



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

October 2009



Superintendent of Palm Beach County Schools to Speak

Dr. Art Johnson will be the keynote speaker during a membership luncheon on Thursday, October 29 at the Crowne Plaza Hotel in West Palm Beach. Learn about the challenges facing our school district including H1N1 and the budget crisis. Appointed in March 2001, he is under contract through the end of June 2012. Johnson oversees the nation's 11th largest school system, a \$3.4 billion annual budget, nearly 22,000 employees and 169,000 students in kindergarten through 12th grade. Dr. Johnson received a Ph.D. and a MS from Florida State University and a BA from the University of South Florida. During his career in education, he has served in a variety of positions. He was a principal for over 13 years at various high schools and elementary schools. Prior to that he was a teacher, teaching children in elementary schools and young adults in college.

Please join us for lunch by registering on line at www.palmbeachbar.org.

Mark your calendar for upcoming Membership Meetings

Membership Luncheon

October 29, 11:45 – 1:00 p.m.
Crowne Plaza Hotel
Guest Speaker: PBC School Superintendent Art Johnson

Tri-County Appellate Law Seminar

December 4, 11:30 – 5:30 p.m.
Boca Raton Marriott

Annual Holiday Party & Silent Auction

December 10, 5:30 – 7:00 p.m.
Frenchman's Reserve,
Palm Beach Gardens

Inaugural Lawyer Variety Show

January 9, 6:00 p.m.
PBCC Eissey Theatre

Bench Bar Conference

February 19, 2010
Palm Beach County Convention Center

Joint Luncheon with South County Bar Association

March 16, 11:45 – 1:00 p.m.
Guest Speaker: FL Bar President Jesse Diner and FL Bar Foundation President Adele Stone
Boca Raton Marriott

Law Day Luncheon

May 7, 11:45 – 1:00 p.m.

Annual Installation Banquet

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



The Annual Committee Chair meeting was recently held at the Bar Offices. Another great Bar year is being planned by the Committees and their members. Be sure to watch future issues of the Bulletin and your eNewsletters for information about upcoming events and seminars. Pictured above are: (back row): Casey Jones, Technology; Sara Alijewicz, Law Week; Edrick Barnes, PI/Wrongful Death CLE; Phil Hutchinson, Commercial Litigation CLE; Lloyd Comiter, Small Claims Court Clinics; Robert Arzonetti, Business Law; Robert Hauser, Appellate Practice; Craig Stein, Securities Law CLE; Kara Rockenbach, Professionalism; Patricia Leonard, Judicial Relations; Scott Suskauer, Criminal Law Practice; Debbie Block Solo & Small Firm Practitioners; Nadine White-Boyd, Bankruptcy Law CLE. (Middle Row): Matthew Lane, Family Law CLE; Steve Rubin, Real Estate CLE; David Garten, Probate/Guardianship Practice; David Schwartz, Elder Law; John Whittles, Board Member; Jeff Collier, Environmental/Land Use Law; Nicole Hessen, Workers' Compensation. (front row): Board Members Richard Schuler, Theo Kypreas, Michael Napoleone, Michelle Suskauer, John Howe and Jason Guari. Not pictured: Jay Hunston, ADR; Julianne Frank, Bankruptcy; Roger Hurd, Blood Bank; Joe Ianno, Circuit Civil; Mark Greenberg, Client Relations; Michael Gelfand, Community Association; Charles HERNICZ, Construction; Daliah Weiss, Criminal; Cathleen Scott, Employment; Brian O'Connell, Estate/Probate; Rebecca Doane, Guardianship; Ted Deckert, Judicial Campaign Practices; Tanique Lee, Law Week; Cindy Spall, Lawyers for Literacy; Sarah Shullman, Membership; Rosalyn Sia Baker-Barnes, PI; Elisha Roy, Unified Family Practice; and Jane Robin Wender, Workers' Compensation.

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THE
BULLETIN

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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
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**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

Holiday Party scheduled for December 10

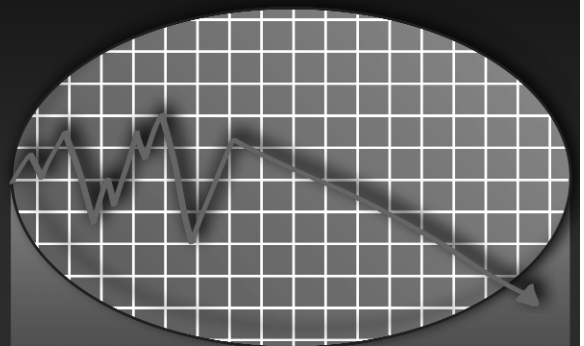
It's not too soon to mark your calendar and register for our annual Holiday Party and Silent Auction. This year's event takes place on Thursday, December 10 from 5:30 pm to 8:00 pm at Frenchman's Reserve in Palm Beach Gardens. The cost is just \$30 and includes drinks, heavy hors d'oeuvres plus a chance to shop for holiday gifts at bargain prices!



If you can donate an item for the auction, that would be great. We're looking for gifts such as vacation destinations, tickets to professional ballgames, electronics, artwork, jewelry, hotel accommodations and presents for kids and pets. If you have something to donate, please call Lynne at the Bar Office at 687-2800. One hundred percent of the proceeds benefit charities sponsored by the Young Lawyers and North County Sections.

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President's Message



"What is a lawyer?"

By Michelle R. Suskauer, President

Go into any classroom across the country and talk to kids about what they want to be when they grow up: a doctor, a rock star, a teacher, a football player, a vet... How about a lawyer? What is a lawyer? Silence. Oh, you may get a few who know, their parent is a lawyer, or they saw one on a TV commercial. The simple fact is that kids do not know what we do. Do children know why the civil and criminal justice systems cannot work without us? Do they know how lawyers protect their constitutional rights, fight to save their homes, prepare their parents' wills, make sure that products they use are safe, help their families with immigration issues?

So is it hopeless? How do we educate children not only about our legal system, but about the attorney's

role in it? How do we create the correct perception of attorneys that they can carry with them throughout their lives. It is simple. We teach them.

Your Bar Association has forged a partnership with the School District of Palm Beach County to bring attorneys into schools. We have an opportunity, no, we have an obligation, to mentor, to teach, to provide information, education and be positive role models to the 169,000 students in Palm Beach County. We will provide an answer to the question, "What is a lawyer?"

By now, you should have received our school volunteer questionnaire via email. We have asked you to give of your time to change the lives of children in our community. You can personalize your time commitment - from one hour a year, to one hour a week. Do you prefer elementary, middle or high school? You decide what day of the week, what area of

the county, or even choose your desired school. Some of the many programs to choose from are: career day, the law magnet program, mentoring, mock trial competition, law week, character education, speak on your specialty, teach about the jury system, represent a child in the expulsion process and so many more.

If you have already filled out the questionnaire, thank you! If not, please complete it today and you will be contacted about your willingness to volunteer.

Our legal community must dedicate time to this effort. Trust me, it will pay off. What will we see? We will provide our county with better educated citizens, future jurors and litigants. This will lead to an increase in respect for the legal profession and answer the question, "What is a lawyer?"

Come hear the Superintendent of the Palm Beach County School District, Dr. Art Johnson on October 29th.

County Court Judge Caroline Shepherd



Newly appointed County Court Judge Caroline Shepherd is congratulated by Chief Judge Peter Blanc as her husband Bill and son Jack look on.



Judges Caroline Shepherd, Peter Blanc and James Martz



Newly appointed Circuit Judge Joseph Marx and his wife Circuit Judge Krista Marx



County Court Judge Laura Johnson, Circuit Judge Timothy McCarthy and County Attorney Denise Nieman



**The Palm Beach County Bar Association's
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Tuesday, October 28, 2009

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

Bar Office

Cost: \$10.00 includes lunch

Kindly RSVP before 10/24 to avoid a \$5.00 late fee

RSVP ON LINE @www.palmbeachbar.org

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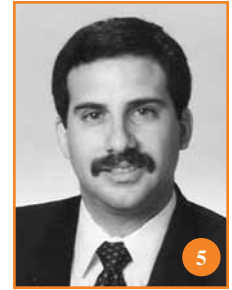
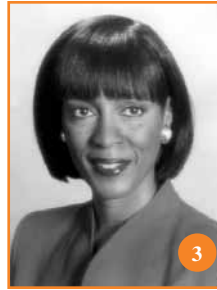
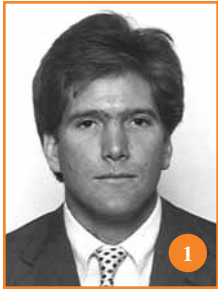
SECURITY SELF STORAGE



Historical Committee

Who are they?

Can you guess who these members are? Answers can be found on page 14. 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 on Sale Now!

The Bar will host its first Lawyer Variety Show featuring members singing, dancing, and performing live on stage of the Eissey Campus Theatre in Palm Beach Gardens. The show takes place on Saturday, January 9, 2010 beginning at 6:00 p.m. with a cocktail reception. This evening is going to be great fun and should not be missed! Tickets are just \$35.00 and can be purchased on line at www.palmbeachbar.org. Proceeds benefit the Legal Aid Society of Palm Beach County and the North County Section's Scholarship Fund at Palm Beach Community College.

Come and enjoy the show!

Here's a sneak preview of some of the terrific talent performing in our show.



Tom Gruseck plays an original composition that's not to be missed.



Iola Mosley will give you cold chills as she sings to Natalie Cole's Route 66.

Carl Spagnuolo is an accomplished pianist who performs a medley of popular Billy Joel and Elton John songs.



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by Adam T. Rabin

10. Hire your expert early.

Few lawyers do this, and it is one of the experts' biggest gripes. Ironically, lawyers often bring the expert on a short while

before the expert disclosures are due, and the expert is saddled with what the lawyer decided was important. Isn't the main point of bringing on an expert to get their expertise for some part of the case that we cannot prove without the expert?

Getting the expert involved early also allows the expert to help frame discovery and take a hard look at your damages case. The lawyer's damages theory or assumptions might be flawed and having the expert involved early may allow the lawyer to reform his theory with time to change it.

9. Give your expert all relevant documents, not just the good ones.

It is a major credibility loser when your expert cannot testify that he knows about certain harmful documents. This arguably is more important than your expert seeing the favorable documents. I call this the three-strikes rule – your expert can only handle three major strikes to his credibility. A corollary of this is that your expert should concede harmful documents and facts, particularly when they are not on material issues. It looks a lot better for your expert to concede something harmful than not to know about it in the first place.

#8. Pick up the phone!

Whatever you communicate in writing to your expert is going to come back to haunt you. E-mail may be the deadliest tool ever invented when it comes to working with an expert. With every e-mail you send to your expert, you should be imagining how that e-mail is going to look when a trial graphics firm blows it up at trial. Similar to e-mails, limit the number of draft reports communicated between attorney and expert. You don't want eight drafts of your expert's report that shows every change the expert made to his own report, or worse your changes to his report. This means more in-person meetings, or when working remotely, on-line meetings with services like Meeting.com.

#7. Interview and prepare the expert like he is a rookie, even if he is a veteran.

Interview your expert like you just

met him for the first time and mock cross-examine him during that interview. Ask your expert how many cases he has testified in. Ask which judges he has testified in front of. Ask if he has ever been disqualified or not accepted as an expert. Ask how many times has he testified for plaintiffs or defendants. In short, interview and prepare your expert as if it were his first time testifying.

#6. Be reasonable with your number.

Don't be greedy. A greedy lawyer often will get his expert into problems. For example, your expert is telling you that based upon his assumptions, he can only calculate three years out for lost profits and in year 4 they become speculative. But you as the plaintiff's lawyer wants to double the damages by adding years 4 and 5. That decision could render the expert not credible and you get zipped. Ask the expert what is reasonable and why, debate it and work it out.

Make sure also to hire the right kind of expert for your case – don't try to put a square peg into a round hole. Try not to make an accounting expert that testifies mostly in divorce cases testify in a health care consulting contract lost profits case, unless that expert is really going to get up to speed on that business or industry. Take your time to find the right expert with the right expertise. It will save your client money when an expert knows the area and has testified in that area before.

#5. Think of your expert as Ms. Crabtree who just happens to be wearing a nice suit.

Your expert should be a teacher – if she can't teach, she's not a good expert. To teach well, your expert has to be able to create visual images through his words that will stick with jurors. Your expert always should use charts and graphs as demonstrative teaching aids. And don't forget what a great advocacy tool this is. Your expert will have greater flexibility with using demonstrative aids that support your fact witnesses. Use your expert to hammer home not only her opinions but your theme of the case. Finally, make your expert stand up in front of the jury – motion and action are good. It keeps everybody awake and listening.

#4. The most important acronym for your expert is not GAAP or GAAS – it's KISS.

There might be no more appropriate place to apply the cliché phrase KISS than working with an expert. Probably the hardest challenge for your expert is to keep it simple yet cover what he needs to.

Accounting concepts are abstract, and they can be a bottomless pit of complexity.

To ensure your expert's testimony is comprehensible, recruit some staff from your office who know nothing about your case, and have your expert testify for a half hour to them and get their feedback. It is also a good idea for the attorney to help the expert break down complex concepts by simplifying terminology: For example, instead of having your expert testify that the "corporation's principal embezzled funds from the corporate operating account and the funds were traced off shore" have him testify that "the company president stole money by writing company checks to himself and depositing those checks in the Bahamas."

#3. Ensure that your expert will remain Dr. Jekyll and not turn into Mr. Hyde during cross.

Make sure your expert is the same person on cross as he was on direct. Prepare him that he is only there to give an opinion. Remind him that he is not an advocate. Encourage him not to get frustrated, or even he does, not to show it. Prepare your expert well on the key issues and themes so he knows what not to fight on and what to concede. Studies show that juries often focus more on nonverbal cues and the expert's tone of voice than the content of his testimony. If your expert appears frustrated, angry or flustered, that likely is what the jury will remember.

2. Actively manage the expense and time of your expert.

Give your expert a budget... and then subtract several grand. Be clear on your needs and the types of opinions you are seeking. Ask what is the testimony or report is going to cost. When you're working with an expert, a month may be too long between bills. Work it out up front with the expert where you'll get weekly or bi-weekly WIPs (work in progress reports) to monitor progress and unbilled time. Put ceilings on monthly bills. Consider a flat rate or modified flat rate for investigation and research, preparation of expert report, deposition testimony, and trial testimony.

Give your expert a litigation time line and make expectations and deadlines clear. Tell your expert up front when the discovery cutoff is. Tell him when his deposition likely will occur. Tell him when the opponents' experts' deposition likely will occur. Tell him when you expect to get him the documents he needs to start developing his opinions. Give him plenty of lead time to prepare his opinions or

Continued on page 7



Submitted by the PBCBA ABA Delegate
Donnie Murrell

Well folks, there really isn't much to tell. I flew all the way to Chicago for the House of Delegates meeting. It lasted about a day and half – and that was only because the agenda was stretched like a rubber band. We probably could have done everything we got done by telephone. There were practically no contested matters on the agenda for consideration by the House.

The only matter that had promised to provide any fireworks at all was a resolution concerning children as clients and whether a lawyer has the duty to advocate for the child's wishes or the child's best interest. This was a thorny issue that had House membership weighing in by e-mail long before the meeting. Unfortunately, rather than sort out the issues by debate on the House floor, the proponents withdrew the resolution in an effort to resolve the matter in committee. That strategy is becoming more and more common. If any opposition to a resolution exists, proponents are getting very sophisticated about withdrawing the matter and trying to work differences out prior to a vote by the House. It may be smart politics, but it makes for very boring House meetings.

There were a few high points to the meeting. The House honored William Reece Smith from Tampa for his many years of service to the profession and the ABA. Reece Smith served as President of the both The Florida Bar and the ABA. He has taught at Stetson Law School for many years and has been a partner at Carlton Fields for more than fifty years. He also served a stint as president of the University of South Florida. It was nice to see him get the recognition he deserves while he is still around to enjoy it.

Stephen Zacks was sworn in as president-elect of the ABA, the next in a long line of ABA presidents from Florida. (In fact Zacks joked that his opponent had run on the platform that he was not from Florida.) There was a nice profile of Steve in both the ABA Journal and the recent Florida Bar News.

The February 2010 Mid-Year meeting is in Orlando. Let's hope there's more to talk about.

YLS Back to School

The Young Lawyers recently donated school supplies to Pleasant City Elementary School in West Palm Beach. Each class from kindergarten thru 5th grade received an entire school year of supplies consisting of crayons, markers, pens, pencils, folders, glue, binders, and paper. The Young Lawyers will continue their involvement with the school by organizing a career day in the spring and hosting a special end of the year field trip for the entire 5th grade class. Pleasant City was chosen to receive the items based on their financial need.



(Pictured from left to right:)
Julia Wyda, Adam Langino, Theo Kypreos, Bill Lazarchick, Melissa Devlin and Eric Severson



Bill Lazarchick (middle picture) and Eric Severson (bottom) were co-chairs for this year's Back to School event.

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The Business Law Practice Committee of the Palm Beach County Bar Association
presents:



“Entity Selection and Structuring”

Thursday, November 12, 2009 - 11:30am - 1:00p.m.

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

Program Schedule

11:30am - 11:45am **Buffet Lunch / Check In / Late Registration**

11:45am - 12:00pm **Welcome - Opening Remarks** - *Robert H. Arzonetti, Esq.,
Gunster, West Palm Beach, FL, Business Law Practice
Committee Chairperson*

12:00pm - 1:00pm **“Entity Selection and Structuring”** - *Adi Rappoport, Esq.,
Gunster, West Palm Beach, FL*

This course is pending 1.0 CLER from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$30** for PBCBA members/legal assistants, **\$40** for non-PBCBA members/legal assistants. Register now to save \$10.00. **After 10/12/09, add \$10.00.**

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$15. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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

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Please register me for the November 12, 2009 Business Law CLE Seminar:

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___ I will not be able to attend the seminar but would like to order the CD Rom. (allow two weeks for delivery)
(Business Law 11/12/09) **Cost is the same as listed above, in addition to \$10 for shipping and handling.**

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

Membership in your local bar association: WIIFY?



OK. You're reading this article, so you're already a member of the Palm Beach County Bar Association. Good. Very good. So, the question is "why?" Why are you a member? WIIFY – What's in it for you? Or to paraphrase Janet Jackson, "What has your bar association done for you lately?" All right, that was sort of a trick question. The answer is: A lot.

But before I go on, I've got to put something on the table. I'm a former bar exec. There, I've said it. So my biases about bar membership are firmly in place. But I'm a lawyer, too. And I was a member of my local bar long before I became a bar exec. Now, that was back in the stone age, long before LinkedIn, Facebook, and Twitter. And while I am a huge proponent of social media networking and marketing (more about that in an upcoming column), local bar associations offer something that those online services can't: personal contact and the opportunity to build real relationships with people in your community.

Relationships. Relationships. Relationships.

There is no greater indicator of our quality of life than the relationships in our lives. The more positive, meaningful relationships we have in our lives, the more our stress levels go down and our overall health improves. In fact, medical research has shown that the quality of our relationships can have a positive impact on everything from our heart health to our ability to overcome diseases – even cancer. But being a "connector" who seeks out and develops quality relationships won't only improve the quality of your life, it will improve the quality of your practice. Everything about the practice – and business – of law is about relationships. And the better the relationships, the more satisfying and profitable your practice will be. Building quality relationships is the most important investment you can make in your life and your profession.

So where does bar membership fit in to this equation?

Simple. Bar membership helps you build relationships with your colleagues in three very important ways.

1. Professional Relationships

You've heard it many times, maybe you've even said it, "There just isn't the level of professionalism in the profession that there used to be." Professionalism in this context means treating each other with respect and courtesy and being – dare I say it – nice to each other. You really can be an advocate for your clients and be nice to opposing counsel at the same time. And it becomes a whole lot easier to be nice if you know that lawyer on the other side. Maybe you've sat together at a bar luncheon and talked about your kids or your mutual love of sailing. Maybe you've had the opportunity to work through a sticking point in a case over a glass of wine at the Judicial Reception. Maybe you've worked together on a project to deliver legal services to the poor. Whatever the situation, you've had the opportunity to get to know the voice on the other end of the phone. Bottom line: it's a whole lot easier to be nasty (unprofessional) to someone you don't know.

2. Marketing Relationships

Write this down and stick it someplace you'll see it every day. People want to work with people that they know, like and trust. Attorneys want to refer work to other attorneys that they know, like and trust. Think about that. Then think about where your best referrals typically come from. Other attorneys, right? And who are those attorneys? (Another trick question.) They are attorneys who know you, and like you, and trust you. So if you want to grow your practice and develop great referral sources, get out there and

get to know your colleagues. Develop real relationships – not phony, just for the referral relationships – real relationships. Think of the quality of referrals you'd consistently be receiving if you developed just twenty real, true, friendships with any of the thousands of lawyers in the Tampa Bay Area. Start with your own bar association, get involved, make some friends, have fun and watch your revenues grow.

3. Friendships

Here's the real secret, once you start developing the first two types of relationships, you'll see that they are really all the same. You're getting to know people that you work with professionally, and that you genuinely know, like and trust. Those people will often turn into friends. And what could be better than working with your friends. OK, so you're not going to be best friends with every lawyer you know. There are still going to be some lawyers you don't get along with. That's life. But, I'll bet you a latte at Starbucks that those folks that you get to know, like and trust will be far greater in number than those you don't.

Nora is a graduate of the Leadership Development Program at Eckerd College, and is certified in the Conflict Dynamics Profile® developed by Eckerd to help individuals and organizations learn how to deal with conflict constructively. She received an undergraduate degree in journalism, summa cum laude, from the University of South Florida and her J.D., cum laude, from Stetson University College of Law. As a business coach and practice advisor with Atticus, Nora is dedicated to helping attorneys create the lives and law practices they dreamed of when they were in law school. Nora has practiced as an employment law attorney and certified mediator and has served as a professor at both Stetson University College of Law and the University of South Florida, teaching courses in alternative dispute resolution and negotiation. She has also served as the Executive Director of the St. Petersburg Bar Association. Visit Nora at www.norarivabergman.com and www.atticusonline.com.

10 Practical Tips

Continued from page 5

report. Be clear on your needs, your expectations, and the opinions you are seeking.

1. Change your expert's greatest weakness into a strength.

Your expert may have a background weakness or maybe he has some prior testimony that seems inconsistent on the opinions you want him to give. You have three choices on how to treat the weakness: (1) ignore it – that can be deadly; (2) explain it – that's better than ignoring; and (3) the best course is for you to transform the weakness into a strength by building your case theory around it so it is no longer a weakness.

When working with your expert on his opinions, think about what you would emphasize if you were going to cross your expert. Is the expert biased? Has the expert testified for you in 10 prior cases? Has the expert never testified for a defendant? It might be an assumption that was made. Was the expert's calculation of lost profits beyond 3 years too speculative?

A good cross by the other side may do little more than exploit two weaknesses of your expert. Your job is to find the holes and plug them. Better yet, be creative and build your case around them. The only way you'll be nimble enough to do that, however, is to have your expert on board early.

Adam T. Rabin is a shareholder with McCabe Rabin, P.A. and concentrates in business litigation and plaintiff-side securities arbitration. He can be reached at arabin@McCabeRabin.com.



Summary Judgment in Vicarious Liability Cases

by Ted Babbitt

Every trial judge knows that summary judgments in personal injury actions are rarely upheld. This was underscored in the recent case of Ginsberg v. Northwest Medical Center, 34 Fla. L. Weekly D1349 (Fla. 4th DCA July 1, 2009). Ginsberg was a medical malpractice case in which the plaintiff had entered the hospital after signing a consent form that clearly alleged that the surgeons at the hospital were independent contractors. The negligence complained of was related to the surgeons and the hospital's liability was limited to vicarious responsibility. The trial court granted a summary judgment based upon the consent form and the Fourth District reversed. The basis for reversal, inter alia, was the failure of the hospital to lay the proper predicate under the business records exception for the admission of the consent form into evidence, however, the Court made clear that even if the consent form had been admitted, the summary judgment was improper.

At the hearing, the plaintiff claimed that when he had signed the consent form, he was in pain, had no glasses and had taken pain medication and was, thus, incapable of understanding the form. The Court, citing to Fieldhouse v. Tam Inv. Co., 959 So. 2d 1214, 1216 (Fla. 4th DCA) (quoting Winston Park, Ltd. v. City of Coconut Creek, 872 So. 2d 415, 418 (Fla. 4th DCA 2004), review denied 969 So. 2d 1018, stated:

"If the record reflects even the possibility of a material issue of fact, or if different inferences can reasonably be drawn from the facts, the doubt must be resolved against the moving party."

Villazon v. Prudential Health Care Plan, Inc., 843 So.2d 842 (Fla. 2003) is the last word from the Supreme Court on what is required to establish apparent authority. That case requires that the purported principal holds out the purported agent as its agent and that the agent claims to have authority to act on

behalf of the principal. In this case the plaintiff stated both of those allegations and met the requirements for the three elements of apparent agency set forth in Guadagno v. Lifemark Hosps. of Fla., Inc., 972 So. 2d 214, 218 (Fla. 3d DCA 2007):

- "(1) a representation by the purported principal,
- (2) a reliance on that representation by a third party, and
- (3) a change in position by the third party in reliance on the representation."

In Ginsberg the Fourth District, relying upon Villazon, reflects on the obvious motivation of parties to include within admission forms exculpatory language regarding purported independent contractors and explains why that language is not the final word.

"In Villazon v. Prudential Health Care Plan, Inc., 843 So. 2d 842 (Fla. 2003) our supreme court explained that it is not uncommon for parties to include conclusory statements in

documents with regard to the independence of the relationship of the parties, and this may occur even where the totality of the circumstances reflects other. Id. at 853-54 (quoting Cantor v. Cochran, 184 So. 2d 173, 174 (Fla. 1966) ("While the obvious purpose to be accomplished by this document was to evince an independent contractor status, such status depends not on the statements of the parties but upon all the circumstances of their dealings with each other."))."

This case makes it clear that summary judgment is rarely appropriate in an apparent agency issue unless the requisite elements are completely devoid of support in the record.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE BY CALLING (561) 684-2500.

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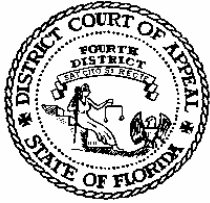
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The Palm Beach County, South Palm Beach County and Broward County Bar Associations presents:

Inside the Appellate Court: An Afternoon with the Judges of the Fourth DCA



Friday, December 4, 2009

11:30 a.m.—5:30 p.m.

Boca Raton Marriott at Boca Center, 5150 Town Center Circle

Program Schedule

- 11:30 am - 12:00 pm **Buffet Lunch / Registration / Check-In**
- 12:00 pm - 1:00 pm **Luncheon - Keynote Speaker: *Honorable Philip J. Padovano, First District Court of Appeal***
- 1:00 pm - 1:15 pm **BREAK**
- 1:15 pm - 2:00 pm **Things You Probably Didn't Know About the Fourth DCA - *Honorable Robert M. Gross, Chief Judge, Fourth District Court of Appeal***
- 2:00 pm - 2:30 pm **Writing the Effective Appellate Brief - *Former Fourth District Court of Appeal Judge Larry A. Klein, Holland & Knight LLP***
- 2:30 pm - 2:45 pm **BREAK**
- 2:45 pm - 3:15 pm **Panel Discussion - Observations as New Judges on the Fourth District - *Honorable Judges Cory J. Ciklin, Jonathan D. Gerber, and Spencer D. Levine, Fourth District Court of Appeal, Moderated by Honorable Robert M. Gross, Chief Judge***
- 3:15 pm - 3:45 pm **Recent Developments in Preservation of Error—*Honorable Melanie G. May, Fourth District Court of Appeal***
- 3:45 pm - 4:00 pm **BREAK**
- 4:00 pm - 5:00 pm **Moderated Panel Discussion - with the *Judges of the Fourth DCA, Moderated by Jack J. Aiello, Esq., Gunster***
- 5:00 pm - 5:30 pm **Cocktail Reception Honoring the New Fourth District Court of Appeal Judges *Jonathan D. Gerber, Spencer D. Levine, and Cory J. Ciklin***

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The Statutory Personal Property Exemption's Availability to Those Who Do Not Surrender Their "Upside down" Home

By Marc P. Barmat

By now you are likely familiar with the 2007 amendment to Florida Statutes § 222.25(4) which increased a debtor's personal property exemption from \$1,000 to \$4,000 for a debtor who "does not claim or receive the benefits of a homestead exemption. . ." Since the amendment, courts have been grappling with the application of § 222.25(4) and the meaning of the phrase "receive the benefits of a homestead exemption."

Recently, Chief Bankruptcy Judge Paul G. Hyman, Jr. of the Southern District of Florida issued an opinion which broadly interprets the statutory personal property exemption. See, *In re Abbott*, 2009 WL 1872125 (Bankr. S.D. Fla.). In *Abbott*, Chief Judge Hyman overruled the trustee's objection to the enhanced personal property exemption claimed by chapter 7 debtors. The trustee's argument was that the debtors, who were not surrendering their home and intended to reaffirm their home mortgage debt, were thus receiving the benefits of a homestead exemption so as to make them ineligible for the enhanced personal property exemption.

In a nutshell, Chief Judge Hyman held that "Debtors who owe more on their homes than the home is worth, do not receive any benefit from the homestead exemption in the bankruptcy context because there simply is no equity to protect from creditors." *Id.* at 7. Chief Judge Hyman noted the statute does not state that the statutory personal property exemption is unavailable to a debtor who owns a homestead, rather it states that it is unavailable to a debtor who receives the benefits of a homestead exemption. *Id.*

In arriving at the *Abbott* decision, Chief Judge Hyman agreed with other courts who drew meaning from the fact that the statute is written in the present tense. *Id.* at 2. See e.g., *In re Gatto*, 380 B.R. 88, 91 (Bankr. M.D. Fla. 2007) ("The word 'receive' is in the present tense. This is consistent with the general proposition that a debtor's entitlement to an exemption is determined as of the date of the petition."); *In re Morales*, 381 B.R. 917, 920 (Bankr. S. D. Fla. 2008) ("A striking feature of the language of the statute is that it is written in the present tense. Therefore, the fact that a debtor may have claimed or received

the benefits of a homestead exemption in the past would appear to have no bearing on the application of the statute to a debtor's present situation."); *In re Magelitz*, 386 B.R. 879, 881 (Bankr. N.D. Fla. 2008) ("[I]n order to be excluded from the enhanced personal property exemption, the language of the statute requires that the debtor presently receive benefits that derive from the constitutional exemption of the home from the reach of creditors."). Accordingly, Chief Judge Hyman found that whether a debtor acquires equity in the property in the future is irrelevant to the issue of whether the debtor receives the benefits of the homestead exemption as of the petition date.

Chief Judge Hyman also agreed with and adopted the reasoning set forth by Judge Mark in *In re Hernandez*, 2008 WL 1711528 (Bankr. S.D. Fla.) wherein Judge Mark stated:

If the legislature meant to exclude from the Statutory Personal Property Exemption all homeowners who owned homes on the petition date which met the constitutional definition of a homestead, the statute could have plainly and easily been written to exclude all individuals owning homes eligible for the constitutional exemption. That, of course, is not what the statute says. Rather, it excludes only those who receive the benefits of the constitutional exemption. *In re Hernandez* at 3.

Debtors who do not have equity in their home and regardless of whether they indicate their intention to reaffirm their debt with the mortgage company or not, must still be aware that by not claiming their homes as exempt it leaves the property available for administration by the trustee. Although it may seem counter intuitive that a trustee would administer an asset that has no equity, there are situations which arise where a trustee can demand that the debtor vacate the premises in order for the trustee, for example, to attempt to negotiate a short sale and a carve out of funds for the estate. Accordingly, debtors must be aware of the potential risk of not claiming a homestead exemption if their intention is to remain in the home.

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

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The Bar's Best Spellers



Front row left to right: Art Pumpian, Word Master; Bob Bertisch, Lesley Hogan, Ted Herold and Lawyers for Literacy Chair Cindy Spall.

Standing: Darlene Kostrub, Executive Director of the Literacy Coalition of Palm Beach County and Serena Laine-Lobsinger. Serena is 13 years old and participated in the National Spelling Bee in Washington D.C. Darlene and Serena served as our word judges.

Back row: Richard Schuler, Maureen Martinez, David Prather, Michelle Suskauer, Elisabeth Porter, Adam Myron and Moria Rozenson (not pictured Stan Klett)

Eleven members recently competed for bragging rights as "The Bar's Best Spellers" during the 7th Annual Spelling Bee at Bear Lakes Country Club in West Palm Beach. A great big thank you to all of our members who participated in this event to benefit local literacy programs. The spelling bee is sponsored by the Lawyers for Literacy Committee.



Michelle Suskauer reacts to the gong as David Prather says "see ya!"



Cindy Spall (far left) and Art Pumpian (far right) pictured with winners Richard Schuler, Bob Bertisch and Lesley Hogan. Maureen Martinez placed fourth and is our first runner up.



Sandy Myers, Jay Hunston, Stan Klett, Susan Guilbert and Michael Gelfand



Theo Kypreos, Brian Joslyn and Grier Pressly



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May a Trustee or Qualified Beneficiary Challenge the Settlor's Transfers from her Revocable Trust on Undue Influence Grounds Either Before or After the Settlor's Death?

By David M. Garten, Esq.

In MacIntyre v. Wedell, 12 So.3d 273 (Fla. 4th DCA 2009), the settlor executed and funded a revocable trust. A few weeks before her death, the settlor transferred certain trust assets to the defendant and placed other trust assets into an account jointly titled in both the settlor's and the defendant's names. After the settlor's death, the trustee sued the defendant alleging that these transfers were the product of undue influence.

Upon defendant's motion, the trial court dismissed the suit with prejudice, finding our supreme court's decision in Florida National Bank of Palm Beach County v. Genova, 460 So. 2d 895 (Fla.

1984), bars an undue influence challenge to a settlor's removal of funds from her revocable trust. The Fourth DCA agreed with the lower court and affirmed the dismissal. The court reasoned, in part, that "the inter vivos trust was revoked during the settlor's lifetime and never ripened into a testamentary disposition. Further, the Genova decision itself plainly suggests the availability of an undue influence challenge to the settlor's revocation of his or her revocable trust should not turn upon whether the action is brought when the settlor is alive or deceased." The court held that, as a consequence of Genova, even after the

settlor's death, the settlor's revocation of her revocable trust during her lifetime is not subject to challenge on the ground that the revocation was the product of undue influence.

In Genova, the court explained that a revocable trust is "a unique type of transfer" and "[b]y definition...when a settlor sets up a revocable trust, he or she has the right to recall or end the trust at any time, and thereby regain absolute ownership of the trust property." The settlor's retention of control "distinguishes a revocable trust from the other types of conveyances in which the principle of undue influence is applied, i.e., gifts, deeds, wills, contracts, etc." The court further wrote:

The courts have no place in trying to save persons such as Mrs. Genova, the otherwise competent settlor of a revocable trust, from what may or may not be her own imprudence with her own assets. When she created this trust, she provided a means to save herself from her own incompetence, and the courts can and should zealously protect her from her own mental incapacity. However, when she created this trust, she also reserved the absolute right to revoke if she were not incompetent. In order for this to remain a desirable feature of a trust instrument, the right to revoke should also be absolute.

Id. at 898. Genova thus held that a co-trustee could not seek to preclude the settlor from revoking her trust on the grounds of undue influence, but suggested that the settlor could be precluded from revoking the trust if she were incompetent.

See also Siegel v. Novak, 920 So. 2d 89 (Fla. 4th DCA 2006) (A "settlor/trustee's withdrawal of funds from a revocable trust is tantamount to a revocation or termination of the trust with respect to the funds withdrawn.... [T]he settlor retained the right to remove the property from the trust for any purpose and for any reason. In this situation, the settlor is, in essence, disposing of the settlor's own property. By making an expenditure from the trust, the settlor/trustee tacitly terminates the trust with respect to the expended funds.")



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

“Special Needs Trusts – The Basics and Beyond”

Tuesday, December 15, 2009 - 8:25a.m. - 2:00p.m.
Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

- 8:00am - 8:25am Late Registration - Check In
- 8:25am - 8:30am Welcome - Opening Remarks - *David R. Schwartz, Esq., Greenacres, FL, Florida Bar Board Certified Elder Law Attorney, Chair PBCBA Elder Law Affairs Committee*
- 8:30am - 10:00am “Everything You Wanted to Know About Inter Vivos and Testamentary Special Needs Trust: From A to Z” - *Stephanie L. Schneider, Esq., Stephanie L. Schneider, P.A., Plantation, FL, Florida Bar Board Certified Elder Law Attorney*
- 10:00am - 10:10am Break
- 10:10am - 11:40am SSA Speaks: A Practical Review of the New 2009 POMS on Drafting and Administering Government Approved Special Needs Trusts - *David J. Lillesand, Esq., Lillesand and Wolasky, P.L., offices in Miami & Gainesville, FL*
- 11:40am - 12:00pm LUNCH (included in registration)
- 12:00pm - 12:30pm Marketing Special Needs Trusts to Personal Injury Lawyers - *Craig Goldenfarb, Esq., Law Offices of Craig Goldenfarb, P.A., West Palm Beach, FL*
- 12:30pm - 1:00pm Tax Aspects of Special Needs Trusts - The Basics - *Michael A. Lampert, Esq., Michael A. Lampert, P.A., West Palm Beach, FL, Florida Bar Board Certified Tax Attorney*
- 1:00pm - 2:00pm Elder Law for Trial Lawyers: How the Elder Law Attorney can Market to and Serve the Trial Bar - *Scott M. Solkoff, Esq., Solkoff Legal, P.A., Delray Beach, FL, Florida Bar Board Certified Elder Law Attorney*

As a public service project the Elder Law Affairs Committee has adopted the Indian Ridge School, a unique therapeutic day school that serves students from all of PBC who suffer from emotional and behavioral disorders. The school and students are in dire need of supplies. **We ask that each attendee either donate some school supplies or make a monetary contribution. Supplies/Donations can be dropped off at seminar location. See Supply list on page 2 of Flyer.**

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Welcome New Members!

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

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BRIAN BALAGUERA – New York; Nova Southeastern University, 2006; Associate in Entin and Della Fera, Fort Lauderdale

NICOLE BARNA – Florida; Florida Coastal School of Law, 2008; Associate in Wicker, Smith, O'Hara, McCoy, & Ford, P.A., West Palm Beach

MATTHEW I. BERNSTEIN – New York; Florida International University, 2008; Associate in Powers, McNalis, Torres & Teebagy, West Palm Beach

NICOLE R. BLANTON – Florida Atlantic University; Law Student Member, Lake Worth

CYNTHIA A. CARRINO – Michigan; Stetson, 1993; Associate in Rosen and Wining, P.A., Palm Beach Gardens

NICHOLAS DEFILIPPO – New York; University of Florida, 2004; Partner in Martoccio & DeFilippo, P.A., Boca Raton

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ROBERT C. GLASS – Virginia; University of Virginia, 2008; Fourth District Court of Appeal, West Palm Beach

RACHEL JOHNSON – Louisiana; Tulane University Law School, 2006; Associated with the City of Riviera Beach, Riviera Beach

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RAYMOND M. RANELLUCCI – University of Miami, 1996; Associated with Wells Fargo Private Bank, Palm Beach

JAMES D. SALLAH – Ohio; University of Miami, 1996; Partner in Sallah & Cox, LLC, Boca Raton

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All the World's a Stage — for Rainmaking

By: *Mark Powers & Shawn McNalis*

What can a mouse teach us about personal presentation? As it turns out, quite a lot. Visit any Disney property throughout the world and you'll encounter clean scrubbed, well-groomed employees who'll give you directions, sell you a balloon, or serve your meals. Each person, (Disney refers to employees as members of their "cast") you meet is costumed according to the role they play and all conform to rigorous standards of appearance.

Supporting this effort are extensive backstage facilities dedicated to making, cleaning and distributing thousands of custom made costumes each day. To complete their look, each employee is given written grooming guidelines to follow and management doesn't tolerate deviations. Excess facial hair can be a firing offense.

Why does Disney spend millions of dollars and a great deal of effort maintaining the look of their employees?

The answer may surprise you. Prior to the opening of Disneyland in California, Walt Disney is reputed to have had a recurring dream haunt his sleep: he dreamt of walking down his newly constructed Main Street and being accosted by surly, cigar-smoking carnival types trying to entice guests into the shops. Carnival "barkers" were the antithesis of how he wanted his employees to dress and act. Though theme parks are a familiar concept today, he was breaking new ground in the mid-fifties and feared his multi-million dollar entertainment complex would be mistaken for some sort of carnival-like operation. Carnivals, in his mind, sat on the bottom tier of the entertainment hierarchy, far below Hollywood and the theatrical traditions with which he wanted to be associated. Driven by his fears, he instituted grooming standards for all his employees to follow.

So what does this have to do with you and your law firm? More than you might think.

Every day you don a costume of some sort to play your role as an attorney. Whether you stumble into the closet and emerge dressed in a new blue suit, a skirt and jacket or old khaki pants and a sport shirt, you pick out something, put it on and present yourself to the world. Your staff members do much the same.

Some of you make an effort to put together something nice; others don't give it much thought.

Unfortunately, whether you think about it or not, your clothing and style of grooming make up your image and telegraph a message that clients, colleagues and others can clearly read. If you look clean, well groomed and dressed to fit your law firm's culture, clients will believe you to be intelligent and trustworthy. If you aren't appropriately put together, clients will, rightly or wrongly, regard you as less capable and won't be as inclined to enlist your help with their problems

At Atticus, we take a very broad view of client development. We believe that everything about your personal presentation either adds to, or detracts from, your marketing efforts. Most of the good rainmakers we meet also know this and are caught by surprise when their team doesn't display good judgment. Baffled attorneys all over the country have turned to us to educate their staff and young associates on how to look, dress and act in a professional manner. In trying to help, we've dealt with fashion emergencies of every kind, including tattooed receptionists, associates who wore mismatched suits and bad shoes in court, and – to the horror of their firm's partners — staff members who stripped off their shirts at firm marketing events.

Even with our broad view of rainmaking, that's showing a little too much enthusiasm.

Just like Walt Disney, you can't expect all your team members – especially the younger ones – to automatically possess grooming and dress standards suitable for a law office. Many don't yet realize how their personal appearance speaks volumes about who they are. Compounding their lack of awareness is their lack of funds.

To remedy this situation, we frequently advise partners to pay bonuses

to team members in the form of gift certificates to assist with the financial burden of upgrading their wardrobe. (This has the added benefit of avoiding any "feesplitting" concerns for bonuses given to non-attorney staff.) We also advise that anyone who needs help in this area meet with Personal Shoppers in department stores who can be very helpful in assembling a business wardrobe that is flexible, looks professional, but isn't overly expensive.

Most people don't require a major makeover, but every now and then it's a good idea to check your look. For most of you, a good rule of thumb to follow is this: dress slightly better than your clients. Adopt your own style within reasonable parameters, but be consistent with your firm's image.

Below are some written guidelines for you and your staff. These can be adopted (feel free to modify them to fit), put in your policies and procedures manual, handed to new recruits as part of their orientation, or posted somewhere in a back office. Also included are rules for clients who must appear in court – personal appearance can make a huge difference in how credible they look and how well they are perceived. Feel free to create a handout for clients to take home and follow. As for you and your team, read through the following suggestions and see if you are putting your best foot forward.

Personal Presentation Guidelines:

Hair for staff and attorneys:

For women: Clean, well-groomed hair in an appropriate cut with no obvious roots or unnatural colors is best for the law firm environment. Hair ornaments, bands, ties and ribbons should be small, kept to a minimum and match the outfit they are accessorizing.

For men: Clean, well-groomed hair in a cut appropriate for the law firm culture and not featuring unnatural colors or obvious roots is preferred. Facial hair should also be well tended.

Accessories for staff and attorneys:

Jewelry and other accessories should be conservative in size and few in number. Earrings should not exceed half the size of the ear. Necklaces should be limited to one or two. One or two bracelets, or two

Continued on page 14

Rainmaking

Continued from page 13

bracelets plus a watch is appropriate. No obvious ankle bracelets. Cufflinks and tie-clips should be small in size and tasteful in appearance. Tattoos or piercings should not be on display.

Clothing for staff and attorneys:

Clothing should be clean, unwrinkled and of a style appropriate to the type of business the law firm conducts. Every attempt should be made to look well put together and coordinated, whatever your style. Low-cut, cleavage revealing tops or dresses are best for after hours and not usually appropriate for the law firm. Cropped tops that reveal the midriff and skirts that are too tight and too short don't look professional.

Courtroom attire for attorneys, staff members and clients:

Err on the side of comfortable but conservative business attire. All clothing should be clean and unwrinkled. Men should wear ties and dark suits or dark sports jackets with coordinating pants. Blue suits are considered the best for enhancing credibility. Women should wear

business-like blouses, dresses or jackets and coordinating skirts or pants. Also good are pantsuits or dresses that are not low-cut or revealing. Shoes should be coordinated with the suit or outfit and always clean and polished. For women, clean, closed-toe shoes are preferred, but some sandal styles may work if they don't look too informal.

Makeup for staff and attorneys:

Minimal, natural-looking makeup devoid of glitter or other additives can be worn. Makeup should enhance facial features and look polished, but not appear unnatural or too exaggerated. Piercings and tattoos should be covered up or minimized for both court appearances and work in the law firm.

Now that you've read the guidelines, take a long look in the mirror. If you like the way you look, great. If not, ask yourself if you need to upgrade your wardrobe or shine your shoes or buy a better briefcase. Assess your staff the same way. You may not be a paid performer, but everyday you are onstage playing the role of someone

who can be trusted to handle complex matters. Make sure you and all the supporting players dress the part. We recommend you borrow a page from Disney's book on grooming and you may find that running a Mickey Mouse operation isn't such a bad thing after all.

Mark Powers, President of Atticus, Inc., and Shawn McNalis, co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," is a featured marketing writer for Lawyers, USA and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.



Who Are They?

From Page 4

1. Edward Downey
2. Gary Dunkel
3. Bettye King
4. Jay Hunston
5. Seth Marmor

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Does Your Firm Have a Social Networking Policy?

By *Diana L. Martin and Christopher B. Hopkins*

Without a doubt, there is someone at every firm that uses a social networking site, like Facebook or MySpace, or a professional networking site, like LinkedIn or Legal OnRamp. In fact, the majority of a firm's employees probably use several of these sites. And that number is only going to grow. So it makes sense that every firm should have a policy regarding the use of social and professional networking sites.

Blocking the access of networking sites from the office is not an effective firm policy. Not only is limiting employees' internet access likely to be unreliable at preventing use of these sites during the workday (they can be easily accessed on most cell phones), but it fails to deal with the reality that employees are using these sites outside of the office and associating themselves with their firms when doing so. Furthermore, a firm that blocks these sites is placing a limitation on the ability of their employees to communicate with their networks of contacts. Keeping these lines of communication open may be critical to developing a strong legal practice. The use of social networking by attorneys can amount to free publicity for law firms (Facebook is growing by 600,000 users a day—imagine the possibilities) as well as collaboration and the exchange of ideas with colleagues. Thus, rather than trying to prevent the inevitable use of social and professional networking sites at the office, firms should develop policies that create standards for the use of social networking and establish guidelines for use both within and outside the office.

Jaffe Associates includes two provisions in its social media policy to deal with internal and external use of social networking sites. The internal use clause reads:

You are responsible for what you post. You are personally responsible for any of your online activity conducted with a firm e-mail address, and/or which can be traced back to the firm's domain, and/or which uses firm assets. The (FIRM DOMAIN).com address attached to your name implies that you are acting on the firm's behalf. When using a firm e-mail address or firm assets to engage in any social media or professional social networking activity (for example LinkedIn and Legal OnRamp), all actions are public, and attorneys (and staff) will be held fully responsible for any and all said activities.

View online,

<http://www.jaffeassociates.com/uploads/userfiles/file/int0509.pdf>, at 4. The external use clause reads:

Outside the workplace, your rights to privacy and free speech protect online activity conducted on your personal social networks with your personal e-mail address. However, what you publish on such personal online sites should never be attributed to the firm and should not appear to be endorsed by or originated from the firm. If you choose to list your work affiliation on a social network, then you should regard all communication on that network as you would in a professional network. Online lives are ultimately linked, whether or not you choose to mention the firm in your personal online networking activity.

Id. at 4-5. These policies make employees aware that the use of social networking can have an impact on the firm and their employment with the firm.

Lawyers need to be particularly conscientious when using social networking in order to avoid breaching client confidentiality,



violating state bar rules regarding solicitation, or unintentionally creating an attorney-client relationship. Every firm's policy should at least remind lawyers of these potential pitfalls. In addition, firms may want to guard against these pitfalls by prohibiting their attorneys from answering legal questions on social networking sites or making recommendations for legal services. A firm may also decide to require each of its lawyers to post a disclaimer notifying those in the lawyer's social network that the views expressed belong to the lawyer alone and do not represent views of the firm.

Firms should also warn against, and maybe even restrict, the anonymous posting of material on the internet. Using the shield of anonymity often fosters the posting of inappropriate or ill-advised content. And very rarely is anything truly anonymous. Just asked the CEO of Whole Foods whose anonymous postings about his company caused an investigation, and his outing, by the SEC.

Social networking is here to stay and has enormous potential to benefit legal practitioners if used responsibly. Each law firm needs a policy to guide its employees in the acceptable and appropriate use of social networking sites. By setting a policy and encouraging social networking, firms can get some control over the inevitable use of these sites by their employees, in turn getting free publicity in a potentially unlimited market.

Diana L. Martin (dmartin@leopoldkuvin.com) is an associate with Leopold-Kuvin, P.A., and Christopher B. Hopkins (Hopkins@butzel.com) is a shareholder at Butzel Long, P.C.

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Bulletin Board

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MARK R. HANSON: All admiralty and maritime matters, including personal injury actions, boating accidents, cruise line injuries and insurance claims. 4304 Main Street, Jupiter, FL 33458 (561) 833-7828 Mhanson@PalmBeachInjuryLawyer.com.

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HEARSAY

Haile, Shaw & Pfaffenberger, P.A. is pleased to announce that **Antoinette Theodossakos** has joined the firm as a Shareholder.

William Wallshein, P.A. has relocated his office to 2475 Mercer Ave., Suite 302, West Palm Beach 33401. (561) 533-1221. Wallsheinesq@aol.com. The Palm Beach Gardens office address & telephone remains the same (561) 630-0311.



Carolyn Ansay of Doran, Wolfe, Ansay & Kundid achieved certification by the Florida Bar in City, County and Local Government Law.

Sheryl G. Wood, General Counsel for the South Florida Water Management District, has been elected to the American Bar Association Executive Council for the Government and Public Sector Lawyers division.

Brian J. Cooke and **Carina M. Leeson** have joined Fox Rothschild, LLP in their litigation department. Mr. Cooke has

more than 20 years experience practicing corporate, transactional and securities law. Ms. Leeson focuses her practice on family law including divorce and marital settlement agreements.

Charles H. Damsel, Jr. has been awarded the Florida Defense Lawyers Association's Douglas P. Lawless Award. This award is presented in recognition of an FDLA contribution to the Alternative Dispute Resolution area.



Gunster is pleased to announce that **Tyrone Bongard** has recently earned his Board Certification by the Florida Bar in Real Estate. The firm

also announces that **Kathryn Lewis** has been named to the advisory board of the Harriet L. Wilkes Honors College of Florida Atlantic University.



Sachs Sax Caplan has added **Michael S. Feldman** in the firm's Boca Raton office. Mr. Feldman practices in the area of Community Association Law.

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CALENDAR

October 2009

Thursday, October 1
TFB Videotaped Seminar
"Basic Federal Practice"
Bar Association Office

Thursday, October 1, Noon – 1:00pm
Criminal Law Practice
Committee Meeting
Judicial Dining Room,
Main Courthouse

Thursday, October 1,
5:30pm – 7:30pm
YLS Happy Hour –
John Whittles' Past Pres. Party
Morton's Steak House

Friday, October 2, 8:00am – 3:00pm
Palm Beach Justice Assn.
Golf Tournament
Bear Lakes Country Club

Monday, October 5,
11:00am – 12:00pm
Induction of New Attorneys
Eissey Campus Theatre of PBCC

Thursday, October 8,
Noon – 1:00pm
SPBC FAWL Luncheon
Bogart's

Friday, October 9, Noon – 1:00pm
Worker's Comp. Practice
Committee Meeting
Duffy's, Okeechobee Blvd.

Monday, October 12 – 16
Mediation Week

Monday, October 12, 8:00am
Legal Aid Golf Tournament

Tuesday, October 13,
11:45am – 1:00pm
SPBCBA Membership Luncheon
Boca Marriott

Tuesday, October 13, Noon – 1:00pm
NCS Board Meeting

Tuesday, October 13, Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Thursday, October 15,
5:30pm – 7:00pm
Mediation Week Reception
Bar Association Office

Friday, October 16
Broward County Bench Bar
Conference

Friday, October 16, 11:45am – 1:00
Family Law CLE Lunch Seminar
– **"Preparing Your Client for**
Mediation"
Bar Association Office

Friday, October 16, 4:00pm – 5:00pm
Judge John Kastrenakes Robing
Ceremony
Courtroom 11A

Saturday, October 17, 8:00am
South County Bar Assoc.
Tennis Tournament

Monday, October 19, Noon – 1:00pm
Bench Bar Conference Meeting
Bar Association Office

Tuesday, October 20,
5:00pm – 7:00pm
PBCBA Board of
Director's Meeting
Bar Association Office

Thursday, October 22,
11:45am – 1:00pm
Judicial Relations Luncheon
Main Courthouse,
North End of Cafeteria

Thursday, October 22,
5:30pm – 6:30pm
NCS Happy Hour
Frenchman's Reserve

Friday, October 23,
11:30am – 1:00pm
Technology Committee
CLE Seminar
"Power Point for Dummies"
Bar Association Office

Tuesday, October 27,
5:30pm – 6:30pm
Legal Aid Board Meeting
Bar Association Office

Wednesday, October 28,
11:30am – 1:00pm
Solo Luncheon
Bar Association Office

Wednesday, October 28,
7:00pm – 8:30pm
Small Claims & Mediation Clinic
Library on Summit

Thursday, October 29, Noon –
1:00pm
PBCBA Membership Luncheon
Crowne Plaza Hotel,
West Palm Beach