



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

November 2013

Board of Directors Give thanks this Thanksgiving by donating Bears and Books!



Our Lawyers for Literacy Committee recently collected boxes of Bears and Books for National Adoption Day which takes place on November 22. Every child who participates in the program at the main Courthouse will receive a bear and a book! A huge thank you to all our members who donated a book, bear or money – you made a difference!



Mark your calendar for upcoming Membership Events

December 5:
Annual Holiday Party and Silent Auction

March 7, 2014:
Bench Bar Conference

April 29:
Annual Judicial Reception

May 2:
Law Day Luncheon with guest speaker
Former FL Supreme Court
Chief Justice Charles Wells

June 7:
Annual Installation Banquet

Save the date for our Holiday Party, December 5!

Mark your calendar and join us for our Annual Holiday Party and Silent Auction on Thursday, December 5 from 5:30 pm to 8:00 pm at Frenchman's Reserve Country Club in Palm Beach Gardens. Early registration is just \$35.00 and includes drinks, heavy hors d'oeuvres plus a chance to shop for holiday gifts at great prices!

We are always looking for auction items such as tickets to professional ballgames, electronics, artwork, jewelry, hotel accommodations, gifts for children and pets as well! If you have a gift to donate please call Lynne at the Bar Office at 687-2800. One hundred percent of the proceeds will benefit local charities sponsored by the Young Lawyers and North County Sections.



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THE

BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

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www.palmbeachbar.org

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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

"Could You Pass the Test?"

On behalf of the Law Related Education Committee, attorney Ron Herman recently gave an interactive presentation to members of the Rotary Club of Palm Beach. The mission of the Committee is to promote adult civic education and increase the understanding of the role of the court system. "Could You Pass the Test?" is an engaging presentation, where the audience plays a bingo game based on the questions given in the U.S. citizenship test. A recent study showed that one in three natural-born citizens who took the test failed, while 97 percent of immigrants who took it passed. Members of the Rotary Club immensely enjoyed the program, which involved active participation, laughing, and great fun, while learning about the U.S. and Florida Constitutions.



You too can be a presenter! Contact the Chair of the Law Related Education Committee, Liz Herman of Rosenbaum Mollengarden, PLLC at YHerman@r-mlaw.com or (561) 653-2900.

In Memoriam

Jerome F. Skrandel
1928-2013

John S. Wilbur, Jr.
1941 - 2013

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Announces Dina Keever Has Joined the Firm as Senior Counsel



dkeever@mccaberabin.com

- Former Federal Prosecutor
- Former Law Clerk, U.S. Court of Appeals for the Eleventh Circuit
- Former Editor-in-Chief, FSU Law Review
- Former Candidate for Palm Beach County State Attorney

Ms. Keever will handle both civil and criminal matters and concentrate on whistleblower/qui tam actions and complex litigation.

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President's Message



So What Are You Thankful For?

By Jill Weiss

Of all the holidays that my family and I celebrate, my most favorite by far is Thanksgiving. I love everything about it... watching the Macy's day parade in pajamas, cooking the turkey and sides, watching football in the afternoon, eating the turkey and sides and reflecting on why we are so thankful and lucky.

So I asked some of our members: Why are you thankful to be a lawyer practicing in Palm Beach County? Why are you thankful to be a member of the PBCBA? Here is a sampling of the responses I received:

I am thankful to be a member of the Palm Beach County Bar as it is the first bar organization I joined in my career and helped me get where I am today without limiting my exposure to other voluntary bars by offering so many co hosted events. *Nicole Hessen, Wender, Hedler & Hessen, P.A.*

I love practicing in PBC because of the quality of our judiciary and Bar members is of the highest caliber based upon a statewide comparison. The beauty and diversity of our county is also a huge reason why I chose PBC over many other Florida areas. *David Prather, Clark Fountain, LaVista, Prather, Keen & Littky-Rubin*

I joined the Palm Beach County Bar Association when I began practicing law in order to meet fellow attorneys and potential friends. That reason to join turned into a key benefit:, through my bar involvement I met attorneys from every practice group that I can both refer cases to and receive referrals from. This benefits my practice and my clients. *Jessica Callow Mason, Ciklin Lubitz Martens & O'Connell*

I am grateful that members of the PBCBA are always reaching out to the community in various ways. The overall charitableness of PBCBA members is significant. *Paul Shalhoub, Powers McNalis Torres Teebagy Luongo*

We are spoiled to practice law in a legal community that is recognized for its excellent lawyers and judges and its commitment to practicing with professionalism. Despite the population growth of Palm Beach County, the legal community in the County has successfully maintained its "small town" charm and camaraderie. *Grier Pressly, Pressly & Pressly, P.A.*

I'm grateful to be practicing in Palm Beach County, where the ocean and palm trees serve as the backdrop for a vibrant, close-knit legal community. I'm grateful to be a member of the PBCBA as it has given me a place to hone my legal skills, develop my leadership abilities, serve my community through rewarding volunteer projects, and become part of something larger than myself and my career. *Julia Wyda, Shapiro Blasi Wasserman & Gora, P.A.*

I am thankful to be a lawyer practicing in Palm Beach County because I can play golf, play tennis, and go to the beach with my family all in the same day in December. *Bill Lazarchick, The Law Office of Stuart R. Manoff & Associates*

I am thankful to be a PBCBA member practicing in Palm Beach County because as a solo practitioner it has provided a platform to meet other lawyers practicing various types of law. It has given me a comfort level where I can either pick up the phone to pick a fellow attorney's brain or have confidence that when I have an opportunity to refer a client to them, that client's matter will be handled appropriately. I feel fortunate to be a part of this great association and blessed to sit on the board as a Director. *Ned Reagan, Edward Reagan P.A.*

I am thankful to be a PBCBA member not only because of the great support it gives (CLE, discounts, networking etc.) but because the organization strives to maintain its membership as a cohesive group with numerous happy hours, special events, family events etc. It's not just an organization for lawyers, but for their families as well. *Rosemarie Guerini, The D'Amore Law Firm, P.A.*

I am thankful to have had opportunities to take on leadership roles in the PBCBA and help ensure that our profession remains professional and collegial. I am thankful for all the close friends I have made in the legal community and that the PBCBA is a truly "family friendly" organization. I am thankful to be part of a firm that is comprised not only of excellent attorneys, but values community and bar service. You would be hard pressed to find a better community in which to live and practice law. *Michael Napoleone, Richman Greer, PA*

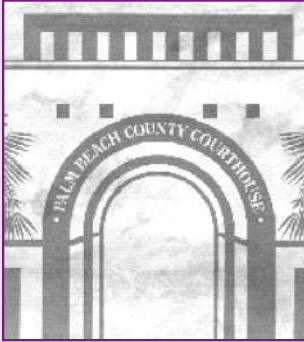
Many of us share these or similar sentiments. Personally, I am thankful that the PBCBA has such an incredible bar staff that makes everything we do look easy, I am thankful to our members who volunteer their time so unselfishly, and I am thankful for the opportunity to serve this organization. We all have so much to be thankful for. Happy Thanksgiving to you and your families.

Board Meeting Attendance

	August	September
Barnes	X	X
Huber	X	X
Kypreos	X	X
Mason	X	X
McElroy	X	X
Pressly	X	X
Rabin	X	X
Reagan	X	X
Stewart	X	X
Weiss	X	X
Whittles	X	X
Wyda	X	X
Xenick	X	X

15th Judicial Circuit Administrative Orders

www.15thcircuit.com/adminorders



REVISED ADMINISTRATIVE ORDERS

2 Series: General Administrative Orders

Administrative Order 2.312 - *Electronic Filing of Documents*. Amended September 20, 2013. Allows the Clerk to reject documents which from their face are clearly misfiled. Sets forth the process the Clerk is to follow for duplicate filings.

4 Series: Criminal

Administrative Order 4.401 - *Procedures for Arrests with Warrants for Violations of Probation*.

Amended August 29, 2013. Amends the procedure for scheduling first appearances on Violation of Probation charges.

5 Series: Unified Family Court

Administrative Order 5.603 - *Delinquency Drug Court*. Amended September 12, 2013. Amends the eligibility requirements for juvenile drug court.

Administrative Order 5.805 - *Truancy Court*. Amended September 10, 2013. Amends the name of the Chief Judge's designee.

11 Series: Internal Policies and Procedures

Administrative Order 11.105 - *Judicial Rotation Policy*. Amended August 23, 2013. Amends the procedure for the handling of cases returned to the trial division when the original trial judge has rotated out of the division.

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

- November 5: Employment Law Seminar
- November 8: Family Law Seminar
- November 15: Estate & Probate Seminar
- November 20: Criminal Law Luncheon Seminar
- November 22: Bankruptcy Law Seminar
- December 6: Personal Injury Law Luncheon Seminar
- December 13: Elder Law Seminar
- December 18: Criminal Law Luncheon Seminar
- January 14: Personal Injury Law Seminar
- January 15: Criminal Law Luncheon Seminar
- January 17: Technology Seminar
- January 24: Criminal Law Seminar
- January 31: Appellate Law Seminar
- February 10: ADR Seminar
- February 14: Employment Law Seminar
- February 19: Criminal Law Luncheon Seminar
- February 24: Employment Law Seminar
- February 28: Workers' Comp Seminar
- March 14: Employment Law Seminar
- March 19: Criminal Law Luncheon Seminar
- April 4: Family Law Seminar
- April 10: Elder Law Dinner Seminar
- April 11: Technology Seminar
- April 16: Criminal Law Luncheon Seminar
- April 24: Securities Law Seminar
- March 21: Paralegal Seminar
- May 21: Employment Law Seminar
- June 6: Community Association Law Seminar
- June 20: Employment Law Seminar



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

**The Patient Protection and Affordable Care Act,
What You and Your Clients Need to Know about "Obama Care."**

WEBINAR ONLY

November 5, 2013 - 11:55 a.m. - 1:15 p.m.

Program Schedule

- 11:55 am - 12:00 pm **Welcome** - *Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and Employment Law Attorney, Employment and Labor Law CLE Committee Chair*
- 12:00 pm - 1:15pm **Presenters:** *Joseph G. Santoro, Esq., Tanya M. Reed, Esq., and Steven D. Muscatello, Esq., Gunster*

This **WEBINAR** will examine the obligations and requirements of The Patient Protection and Affordable Care Act. There will be a 15 minute question and answer session following the presentation.

Please e-mail your questions to: cscott@floridalaborlawyer.com

This course is expected to receive **1.5 CLER / 1.5 Labor & Employ Law Certification credits** from The Florida Bar.

HOW TO REGISTER:

Attend this live **WEBINAR**: register here <http://www.palmbeachbarcle.org/>

Enjoy an "Early Bird" discounted registration cost of **\$35 each** for PBCBA members/paralegals; **\$75 each** for non-PBCBA members/paralegals; **OR** register for all four (4) webinars at **\$100** PBCBA members/paralegals; **\$260** non-PBCBA members/paralegals. After **10/29/13**, add \$15 late fee.

- **November 5, 2013** - "The Patient Protection and Affordable Care Act, What You and Your Clients Need to Know about "Obama Care" Presented by: *Joseph G. Santoro, Esq., Tanya M. Reed, Esq., and Steven D. Muscatello, Esq., Gunster, West Palm Beach, FL*
- **February 24, 2014** - "Representing Public Employees" Presented by: *Glenn J. Torcivia, Esq., Torcivia and Associates, P.A., West Palm Beach, FL*
- **March 14, 2014** - "Employment Arbitration" Presented by: *Matthew N. Thibaut, Esq., Ciklin Lubitz Martens & O'Connell, West Palm Beach, FL*
- **May 21, 2014** - "Restrictive Covenants. I'm Leaving My Job, Can I Compete? What Information Can I Use? Who's Coming With Me?" Presented by: *Dan Levine, Esq., and Joseph Curley, Esq., Gunster, West Palm Beach, FL*

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

_____ I will not be able to attend the webinar but would like to order the audio CD (allow 4 weeks for delivery) (11/5/13 Employ. Law.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

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YLS Miami Dolphins Football Outing



Members of the YLS took a bus down to a recent Dolphins game. And what a game it was...the Dolphins beat the Falcons, 27-23



YLS President Julia Wyda and Secretary Lou Delgado



Joel Lalla and his sister Leanna Lalla and Dane Leitner

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Circuit Court Report CIVIL DIVISIONS • As of September 24, 2013

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA BLANC	02-14	02-14	11-13	1233
AB GILLEN	04-14	04-14	11-13	1325
AD G. KEYSER	01-14	01-14	11-13	1406
AE FINE	01-14	01-14	10-13	1589
AF J. KEYSER	04-14	04-14	09-13	1275
AG CROW	04-14	03-14	10-13	1353
AH BROWN	03-14	03-14	12-13	1313
AI SASSER	01-14	12-13	09-13	1076
AJ J. MARX	01-14	01-14	12-13	1160
AN COX	04-14	04-14	12-13	1515
AO BRUNSON	02-14	01-14	09-13	1466

LAW OFFICE MANAGEMENT ASSISTANCE SERVICES (LOMAS) FOR SOLO & SMALL FIRM ATTORNEYS

Presented by Joseph Corsmeier
LOMAS Advisory Board Member - The Florida Bar

Thursday, November 7, 2013

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

Bar Office

Attend this one hour luncheon and learn how to grow your business in four steps:

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Including fees and fee agreements; withdrawal and non-engagement/disengagement letters; top malpractice issues; The Florida Bar's Law Office Management Assistance Service (LOMAS); Practice and Risk Management Client Representation Issues; plus, Best Practices/Risk Management Tips.



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Michael Rabideau, Esq.
Solo & Small Firm Committee Member



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This course is expected to receive CLE credit from The Florida Bar. The cost is just \$10.00 for PBCBA members; attorneys who are not PBCBA members are welcome for \$20.00; add \$5.00 if registered after 5:00 p.m. on 11.5.13

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Fourth DCA Addresses Patient-Psychotherapist Privilege

By Christopher R. Bruce

Nearly all family law practitioners will eventually be confronted with a case where the parties do not agree on parental responsibility and timesharing and it becomes necessary to critique an evaluation made by a forensic psychologist or elicit testimony from a child's treating therapist. Inherent to these cases are a slew of rules governed by administrative code sections containing too many digits to mention in this article as well as several technical rules related to the privilege and confidentiality of what happens in a therapist's office. Compounding the joy of navigating these rules is they don't apply often since deposing a mental health professional in a divorce case does not happen every day.

When dealing with custody litigation it is imperative to understand the reach of Florida's patient-psychotherapist privilege. The Fourth DCA recently addressed application of the privilege in contested custody litigation in *Carrillo-Jimenez v. Carillo*, 110 So. 3d 490 (Fla. 4th DCA 2013). This case is instructive as to the role a mental health therapist plays in disclosing (or not disclosing) confidential information obtained through therapy of a child-clients and also reaffirms the role (or lack of role) that the guardian ad litem program plays in this process.

Background: Section 90.503

Practitioners need to understand when the patient-psychotherapist is applicable before debating whether the privilege can be waived or asserted. Section 90.503 of Florida's evidence code addresses the privilege. Pursuant to section 90.503, the privilege only applies to confidential communications between a "psychotherapist" and a patient. A "psychotherapist" is defined in the statute to include psychologists, mental health counselors, and in certain circumstances, medical doctors, registered nurses and personnel working in certain types of treatment facilities.

When the privilege is applicable, it operates to allow a patient of a psychotherapist the right to "disclose, and to prevent any other person from disclosing, confidential communications or records made for the purpose of diagnosis or treatment of the patient's mental or emotional condition...". The statute allows the privilege to be claimed by the psychotherapist's patient, the patient's attorney, a patient's guardian/personal representative, or the psychotherapist on behalf of the patient.

Practice Tip: Just because there is a psychotherapist and a patient does not mean there is a privilege. There must be communications involving "diagnosis or treatment" of a "mental or emotional condition" for the privilege to be triggered.

Right to Claim Privilege in Custody Litigation

When psychotherapists are injected into contested custody litigation the dynamics often include one parent wanting to introduce the testimony of a child's psychotherapist while the other parent wants to keep the therapist from as far from the courthouse as possible. The question that arises in these cases is: "Who gets to decide whether my child's confidential communications with the therapist are privileged?". *Carillo* resolves this question and essentially leaves the decision to the child's therapist.

In *Carillo*, Judge Rosemarie Scher denied a father's request to strike a social investigation report on account of the report including confidential communications between the children and their psychotherapist. Part of the father's motion to strike was based upon the court not appointing a guardian ad litem for purposes of determining whether the child's patient-psychotherapist privilege should be waived or asserted. The father petitioned the Fourth DCA for a writ of certiorari following the denial of his motion to strike, claiming that the trial court's future consideration of the social investigation report's contents would disadvantage him in the dissolution proceedings.

In *Carillo*, the Fourth DCA denied the father's petition. Relying on *Hughes v. Schatzberg*, 872 So. 2d 996 (Fla. 4th DCA 2004), the court held that a parent involved in contested custody litigation lacks standing to assert the patient-psychotherapist privilege on behalf of their child "where the parent is involved in litigation seeking to pursue their own interests, and the child is not a party to the underlying action". Given the relative brevity of the *Carillo* opinion, it is worth important to note that *Hughes* states it is not an abuse of discretion for a divorce court judge to refuse appointing a guardian ad litem to assert or waive a child's patient-psychotherapist privilege. The rationale for this is section 90.503(3)(d) allows a psychotherapist to assert the privilege on behalf of the child when the therapist believes it is in the child's best interest to do so.

Bottom Line

Practitioners need to advise their clients that they have no legal ability to prevent their children's therapist from testifying about their child in contested custody litigation. Perhaps more importantly, therapists need to know that they are not prohibited from testifying just because a child's parent (who is likely paying for the therapy) "says no". Absent a valid assertion of the privilege, the Fourth DCA allows therapists to assert or waive the privilege on behalf of their child clients.

Christopher R. Bruce is a divorce and appellate attorney with Nugent Zborowski & Bruce. The firm's practice is limited to resolving divorce & child custody matters through mediation, litigation and related appeals. Christopher R. Bruce can be reached at (561) 844-1200 or cbruce@nugentlawfirm.com.

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



"Deposition Skills: Dealing with Difficult Counsel and Witnesses"

Friday, December 6, 2013 - 11:45am - 1:00 p.m.
Bar Association Office, 1507 Belvedere Road, WPB, FL

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** - *Michael W. Shiver, Jr., Esq.,
Steinger, Iscoe & Greene, P.A.*
- 12:05 p.m. - 1:00 p.m. **Deposition Skills: Dealing with Difficult Counsel and Witnesses**

*This knowledge-packed luncheon will provide a "masters class" on the how and why of professionally and ethically dealing with difficult and obstructive opposing counsel and witnesses in depositions. We are proud to present **Judge Meenu Sasser** of the 15th Judicial Circuit in and for Palm Beach County, as well as a "who's who" of the PBC plaintiff and defense bars – **Joseph Galardi, Esq.** of Beasley, Hauser, Kramer & Galardi, P.A., and **Barry Postman, Esq.** of Cole Scott & Kissane. Our panel will not only discuss specific, actionable ways of effectively controlling your next deposition, but will be available to answer your direct questions.*

This will be a shining opportunity for the newer attorney to see how these true professionals manage their opposition in key depositions, and a chance for the experienced practitioner to ensure their practice is truly state of the art in this area.

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This course is expected to receive **1.0 CLER including 1.0 Ethics** from The Florida Bar.

Early Registration cost is **\$40** for PBCBA members/paralegals; **\$80** for non-PBCBA members/paralegals if registered by 11/25/13; add \$15 to registration fee after that date.

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

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
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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

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

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

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Membership Luncheon Highlights

The PBCBA's annual Diversity Luncheon was recently held with guest speaker FL Bar President Gene Pettis.



PBCBA President Jill Weiss with FL Bar President Gene Pettis



Judges Catherine Brunson and Lucy Chernow Brown



PBCBA President-elect Theo Kypreos, Michelle Diffenderfer, Judicial Relations Committee Chair Joanne O'Connor and Past PBCBA and FL Bar President Scott Hawkins



Members of the Cunningham Bar Association Lynn Solomon, Jeanmarie Middleton, David Prather, Eunice Baros, Salesia Smith-Gordon, Chioma Deere, Tequisha Myles, Judge Edward Rodgers and Sandra Powery pictured with Gene Pettis



President Jill Weiss introduced new Chief Judge Jeff Colbath (L) and thanked outgoing Chief Judge Peter Blanc (R)



Judges Rosemarie Scher and Lisa Small



PBCBA Director Ned Reagan, Nellie King and Scott Suskauer



Nadine White Boyd and Larry Strauss



Restraint On Marriage

By: David M. Garten

As a general rule, a “restraint on marriage” provision in a Will or Trust is void as against public policy. However, devises in restraint of marriage are not void if they are reasonable in themselves, and do not directly operate as an undue restraint upon the freedom of marriage.

There are only two cases in Florida discussing restraint on marriage. The first case is *Jenkins v. Merritt*, 17 Fla. 304 (Fla. 1879). In *Jenkins*, the testator provided in his Will that he wanted his wife’s niece to be his daughter’s companion and help take care of her after his death because she was of “weak and imbecile” mind, “addicted to imprudent habits, requiring care and special attention.” The Will provided in part:

The said A. S. Merritt [“trustee”] will pay annually to my daughter Anna Maria Merritt [“daughter”], and my friend Sarah Elizabeth Rawls [“companion”], the interest accruing on said bonds during the lifetime of my said daughter Anna Maria Merritt; provided that the said Sarah E. Rawls shall reside with my said daughter, and if the said Sarah E. Rawls should cease to live with my said daughter, or my said daughter should die, the said Sarah E. Rawls not having left her, then and in that case the said A. S. Merritt is to pay to the said Sarah E. Rawls one thousand dollars in full for all her interest in said bonds, and her interest in said bonds is to belong to my daughter Anna Maria Merritt. [Emphasis added].

The year following the testator’s death, his daughter married Mr. Jenkins. The companion and Mr. Jenkins didn’t get along and she eventually moved out of their house. As a result, the trustee stopped making payments to the daughter. The daughter argued that the Will provision was a restraint on marriage and void. The court disagreed and reasoned that the will did not make marriage a condition of her enjoyment of the bequest. The court, in dicta, described the law of restraint on marriage as follows:

Even express conditions prohibiting marriage, as a condition of enjoying personal legacies, whether such conditions are precedent or subsequent, are not favored by the courts. [Citations omitted]

Mr. Justice Story thus states the general principle, (1 Story’s Eq., 280,) “conditions annexed to gifts, legacies and devises in restraint of marriage are not void if they are reasonable in themselves, and do not directly or virtually operate as an undue restraint upon the freedom of marriage. If the condition is in restraint of marriage generally, then, indeed, as a condition against public policy and the due economy and morality of domestic life, it will be held utterly void.”

The second case is *Raulerson v. Saffold*, 61 So. 2d 926 (Fla. 1952). In *Raulerson*, the former wife had certain property conveyed to her by her ex-husband in his will. The terms of

the will stated that the property was to be held and used by the decedent’s executors in any manner that in her careful judgment may seem to be in her best interest so long as she remained single. After the estate was closed, the former wife, who never remarried, subsequently conveyed the property to another. The court, in upholding the former wife’s conveyance, reasoned that “[w]hile restraints upon marriage are viewed with disfavor, a majority of courts hold that such a condition is valid where the person restrained is the spouse of the person imposing the restraint...” [Citations omitted].

Because Florida case law gives little guidance on this issue, it is necessary to look to other states and the Restatement of Trusts for guidance. To determine whether a provision in a Will or Trust is reasonable and does not operate as an undue restraint upon the freedom of marriage, you should ask the following questions:

1. Does the provision serve a valid purpose [*Estate of Gimbel*, 42 N.Y.S.2d 253 (N.Y. 1943); *Lewis v. Searles*, 452 S.W.2d 153 (Mo. 1970)]?
2. Is the provision limited in time [*Restatement of the Law Third of Trusts* §29, page 63, Illustration #2]?
3. Is the provision a condition precedent such that there is no “dead hand” control or attempt to control the future conduct of the beneficiary by means of a forfeiture of the bequest [*Estate of Max Feinberg*, 235 Ill. 2d 256, 919 N.E.2d 888 (Ill 2009)]?
4. Was the beneficiary timely made aware of the provision [*Shackelford v. Hall*, 19 Ill. 211 (Ill. 1857)]?

For an expanded discussion on this topic, including copies of cases and the relevant portions of the Restatement of the Law Third of Trusts §29, refer to my web site at: Gartenlaw.com



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The Estate and Probate Law Continuing Legal Education Committee presents:

“The 31st Annual Estate and Probate Seminar–Part 1”

Friday, November 15, 2013 - 7:30a.m.- 12:30p.m.

Marriott West Palm Beach
11001 Okeechobee Blvd., West Palm Beach, FL



Program Schedule

- 7:30a.m. - 8:20a.m. BONUS SEGMENT:**
PRIMER” Estate Administration - *Jordan R. Hammer, Esq., and Jeffrey H. Skatoff, Esq., Clark Skatoff, P.A.*
- 8:00a.m. - 8:35a.m. “Hot” Breakfast Buffet / Late Registration and Check In**
- 8:35a.m. - 8:40a.m. Welcome & Opening Remarks** - *John M. Severson, Esq., Florida Bar Board Certified Wills, Trusts & Estates Attorney, Burns & Severson, P.A., Committee Chair*
- 8:40a.m. - 9:00a.m. Separate “Writings** - *Robert Lee McElroy, IV, Esq. and Jamison C. Evert, Esq., Downey & Downey, P.A.*
- 9:00a.m. - 9:30a.m. E-Filing - An Update** - *A representative from the office of Sharon R. Bock, Esq., Clerk & Comptroller of Palm Beach County*
- 9:30a.m. - 10:00a.m. Closing Estates –** *Leslie S. Hogan, Esq.*
- 10:00a.m. - 10:15a.m. BREAK**
- 10:15a.m. - 11:00a.m. Malpractice/Malpractice Avoidance** - TBA
- 11:00a.m. - 11:45a.m. Weapons - Gun Trusts** - *Nick Davitian, Esq., Firearm Estate Services*
- 11:45a.m. - 12:30p.m. DOMA** - *George D. Karibjanian, Esq., Florida Bar Board Certified Wills, Trusts & Estates Attorney, Proskauer Rose, LLP*

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estate & trust litigation

This course is expected to receive 5.5 CLER; Ethics & Certification credits are pending from the Florida Bar. Early registration cost for the seminar, which includes breakfast, is \$225 for PBCBA member attorneys/paralegals; \$265 for non-PBCBA member attorneys/paralegals if registered by 11/8/13; add \$25 late fee after that date. All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

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

HOW TO REGISTER	BY CHECK Return this form	BY CREDIT CARD For security purposes, your must register online at www.palmbeachbar.org	CLE	Materials will now be emailed to all registrants prior to the seminar
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Can't leave your office? Attend this via live **WEBINAR**: register here <http://www.palmbeachbarcle.org/>

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) (Estate/Probate Seminar 11/15/13) 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



Lawyer's Guide to iOS 7

By Christopher B. Hopkins

The American Bar Association reports that 85% of lawyers use smartphones and more than half are iPhones. Nine out of ten tablet-carrying lawyers use an iPad. Meanwhile, Apple's iOS 7 was released this September and, within a few days, over 200 million users updated. So now what do you do with it? This short guide will explain the two primary changes – Control and Notification Centers – and explain some iOS 7 tips and features.

First, let's discuss the Control Center. Using your thumb, swipe from the bottom of the screen upwards. You now have instant "control" over airplane mode, wifi, brightness and other settings *plus* quick access to the flashlight, clock, calculator, and camera. In short, what used to take several steps to access is now available with a simple gesture.

Second, access the Notification Center by swiping down from the top of the screen – this page provides "notifications" from various apps, such as your calendar, stocks, reminders, and any other app which wants your attention. Go to Settings/ Notifications and turn off the apps which excessively want your attention – like games and music apps. An unclogged Notification Center is a more useful tool for your calendar and important notifications.

Follow these steps for better control over your iDevice:

Protect Your Privacy (Location): Go to Settings / Privacy / Location Services and turn off any apps that really do not need to know your location. Then scroll all the way down to "System Services" to find the real demons: turn off Diagnostics & Usage, Frequent Locations, and any other invasive settings.

Protect Your Privacy (Ads): Step one, under Settings / Privacy, scroll down to Advertising to turn on "Limit Ad Tracking." Step two, on that same page, hit "Reset Advertising Identifier." Step three, go back out to Settings / Safari to turn on "Do Not Track."

Search Your Device: You used to swipe to the left of the main page to access the "Spotlight" search tool. It moved. Swipe down from the top row of icons for the search bar to appear.

Make Text Bigger or Bolder: For our aging iDevice users, head over to Settings / General / Text Size to increase the font size. You can also make the new font a little bolder by going to Settings / General / Accessibility / Bold Text.

Ringtones, Vibration & Flashing: Check out the host of new ringtones under Settings / Ringtones. Create your own vibration by then hitting Vibrations / Create New. Give your contacts their own ringtone or vibration by going to Contacts, finding the person's profile, hit "i" and then scroll down for the settings. Want your camera light to flash when you get a call? Head to Settings / General / Accessibility / LED Flash for Alerts.

What's Eating Your Cellular Data? See which overactive app is using too much cellular data under Settings / Cellular and

scroll down. Turning it off means the app only sends / receives data over WiFi.

What Time Was That Text Sent? On the Messages screen, use your left thumb to swipe from the right to left side of the screen. That gesture "pulls" the right margin to show the timestamp for each text.

Turn Off Text "Read Receipts": Why should others know when you read their text? Go to Settings / Messages and turn off "Send Read Receipts."

Edit Your Text Conversations: Want to show someone your text conversation except for a few choice comments? You can delete individual texts (while keeping the rest of the stream) by holding down the individual text and selecting "more." Put check marks next to specific texts, hit "delete all," and you now have sanitized your conversation. Parents beware.

Block Callers and Texters: Don't want to hear from someone? Go to Settings / Phone (or Messages) and select "Blocked."

Automatic App Updates: Want your device to always have the latest version of your apps? Go to Settings / iTunes & App Store and slide "Updates" to the right.

Automatic Background Refresh: Most apps do not really need to constantly refresh in the background when you are not using them. Save your battery and turn some or all of them off. Frequent travelers might want to keep travel apps on.

Instagram-like Filters: Want to take photos with b&w, instamatic, or other filters? In Camera, tap the overlapping circles icon to the right of the button and select your theme.

"Burst" of Photos: Don't miss a moment of the action. When taking a picture, just hold down the button. Your camera will take a quick burst of pictures.

Change Siri: Change Siri's voice at General / Siri / Gender. If Siri mispronounces something, train her/him by saying, "That's not the way you say it."

Don't Like Zooming / Dynamic Effects? Turn them off (or down) at General / Accessibility / Reduce Motion.

Use Your Phone Like a Level: In Compass, swipe left to a new screen.

Check Settings of Any App: Just ask Siri to "Open [name] app settings."

Christopher B. Hopkins is a shareholder at Akerman Senterfitt. While your device responds well to flipping gestures, he prefers emails at christopher.hopkins@akerman.com.



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

"Visual Evidence/Trial on a Shoestring Using iPad"

Friday, January 17, 2014 - 11:45a.m. – 1:00p.m.
Bar Association Offices
1507 Belvedere Road, WPB, FL

Program Schedule

- 11:45 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 12:00 p.m. - 12:05 p.m. **Welcome & Opening Remarks** - *Edwin M. Walker, III, Esq., Walker Law Firm, P.A. Committee Chair*
- 12:05 p.m. - 12:15 p.m. **Equipment and software needed to present visual evidence to the Jury without the need of support staff** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:15 p.m. - 12:20 p.m. **Downloading evidence to the iPad** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:20 p.m. - 12:45 p.m. **Presenting evidence to the Jury through the iPad including pictures, documents, google earth, having witlessness highlight, zoom in and out, and annotate evidence live for the jury while on the stand** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:45 p.m. - 1:00 p.m. **Open floor for question and answer session**

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This course is expected to receive 1.0 CLER from The Florida Bar.

The **early registration** cost of the seminar is **\$25.00 (includes lunch)** for PBCBA members/paralegals; **\$65.00** for non-PBCBA members/paralegals if registered by **1/10/14**; add \$15 to registration fee after that date.

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

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.

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

Dear Professionalism Committee,
I was recently involved in what I considered to be an unprofessional encounter and seek your advice. I was at the Palm Beach Courthouse outside of the Judge's courtroom waiting for a hearing. I sat on the bench with opposing counsel for about 15 minutes before the hearing began. When opposing counsel began her argument, she handed me, for the first time, cases on which she planned to rely in support of her argument. I was distracted and seething because I did not have an opportunity to read the cases before the hearing especially when there was abundant time for me to do so, while we both sat there waiting for the hearing to begin. What should I do next time? Am I wrong to feel upset about this?

Sincerely,
Livid Lawyer

Dear Livid Lawyer,

Your opponent violated at least one principle of professionalism, and did not display good advocacy. First, your opponent violated goal 2.6 of the Ideals and Goals of Professionalism, published by The Florida Bar, which provides that authorities should be provided to opposing counsel "sufficiently in advance of any related hearing to assure both the Court and opposing counsel have a reasonable opportunity to review it before hand." Section IV.2 of the PBC Standards of Professional Courtesy advises counsel to deliver authorities to opposing counsel at or before the time they are submitted to the Court (this section was directed at the practice of some lawyers who would hand deliver a memorandum to the Court and drop it in the mail to opposing counsel, so that the unsuspecting lawyer would show up at the hearing and learn that the Judge had read the hand delivered memorandum which had yet to be delivered by the postal service).

This principle reminds us of the point of having a hearing – to allow the Court to meaningfully understand the relevant law, analyze how it applies to the facts presented and make a sustainable decision. Attorneys best assist the Court in that process by providing both the Court and opposing counsel with ample time to review the authorities before the hearing. This preparation promotes the ability to

have a well-informed discussion of the merits of the motion. Your opponent chose gamesmanship over advocacy and assistance to the Court. When provided last minute, neither the Court nor counsel are in a position to give much thought to those authorities. The practice will surely irritate the Court because it will not be able to decide the motion efficiently.

Along these lines, Section D.2 of The Florida Bar guidelines for professional conduct requires papers, including case law, not to be served at the time of the court appearance "unless the proponent agrees to give opposing counsel reasonable time following the court appearance in which to respond to the papers." This principle would apply if, for some reason, something new occurred at the hearing where it then became appropriate to discuss authorities not previously considered relevant. Good advocates, however, put the Court in the very best position to make a reasoned decision at the time of the hearing or shortly thereafter. It is simply bad manners and bad strategy to keep the applicable law from the



Court and counsel until the last minute.

So, to answer your question, set a good example. Next time, send your authorities to opposing counsel well before the hearing and request your opponent to do the same. That generally works. If not, you should ask the Court for a reasonable period of time to review whatever of authorities were provided at the hearing, under guidelines Section D.2.

You may want to include in your letter to counsel a copy of The Florida Bar Guidelines for Professional Conduct, Section D.2., which requires papers, including caselaw, not to be served at court appearances "unless the proponent agrees to give opposing counsel reasonable time following the court appearance in which to respond to the papers;" or The Ideals and Goals

Continued on Page 11

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

"The 16th Annual Elder Law Seminar"

Friday, December 13, 2013 - 8:00a.m. - 2:00p.m.
Bar Association Offices - 1507 Belvedere Rd., WPB 33406

Program Schedule

8:00am - 8:20am	Late Registration - Check In
8:20am - 8:30am	Welcome - Opening Remarks - Benjamin H. Greenberg, Esq., Chair PBCBA Elder Law Affairs Committee, Greenberg Elder Law Services, LLC, Delray Beach, FL
8:30am - 9:10am	Guide to Spotting Client Issues and Opportunities: Veteran's Compensation and Pension, the Basics of Medicaid Eligibility for Nursing Home Care - Gregory G. Glenn, Esq., Certified Elder Law Attorney, Elder Law Foundation, Gregory Glenn PA, Boca Raton, FL
9:10am - 9:55am	Medicaid and Florida Legislative Update - Ellen S. Morris, Esq., Elder Law Associates, PA, Boca Raton, FL
9:55am - 10:10am	Break
10:10am - 11:00am	The Capacity of Trust Litigation: Understanding the Issues - Peter J. Forman, Esq., Gutter Chaves Joseph Rubin Forman Fleisher Miller, Boca Raton, FL
11:00am - 11:50am	Annual Tax Law and Ethics Update - Michael A. Lampert, Esq., Michael A. Lampert, P.A., Florida Bar Board Certified Tax Attorney, West Palm Beach, FL
11:50am - 12:20pm	LUNCH (included in registration)
12:20pm - 1:10pm	Elder Law Mediation and Shared Family Decision Making - Elinor Robin, PHD, Circuit Court Certified Mediator, Mediation Training Group, Inc., Boca Raton, FL
1:10pm - 2:00pm	Crimes Against Seniors, Prevention and Prosecution - Michael Rachel, Assistant State Attorney for the 15th Judicial Circuit, Chief of Economic Crimes; and Kathryn Lewis-Perrin, Assistant State Attorney for the 15th Judicial Circuit

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Estate & Trust Litigation



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This course is expected to receive 6.5 CLER including 1.0 Ethics credits / Certification credits are pending from The Florida Bar.

Early registration cost for the seminar, **including lunch**, is **\$175** for PBCBA members/paralegals, **\$215** for non-PBCBA members/paralegals, if registered by 12/6/13. **Add \$25 to registration fee after that date.**

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

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

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For security purposes, you must register online at www.palmbeachbar.org



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

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

Name: _____ Telephone: _____

Address: _____ e-mail: _____

___ I will not be able to attend the seminar but would like to order the CD Rom. (allow four weeks for delivery) (Elder Law 12/13/13)

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

LOOKING TO RECRUIT DIVERSE ATTORNEYS?

The Committee for Diversity and Inclusion Introduces the Diversity Placement Database

The screenshot shows the website's header with navigation links: WELCOME, REQUEST PASSWORD, VIEW AVAILABLE JOBS, POST AVAILABLE JOBS, and PBCBA HOME. Below the header, the title reads "Palm Beach County Bar Association Diversity Placement Database" with a sub-header "View job postings available in Palm Beach County". A circular logo for the Palm Beach County Bar Association is visible. The main content area is titled "WELCOME" and includes a "Welcome, Guest / Log in" link. There are three main sections: "Job Seekers" (with a magnifying glass icon) explaining that a one-time registration is required for access to the jobs database and that identity remains anonymous; "Employers" (with a plus sign icon) explaining that users can manage their job listings, which remain active for 30 days; and a box stating that participating employers are equal opportunity employers committed to increasing diversity.

The Diversity Placement Database (DPD) is designed to be a useful tool for law firms and government agencies eager to recruit attorneys from diverse backgrounds. The DPD:

- is FREE
- allows interested candidates and employers to find each other EASILY
- allows you to register QUICKLY and
- gives you the ability to post and describe open attorney positions DIRECTLY

The DPD can be found under the "Diversity" tab on the PBCBA's new and improved website – <http://www.palmbeachbar.org>.



Scan the QR code above to go the Diversity Placement Database for more details and to register!

Visit the Bar's New Website!

Be sure to see the new features of our revised site:

- Online member directory
- Expanded calendar of events
- Searchable articles
- More information for new attorneys

And much more... visit today: www.palmbeachbar.org



Professionalism Corner

Continued from page 10

of Professionalism, also published by The Florida Bar, which provides in Goal 2.6 that authorities should be provided to opposing counsel "sufficiently in advance of any related hearing to assure both the Court and opposing counsel have a reasonable opportunity to review it beforehand."

In conclusion, we think a good advocate sets the tone for how litigation will proceed by being up front and prepared for hearings. That preparation should include notifying counsel and the Court of the authorities on which you will rely well before the hearing. If your case strategy depends on some element of surprise or gamesmanship, that is not a very good strategy.

Sincerely,
The Professionalism Committee

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

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

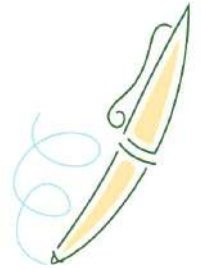


Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.

MOCK TRIAL SCRIPT WRITING CONTEST!

You Could Win A HP Laptop Computer
from Office Depot!



What Will You Write About?

The Law Week Committee needs new fact patterns for Mock Trials. Scripts need to be no more than 30 minutes and can be written for elementary, middle or high school students. Be creative and enter the contest!



Prizes:

First Place: HP Laptop

(6GB of RAM in addition to the 7GM hard drive. Windows 7 operating system)

Second Place: Dinner for two at III Forks

Third Place: Crystal Candy Dish

Fourth Place: Be our guest at the Law Day Luncheon

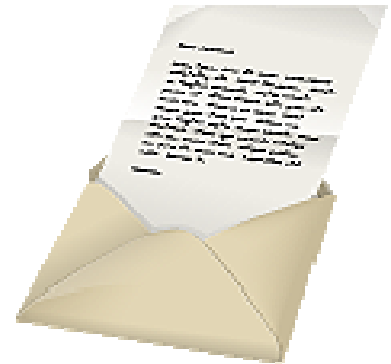
Send Your Script to:

Palm Beach County Bar Association
c/o Mock Trial Script Writing Contest
1507 Belvedere Road
West Palm Beach, FL 33406

Or, email: lpoirier@palmbeachbar.org

Scripts will be judged by the Law Week Committee in January. Winners will be notified shortly after. All scripts will be used once approved.

Deadline: December 15, 2013



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.

Vanesti E. Brown: Law Student Membership; St. Thomas University.

Ana Cohen: Nova Southeastern University, 2007; Associate in Shapiro, Fishman & Gache, LLP, Boca Raton.

Elizabeth Gormley: University of Maine Law School, 2011, Associate with LaBovick Law Group in Palm Beach Gardens

Christopher Harris: Barry University, 2013; George E. Harris, P.A., Palm Beach Gardens.

John O. Hopkins: Admitted to The Florida Bar in 1988, solo practitioner in Boca Raton

Christina M. Martin: Pacific Legal Foundation, Palm Beach Gardens.

Scott P. Schlesinger: Schlesinger Law Offices, P.A., Ft. Lauderdale.

Thomas Sciacca: Pace University; Sole Practitioner, New York.

Courtney R. Soria: Florida A&M University, 2010, Partner in Courtney R. Soria, P.A. Boca Raton.

Katherine Thomason: University of Florida 2013; Fourth DCA, West Palm Beach

Shannon Timmann: Georgetown University, 2012; Fourth District Court of Appeal, West Palm Beach.

Lance Weber: University of Missouri-Kansas City, 1997, Associated with Human Rights Defense Center, Lake Worth.



Discount Movie Tickets Make Great Gifts for the Holidays!



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 - \$8.00 each**

* **Regal Theaters \$8.00 each**

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

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CLE On-Demand: Anytime & Anywhere

The PBCBA's seminars are available for immediate delivery through our website. You can purchase any of our seminars in MP3 format for immediate download, or you can still request a CD that will be mailed to you. We have a large library of courses recorded not only from our seminars but also those presented by the Orange County, Hillsborough County and Clearwater Bar Associations. If your CLE deadline is coming up, be sure to check out our site to order your CLE today! www.palmbeachbar.org

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IN NEED OF CLE CREDIT? WE CAN HELP!

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audio CD's recorded at previously held live seminars of the Association.

We also have copies of audio CD's of live seminars from the Orange Co. Bar Assoc. (OCBA), Clearwater Bar Assoc.(CBA), Hillsborough Co. Bar Assoc.(HCBA), and the Dade Co. Bar Assoc. (DCBA).

Members and non-members alike can benefit from this simple way of acquiring CLE and Ethics hours.

To view courses available for ordering, please check the box next to your desired category and click course title to view course details and ordering information.

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My Experience Teaching About the American Legal System in Korea

By David Steinfeld, esq.

Recently, I had the amazing opportunity to teach South Korean law students about the American legal system at Dankook University Law School. As a consequence of their world-wide business activities, Korean companies like Samsung, Hyundai, and LG are exposed to liability in various jurisdictions and their attorneys now need to understand those systems.

Over one-hundred students and faculty attended my class. I began by explaining the origin of our legal system and why and how it diverged with the Constitution and Bill of Rights. Then we examined our federal and state systems and how the three branches of government work and balance each other. For that, I drew upon my experience with the Bar's Justice Teaching Program, which is a worthwhile endeavor and one that all attorneys should experience.

I next discussed how laws are actually



made in the United States and how lawyers are “made”, as well. Naturally, that interested the law students who attended. I concluded with an overview of how a business dispute is constructed and the various phases of a jury trial. Because Korea does not have a jury system, that aspect of the American legal system was the most fascinating to the students.

The students were attentive and interested. Their well-reasoned questions

at the end confirmed that they grasped the material well. One young man asked whether Korean college students could attend law school in the United States, pass a Bar, and practice law if they chose. A young girl next asked what the ramifications were for people who failed to appear in response to a jury summons. Following that, another young woman asked how American attorneys handle the biases and prejudices of jurors. In her question, she referenced the recent Zimmerman trial, which was highly publicized even in Korea. She expressed her view that from what she saw on the news, the case seemed to turn on the issue of race. She and other students were very interested to understand how our jury system is able to ensure fairness to litigants given the natural prejudices and biases of prospective jurors.

Dankook University Law School has asked me to return and I am very much looking forward to presenting more in-depth courses there on the American legal system in the future.

David Steinfeld is Board Certified in Business Litigation and owns the Law Office of David Steinfeld in Palm Beach Gardens. He is a Board Member of the North County Section, Chair of the Business Litigation CLE Committee, and serves on the Professionalism Committee. Informative videos and articles on business law are available at www.thepalmbeachbusinesslawyer.com.

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Can A Defendant Waive a Stern Objection?

by Jason S. Rigoli

In *Stern v. Marshall*, -- U.S. --, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011), the United States Supreme Court held that a bankruptcy judge did not have the constitutional authority to issue a final judgment on a state law counter-claim, even though Congress had granted the bankruptcy court statutory authority to do so.

Since *Stern*, the question is whether a party can waive their constitutional right to have a matter decided by an Article III judge and allow the bankruptcy judge to enter final orders. The Sixth and Seventh Circuits held that a party cannot waive this right, but the Ninth Circuit held that a party can waive their right to have a matter decided by an Article III judge. On June 23, 2013, the United States Supreme Court granted certiorari in the case *Executive Benefits Insurance Agency v. Arkinson* (*In re Bellingham Ins. Agency, Inc.*), 702 F.3d 553 (9th Cir. 2012) *cert. granted* 133 S.Ct. 2880, 81 USLW 3582, 81 USLW 3695, 81 USLW 3702 to resolve, among other questions, the question of whether a non-creditor could waive their right to have a matter determined by an Article III Judge even if the issue was considered a core matter.

In *Bellingham*, the trustee sought to avoid and recover transfers made by the principal of the Bellingham, which included funds from Bellingham used to incorporate Executive Benefits Insurance Agency ("EBIA") the day after ceasing operations of Bellingham as well as commission income directly deposited in EBIA's accounts. The Bankruptcy Court granted summary judgment in favor of the Trustee and entered a final judgment for \$373,291.28. EBIA appealed to the federal district court, which affirmed. EBIA then appealed to the United State Court of Appeal, Ninth Circuit, where it

raised for the first time an objection to the authority of the bankruptcy court to enter a final judgment on the Trustee's fraudulent transfer claims.

The Ninth Circuit determined that EBIA had waived its right to be heard in an Article III court, or impliedly consented to adjudication of the issue by the bankruptcy court. 702 F.3d 567. The Ninth Circuit relied on *Commodity Futures Trading Com'n v. Schor*, 478 U.S. 833, 106 S.Ct. 3245, to reason that "'Article III, § 1's guarantee of an independent and impartial adjudication by the federal judiciary of matters within the judicial power of the United States ... serves to protect primarily personal, rather than structural, interests.'" *Id.* at 567 (quoting *Schor*, 478 U.S. at 848, 106 S.Ct. 3245). Therefore, it concluded that "as a personal right, Article III's guarantee[s] ... [are] subject to waiver." *Id.* The *Bellingham* Court found that the structural interests were not harmed "because bankruptcy judges are 'officer[s] of' the district court and are appointed by the Courts of Appeals." *Id.* (citing 28 U.S.C. §§ 151, 152(a)(1)).

The Sixth and Seventh Circuits, disagree with the rationale of the Ninth Circuit's opinion in *Bellingham*. The Sixth Circuit in *Waldman v. Stone*, 698 F.3d 910 (6th Cir. 2012), held that a *Stern* objection to the bankruptcy court's constitutional authority to enter a final judgment against a non-creditor is not waivable. *Id.* at 917-18. And, the Seventh Circuit, in *Wellness Intern. Network, Ltd. v. Sharif*, -- F.3d --, 2013 WL 4441926 (7th Cir. 2013), agreed with the reasoning in *Stone*. The disagreement between the circuits arises from the dual protections provided for in Article III, § 1. Article III, § 1 provides "safeguards [for] litigants' right to have their cases decided by independent and impartial judges, and it

also operates as an inseparable element of separation of powers by protecting the judicial branch from encroachment by the political branches." *Id.* at *14 (Citing, *Stern*, 131 S.Ct. at 2608-09; *Schor*, 478 U.S. at 848-50, 106 S.Ct. 3245; *N. Pipeline*, 458 U.S. at 58, 102 S.Ct. 2858 (plurality opinion)).

Unlike the Ninth Circuit, the Sixth and Seventh Circuits determined that because Article III, § 1 concerns the structural principles of the constitutional government, even if the personal interest may be greater, the parties cannot consent, or waive their objection to the constitutional difficulties imposed thereby. *Id.* See also, *Stone*, 698 F.3d at 918 ("The issue here is not so much the aggrandizement of the Legislative or Executive Branches, as it is the diminution of the Judicial one. 'Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial decision making if the other branches of the Federal Government could confer the Government's 'Judicial Power' on entities outside Article III.' ... To the extent that Congress can shift the Judicial Power to judges without those protections, the Judicial Branch is weaker and less independent than it is supposed to be.") (internal citations omitted).

Stern v. Marshall is not the end of the debate on determining the breadth of constitutional authority a bankruptcy court has to enter a final judgment against a non-claimant defendant. The answer from the Supreme Court on this issue could have significant and far reaching effects on bankruptcy practitioners.

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

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



“Evidentiary and Ethical Issues in Bankruptcy”

Friday, November 22, 2013 - 11:45a.m. - 2:00p.m.

Bar Offices - 1507 Belvedere Rd., WPB

Program Schedule



- 11:45am - 12:00pm **Check In / Late Registration**
- 12:00pm - 12:25pm **Buffet Lunch**
- 12:25pm - 12:30pm **Welcome - Opening Remarks** - *Brian K. McMahon, Esq.,
Brian K. McMahon, P.A., Bankruptcy CLE Committee Chair*
- 12:30pm - 2:00pm **Evidentiary and Ethical Issues in Bankruptcy** -
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By Manuel Farach

Steinberg v. Winn-Dixie Stores, Inc., – So.3d –, 2013 WL 4525305 (Fla. 4th DCA 2013).

Pursuant to Rule Regulating the Florida Bar 4–3.7, an attorney who has personal knowledge of the facts of a case can be disqualified only if the attorney is a necessary witness on behalf of her client.

Generally, disqualification should not occur if the opposing party calls the lawyer as a witness.

Yang v. Sebastian Lakes Condominium Ass’n, Inc., – So.3d –, 2013 WL 4525318 (Fla. 4th DCA 2013).

Merely uttering the “magic words” under Fla. Stat. 90.803 (6) (a) is not sufficient; a witness must be able to testify as to the foundation of the business records.

In re Hood, – F.3d –, 2013 WL 4574249 (11th Cir. 2013).

The act of filling in blanks in a pre-printed *pro se* bankruptcy petition is not drafting or “ghostwriting” in violation of Rule Regulating the Florida Bar 4–1.2(c).

Port Marina Condominium Ass’n, Inc. v. Roof Services, Inc., – So.3d –, 2013 WL 4726923 (Fla. 4th DCA 2013).

An action against a supplier for the implied warranty of fitness and merchantability for condominiums, Fla. Stat. § 718.203, must allege the defendant is a supplier of materials to a condominium; the materials fail to conform to the generally accepted standards of merchantability applicable to goods of that kind, or fail to conform to the requirements specified in the contract, and the failure of the goods to conform is a proximate cause of the plaintiff’s damages.

Turton v. Singer Asset Finance Co., L.L.C., – So.3d –, 2013 WL 4727388 (Fla. 4th DCA 2013).

Statements in employment contracts do not constitute terms of employment, i.e., do not give rise to enforceable contract rights unless the statement induces an employee to refrain from acting separately from contact duties. Summary judgment regarding a plan is improper when impossible to determine whether intent was to induce merely to motivate employees or prevent them from exercising a right to terminate employment.

Williams v. Washington, – So.3d –, 2013 WL 4996466 (Fla. 1st DCA 2013).

Summary judgment is a pretrial mechanism that cannot be invoked after trial.

New Jerusalem Church of God, Inc. v. Sneads Community Church, Inc., – So.3d –, 2013 WL 4859091 (Fla. 1st DCA 2013).

Florida follows the “deference approach” with regard to interchurch property disputes such that courts will generally defer to the hierarchical church’s decision.

McGee v. Commonwealth Land Title Ins. Co., – Fed.Appx. –, 2013 WL 4850298 (11th Cir. 2013).

Under Fla. Stat. § 718.110 (10), a Declaration of Condominium is effective to create a condominium notwithstanding defects in the declaration unless an action challenging the condominium is brought within three years.

Cricket Properties, LLC v. Nassau Pointe at Heritage Isles Homeowners Ass’n, Inc., – So.3d –, 2013 WL 5288863 (Fla. 2d DCA 2013).

Community association covenants are not eliminated by a tax deed sale under Fla. Stat. § 197.573(2), but any outstanding association liens or dues are eliminated.

CVS EGL Fruitville Sarasota FL, LLC v. Todora, – So.3d –, 2013 WL 5225769 (Fla. 2d DCA 2013).

Property appraiser assessments are reviewed by using only the standards set forth in Fla. Stat. § 194.301; the “any reasonable hypothesis” standard for upholding tax appraiser assessments is legislatively abolished.

JPMorgan Chase Bank, Nat. Ass’n v. Bigley, – So.3d –, 2013 WL 5226054 (Fla. 3d DCA 2013).

Private postage meter stamp is competent evidence that can rebut the presumption created by the date of certificate of service on a court paper.

In re Amendments to Florida Small Claims Rules, – So.3d –, 2013 WL 5355064 (Fla. 2013).

The Small Claims Rules are amended to clarify that equitable relief can be sought in Small Claims Court, when a party can testify telephonically, and when non-lawyers can represent a company.

Focht v. Wells Fargo Bank, N.A., – So.3d –, 2013 WL 5338048 (Fla. 2d DCA 2013).

Standing at time of filing suit must be conclusively proven notwithstanding that standing at time judgment is undisputed. The Second District Court of Appeal certifies the following question of great public importance:

CAN A PLAINTIFF IN A FORECLOSURE ACTION CURE THE INABILITY TO PROVE STANDING AT THE INCEPTION OF SUIT BY PROOF THAT THE PLAINTIFF HAS SINCE ACQUIRED STANDING?

Premier Finishes, Inc. v. Maggrias, – So.3d –, 2013 WL 5338052 (Fla. 2d DCA 2013).

A contract entered into by a party using a fictitious name is enforceable; a trial court must conduct an evidentiary hearing in a construction lien case to determine whether there has been any adverse effect of using a fictitious name in a construction contract.

Board of Trustees of Internal Imp. Trust Fund v. Walton County, – So.3d –, 2013 WL 5302580 (Fla. 1st DCA 2013).

An inverse condemnation proceeding is a *in rem* action subject to the Local Action Rule requiring actions to be brought in the county where the land in question lies.

Manuel Farach is Of Counsel to Richman Greer, P.A. in West Palm Beach and practices in the areas of Real Estate, Business Litigation and Appellate Law. Request the Weekly Update by sending an email to mfarach@richmangreer.com and writing “Request Update” in the subject line.



Justice Anthony Kennedy, Attorney General Eric Holder and former Secretary of State Hillary Clinton were all speakers at the

August ABA annual meeting in San Francisco. All three spoke on different topics, all three had different styles, and all three were worth hearing.

At the annual meeting ten years ago, Justice Kennedy gave a memorable speech decrying the impact of the federal Sentencing Guidelines in contributing to America's ever-increasing prison population. He called for a top-to-bottom review of sentencing guidelines, mandatory minimum sentences and harsh penalties for non-violent drug offenses. He pointed out then that the Land of the Free led the world in the percentage of its population behind bars.

This year, Justice Kennedy spoke about the "language of the law" and how our training as lawyers gives us all the ability to speak the common language that we are taught in law school. This language allows a lawyer in Florida to call a

lawyer in Iowa and complete a real estate transaction, or draft a contract, or settle an estate using terms that are familiar and understood by both lawyers. He also spoke of the importance of educating citizens in the language of the law, and by that he made it clear that he meant civics and government. He stressed the need for an educated electorate to be able to make wise choices at the ballot box.

Ten years after Justice Kennedy attempted to draw attention to the consequences of harsh sentencing guidelines, Attorney General Eric Holder came to the House of Delegates and announced a new policy by the Justice Department. He echoed the same concerns expressed by Kennedy a decade earlier: crowded prisons; harsh sentences for first offenders; an aging prison population; and the spiraling costs to tax payers (especially in light of a declining crime rate). Holder announced that the Justice Department would be moving away from mandatory minimum sentences for certain first time drug offenders. The key word here is "certain", the criteria to qualify is so strict very few defendants may see any actual relief. Time will tell.

Lastly, Hillary Clinton addressed the House. The main topic of her speech was voter rights. She recounted her early experiences registering voters throughout the south. She spoke about legislative obstacles to getting voters to the ballot box. And she talked a like a woman who wants all the voters she can get to the voting booth. This woman is running for president, make no mistake about that. She mentioned an ambitious speaking schedule that can only mean one thing: 2016. Remember, you heard it here first.

As for actual substance, once again the House agenda was very light. It did adopt a resolution sponsored by the Criminal Justice Section (chaired by West Palm Beach's own William Shepherd) which prohibits a defense lawyer from advising his client to waive any claims of ineffective assistance of counsel and/or prosecutorial misconduct as part of a plea agreement. In this regard, the ABA is playing catch-up to Florida. Our Professional Ethics Committee issued an opinion saying just that last year.

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On September 16, 2013 at 11:30 a.m. the Honorable Mary D’Ambrosio and Attorney Nicole Hessen (Members of the Palm Beach County Bar Association’s Workers’ Compensation Practice Committee) met with third, fourth, fifth and sixth grade students in Palm Beach County, Florida at S.D. Spady Elementary School, 901 N.W. 3rd Street, Delray Beach, Florida 33444 on behalf of the Justice Teaching Program. The teachers that participated in the presentation from the school were Mrs. Schuman and Mrs. Taiar. The students who participated in the program spent time on exploring how rules and laws are written and interpreted. They were also provided with Strategies for Writing a good rule/ law and examine what a rule / law really means. If you are a school interested in having a Judge/Attorney provide this program to your class or if you are interested in signing up with this program to become a speaker at other schools please contact Justice Teaching at <http://www.justiceteaching.org/> or by telephone at (850)-922-8926. There is nothing more important than giving back to the community and educating the children who will be the leaders of our future!



Tuesday, December 3, 2013 11:30—1:30
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PALM BEACH COUNTY & THE JFK ASSASSINATION: A CORONER'S INQUEST

Did you know that Palm Beach County played a remarkable role in the JFK Assassination? Were you aware that county court judges may preside over a public inquest regarding any death in the jurisdiction which could be referred to the medical examiner? Timed with the 50th anniversary of the assassination of President Kennedy, this seminar will focus on Florida's rarely-invoked inquest procedure and the public inquiry into the April 1977 death of George de Mohrenschildt (the alleged "best friend" of Lee Harvey Oswald) in Manalapan. The panel will also discuss the various government investigations/reviews, from the Warren Commission to the JFK Act, and how the Palm Beach Inquest played a role in assisting the House Select Committee on Assassinations' investigation.

11:30 – 11:45a **Welcome and Opening Remarks** – David Blutworth, former prosecutor; Gerald Posner, lawyer & author of "Case Closed"; Christopher B. Hopkins, Akerman Senterfitt, chairperson.

11:45 – 12:30p **Overview of Government Investigations into the JFK Assassination** – Gerald Posner is a NY & DC lawyer who has written eleven books, including the Pulitzer Prize-finalist, "Case Closed." He will discuss the federal government's investigations into and collection of records about the Kennedy assassination including the Warren Commission, Church Committee, Rockefeller Committee, House Select Committee and Assassination Records Review Board.

12:30 – 1:15p **Palm Beach Inquest: *In Re Death of George de Mohrenschildt*** – David Blutworth, the prosecutor who petitioned for and brought this inquest before Judge Harold Cohen (ret.), will discuss the procedures and merits of a county court inquest and his experience in this April 1977 inquest, which drew national attention to Palm Beach County.

1:15 – 1:30p **Panel Discussion: Questions and Answers**

This course is expected to receive 2.0 CLER credits from The Florida Bar.

Early registration cost for the seminar, which includes lunch is **\$60** for PBCBA member attorneys/paralegals; **\$100** for non-PBCBA member attorneys/paralegals if registered by 11/28/13; add \$25 late fee after that date.

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HEARSAY



Salesia Smith-Gordon was sworn in as a member of the Commission on Ethics on September 12. She was appointed as the representative for the Palm

Beach County Bar, the F. Malcolm Cunningham, Sr. Bar and the Hispanic Bar Associations as a part of the three bar associations' diversity efforts. Commissioner Smith-Gordon takes over the remaining term of former Commissioner and Committee Chair, attorney Manuel Farach, for the next three years.



Kalinthia R. Dillard, Attorney for the PBC School District, joined the Women's Foundation of PBC Board. WFPBC encourages women to take on leadership

positions that positively affect change in their communities. Ms. Dillard co-chairs the Women on the Run Campaign Training Series, presented by WFPBC and Junior League of PB.



Patricia A. Leonard, a Litigation Shareholder with Greenberg Traurig, LLP, has been appointed to The American Academy of Medical Entrepreneurs (AAME) Editorial Advisory Board.



David C. Prather, a Partner at Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has been named the 2014 West Palm Beach Lawyer of the Year in the area of Personal Injury Litigation – Defendants by the publication Best Lawyers in America.



Sachs Sax Caplan, PL has added **Angela Prudenti** in the firm's Boca Raton office. Ms. Prudenti is an Attorney practicing in the firm's Commercial Litigation &

Appeals Practice Group.

Cohen, Norris, Wolmer, Ray, Telepman & Cohen announce that **Douglas P. Lambert** has joined the firm and will practice in the areas of Complex Commercial Litigation, General Civil Litigation, Real Property Litigation and Mortgage Foreclosure.

Tana Sachs Cople and **Ryan S. Cople** proudly announce the formation of Cople Sachs Cople, 601 Heritage Drive, Suite 228, Jupiter, FL 33458. Ms. Sachs Cople practice focuses on Marital and Family law litigation. Mr. Cople's practice focuses on Community Association law, including Real Estate and Civil Litigation matters.



Gerald F. Richman, President of Richman Greer, P.A., has been elected Treasurer of the Florida Chapter of the American Board of Trial Advocates

(ABOTA).

Ellie Halperin and **Jayne Regester Barkdull** formerly partners of Levy Kneen, P.L., announce the formation of Halperin Barkdull, P.L. The firm shall continue representation of clients in all aspects of Real Estate law, Business and Commercial Transactions and Land Use and Zoning. The new firm will remain in its current location 1601 Forum Place, Suite 500, West Palm Beach, FL 33401 (561) 478-4700 or www.halperinbarkdull.com.

W. Jay Hunston, III, an Associate Attorney with the law firm of Ciklin, Lubitz, Martens & O'Connell, is now a Florida Bar Board Certified Construction Lawyer. His mother, Jane S. Hunston, has been a Board Certified Real Estate Lawyer since 1987 and his father, W. Jay Hunston, Jr., has been a Board Certified Civil Trial Lawyer, Emeritus, since 1983.



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PALM BEACH COUNTY BAR ASSOCIATION
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 *** DECEASED, FLORIDA BAR PRESIDENT, SUPREME COURT JUSTICE
 **** DECEASED, FLORIDA BAR PRESIDENT
 ***** DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE

CALENDAR

November 2013

<p>Friday, November 1, 7:30am – 10am New Attorney Breakfast Palm Beach County Courthouse</p> <p>Friday, November 1, 8:30am – 9:30am ADR Committee Meeting Bar Association Office</p> <p>Tuesday, November 5, 11:55am – 2pm Employment Law CLE Lunch Seminar Bar Association Office</p> <p>Tuesday, November 5, 6pm – 8pm Legal Aid Brooks Brothers Event Boca Raton</p> <p>Wednesday, November 6, Noon – 1pm Transaction Law Committee Meeting Bar Association Office</p> <p>Thursday, November 7, Noon – 1:30pm Solo Luncheon Bar Association Office</p> <p>Thursday, November 7, 5:30pm – 7pm NCS Dinner Brio's, Palm Beach Gardens</p> <p>Friday, November 8, 1pm – 5:25pm Family Law CLE Committee Seminar Bar Association Office</p>	<p>Saturday, November 9, 11am – 4:30pm Minority Mentoring Picnic</p> <p>Monday, November 11 Court Holiday - Veteran's Day Bar Association Office Closed</p> <p>Tuesday, November 12, 11:45am – 1pm SPBCBA Luncheon Morton's, Boca Raton</p> <p>Tuesday, November 12, Noon – 1pm YLS Board Meeting Bar Association Office</p> <p>Wednesday, November 13, Noon – 1pm Professionalism Committee Meeting Bar Association Office</p> <p>Wednesday, November 13, 5:30pm – 8pm Legal Aid Brooks Brothers Event Palm Beach Gardens</p> <p>Thursday, November 14, Noon – 1pm BBC Committee Meeting Bar Association Office</p> <p>Thursday, November 14, Noon – 1pm Circuit Civil Committee Meeting Judicial Conf. Room, Main Courthouse</p> <p>Thursday, November 14, Noon – 1pm So. County FAWL Luncheon Mariposa @ Newman Marcus in Boca Raton</p>	<p>Thursday, November 14, 5:30pm – 7pm YLS Happy Hour Pampas Grille, West Palm Beach</p> <p>Friday, November 15, 8am – 12:30pm Estate & Probate CLE Seminar Marriott WPB, 1001 Okeechobee Blvd., West Palm Beach</p> <p>Friday, November 15, Noon – 1pm Cunningham Bar Meeting Law Library Conference Room</p> <p>Tuesday, November 19, Noon – 1pm CDI Committee Meeting Bar Association Office</p> <p>Tuesday, November 19, 12:30pm – 1:30pm NCS Board Meeting Duffy's North Palm Beach</p> <p>Tuesday, November 19, 5:30pm – 6:30pm American Inns of Court Meeting Judicial Conference Room, Main Courthouse</p> <p>Tuesday, November 19, 6pm – 7:30pm Small Claims Court West Boca Branch Library</p> <p>Wednesday, November 20, 11:45am – 1pm Criminal Law Practice Committee Luncheon North end of cafeteria, Main Courthouse</p>	<p>Wednesday, November 20, Noon – 1pm Law Related Education Committee Meeting Bar Association Office</p> <p>Wednesday, November 20, 5pm – 6:30pm PBCBA Board of Directors Meeting Bar Association Office</p> <p>Thursday, November 21, 11:45am – 1pm PBC FAWL Luncheon Top of the Point 777 S. Flagler Dr., WPB</p> <p>Thursday, November 21, 6pm 7:30pm PBCJA Reception Café Saporì</p> <p>Friday, November 22, 11:45am – 2pm Bankruptcy Law CLE Seminar Bar Association Office</p> <p>Tuesday, November 26, 5:30pm – 6:30pm Legal Aid Board Meeting Bar Association Office</p> <p>Thursday – Friday, November 28-29 Court Holiday - Thanksgiving Bar Office Closed</p>
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