



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

September 2012

October 19 Diversity Luncheon - "Women in the Law"



The Committee for Diversity and Inclusion will be hosting its annual luncheon from 11:45 – 1:00 p.m. on October 19 at the West Palm Beach Marriott. This year's topic will be Women in the Law with **keynote speaker Florida Bar President Gwynne Young**.

This will be followed by a panel discussion that will include the following: *Elisa Garcia (GC, Office Depot)*: Why clients hire law firms that retain and promote women, and why supporting women attorneys makes good business sense; *Tracy Gerber (Administrative Shareholder, Palm Beach North Office, Greenberg Traurig)*: How women attorneys can rise to leadership

positions and why law firms should support them; *Lou Mrachek (Managing Partner, Page, Mrachek, Fitzgerald & Rose, P.A.)*: How managing partners can retain women attorneys at their firms; *Sia Baker-Barnes (Attorney, Searcy Denney Scarola Barnhart & Shipley PA)*: How women can juggle family and life as trial lawyers; and *Allison Kahn (Associate, Carlton Fields)*: How flex-time attorneys can remain effective, valuable and profitable to firms.

Pre-registration is required for this luncheon and can be done online at palmbeachbar.org.

Mark your calendar for upcoming Membership Events

- September 29:** Lawyers Have Heart Run
- October 13:** Family Picnic at Dreher Park
- October 19:** Diversity Luncheon with guest speaker FL Bar President Gwynne Young
- November 9 (PLEASE NOTE NEW DATE):** Joint Luncheon with Forum Club with Guest Speaker Ret. U.S. Supreme Court Justice John Paul Stevens
- December 6:** Annual Holiday Party and Silent Auction at Frenchman's Reserve
- February 1, 2013:** Joint Luncheon with Federal Bar Association. Guest speaker is 11th Circuit Court of Appeals Chief Judge Joel Dubina
- March 1:** Bench Bar Conference
- April 5:** Membership Luncheon with Guest Speaker Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers
- April 30:** Annual Judicial Reception

Executive Director Patience Burns Receives Marshall R. Cassidy, Sr. Award

Congratulations to our very own Patience Burns for receiving the first annual Marshall R. Cassidy, Sr. Award by The Florida Bar. This award, named in memory of The Florida Bar's Executive Director from 1961-1980, is awarded for exemplary service and extraordinary support of the legal profession. Patience worked for Mr. Cassidy at The Florida Bar from 1978 until his retirement in 1980. Pictured with Patience is Scott Hawkins, immediate past president of The Florida Bar.



Inside...

President's Message	3	Judicial Candidate Forum	9
Pro Bono	4	Professionalism Corner	10
Young Lawyers Section.....	5	Real Property	11
Professionalism Council	5	Bankruptcy Corner.....	13
Judicial Profile	6	Probate Corner	14
Capital Campaign	7	Diversity Corner	15
Rules of Civil Procedure.....	8	Bulletin Board.....	17

THE
BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

ADAM T. RABIN
President

www.palmbeachbar.org

PATIENCE A. BURNS, CAE
Executive Director

Officers

Adam T. Rabin, President
Jill G. Weiss, President-elect

Directors

Rosalyn Sia Baker-Barnes
C. Wade Bowden
Gregory P. Huber
Theodore S. Kypreos
Jessica Callow Mason
Edward "Ned" Reagan
James "Grier" Pressly III
John R. Whittles

John M. Howe, Immediate Past President
Robert Lee McElroy, IV, Young Lawyers Section
President
Kenneth N. Johnson, North County Section President
Larry Corman, Ex Officio, South Palm Beach County
Bar President

FL Bar Board of Governors Members

Gregory W. Coleman
Gary S. Lesser
David C. Prather
Michelle R. Suskauer

FL Bar Young Lawyers Division

Board of Governors Members
Miles A. McGrane IV
Adam Myron
Matthew T. Ramenda

1507 Belvedere Road
West Palm Beach, FL 33406
PHONE (561) 687-2800
FAX (561) 687-9007
EMAIL info@palmbeachbar.org.

Advertising Information:

Shoshannah Spence • spence@palmbeachbar.org

Views and conclusions expressed in articles and advertisements herein are those of the authors or advertisers and not necessarily those of the officers, directors, or staff of the Palm Beach County Bar Association. Further, the Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. Copy deadline is the first of the month preceding publication.

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



Letters to the Editor

Dear Rick:

I wanted to write you this letter relative to your wife, Misty Taylor Chaves. I think it's important that you know one of the things she's doing when she is not a full-time civil trial lawyer.

Since I left the Civil Division in January of this year and began working in the Family Division, I have had the amazing opportunity to deal with very skilled and professional lawyers in the Family division. Your wife is one of them, even though she is not a family lawyer.

In the latter part of April this year, I was in a series of hearings with a family that had been torn completely apart. The only thing this family had left in common was the young daughter, Chloe. The mother had fled the State of Florida with the child. Allegations of serious abuse of the child made the parties positions unyielding. No one in the family trusted anyone else and the child was the victim. There was simply nothing more that I could do. I needed someone who could help protect the child.

I directed my judicial assistant to contact the Guardian Ad Litem office and have someone appointed. I learned very quickly that that's not how it works. There is no pool of Guardian Ad Litem waiting for appointments. There's just an informal list with a small number of people willing to take on these kinds of cases. Your wife is one of them.

Notwithstanding her busy jury trial schedule and the stress of her own practice, Misty volunteered to act as a Guardian Ad Litem, for this child. Why, I don't know.

Solely because of her efforts, the parties are now beginning to communicate more openly. She single-handedly negotiated an Agreed Order setting timesharing and telephonic communication and has succeeded in focusing this family's attention on the child, and away from the things that divided them.

How she did it, I don't know. In this division I look for little miracles. Your wife has delivered a giant miracle, and she tells me she is not finished. She's going to remain involved with this family in an attempt to create a workable visitation schedule for the calendar year 2013, and hopefully into the future.

So Rick, the reason I am writing you is to say that there is nothing that we can do to show our appreciation for what Misty has done for the family division and for this family and this child. And though we are sure you know that your wife is special, we wanted you to know that over here, at the Courthouse, in the Family Division, she is very special.

/s/ Jack Schramm Cox
Circuit Judge



Do You Need a Mentor?

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

Board Meeting Attendance

	Retreat
Barnes	x
Bowden	
Howe	x
Huber	x
Johnson	x
Kypreos	x
Mason	x
McElroy	x
Pressly	x
Rabin	x
Reagan	x
Weiss	x
Whittles	x

President's Message



Who Are Our Paragons of Professionalism?

By Adam Rabin

Litigators often experience the tension between zealously representing our clients' interests

and practicing with professionalism. In this vein, we balance our clients' expectations that we "be aggressive" with our professional obligation to extend reasonable courtesies to opposing counsel, resolve discovery disputes in good faith, and present all written and oral communications in a civil manner.

One way for litigators to reconcile this frequent tension is to ask themselves how one of our local paragons of professionalism would handle the same situation; then endeavor to emulate that course of conduct.

Because what makes a lawyer professional is difficult to articulate, identifying professionalism role models is one way to remind ourselves to take the high road when we are confronted with a professionalism dilemma. The purpose of this article is to identify several of our community's paragons of professionalism and to highlight some of the character practice traits they evince that earmark them as professional.¹

David Ackerman



David Ackerman is one of the icons of professionalism in our legal community. He coauthored the administrative order that governs the Fifteenth Judicial Circuit's Professionalism Council and the 2007 amendments to PBCBA's Standards of Professional Courtesy that have become part of the fabric of Palm Beach County's legal community. David's strengths are to never raise his voice at anyone, to treat opposing counsel with the utmost respect, to concede facts or legal positions where appropriate, and to pick up the phone to resolve conflicts before they escalate. These are traits worth emulating.

¹This article is not intended to be an exhaustive list of the paragons of professionalism in our community. There are more examples at all experience levels. In this article, I have put an emphasis on experienced lawyers who actively practice and are from diverse practice areas. If you know of others who deserve future recognition for their professionalism, please e-mail me at arabin@mccaberabin.com.

Manuel "Manny" Farach



As a past president of PBCBA, the current chair of the county's Ethics Commission, and the author of weekly case summaries, Manny combines his

professorial perspective with his straight-shooter demeanor. When colleagues have asked Manny how he argues certain discovery motions in court, he usually responds, "I don't, usually. I work hard to resolve all my discovery issues without ever going to court on them." While we all know that some discovery issues need to be heard, we can all take a page from Manny's playbook and exhaust all reasonable means to resolve discovery disputes before taking the court's time.

Jane Kreuzler-Walsh



Jane is a renowned appellate lawyer who has received numerous accolades. When she reviews a trial transcript and believes the appeal has little

or no merit, she will advise the client of her opinion and turn over her own work product to the client to review with other appellate lawyers. She routinely informs the court of adverse authority and is always candid about negative parts of the record below. She routinely counsels clients, when they object, that extensions of time are a routine professional courtesy and persuades them to forge a positive path with opposing counsel by granting the same. Jane's practices are worth remembering in both appellate and trial practice.

John Mariani



John is a natural mentor to those inside and outside his law firm. Because billable hours and the business of law have eroded the practice of mentoring, identifying

the traits of good mentors is important. John's colleagues comment that what makes John a good mentor is his accessibility, patience, and candor with mentees. He exemplifies the hallmarks of a good listener and dispenses advice judiciously. The skill and will that John brings to the art of mentoring exemplifies his professionalism.

Edward "Ned" Reagan



Ned is a member of PBCBA's Board of Directors and a past president of PBCBA's North County Section. Ned is one those criminal defense lawyers

where both the defense lawyers and prosecutors agree – Ned is the consummate professional. If Ned says something during a case, you can take it to the bank. While prosecutors know that Ned will zealously represent his clients, they also know he will be reasonable when it comes to evaluating his case objectively and treating opposing counsel with respect and candor. Ned has hit the "sweet spot" in that prosecutors like having cases against Ned because he is reasonable to deal with, but would rather not try a case against him if that can be avoided.

Culver "Skip" Smith



Skip is a past president of PBCBA, former member of the Florida Bar Board of Governors, and long-time member and former chair of Florida Bar's Professional Ethics Committee. Skip's

expertise is in the areas of legal ethics, professional responsibility, and attorney discipline. He is our local "professor of ethics" and has been one of our bar's pioneers in espousing professionalism for over 40 years. Skip is a leading educator for our bar's membership, having written scores of articles on ethical conduct and professionalism over the years. Skip continues to serve our bar to this day with his ethics expertise, his professionalism tips, and his ability to weave humor into his teachings.

Conclusion

When facing a professionalism dilemma that weighs your zeal against your professionalism, try to envision how one of the above lawyers would resolve the same dilemma. Then emulate what you believe that lawyer would do in your situation. Choosing the most professional course of conduct may make you feel, in the short term, like you are losing the race to your opponent. And while that might cause you to concede a sprint or two, the truth is you will win far more races than you lose. Moreover, you will be much better situated to win the marathon.

Adam Rabin is partner with McCabe Rabin, P.A. in West Palm Beach. He practices in the areas of business litigation, stockbroker misconduct, and whistleblower actions.

WELCOME BACK FROM THE LONG HOT SUMMER!

*Complimentary Cocktail Reception for all
North County Section Members & the Judiciary*

Thursday, September 6, 2012
5:30 p.m. to 7:00 p.m.
Brios's Tuscan Grille
Palm Beach Gardens



The Officers and Directors for
the North County Section
look forward to seeing you
there!

Kindly RSVP online @www.palmbeachbar.org

Sponsored by:



**First Citizens
Bank**

Pro Bono Attorneys Who Closed Cases January-June 2012

We salute the following attorneys who closed their pro bono cases during the first half of 2012

Richard Abedon
Annie Adkins
Philip Chopin
Tasha K. Dickinson
Margherita Downey
Allan Hoffman
Thomas Kingcade
Richard Kleid
Jennifer Labbe
Elaine Martens
Lawrence Moncrief
Georgia T. Newman
Kimberly Rommel-Enright
Michael Stern
Laura Zborowski
Ronald J. Zeller

The total amount of hours: 487

September's Flower Sponsor



Thank you to Sabadell United Bank for all the beautiful flowers & plants in the office this month. If your firm would like to sponsor a month, and receive signage in the lobby of our new office, call Lynne at 687-2800.

Young Lawyers Section Activities

The YLS has been busy over the summer working on several different projects. At the end of June, they hosted a Fishing Tournament to benefit the Legal Aid Society's Legal Advocacy for Minor Mothers Project. The event raised over \$7,000 and together with a matching grant that Legal Aid has obtained, this project will receive a total of \$14,000. Next up was serving lunch at Café Joshua and providing legal guidance to their patrons. Lastly, in conjunction with the Bar's Committee for Diversity and Inclusion, FAWL, the Hispanic Bar and the Cunningham Bar, they hosted their annual summer law firm intern happy hour where approximately 135 members attended. Pictures of these events are on this page.



Leanna Lalla and YLS Secretary Lindsay Demmery



Rob Vargas, Cris Rapp, Jennifer & Ryon McCabe, Stephanie Rapp and YLS President Lee McElroy



W Mason, Theo Kypreos and Jessica Callow Mason



Lindsay Demmery, Bob Bertisch, Evan Frederick and Lee McElroy



Ashley Richman and Christine Bialczak



Evan Frederick



Adam Kramarow, YLS President Lee McElroy, YLS President-elect Julia Wyda and John Terwilleger



CDI Committee Co-Chair Sarah Shullman and Hispanic Bar/FAWL Board Member Nicole Hessen



Lee McElroy



Lesley Hogan, Shayla Waldon and Leanna Stanick



Vicky Vichez, Amy Siegel, Yolanda Ann-Marie Hewling and Lee Fairchild

Judicial Profile of Judge Rosemarie Scher

By: Robert Glass

Judge Rosemarie Scher is an actual Florida native! She was born in Fort Lauderdale then moved as a toddler to Upstate New York where she resided until she was 9 years old. She returned to Broward County in the 4th grade and has lived here ever since. In pursuit of a degree in finance at Florida Atlantic University, Judge Scher enrolled in a business law class in her junior year. Midway through the semester, she realized that her future was in the law, not finance, and she decided her goal was to one day become a judge.

After receiving her Bachelors in Business Administration from FAU, Judge Scher jettisoned the idea of a career in finance and matriculated to the University of Florida's Levin College of Law. Judge Scher thought she would pursue a career in criminal law, but her plans changed after graduation. After less than a year with Henry Laffer, Esquire, a sole practitioner specializing in personal injury, she left to pursue trial experience by joining Kubicki Draper in 1996. She "loved the civil litigation," and under her mentor, Hubert McGinley, Judge Scher developed a practice in insurance defense, professional malpractice, and general commercial litigation.

Eleven years later, Judge Scher left Kubicki Draper, realizing that she would need to broaden her horizons to achieve her goal of becoming a judge. Thus, she hung out her shingle and went solo. After a few months of being on her own, however, Judge Scher decided to make yet another major change in her professional life. This time, she leapt head first into the practice of family law, joining Fisher & Bendeck in what she described as a "chance of a lifetime." A year later, she left Fisher & Bendeck and rejoined her old mentor, and now close friend, Hubert McGinley at his new firm, Schwed McGinley & Kahle. Though she practiced family law only for a short time, her training with Odette and Jeff was invaluable.

Meanwhile, Judge Scher also became a Palm Beach County Traffic Hearing Officer in 2005. She described this experience as excellent preparation for her role on the bench. Working almost

exclusively with pro se litigants, Judge Scher learned to be decisive while making sure each litigant had a fair hearing.

Judge Scher's dreams of becoming a judge were finally realized on August 31 of last year, when Governor

Scott appointed her to the Circuit Court. When the Governor called, Judge Scher initially thought one of her friends was playing a joke on her. Already overwhelmed, she then realized she had one month to prepare for and finish an eight-day trial and wind down her practice.

Thirty days later, she walked onto the dais in the South County Courthouse and began presiding over family and probate cases. While all of the judges have been ready to lend a hand while she learns the ropes, Judge Martz and Judge Colin have gone "above and beyond" in helping her transition to her new position. She describes her fellow South County judges as being like her new family. Judge Scher also has nothing but praise for South County practitioners, who she describes as extremely "patient, professional, and kind" in educating her on the finer points of family and probate law.

After nearly eight months on the bench, being a judge is better than Judge Scher could have imagined. She expressed that the hardest part so far has been balancing the large number of cases with the limited number of hours in a day. Judge Scher wants to be able to hear litigants sooner and give them as much time as they think they need.



Judge Scher shares her love of the law with her husband Brian, a partner at Scher & Meltzer in West Palm Beach. The Scher's spend their free time hiking and cycling and can often be spotted taking long walks on Saturday morning to one of their favorite breakfast spots. Judge Scher is also an avid baker. The Scher household is ruled by Annabelle, the family pug.

Annabelle's least favorite time of year is the annual Florida Judicial College, when Judge Scher must leave her "daughter" at home for a week.

After meeting Judge Scher, it is apparent that she is a committed public servant with a passion for the profession. Her lifelong commitment to becoming a judge is an immense benefit to the Fifteenth Circuit, the Bar, and the citizens of Palm Beach County.

Robert Glass is an Associate at McCabe Rabin, P.A., in West Palm Beach.



Of all the banks in South Florida, only one has the distinction of being called "The Lawyers' Bank."

For over 30 years, we have concentrated on providing law firms, their partners, associates, staff and clients with an uncommon level of attention and service. Which is why so many law firms in South Florida count on **Sabadell United Bank**.

Whether it's business or personal banking, or private banking, our goal is to make a **measurable difference** in all relationships through exceptional service, and constant focus on delivering **measurable results** to our clients.

For more information, please call
Bud Osborne, Executive Vice President,
or Donn Londeree, Vice President at (561) 750-0075
or Vincent Cuomo, Vice President at (561) 688-9400

Sabadell
United Bank



MEMBER
FDIC

www.sabadellunited.com

©2010 Sabadell United Bank

Capital Campaign – Thank You to Those Who Have Contributed!

Personalized Bricks Purchased (As of 6/30/12)

Akerman
 Adams, Coogler, Watson,
 Merkel, Barry & Keller, P.A.
 Babbitt, Johnson, Osborne &
 LeClainche, P.A.
 Beer, Jerald
 Bertisch, Robert & Harreen
 Breton, Lynch, Eubanks &
 Suarez-Murias, P.A.
 Brewer, Carol McLean
 Burns, John L.
 Burns, Tom & Patience
 Casey, Patrick
 Clark, Fountain, LaVista,
 Prather, Keen
 & Littky-Rubin
 Coleman, Greg & Monica
 Colton, Roger B.
 Cortvriend, Sarah
 Deckert, Ted
 Downey, Edward
 Dunwoody White & Landon,
 P.A.
 F. Malcolm Cunningham, Sr.
 Bar Assn.
 Farrell, John
 Fine, Edward
 Fox Rothschild
 FPL
 Gamot, Melinda
 Gerber, Jonathan & Tracy
 Glickman, Garry
 Glickman, Witters & Marell
 Gordon & Doner, P.A.
 Hispanic Bar Association
 Howe, John
 Hunston, Jay and Jane
 Jay R. Jacknin, P.A.

Jenks, Debra & Robert
 Harvey
 Jones Foster Johnston
 (In memory of John
 McCracken)
 Kenwood, Joel
 Klett, Stan
 Koehler, Dennis, In Memory
 of
 Kreusler-Walsh Compiani &
 Vargas, P.A.
 Kypreos, Theo & Jennifer
 LaBovick Law Group
 Law Offices of Irwin J. Block
 PLLC
 Law Offices of Robin Bresky
 Lazarus, Jason
 Legal Aid Society of Palm
 Beach County
 Leopold Law
 Levine, Spencer & Judith
 Maschler, Matthew H.
 Massa, Patrick
 McBane, Louis R.
 McCabe Rabin
 McCall, Wallace
 McClosky, D'Anna & Dieterle,
 LLP
 McHale & Slavin
 Murray & Guari
 Murrell, Donnie
 Napoleone, Michael
 Neal, Ginny R.
 Palm Beach Spine &
 Diagnostic Institute
 Pateman, Mark
 PBC Chapter of Paralegal
 Association

Pineiro Byrd PLLC
 Pressly & Pressly
 Prior, Ted
 Proskauer Rose LLP
 Rock Legal Services &
 Investigations
 Royce, Catherine S.
 Royce, Raymond W.
 Rudolph & Associates LLP
 Rutherford Mulhall, P.A.
 Sabadell United Bank
 Sasser, Tom & Meenu
 Schutz & White LLP
 Shalloway & Shalloway
 Shutts & Bowen LLP
 Signature Court Reporting
 Small, Michael, Lisa Small &
 J.D. Small
 Smith, Amy
 Smith, D. Culver
 Smith, Scott & Molly
 Sojka, Cindy
 Sorgini & Sorgini, P.A.
 South Palm Beach County
 Bar Association
 Stewart, Todd
 Stuart Manoff & Associates
 Stubbs, Sidney
 Suskauer, Michelle
 U.S. Legal Support
 Walsh, Michael P.
 Weiss, Jill
 Weissman, Joel & Alexandra
 Wennet, Richard I.
 Whittles, John
 Wroble, Art & Mary Ellen
 Zele Huber



The Bar Association has moved to its first permanent home located on Belvedere Road in West Palm Beach. The building is a state-of-the-art facility for our legal community to enjoy for many years to come. You can be a part of history by naming a room or buying a brick.

We sincerely thank the following firms and members who have contributed as of 11/25/11:

- Searcy Denney Scarola Barnhart & Shipley Classroom
 - Richman Greer, P.A. Executive Director's Office
 - Schuler, Halvorson, Weisser & Zoeller, P.A. Small Conference Room
 - Holland & Knight LLP Member Services Office
 - North County Section & Young Lawyers Section Communication Director's Ofc
 - Lesser, Lesser, Landy & Smith Front Bench
 - Lytal Reiter Smith Ivey & Fronrath Reception Area
 - Jones, Foster, Johnston & Stubbs LRS Office
 - Gunster Landscape
 - Fisher & Bendeck Landscape
 - Wyland & Tadros Workroom
 - H. Irwin Levy Visiting Attorney's Office
 - In Memory of Bob & Sandy Rogers Lounge
 - Brian Scher & Debbie Meltzer Women's Lounge
 - Greenberg Traurig Admin. Asst. Workstation
- Additional rooms are still available!*

SECOND ANNUAL SPEED NETWORKING FOR NEW & RETURNING MEMBERS

Presented by the Membership Committee

Wednesday, September 19, 2012
 5:30 p.m. to 7:00 p.m.
 BB Kings, City Place



RSVP online @ www.palmbeachbar.org

FREE for new members as of July 2012;
 \$25.00 for renewing PBCBA Members; Judges are complimentary

Add \$5.00 if registered after 5:00 pm on 9.16.12

Sponsored by

ESQUIRE
DEPOSITION SERVICES

FWBD
frank, white, boyd, p.a.
BANKRUPTCY, FINANCIAL DISTRESS CONSULTING
AND ASSET PROTECTION PLANNING

VISUAL
EVIDENCE

E-Mail Service And Electronic Discovery

By Matt Triggs and Jonathan Galler

They say that to err is human, but to really mess up requires a computer. If there is any truth to that, we will all have plenty of chances to really mess up over the next few months.

That's because the most recent amendments to the rules of civil procedure have embraced the modern world of computer technology. Service by e-mail is now mandatory in most cases, and the concept of electronically stored information (ESI) has been formally incorporated into the rules governing discovery. Not too far off is electronic filing, which becomes mandatory state-wide in April 2013.

E-Mail Service

If you've ever said to yourself, "I wish I received more daily e-mail," then amended rule 1.080 is just for you.

In 2009, The Florida Bar's rules committees formed a joint committee to develop a proposal to implement e-mail service. The result of the joint committee's efforts is Rule of Judicial Administration 2.516, which establishes a uniform procedure governing the service of pleadings and papers across Florida's court system. The rule is modeled after rule 1.080, which has mostly been scrapped and now simply provides that all pleadings subsequent to the initial pleading, as well as other documents, must be served pursuant to rule 2.516. Similar amendments have been made to the corresponding rules of procedure in other Florida courts.

Under the new rule, all documents required or permitted to be served on another party must be served by e-mail in all but a few, limited circumstances.¹ Service by other methods is still permissible, but any such service must be in addition to, not in lieu of, e-mail service. An e-mailed document is deemed served on the date it is sent, and e-mail service is treated as service by mail for purposes of computation of time.

The rule requires that, upon appearing in a proceeding, an attorney must serve a designation of a primary e-mail address and may designate up to two secondary e-mail addresses. Service in that proceeding must be directed to all designated e-mail addresses. All documents filed thereafter must include the primary and any secondary e-mail addresses of that attorney. In fact, rule 2.515(a) has also been amended to require that every pleading and other paper of a party represented by an attorney must be signed by an attorney and must state not only the attorneys' address and telephone number, but also the attorney's primary and secondary, if any, e-mail addresses.

The rule does not address whether a designation of e-mail addresses must be served in pending cases in which an attorney has already appeared, but it would seem prudent for practitioners to do so.

The rule also provides specific instructions for the content of the e-mail. The subject line must begin with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number of the proceeding. The body of the e-mail must identify the court, the case number, the name

¹The new rule does not apply to applications for witness subpoenas or documents that are served by formal notice, a concept familiar to probate lawyers. In addition, pro se parties are not required to serve documents by e-mail, and the court may also excuse an attorney who has no e-mail account and lacks access to the Internet at his or her office.

of the initial party on each side, the title of each document served with that e-mail, and the sender's name and telephone number.

Any document served by e-mail must be attached as a PDF and may be signed by the "/s/" format often used in federal court, as long as the filed original is signed in accordance with the applicable rule of procedure. If the e-mail exceeds 5MB, it must be broken up into multiple e-mails.

The rule is likely to be amended again when mandatory e-filing begins. The statewide e-filing system is expected to perform automatic e-service, similar to the federal CM/ECF system.

Electronic Discovery

If you think that *Zubulake* is the machine that resurfaces ice hockey rinks, and if you are fairly certain that the Sedona Conference is an Arizona basketball league, you may want to spend some time brushing up on the last decade or so of electronic discovery jurisprudence.²

Amendments to seven rules of civil procedure now expressly incorporate issues related to ESI. Amended rule 1.200, which governs case management conferences, provides that at such a conference, a court *may* consider issues like the voluntary exchange of ESI, stipulations regarding the authenticity of ESI, the need for advance rulings on the admissibility of ESI, and the possibility of an agreement between the parties regarding the extent to which ESI should be preserved and the form in which it should be produced. The absence from amended Rule 1.200 of a mandatory meet and confer between the parties on ESI issues is the most significant difference between the amended state court rules and the federal rules of civil procedure.

However, amended rule 1.201, which governs complex litigation, does have such a mandatory "meet and confer." That rule now provides that the parties in a complex civil case must discuss the possibility of an agreement between them addressing the extent to which ESI should be preserved and the form in which it should be produced.

Amended rule 1.280 (General Provisions Governing Discovery) authorizes discovery of ESI but expressly identifies some limitations on such discovery. A person may object to discovery of ESI from sources that are not reasonably accessible because of burden or cost. On a motion to compel, if the objecting party makes such a showing, the court may nevertheless order the discovery if the requesting party shows good cause, but the court may specify conditions of the discovery and may order that some or all of the expenses be paid by the requesting party. In addition, the court must limit the frequency or extent of discovery if it determines either that (i) the discovery sought is unreasonably cumulative or duplicative,

Continued on page 15



²See *Zubulake v. UBS Warburg*, 217 F.R.D. 309 (S.D.N.Y. 2003) and its progeny; see <https://thesedonaconference.org/>.

Judicial Candidate Forum

This summer the Palm Beach County Bar Association, along with the Palm Beach County Criminal Defense Lawyers, held a Judicial Candidate Luncheon at the Marriott in West Palm Beach. In a question and answer format, the program included all 10 candidates running for the five circuit and county positions. More than 150 members joined us for the luncheon.



Antony Ryon, President of the Palm Beach County Criminal Defense Lawyers; Moderator Liz Quirantes from WPEC; and Adam Rabin, President of the Palm Beach County Bar Association



Judge Ronald Alvarez and his wife Elaine



Robin Bresky and Grier Pressly



Larry Mesches and NCS President Ken Johnson



Steven Brannock, Chief Judge Peter Blanc and Judge James Martz

Additional pictures can be found on the Bar's Facebook page



Join Us Today!!!

Legal Aid Society of Palm Beach County's 12th Annual Cup of Justice Golf Classic Benefiting Children's Advocacy

Lakes Course, Bear Lakes Country Club
Monday, October 8, 2012 ~ Columbus Day

\$2000 Sponsorships (w/ foursome)

- Beer & Bar
- Beverage Carts
- Chipping Contest
- Goody Bag
- Logo Golf Accessory
- Platform Shot
- Snack Stations
- Sports Bottle
- Towel

\$1500 Sponsorships (w/ foursome)

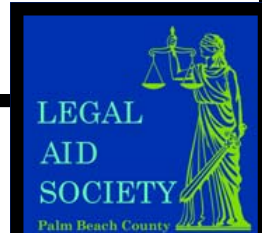
- Beat the Amateur
- Beat the Pro

Team Sponsorships - \$1000 Sign Sponsorships - \$250

Golfers enjoy lunch, golf, dinner, goody bags, raffles, contests, trophies, prizes and much more!!!

For More Information

Call Devin @561.822.9791



Email Etiquette

By Carolyn Bell on behalf of the Professionalism Committee

It's happened to you. You're sitting at your desk, and you get an email from opposing counsel in that horrible case you have. You popped one off to her earlier in the day, while sitting in your car waiting for the light to turn green. You can't believe the snideness of her response, and you really can't wait to fire off your reply.

Before you hit send, STOP. That hasty, nasty email may not only reflect poorly on you and the legal profession, but may constitute violations of both the Fifteenth Judicial Circuit Standards of Professional Courtesy as well as the Rules of Professional Conduct of The Florida Bar. Instead, consider the following:

TOP TEN E-MAIL DO'S AND DONT'S

Stick To The Issues: Keep your emails focused on the issues at hand. If you are scheduling depositions, focus on dates. If you are discussing discovery, focus on logistics. If you are addressing legal issues, discuss the legalities.

Shorter is Better: This is the corollary to Stick To The Issues. Thomas Edison famously said, "You will have many opportunities in life to keep your mouth shut: You should take advantage of every one of them." The same is true of your typing.

Avoid Negativity: Always remain courteous, reasonable and professional. Always. Email is not the forum for attacking your opponent's competence, ethics, or professionalism. If you want to vent, do so out loud to your friend down the hall or, better still, to your dog.

Avoid Misunderstanding: This is probably the biggest issue with email. The nature of emails and the informal, quick manner in which they are usually created can easily lead to unintended sub-text. Inappropriate informality, misguided attempts at humor, and poor word choice are all too common. **SOMETIMES PEOPLE USE ALL CAPS BECAUSE THEY DON'T KNOW IT SIGNIFIES SCREAMING;** sometimes they use an emoticon they learned from their teenager that doesn't mean what she told them it meant. These issues are exacerbated by the lack of face to face interaction, and the absence of those subtle but real clues about meaning that we gain when we look at someone's face. In addition to unintended messages, there are those emails that are the result of "The Bad Moment," when someone is stressed out and sends an offensive missive that is otherwise out of character. To avoid misunderstanding, beware of unintended hostility when you send a message; just as importantly, when you receive an email, assume any hostility is unintended or just a momentary lapse.

EDIT for Style, Spelling, Substance and Sub-Text:

Emails are a reflection of the kind of lawyer you are. Careful editing is as important in an email as it is in a more formal letter or court pleading. Take the time to review your email not only for grammatical issues, but also to be sure it mirrors your usual courteous, professional tone.

Defuse Confrontation: Much has been said about the legal profession's current lack of courtesy. Many attribute the

problem, at least in part, to too little personal interaction. If you see your relationship with counsel devolving, pick up the phone. Arrange to meet for coffee or, better still, lunch. Sit next to one another at the next bar function. The best lawyers I know always begin a case by calling opposing counsel, and maintaining a personable relationship with their adversaries. Clients are almost always best served by lawyers who can work with the other side. It saves unnecessary litigation costs, and allows for more effective settlement negotiations. The legal system requires lawyers to be adversaries as to the law and the facts – not each other.

Never Forward Without Permission: Oftentimes, inappropriate emails are written for an audience. Perhaps you are writing to impress a client who mistakenly equates entertainment with effective lawyering. Perhaps you want to forward the chain to your pal for a good laugh during happy hour. If you don't allow yourself to forward without permission, you won't be tempted to succumb to these pressures.

Remember Email is Eternal: Email, like everything on the internet, is a virtual tattoo. Be sure that what you write is something you won't mind your kids – and grandkids – seeing when they google your name.

Follow "The Mother Rule": Don't say anything in an email you wouldn't say in person, in a courtroom, with the cameras on and the press in the gallery, in front of a Judge. Have your mother as an imaginary blind cc on every email you send.

STOP BEFORE YOU SEND!: Before you hit send, STOP. Walk away. Come back later. Consider whether a response is necessary. If it is, ask yourself if what you have written is a positive reflection of you and the legal profession.

Then, hit SEND...

Carolyn Bell works as an Assistant United States Attorney in West Palm Beach. Ms. Bell is also the current Chairman of the Florida Bar Professional Ethics Committee, and the immediate past Co-Chairman of the Professionalism Committee of the Palm Beach County Bar Association. The views expressed herein are her own and do not reflect those of the United States Department of Justice.



www.palmbeachbar.org

Real Property and Business Litigation Report

July 2012 Summary

Submitted by *Manuel Farach*



Richards v. HSBC Bank USA, – So.3d –, 2012 WL 2359656 (Fla. 5th DCA 2012).

Summary judgment of foreclosure may not be granted when an allonge is inconsistent with the assignment of mortgage and in contradiction of the complaint.

Wells Fargo Bank, N.A. v. Taboada, – So.3d –, 2012 WL 2361501 (Fla. 2d DCA 2012).

Verification of mortgage foreclosure complaints under Florida Rule of Civil Procedure 1.110 (b) need only be based on information and belief, i.e., the verification does not need to state the statements are true and correct.

Deutsche Bank National Trust Co. v. Waldorf, – So.3d –, 2012 WL 2361517 (Fla. 2d DCA 2012).

A trial court must consider the *Kozel v. Ostendorf*, 629 So.2d 817, 818 (Fla.1993), factors before dismissing a foreclosure complaint with prejudice for failure to follow the court's administrative procedures for foreclosure complaints.

Karl v. Carefree Lifestyles, Inc., – So.3d –, 2012 WL 2327721 (Fla. 3rd DCA 2012).

Award of damages to employer for employee breach of non-compete agreement requires calculation of net lost profits award by deducting the expenses of salaries paid to employer's officers.

PGA North II of Florida, LLC v. Division of Admin., State of Florida Dept. of Transp., – So.3d –, 2012 WL 2327758 (Fla. 4th DCA 2012).

A special warranty differs from a general warranty deed only in that a general warranty deed warrants against claims of all persons, whereas a special warranty is limited to claims involving the grantor. A "real covenant" concerns property conveyed and occupation and enjoyment thereof; a "personal covenant" is collateral or is not immediately concerned with property granted. In order to establish a covenant that runs with the land, one must show

that the covenant touches and concerns the land; intent; and notice.

Langer v. Fels, – So.3d –, 2012 WL 2327921 (Fla. 4th DCA 2012).

"Law of the case doctrine" includes not only issues explicitly ruled upon by the court, but also those issues which were implicitly addressed or necessarily considered by the appellate court's decision.

Jasser v. Saadeh, – So.3d –, 2012 WL 2328230 (Fla. 4th DCA 2012).

A promissory note that does not state any time of payment is "payable on demand" in accordance with Fla. Stat. § 673.673.1081 (1).

Paul N. Howard Co. v. Camp, Dresser, & McKee, Inc., – So.3d –, 2012 WL 2464870 (Fla. 5th DCA 2012).

Expert witness and deposition costs may be taxable, even if not used at trial, if the costs were reasonably necessary to prepare the winning party's case.

Lyons v. Chamoun, – So.3d –, 2012 WL 2400867 (Fla. 4th DCA 2012).

A proposal for settlement which offers a release but fails to attach a release together with failure to define to whom the release is directed makes the proposal invalid.

Geraci v. Sunstar EMS, – So.3d –, 2012 WL 2401793 (Fla. 2d DCA 2012).

A residence subject to a long term lease can qualify for the homestead exemption from forced levy under Art. X, Section 4 of the Florida Constitution.

Quesada v. City of Tampa, – So.3d –, 2012 WL 2614918 (Fla. 2d DCA 2012).

An arbitrator's conducting non-legal research is "misconduct" as set forth in Fla. Stat. § 682.13 (1) (b) sufficient to vacate the award.

In re Amendments to Florida Rules of Civil Procedure-Electronic Discovery, – So.3d –, 2012 WL 2579681 (Fla. 2012).

The Florida Supreme Court has revised the Rules of Civil Procedure to address electronically stored information (ESI) follow, in some respects, the federal rules.

Heron at Destin West Beach & Bay Resort Condominium Ass'n, Inc. v. Osprey at Destin West Beach, – So.3d –,

2012 WL 2546063 (Fla. 1st DCA 2012).

A master condominium association will be governed by the Condominium Act (and not the corporate act) if it is primarily responsible for the operation of real property or facilities that are not common elements of an individual condominium or property of a condominium association, condominium unit owners have user rights in the master association's property, voting membership is exclusively reserved to condominium unit owners (or their agents or representatives), membership is a requirement of unit ownership, and the master association is authorized to assess its members or affected owners for the payment of shared expenses (with unpaid assessments becoming a lien). Moreover, the Condominium Act permits weighted voting.

In re Amendments to Florida Rules of Judicial Administration, – So.3d –, 2012 WL 2848890 (Fla. 2012).

The different Florida rules regarding computation of time are made uniform.

Simonson v. Palm Beach Hotel Condominium Ass'n, Inc., – So.3d –, 2012 WL 2813875 (Fla. 4th DCA 2012).

Employing Florida Statute § 45.031 (publication requirements for foreclosure sale) may be not be mandatory in all foreclosure sales, but is required if the final judgment of foreclosure references and directs the sale be in accordance therewith.

Cirrus Design Corp. v. Sasso, – So.3d –, 2012 WL 2913180 (Fla. 4th DCA 2012).

If an offer to settle makes clear the settlement contract is in full satisfaction of a tort dispute, the contract becomes an accord and immediate satisfaction. A subsequent breach of the settlement agreement implicates the breach of contract remedies set forth in the contract, but not the underlying tort remedy.

Bonilla v. Bank United, – So.3d –, 2012 WL 2913281 (Fla. 4th DCA 2012).

"Surprise" under Florida Rule of Civil Procedure 1.540 (b) is basis for relief from judgment when the trial court permits withdrawal of counsel with thirty days to obtain new counsel and enters final judgment five (5) days later.

BEASLEY HAUSER KRAMER & GALARDI, P.A.

& Business & Financial Litigation

Federal & State Courts | Appeals | Arbitration

COMMERCIAL LITIGATION
BANKING AND FINANCIAL LITIGATION
SECURITIES LITIGATION
CORPORATE AND PARTNERSHIP LITIGATION
REAL ESTATE LITIGATION
HEALTHCARE BUSINESS LITIGATION
BANKRUPTCY LITIGATION
INTELLECTUAL PROPERTY LITIGATION
TRUST & ESTATE LITIGATION
PROFESSIONAL MALPRACTICE LITIGATION
CLASS ACTIONS

561.835.0900 | BEASLEYLAW.NET

505 S. FLAGLER DRIVE, SUITE 1500 | WEST PALM BEACH, FLORIDA 33401



Lawyers' Reporting

Court Reporting | Video | Interpreting



The First BlackBerry App in Florida.

Our clients are feeling the love. Are you?

Now serving over 76 locations throughout the U.S.

Lawyers' Reporting

1655 Palm Beach Lakes Boulevard, Suite 405 West Palm Beach, FL 33401

Phone: (561) 242-0023 Toll Free: (800) 326-9690

Fax: (561) 659-9855 Toll Free Fax: (877) 530-3579

Email: service@lawyersreporting.com

www.lawyersreporting.com



CLE CLASSES Now BEING OFFERED ONLINE

We are very pleased to bring you another way to obtain your CLE credit. In addition to the CD's that we currently sell, these same programs are now being offered for purchase online to either download to your MP3 player or to listen to right on your computer. That means when your CLER reporting period is approaching, you can go right online and download seminars any time of the day or night. To view a full listing of the seminars available, be sure to log on to our website at www.palmbeachbar.org/continuing.php



When Does Payment For An Illegal Debt Constitute “Reasonably Equivalent Value”?

By Jason S. Rigoli

In a recently published decision, the Bankruptcy Court of the Southern District of Florida, analyzed whether “reasonably equivalent value” was given to a debtor for payments made on an illegal debt. *In re Capitol Investments, Inc.*, 2012 WL 2160242 (Bankr. S.D.Fla. 2012).

The Debtor, an individual, in this case had engaged in illegal gambling and incurred substantial debts in the process. The Trustee sought to avoid and recover the aggregate amount \$1,345,310.00 in payments made to Joseph M. Lehman, the Debtor’s “bookie” (the “Defendant”). The Defendant claimed that the transfers were made for “reasonably equivalent value” as the Defendant had provided the Debtor with “value” by allowing him to gamble. The Defendant argued that even though the debt was “illegal or unenforceable [did] not ipso facto mean that the debt didn’t provide value.” *Id.* at *3 (Citing *Kaler v. Able Debt Settlement Inc. (In re Kendall)*, 440 B.R. 526 (B.A.P. 8th Cir. 2010).

The Court agreed that a debt that is “illegal or unenforceable” does not *ipso facto* mean that no “value” was provided for the purposes of determining whether repayment of such a debt is avoidable under Section 548 and 550 of the Bankruptcy Code. There is a line that will be drawn, however, on whether an illegal debt provides value. The Court stated that “there may be instances in which a contract, or transaction or event that is illegal or unenforceable might nonetheless support reasonably equivalent value, such as that is illegal or unenforceable because a party was unlicensed, or a statute of limitations has run.” *Id.* at *5. See also, *Barber v. Golden Seed Co., Inc.*, 129 F.3d 382 (7th Cir.1997) (The court determined that an oral contract for seeds was valid under Illinois law, but even if the contract had been invalid under Illinois law, violation of Illinois law would not automatically make the contract unenforceable and void, especially when one side fully performed); and *In re 21st Century Satellite Commc’n, Inc.*, 278 B.R. 577 (Bankr.M.D.Fla.2002) (Payments to unlicensed brokers for the sale of participation interests ultimately found to be securities under Florida

law did not have to be disgorged, if the brokers did not know of the unlawfulness of the transaction, because the brokers provided value). However, where the very activity giving rise to the debt “is absolutely prohibited by law,” there can be no value given to the Debtor.

In this case the gambling transactions occurred in the State of New York, and were illegal under New York law. This fact was ultimately the determining factor for the Court. Had the gambling been lawful in New York, then a valid and legally enforceable contract for these debts would have been created. And, regardless of Florida’s position on gambling, the payment of this debt would probably have been for “value” for the purposes of 548 and 550.

The Court found one case in particular to be analogous to the immediate case, *Armstrong v. Collins*, 2010 WL 1141158 (S.D.N.Y. 2010). In *Armstrong* the defendant, the owner of an escort service, “argued that the funds paid to her for services provided

to the debtor were not recoverable because the services of the young ladies whose company she arranged provided ‘reasonably equivalent value’ for the thousands of dollars per night.” *Capitol Inv.*, at *4. The court in *Armstrong* found that “‘illegal consideration does not constitute reasonably equivalent value.’” *Id.* The Court in this case reasoned, that if the argument set forth by the Defendant here, and the same argument set forth by the defendant in *Armstrong*, were taken to their logical extreme, then “a successful murder for hire would provide measurable value to the payor” for the purposes of 548 and 550 of the Bankruptcy Code.

When faced with the prospect of defending against the recovery of payment made on an illegal or unenforceable debt, it is important to start by examining the very nature and lawfulness of the underlying contract, transaction or event giving rise to the debt.

Jason S. Rigoli, *Furr and Cohen, P.A.*, One Boca Place- Suite 337W, Boca Raton, FL 33431, jrigoli@furrcohen.com

probate | litigation

referral fees

pankauski

LAW FIRM
P.L.L.C.

(561)

514 – 0906

support@pankauskilawfirm.com



Mandatory v. Precatory

By David M. Garten

In determining whether particular words are to be construed as mandatory or precatory, the court will look to the expressed intent of the decedent, as found from the context of the will or trust and surrounding circumstances; and words which, in their ordinary meaning, are precatory will be construed as mandatory only when it is evident that such was the decedent's intent. *See* 95 C.J.S. Section 602b.

Precatory words. As a general rule, language contained in a Will or Trust such as “wish,” “want,” “desire,” “ask,” “request,” and “should” is merely an expression of the decedent's wishes or desires and is not legally binding on the donee. *See Diana v. Bentsen*, 677 So. 2d 1374 (Fla. 1st DCA 1996) *citing Dwyer v. Allyn*, 596 N.E.2d 903 (Ind. 1st DCA 1992); 2-16 Florida Estates Practice Guide §16.38. When precatory words are used and no imperative duty is imposed, performance is left to the sense of gratitude and discretion on the part of the donee. The obligation of the donee of the gift is moral only; no legal duty is imposed upon him. The donee can carry out the wish and desire of the decedent as he sees fit. The courts have no control over the donee's actions and cannot substitute its judgment for the donee's judgment.

Where a provision of a will directs the PR or trustee to use a particular attorney or realtor, such language is only advisory. *See In Re: The Estate of Fresia*, 390 So. 2d 176 (Fla. 5th DCA 1980); *In re Marks Estate*, 83 So.2d 853 at 854 (Fla. 1955); *Nantell v. Lim-Wick Const. Co.*, 228 So.2d 634 (Fla. 4th DCA 1970).

A precatory oral will was found to be valid in *Glenn v. Roberts*, 2012 Fla. App. LEXIS 9850 (Fla. 3rd DCA 6/20/12). In Glenn, Article THIRD of the will read: “I hereby give, devise and bequeath all of the rest, residue and remainder of my estate, both real and personal, of whatsoever kind and nature, and wheresoever the same may be situate unto my friend, TERRY GLENN, having full confidence he will honor all

requests made to him by me prior to my death as to friends whom I desire he benefit.”[emphasis added]. The appellant argued that Article THIRD constituted an unauthorized oral will and therefore, was invalid. The appellate court disagreed. The court reasoned that the language in the will is merely precatory, and not mandatory. The language does not mandate the donee to distribute the residuary estate according to instructions from the decedent, but rather, simply expresses the decedent's hope that the donee will honor all of her “requests”. In other words, the unambiguous language of Article THIRD devises the entire residuary estate to the donee, who then has the discretion to honor the decedent's requests. The court distinguished *Estate of Corbin v. Sherman*, 645 So. 2d 39 (Fla. 1st DCA 1994), where the language in the will was clearly mandatory as it referenced oral instructions for the distribution of property “to dispose of as she has been instructed”. Because it mandated the distribution of the decedent's estate pursuant to oral instructions, it constituted an unauthorized oral will.

In *Halton v. Austin National Bank*, 487 S.W.2d 201 (TX 1972), the principal question to be decided was whether the words, “would like”, as used in the will, are precatory or mandatory. The will reads: “I, Wayman E. Adams, being of sound mind, will that in case of my death all property of which I am possessed go to my wife Margaret Boroughs Adams as long as she lives. And after her death if it has not been necessary to dispose of it *would like* our home at 2815 San Gabriel, Austin Texas be given to the Texas Fine Arts Association for a small museum – All paintings other real estate and personal property be administered by the Austin National Bank with advice from Mr. Ben Thrasher and Miss Ima Hogg – for the benefit of our son Wayman Jr.” [emphasis added]. Appellants argue that the words, “would like”, are the choice words and measured phrase of a cultivated gentleman who wrote,

not with legal precision, but rather with polite and gentle language. They say that the critical words, though ordinarily denoting desire, are, in effect, words of command cloaked in the language of civility. The appellate court disagreed and held that the reference to the Texas Fine Arts Association in the will is precatory and that the Association acquired nothing under the will. The court reasoned that the appellants' view of the words, “would like”, departs substantially from general notions. The word, “would”, is frequently used in expressions of desire or wish, (Webster's New International Dictionary, Second Edition), and the word, “like”, is akin to words such as desire or wish. Roget's International Thesaurus (Third Edition).

Mandatory words. As a general rule, language contained in a Will or Trust such as “direct” is legally binding on the donee. *See Sturdevant v. SAE Warehouse, Inc.*, 270 N.W.2d 794, 800 (N.D. 1978) (Use of the word “direct” indicates a command or order.). Interestingly, hotelier and real estate magnate Leona Helmsley “directed” in her Will that her mausoleum be acid washed or steam cleaned at least annually. She also “directed” that, upon her dog's death, her remains were to be buried next to Mrs. Helmsley's remains, in her (presumably freshly acid washed or steam cleaned) mausoleum. The Helmsley will can be found at: uniset.ca/misc/helmsley_will.html.



Finally, in a technical advice memorandum, Number: 201126030 (3/1/11), the IRS concluded that the words “it is my desire” in a decedent's will constitute mandatory language that passes equity interests to the decedent's children as specific bequests that reduce the marital deduction and increase the taxable estate.



“Keeping Diversity on the Forefront”

Submitted by Co-Chairs Sia Baker-Barnes and Sarah Shullman

Keeping Diversity on the Forefront—this is the mission of the Palm Beach County Bar Association’s Committee for Diversity & Inclusion (CDI). As the Bar’s only standing committee, we are focused upon taking the necessary steps to ensure that Palm Beach County’s legal community reflects, and includes, our community as a whole. The “Diversity Corner” is a step in that direction and through this column, we will address successes and obstacles in the area of diversity, we will highlight diverse members of our legal community and keep you informed about our committee’s efforts throughout the year.

The CDI is divided into six sub-committees, designed to address areas of concern and need in our legal community.

Events - assists with planning and organizing the committee’s events, including the Annual Diversity Luncheon (Oct. 19), Minority Mentoring Picnic (Nov. 10) and Bench-Bar conference (Mar. 1- including the law student session highlighting the benefits of practicing and living in Palm Beach County).

Law Firm Liaison - plans and attends luncheons with law firm managing partners to discuss diversity issues, highlight the work of our committee, and increase participation in diversity hiring, including participation in the diversity internship program. We will be introducing the brown bag lunch series this year to have informal discussions about ongoing diversity issues. This sub-committee also assists in vetting nominees for the Judge Edward Rodgers Diversity Award, presented at the Bench Bar Conference.

JNC/Road to the Bench - oversees the mentorship program for diverse attorneys interested in serving on the Bench or JNC. This sub-committee also assists in planning the Road to the Bench seminar.



Diversity Internship Program - works to promote the hiring of diverse law students in Palm Beach County by matching them with prospective employers. Also plans events over the summer including the Diversity Intern Tools & Tips Seminar and Diversity Intern Happy Hour.

Gender Equity - focuses on gender issues, including work-life balance and flex-time initiatives. This year’s focus is the diversity luncheon (Oct. 19) featuring Women in the Law, with Florida Bar President Gwynne Young as the keynote speaker, following by an outstanding panel discussion.

Public Relations/Marketing - promotes the CDI’s work and events and maintains the CDI website and jobs database for diverse candidates. Also will assist with the new “Diversity Corner” section of the bar bulletin which will address issues related to diversity or highlight diverse members of our legal community.

Among our over 50 committee members are local Judges, members of the Judicial Nominating Commission, Managing Partners and leaders of many of our local bar associations, ensuring a collaborative effort to address these important issues. We hope that you will consider joining our committee and assisting in our efforts to promote diversity and inclusion this year.

Sia Baker-Barnes and Sarah L. Shullman are the co-chairs of the Committee for Diversity and Inclusion. Sia is an attorney at Searcy Denney Scarola Barnhart & Shipley, specializing in Plaintiff’s personal injury, medical negligence, wrongful death and product liability cases. Sarah is a business litigation and consumer law attorney with the Law Offices of Sarah Shullman, P.A. in Wellington, FL, representing businesses and consumers in commercial and real estate litigation, contract disputes, consumer law and consumer finance litigation.

June 2012 Summary

Continued from page 8

or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive or (ii) the burden or expense of the discovery outweighs its likely benefit, taking into account various enumerated factors.

The Committee Notes to amended rule 1.280 are fairly extensive. The Notes encourage the parties to confer at the earliest opportunity to discuss the reasonable scope of preservation and production of ESI. They also counsel the court to balance, under the good cause test set forth in the rule, the potential for disruption of operations or corruption of electronic systems against the relevance of the information sought. The Notes further suggest that the court may direct the parties to develop the record further by engaging in “focused discovery,” such as the sampling of the ESI sources, to learn more about what ESI may exist, the costs of obtaining the ESI, and the relevance of the ESI.

Amended rules 1.340 and 1.350 expressly address discovery of ESI, most notably providing that the producing party may

object to producing documents in a particular form, but it must state the form it intends to use. If no particular form is requested, the party must produce the information in a form in which it is ordinarily maintained or in a reasonably usable form. Additionally, amended rule 1.410, governing subpoenas, essentially incorporates the same ESI principles set forth in amended rule 1.280.

Finally, amended rule 1.380 (Sanctions) provides that, absent exceptional circumstances, a court may not impose sanctions for failing to provide ESI lost as a result of routine, good faith operation of an electronic information system.

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.

ADMIRALTY & MARITIME

NAVIGATING INJURIES ON THE WATER

Admiralty and maritime cases are a specialized area of law. Admiralty and maritime matters include all personal injuries, property losses or wrongful deaths that occur on board a boat or ship. The ship or boat can be used for professional, commercial or recreational reasons. This includes everything from cruising vessels and cruise ships to recreational boats and Jet Skis.

Many attorneys make the mistake of thinking that land law applies at sea — it does not. At LaBovick Law Group, we know the difference. We help passengers and crew in all vessel-related cases.

THESE CASES INCLUDE:

- Cruise Ship Injuries
- Seaman's Personal Injury and Death
- Jones Act and Un-Seaworthiness
- Recreational Boating Accidents
- Cargo Claims and Subrogation
- Collisions at Sea
- Vessel Sales, Documentation and Transfer
- Marine and Boatyard Fires
- Salvage
- Marine Pollution Issues

Contact our dedicated maritime practice group today to find out your legal options.

REAL ATTORNEYS.
HELPING REAL PEOPLE.
WITH REAL PROBLEMS.



Mark R. Hanson, Esq.
Director of Litigation
and Maritime Law



5220 Hood Road | Second Floor | Palm Beach Gardens, FL 33418
1-866-LABOVICK (522-6842) | www.LaBovick.com
CO-COUNSEL AND REFERRAL FEES AVAILABLE

*** Ad Rates ***

CLASSIFIED ADVERTISING RATES:
TO PLACE AN AD: 1) Please fax all ads to 561/687-9007. 2) Upon receipt you will be notified of cost. 3) Send payment by the 25th of the month. 4) Cost: 50 words or less \$50, 50-75 words \$65, up to 75 words with a box \$75. 5) Members receive 1 free classified ad per year (excluding professional announcements). Ads will only be re-run by re-faxing ad to 561/687-9007. Web-site advertising is also available for a cost of \$75 for a three week run. Payment must be received prior to publication and renewable only upon receipt of next payment.

The Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. The PBCBA is committed to equal employment opportunity and does not accept employment ads which imply a preference based on race, color, sex, religion, national origin, disability, familial status, sexual orientation, age, marital status and gender identity or expression.

POSITIONS AVAILABLE:

ASSOCIATE POSITION open at AV rated probate and real estate transactional law firm in Lake Worth. Some experience preferred. Ability to learn and desire to work are essential. Send resume in confidence to Bob Sorgini at Bob@rcslawyers.com.

PROFESSIONAL ANNOUNCEMENTS:

The following announce their availability for referral, assistance and consultation.

GREGORY TENDRICH, Esq.: "AV" rated, FINRA Arbitrator, Certified County Court Mediator & Former Series 7 licensed VP & Asst. General Counsel to national and regional NYSE & FINRA stock brokerage firms, is accepting referrals and is available to co-counsel, provide trial/arbitration consultation or assistance in matters involving the recovery of losses due to stock broker fraud, unsuitability, churning and misrepresentation, in addition to SEC, FINRA, NYSE and other regulatory enforcement matters. Please call (561) 417-8777 or visit www.yourstocklawyer.com.

SCOTT SUSKAUER: "AV" rated, Board Certified Criminal Trial Lawyer. Over 20 years of experience. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI, juvenile and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; (561) 687-7866. www.suskauerlaw.com.

GREY TESH: "Law is not black & white, it's Grey." Passionate, caring, prepared, truthful. Criminal defense (board certified) and personal injury, over 100 jury & non-jury trials, Federal (nationwide) and State. aaacriminaldefense.com & floridainjuryaccidentlawyers.com. 1610 Southern Blvd, WPB, FL 33406. (561) 686-6886.

STEVEN GOMBERG: CONSULTATION SERVICES –

Criminal Law/Police Policy and Conduct; Law Enforcement Records Requests; Police Depositions; Criminal Background and Court info as to clients/witnesses/parties; Civil 5th Amendment issues; Records Interpretation. 38 years criminal law experience in W.P.B.; 7 years as Assistant State Attorney; 3 years Chief of the Economic Crimes Unit; Practicing criminal defense since 1981; civil claims against Police since 1985. CLE Lecturer. (561) 471-8100 or gomberglaw@comcast.net. Flat or hourly rates.

OFFICE SPACE

OFFICE SUBLEASE IN CENTURION

TOWER: 1601 Forum Place, West Palm Beach. Includes office, file space and a secretarial station, and access to a high speed copier/scanner, two conference rooms, a full kitchen and internet. Call Beth (561) 659-7878.

WPB LAKE VIEW SUBLEASE: 1 to 3 executive offices (min. 13.5 x 15.0) with all amenities; space for support staff; conference room. Class A space on Australian Avenue. Potential for referrals. All inquiries confidential. Currently available. Please call (561) 471-9000.

SHARED OFFICE SUITE: Large law offices with adjacent legal assistant stations available in a spacious law office suite. Use of 2 large conference/deposition rooms; kitchen; large file-room with shelving; lobby area; file cabinets; fax/copier/high speed scanner; and undercover parking. Located in the Barristers' Building, one block off Palm Beach Lakes Blvd, with easy access to I-95. \$750 per mo. (561) 371-1431.



W. Jay Hunston, Jr. Mediator/Arbitrator

Since 2001, limiting his practice to all forms of effective dispute resolution, including mediation, arbitration, special master, and private judging services.

- J.D., Stetson Univ. College of Law (1976)
- Fla. Bar Bd. Cert. Civil Trial Lawyer (1983 - 2003)
- Fla. Bar Bd. Cert., Emeritus, Civil Trial Law (2003 - Present)
- Fla. Certified Circuit Civil Mediator (1991 - Present)
- Fla. Certified Family Mediator (1998 - Present)
- Fla. Certified Appellate Mediator (2012 - Present)
- Qualified Fla. Arbitrator (2000 - Present)
- FINRA Approved Mediator
- Hourly and Per Diem Rates Available Upon Request

P.O. Box 508, Stuart, FL 34995
 (772) 223-5503; (800) 771-7780 - Office
 (772) 223-4092; (866) 748-6786 - Fax
 Email: wjh@hunstonadr.com

Website/Online Calendar: www.hunstonadr.com

ONLY ONE

How many lawyers can say that?



Fighting for the Injured since 1985

Rosenthal, Levy, Simon & Ryles, P.A.

ATTORNEYS AT LAW

Attorney Joy E. Greyer is the only Board Certified Social Security Disability Advocate in Palm Beach County and the Treasure Coast. Joy is one of only six social security disability advocates in Florida certified by the National Board of Legal Specialty Certification.

When choosing an attorney to represent your clients in Social Security Disability, shouldn't you **choose the only one?**

Referral fees paid in accordance with all rules governing the Florida Bar.

WEST PALM BEACH | PORT ST. LUCIE | NATIONWIDE | ROSENTHALLEVY.COM | 1-866-640-7117

1, 2 OR 3 OFFICES AVAILABLE

FOR LEASE: In professional office building. Butler Street near State, Federal and Bkc courts, island of Palm Beach and downtown WPB. Nicely appointed and professional suite has large kitchen, bathroom, conference room and receptionist. Contact Joel (561) 313-9873 or jblaw@bellsouth.net.

WEST PALM BEACH OFFICE:

Ideal office space available for lease or purchase \$140,000; 3 miles from Palm Beach County Courthouse; 1/2 mile from I-95 on Palm Beach Lakes Blvd and 2 miles from turnpike. Approximately 1500 sq. ft. of space, newly renovated. Super large conference room, client bath, reception room, business office with granite countertops, private office with private bath, wet bar and separate entrance, 3 additional offices. Owner financing available. Mike (561) 254-2868; mikepark923@aol.com.

HEARSAY

Jones Foster Johnston & Stubbs, P.A. announces that **Jane Stubbs Hunston** has been certified by the Supreme Court of Florida as an Appellate mediator. Also, the firm announces **Thornton M. "Tim" Henry** has been elected to the Board of Directors of Alzheimer's Community Care and is Chairman of the Development Standing Committee.



The Law Offices of Craig Goldenfarb is pleased to announce that **Anthony Goodman** has joined the firm as a litigator. Mr. Goodman will continue to passionately represent Plaintiffs in the specialties of automobile negligence, premises liability, medical malpractice and nursing home neglect.

Cindy A. Sojka has been appointed to The Florida Bar Grievance Committee for the 15th Judicial Circuit of Palm Beach County. Sojka is a partner at Cindy A. Sojka, P.A.



Adam I. Bregman has joined McDonald Hopkins, LLC as an Associate in the Business Department of the business advisory and advocacy law firm.



Nellie L. King, a criminal defense attorney with her own practice in WPB and the Immediate Past President of the Florida Association of Criminal Defense Lawyers, was presented the Distinguished Alumnus Award from the University of Mary Washington in June 2012.

Florida Bar Board Certified Business Litigation lawyer **David Steinfeld** has been appointed to a three year term to the Business Litigation Board Certification Committee.



Greenberg Traurig attorney **Patricia A. Leonard** was selected among Florida Association of Women Lawyers (FAWL) 2012 class of 'Leaders in the Law.'



Clerk & Comptroller **Sharon Bock** was recently appointed by the Florida Supreme Court to the Florida Courts Technology Commission (FCTC).

Clerk Bock was also re-elected to a two year term on the Executive Council of the Florida Clerks of Court Operation Corporation (CCOC).

Bar offers on-line traffic and parenting courses

The Palm Beach County Bar Association continues to look for non-dues sources of revenue to assist in keeping the cost of Bar dues down. Accordingly, we offer online courses in Business & Personal Services and Traffic Safety such as:



- Basic Driver Improvement Course
- First Time Driver Course
- Mature Driver Course
- Florida Notary Service
- 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.

For more information, visit www.palmbeachbar.org/online_courses.php





PALM BEACH COUNTY BAR ASSOCIATION
BULLETIN

PRESORT STD
 US POSTAGE
 P A I D
 WEST PALM BCH FL
 PERMIT NO. 66

1507 Belvedere Road, West Palm Beach, FL 33406

PAST PRESIDENTS...

M.D. CARMICHAEL*
 RICHARD P. ROBBINS*
 L.R. BAKER*
 HARRY A. JOHNSTON*
 GEORGE W. COLEMAN*
 H.C. FISHER****
 MARSHALL B. WOOD*
 E. HARRIS DREW***
 B.F. PATY*
 JOSEPH S. WHITE*
 HENRY P. LILIENTHAL*
 MANLEY P. CALDWELL*
 WILBUR E. COOK*
 W. MURRAY HAMNER*
 RICHARD PRESCOTT*
 RUSSELL MORROW*
 CULVER SMITH*
 RAYMOND ALLEY*
 C.Y. BYRD*
 WILLARD UTLEY*
 C.H. ERNEST*

PAUL W. POTTER*
 WAREING T. MILLER*
 CHARLES B. FULTON*****
 J. LEO CHAPMAN*
 ELWYN L. MIDDLETON*
 H. ELMO ROBINSON*
 J. STOCKTON BRYAN, JR.
 HAROLD G. MAASS*
 ROBERT F. CROMWELL*
 CHARLES H. WARWICK III
 PHILLIP D. ANDERSON*
 FREDERICK C. PRIOR
 JAMES C. DOWNEY*
 WILLIAM A. FOSTER
 ALAN F. BRACKETT*
 ROBERT D. TYLANDER*
 ROBERT MCK FOSTER*
 JOHN M. FARRELL
 H. LAURENCE COOPER, JR.*
 JOHN R. DAY*
 JOHN L. BURNS*
 HARRY JOHNSTON II

GAVIN LETTS*
 JAMES S. ROBINSON
 CHARLES H. DAMSEL, JR.
 EDWARD LEWIS
 RAYMOND ROYCE
 PETER VAN ANDEL
 LARRY KLEIN
 THEODORE BABBITT
 JOHN FLANIGAN
 SIDNEY A. STUBBS, JR.
 JOSEPH J. REITER**
 JOHN B. McCracken*
 DAVID L. ROTH
 D. CULVER SMITH III
 TIMOTHY W. GASKILL
 ARTHUR G. WROBLE
 GUY C. HILL
 PATRICK J. CASEY
 JAMES G. PRESSLY, JR.
 PATRICK C. MASSA
 STEVEN A. STINSON
 CARL M. MATHISON, JR.

ROBERT V. ROMANI*
 MICHAEL P. WALSH
 JULIEANN ALLISON
 MICHAEL A. VISCOMI
 CAROL McLEAN BREWER
 JERALD S. BEER
 JOHN G. WHITE III**
 MICHAEL T. KRANZ
 EDWARD DOWNEY
 SCOTT G. HAWKINS**
 AMY L. SMITH
 GREGORY W. COLEMAN
 LISA S. SMALL
 STANLEY D. KLETT, JR.
 THEODORE J. LEOPOLD
 MANUEL FARACH
 MEENU T. SASSER
 RICHARD D. SCHULER
 MICHELLE SUSKAUER
 MICHAEL J. NAPOLEONE
 JOHN M. HOWE

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

CALENDAR

September 2012

<p>Monday, September 3 Court Holiday – Labor Day Bar Office Closed</p> <p>Thursday, September 6, 5:30pm – 8:00pm NCS Happy Hour Brio Tuscan Grille, Palm Beach Gardens</p> <p>Friday, September 7, 8:30am – 9:30am ADR Committee Meeting Bar Association Office</p> <p>Tuesday, September 11, Noon – 1:00pm Corporate Counsel Committee Meeting Bar Association Office</p> <p>Tuesday, September 11, Noon – 1:00pm YLS Board Meeting Bar Association Office</p> <p>Wednesday, September 12, Noon – 1:30pm NCS Board Meeting</p>	<p>Wednesday, September 12, 6:30pm – 7:30pm Small Claims Court Glades Road Branch Library</p> <p>Thursday, September 13, 5:30pm – 7:00pm YLS Happy Hour</p> <p>Friday, September 14, 11:30am – 1:00pm Solo & Small Firm Luncheon</p> <p>Monday, September 17 Court Holiday - Rosh Hashanah</p> <p>Tuesday, September 18 - 21 Florida Bar Midyear Meeting Buena Vista Palace, Orlando</p> <p>Tuesday, September 18, 11:45am – 1:00pm Unified Family Practice Committee Meeting</p> <p>Wednesday, September 19, Noon - 1:00pm CDI Brown Bag Lunch</p>	<p>Wednesday, September 19, Noon – 1:00pm Employment Law CLE Committee meeting Bar Association Office – Small Conference Room</p> <p>Wednesday, September 19, 5:30pm – 7:00pm Second Annual Membership Speed Networking BB Kings</p> <p>Thursday, September 20, 11:45am – 1:00pm FAWL Luncheon West Palm Beach Marriott</p> <p>Thursday, September 20, 6:00pm – 8:00pm PBCJA Dinner Meeting Bear Lakes Country Club</p> <p>Friday, September 21, Noon – 1:00pm Law Week Committee Meeting Bar Association Office</p> <p>Monday, September 24, Noon – 1:00pm CDI Committee Meeting Bar Assn. CLE Classroom</p>	<p>Monday, September 24, 5:30pm – 6:30pm Legal Aid Board Meeting Bar Association Office</p> <p>Tuesday, September 25, Noon – 1:00pm Membership Committee Meeting Bar Association Office</p> <p>Wednesday, September 26 Court Holiday - Yom Kippur</p> <p>Thursday, September 27, 5:00pm - 6:30pm PBCBA Board of Directors Meeting Bar Association Office</p> <p>Friday, September 28, 7:30am – 6:00pm PBCJA – 13th Annual Golf Classic The Falls Country Club</p> <p>Saturday, September 29, 7:00am – 10:00am Lawyers Have Heart Run</p>
---	--	---	---