



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

October 2013

North County Section to host Happy Hour with FAWL Wear Pink and Party with a Purpose for Breast Cancer Awareness Month



Members of the North County Section and the Judiciary are invited to a networking reception with members of the Palm Beach County Chapter of FAWL.

Join us on Thursday, October 10 from 5:30 p.m. to 7:30 p.m. at Red Tapas Bar & Grille in Palm Beach Gardens. Wear pink and show your support for breast cancer awareness.

The cost is just \$10.00 for NCS and FAWL members. The Judiciary is welcome complimentary. One hundred percent of your registration fee will be donated to The Smiley Wiley Breast Cancer Foundation.

Let us know you can attend by registering online @ www.palmbeachbar.org.

Your Name Could Be Here!

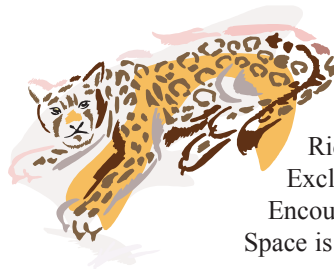


The entrance to the Bar Office is paved with engraved bricks purchased by our members and seen by hundreds of attorneys and judges who visit our building for meetings and seminars on a weekly basis. The bricks are personally engraved in a variety of ways. Some include law firm names, others are engraved with the names of children and spouses and some were purchased in memory of loved ones. If you haven't already purchased a brick, please consider doing so! Your brick will be placed along the walkway for the life of our building. Bricks are sold in two sizes, 4" x 4" for \$1,000.00 and 8" x 8" for \$2,500.00. To purchase your signage, or for further details, call Lynne at 687-2800.

Join Us For a Day At The Palm Beach Zoo!

Saturday, October 26

10:00 a.m. to 2:30 p.m.



Last chance to RSVP for this great event including a day of Face Painting, Tattoos, Complimentary Carousel Rides, Private Wings Over Water Bird Show, Buffet Luncheon, Exclusive Tours of the Jaguar Exhibit, plus Private Animal Encounter, Pictures and Ice Cream!
Space is limited. RSVP online at www.palmbeachbar.org

Mark your calendar for upcoming Membership Events

- October 26:** Family Day at Palm Beach Zoo
- December 5:** Annual Holiday Party and Silent Auction
- March 7, 2014:** Bench Bar Conference
- April 29:** Annual Judicial Reception
- May 2:** Law Day Luncheon
- June 7:** Annual Installation Banquet

YLS to Host Real Life Series October 3

The YLS will host the first of three *Real Life Series* that will serve to provide young lawyers with practical information to assist them in their practice and in life. This first series will focus on *Enhancing Your Value to Your Employer* in large, mid and small size firms; marketing yourself to potential clients and to the legal community generally; and the role diversity plays in marketing. Speakers to include Michael Brown, State Attorney Dave Aronberg, Alexa Hartley, Judge Meenu Sasser and Elisha Roy. Other series will focus on financial management and technology. Register today on the Bar's website www.palmbeachbar.org.

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THE
BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

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The mission of the Palm Beach County Bar Association is to serve its members, foster professionalism and enhance the public's understanding and awareness of the legal system.

LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.



Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1507 Belvedere Road
West Palm Beach, FL 33406

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** in Palm Beach Gardens. The cost is \$35.00 and includes drinks, heavy hors d'oeuvres plus a chance to shop for holiday gifts at great prices!

If you can donate an item for the auction, that would be great! We're looking for gifts such as tickets to professional ballgames, electronics, artwork, jewelry, hotel accommodations, items for children and pets too! 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 charities sponsored by the Young Lawyers and North County Sections.

"A big thanks from the Palm Beach County Food Bank for being included in the event at Washington Elementary. Congrats to the Bar Association and Office Depot for teaming up to do such positive things in our community. Our goal is to increase our distribution of healthy food to children in the PBC via our Weekend Nutrition Program. We couldn't do it without this incredible team effort!"

Perry Borman, Palm Beach Food Bank, Executive Director

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Are You Civic Minded?

By Jill Weiss

Lawyers are an educated bunch. We are well taught, well studied, and well spoken. We know the three branches of government, we can name a sitting Supreme Court Justice and we know our courts are underfunded.

But what if you are not a lawyer, what would you know about civics, about the U.S. court system? Would you be one of the only 21% of Americans that could name the three branches of government? Or would you still be one of one-third of the American public that knows the name of even one of the nine Supreme Court Justices? Or would you agree with the 41% of Americans who blame delays in justice on unnecessary lawsuits rather than inadequate funding of our courts?¹

During last year's election, The Florida Bar initiated the *Vote Is In Your Court*, a program designed to educate adults about merit retention and the election of judges in our state. What was learned from that initiative was that Floridians, similar to the rest of the country, are lacking in civics education. Simply put, "an informed public is the best defense of a vigorous democracy, the rule of law and an independent, impartial and fair judiciary."² And who better than attorneys to teach adults about civics.

To encourage attorneys to promote and speak about civics, The Florida Bar has launched *Benchmarks: Raising the Bar on Civics Education*. Benchmarks is designed to teach the fundamentals of government and civics to adults in an interactive and entertaining manner. The program provides subjects with corresponding activities including PowerPoints and handouts that attorneys can use when addressing

community groups. There are a variety of topics, including: *Amending Florida's Constitution: The Role of the Courts*, which addresses amending the Florida Constitution and the role of the court in doing so; *Judging for Yourself*, where participants learn about the role of appellate judges and merit retention; *Could You Pass the Test?* an interactive activity addressing citizenship and the Constitutions of the United States and Florida; *Is it Unconstitutional? The Case of the Scarlet Tag*, where participants review the Bill of Rights and analyze whether a hypothetical law is unconstitutional; *What the Law Means*, an activity which addresses the role of judges and how the judicial branch differs from the other branches of government; and *Beyond Labels*, a program teaching the importance of judicial independence. The activities are fun as well as educational. I had the opportunity to answer some of the questions on the U.S. citizenship exam as part of the *Could You Pass the Test* program. My group had a ringer in the form of a 13 year old that was quite helpful as he had just studied government in school.

The Palm Beach County Bar Association endorses and supports this important effort. Our Law Related Education Committee, chaired by Liz Herman, is taking this program to churches, temples, rotary clubs, Kiwanis and other community groups throughout Palm Beach County. In the coming months, attorney volunteers will speak to adults about our government, our courts, and the importance of judicial independence. If you know of a group that may want a speaker, or you are willing to volunteer yourself, I encourage you to contact the Bar. As Justice Kennedy said when addressing the opening assembly of the ABA this summer, we "must insist that civics education be recommenced and revitalized because freedom is not something that's on automatic pilot."

¹ <http://ourcourts.org>

² <http://www.floridabar.org/tfb/TFBLegNW.nsf>

Circuit Court Report CIVIL DIVISIONS • As of August 22, 2013

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA BLANC	02-14	02-14	10-13	1235
AB GILLEN	02-14	02-14	10-13	1336
AD G. KEYSER	01-14	01-14	11-13	1458
AE FINE	01-14	01-14	10-13	1575
AF J. KEYSER	03-14	03-14	09-13	1299
AG CROW	03-14	01-14	09-13	1448
AH BROWN	01-14	01-14	11-13	1324
AI SASSER	11-13	10-13	08-13	1089
AJ J. MARX	01-14	01-14	11-13	1239
AN COX	04-14	04-14	11-13	1515
AO BRUNSON	01-14	11-13	09-13	1503

Board Meeting Attendance

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

15th Judicial Circuit Administrative Orders

www.15thcircuit.com/adminorders



REVISED ADMINISTRATIVE ORDERS

2 Series: General Administrative Orders

Administrative Order 2.402 - *Jury Panels*. Amended July 26, 2013. Changed the time when jurors in the jury pool may be released from 4:00 p.m. to 2:30 p.m.

11 Series: Internal Policies and Procedures

Administrative Order 11.105 - *Judicial Rotation Policy*. Amended August 23, 2013. Requires that when cases are returned to a division, the currently assigned judge will hear the matter unless court rule, statute, or judicial economy provides otherwise.

Administrative Order 11.203 - *Appointment of Magistrates*. Amended July 1, 2013. Appointed Jorge Maxion, Esquire as a Magistrate in the Foreclosure Division.

VACATED ADMINISTRATIVE ORDERS

3 Series: Civil

Administrative Order 3.902 - *Chinese Manufactured Drywall Litigation*. Vacated August 22, 2013. Vacated the administrative order requiring pretrial motions in Chinese Manufactured Drywall cases to be scheduled in Division AA. Pretrial motions shall now be scheduled in the trial division to which the cases are currently assigned.

Join NCS for dinner at Brio's

The Board of Directors of the North County Section will host a dinner for its members and the Judiciary on Thursday, November 7th from 6:00 p.m. to 8:00 p.m. at Brio's in the Gardens Mall.

Join us for this stress free pre-holiday get together. As a North County Section member benefit your dinner is just \$40.00.

Space is limited and is expected to sell out. RSVP online at www.palmbeachbar.org. Sponsored by Sabadell United Bank and MetLife.

Upcoming Live CLE Seminars

- October 11: Technology In and Out of the Law Office
- November 8: Family Law Seminar
- November 15: Estate & Probate Seminar
- November 22: Bankruptcy Law Seminar
- January 14: Personal Injury Seminar
- January 17: Technology Seminar
- February 10: ADR Seminar
- April 4: Family Law Seminar
- April 11: Technology Seminar
- June 6: Community Association Law Seminar

And for our Solo & Small Firm Practitioners:

- September 20 – Social Media Tips, Plus Ethics in Online Marketing
- November 7 – Law Office Management Tips (LOMAS)
- January 8, 2014 – Just Opened Your Own Law Firm? Now What?
- March 28 – New Guidelines for IOTA Accounts: Are Your Clients' Assets Covered?
- May 6 – Ethics and New Rules in Advertising

Professionalism Corner



By: **Amy Borman**

On Friday November 1, 2013, the Palm Beach County Bar Association's Professionalism Committee, in conjunction with the judges of the Fifteenth Judicial Circuit, will hold the third annual New Attorney Breakfast in the cafeteria of the West Palm Beach Courthouse. This exciting program, launched in May 2012, reaches out to newly admitted attorneys practicing in Palm Beach County to help demystify the legal practice in the Fifteenth Judicial Circuit and provide an overview of all that the Palm Beach County legal community has to offer.

The morning will start at 7:45 with breakfast attended by new attorneys, judges and members of the various voluntary bar associations in Palm Beach County. Officers from the voluntary bar associations hand out information about their associations with the hope that the new attorneys join and become integrated into the legal community. New attorneys can reconnect with classmates from law school, college, and even high school!

The official program begins at 8:15 with opening remarks by

the Chief Judge. The Administrative Judges from civil, criminal, family, probate and juvenile then present an overview of their divisions along with some "do's" and "don'ts" to a successful practice. The Clerk of Court, the Chairs of the Professionalism Committee, and representatives of the local voluntary bar associations, also spend a few minutes speaking to the new attorneys. After remarks by a guest speaker, (for the past two years we have been fortunate to have had Justice Labarga in attendance), tours of the clerk's offices, courtrooms, and judges' chambers are given.

The New Attorney Breakfast allows a new attorney to learn about the various voluntary bar associations, meet judges and fellow new attorneys, explore the courthouse, and understand the expected level of professionalism and civility in Palm Beach County.

If you know of an attorney practicing in the Fifteenth Judicial Circuit who was admitted to The Florida Bar in 2013 or who relocated to Palm Beach County in 2013, please email the contact information to ABorman@pbcgov.org.

YLS/Federal Bar Summer Happy Hour



Legal Aid seeking Attorney Volunteers for the Ethics Commission

The Palm Beach County Commission on Ethics (COE), is charged with enforcing the Palm Beach County Code of Ethics. Under the Commission Rules of Procedure, advocates are assigned to “prosecute” complaints alleging violations of the ordinance(s). Advocates may be pro bono volunteers. Acting as a pro bono advocate provides a unique opportunity to serve the public. The advocate reviews the COE staff investigation of a reported violation. The advocate then acts on behalf of the COE Executive Director and staff in presenting alleged ethics violations before the commission at a probable cause hearing. If probable cause is found, the advocate may try the case at a public hearing where the commission determines if the respondent is guilty of the alleged violation.

The resources of commission staff are available to assist volunteer advocates. When the need for a volunteer advocate arises, commission staff will call to verify your ability and willingness to serve prior to making the assignment. This pro bono opportunity significantly advances the code’s stated purpose of maintaining public trust in government. It also provides important experience and professional visibility in the community. Participants immediately add to their professional qualifications: “Volunteer Advocate, Palm Beach County Commission on Ethics.”

It is anticipated that there will be an advocate training seminar, with CLE credit available, for volunteers. The seminar will provide you with all of the necessary information.

If you are interested in volunteering please contact Kimberly Rommel-Enright, Esq. at the Legal Aid Society, kenright@legalaidpbc.org.

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

"Technology in and out of the Law Office - Should you be in the Cloud?"



Friday, October 11, 2013 - 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. - 12:30 p.m. **Impact of the "Cloud" - in-house versus hosting of essential applications: E-Mail, Document Processing, Case and Financial Management programs and Security implications for your client data** - *Marc S. Dobin, Esq., Dobin Law Group, P.A.*
- 12:30 p.m. - 12:45 p.m. **Communications tools - local, hosted and cellular solutions** - *Marc S. Dobin, Esq., Dobin Law Group, P.A.*
- 12:45 p.m. - 1:00 p.m. **Essential Hardware for the Law Office - Printers (inkjet, laserjet and multifunction printers) and Scanners (stand alone and network systems)** - *Marc S. Dobin, Esq., Dobin Law Group, P.A.*

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This course has been granted 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 **10/4/13**; add \$15 to registration fee after that date.

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

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

HOW TO REGISTER



BY CHECK
Return this form



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



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

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

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

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

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

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



Temporary Grandparent & Relative Custody Through a “751 Action”

By Christopher R. Bruce

Over time, nearly all divorce and family law practitioners will consult with someone who is concerned about the well-being of a child that is not their own. Oftentimes, the prospective client is a grandparent or close relative to a child. Unfortunately, in many cases, the prospective client is concerned that a child’s parent or parents have substance abuse problems that render them incapable of adequately caring for a child. The prospective client wants to step in and help but the pervading legal myth is a relative or grandparent has no custody rights. The question many practitioners face in these nearly always emotional and heartbreaking interviews is “what on earth can be done to help?” The answer: take action with a “751 action”.

This article explains the procedures available for obtaining temporary or concurrent custody over a child in Florida through chapter 751, Florida Statutes. This article is limited to an overview of chapter 751 and does not even begin to touch on other remedies available to protect a child from immediate harm. It should go without saying that a client needs to call law enforcement and the Department of Children and Families (DCF) if they do not have physical custody of the child and the child is suspected to be the victim of abuse, abandonment or neglect.

Benefits of a 751 Action

A chapter 751 temporary relative custody action allows grandparents and relatives to obtain temporary custody of a child. This can include temporary sole custody or rights to see a child at certain times similar to the timesharing parents receive with children after a divorce. Further, a 751 action allows a grandparent or relative to obtain the temporary legal authority to do what is necessary to care for a child, such as enroll the child in school and obtain medical care. In some cases, a 751 action also allows a grandparent or relative to receive child support from the child’s parents.

Who Can Bring a 751 Action

Section 751.02 provides a relative custody action can be brought by (1) any “extended family member” who had the signed, notarized consent of the child’s legal parents, or (2) any “extended family member” who is caring fulltime for the child in the role of a substitute parent and with whom the child is presently living. Section 751.011 defines an “extended family member” as a relative by third degree or the child’s stepparent (in limited circumstances).

It is important to note that statutory entitlement to bring a 751 action without the consent of a parent requires the grandparent or relative to be caring for the child at the time the action is filed. If the child is not living with the client and the child’s parents do not consent to a temporary custody order, the best course of action is likely to seek relief through dependency court. There are more “moving parts” to dependency court but this route can ultimately result in the grandparent or relative obtaining temporary or concurrent custody of a child.

Process & Procedure

A 751 action is filed in circuit court. In Palm Beach County, a 751 action will be assigned to one of the judges in the family division that handles the county’s divorce and paternity cases.

Section 751.03 sets out the mandatory components of a 751 action and section 751.04 explains the required notice parents must receive before any hearing. Practitioners should take great care to comply with these pleading and notice requirements.

If both parents consent to the grandparent or relative having custody rights the process is similar to an uncontested divorce. Once the petition is filed the parties can arrange for the entry of an agreed temporary custody order, typically at a motion calendar hearing or short evidentiary hearing.

If a parent objects, the court cannot grant temporary custody to a relative unless there is clear and convincing evidence establishing that the parent or parents are “unfit” to care for the child. To find that a parent is “unfit”, the court must find that the parent abused, abandoned or neglected the child as defined by Florida’s dependency statute. Because of this high burden of proof, practitioners should engage in a thorough pre-suit evaluation and investigation before allowing a client to throw dollars at a 751 action. Typically, “shock the conscience” type evidence is needed to prevail in a contested 751 action- mere concerns about a parenting abilities will not be enough.

Bottom Line

A 751 action is not available to everyone and should only be used to remedy serious situations (which do not include a grandparent or relative’s disagreements with a family member’s parenting style). However, when appropriate, a 751 action is an effective remedy that grandparents or relatives can use to obtain temporary custody and responsibility over a child without involving law enforcement or DCF in what might otherwise be a private family situation.

Christopher R. Bruce is a divorce and appellate attorney with Nugent Zborowski & Bruce. The firm’s practice is limited to resolving matrimonial 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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Students off to a healthy start thanks to YLS & Office Depot Foundation



Project Co-Chairs Stephen Grant and Scott Perry, along with YLS Secretary Lou Delgado, shop for healthy snacks for the children at Washington Elementary School in Riviera Beach. The food was made possible through a grant from the Office Depot Foundation.



YLS President Julia Wyda interviewed LIVE on Channel 12 on the morning of the distribution



Students show off their new snackpacks! A total of 400 bags along with food and school supplies were distributed to the children.



A very special thank you to YLS President-elect Lindsay Demmery, School Supply Committee Chair Steven Grant and YLS President Julia Wyda for coming to the office at 4:45 a.m. to be interviewed live on Channel 12.



Upcoming Events ~ Fall 2013 SAVE THE DATES



Monday, October 14, 2013

13th Annual Cup of Justice Golf Classic

*Presented by Sabadell United Bank
at Bear Lakes Country Club*

Tuesday, November 5, 2013

Brooks Brothers Event

at Town Center, Boca Raton

Wine & Hors d' Oeuvres ~ Casual Evening Attire

Wednesday, November 13, 2013

Brooks Brothers Event

at the Palm Beach Gardens Mall

Wine & Hors d' Oeuvres ~ Casual Evening Attire

Be sure to put on your calendar today....

Saturday, May 10th, 2014

**26th Annual Pro Bono Recognition
Evening & Auction**

at the Palm Beach County Convention Center

For more information
or to RSVP for any of these events,
please contact Devin Krauss,
our Special Events Coordinator,
at dkrauss@legalaipbc.org or 561-822-9791.

Thank you for your support!



Renounce/Divest Bequest – A Prerequisite To Challenging The Validity Of A Will

By: David M. Garten

PRE-DISTRIBUTION: A beneficiary who seeks to revoke probate of a will must renounce his benefits under that will. *See, Carman v. Gilbert*, 641 So. 2d 1323 (Fla. 1994). The renunciation can be in the body of the petition to revoke probate [*Carman, supra*], and a renunciation alleged in an amended petition will relate back to the date of the original petition. *See, In re Estate of Wood* (Fla. 1973). The renouncing party bears the burden of proving renunciation, and the renunciation must be clear and unequivocal. *See, Gardner v. Richardson (In re Gardner)*, 283 P.3d 676 (Ariz. App. 2012), citing *Daley v. Daley*, 308 Mass. 293, 32 N.E.2d 286, 290 (Mass. 1941) and *Garfield v. White*, 326 Mass. 20, 92 N.E.2d 575, 579 (Mass. 1950).

A renunciation is “qualified” in effect and permits an unsuccessful contestant to take under the will as the testator intended. At the same time, it encourages beneficiaries to come forward with bona fide claims as to the validity of an instrument that could thwart the testator’s true intent. *See, Carman, supra; Estate of Harby*, 269 So. 2d 433 (Fla. 2nd DCA 1972) (a “qualified” renunciation protects the estate by keeping the property in question in the possession of the estate until its proper disposition is determined; it prevents the attacker of the will from “having his cake and eating it too,” in that if he is successful in invalidating the will he cannot take under the will).

POST-DISTRIBUTION: A beneficiary who seeks to revoke probate of a will must divest the benefits he received under the will. Divestiture of title must be by some method and means apparent of record, and it is not sufficient for the beneficiary to say simply that he declines and will not have the title thrust upon him. *See, Pournelle v. Baxter*, 151 Fla. 32 (Fla. 1942). A beneficiary who receives and retains a bequest under a will is estopped to contest the validity of the will if it appears that prejudice has resulted to third persons whose interests are affected by the instrument by reason of the temporary receipt of the benefits and if the elements of laches are present in the transaction. *See, Barnett Nat’l Bank v. Murrey*, 49 So. 2d 535 (Fla. 1950). Arguably, once the beneficiary received his bequests, he is no longer an “interested person”. *See, §731.201(23), F.S.* (The term “interested person” does not include a beneficiary who has received complete distribution).

The purpose of such divestiture is three-fold: (1) to protect the personal representative in the event the will is held invalid; (2) to demonstrate the sincerity of the contestant and prove that the suit is not merely vexatious; and (3) to have the property readily available for disposition under a decree of court. *See, Carman, supra*.

The presumption of acceptance may be conclusive if the beneficiary fails to return his bequest “promptly”. *See, In re Estate of Pellicer*, 118 So. 2d 59 (Fla. 1st DCA 1960); *Barnett Nat’l Bank v. Murrey, supra* (a beneficiary who has received benefits under such an instrument is not thereby estopped to contest the validity of the instrument if he returns the benefits promptly); *Pournelle v. Baxter*, 151 Fla. 32 (Fla. 1942) (A beneficiary cannot hold to a devise with one hand and shove it away with the other. He must determine, and determine promptly what course he will pursue).

When a contesting beneficiary is unsuccessful and assets of the estate are depleted because of the unsuccessful contest, the court has the discretion to direct that the resulting costs and attorney fees be charged against the contestant’s devise under the will. *See, §733.106(4), F.S.; Carman, supra*.



The Palm Beach County Hispanic Bar Association would like to thank all of the Sponsors of the 3rd Annual Justice Labarga Luncheon Honoring Judge Nancy Perez!



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Amendment of Complaint Upon Death of a Plaintiff

By *Ted Babbitt*

Capone v Philip Morris USA, Inc., 38

Fla. L. Weekly S402 (Fla. June 13, 2013) was a tobacco litigation case which was the progeny of Engle v Liggett Group Inc., 945 So. 2d 1245 (Fla. 2006). An action for personal injury was brought by a plaintiff and his wife and the plaintiff died during the pendency of the litigation. The wife was appointed as personal representative and sought to amend the complaint to allege, alternatively, a wrongful death claim based upon the same allegations as the original suit and the survival action for the pain and suffering of the decedent prior to his death. The wrongful death claim asserted that the defendants' negligence caused the decedent's death while the survival claim, alternatively, pled that if the defendants showed that the decedent's death was caused by an unrelated condition or act, then the survival action allowed a claim for pain and suffering allegedly caused by the defendants' actions and which the decedent suffered until he died from the

unrelated cause.

The Circuit Court relied upon the Wrongful Death Statute § 768.20, Florida Statutes (2008) which holds:

“When a personal injury to the decedent results in death, no action for the personal injury shall survive, and any such action pending at the time of such death shall abate.”

The Circuit Court held that the word abate was essentially the same as terminate and that the original personal injury action could not be amended to claim wrongful death but that a new and independent lawsuit had to be filed.

The Third District Court of Appeals in Capone v. Philip Morris, 56 So. 3d 34 (Fla. 3rd DCA 2010) affirmed the Circuit Court concluding the above-quoted statute precluded an amendment of the original complaint.

The Supreme Court took jurisdiction based upon a direct conflict with the Third District case and the case of Niemi v. Brown & Williamson Tobacco Corp., 862 So. 2d 31 (Fla. 2d DCA 2003) in which the Second District held exactly the opposite.

The Supreme Court reversed the Third District and approved the opinion in Niemi. The Supreme Court relied, in part, upon the interplay between the Wrongful Death Act as quoted

above and § 46.021 Florida Statutes (2008) commonly known as the survival action statute which holds “No cause of action dies with the person. All causes of action survive and may be commenced, prosecuted and defended in the name of the person prescribed by law.”

The Supreme Court in trying to determine what the legislature intended in utilizing the word “abated” in the Wrongful Death Act held that the meaning of that word should be determined by the purpose behind the Wrongful Death Act. That purpose, the Court held, was “to prevent a tortfeasor from avoiding liability for his misconduct when such misconduct results in death.” The Court concluded that to require a personal representative to abandon a personal injury action that may have been pending for years and to file a new wrongful death action would be putting form before substance and require unnecessary litigation, costs and delay. At Page 407, the Court held:

To give effect to the intent of the Act, we conclude that the word “abate” in section 768.20 must be interpreted in a manner that facilitates – not complicates or convolutes – the initiation and progression of a wrongful death action on behalf of a decedent’s

Continued on page 11

Are You Involved in Other Organizations or Civic Groups? The Law Related Education Committee Needs Your Help!

By *Liz B. Herman, Associate at Rosenbaum Mollengarden, PLLC, Chair of the Law Related Education Committee*

The Law Related Education Committee seeks to increase public understanding of the judicial system, including judicial elections, and works to impart the significance of supporting our courts. The Florida Bar, the ABA, and even the Supreme Court Justices all recognize the critical need to improve the public's knowledge of the role of the courts. The statistics are staggering: 44 percent of Americans could not name any branch of government, and only 17 percent think that court funding is inadequate. Our Committee members employ a series of presentations prepared by the Florida Bar Constitutional Judiciary Committee, called “Benchmarks: Raising the Bar on Civics Education.” We reach out to various community civic organizations, such as churches, temples, social clubs, non-profits, and HOAs, and offer to make the fun and engaging presentations to their members. Our presentations are interactive and encourage audience participation.

Are you involved with the local chamber of commerce, do you sit on the board of directors of the JCC, the YMCA, a retirement community or a charitable organization? The Committee is looking for contacts in other community organizations to whom we could reach out and offer to speak at one of the organization's meetings or membership events. You could also volunteer to be one of the speakers to give these presentations. Our Committee members have been hard at work, already securing several presentations with Rotary Clubs throughout Palm Beach County, a women's business professional group, and a temple in Delray Beach, to name a few. We are excited to have received a lot of interest from the general Bar membership in volunteering to be speakers, including several judges! If you can help us reach out to the community or if you are interested in being a speaker, please contact Liz Herman at yherman@r-mlaw.com.

**Rule 1.140(b):
Motions to Dismiss**

By Matt Triggs and Jonathan Galler

Don't think outside the box.

That is the typical mindset of practitioners on a motion to dismiss. After all, the general rule is that "when considering a motion to dismiss, a trial court is limited to the allegations within the four corners of the complaint and any attachments." *Steiner Transocean Ltd. v. Efremova*, 109 So. 3d 871, 873 (Fla. 3d DCA 2013).

But, as the Third District Court of Appeal reminded us in *Steiner*, there are exceptions to the general rule. At issue in that case was the propriety of considering the plaintiff's employment agreement, which was not attached to the complaint, on the defendants' motion to dismiss.

The plaintiff in *Steiner* was injured while working aboard a cruise ship. She sued four entities, all of which she alleged were her employers, for causes of action that included negligence and unseaworthiness. The defendants moved to dismiss the complaint on the basis of a mandatory forum selection clause in the plaintiff's employment agreement. The defendants argued that the forum selection clause required the plaintiff to file her lawsuit in federal court. Because the employment agreement was not attached to the complaint, however, the defendants attached it to their motion to dismiss. But the trial court denied the motion to dismiss (at least in part, according to the Third District) because it believed it could not look beyond the four corners of the complaint in deciding the motion.

The Third District reversed. "A motion to dismiss based on a contractual forum selection clause is similar, in many respects, to a motion to dismiss for improper venue." *Id.* Just as the court is permitted to look beyond the four corners of the complaint on a motion to dismiss for improper venue, *see, e.g., Barclays Bank, PLC v. Munoz*, 890 So. 2d 1252 (Fla. 3d DCA 2005), the Court held that the trial court here was likewise permitted to consider the forum selection clause even on a motion to dismiss.

In its opinion, the Court recounted other examples of motions to dismiss that similarly lend themselves to consideration of evidence outside of the four corners of the complaint. A court is permitted to consider such evidence where the motion to dismiss challenges subject matter jurisdiction or personal jurisdiction or

where the motion to dismiss is based on *forum non conveniens*. *Steiner*, 109 So. 3d at 873 (citing *Seminole Tribe of Fla. v. McCor*, 903 So. 2d 353 (Fla. 2d DCA 2005); *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499 (Fla. 1989); *Kinney Sys., Inc. v. Continental Ins. Co.*, 674 So. 2d 86 (Fla. 1996)).

Although the Third District did not expressly say so, the point seems to be that motions to dismiss under rule 1.140(b)(1)-(5) and (7) are unlike motions to dismiss under rule 1.140(b)(6) ("failure to state a cause of action"). Rule 1.140(b)(6) "tests the legal sufficiency of the pleading, and the trial court must confine itself strictly to the four corners of the complaint." *Hospital Constructors Ltd. ex rel. Lifemark Hospitals of Florida, Inc. v. Lefor*, 749 So. 2d 546, 547 (Fla. 2d DCA 2000). By contrast, as *Steiner* makes clear, the sufficiency of the pleading itself is not the exclusive way to assert a challenge under the other enumerated grounds for a motion to dismiss.

That is certainly the view of the leading treatise on federal procedure. In describing the distinction between federal rule 12(b)(6), on the one hand, and federal rule 12(b)(1)-(5) and (7), on the other hand, the authors write as



follows: "The validity of these [latter] defenses rarely is apparent on the face of the pleading and motions raising them generally require reference to matters outside the pleadings on a variety of questions such as the citizenship or residence of the parties, the activities of the defendant in the forum state, and the details of the service of process." 4 Charles Alan Wright & Arthur R. Miller, *Fed. Practice & Proc.* § 1364 (3d ed. 2013).

In other words, thinking (or looking) outside the "box" may be exactly what is required for certain types of motions to dismiss.

Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation.

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“Strength in Diversity”

Creating Pathways to Unity

Submitted by Sia Baker Barnes

“Inclusion- The Pathway to Unity”- this is the theme of the current, and first African-American President of The Florida Bar. In an effort make our state bar better, the bar has established numerous programs including efforts to encourage participation in committees and sections, establishment of a leadership academy and funding voluntary bar associations with grants to promote diversity and inclusion. It is a combined effort with local voluntary bar associations, including the Palm Beach County Bar Association, to ensure that our legal community is both reflective of, and inclusive of, members from all walks of life. Studies have shown that these efforts have a positive impact on the services we as lawyers provide to our clients and to our community.

So what are we doing locally to promote the goals of diversity? Your Committee for Diversity and Inclusion has a multi-faceted approach designed specifically for the members of the Palm Beach County legal community. Among those efforts is a Diversity Internship Program, connecting aspiring lawyers to local law firms, agencies and organizations in an effort to attract diverse lawyers- the best of the best, to our legal community. The program is a 10-week summer program consisting of legal assignments, exposure to the legal process, networking within a number of voluntary bar associations, a courthouse tour and a seminar providing keys to success. This summer, we are proud to have placed 16 interns in environments designed to promote their success as future lawyers. In addition to the positive impact the program has on the students, there is an added element. Through our own local research, we have learned that one of the largest barriers to hiring diverse lawyers is exposure- the decision-makers simply may not be aware of very qualified, yet diverse, candidates. The program is designed to fill that gap, to be a pathway to unity between those who seek to add diversity to their firms and those law students who fit the bill.

Now for the big question, what are the results? The program is extremely successful. Both the students and the firms/agencies report a positive impact from participation in the program. In fact, one such firm, Squire Sanders, was so impressed with its intern that they offered him a job - and he accepted. Ricardo Marengo will begin his third year of law school this fall at Rutgers University, and upon graduation, will return to practice in Palm Beach County. He is a native of West Palm Beach, and has a strong desire to make a positive impact when he returns home.

So what can you do to get involved? Consider participating in the Diversity Internship Program next summer by hiring an intern or sponsoring an intern at a local government agency; join the Committee for Diversity and Inclusion (we meet once a month at the bar office); or simply take a look at your firm or agency, and think about the benefits of increasing or improving



diversity. These are all simple steps you can take to create your own Pathway to Unity.

This program could not be successful without the dedicated efforts of the Diversity Internship Sub-Committee- Chioma Deere and Edrick Barnes, co-chairs, and members Jessica Callow Mason and Holly Galinskie. Thank you all for your hard work!

Sia Baker Barnes is a shareholder with Searcy Denney Scarola Barnhart & Shipley, specializing in Plaintiff's personal injury, medical malpractice, wrongful death and product liability cases. She serves on the Bar's board of directors and on the Committee for Diversity and Inclusion.

Amendment of Complaint

Continued from page 9

survivors when the injured party plaintiff in a personal injury action dies.

Instead, “abate,” as that term is used in section 768.20 must be interpreted to cause the case to be suspended until the personal representative of the decedent’s estate is added as a party to the pending action and receives a reasonable opportunity to amend the complaint to state the damages sought under a wrongful death claim or to state both a claim for survival damages and, in the alternative, wrongful death where – as here – the cause of the decedent’s death may be disputed by the parties. (emphasis in original)

The Court held for the first time that upon the death of a party plaintiff in a personal injury action, the personal representative of the estate of the decedent can be added to the action already pending and can, alternatively, claim a wrongful death claim and a survival claim.

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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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.

Robb Armstrong: Barry University, New Members October 2013 Bulletin

Elina Basham: University of Miami; Akerman, West Palm Beach

Kimberly Belford: Lytal Reiter Smith Ivey & Fronrath, West Palm Beach

Staci L. Burton: Nova University; Sasser, Cestero & Sasser, P.A., West Palm Beach.

Susan Lauren Castle: Thomas M. Cooley Law School; Palm Beach Gardens

Matthew Conolly: Barry University School of Law; West Palm Beach

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Can a Bankruptcy Court Surcharge Exempt Assets?

by Jason S. Rigoli

In its upcoming term, the United States Supreme Court will likely rule on whether bankruptcy courts may surcharge exempt assets, or more specifically whether they may surcharge constitutionally protected homestead property. See, *Law v. Siegel*, 133 S.Ct. 2824 (Mem), 81USLW3685 (Granting certiorari) (Jun 17, 2013).

Three Circuit Courts of Appeal have issued opinions regarding whether a bankruptcy court has the authority to surcharge exempt assets. The First Circuit, with Justice Souter sitting by designation, in *Malley v. Agin (In re Malley)*, 693 F.3d 28 (1st Cir. 2012) (Souter, J.), and Ninth Circuit, in *Law v. Siegel (In re Law)*, 435 Fed.Appx. 697 (2011) cert. granted 133 S.Ct. 2824 and *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004), have both held that bankruptcy courts have the authority to surcharge exempt assets “to prevent an abuse of process.” In contrast the Tenth Circuit, in *In re Scrivner*, 535 F.3d 1258 (10th Cir. 2008), held that a bankruptcy court does not have the authority to exercise its equitable powers in such a manner where it is in direct conflict with provisions of the Bankruptcy Code. *Id.* at 1263.

In each of the cases where surcharging exempt assets is sought, the relief is sought to remedy misconduct or abuse of process by a debtor, e.g., concealment or failure to surrender estate assets or failure to comply with permissible discovery requests.

The Supreme Court’s decision will likely come down to statutory interpretation. The Circuit Courts that have held that bankruptcy courts have the equitable power to surcharge exempt assets have grounded their reasoning in the policy that “an honest debtor is entitled to a fresh start, not a head start” and couched in section 105(a), authorizing a bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of ... title [11] ... to prevent

an abuse of process. See, 11 U.S.C. 105(a); *Malley*, 693 F.3d at 28-31. The Tenth Circuit, however, has concluded otherwise. In *Scrivner*, the Tenth Circuit held that a bankruptcy court may not exercise the broad equitable powers granted in section 105(a) in a manner which is inconsistent with other more specific provisions of the Bankruptcy Code. *Scrivner*, 535 F.3d at 1263. Accord, *In re Mazon*, 395 B.R. 742 (M.D.Fla. 2008) (Bankruptcy courts lack authority to surcharge exempt assets). The *Scrivner* Court stated that a bankruptcy court is “not at liberty to grant more or less than what the clear language of the [Bankruptcy Code] mandates.” *Id.* at 1264 (internal citation omitted). The bankruptcy code contains specific provisions regarding exemptions, 11 U.S.C. § 522, and if a party in interest does not object, that property is exempt from the estate. *Id.* Furthermore, the Bankruptcy

Code provides specific remedies for misconduct of the debtor, such as denial or revocation of the debtor’s discharge, 11 U.S.C. § 727, or dismissal. See, 11 U.S.C. 707(a)(1). See also, *Scrivner*, 1262-1265.

The Supreme Court’s ruling on the surcharge issue could have wide ranging consequences depending on how broadly the court rules. Alternatively, the Court could narrowly tailor its opinion to address only constitutionally protected homestead property. Either way it will be an important decision that all members of the bankruptcy bar should look forward to.

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

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- 12:25pm - 12:30pm **Welcome - Opening Remarks** - *Brian K. McMahon, Esq.,
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- 12:30pm - 2:00pm **Evidentiary and Ethical Issues in Bankruptcy** -
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By Manuel Farach

Aery v. Wallace Lincoln-Mercury, LLC, – So.3d –, 2013 WL 3924091 (Fla. 4th DCA 2013).

A Chapter 13 bankruptcy debtor, not the bankruptcy Trustee, has the right to maintain a state court cause of action after a bankruptcy is filed.

Newton v. Tenney, – So.3d –, 2013 WL 3924103 (Fla. 4th DCA 2013).

The Fourth District broadly states that there must be a prevailing party in a contract dispute, but also recognizes there “may be compelling circumstances in which a trial court determines that neither party prevailed...”

Carvajal v. Banc of America Inv. Serv., Inc., – So.3d –, 2013 WL 3927684 (Fla. 3d DCA 2013).

An arbitration panel may not award attorneys’ fees absent an “express waiver” of the trial court’s right to award fees. A fees request in arbitration pleadings does not rise to the level of an “express waiver.”

Reed v. Chase Home Finance, LLC, – F.3d –, 2013 WL 3868079 (11th Cir. 2013).

Mortgagee’s assignment of note to servicer to foreclose is an assignment for “administrative convenience” under the Truth in Lending Act, 15 U.S.C. § 1641 (f) and (g), and TILA does not require a notice that the assignee is the new owner of the debt.

Attaway Elec., Inc. v. Kelsey Const., Inc., – So.3d –, 2013 WL 400641 (Fla. 4th DCA 2013).

Suits on transfer bonds under Florida Statute § 713.24 (3) must be brought in the county where the bond is filed and the property is located, notwithstanding mandatory venue provisions in contracts between parties.

Bennett v. Deutsche Bank Nat. Trust Co., – So.3d –, 2013 WL 4007079 (Fla. 4th DCA 2013).

Under Fla. Stat. § 673.3081 (1), the validity of signatures is presumed unless contested.

Rembrandt Vision Technologies, L.P. v. Johnson & Johnson Vision Care, Inc., – F.3d –, 2013 WL 4007537 (11th Cir. 2013).

The failure of an expert to disclose his methodology in testing a product violates Federal Rule of Civil Procedure 26 (a) (2)(B)(i)’s requirement of disclosing “a complete statement of all opinions the witness will express and the basis and reasons for them.” Failure to disclose calls into play Rule 37’s self-executing sanction, and a party may not testify beyond their report and may not testify as to methodology not included in the report.

F.D.I.C. v. HG Capital LLC, – Fed.Appx. –, 2013 WL 4007573 (11th Cir. 2013).

The mere appearance of bias or partiality is not enough to set aside an arbitration award, but is enough to conduct an evidentiary hearing. Participation in the same arbitrations, mediations and litigations before an arbitration begins, i.e., “familiarity due to confluent areas of expertise,” is not evidence of bias.

UCF Athletics Ass’n Inc. v. Plancher, – So.3d –, 2013 WL 4226848 (Fla. 5th DCA 2013).

The judgment (not the verdict) obtained determines whether a party has met the threshold for an award of attorneys’ fees under Fla. Stat. § 768.79. Application of the sovereign immunity statute reduces the judgment notwithstanding a higher verdict, and both fees and costs cannot exceed \$200,000 under the statute.

City of Atlantic Beach v. Wolfson, – So.3d –, 2013 WL 4106695 (Fla. 1st DCA 2013).

A circuit court sitting in its appellate capacity on first-tier certiorari review commits error if it reviews the record and finds for a party other than the prevailing party at agency level; a circuit court reviews merely to determine whether substantial, competent evidence supports the finding.

Regions Bank v. MDG Frank Helmerich, LLC, – So.3d –, 2013 WL 4081005 (Fla. 2d DCA 2013).

A judgment creditor is entitled to discovery of a judgment debtor’s assets, including those jointly held with a spouse.

Angelo’s Aggregate Materials, Ltd. v. Pasco County, – So.3d –, 2013 WL 4081010 (Fla. 2d DCA 2013).

Landowner may seek declaratory judgment to determine whether its rights have vested under applicable land use ordinances.

Ocean Bank v. Caribbean Towers Condominium Ass’n, Inc., – So.3d –, 2013 WL 4081702 (Fla. 3d DCA 2013).

A trial court has jurisdiction to determine the amount of association dues owed a condominium association in the foreclosure action notwithstanding Fla. Stat. § 718.303 (1), and also to determine the amount of attorneys’ fees to be awarded in the action to determine the association dues.

Cohen v. D.R. Horton, Inc., – So.3d –, 2013 WL 4482973 (Fla. 5th DCA 2013).

Inconvenience and expense after an allegedly erroneous trial court ruling are not bases for certiorari relief.

Harris v. Aberdeen Prop. Owners Ass’n, Inc., – So.3d –, 2013 WL 4436603 (Fla. 4th DCA 2013).

The statute of limitations to contest a community association restriction does not begin to run until the party purchases the real property subject to the restriction.

Jackson-Platts v. General Elec. Capital Corp., – F.3d –, 2013 WL 4463006 (11th Cir. 2013).

Proceedings Supplementary under Fla. Stat. § 56.29 are “civil actions,” not ancillary proceedings, for purposes of removal to federal court.

Travaglio v. American Exp. Co., – F.3d –, 2013 WL 4406389 (11th Cir. 2013).

Citizenship, for diversity jurisdiction purposes, requires “domicile,” i.e., residence in a state together with the intention to remain there.

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.

The Florida Bar Foundation provides leadership and funding for justice



As lawyers we share a commitment to justice. The Florida Bar Foundation, a 501(c)(3) public charity, turns that commitment into action through its

funding of programs that provide access to justice for Floridians living in poverty. Through support of The Florida Bar Foundation, we can demonstrate our belief that the justice system works best when it works for everyone – regardless of his or her economic status.

Locally, The Florida Bar Foundation is a vital funding source for the Legal Aid Society of Palm Beach County, as well as Florida Rural Legal Services and the Florida Equal Justice Center, which also serve Palm Beach County. Through its Administration of Justice Grant Program, the Foundation also helps fund special projects and initiatives across the state such as the Innocence Project of Florida, which has succeeded in exonerating

13 wrongfully imprisoned Floridians using DNA evidence since 2003, as well as the Florida Law Related Education Association.

If you visit the Foundation's website at www.floridabarfoundation.org, you will be impressed with the number and diversity of the grantees assisted by the Foundation.

Since 1981, the primary source of funding for The Florida Bar Foundation has been Florida's Interest on Trust Accounts (IOTA) Program, which has enabled the Foundation to provide about a third of the total funding for civil legal aid organizations in Florida. Over the past 32 years, Florida's IOTA Program has distributed more than \$400 million to help hundreds of thousands of poor people receive critically needed free civil legal assistance throughout Florida.

The Foundation also funds initiatives such as salary supplementation and loan repayment programs that help attract and retain legal aid attorneys. The Legal Aid Society of Palm Beach County's salary

supplementation grant was \$378,950 in 2012-13.

In recent years, due to the impact of extremely low interest rates on IOTA revenue, the Foundation has had to drastically reduce its grants. Whereas in 2010, the Legal Aid Society of Palm Beach County received a Foundation general support grant of \$505,343 to provide legal services, as well as a \$144,200 Foundation grant specifically for Children's Legal Services, in 2013 those grant amounts were \$229,931 and \$62,962, respectively. Overall, Foundation funding is now about a quarter of overall legal aid funding statewide.

I urge you to take a few minutes to learn more about The Florida Bar Foundation, an organization in which all of us, as Florida attorneys, can take tremendous pride, and one that brings critical resources back to our community.

Sincerely,
 Gregory W. Coleman, President-Elect
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The One Change You Can Make That Can Make All the Difference

By: *Nora Riva Bergman*

If there was one thing you could do that would increase your productivity, decrease your stress, and just generally make you happier, would you do it? Would you at least try it? Now, don't get me wrong, I'm not saying that the secret to success lies in doing just one thing – or changing just one thing. But what I am saying is that changing just one thing can make a big difference.

So, what is the “one thing”? Limit needless interruptions. If you can limit the number of needless interruptions in your day, it will make a big difference in your life and your practice. Whether you realize it or not, needless interruptions are wreaking havoc on your productivity and your peace of mind. Needless interruptions can add up to hundreds of hours lost over the course of a year. It can take our brain about 20 minutes to recover from an interruption. So if you're dealing with just three interruptions each day, that's one hour a day, five hours a week, 240 hours over a 48-week year. But if you're like most attorneys, you're dealing with more than three interruptions every day.

Before I go any further, let's define what I mean by “needless interruption.” Some interruptions can be beneficial. For example, if you're working on a memo and your associate interrupts you to provide additional research that supports your argument, that is not a needless interruption. Needless interruptions are anything that is: a) not a really important, i.e. the building (or your hair) is on fire, a family emergency, a call from opposing counsel regarding your hearing tomorrow; and b) not relevant to what you are working on at that moment. As you're probably thinking, most of the interruptions we deal with every day are needless interruptions. Needless interruptions are distractions. They take you away from whatever you're working on. Needless interruptions can be external—the ringing phone, the dinging inbox, the team member with “just a quick question.” But they can also be internal. Internal interruptions occur when we lose focus on what we are doing—our minds wander, we surf the net. And here's another reason needless interruptions are so damaging: If you're concentrating on really high-level work when you're interrupted, there's a good chance you won't return to it when the interruption is over because it takes too much energy to get back to where you were. Whatever that forgotten project was will often become the fire to be put out tomorrow or the next day or next week.

Next, is the idea of “limiting” the number of needless interruptions you deal with each day. Recognizing needless interruptions is just the first part of the equation. Once you realize that you're losing up to an hour a day to these nasty creatures, you'll know it's time to start limiting them. But before you can begin to limit them, you need know just how many you're dealing with and where they're coming from. For that, I recommend that you keep an interruption log for three days. These don't need to be three consecutive days, just three days when you are in your office for most of the day. Get out a legal pad and jot down every interruption you deal with noting the following:

- Type of interruption? (phone call, person coming in my office, email)
- Was it external or internal?
- Was it important and/or relevant to what you were working on? If not, it was needless.

- What time of day was it? You might notice patterns based on the time of day. For example, you may interrupt yourself every afternoon at 2:30. If so, maybe you need a break at 2:30 and can build that into your day.



Once you know how many needless interruptions are invading your days, you can begin to limit them. Here are just a few suggestions to get you started:

- Create Q&A time with your team. The most effective way to do this is to schedule quick huddles (5-10 minutes) in the morning and afternoon. Ask your team to save their questions for these huddles.
- Turn off pop-up email notifications.
- Close your door. I know this may sound simple, but it can make a big difference.
- Wear earplugs. If you have trouble focusing, earplugs can really help.
- Listen to music with headphones, but not something you'll be tempted to sing along with. (I'm wearing headphones right now listening to my Alex De Grassi radio station on Pandora.)

Remember, every needless interruption in your day eats up precious time. Limiting needless interruptions = more productivity, more profit and more sanity. Now that's a change that's worth making.

Nora is a business coach and practice advisor with Atticus. She has practiced as an employment law attorney, a certified mediator and has served as an adjunct professor at both Stetson University College of Law and the University of South Florida. Nora is a graduate of the Leadership Development Institute 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 is also certified in Lean Six Sigma the DISC Behavioral Style Assessment. Visit Nora online at www.reallifeppractice.com and www.atticusonline.com. © 2013

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Kimberly Belford



Nelson E. Baez comes to the firm from the Palm Beach County State Attorney's Office where he served as Deputy Chief of County Court. He will concentrate his practice in the areas of Automobile Accidents, Premises Liability and Wrongful Death.

Kimberly has eight years of experience as a paralegal working with law firms in the South Florida area. She is well versed in personal injury procedures as well as immigration and labor certification.

Both Nelson and Kimberly are bi-lingual and will be great assets to the firm's growing Hispanic clientele.

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HEARSAY



Real Estate and Business Litigation attorney **Manuel Farach**, Of Counsel with the law firm of Richman Greer, P.A., has been elected Chair of the Florida Supreme Court Committee on Standard Jury Instructions for Contract and Business cases.

W. Jay Hunston, III, an attorney with the law firm of Ciklin, Lubitz, Martens & O'Connell, achieved Board Certification by The Florida Bar in Construction Law.

Gunster's Managing Shareholder, **H. William Perry**, has been appointed to the Board of Trustees of the Law Center Association Inc. at the University of Florida for a five-year term beginning September 2013. Also, **Joseph P. Chase**,



a business attorney with Gunster, has been named to the 2013-14 Board of Directors for the Forum Club of the Palm Beaches.

F. Gregory Barnhart, Partner with Searcy Denney Scarola Barnhart & Shipley, P.A., was recently inducted into the International Academy of Trial Lawyers (IATL).

Jones, Foster, Johnston & Stubbs, P.A. announces that **Christopher B. Cortez** has been appointed as General Counsel for Leadership Palm Beach County. Also, **Grasford W. Smith** has been appointed to Chair the newly formed Transaction Law Committee of the Palm Beach County Bar Association.



Adam Rabin has been appointed to the Board of Directors of Kozyak Minority Mentoring Foundation that hosts the annual picnic for minority law students.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Carlos J. Berrocal** was recently elected to serve on the 2013-14 Executive Committee of the Northern Palm Beach County Chamber of Commerce.



James W. Beasley, Jr., Managing Partner of Beasley Hauser Kramer & Galardi, P.A. has been named "Lawyer of the Year" for 2014 in the practice area of Litigation-Mergers & Acquisitions in West Palm Beach, Fla. by Best Lawyers®.



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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CALENDAR

October 2013

Tuesday, October 1, Noon – 1:30pm
NCS Board Meeting
Duffy's North Palm Beach

Wednesday, October 2 – 4
TFB Board of Governor's Meeting
Chicago

Thursday, October 3, 5pm – 7:30pm
YLS Real Life Series Seminar
Bar Association Office

Monday, October 7, 11am – Noon
New Attorney Swearing in
Northwood University

Tuesday, October 8, 11:45am – 1pm
South County Bar Luncheon
Morton's in Boca Raton

Tuesday, October 8, Noon – 1pm
YLS Board Meeting
Bar Association Office

Wednesday, October 9, Noon – 1pm
Professionalism Committee Meeting
Bar Association Office Classroom

Thursday, October 10, 11:45am - 1pm
Pro Bono Training
Bar Association Office

Thursday, October 10,
Noon - 1:30pm
South County FAWL
Think Pink Luncheon
Boca Grove Country Club

Thursday, October 10, Noon – 1pm
Transaction Law
Committee Meeting
Bar Association Office

Thursday, October 10, 5:30pm – 8pm
NCS Joint Event with FAWL
Red Tapas, Palm Beach Gardens

Friday, October 11, 8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Friday, October 11,
11:45am – 1:30pm
Technology Committee Seminar
Bar Association Office

Monday, October 14
Court Holiday – Columbus Day
Bar Office Closed

Tuesday, October 15,
5:30pm – 6:30pm
American Inns of Court Meeting
Main Courthouse, Judicial
Conference Room

Friday, October 18, 5:30pm – 7pm
Palm Beach Justice
Association Dinner
Bear Lakes Country Club

Saturday, October 19, 8 am – Noon
South County Bar Assn.
Tennis Tournament

Tuesday, October 22, Noon – 1pm
CDI Committee Meeting
Bar Association Office

Tuesday, October 22, 5:30pm -7pm
YLS Happy Hour
Nick & Johnnie's

Wednesday, October 23,
11:30am – 1pm
Criminal Law
Practice Luncheon
Main Courthouse,
North end of cafeteria

Wednesday, October 23,
5pm – 6:30pm
PBCBA Board of
Director's Meeting
Bar Association Office

Thursday, October 24, Noon – 1pm
BBC Committee Meeting
Bar Association Office

Thursday, October 24, 5:30pm - 7pm
PBCJA Jurist Dinner
Bear Lakes Country Club

Saturday, October 26, 10am – 2pm
Family Day at the Zoo
Palm Beach Zoo

Tuesday, October 29, 11:45am – 1pm
Judicial Luncheon
Main Courthouse,
North end of cafeteria

Tuesday, October 29, 5:30 – 6:30pm
Legal Aid Board Meeting
Bar Association Office

Wednesday, October 30, Noon – 1pm
Law Related Education
Committee Meeting
Bar Association Office

Wednesday, October 30,
6:30pm – 8pm
Small Claims Court Clinic
Lantana Library

Thursday, October 31, Noon – 1pm
Circuit Civil Committee Meeting
Main Courthouse, Judicial
Conference Room