



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

September 2013

## Eugene K. Pettis To be Keynote Speaker at Annual Diversity Luncheon Focusing on "The Importance of Getting Involved in Leadership"



Florida Bar President Eugene K. Pettis will be the keynote speaker during our annual Diversity Luncheon on Friday, September 27, at the Marriot in West Palm Beach. The luncheon will be a forum to

discuss the importance of getting involved in leadership, especially for minorities.

For more information about our speaker, please see page 15.

During the luncheon, we will recognize outgoing Chief Judge Peter Blanc and incoming Chief Judge Jeffrey Colbath. The cost is \$35.00 for PBCBA members and complimentary to the Judiciary. Please RSVP at [www.palmbeachbar.org](http://www.palmbeachbar.org).

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## Mark your calendar for upcoming Membership Events

- September 12:** North County Section Reception
- September 22:** YLS Dolphins Road Trip
- September 27:** Diversity Luncheon with Guest Speaker Florida Bar President-elect Eugene Pettis
- October 26:** Family Day at the Palm Beach Zoo
- December 5:** Annual Holiday Party and Silent Auction
- March 7, 2014:** Bench Bar Conference
- June 7:** Annual Installation Banquet

## Young Lawyers Go Fishing!



**Congratulations to our Young Lawyers Section for hosting another successful fishing tournament! Twenty-one teams participated in this year's sold-out event, which was held at the Palm Beach Yacht Club in West Palm Beach. With a matching grant from the Richard & Peggy Greenfield Investment in Justice Challenge, a total of \$29,000 was raised for the Legal Advocates for Minor Mothers Project, a program of the Legal Aid Society of Palm Beach County. Pictured from left to right: Ashley Ortagus Wilson, YLS Treasurer; Evan Frederick, event co-chair; Bob Bertisch, Executive Director of Legal Aid Society; Lindsay Demmery, President-Elect and Jamie Gavigan, event co-chair. For more photos, see page 5.**

## North County Section To Host Its Annual

# Membership Appreciation Reception

Thursday, September 12, 2013

5:30 p.m. to 7:00 p.m.

Ill Forks

4645 PGA Blvd., Palm Beach Gardens

This event is complimentary for all North County Section members and the Judiciary.

Kindly RSVP @ [www.palmbeachbar.org](http://www.palmbeachbar.org)

Sponsored by: First Citizens Bank; Karen Holloway/Northwestern Mutual and the Law Office of David Steinfeld, P.L.

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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

## Be an Ally for the Visually Impaired!



My name is Andrew Kwan and I'm a member of the Lawyers for Literacy Committee. I volunteer at Learning Ally, a nonprofit organization that provides audio books to people with visual impairments like blindness or dyslexia. Every other weekend, I drive down to the Boca Raton Learning Ally studio located in FAU, and record everything from nutrition textbooks to rousing antislavery speeches. I find it's a nice way to read something other than deposition transcripts, court opinions, or agency regulations.

If you'd like more information on volunteering for Learning Ally or obtaining audio books, contact the Boca Raton studio at (561) 297-4444. Additionally, the Bar Association's Lawyers for Literacy Committee will be co-sponsoring an open house there later on this year; stay tuned to the Bar Bulletin for more details.

## CLE Seminars Now Available 24/7

We are pleased to unveil our new online CLE order page for attorneys to purchase seminars either on CD's or in an MP3 format to download to your computer or iPod. We have a large library of courses recorded from seminars presented by the Palm Beach County, Orange County, Hillsborough County and Clearwater Bar Associations. If your CLE deadline is coming up, be sure to check out this new site and order your CLE at [www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php) today.



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## What are the rest of the voluntary bar associations doing and How does the PBCBA stack up?

By *Jill Weiss*

One of the best things I get to do as PBCBA President is getting to meet other voluntary bar leaders from around the state. While executive directors remain fairly constant and provide a stabilizing force for bar associations, officers come and go. In July, Patience and I had the opportunity to attend The Florida Bar's Voluntary Bar Leaders Conference in Clearwater where officers and executive directors from all types of voluntary bar associations meet to share ideas, issues and solutions. The breadth of organizations represented includes the following: staffed bar associations such as ours; brand new organizations such as the Weston Bar Association which is a few months old; unstaffed voluntary bars; and specialty bars which include chapters of the Federal, Bankruptcy, African-American, Asian, FAWL and Hispanic Bars.

The PBCBA is one of the largest voluntary bar associations in the state. With approximately 3100 members, we are larger than the Broward County Bar Association (2500 members), but smaller than the Dade, Orange and Hillsborough County Bars with approximately 4000, 3600 and 3400 members respectively. I thought I would share with you some of the things other bars are doing as well as how the PBCBA stacks up.

Last year the Dade County Bar underwent a revitalization and slashed a number of committees – they are now down to 34 committees. Further, due to economic considerations, they were forced to re-examine and cut a number of programs as well as reassess staffing. While such measures are unpleasant to say the least, because of this, Dade is now a financially leaner bar machine.

Because of its dues and new member requirements, the

Orange County Bar must seek significant alternative sources of revenue other than dues to fund its programs. The Orange County Bar is extremely resourceful in seeking alternative methods of raising revenues. They have expanded their lawyer referral service; maintain a copier in the law library which provides the Bar with revenue, and even has an official sponsorship agreement with the Orlando Magic.

Financially the PBCBA is strong. Our financial stability enables us to introduce new programming and enhance existing seminars and events. While we continue to seek sponsorships from law firms and law related vendors, we recognize that we also must seek other non-dues sources of revenue and like Orange County, we will be looking at our lawyer referral service this year to see how it can be enhanced.

In regard to programming, smaller bars often hold small membership luncheons and one or two signature events. With the increased number of voluntary bar organizations, cooperating to hold joint events has been beneficial especially to smaller or specialty bars.

In addition to the "usual" CLE seminars and networking events, the Hillsborough County Bar Association puts on a production of "Law Follies". The show is a choreographed legal star studded production. The Clearwater Bar Association offers its members a four day cruise which includes a CLE program, which was co-sponsored by the PBCBA last year. Many bar associations host Bench Bar conferences similar to ours however; the PBCBA Bench Bar is one of the oldest and most well attended.

A number of bar associations are addressing new attorney education. The YLD section of The Florida Bar encourages mentoring and teams up with voluntary bar organizations, including the PBCBA, to provide mentoring at the local level.

As for the PBCBA, we have a number of inventive CLE seminars that we shared at the conference including our ½ day Golf and CLE seminar and the Young Guns v. Legal Legends seminar. We are 32 committees strong and have both CLE and practice committees in major areas of practice. In addition, we have several committees devoted to various community projects such as our Lawyers for Literacy, Law Week and Small Claims Court Clinics committees. Lastly, we have very active Young Lawyers and North County Sections that put on monthly events. Voluntary bar leaders from all types of organizations sought out the PBCBA to ask questions and inquire as to what we are doing for our members. With that said, Patience and I did come back from the conference with new ideas and valuable information that we are excited to implement. So how does the PBCBA stack up? Thanks to so many dedicated volunteers, very well indeed.

Please feel free to email me if you have any comments or ideas at [jweiss@ssclawfirm.com](mailto:jweiss@ssclawfirm.com)

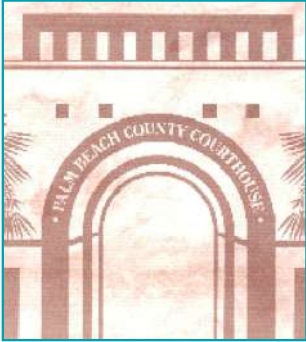
### Circuit Court Report CIVIL DIVISIONS • As of July 24, 2013

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA BLANC	01-14	01-14	08-13	1226
AB GILLEN	01-14	01-14	09-13	1333
AD G. KEYSER	11-13	11-13	10-13	1468
AE FINE	01-14	01-14	08-13	1605
AF J. KEYSER	01-14	01-14	08-13	1299
AG CROW	03-14	10-13	08-13	1454
AH BROWN	10-13	10-13	10-13	1317
AI SASSER	10-13	09-13	08-13	1089
AJ J. MARX	12-13	12-13	10-13	1249
AN COX	02-14	02-14	10-13	1525
AO BRUNSON	11-13	10-13	07-13	1516



# 15th Judicial Circuit Administrative Orders

www.15thcircuit.com/adminorders



## REVISED ADMINISTRATIVE ORDERS

### 2 Series: General Administrative Orders

Administrative Order 2.105 - Professionalism Panel. Amended June 20, 2013. Renamed the council the Professionalism Panel to comport with Supreme Court Opinion 13-688. Added provisions to include referrals to and from the Florida Bar Attorney Consumer Assistance and Intake Program (ACAP).

### 11 Series: Internal Policies and Procedures

Administrative Order 11.101 - *Judicial Assignments*. Amended July 1, 2013. Amended divisional assignments to reflect Judge Peter Blanc to Circuit Civil Division AA, Judge Joseph Marx to Circuit Civil Division AJ, Judge Glenn Kelley to Circuit Criminal Division W, and Judge Karen Miller to Circuit Criminal Division R.

Administrative Order 11.102 - *Administrative Judges and Executive Committee*. Amended July 1, 2013. Assigned Judge Joseph Marx as Administrative Judge for Circuit Civil. Assigned Judge John Kastrenakes as Administrative Judge for Circuit Criminal.

Administrative Order 11.106 - *Alternate Assignments*. Amended July 1, 2013. Judge Peter Blanc and Judge Jeffrey Gillen will serve as alternates. Judge Glen Kelley and Judge Richard Oftedal will serve as alternates. Judge Robin Rosenberg and Judge Diana Lewis will serve as alternates.

Administrative Order 11.202 - *Trial Division Judges*. Amended July 19, 2013. Eliminated the Circuit Civil Trial Division at the main courthouse. Created a trial division at the South County Courthouse.



## The 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](http://www.palmbeachbar.org/online_courses.php)

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## Going to the movies this weekend?

Buy your discounted tickets through the Bar!



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

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## YLS Activities

The Young Lawyers Section has been very busy this summer hosting their 4th Annual Fishing Tournament, their annual summer law intern happy hour, breakfast with the judges and another happy hour in July.



Larry Bishin (center) takes home the prize for Overall Winning Boat



The YLS hosted a happy hour announcing their upcoming road trip to a Dolphins Game on September 22. Members came decked out in their Dolphins attire: Melinda Hayes, Lindsay Demmery, Leanna Lalla, Julia Wyda and Dan Zuniga



Second place in the Kingfish category goes to Ken Johnson, John Howe, Jill Weiss, W Mason, Jessica Callow Mason and Dean Xenick.

Ned Reagan,  
John Riordan  
and Law Student  
Francisco  
Zornosa



## Annual Summer Intern Happy Hour



A judicial breakfast was hosted by the YLS on July 10 with Judges Jeff Colbath, Peter Blanc, Rosemarie Scher, John Kastrenakes and Glenn Kelley







## Fourth DCA Addresses § 57.105(7) & “Defaulting Party” Fee Clauses

By Christopher R. Bruce

Florida’s Fourth District Court of Appeal recently readdressed the reach of § 57.105(7) and the limited impact “defaulting party” fee clauses have in domestic relations litigation in *Sacket v. Sacket*, 38 Fla. L. Weekly D 1345, No. 4D12-1872 (Fla. 4th DCA June 19, 2013). Although Sacket initially appears to be just an appellate correction of a post-divorce attorney fee squabble the case will have future impact on both commercial contract cases and domestic relations disputes.

In *Sacket*, the parties’ marital settlement agreement included the following provision for future attorney’s fees and costs:

“should either party to this agreement **default** in his or her obligation hereunder, the party in **default** shall be liable to the other party for all reasonable expenses, including attorney’s fees...” (Emphasis Added).

The litigation that gave rise to the appeal in *Sacket* started with the former wife filing an emergency motion for temporary custody and contempt, alleging the former husband was not complying with the parties’ timesharing schedule and parenting plan. The emergency motion requested the trial court to order former husband to pay the attorney’s fees and costs related to the motion.

At the emergency hearing, the trial court found that the former husband was not in contempt of court. Shortly thereafter, the parties returned to court for an attorney’s fee hearing. The former wife relied upon § 61.16 (Florida’s “need and ability to pay” attorney fee statute) to argue that former husband should pay the attorney’s fees related to her unsuccessful emergency motion. The former husband argued the parties’ “defaulting party” attorney fee clause operated to eliminate former wife’s entitlement to fees under § 61.16 for the emergency motion. He also argued that §57.105(7) created his entitlement to attorney’s fees from his dependent former wife because he successfully defended against her action to enforce their marital settlement agreement.

The trial court agreed with the former husband, finding that § 57.105(7) applied to the parties’ “defaulting party” fee clause to create former husband’s entitlement to attorney’s fees because he was found not to have defaulted on the terms of the parties’ marital settlement agreement. The implied logic of the decision was that § 57.105(7) creates “reciprocity” for attorney fee clauses, and this “reciprocity” provision would require an “accused” defaulting party to receive fees if they are “exonerated” after hearing (because the party would have to pay fees if found in default)(and yes, this is a tricky analysis). The trial court found that \$6,932 was a reasonable fee for the former husband’s defense of the emergency motion and offset this amount from other money owed to former wife.

On appeal, the former wife argued that operation of § 57.105 was not triggered, because the “defaulting party” fee clause was a bilateral (and not unilateral) contractual fee provision. Further, former wife stressed the “defaulting party” clause was inapplicable since the trial court did not find either party in default. Therefore, the trial court should have awarded her attorney’s fees related to her emergency motion under § 61.16 since the court determined at the fee hearing that she was otherwise entitled to attorney’s fees from her bank-president former husband.

The *Sacket* court agreed with the former wife and reversed. The court noted § 57.105(7) “renders bilateral a unilateral contractual clause...for attorney’s fees”. However, § 57.105(7) was not applicable to the Sacket family’s fee dispute because the “attorney’s fee provision in the marital settlement agreement applied to both parties equally, and was therefore not a unilateral provision necessitating the application of § 57.105(7) for reciprocity purposes”. In other words, § 57.105(7) does not apply to transform a “defaulting party” fee clause into a “prevailing party” fee clause.

The Sacket court also made clear that the mere existence of a “defaulting party” fee clause does not render inapplicable the § 61.16 “need and ability to pay” statute. If neither party is found to be in default the contractual fee provision does not apply and the divorce court judge must assess whether either party is entitled to fees under § 61.16.

### Takeaways from Sacket

The *Sacket* decision clarifies that § 57.105(7) does not apply to effectively transform a “defaulting party” fee provision into a “prevailing party” fee provision. Furthermore, the case highlights how a “defaulting party” fee clause are mostly “useless” for discouraging unnecessary post-divorce litigation because a impecunious spouse can still seek attorney’s fees for unsuccessful litigation based under the § 61.16 “need and ability to pay” statute.

*Sacket* shows why family law practitioners would be well served using “prevailing party” fee clauses in lieu of “defaulting party” clauses when the goal is discouraging meritless post-divorce litigation. When “prevailing party” clauses are used “the loser pays” and the “need and ability to pay” statute does not apply.

*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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## Shareholder and Member Rights to Accounting Records: What if the Statutorily Required Record Does Not Exist?



By Hank Jackson

When shareholders of corporations or members of limited liability companies need financial information concerning their investments, they often turn to their statutory rights of access and inspection of the entity's books and records. These statutes, Fla. Stat. §§ 607.1602 and 607.1620 governing corporations and Fla. Stat. §§ 608.4101 and 605.0410

pertaining to limited liability companies, lists the records that must be made available for inspection and copying.

However, what if the corporation or limited liability company does not generate or maintain such accounting records in its ordinary course of business? Recently, in *Omes v. Ultra Enterprises, Inc.*, 38 Fla.L. Weekly D 1470a (Fla. 3rd DCA July 3, 2013), this precise issue was addressed: "whether a corporation or LLC that fails to maintain an accounting record specified to be accessible to shareholders... can be ordered to either (a) prepare and provide such a record, or (b) produce those 'source' or original accounting records that would be necessary to produce the statement." *Id.* In this case, the plaintiff shareholder requested a "statement of annual cash flows" as required to be maintained by Fla. Stat. § 607.1620(1). The statute provides that a corporation shall furnish its shareholders annual financial statements that include "a statement of cash flows for the year." *Id.* Here, the defendant corporation claimed it did not have a cash flow statement. Instead, it produced documents from which a statement of cash flows could be created. The trial court held this complied with the statute. The plaintiff shareholder appealed.

In analyzing the issue, the Third District specifically addressed a decision from the Fourth District, *Nu Med Home Health Care, Inc. v. Hospital Staff Services, Inc.*, 664 So.2d 353 (Fla. 4th DCA 1995), which had been cited by the plaintiff shareholder. The Third District embraced a general holding by the Fourth District that a corporation is not required to produce a corporate record that it does not have nor is it required to prepare such a document from other source documents. But the Third District in its *Omes* decision did not mention the other holding in *Nu Med*. The other more narrow holding was that the defendant corporation had strictly complied with the technical wording of Fla. Stat. § 607.1601(3) – the statute defining the corporate record to be maintained. This statute provides that a corporation shall maintain a record of its shareholders showing the number and series of shares held by each shareholder. *Id.* The defendant corporation in *Nu Med* had done so, and the list was available to shareholders. Stated differently, the precise issue in *Nu Med* was really that the plaintiff shareholder wanted a different type of shareholder list – a list of the "non-objecting beneficial owners" – which the corporation did not have or maintain. Seemingly important, a specific finding in *Nu Med* was that the requested customer list by the shareholder was not the "official stockholder list required to be maintained by statute." *Nu Med*, 644 So.2d at 355. Nevertheless, the Third District in *Omes* still held that the *Nu Med* opinion supported its ruling – the defendant corporation had complied with the statute by providing documents from which the statutorily required accounting statement could be generated.

After addressing *Nu Med*, the court in *Omes* also focused on case authority that neither the plaintiff shareholder nor

the defendant corporation had cited in their briefs, which is *Computer Solutions, Inc. v. Gnaizda*, 633 So.2d 1100 (Fla. DCA 3rd 1994). In that case, the plaintiff shareholder requested documents pursuant to Fla. Stat. § 607.1602, which requires a finding of proper purpose to access or inspect particular documents. Indeed, the court in *Computer Solutions* considered the affidavit of the shareholder's accountant and permitted inspection of some of the documents and not others based on the expert affidavit. In drawing a comparison with the holding in *Computer Solutions*, the *Omes*' court stated the facts were similar. In *Omes*, an independent certified public accountant had considered the sufficiency of the records produced in lieu of the cash flow statement and considered it sufficient. Aside from the factual similarity, the Third District chose not to distinguish the two different statutes under which the requests were made. In *Omes*, Fla. Stat. § 607.1620 was utilized by the shareholder to request annual statements of cash flow, which does not require a finding of proper purpose, but is an absolute right. On the other hand in *Computer Solutions*, Fla. Stat. § 607.1602 was the basis of the request and specifically requires a proper purpose by the shareholder to access the requested documents.

In short, the Third District in *Omes* broadly ruled that where a corporation or LLC has failed to maintain an accounting record specified to be accessible to shareholders or members, the entity cannot be ordered to prepare such record. Instead, it only can be required to produce source documents from which such report can be derived. Whether this ruling has limitations – such as consideration of how much time and expense would be required of the shareholder to create the report from source documents – is not known. Also, whether the other District Courts of Appeal, including the Fourth District, will rule so broadly is yet to be determined.

Author: Hank Jackson is a Board Certified Business Litigation Attorney with Shutts & Bowen LLP

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Bar Office

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The PBCBA's Committee for Diversity and Inclusion sincerely thanks the following law firms and company for hiring diverse law students through our Diversity Internship Program this summer.



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Torres Teebagy Luongo



We are also grateful for financial contributions from the following firms, which allowed our interns to work with local government agencies.



We give our thanks to the following agencies for hosting diverse legal interns this summer.



Finally, our DIP events were made possible by support from our DIP Event Sponsors.



We are excited to report that feedback about this year's program has been extremely positive from both our interns and their employers. We could not have done it without help from all of you. Thank you for supporting this wonderful program!



## Your Law Firm Blog is Terrible

By Christopher B. Hopkins

“F\*&%ing punks. These a^%#@\*%&% always get away,” were the words that began the *State vs. Zimmerman* trial in late June 2013. While the prosecution commenced with that jaw-dropping start, the defense trotted out a failed knock-knock joke. There was no dispute as to which opening received better attention.

Your law firm’s blog is a lot like that knock-knock joke: conceived with the best of intentions, perhaps, but ultimately thudding to the floor. Writing a blog is different than legal writing since it involves strategy so that your blog is more visible. Intentional use of keywords and hyperlinks are food for “bots” which digest whether you are worthy of placement on the (coveted) first page of Google search results. Perhaps above all, you must be cogent. Internet readers are curious yet distracted as easily as the dog in the movie *Up* (squirrel!). Don’t let them get away.

While your firm may send out an “email blast” or an RSS feed to (few) subscribers, reaching those people is easy – your post is pushed to them. That’s a poor metric of visibility. Your larger audiences are internet searchers who use keywords to find a case, a new law, or some legal analysis. That is the larger audience you want. In that group lies a reporter looking for an interview, another writer looking to cite you, or, better still, a client looking for someone with your expertise.

Writing a blog post requires three steps: keyword selection, writing, and hyperlinking. Again, in your motion practice or academic writing, “keywords” are not a concern. Search engines like Bing and Google, however, scour the internet for keywords and develop algorithms around them in order to generate better search results. The world of internet searching is driven by keywords. So you need to write your blog in a format which anticipates which keywords prospective readers might use.

For step one, ask yourself: if someone were to search for my topic, what keywords would they type into Google? According to Matt Kakuk of Localmanagement.us, a search engine optimization company, keywording will “organically” lead to better search placement. In fact, more than 50% of people click on the first link suggested by Google and practically no one reads the second page of Google search results. By tailoring your words, your blog will get a higher ranking on Google and more traffic.

Let’s assume your blog post is about a new case, *Smith v. Jones*. The keywords might be the name of the case and maybe “Florida,” “slip and fall,” “negligence,” and “Chapter 768.” First, use keywords in the title but do not make the whole title of keywords (Mr. Kakuk tells clients to think of titles like, “Visit Boca Raton’s premier restaurant” instead of just “Restaurant in Boca Raton”). Second, make sure you use the keywords early in the article. Third, don’t be clever with synonyms. Repeating keywords may actually help. Likewise, as your blog grows, use the keywords consistently in other posts.

Step two begins with the recognition that writing a blog differs from persuasive or graduate-level writing. Blogging is a return to a more primitive writing style since the reader’s sole interest is getting information quickly. Clarity and cogency

are the only rules of style. Turn to the basic elements of the expository paragraph: a title sentence, followed by sentences which expand upon the idea, and a concluding sentence. Unlike persuasive writing, there is limited time for you to tell a story, paint a verbal picture, or connect with the reader. They don’t care. They are not truly “readers” -- they are Googlers searching for quick legal content. According to Nielsen, internet readers spend 10-20 seconds on your site and read less than a quarter of the text per page. Ditch the long winded introduction or the academic overload of information. Get to your point.

Some basic elements of blog writing:

- Use short sentences and write 500 words or less;
- Get right to your point and use keywords;
- No long quotes from cases or statutes -- your readers are largely skimming anyhow;
- Short paragraphs. Long, dense passages will scare away internet readers;
- Avoid sounding like an advertisement or press release.

Be genuine.

The third step is editing for the internet, which generally means proper hyper-linking. If you are writing about a case, link to the case. Link to other pages on and off your site. Also link the authors’ bios or social media accounts. It is a good idea to then use Twitter, LinkedIn, and Google+ to promote your blog post.

With that in mind, go to your firm’s blog and read a few posts. How quickly does the lawyer get to the point? Are keywords used effectively? Does it appear dense and unfriendly? Any hyperlinks? Do a Google search for some of the keywords to see whether your blog lands on the first page. If other firms’ blogs appear before yours, the knock-knock joke may be on you.

*Christopher B. Hopkins is a shareholder at Akerman Senterfitt. Send your emails extolling how this article fails to follow its own instructions to Christopher.Hopkins@Akerman.com.*



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By Manuel Farach

**First Baptist Church of Cape Coral, Florida, Inc. v. Compass Const., Inc.**, – So.3d –, 2013 WL 2349380 (Fla. 2013).

So long as the fee agreement provides for this form of alternative fee, a court presiding over an indemnity case may award the higher of the contractual fee between the attorney and the client or the fee deemed reasonable by the court.

**Rocket Group, LLC v. Jatib**, – So.3d –, 2013 WL 2319486 (Fla. 4th DCA 2013).

Although not specifically listed as a category under Florida Rule of Judicial Administration 2.420 (a), corporate records may be confidential and filed under seal.

**In re Standard Jury Instructions-Contract and Business Cases**, – So.3d –, 2013 WL 2435441 (Fla. 2013).

The Florida Supreme Court approves the first set of standard jury instructions for contract and business cases.

**In re Code for Resolving Professionalism Complaints**, – So.3d –, 2013 WL 2435539 (Fla. 2013).

The Florida Supreme Court adopts procedures for resolving professionalism complaints.

**Association for Molecular Pathology v. Myriad Genetics, Inc.**, – S.Ct. –, 2013 WL 2631062 (2013).

Naturally occurring DNA is not able to be patented, but synthetic DNA may be patented under the Patent Act.

**Oxford Health Plans LLC v. Sutter**, – S.Ct. –, 2013 WL 2459522 (2013).

An arbitrator's interpretation of a contract, even if grossly wrong, cannot be overturned. Accordingly, arbitrator's decision to allow class action upheld even if not expressly permitted under the arbitration clause and contract.

**In re Rothstein, Rosenfeldt, Adler, P.A.**, – F.3d –, 2013 WL 2494980 (11th Cir. 2013).

Criminal proceeds deposited into law firm's accounts are not directly traceable to the criminal activity, and thus are not subject to forfeiture.

**Franks v. Bowers**, – So.3d –, 2013 WL 3064807 (Fla. 2013).

A party seeking to enforce an arbitration agreement under the Medical Malpractice Act must agree to all terms and conditions of the Medical Malpractice Act.

**Cortez v. Palace Resorts, Inc.**, – So.3d –, 2013 WL 3068147 (Fla. 2013).

Public interest factors should always be considered in forum non conveniens analysis, and must be in favor of the alternative forum in order to defeat a plaintiff's choice of Florida. The public interest factors must be considered even if the private interest factors favor the alternative forum.

**American Exp. Co. v. Italian Colors Restaurant**, – S.Ct. –, 2013 WL 3064410 (2013).

Class action waivers in arbitration agreements are enforceable, notwithstanding that eliminating class actions may deny "effective vindication" of statutory or common-law claims because the cost of arbitrating a claim outweighs the potential recovery.

**F.T.C. v. Actavis, Inc.**, – S.Ct. –, 2013 WL 2922122 (2013).

Parties making reverse payment settlements, i.e., settlements based on payments by owners of drug patents to other manufacturers to keep their generic drugs off the market for a specified period of time, are not immunized from anti-trust liability by the Hatch-Waxman Act.

**Koontz v. St. Johns River Water Management Dist.**, – S.Ct. –, 2013 WL 3184628 (2013).

"Monetary exactions" as a condition of permitting land development must meet the Nollan and Dolan tests of nexus and rough proportionality. Government may not avoid a violation of the Unconstitutional Conditions Doctrine (government may not impose a burden upon citizens exercising their Constitutional rights) by imposing conditions to permit issuance such as off-site mitigation on public lands.

**Mutual Pharmaceutical Co., Inc. v. Bartlett**, – S.Ct. –, 2013 WL 3155230 (2013).

State law claims regarding drug labeling are preempted by federal law that expressly prohibits manufacturers of generic drugs from making unilateral changes to drug's label.

**In re Piazza**, – F.3d –, 2013 WL 3198005 (11th Cir. 2013).

Prepetition acts of "bad faith" can, under the totality of the circumstances test, constitute "for cause" grounds to dismiss a bankruptcy under 11 U.S.C. § 707 (a).

**Arsali v. Chase Home Finance LLC**, – So.3d –, 2013 WL 3466800 (Fla. 2013).

Inadequate sale price is not an absolute requirement to vacate a foreclosure sale, and only one of the equitable factors (surprise, accident, mistake, irregularity in conduct of sale or inadequate sale price) need be proven to vacate the sale.

**Maronda Homes, Inc. of Florida v. Lakeview Reserve Homeowners Ass'n, Inc.**, – So.3d –, 2013 WL 3466814 (Fla. 2013).

The implied warranties of fitness and merchantability apply to subdivision improvements that supply essential services to a home, e.g., infrastructure, drainage systems, retention ponds and underground utilities. Fla. Stat. § 553.835 (no implied warranties may be extended for subdivision improvements off the homeowner's lot) is substantive in nature, and may not be applied retroactively to these parties.

**Wolfe v. Foreman**, – So.3d –, 2013 WL 3724763 (Fla. 3d DCA 2013).

The Litigation Privilege applies to both abuse of process and malicious prosecution claims.

**NAFH Nat. Bank v. Aristizabal**, – So.3d –, 2013 WL 3811356 (Fla. 4th DCA 2013).

A trial court loses jurisdiction to entertain a motion to vacate a final judgment under Florida Rule of Civil Procedure 1.540 (b) after one year, including motions for "fraud on the court." Only "extrinsic fraud," i.e., that fraud which is outside and collateral to the issues tried in the case, may be raised beyond the one year period.

**State v. Basford**, – So.3d –, 2013 WL 3814317 (Fla. 1st DCA 2013).

An "as applied" cause of action for inverse condemnation arising out of a new law accrues when the law becomes effective, not when the law is passed.

**Tubbs v. Mechanik Nuccio Hearne & Wester, P.A.**, – So.3d –, 2013 WL 3835838 (Fla. 2d DCA 2013).

A plaintiff's voluntary dismissal of a moot claim does not make the defendant a "prevailing party" for purposes of attorneys' fees awards. The "prevailing party" in a complex, multi-suit dispute cannot be determined until the conclusion of all the litigation.

## 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, 2012; Associate in Ice Legal, P.A., Royal Palm Beach.

**Steven Brotman:** University of Florida, 2010; Associate in Ice Legal, P.A., Royal Palm Beach.

**Olga Butkevich:** University of Florida, 2011; Associate in Cole Scott & Kissane, P.A., West Palm Beach.

**Sabrina R. Jadunandan:** Law Student Membership, Lake Worth.

**Howard Kirkpatrick, II:** Associate in Holland & Knight, LLP, West Palm Beach.

**Benjamin R. Kennard:** Emory University, 2013, Fifteenth Judicial Circuit, West Palm Beach.

**Michelle Cohen Levy:** University of Miami, 2009; Associate in Gordon & Rees, LLP, Miami.

**Michelle Logan:** Nova Southeastern University, 1999; Office of the State Attorney, West Palm Beach.

**Chance McClain:** Wilmington, N.C.; Florida Coastal School of Law, 2009; Sole Practitioner, West Palm Beach.

**Reeva Oza:** Hofstra University School of Law; 2011, Associate in Powers McNalis Torres Teebagy Luongo, West Palm Beach.

**Sean Perkins:** Durham, N.C.; University of Miami, 2001; Associate in Hall Booth Smith, P.C. North Palm Beach.

**Jonathan Phillips:** University of Florida, 2012; Wellington.

**Jaimie A. Tuchman:** Tulane University Law School, 2010; Palm Beach Gardens.

**Steven C. Williams:** Florida Coastal School of Law, 2013; Associate in Rosenwater & Associates, P.A., West Palm Beach.



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## Practice Tips from the Federal Bench

**By: Bill Abel**

On April 17, 2013, the Palm Beach County Bar Association hosted its monthly judicial lunch, where attendees learned about Federal Civil Practice and received one CLE credit. The judicial panel included United States District Judge Daniel Hurley, United States District Judge Kenneth Marra, United States District Magistrate Dave Lee Brannon, and United States District Magistrate William Matthewman. The panel addressed the following topics and provided the following suggestions:

### DISTRICT JUDGES HANDLE

- Death penalty and Habeas Corpus petitions
- Criminal Sentencing
- Felony Trials
- Dispositive Motions

### MAGISTRATE JUDGES HANDLE

- Non-dispositive motions
- If the parties consent, the magistrate may rule upon dispositive motions
- If the parties and the judge consents, the magistrate may preside over trials
- Reports and recommendations on any issue as requested by the District Court Judge.
- Scheduling conferences
- Settlement Conference

### CONTACTING CHAMBERS

- If contacting chambers, do not ask for advice, attempt to gain favor or discuss facts. You may solicit ministerial information, but you may not inquire about substantive or procedural matters.

### DISCOVERY DISPUTES

- Make sure to know whether the judge or magistrate is handling discovery matters.
- The duty to conference and make a “good faith effort” to resolve discovery issues requires a verbal conference. Written communications do not satisfy this requirement.
- Discovery motions are limited to five pages and the responding party has five days to respond. Then the hearing may be set. Discovery motions should suggest time frames for responses.
- Attorneys may attend hearings by phone if the parties agree, but a landline should be used.
- The Court relies upon the attorneys to act professionally and work together to resolve discovery matters.

### MOTION PRACTICE

- Be concise.
- State the issue, the relief sought and the reason you are entitled to it.

### TRIAL MATTERS

- Read the Court trial Order because each judge/magistrate has unique requirements.
- Do not waste the juries’ time with evidentiary issues. The parties should address the evidentiary issues prior to trial in order to limit the issues raised at trial.
- Motions in Limine should address only the most salient evidentiary issues that require legal research and thoughtfulness. Avoid omnibus Motions in Limine that address generic, non-case specific issues.
- Attorneys may visit the courtroom a few days before trial in order to practice using the courtroom technology and equipment.

## Evidentiary Foundations and Objections/Preserving Objections for Appeal

**By: Bill Abel**

On May 29, 2013, the Palm Beach County Bar Association hosted its monthly judicial lunch, where attendees learned about evidentiary foundations, objections and preserving the record and received one CLE credit. The judicial panel included Fourth District Court of Appeal Judge W. Matthew Stevenson, Circuit Court Judge Lucy Chernow Brown, County Court Judges Reginald Corlew and August Bonavita. The panel addressed the following topics and provided the following suggestions:

### Objections

- The most common mistake is the failure to give a clear, concise legal basis for the objection.
- In order to preserve an objection you must: 1) make an objection, 2) provide a specific legal basis, 3) obtain a ruling from the court, and 4) if the evidence gets in anyway you need to request a curative instruction and/or a new trial.
- The most overused objection is Relevance
- The least understood objection is Hearsay when it is not used for the truth of the matter asserted.
- Photographs – to lay a proper foundation all that is required is that the photograph be a true and accurate representation of the item photographed as it appeared at the relevant timeframe.
- Standing Objections require 1) the judge acknowledge it on the record, and 2) opposing counsel acknowledges it on the record. Make sure to modify objection if the evidentiary landscape changes. Make objection very specific as to scope and basis.
- Rulings on Motion in Limines are tentative and can be revisited if the facts warrant it.

### Foundation

- 90.105 addresses foundation which is a preliminary question for the judge. The judge can consider inadmissible evidence in reaching a decision regarding foundation.
- Foundation can be established through: record custodians, discovery requests, affidavits and pre-trial stipulation.
- If by agreement, the parties must not only contemplate that the records are authentic but also whether they satisfy the business record exception to the hearsay rule. The records should be specifically identified in the agreement.

### Proffers

- The parties should confer beforehand in order to narrow the scope of the questioning.
- When the judge excludes anticipated testimony make sure to proffer the evidence. If you believe it will change the judge’s mind, you should request that the jury be sent out so that the judge can hear the proffer.
- If the judge strikes testimony, ask for a curative instruction and request that the judge have the jurors cross out any notes to ensure the testimony is struck.

### Appeals

- The appellate court only wants to reverse a case when there is a serious error and the abuse of discretion standard makes it difficult to reserve a case.
- Attorneys should have a good understanding of what constitutes harmful error as defined in 90.104. If evidence comes in over an objection, it needs to be harmful error to be reversed.



The Business Litigation CLE Committee of the Palm Beach County Bar Association  
presents:



**“A Panel Discussion on E-discovery  
for Commercial Litigators”**

**Tuesday, September 24, 2013 - 11:30am - 1:00p.m.**  
Bar Offices - 1507 Belvedere Road, WPB 33406

**Program Schedule**

- 11:30am - 11:55am     **Buffet Lunch / Check In / Late Registration**
- 11:55am - 12:00pm     **Welcome - Opening Remarks** - *David Steinfeld, Esq.,  
Law Office of David Steinfeld, P.L., Board Certified Business  
Litigation Attorney, Business Litigation CLE Committee Chairperson*
- 12:00pm - 1:00pm     **Panel Discussion** - *Stanley D. Klett, Jr., Esq., Klett, Mesches &  
Johnson, P.L., Board Certified Business Litigation Attorney;  
Mark R. Osherow, Esq., Buckingham Doolittle & Burroughs, LLP,  
Board Certified Business Litigation Attorney; Chioma R. Deere,  
Esq., Vernis & Bowling of Palm Beach, P.A.; Victoria E. Brieant,  
Esq., Law Office of Victoria E. Brieant; and Honorable Meenu T.  
Sasser, Fifteenth Judicial Circuit*

**Topics include:**

- *The Impact of ESI on the Practice of Law*
- *E-Discovery in Practice*
- *Federal Law vs. State E-Discovery Laws*
- *Case Management Orders*
- *Costs & Cost Shifting*

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## Sometimes a Deadline is the Deadline

by Jason S. Rigoli

Procedure is an important part of the bankruptcy practice. Bankruptcy practitioners are subject to a number of rules of procedure: the Federal Rules of Bankruptcy Procedure, Federal Rules of Civil Procedure and Local Rules of Procedure. Understanding and applying these rules can be crucial in representing clients.

Rule 9006 of the Federal Rules of Bankruptcy Procedure sets forth the procedures for computing time and extending time in a bankruptcy case. Subsection (a) sets for the procedure to compute “any time periods specified in the [Federal Rules of Bankruptcy Procedure], Federal Rules of Civil Procedure, any local rule or court order, or any statute that does not specify a method of computing time.” Fed. R. Bankr. P. 9006(a). The rules contemplate a computation of time set forth in hours, days or a longer unit of time. Fed. R. Bankr. P. 9006(a)(1) and (2).

Properly applying these rules is essential in effectively representing your clients. An example of the proper application of these rules is as follows. Assume there was a Section 341 Meeting of Creditors held on July 24, 2013; Federal Rule of Bankruptcy Procedure 4004(a) states: “In a chapter 7 case, a complaint . . . objecting to the debtor’s discharge shall be filed no later than 60 days after the first date set the meeting of creditors under § 341(a).” Fed. R. Bankr. P. 4004(a). Computing the deadline to object to discharge pursuant to 9006(a) would proceed accordingly:

- July 24, 2013, the day of the triggering event would be excluded. Fed. R. Bankr. P. 9006(a)(1)(A).
- Starting with July 25, 2013, 60-days are counted to determine the deadline by which an objection to the debtor’s discharge must be filed. Fed. R. Bankr. P. 9006(a)(1)(B).
- This would land on September 22, 2013, a Sunday.
- Pursuant to Fed. R. Bankr. P. 9006(a)(1)(C) this deadline would continue to run until the end of the day on that following Monday, September 23, 2013.

This hypothetical is fairly straight forward. However, a recent opinion issued by the Bankruptcy Court in the Middle District of Florida addressed the application of subsection (a) (1)(C) and whether a date certain filing deadline set forth in an agreed court order which falls on a Saturday, Sunday or legal holiday is the deadline or whether the deadline is continued to the end of the next business day.

In *In re Gray*, –B.R.–, 2013 WL 3462652 (Bankr. M.D.Fla. 2013), the Bankruptcy Court, held that when parties’ set forth a specific date in an agreed order, the new deadline is not subject to computation under Fed. R. Bankr. P. 9006(a). The *Gray* court reads rule 9006(a) to apply only to those deadlines in which computation is required, as in the hypothetical set forth above. However, when there is a fixed date parties are not required to undertake any action to determine when the deadline to act is set. Therefore, according to the *Gray* court, Fed. R. Bankr. P. 9006(a)(1)(C) is inapplicable to extend the deadline beyond the fixed date.

Both Judge Kimball, *In re Biggs*, 2012 WL 2974885 (Bankr. S.D.Fla. 2012) and Judge Cristol, *In re Vieweg*, 2011 WL 5593184 (Bankr. S.D.Fla. 2011), agree with the opinion issued by the *Gray* court. Judge Kimball cites to the Advisory Committee Note – 2009 Amendment to Fed. R. Bankr. P. 9006, which states:

amended to simplify and clarify the provisions that describe how deadlines are computed ... [t]he time-computation provisions of subdivision (a) apply only when a time period must be computed. They do not apply when a fixed time to act is set. The amendments thus ... reject the contrary holding of *In re American Healthcare Management, Inc.*, 900 F.2d 827, 832 (5th Cir.1990). Fed. R. Bankr.P. 9006 Advisory Committee Note—2009 Amendment.

*Biggs*, at 3.

Bankruptcy practitioners must be cognizant of all pleadings filed in a case and the rules under which they must perform their duties. In this case, when a fixed date is set forth as a deadline to act, that is your deadline, regardless if that date happens to fall on a Saturday, Sunday or legal holiday.

*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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## "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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### “Strength in Diversity”

Submitted by Grace Murillo, Diversity Relations Subcommittee Chair

Gene Pettis, who is the first African-American in The Florida Bar’s history to serve as president, is co-founder of Haliczzer Pettis & Schwamm. He focuses his practice in the areas of medical malpractice, personal injury, commercial litigation and employment law. Pettis has served in many leadership roles, including chairman of the Constitutional Judiciary Committee of The Florida Bar, co-chair of the Hawkins Commission, vice-chairman of the South Florida Water Management District’s governing board, and currently serves on the University of Florida’s Levin College of Law Board of Trustees. He has earned numerous awards and praises, including repeated selection by his peers for inclusion in the *Best Lawyers in America*, *Florida Super Lawyers*, the *South Florida Legal Guide* Top Lawyers in South Florida list and *Florida Trend’s* Legal Elite. Pettis has also earned Martindale-Hubbell’s top “AV” rating, a testament to the fact that his peers rank him at the highest level of professional excellence.

As president of one of the nation’s largest Bars, Pettis hopes to improve leadership skills among attorneys with the William Reece Smith Jr. Leadership Academy. The Leadership Academy will help a diverse group of attorneys in becoming better leaders. “Some people, I think, are just born with the skills that they are comfortable stepping forward. Other people need more enrichment opportunities. But in order to make sure we have a culture within our Bar and profession of true inclusion, I think we need to have a system, a curriculum, that teaches skills: communication skills, advocacy skills, organizational skills, and strategic planning skills,” Pettis said. Jan Pudlow, 87 Fla. Bar J., 9, 18 (2013).

Pettis also launched the “Get Involved” campaign. “It’s one thing to talk diversity and inclusion. But in order to make lasting change, we need to do more than talk. We need to advance people. We need to put people in positions. True diversity and

inclusion is not just making sure that we have women and other minorities on the committee. True diversity is that they are given an opportunity to lead,” Pettis said. *Id.*

Pettis also recently appointed Bar leaders to “Commission 2016,” which will conduct a comprehensive study of the future practice of law. Commission 2016 will look at four areas: technology, legal education, Bar admissions and legal aid/pro bono services.

To encourage the Bar to raise the standard on civics education, Pettis started the ROPES initiative. This initiative highlights the need for an independent judiciary and examines the importance of the rule of law in our society. “Just as a rope has different threads that come together for its greater strength, so too is the Bar,” Pettis said.

Borrowing his “rope has different threads” analogy, the CDI is pleased to announce that this year’s theme for our

*Diversity Corner* will be “Strength in Diversity.” Different perspectives and ideas drive innovation, creativity and change. Diversity is our strength.

Please join us for this special luncheon. The discussion will be led by Pettis and moderated by David Prather. If you have a specific question you would like to ask our keynote speaker, kindly pre-submit it to Malinda Hayes at malinda@fwbpa.com prior to the luncheon. We thank the sponsors for this event, which, to date, include: Burman Critton Luttier & Coleman; Palm Beach County Chapter of FAWL; Palm Beach County Hispanic Bar Association; Sabadell United Bank; Searcy Denney Scarola Barnhart & Shipley and Visual Evidence.

*Grace Murillo is chair of the Diversity Relations Subcommittee of the Committee for Diversity and Inclusion. Grace is an employment attorney at the law firm of Schwarzberg & Associates, P.L.*

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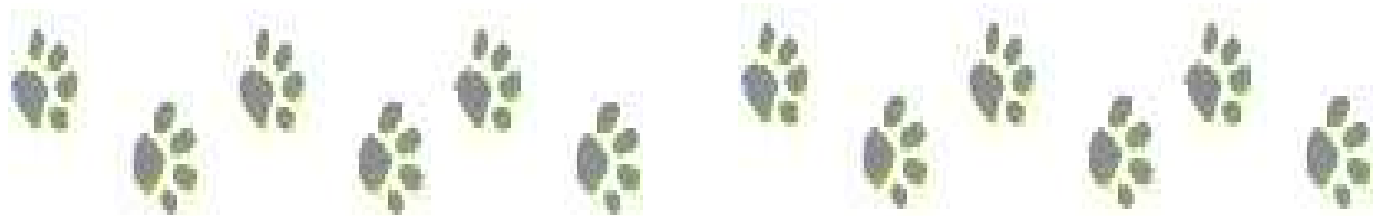
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## The Economic Loss Rule

By Ted Babbitt

The economic loss rule is a Court created rule of law that prohibits an action based upon tort when the damages are limited to economic losses arising out of a contractual relationship and there is no independent tort. The seminal case in Florida adopting this rule is Florida Power & Light Co. v. Westinghouse Elec. Corp., 510 So. 2d 899 (Fla. 1987). That case adopted the California Supreme Court opinion in Seely v. White Motor Co., 403 P. 2d 145, 149 (Cal. 1965) and the United States Supreme Court decision of East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858, 871 (1986).

The theory behind the economic loss rule is that when parties' contract and a cause of action accrues for breach of contract such as a breach of a warranty,

contractual law should apply because the parties negotiated their rights under the contract. Therefore, Courts have prohibited extending liability beyond the contract action to include negligence or other tort claims.

In Tiara Condominium Ass'n, Inc. v. Marsh & McLennan Co., Inc., 38 Fla. L. Weekly S151 (Fla. March 7, 2013), the Supreme Court of Florida revisited the application of the economic loss rule. Reviewing the history of that rule, the Court determined that while the underpinnings of the rule were created through product liability law, a number of decisions by the Supreme Court and lower courts have extended the economic loss rule far beyond its product liability origins. Thus, for example, in AFM Corp. v. Southern Bell Telephone & Telegraph Co., 515 So. 2d 180 (Fla. 1987), the Court held that no cause of action in tort existed under the theory of negligence when Southern Bell listed an incorrect telephone number for AFM.

In reviewing that case, as well as many others, the Court explained

that the reason the economic loss rule existed in the first place was to protect manufacturers in product liability cases from extending their warranties well beyond that intended by the parties. That consideration does not apply outside the product liability context. The Tiara case related to the liability of an insurance broker for failing to obtain adequate hurricane coverage, clearly not a product liability situation. Utilizing those facts to recede from prior case law extending the economic loss rule beyond the context of product liability, the Court definitively pulled back the application of the economic loss rule solely to product liability cases. At 154 the Court holds:

Having reviewed the origin and original purpose of the economic loss rule, and what has been described as the unprincipled extension of the rule, we now take this final step and hold that the economic loss rule applies only in the products liability context. We thus recede from our prior rulings to the extent that they have applied the economic loss rule to cases other than products liability.

\* \* \* \*

Our experience with the economic loss rule over time, which led to the creation of the exceptions to the rule, now demonstrates that expansion of the rule beyond its origins was unwise and unworkable in practice. Thus, today we return the economic loss rule to its origin in products liability.

There are myriad cases extending the economic loss rule beyond the realm of product liability. These cases no longer provide authority for application of the economic loss rule in Florida.

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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**WEST PALM BEACH SINGLE SUITE OFFICE SPACE** for rent located on North Olive Avenue, Downtown, with various legal support available. High speed internet provided. Meeting rooms. Rooms for expansion. Very close to courthouse. Great friendly environment with long term tenants. Available immediately. Contact Jim (561) 838-9595.

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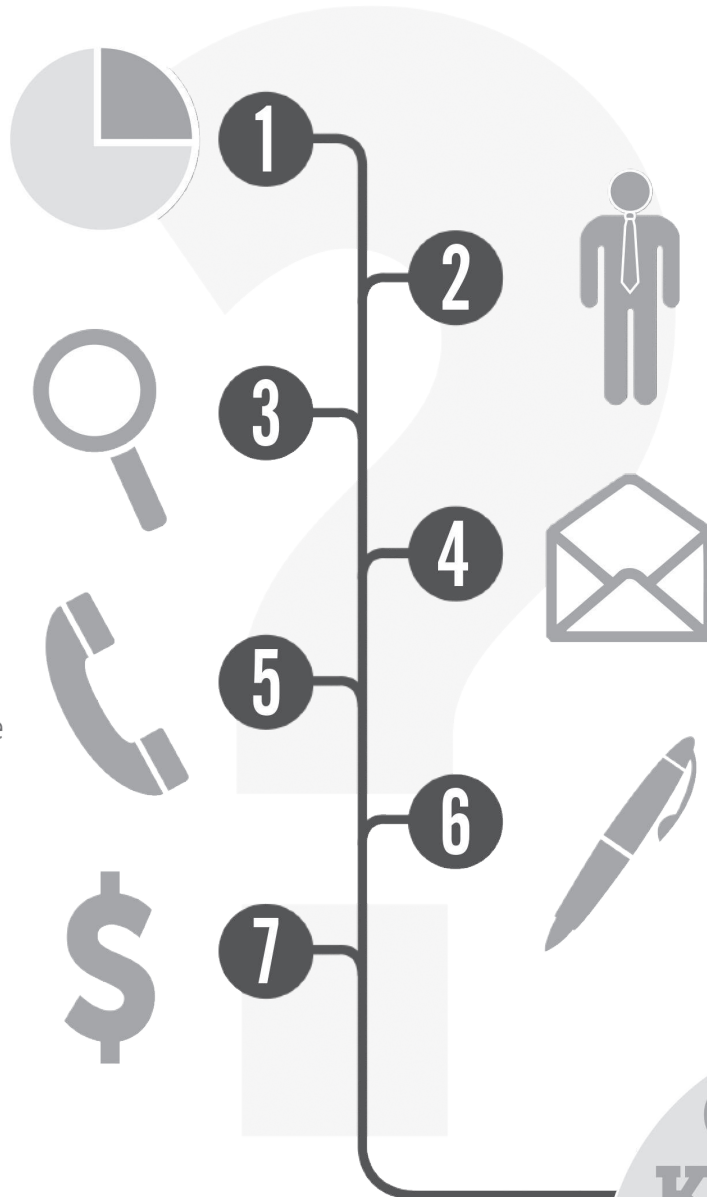
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## Bulletin Board

### HEARSAY



**Gregory W. Coleman**, Florida Bar President-Elect, will serve as a designated director on the board of The Florida Bar Foundation, a statewide charitable organization that provides leadership and funding for justice in Florida. Also, **Patrick J. Casey** has been

reappointed to a three-year term on the board of The Florida Bar Foundation.



**Elisha D. Roy** is proud to announce the opening of the Law Offices of Elisha D. Roy, P.A. specializing in marital and family law. 1601 Forum Place, Suite

505, West Palm Beach 33401. (561) 689-8625 [eroy@eroylawpa.com](mailto:eroy@eroylawpa.com). Also, Elisha was recently elected Chair of the Family Law Section of the Florida Bar.



**Gary S. Lesser**, Managing Partner at Lesser, Lesser, Landy & Smith, PLLC was sworn in for his second two-year term as a member of the Florida Bar Board of

Governors.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Robert W. Wilkins** has been appointed to serve as Chairman of The Florida Bar's Board of Legal Specialization and Education, **Grasford W. Smith** has been appointed to serve on The Florida Bar's inaugural Leadership Academy and **Roberto M. Vargas** has been elected as President of HomeSafe.



**Nancy La Vista**, a Partner at the law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has been named President of the Florida chapter of the American Board of Trial Advocates (FLABOTA). Also, **David C. Prather**,



a Partner with the firm, has been reappointed to the Judicial Nominating Committee, Southern Conference of Florida.



**Denise Bleau**, a Partner at Ward, Damon, Posner, Pheterson & Bleau, P.L., has been named Vice Chair of the Board of Directors for the Center for Child Counseling Inc.



**Manuel Farach**, Of Counsel with the law firm of Richman Greer, P.A., has been elected President of the Forum Club of the Palm Beaches.

**David A. Greene**, a Partner with Fox Rothschild, LLP, has been elected President of Leadership Palm Beach County, Inc. for the 2013-14 term.

**William McAfee**, Managing Partner with Steinger, Iscoe & Greene, was elected by fellow legal professionals and Florida Justice Association members to serve as 'at large' appointee to the FJA's Board of Directors.



Rudolph & Associates, LLP has expanded its practice with the addition of three new associates, **Matthew D. Martin**, **Jaelyn Soroka** and **Caryn Stevens**.



**Spencer T. Kuvin**, formerly of Leopold-Kuvin, a Board Certified Civil Trial Lawyer, has joined The Law Offices of Craig Goldenfarb as Director of Litigation. Mr.

Kuvin will serve as lead counsel in cases involving automobile accidents, premises accidents, nursing home abuse, medical malpractice and product liability.



**Christa L. McCann** has joined Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin as an associate attorney. McCann concentrates her practice in the areas of personal injury, automobile negligence, wrongful death, products liability and medical malpractice.

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# CALENDAR

## September 2013

Monday, September 2 <b>Court Holiday – Labor Day</b> Bar Office Closed	Tuesday, September 10, Noon – 1:00pm <b>YLS Board Meeting</b> Bar Association Office	Tuesday, September 24, 8:00am – 5:00pm <b>Business Litigation CLE Seminar</b> Bar Association Office	Wednesday, September 25, 5:00pm – 6:30pm <b>PBCBA Board of Directors Meeting</b> Bar Association Office
Tuesday, September 3, Noon – 1:30pm <b>NCS Board Meeting</b> Duffy’s, North Palm Beach	Thursday, September 12, 5:30pm – 7:00pm <b>NCS Happy Hour</b> III Forks, PGA	Tuesday, September 24, Noon – 1:00pm <b>CDI Committee Meeting</b> Bar Association Office	Thursday, September 26, 5:30pm – 7:00pm <b>YLS Happy Hour</b>
Wednesday, September 4, 11:45am – 1:00pm <b>PBC FAWL Luncheon</b> West Palm Beach Marriott	Friday, September 20, Noon – 1:30pm <b>Solo &amp; Small Firm Luncheon</b> Bar Association Office	Tuesday, September 24, 5:30pm – 6:30pm <b>Legal Aid Board Meeting</b> Bar Association Office	Friday, September 27, 11:45am – 1:00pm <b>Diversity Luncheon with guest speaker FL Bar President Gene Pettis</b> Marriott WPB
Thursday, September 5 <b>Court Holiday – Rosh Hashanah</b> Bar Office Closed	Sunday, September 22, 1:30pm -2:00pm <b>YLS Dolphins v. Falcons Game</b>	Wednesday, September 25, Noon – 1:00pm <b>Law Related Education Committee Meeting</b> Bar Association Office	
Friday, September 6, 8:30am – 9:30am <b>ADR Committee Meeting</b> Bar Association Office			