from Major League Baseball Hall of Famer Andre Dawson who shared his own inspiring story on volunteerism and community involvement. The company made a \$1,000 donation to the Legal Aid Society of Palm Beach County in honor of the company's legal department, which won "Outstanding Volunteer" of the year as a team for its work to help local residents facing foreclosure.

Pictured Are: Jim Robo, NextEra Energy president and chief operating officer (far right); Pamela Rauch, FPL vice president of corporate & external affairs (left of Robo); and Major League Baseball Hall of Famer Andre Dawson (center, back) helped recognize the NextEra and FPL Legal Departments for their volunteer efforts with the Palm Beach County Legal Aid Society. (Photo Credit: Doug Murray, FPL)

Movie tickets make holiday great gifts for teachers, clients and staff!

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

- * Muvico Theater - \$7.50 each (\$10.00 at box office)
- * Regal Theaters \$7.50 each (\$10.00 at box office)
- * Cobb Theatres \$7.50 each (\$10.00 at the box office)

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

PRICES ARE SUBJECT TO CHANGE



Historical Committee

Who Are They?

From Page 4

1. Nat Nason
2. Judge Edward Rodgers
3. Susan Yoffee
4. Jack Scarola
5. Gregory Scott

Attorneys that closed cases in August 2010

Richard Abedon
Peter M. Arnold
Barry S. Balmuth
Marc P. Barmat
Thomas Bates
Kathryn Beamer
Amy Beller
Robert T. Bergin, Jr.
Flynn P. Bertisch
Michelle S. Bertolini
Warren B. Brams
Thomas A. Burford
John Buso
Wade R. Byrd
Tony Cao
Maxine Cheesman
Edward B. Cohen
Fred Cohen
Joseph M. Considine
Steven Cripps
Nancy E. Crown

Blaine C. Dickenson
Melissa Duncan
Catherine S. Eaton
Brett Elam
John Farina
Chandler R. Finley
Julianne R. Frank
Ron Gache
Jeffrey Garber
Isidro M. Garcia
David Gart
Karen Brown Gattozzi
Amy Genet
Scott D. Glassman
Jaime Guttman
Stephanie Harris
Allan Hoffman
John Hough
John Harrison Hough
Richard A. Hujber
Raymond G. Ingalsbe

Elaine Johnson James
Charles D. Jamieson
Philippe Jeck
Georgina Jimenez-Orosa
Heidi Juhl
Lawrence P. King
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Kevin McNamara
Stephanie McQueen
Michael S. Mersky
Lawrence Moncrief
Richard Monescalchi
Michael J. Napoleone
Brian M. O'Connell
Kristina B. Pett
Jaime Quick

Michael P. Reitzell
Betty C. Resch
Kimberly Rommel-Enright
Steven D. Rubin
Matthew Sackel
M. Richard Sapir
Stephen L. Seffenberg
Robert L. Sellars
Jeffrey Shaffer
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Arbitration Agreement by Proxy

by Ted Babbitt

It has become common for doctors and hospitals to ask patients to sign an arbitration agreement which waives the right to trial by jury. The law favors arbitration and many cases have enforced such arbitration agreements. A recent opinion of the Second District in Stalley v. Transitional Hospitals Corporation of Tampa, Inc., 35 Fla. L. Weekly D1804 (Fla. 2nd DCA, Aug. 11, 2010), takes a contrary view under specific facts.

Plaintiff's decedent entered the defendant hospital by ambulance even though it was not an emergency admission. He gave his wife authority to sign "admission papers." Among those papers was an arbitration agreement which she testified that she signed without reading. After the death of plaintiff's decedent, allegedly due to malpractice which occurred as a result of the hospital employee's negligence, a suit was instituted. The trial court held a lengthy evidentiary hearing and granted a motion to stay the litigation compelling the parties to arbitration pursuant to the arbitration agreement signed by the wife.

The Second District reversed, holding that the wife's signing of the arbitration agreement did not bind the husband's estate. The Second District was faced with three questions. First whether the wife, by virtue of being a wife, could be considered the husband's agent. Second, whether if the wife was not the actual agent of the husband, she could bind him as his apparent agent and lastly whether the husband had consented to arbitration by virtue of estoppel since he reaped the benefit of his agreement with the hospital to receive treatment at the hospital. The Second District answered all three questions in the negative.

The trial court apparently took the position that evidence of agency was not required because one spouse is always the agent of the other as a matter of law. The Court cited numerous cases indicating that that was not the case and that, in fact, absent actual agency there is no imputed agency by virtue of being a spouse. In ancient England the law may have been different because the concept of coverture existed. This concept led Mr. Bumble, a character in *Oliver Twist*, when informed that "the law supposes that your wife acts under your direction" to reply "if the law supposes that... the law is a ass – a idiot. If that's the eye of the law, the law is a bachelor;..." The Court pointed out that there was no evidence that plaintiff's decedent either signed the arbitration agreement or that his wife had a power of attorney or other written consent authorizing her to sign the arbitration agreement. There was, therefore, no evidence of actual agency.

On the second point, the Court concluded that there was insufficient evidence to support a finding of apparent agency. One of the elements of apparent agency is a representation by the principal that the purported apparent agent is, in fact, the principal's agent. See Mobile Oil Corp. v. Bransford, 648 So. 2d 119, 121 (Fla. 1995), Smith v. Am. Auto. Ins. Co., 498 So. 2d 448, 449 (Fla. 3rd DCA 1986), Owen Indus., Inc. v. Taylor, 354 So. 2d 1259, 1262 (Fla. 2d DCA 1978); Taco Bell of Cal. V. Zappone, 324 So. 2d 121, 124 (Fla. 2d DCA 1975), and Poe & Assocs., Inc. v. Estate of Vogler, 559 So. 2d 1235, 1236 (Fla. 3d DCA 1990).

Conceding that there was no express representation by

plaintiff's decedent that his wife was his agent, the hospital claimed that the decedent's failure to question his wife about the documents or ask to see them indicated an implied representation by him that she had authority to sign anything including the arbitration agreement. At 1805, the Court made short work of that:

In the absence of some evidence that Roderic knew that JoAnne would be asked to waive his constitutional rights, Roderic's failure to ask to review the documents cannot constitute a representation that JoAnne was authorized to act as his agent in waiving his right to a jury trial. Thus, since Kindred failed to present any evidence of such a representation by Roderic concerning JoAnne's authority, it did not establish a necessary element of the formation of an apparent agency, and it cannot bind Roderic to the arbitration agreement he did not sign.

On the last point that the plaintiff's decedent ratified his wife's action in signing the agreement by accepting treatment at the hospital, the Court concluded at 1806:

Here, the evidence presented by Kindred did not establish that Roderic was ever informed – much less *fully* informed – of the arbitration agreement signed by JoAnne. Further, Kindred failed to establish any "intelligent act or conduct" by Roderic that would show his intention to be bound by the arbitration agreement. In the absence of such evidence, Kindred cannot show that Roderic ratified the arbitration agreement signed by JoAnne so as to bind the Estate to it.

The right to trial by jury is a constitutional right that should not be easily waived. This case of first impression holds that an arbitration agreement signed by a spouse does not bind that spouse's wife or husband absent a showing that the nonsigning spouse intended to be bound by such a signature and fully understood the waiver of the constitutional right in question.

NOTE: BECAUSE OF 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>	<ul style="list-style-type: none">• All Litigation Support Services Including but not limited to...• Trial Exhibit Enlargements Color and Black & White - Documents & Photos - Xrays/MRI• Document Scanning Summation - Concordance - Sanction iPRO - Tiff - PDF to Disk• Document Production Copying - Color Copying - Print Documents from Files Binding - Digital Photo Printing - Blueprints Copied Video / Audio Tapes / DVDs / CDs Duplicated <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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Top 10 Signs of Possible Stockbroker Abuse

by Ryon M. McCabe

1. Vulnerable Client

Vulnerable clients frequently fall victim to stockbroker abuse or misconduct. Common features include: elderly, lack of financial sophistication, lack of understanding about account activity, and placing blind trust or faith in broker.

Recent research also shows that fraud and Ponzi scheme victims often have the following traits:

- Self-reliant
 - Optimistic
 - Above-average financial knowledge
 - College educated
 - Recently suffered a financial or health setback
 - Open to new ideas and sales pitches
- See Investor Fraud Study Final Report at*

www.finra.org/Investors/ProtectYourself.

2. Big Losses

While all losses do not equal wrongdoing, big losses could be a sign of trouble. The S&P 500 lost 30% in the second half of 2008. But should the client have been invested in S&P 500 stocks? Or did the client suffer above-market losses?

3. Too Many Transactions

Many firms charge commissions on a per-trade basis. Excessive trading or “churning” is trading designed to generate commissions for the broker rather than to achieve any legitimate investment goal of the client. Look out for thick account statements and lengthy attachments.

4. Transactions Not Approved by the Client

Unless the account is “discretionary,” the client must approve every transaction. If the client reports that a broker handles all trades and the client learns the details only after the fact, the broker may have taken unlawful discretion.

5. Too Many Eggs in One Basket

The expression “too many eggs in one basket” can apply in 3 contexts:

- A. Too Much in One Stock. Most firms recommend no more than 5%-10% in any single position.
- B. Too Much in One Sector. Example: technology sector or banking sector.
- C. Too Much in One Asset Class – Stocks, Bonds or Cash. Most firms have published “asset allocation” recommendations based upon investment objectives and risk tolerance. As an example, one major firm recommends that a “conservative” investor’s portfolio should hold 20% stocks, 55% bonds, and 25% cash. Note that brokerage firms often fail to follow their own published asset allocation guidelines.

6. Use of Margin

A client who uses margin is borrowing money from the brokerage firm to buy more investments, usually stocks. Brokerage firms often fail to explain the full risks of margin. It can be extremely dangerous, especially in declining market. When the value of the account falls, the firm has the right to demand more collateral, via margin call, or to sell the account holdings, via liquidation.

For more on margin, see FINRA Investor Alert, *Investing with Borrowed Funds: No “Margin” for Error*, at www.finra.org/Investors/ProtectYourself

7. Options - Put and Calls

Trading options is extremely sophisticated and can be very dangerous. A “call” option gives the buyer the right to buy a given stock at a “strike price” over a set number of months. A “put” option does the reverse, giving the buyer the right to sell at the strike price over a set number of months.

Both types of option contracts allow the investor to speculate about which direction the stock price will head. This type of investing can be very close to gambling, and the full risks are frequently not explained by the broker.

8. Investment Names You Do Not Recognize

You can easily recognize “blue chip” stocks like Coca Cola and IBM. But if the client’s account statements are loaded with names you do not recognize, this may be a sign of trouble. High risk or “alternative” investments might include penny stocks, private placements, promissory notes, structured notes, derivatives, etc. Also, if an investment does not appear on the brokerage firm’s regular monthly account statement, this could be a sign of trouble.

9. Variable or Equity-Indexed Annuities

An annuity is a contract between the client and an insurance company, whereby the insurance company, in exchange for a lump sum payment, promises to make periodic payments to the client over an extended period of time. Annuities come in many varieties, including fixed, variable, and equity-indexed.

Annuities can be good investments for many clients, but they are extremely complicated and often misunderstood by the client. Moreover, annuities carry high commissions for brokers, creating an incentive for abusive sales practices.

For more on annuities see, NASD Notice to Members 00-44, and FINRA Investor Alert, *Should You Exchange Your Variable Annuity?* both at www.finra.org/Investors/ProtectYourself.

10. Problem Brokers

Clients can check out their broker’s regulatory history through FINRA “Brokercheck” at www.finra.org/Investors/ToolsCalculators/BrokerCheck. This website contains information on past customer complaints, discipline, and the number of firms where the broker has worked. Too many firms over a short period of time may be a sign of trouble.

Ryon M. McCabe is a partner with McCabe Rabin, P.A. in West Palm Beach. He represents investors in FINRA arbitrations against securities brokerage firms and handles business litigation matters throughout Florida in federal and state courts.

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No Email Friday?

By Christopher Hopkins, Chair, Law Office Technology Committee

Consider a day in your law practice without email. If you are a lawyer who receives 100 or more emails a day, the notion of a day-without-email is either a jarring thought or an impossible oasis from the tide of emails. Do you grab your iPhone when you get up or glance *one last time* at the Blackberry before bed? It is probably a bad habit rather than a conscientious work ethic. You may need better email management.

The concept of “No Email Friday” arose years ago out of technology companies – like Intel, the computer chip manufacturer – when it was recognized that engineers were spending more time tending to emails than collaborating in person or doing substantive work. The idea was to turn off email and let professionals focus on real work and person-to-person collaboration for one day. If you’ve spent a morning plowing through emails, only to return from lunch to see a new batch crop up, you may wonder how “productive” you have been.

Judging from a review of the news stories and blogs, however, “No Email Friday” existed for only a short period of time or, if it still exists at some companies, it lives quietly and without fanfare or propagation. There were no Google hits for law firms with such plans. In short, we may assume that institutional email blackouts every Friday may not be a workable solution. But are there other ideas for email management?

The practice of law involves times when you need to be constantly in touch – phone, faxes, letters, and people lined up at the door – as well as periods when you need concentrated focus to be studious, creative, and industrious. Using email to be productive certainly fuels that outside-world-connectivity but it is a hamper to when you need solitude to concentrate, research, and develop new ideas. You cannot multi-task those brain functions. Interruptions distract the process, causing inefficiency and, quite frankly, not your best work.

Turn Off Email Notifications. I have been in lawyers’ offices where Outlook pops up a message each time an email arrives. Turn off notifications on your PC and smartphone. That momentary notification on your screen creates a distraction and requires time for your mind to refocus on the task at hand. The re-focusing is more costly than the “ping” interruption.

Fall Out of Love With Multitasking. At some point in the 1990’s, the phrase “multi-tasking” crossed over from the technology sector into the mainstream. Computers are efficient and can handle several processes at the same time (“multi-tasking”) so a human performing the same function must be important and efficient. Actually, that’s quite wrong – hence the pendulum effort of “No Email Friday” also coming out of the tech sector. Don’t allow yourself to detour towards the web or email when you are halfway through drafting a motion or letter.

Stop Tending to the Garden of Emails. If you find yourself checking emails at any seemingly idle moment in your life (*e.g.*, before/after sleeping, walking to elevator, at hearings, with your kids) then you may want to reconsider who has control, you or the email. Your brain needs those episodes of downtime without stimulus. Facebooking and Twitter are stimulus and, in the end, probably a fair amount of noise. Allow your brain to rest. Facts will “stick” during that time and ideas

may arise. Even the most occupied lawyers could discipline themselves to check emails once an hour or at set intervals during the day. The next time you receive an email sent to more than one person, just sit back and wait an hour. You will likely find that the last response in the series of emails solves the problem – then you can delete the rest.

Stop Needless Replies. We have reached the point where email is fairly reliable, especially inside our own offices. Responses such as “thanks” and “ok” to smaller issues are unnecessary and time consuming for the sender and the recipient. You might protest that such a response is only polite but try this instead: talk to your co-workers and establish a relationship where you do not need to co-dependently confirm emails. You’ve just created a working bond and avoided interruption-and-refocus frustrations.

Consider How You Handle Email. This article could have easily been entitled “zero email inbox” since the concept of a perfectly empty email inbox may seem like a constant goal. Once you have disciplined yourself not to vigilantly guard against every incoming email intruder – or, better still, be patient in responding to group emails and let the invaders be vanquished by others’ responses – you need to accept the fact that you will have emails waiting for you. Do not make answering emails an emotional burden nor a scorecard for your day. Make sure you accomplish some “real” work and ensure that email is helping you reach that goal.

A quick test: if the foregoing (a) seems impossible, (b) comes across as solutions for someone who is less busy than you or (c) evokes even a subtle negative emotional response, you likely need to tend to your email habits. Start with a Friday off!

Christopher B. Hopkins is a shareholder at Akerman Senterfitt and is the chair of the PBCBA Technology Committee. You can interrupt him at Christopher.Hopkins@akerman.com.

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Rutherford Mulhall, P.A. is pleased to announce that **Rosemarie W. Guerini** has been appointed to the Board of Directors of the North County Section, Palm Beach County Bar Association.



Nellie L. King, owner of The Law Offices of Nellie L. King, P.A. in West Palm Beach was recently installed as the President-Elect of the Florida Association of Criminal Defense Lawyers at FACDL's 23rd Annual Meeting in Orlando.



Holly M. O'Neill, of Miller & O'Neill, P.L. in Boca Raton, recently became one of only nine attorneys in Florida to achieve dual board certifications by The Florida Bar in both will, trusts and estates and in elder law. Holly also has her LL.M. in taxation.



Nicole C. Morris (pictured) and **Eileen T. O'Malley** have formed The Law Offices of Morris & O'Malley, P.A., concentrating in the areas of probate, guardianship, estate planning and trusts, and business and real estate matters.

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RICHARD D. SCHULER
MICHELLE SUSKAUER

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

CALENDAR

November 2010

Wednesday, November 3,
8:30am-Noon
**Mediating the Construction Dispute
- Keys to Success (or Failure)
Construction Law CLE Seminar**
Bar Association Office

Thursday, November 4,
11:45am – 1:00pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room

Thursday, November 4, 5:30pm
**PBC FAWL
Membership Reception**

Friday, November 5, 8:00am
PBJA Seminar

Saturday, November 6, 7:00pm
**NCS Event
“12 Angry Men at the Maltz
Jupiter Theatre”**

Tuesday, November 9,
11:45am – 1:00pm
Judicial Luncheon
Main Courthouse,
North end of cafeteria

Tuesday, November 9,
Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Tuesday, November 9, 5:30pm
NCS Happy Hour with FAWL
Cabo Flats

Wednesday, November 10,
Noon – 1:00pm
NCS Board Meeting
Office of McHale & Slavin

Thursday, November 11
Court Holiday - Veteran's Day
Bar Office Closed

Friday, November 12,
8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Friday, November 12,
Noon – 1:00pm
**Probate/Guardianship
Committee Meeting
w/Probate Judges**
Main Courthouse

Saturday, November 13, 8:00am
**7th Annual Minority
Mentoring Picnic**
Amelia Earhart Park in Hialeah

Monday, November 15,
Noon – 1:00pm
BBC Committee Meeting
Bar Association Office

Wednesday, November 17,
Noon – 1:00pm
**Professionalism
Committee Meeting**
Bar Association Office

Wednesday, November 17, 5:00pm
**PBCBA Board of
Directors Meeting**
Bar Association Office

Thursday, November 18,
11:45am – 1:00pm
PBC FAWL Luncheon

Thursday, November 18, 5:30pm
YLS Happy Hour
Sky 309

Thursday, November 18, 5:30pm
**Palm Beach Chapter Federal Bar
Evening Reception**

Thursday, November 18, 6:00pm
PBJA Reception

Friday, November 19,
11:30am – 2:10pm
**Law Practice Technology
CLE Seminar
“Is Your Firm’s Website
Out of Compliance”**
Bar Association Office

Friday, November 19, 11 – 2
FAWL Holiday Bookfest
Barnes & Noble at City Place

Friday, November 19,
Noon – 1:00pm
**Cunningham Bar Assn.
Monthly Meeting**
Library @ Main Courthouse

Friday, November 19, 3:00pm
YLS Café Joshua Legal Seminar
Family Campus

Wednesday, November 24,
3:30pm – 4:30pm
**Corporate Counsel
Committee Meeting**
Bar Association Office

Thursday, November 25 – 26
Court Holiday – Thanksgiving
Bar Office Closed

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