



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

May 2017

Bar Dues

Have you renewed your Member dues yet? The new fiscal year for the Bar Association begins July 1.

Dues statements have been mailed out, if you have not received yours yet, please visit our website: www.palmbeachbar.org and renew. Be sure to take advantage of all your membership benefits including CLEs, discount on office supplies, networking events and so much more. For a complete list of membership benefits be sure to check out our website at www.palmbeachbar.org and click on the Membership Benefit tab.



Mark your calendar for upcoming Membership Events

May 2, 2017

Judicial Reception

May 11, 2017

YLS Fishing Tournament
Kick-Off Party

May 18, 2017

North County Section's
Jurist of the Year Dinner

May 31, 2017

CDI Luncheon Summit

June 10, 2017

YLS Fishing Tournament

June 17, 2017

Annual Installation Banquet



Baker-Barnes to be sworn in as President June 17

Please save the date and join us for the Bar's annual Installation Banquet scheduled for Saturday, June 17 at the Breakers Hotel in Palm Beach. This special evening is one of our largest and most well attended events of the year! Roslyn Baker-Barnes will be sworn in as the Bar's 95th president along with Greg Huber as president-elect. Look for your printed invitation to arrive in your mailbox soon!

Bar Building Update



This segment is to provide you with an update of how things are progressing after the bar building was heavily damaged by fire, smoke and water on January 31st. All contents have been removed from the building and it has been fully gutted. The mitigation company will begin to treat all wood surfaces with a sealing product to alleviate the smoke damage. An environmental company will be hired to assess the air quality of the building prior to any reconstruction. Thanks for the support that many bar members, firms and courthouse employees have offered to the bar staff during this time of displacement.

Inside...

President's Message	3
Diversity Corner	4
YLS Highlights	7
Veteran's Corner.....	9
Real Property Report	11
Marital Effort.....	13
New Members.....	14
Probate Corner	15

View from the Bench.....	16
ADR Corner	17
Bankruptcy Corner.....	19
UMC Coffee with the Judges	20
Personal Injury Corner.....	21
CDI Road to the Bench.....	22
Professionalism Corner.....	23
Bulletin Board.....	31

THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

JOHN R. WHITTLES
President
www.palmbeachbar.org

CARLA THARP BROWN
Executive Director

Officers:
John R. Whittles, President
Rosalyn Sia Baker-Barnes, President-elect

Directors:
Gregory P. Huber
Jessica Callow Mason
Robert Lee McElroy IV
Edward "Ned" Reagan
Grasford W. Smith
Scott B. Smith
Julia Wyda
Dean T. Xenick

J. Grier Pressly III, Immediate Past President
Ashley Wilson, Young Lawyers Section President
Rosemarie Guerini D'Amore, North County
Section President
Patricia Alexander, Ex Officio, South Palm Beach
County Bar President

Florida Bar Board of Governors Members:
Gary S. Lesser
Ronald P. Ponzoli
Adam T. Rabin
Michelle R. Suskauer

Florida Bar Young Lawyers Division Members:
Stephanie Cagnet
Denise Mutamba
Santo DiGangi

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

Advertising Information:
Mikki Johnson • mjohnson@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
P.O. Box 17726
West Palm Beach, FL 33416



Judge Sherri L. Collins Robing

Board of Director, Scott Smith presented Judge Sherri L. Collins with a personalized gavel on behalf of the Palm Beach County Bar Association during her April 7th Investiture.

Board Meeting Attendance

	JUL	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR
Barnes	X		phone	X	X	X	X	X	X
D'Amore	X	X	X	phone	X	X	X	phone	X
Huber	X	X	X	X	X	X	X	X	X
Mason	phone	X	X	X	X	X	X	X	X
McElroy	X	X	X	X	X	X	X	X	X
Pressly	X	X	X	X	X		X	X	X
Reagan	X	X	X	phone	X	X	X	X	
Smith, G.	X	X	X	X	X	X	X	X	X
Smith, S.	X	X	X	X	X	X	X	X	X
Whittles	X	X	X	X	X	X	X	X	X
Wilson	X	X	X	X	phone	X	X	phone	X
Wyda	X	X	X	X	X		X		phone
Xenick	X	X	X	X	phone	X	phone	X	phone

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.





April 2017 Bar Article: The Judge Mounts Prison Tour is a Real Eye-Opener

by John R. Whittles

I recently attended the annual Judge Marvin Mounts Prison Tour. In 1973, Judge Marvin Mounts began taking a group from Palm Beach County (mostly legal and law enforcement types but also educators and business persons) on a tour of the state prison system, based on the credo that those involved in the incarceration of a person should have an understanding of what happens.

Before Judge Mounts passed in 2003, he tasked Judge Moses Baker and Judge Jonathan Gerber with continuing the tour, which they have done for the past 14 years.

On this tour, there were 34 of us including state attorneys, public defenders, trial and appellate judges, law clerks, a chief of police, a high-ranking PBSO corrections supervisor, and a few business owners.

First, we visited a lower security facility housing those convicted of non-violent, non-felony crimes. We talked to inmates in their secure dorm rooms and I was surprised to hear that no questions were off limits. Some inmates were allowed to work off premises during the day and most had jobs on the campus, from maintenance to gardening.

We toured Lake Correctional Institution in Clermont a facility that housed mentally ill patients, some of whom had been convicted of violent crimes. I saw a mentally ill man, with no provocation, begin beating his head against the wall of his cell and quickly split open his forehead into a bloody mess. Another man in his cell pulled his clothes off and began masturbating. All of this was met by a professional, measured (emotionally numb) response from the staff, who redirected us around the offensive conduct.

We stopped at Sumter Correctional Institute in Bushnell where we saw a prison furniture-manufacturing facility and also observed a military-style camp for youthful, non-violent offenders.

At Lowell Correctional Institution in Ocala we saw a facility for women. We talked to the inmates; some in lower security dorm rooms and also with women serving on death row. Again, no question was off limits and I asked any question of an inmate that came to mind.

Our tour included the Reception and Medical Center in Lake Butler. This is one of the hubs (think Atlanta or O'Hare airport) where many of our prisoners are processed. Here they turn in their personal belongings, have their heads shaved, take a shower and then wait in nothing but boxer shorts for the medical doctor to examine them.

This facility also houses the medical director for the prison system and contains a fully functioning hospital. That thought had never even occurred to me – that prisoners also have sickness and diseases that require medical care, some of which is ongoing, very expensive and requires special facilities.

The maximum security facility at Union Correctional Center houses violent and dangerous people, which is often

understaffed. It is hard to maintain employees who come to work expecting to be stabbed when they can make more money working at Wal-Mart.

We toured death row at Florida State Prison. Some inmates looked so evil I admit to looking down when making eye contact. We walked through the holding cell of an inmate scheduled for execution and toured the meeting room where they say final goodbyes to family. That floored me; the notion of saying goodbye to a loved one who is about to be executed. I am not suggesting that person does not deserve the result but the thought of that interaction is profoundly sad.

We toured the execution chamber, the witness room and were given a step-by-step explanation of how an execution is carried out.

A few final bus-ride-home thoughts:

I was surprised at how open the inmates were to talk about their crimes and their condition. I originally thought they would show resentment that a bunch of strangers were ogling them and walking around where they sleep, looking at them with a stranger's curiosity, but it was the opposite reaction. Most of the inmates wanted to interact and were interested in talking to people.

The logistics and expense of the corrections system is mind-boggling. There are around 100,000 full-time prisoners today.

The separation of crime v. person. I have always thought that we as a society should be as tough on crime as our collective sense of humanity (and state budget) would allow and nothing about this tour changed that view. However, it was palpable to me that regardless of the crime and how deserving that prisoner may be of his or her fate, there is an undeniable sense of suffering and sadness in these facilities. This might explain why the prisoners were so interested in talking to us – that even very bad people who may be thoroughly deserving of punishment get really lonely and bored.

It is incredible the level of dedication required of corrections employees to work for \$30,000 or less and come to work risking death or attack at the hands of dangerous people. How underpaid they are. The officers we saw seemed dedicated and respectful of their duties.

Judge Mounts was ahead of his time on this to start this tour 44 years ago. This type of tour should be arranged for state legislators who are considering the budget for the corrections system. Youthful offenders would also benefit greatly from a tour of where really bad people go for a long time.

Thanks to Judge Gerber and his staff, Judge Baker and Mrs. Baker for their work in putting this tour together and continuing the tradition.



Voting and Knowledge: Still Vehicles for Change — Ask Nicholas C. Johnson, Esq.

by: Amy Pettway

Anticipating change in diversity while watching it unfold requires a plan of action, according to Nicholas

C. Johnson, Esq. Stellar examples of this premise include Attorneys John Howe, Rosalyn Sia Baker-Barnes, Judges Bradley Harper and Lou Delgado—all notable trendsetters in the Palm Beach County legal community. As this year's F. Malcolm Cunningham, Sr. Bar Association's (FMCBA) President-Elect, Nick brings with him the hope of continued change through voting awareness.

Born in Kingston, Jamaica in the late 1970s, Nick might not have considered law as a profession during his childhood. His late grandmother, however, discerned that he would one day become a lawyer because his words were many. Today, there is no doubt that Nick's passionate, persuasive communication throughout the course of his legal career has proven his grandmother right. Nick attended Boston University for his undergraduate education, followed by the University of Florida for graduate studies. It was St. Thomas University School of Law that provided Nick ample training ground to use law as a platform for change to those who are unheard or unaware.

Nick's first position as an attorney was as Assistant Public Defender for misdemeanors and felonies. Former Supervising Attorney John Rivera, at first blush, described Nick as "organized." However, Mr. Rivera quickly clarified that this quality was not simply a "clean desk organized... but rather a person who is driven and works with a purpose." FMCBA President Lawonda Warren described this purpose as emanating from passion about community and justice. She expounded, "Nick is a passionate attorney who cares about his clients, the community, and justice. What I admire most about Nick is that he is not afraid to challenge the status quo or ruffle feathers to do what is right."

So, without question, Nick has demonstrated a deep commitment to

seeking justice. The means to seeking justice is voting. While his energetic pursuit to inspire others to vote is admirable, one could question--what's behind the energy? In 2004, Nick celebrated two milestones. He became a citizen of the United States, and he voted for a U.S. president for the first time. Upon reflection, Nick relayed that "[i]t was one of my most memorable experiences because I felt as if I had a voice, no matter what my background or financial circumstances."

This backdrop has defined Nick's work ethic as it relates to clients and community relations. Nick's current position at Cohen Milstein Sellers & Toll requires expertise in handling medical malpractice, personal injury and wrongful death actions, while carefully understanding the overall socio-economic needs of his clients. Each day, Nick is moved by his clients' personal experiences, which at times, extend from injuries to death. Needless to say, his greatest reward is to achieve favorable results for his clients. An additional one is to continue to learn from his clients' different perspectives.

When joining clients' experiences with the importance of voting, Nick takes a very deliberate, constructive approach. He has accumulated a catalog of information about his clients' circumstances over the years, compelling him to advance voting rights and awareness even more. Particularly, bills that are passed through state legislation which adversely affect his clients go virtually unnoticed by them. For this reason, Nick advises, "Always vote!" Most critical to this resounding message is Nick's objective to reach the younger, soon-to-be voters and to educate them on how each vote becomes a vehicle for change. As President-Elect of FMCBA, Nick is laboring over an "initiative to encourage our younger generation to vote and practice civic engagement in both local and national issues."

An additional goal for Nick is to further FMCBA's commitment to diversifying the judiciary of Palm Beach County. The objective here is to increase

visibility in diverse communities and to widen the association's exposure to non-lawyer residents of Palm Beach County. On a broader scale, Nick's dedication to change is undeniable, as he actively demonstrates the highest professional leadership as a Director of the North County Section of PBCBA, member of the Florida Justice Association Diversity Committee, and member of the American Association for Justice Minority Caucus.

Two mottos shape Nick's passion and direction. "What counts in life is not the mere fact that we have lived. It is what difference we have made to the lives of others that will determine the significance of the life we lead." by Nelson Mandela. And, "Out of many, One people." Motto of Jamaica. Nicolas C. Johnson's professional contributions and future endeavors as FMCBA's President-Elect epitomize the conclusion that diversity, inclusion and knowledge enhance Palm Beach County's preeminence.

Amy Pettway is a civil litigation practitioner for the Law Firm of Amy Pettway, P.A. Her practice areas include breach of contract, landlord/tenant issues, estate planning, negligence and custody. She is serving her second term as Chair of the Newsletter section of the Committee for Diversity and Inclusion. Amy is also a member of the Solo and Small Firms Practitioners Committee.



MEMBERSHIP has its Privileges

 Muvico Theatre Tickets

 DEX Imaging

 CLIO

 Regal Cinemas

PLANET GREEN

01

02

LAW PAY

03

AMO

04

PAYCHEX

PALM BEACH YACHT CLUB

05

TICKETSATWORK.COM

06

07

BROOKS BROTHERS



Join the
Palm Beach County Bar Association

The Palm Beach County Bar Association Committee on Diversity and Inclusion

presents the 3rd Diversity Summit:



ARE WE AS DIVERSE AS WE THINK?

Improving the Workplace Through Diversity

Wednesday, May 31, 11:30 a.m. - 4:00 p.m.

The Marriott 1001 Okeechobee Blvd West Palm Beach

Keynote Speaker

**Hilarie Bass, Esq., Shareholder, Co-President - Greenberg Traurig;
President-elect, American Bar Association**

The purpose of the summit is to continue and encourage dialogue between managing and hiring partners, government and agency heads, associates and Judges on ways to improve the diversity in our legal community.

Moderator:

Kalinthia Dillard, Esq., Office of the Inspector General

Panelists:

- Benjamin Crump, Esq., *Parks Crump, P.A., Former President of the National Bar Association*
- Judge Nancy Perez, *15th Judicial Circuit;*
- Sia Baker Barnes, Esq., *Searcy Denney Scarola Barnhart & Shipley, P.A., President-Elect of the Palm Beach County Bar Association;*
- JulieAnn Rico, Esq., *General Counsel, Palm Beach County School Board, Past President of the Palm Beach County Bar Association;*
- A. Denise Sagerholm, Esq., *Office of General Counsel, Palm Beach County School Board;*
- Evett L. Simmons, Esq., *Greenspoon Marder;*
- Michelle Suskauer, Esq., *President-Elect, The Florida Bar;*
- Gary Walk, Esq., *Ciklin, Lubitz & O'Connell*



RSVP Today! Register online at www.palmbeachbar.org or fill out this form and return it with your payment of \$50.00 PBCBA members or \$75.00 non-members to: Palm Beach County Bar Association, P.O. BOX 17726, West Palm Beach, FL 33416. To avoid a \$10.00 late fee, please be sure to register by 04/24/17. No refunds will be given after that date.

Enclosed is my check in the amount of \$_____ or charge my ☐ Visa ☐ Mastercard ☐ American Express

Card Number: _____ Exp. Date _____

Name: _____

Address: _____ City _____ State _____ Zip Code _____

Phone: _____ Email: _____

YLS Highlights

YLS Members and the Guild of Catholic Lawyers provided Quantum House patients with dinner, cookie decorating and a fun Easter Egg Hunt during Easter Passover.





NEED CLIENT REFERRALS?

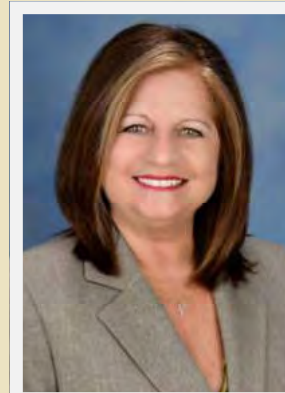
PROMOTE YOUR PRACTICE ONLINE BY JOINING **PALM BEACH COUNTY FIND A LAWYER**

AN AFFORDABLE WEBSITE MARKETING TOOL CONNECTING CLIENTS WITH LOCAL LAWYERS



"The Find A Lawyer program has been very good for my practice. Through this affordable website advertising, I have generated NEW clients!"

Al Morici, Esq.



"Palm Beach County Find A Lawyer works! I was found online and hired for a complex case. Thank you, Palm Beach Co. Bar Association!"

Patty Alexander, Esq.

Join Today!

FOR PBCBA MEMBERS ONLY !

\$150.00 A MONTH (OR) \$99.00 A MONTH WITH A 1 YEAR COMMITMENT

TAKE ADVANTAGE OF THIS MEMBER BENEFIT!

CONTACT LYNNE AT LPOIRIER@PALMBEACHBAR.ORG



The Veterans' Legal Services Framework in Florida – Part I

by James P. Curry

This past year the ABA established the Veterans Legal Services Initiative.¹ The ABA vision for the initiative is to “position the ABA to lead and coordinate a holistic, multipronged, sustainable effort to ensure that Veterans have access to justice and receive the legal support they, their families, and their caregivers deserve. The initiative will also develop and advocate for systemic and policy changes to enhance and sustain Veteran-related access to justice.”²

To that end, the ABA is actively encouraging local bars to create new programs and highlight existing programs that provide veterans' legal services.

In support of that mission, this article briefly describes the Military Affairs Committee of The Florida Bar (“MAC”). The MAC is one of many institutions comprising the veterans' legal services framework in Florida. The hope is that this article will inspire Palm Beach County Bar Association attorneys interested in serving veterans to become more involved with the MAC.

The ABA states that the “legal profession owes more than gratitude to our nation's Veterans. Legal barriers often make it difficult, if not impossible, for those who have served in the military to receive the rightful benefits and services that federal and state governments provide. Many Veterans, their families, and caregivers also have unique needs involving legal issues common to the civilian sector, in areas including issues of family law, consumer law, landlord-tenant law, labor and employment law, criminal law, guardianships and conservatorships, administrative challenges resulting from service or discharge, and other matters. Despite the many lawyers and organizations that help Veterans with their legal needs, access to legal assistance is not well-coordinated among service providers or across state lines.”³

In Florida, there are many institutions, such as the MAC, that support veterans' legal services where an attorney can find pro bono opportunities.

Tina Fischer, Chair of the MAC, describes its mission as twofold. First, the MAC seeks to gather and disseminate information, share expertise and advise the members of the Bar on all matters relating to the practice of military law in Florida. Second, the MAC strives to have general jurisdiction regarding any problem which may arise relative to the provision of legal services to, for, or by members of the military establishment.

Ms. Fischer stated that there is a disconnect in Florida between the resources that are available and those seeking the resources.

“To solve that issue,” Ms. Fischer said, “the Military Affairs Committee decided to spearhead a project with the goal of connecting veterans and active duty military members and their families to the resources they may need that are available

throughout the State. Our goal is to re-design the Military Affairs Committee webpage to provide a comprehensive listing and links to the available resources offered to veterans and active duty military and families here in Florida. We are gathering information from all local bar associations regarding what services may be provided, and are working with other agencies and organizations throughout the state to provide information and links to much needed resources.”

The MAC currently uses a listserv which any attorney may join to receive requests for legal assistance from active duty military members that it receives from the ABA Military Pro Bono Project. The MAC also forwards to the listserv any requests that it receives from veterans, service members or other attorneys or organizations that contact the Committee on behalf of veterans seeking legal assistance. The MAC legal assistance listserv is open to any attorney in Florida who wishes to assist the state's active duty military and veteran community.

Ms. Fischer encourages attorneys who want to be more involved in helping veterans, active duty military and their families to contact the local bar association and ask about opportunities. In addition, membership on the MAC is good way to become involved on a state-wide level. The MAC welcomes any attorney who wants to become more involved.

Further, Ms. Fischer invites attorneys to attend the annual Military Affairs Symposium at the Annual Florida Bar Convention. Each year there are several speakers with wonderful insights and information on the resources available, the significant needs of this community, and other important insights into how to effectively represent these unique clients.

This year, the MAC will be presenting a roundtable discussion on Veterans Treatment Courts, with input from a judge, defense attorney and a mentor, as well as a presentation from Mission United of Broward County. Additional speakers will be presenting information related to military divorce and family law issues, updates to legislation related to veterans' disability benefits, and homelessness issues for veterans.

If a Florida attorney is interested in becoming more involved with serving veterans, the MAC symposium in June is a great place to find opportunities. Attendees will receive Florida Bar CLE hours and the Symposium may also qualify to satisfy the Department of Veterans Affairs CLE requirements to maintain accreditation. Also, subscribing to the MAC legal assistance listserv is a great way to learn about pro bono opportunities.

The next article in this series will focus on the Palm Beach County Veterans Court, and the Florida Veterans' Foundation, an affiliate of the Florida Department of Veterans' Affairs.

¹ https://www.americanbar.org/groups/committees/veterans_benefits.html

² *Id.*

³ *Id.*



The Real Estate Committee of the
Palm Beach County Bar Association
presents:



Real Estate for the Current Times

Friday, May 19, 2017, 8:00 a.m. - 2:40 p.m.

LOCATION: Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd, WPB

8:00a.m. - 8:25a.m. **Late Registration / Check In**

8:25a.m. - 8:30a.m. **Welcome & Opening Remarks** - Jared Quartell, Esq., Quartell Law Firm, P.A.

8:30a.m. - 9:50a.m. **Case Law Update** - Manuel Farach, Esq., McGlinchey Stafford

9:50a.m. - 10:00am **Break**

10:00a.m - 10:50a.m. **Cybersecurity** - Deborah (Deb) B. Boyd, Esq., Board Certified in Real Estate Law, Senior Underwriting Counsel / Assistant Vice President Fidelity National Title Group

10:50a.m. - 11:40a.m. **Commercial Leases** - Gregory Cohen, Esq., Cohen, Norris, Wolmer, Ray, Telepman & Cohen; Board Certified in Real Estate Law

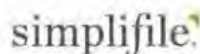
11:40a.m. - 12:30p.m. **Lunch**

12:30a.m. - 1:20p.m. **Current Climate in Commercial Real Estate** - John K. Brackett, John K. Brackett Real Estate

1:20p.m. - 1:50 p.m. **E-Recording** - Sandra Wallace, Esq., Wallace Law, P.A.

1:50 p.m. - 2:40 p.m. **SBA Loans** - Max Holzbaur, Esq., Fogel Law Group

Sponsors:



7.5 CLER; 1.0 Technology. Certification credits: 7.0 in Real Estate. \$215 PBCBA members/paralegals, \$255 non-PBCBA attorney members/paralegals. After 5.12.17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

HOW TO REGISTER

BY CHECK
Return this form

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



Materials will be emailed to registrants prior to the seminar

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar, but would like to order the CD (if available). The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800.
(5.19.17 Real Estate seminar)

Real Property and Business Litigation Report



by *Manuel Farach*

City Of Largo, Florida v. AHF-Bay Fund, LLC, Case No. SC15-1261 (Fla. 2017).

PILOT (Payment in Lieu of Taxes agreements that pay government in lieu of ad valorem taxes) contracts do not violate either Florida Statute section 196.1978 or Florida Constitution Article VII, § 9(a).

The Bank of New York Mellon Trust Company, N.A. v. Fitzgerald, Case No. 3D16-981 (Fla. 3d DCA 2017).

A party who successfully defends a mortgage foreclosure suit on the basis of lack of standing is not entitled to an award of attorney's fees because there is no privity between plaintiff and defendant sufficient to implicate Florida Statute section 57.105 (7).

Rippo v. Baker, Case No. 16-6316 (2017).

The Due Process Clause may require recusal of a judge even when the judge has no actual bias; recusal is required when, viewed objectively, "the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable."

Tarantola v. Henghold, M.D., P.A., Case No. 1D16-3718 (Fla. 1st DCA 2017).

When used in a restrictive covenant, the phrase "including [a specific restriction]" following a general restriction illustrates the restricted conduct and are not words that limit the restriction.

Harris v. U.S. Bank National Association, Case No. 1D15-2022 (Fla. 1st DCA 2017).

The "face to face" counseling requirements of H.U.D. regulation 24 C.F.R. § 203.604 are a condition precedent when the lender has a branch within 200 miles of the borrower, but the condition precedent can be waived.

Spradley v. Spradley, Case No. 2D15-4850 (Fla. 2d DCA 2017).

A cause of action for conversion can be brought for wrongful detention of items which have no intrinsic value, including papers and documents.

ARC HUD I, LLC v. Ebbert, Case No. 2D15-4848 (Fla. 2d DCA 2017).

The time to determine whether a lender has a branch within 200 miles of borrower so as to bring into play the "face to face" counseling requirements of H.U.D. regulation 24 C.F.R. § 203.604 is when the borrower defaults.

Flinn v. Doty, Case No. 4D15-2424 (Fla. 4th DCA 2017).

Unjust enrichment is all that is necessary to impose an equitable lien on a homestead; fraud and egregious conduct are not requirements to imposition of the equitable lien.

Stanbro v. McCormick 105, LLC, Case No. 4D16-3071 (Fla. 4th DCA 2017).

A judgment creditor seeking to garnish a bank account held in the name of multiple parties must prove the funds are exclusively the property of the judgment debtor.

ICMFG & Associates, Inc. v. The Bare Board Group, Inc., Case No. 2D15-3557 (Fla. 2d DCA 2017).

A plaintiff is required to prove a connection between the tortious conduct of the defendant and its lost profits, even when defendant's pleadings have been struck as a sanction for misconduct.

Villages of Avignon Community Development District v. Burton, Case No. 2D16-1048 (Fla. 2d DCA 2017).

Ad valorem tax liens are subject to the same priority as CDD liens.

Allied Universal Corporation v. Given, Case No. 3D16-1128 (Fla. 3d DCA 2017).

Irreparable injury is presumed once a movant establishes a substantial business interest that is protectible under Florida Statute § 542.335; the burden then shifts to the non-movant to establish the absence of injury.

Village of Palmetto Bay, Florida v. Alexander School, Inc., Case No. 3D16-1201 (Fla. 3d DCA 2017).

Zoning ordinances which require approval of voters before a municipality will act on a requested zoning change are not unconstitutional deprivations of due process. Moreover, such ordinances are legislative enactments for which movant must prove the ordinance is "unreasonable and bears no substantial relation to public health, safety, morals or general welfare."

City of Riviera Beach v. J & B Motel Corp., Wells Fargo Bank, N.A., Case No. 4D16-0174 (Fla. 4th DCA 2017).

Municipalities have twenty years to foreclose Chapter 162 code enforcement liens.

U.S. Bank National Association v. Roseman, Case No. 4D16-876 (Fla. 4th DCA 2017).

A promissory note sought to be introduced at trial that varies from the one attached to the complaint is reviewed for violation of Florida Statute § 673.4071 as to whether such alteration modifies the obligation of any party or whether the alteration was fraudulently placed on the instrument.

Czyzewski v. Jevic Holding Corp., Case No. 15-649 (2017).

"Structured dismissal" plans under 11 U.S.C. 1112(b) must pay creditors in accordance with the bankruptcy priority rules.

Star Athletica, L.L.C. v. Varsity Brands, Inc., Case No. 15-866 (2017).

Copyright law protects "features" incorporated into the design only if the feature can independently be perceived as a two- or three-dimensional work of art separate from the useful article, and qualifies, by itself as a protectable pictorial, graphic, or sculptural work.

Purchasing Power, LLC v. Bluestem Brands, Inc., Case No. 16-11896 (11th Cir. 2017).

The state of citizenship of a LLC, for diversity purposes, is the state of citizenship of its members traced back to an individual.

Costco Wholesale Corporation v. Llanio-Gonzalez, Case No. 4D15-4869 (Fla. 4th DCA 2016).

Attaching a general release to a Proposal for Settlement does not make the proposal ambiguous and unenforceable.



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



LLC Member Disputes

Friday, June 16, 2017, 8:30a.m. - 1:30p.m.

LOCATION: Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd, West Palm Beach

- 8:30a.m. - 8:35a.m. **Welcome and Introductions:** Kent Frazer, Esq., Akerman, Chair, Business Litigation CLE Committee
- 8:35a.m. - 9:10a.m. **Rights and Duties of Managers and Members in LLC Member Disputes:** Adam Rabin, McCabe Rabin, P.A., Board Certified in Business Litigation
- 9:10a.m. - 9:45a.m. **Litigation & Remedies in LLC Disputes:** Joseph Galardi, Esq., Beasley Kramer & Galardi, P.A.
- 9:45a.m. - 10:00a.m. **Break**
- 10:00a.m. - 10:35a.m. **Key Issues and Clauses in LLC Operating Agreements:** James Dodrill, Esq., James Dodrill, P.A.
- 10:35a.m. - 11:10a.m. **Appraisal Rights and Valuing a Minority Member's Interest** Christopher Kammerer, Esq., Kammerer Mariani PLLC
- 11:10a.m. - 11:45a.m. **Taking and Defending the Corporate Representative Deposition of an LLC** Joanne O'Connor, Jones Foster Johnston & Stubbs, P.A., Board Certified in Business Litigation
- 11:45a.m. - 11:55a.m. **Working Lunch**
- 11:55a.m. - 12:30p.m. **Professionalism Expectations and Contentious Cases:** D. Culver "Skip" Smith, III, Culver Smith, III, P.A.
- 12:30p.m. - 1:30p.m. **Judicial Panel:** Fourth DCA Judge Jeffrey Kuntz; 15th Judicial Circuit Judge Meenu Sasser and 15th Judicial Circuit Judge Jeffrey Gillen. Moderator: Kent Frazer, Chair, Business Litigation CLE Committee.

Sponsors



5.5 CLER, .5 ethics, plus 5.5 certification credits in business litigation. \$ 150 PBCBA members/paralegals, \$ 190 non-PBCBA attorney members/paralegals. After 6.9.17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

HOW TO REGISTER

BY CHECK

Return this form

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



Materials will be emailed to registrants prior to the seminar

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar, but would like to order the CD (if available). The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800.
(6.16 Business Lit seminar)



Fourth DCA Clarifies Definition of “Marital Effort”s

by Christopher R. Bruce

If you were to interview former spouses who were involved in contested divorce litigation about their perception of their spouse’s attitude when it comes to property division, many of them would summarize their spouse through this quote: “*What’s mine is mine and what’s yours is mine.*”

For everyone who feels that way: relax and rejoice! Based on the Fourth District Court of Appeal’s recent decision in *Witt-Bahls v. Bahls*, 193 So. 3d 35 (Fla. 4th DCA 2016), there is now more clarity into what constitutes the “marital effort” needed for the enhanced value of otherwise nonmarital corporate stock to be considered a marital asset subject to distribution between spouses in a divorce.

Appreciation of Premarital Business Interests

The practical application of Florida’s property division statute is that if a spouse owns a share of a business before the marriage, the appreciation in the value of the business during the marriage is a marital asset if the appreciation of the business is caused by either (1) the efforts of either party during the marriage (called “marital effort”) or (2) the investment of other marital assets into the business. § 61.075(1), (6)(a)1.b.

An issue often subject to divorce litigation when there is appreciation of a premarital or nonmarital business during the marriage is whether the owner-spouse’s involvement with the business should be considered “marital effort” that caused the appreciation. This issue is often litigated because a trial court’s decision that an owner-spouse’s involvement was (or was not) “marital effort” can be worth millions of dollars to the non-owner spouse.

What is “Marital Effort” in the Fourth District?

Two of the main Florida appellate decisions that have historically governed this issue come out of the Fourth District. Both opinions focus on the degree of management that the owner-spouse had in the premarital business.

In *Robbie v. Robbie*, 654 So. 2d 616 (Fla. 4th 1995), the Fourth District held that the appreciation of stock owned by the general manager of the Miami Dolphins was a marital asset. “Marital effort” was found to exist because the husband, who owned 9.5% of the business, was employed in an executive capacity and acted in a managerial role in implementing corporate decisions made by others.

Conversely, in *Oxley v. Oxley*, 695 So. 2d 364 (Fla. 4th DCA 1997), the Fourth District determined the husband’s involvement in a non-marital business did not rise to the level of “marital effort” when the business was held through a trust, and the business and managerial decisions were performed by the trustee.

The historic takeaways from Robbie and Oxley had been that if a spouse performed managerial functions, than their effort was likely “marital effort” that could subject the entire

appreciation of the non-marital entity to distribution in a divorce. But these decisions begged this question: *what if the owner spouse does have some managerial responsibilities but does not have a significant role in the business?*

This question was addressed by the Fourth District’s recent decision in *Witt-Bahls v. Bahls*, 193 So. 3d 35 (Fla. 4th DCA 2016). In *Bahls*, the husband owned stock prior to the marriage in a privately held international company that employed thousands of people. The husband, who worked for the company, was demoted twice during the marriage and eventually terminated. At his highest position, the husband had seven or eight levels of management above him.

In the divorce trial, the wife’s position was that the substantial appreciation in the husband’s corporate stock was a marital asset that should be divided in the divorce. The trial court determined the appreciation in the stock was non-marital. The Fourth District affirmed, holding that “*because the wife failed to establish that the husband occupied a significant management role in [the company], the appreciation of [the company] stock was not due to active effort and is therefore not a marital asset. We fail to see how the rule proposed by the wife – that all appreciation of the stock of a company for which a spouse works is a marital asset- would not force the trial courts to determine exactly how much of the increase in the value of a multi-national corporation each and every hourly employee was responsible for. ‘Such a significant expansion...is better left to the legislature.’*” (Internal citations omitted).

Bottom Line

Based on *Bahls*, family law practitioners need to understand that the mere fact that a spouse actually works in a business may not be enough to constitute the “marital effort.” When developing a case with similar facts, practitioners should pay close attention to whether the owner-spouse had a significant managerial role or if their role was more akin to a “middle manager” in a large corporation like the husband in *Bahls*. That said, practitioners should be mindful of arguments that *Bahls* is distinguishable based on its facts, as the case involved a multi-national company with thousands of employees. Whether the result would be the same if the business was a closely held family business is not completely clear.

Christopher R. Bruce is a divorce attorney with the Bruce Law Firm, P.A. The firm’s practice is limited to resolving divorce & child custody matters through mediation, litigation and related appeals.

Welcome New Members!

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

Marie E. Andrews: Law Student Membership, Davie.

Drew W. Barsalou: Stetson University, 2013; Associate in the Law Office of Michael A. Lampert, P.A., West Palm Beach.

Barbara K. Case: St Thomas University, 2000; Solo Practitioner, North Palm Beach.

Alyssa M. Grant: Florida A&M University, 2016; Solo Practitioner, West Palm Beach.

Lisa A. Grossman: Florida State University, 2005; North Palm Beach.

Karen M. Hansen: Northeastern University, 2002; House Counsel AVM, L.P., Boca Raton

Eleni Kastrenakes: Wake Forest University, 2009, Associate in Holland & Knight, West Palm Beach.

Jordan H. Lewis: University of Miami, 2016; Associate in Roberts, Reynolds, Bedard & Tuzzio, West Palm Beach.

Laura Greco Naylor: New England School of Law, 2009; Solo Practitioner, West Palm Beach.

Paul Patti, III: Florida A&M University, 2015; Attorney General's Office, West Palm Beach.

Clara M. Rodriguez Rokusek: Stetson University, 2008; Solo Practitioner, Jupiter.

Mark A. Templeton: Florida State University, 2015; Solo Practitioner, West Palm Beach.

Brittany Trigg: Florida Coastal School of Law, 2015; U.S. Legal Support, West Palm Beach.

Cassandra Ward: University of Miami, 2011; Legal Aid Society of Palm Beach County.

Stuart J. Zoberg: University of Miami, 2002; Shir Law Group, Boca.



DUI Victim

We hold alcohol vendors accountable.
Dram Shop is all we do - a one trick pony with a really good trick.

THE LIQUOR LAW CENTER
Dram Shop Attorneys

866.957.4878

DramLaw.com



Will The Real Party In Interest Please Stand Up?

by David M. Garten

Who is the “real party in interest” to prosecute or defend an action on behalf of an estate, trust, or guardianship? Fla. R. Civ. P. 1.210(a) provides that “[e]very action may be prosecuted in the name

of the real party in interest, but a personal representative, administrator, guardian, trustee of an express trust... may sue in that person’s own name without joining the party for whose benefit the action is brought.” The same rule applies in the probate division.

I. ESTATES:

With regard to estates, the personal representative is the real party in interest. A personal representative is the fiduciary appointed by the court to administer the estate and may prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the personal representative. *See* §§731.201(28) and 733.612(20), F.S. *See also* §733.607 (The PR shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it.) and §733.309 (Any person taking, converting, or intermeddling with the property of a decedent shall be liable to the PR or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by the wrongful action.)

However, with regard to recovery of inter vivos transfers, the beneficiaries of the decedent’s estate are the real party in interest because inter vivos transfers are not estate assets. *See Parker v. Parker*, 185 So. 3d 616 (Fla. 4th DCA 2016).

The “estate” is not the real party in interest because the estate is not an entity. The real party in interest is the personal representative whose job is to act on behalf of the estate. *See Spradley v. Spradley*, 2017 Fla. App. LEXIS 3034 (Fla. 2nd DCA 3/8/17); *Randolph Fndn. v. Appeal Fr. Prob.*, Ct. Sup. 4795 (Conn. Super. Ct. 2001).

II. GUARDIANSHIPS:

With regard to guardianships, the guardian is the real party in interest. A guardian is a person who has been appointed by the court to act on behalf of a ward’s person or property, or both, and upon court approval may prosecute or defend claims or proceedings in any jurisdiction for the protection of the estate and of the guardian in the performance of his or her duties. *See* §§744.102(9) and 744.441(11), F.S.

III. TRUSTS:

With regard to trusts, as a general rule, the trustee is the real party in interest. A trustee is authorized to prosecute or defend, including appeals, an action, claim, or judicial proceeding in any jurisdiction to protect trust property or the trustee in the performance of the trustee’s duties. *See* §736.0816(23), F.S. *See also First Union Nat’l Bank v. Jones*, 768 So. 2d 1213 (Fla. 4th DCA 1999) (“the trustee” is merely the legal entity who is sued when an action is brought against “the trust.”).

The “trust” is not the real party in interest because a trust is not an entity. As a general rule, the real party in interest

is the trustee whose job is to act on behalf of the trust. *See Randolph Fndn. v. Appeal Fr. Prob.*, Ct. Sup. 4795 (Conn. Super. Ct. 2001), wherein the court stated:

A number of treatises have discussed the fact that a trust is not an entity. The leading treatise characterizes a trust as, “a fiduciary relationship with respect to property, subjecting the person by whom the title to property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it.” I Scott, Trusts § 2.3 (4th Ed. 1987). “As against a person acting adversely to the trustee, it is the trustee who is the proper party to maintain an action at law or a suit in equity.” IV Scott, Trusts § 280 (4th Ed.), citing *Brown v. Hart*, 91 Conn. 667, 670 (1917). *See also Treat v. Stanton*, 14 Conn. 445 CT Page 4814 (1841) (“The right of action at law has, therefore, been wisely vested solely in the party having the strict legal title and interest.” Id. 455. “In such case, the obligation and legal responsibility is exclusively to the trustee and must be enforced by him in a court of law.” Id. 454.). * * * *

“As a general rule, the trustee is the proper person to sue or be sued on behalf of a trust.” 76 Am.Jur.2d, Trusts § 656. “A trustee is a necessary party to assert or defend title to trust property, and is an indispensable party to an adjudication of rights of beneficiaries in a trust.” 76 Am.Jur.2d, Trusts § 672. “Where a trust estate is liable directly on a contract or for goods or services provided it, or for a tort . . . the proper practice is either to sue the trustee as such or to join the trustee and beneficiary as defendants.” 76 Am.Jur.2d, Trusts § 679. * * * A number of other jurisdictions have addressed the issue of whether a trust is an entity that can sue and be sued. These decisions support this court’s decision. *Coverdell v. Mid-South Farm Equipment Assn., Inc.*, 335 F.2d 9, 12 (6th Cir. 1964) (A trust cannot sue or be sued, but rather legal proceedings are properly directed at the trustee, citing 1 Restatement (Second), Trusts § 2, p 2. (1959); and 54 Am.Jur., Trusts §§ 570, 584, 586 and 588; *Limouze v. M.M. P. Maritime Advancement, Training, Education, and Safety Program*, 397 F. Sup. 784, 789-90 (D. Md. 1975) (The defendant, an incorporated trust not registered as a business trust, was held to be an entity not capable of the being sued. “In the absence of statute or case law, the weight of authority is clear that the trust estate is not a person in the eyes of the law and does not have the capacity to be sued as an entity.”); *Yonce v. Miner’s Memorial Hospital Assn., Inc.*, 161 F. Sup. 178, 187-88 (W.D. Va. 1958) (Suit against an unincorporated union welfare fund dismissed. Trustees of fund were not joined.).

However, in some circumstances, the beneficiary of the trust is the real party in interest to pursue recovery of trust assets. *See Kent v. Kent*, 431 So.2d 279(Fla. 5th DCA 1983) (fraudulent conspiracy between the trustee and a third party to transfer real estate); *St. Martin’s Episcopal Church v. Prudential-Bache Secur., Inc.*, 613 So. 2d 108 (Fla. 4th DCA 1993) (fraudulent scheme between the trustee and a third party to generate excessive commissions).

Elder Law Reception, Dinner and CLE View from the Bench

The Elder Law Affairs Committee held its 17th annual “View from the Bench” reception, dinner and panel discussion at The Colony Hotel in Palm Beach. The panel, featuring Judges Coates, Keyser, Kroll, Miller, and Ticktin, answered questions submitted by members of the bar related to procedural, practical, and efficiency matters before the Court.





Civility in Mediation – What’s the Big Deal?

by Michael D. Mopsick

Mediation is not monolithic. It spans literally every type of case that can be brought before a court and many that cannot. Even within each practice area (Family, Probate, Commercial, Personal Injury, etc.), one size does not fit all. And the types of parties that appear in mediation are even more diverse than the genres of their cases.

Nevertheless, civility in mediation is critical in virtually every case that we as mediators see. Mediation is a microcosm that reflects the decline of civility in our public discourse and demonstrates how the effects of that decline can contribute to making the mediator’s job these days a lot tougher.

So, what do we mean by “civility”, and why is it such a big deal in mediation? We know what civility is when we don’t see it. We see its absence more and more in our political campaigns, at all levels of government, and sadly, of late even in campaigns for judicial office.

The Institute for Civility in Government, on its website, put it succinctly: “Civility is claiming and caring for one’s identity, needs and beliefs without degrading someone else’s in the process”. Obversely, incivility includes the vilification, demonization, and degradation of the adversary personally in order to attack the adversary’s message. In mediation, civility also includes the idea of respect, but not only respect for an adversary’s views. It requires respect for their person, position, physical condition, level of intelligence, and even respect for what the person across the table is going through - their emotional state. In mediation, a true atmosphere of civility exists when all of the actors remain mindful of all of these factors. Yes, this is an idealized goal, but why not aspire to this kind of atmosphere rather than one in which every adversary is vilified as a loser, a liar, a moron, or a criminal?

From the mediator’s perspective, the success of a mediation is measured in only one way: whether or not it resulted in a settlement. Maintaining an atmosphere of civility in the mediation directly affects the chances of settlement. It is at the heart of the mediation process. First, a civil atmosphere allows for listening to the other party’s message instead of simply reacting defensively to a diatribe of insults that immediately shuts down the listening process. Second, it eases the transformation of the gladiator lawyer to conciliator. It requires that the “we will bury you” rhetoric be left outside, so the lawyers can start a civil discussion of the issues and the relative merits of their claims. Third, it allows the parties to stop dwelling on all of the injustices they’ve been dealt and finally start focusing on finding solutions.

An example of the impact of incivility on the mediation process is the loss, with increasing frequency, of one of the mediator’s most valuable tools: the opening joint session, and with it, the opening statement. In Family practice, counsel and mediators have almost routinely abandoned the joint session in favor of beginning the mediation with caucuses, a practice which is spreading to circuit civil cases. Rather than attempting to control the often inherent incivility, lawyers and mediators are opting to simply keep the parties, and even the lawyers, separated. What is avoided?

- The risk of offending the opposing party, even unintentionally, raising defensiveness and shutting the door to listening.
 - Comments by counsel that cross the civility line, attack and insult the opponent more than their legal position, set a negative tone, fester, and prevent positive thinking.
 - The litigants, thinking this is their day in court, adopting a confrontational attitude; they want to have their say, and by doing so, they slam the door shut just by the way they say it.
 - Of course, there is always the risk of a violent confrontation, either at the mediation or later in the parking lot, or at home.
- But here are some of the opportunities lost:
- For counsel to speak directly to the opposing party and to try to set a positive tone;
 - To plant a seed of a positive idea at the outset.
 - To allow a party to express, directly or subtly, what they really need in order to settle, even if it’s not within the framework of the pleadings.
 - To allow the mediator to manage the parties’ expectations of the mediation process, to explain that this is not their day in court, and their lawyer is not, today, a gladiator who is going to bludgeon the other side into submission.
 - To allow the mediator to speak to everyone at once and demand civility and creative thinking, to engage the parties equally in the process, and to explain that everyone has an equal responsibility for finding solutions to the conflict.

The opening joint session is an integral part of the mediation process. By abandoning it, we are ceding a valuable part of the process to the evils of incivility and abandoning an effective tool. We should be finding ways to restore civility to the process instead of giving up and tossing away part of the process itself. We need to do better.

Michael D. Mopsick is a member of the Alternative Dispute Resolution Committee and the Professionalism Committee of the Palm Beach County Bar Association and is a Florida Supreme Court Certified Circuit Civil Mediator

Sabadell



WWW.SABADELLBANK.COM

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

Doug Clevenger, SVP • John B. Apgar, SVP

561.688.9400



Sabadell® is a registered mark of Banco de Sabadell, S.A. used by Sabadell United Bank, N.A., a subsidiary of Banco de Sabadell, S.A. Sabadell United Bank, N.A. is a member FDIC and an Equal Housing Lender. FDIC insurance is provided solely under our legal name, Sabadell United Bank®, N.A. There is no separate FDIC insurance for service marks and trade names, or for divisions of Sabadell United Bank®, N.A. 2016 Sabadell United Bank®, N.A., a subsidiary of Banco de Sabadell, S.A. All rights reserved.

The Bankruptcy CLE Committee of the Palm Beach County Bar Association
Presents

**FROM THE HORSE'S (ER, JUDGE'S) MOUTH:
AN AFTERNOON WITH THE HONORABLE ERIK P. KIMBALL
UNITED STATES BANKRUPTCY JUDGE FOR THE SOUTHERN DISTRICT OF FLORIDA**



Thursday, June 1, 12:30 p.m. - 6:00 p.m.
Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd, West Palm Beach



- 12:30 p.m. – 12:55 p.m. Lunch / Check In / Registration
- 12:55 a.m. – 1:00 p.m. Welcome: Eric Rosen, Esq., Bankruptcy CLE Committee Chair
- 1:00 p.m. – 1:50 p.m. Put Your Best Foot Forward: How to Educate Your Judge
- 1:50 p.m. – 2:40 p.m. Technology Now: How to Get Large Amounts of Evidence Kept In Electronic Format Before The Court, Confidentiality, Redacting, etc.
- 2:40 p.m. – 2:50 p.m. Break
- 2:50 p.m. – 3:40 p.m. Evidentiary Hearings/Trials: Local Rules, Conferring With Counsel, "The Rule", Evidence and Ethical Considerations
- 3:40 p.m. – 4:30 p.m. Houston, We Have A Problem: Motions To Recuse/Disqualify
- 4:30 p.m. - 5:00 p.m. Question and Answer Session
- 5:00 p.m. - 6:00 p.m. Reception

Sponsor

SISKIND LEGAL GROUP

Credit: 4.5 CLER, 1.0 Technology, .5 Ethics. Cost \$125 members; \$165 non-members. Those registering after 5/25/17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

**HOW TO
REGISTER**

BY CHECK
Return this form

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



**Materials will be emailed to
registrants prior to the seminar**

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar. **IF AVAILABLE**, I would like to order the CD. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800.
(6.1 Bankruptcy seminar)

Bankruptcy Corner



Unsuccessful Bidders in 363 Sales Do Not Have Standing to Object

by Jason S. Rigoli

In a sale under section 363 of the Bankruptcy Code¹ ("363 Sale"), there generally can only be one winner when it comes to purchasing the asset being offered for sale by the estate. Unfortunately for the other bidders who's offer was not accepted you, generally, do not have standing to object to the sale just because you participated.² See *Imperial Bowl of Miami, Inc. v. Roemelmeyer*, 368 F.2d 323, 324 (5th Cir. 1966).³

Generally, for a party to have standing in a bankruptcy case they must be "directly and adversely affect pecuniarily by [an] order" of the bankruptcy court, either by "directly diminish[ing] a person's property, increase[ing] his burdens, or impair[ing] his rights." *In re Moran*, 566 F.3d 676, 681 (6th Cir. 2009) (internal citations and quotations omitted). "This standing requirement is more limited than Article III standing." *Id.* (internal citations and quotations omitted).

The rationale for why an unsuccessful bidder does not have standing makes legal and logical sense. An offer without acceptance has no legal significance, there is no legal right to be enforced by the offeror. Accordingly, a party who has made an offer to purchase an asset of a bankruptcy estate that has not been accepted does not acquire a right or cause of action against the estate that would ascribe standing to object to the sale of the asset. See *Imperial Bowl*, at 324 (citing *In re Realty Foundation*, 75 F.2d 286 (2d Cir. 1935)⁴ ("The appellee is not even a person who has made the highest bid, and we know of no theory of law upon which such a person has any standing whatever. A contract with a bidder only arises after his bid has been accepted and the sale to him confirmed. The appellee never made a

¹ 11 U.S.C. §§ 101, *et seq.*

² This article is directed at bidders who are entirely disconnected from the Bankruptcy Case, who are not creditors of the Bankruptcy estate, or otherwise interested parties (as more fully discussed herein).

³ *Bonner v. City of Prichard, Ala.*, 661 F.2d 1206 (11th Cir. 1981), says all Fifth Circuit Court of Appeals decisions prior to the creation of the 11th Circuit Court of Appeals, on October 1, 1981, under Fifth Circuit Court of Appeals Reorganization Act, are binding. *Imperial Bowl of Miami* was decided in 1966 and is therefore binding.

⁴ The *Imperial Bowl* opinion improperly cite the *Realty Foundation* opinion as being issued by the S.D.N.Y.

bid that was either accepted or confirmed. *** only...some one (*sic*) having a legal interest in the premises [could petition for appeal]. In our opinion, Certified Associates, Inc. had no such interest and could not properly either object to the confirmation of the sale or review the order of confirmation.") (internal citations omitted)).

This rationale comports with the objectives of the Bankruptcy Code as well. The "primary objective of the Bankruptcy [Code] is to minimize the injury to creditors arising from the fact of bankruptcy." *In re Harwald Company*, 497 F.2d 443, 444-45 (7th Cir. 1974). An unsuccessful bidder's interest becomes adverse to the creditors' interest, because, if every unsuccessful bidder could challenge every proposed sale, each sale could be held hostage to the detriment of the very creditors the Bankruptcy Code is seeking to protect.

There is an exception to the general rule that unsuccessful bidders lack of standing and that is "where an unsuccessful bidder challenges the intrinsic structure of the sale because it is tainted by fraud, mistake, or unfairness." *In re Moran*, 566 F.3d 676, 681 (6th Cir. 2009). However, this exception is extremely narrow and exists only where the unsuccessful bidder's interest in obtaining the asset being sold aligns with the interests of creditors who may not be aware of an alleged wrongdoing that would limit the creditors' recovery. *Id.* at 682. But allowing the unsuccessful bidder to challenge the sale where the alleged wrong does not harm any creditor does not serve the interests protected by the Bankruptcy Code, because the creditors' recovery could not increase.

Conclusion

An offeror (bidder) has no legal rights to protect or enforce whether in a bankruptcy case or some other non-bankruptcy context. The mere participation in a 363 sale does not create some new right for the bidder just because it an offer is made in the bankruptcy case, without having a legal interest in the disposition of assets of the estate of the proceeds therefrom. Therefore, generally, unsuccessful bidders would not have standing to object to the confirmation of a proposed 363 Sale.

COURTHOUSE COMMONS

MOVE-IN READY SUITES AVAILABLE



444 West Railroad Avenue
West Palm Beach, Florida 33401

PROPERTY HIGHLIGHTS

- Gorgeous move-in ready suites with beautiful contemporary finishes
- Efficient floor plans to accommodate legal professionals
- Covered walkway connects you directly to the Palm Beach County Courthouse
- 24/7 security
- Downtown convenience
- Common area improvements recently completed
- Lobby & entrance upgrades and renovations from the new responsive and motivated institutional ownership
- On-site property management and day porter

5

FLOORS

92,585 SF

CONNECTED DIRECTLY TO COURTHOUSE



WALKABILITY TO
SHOPPING &
RESTAURANTS

5.0/1,000
SQUARE FEET
COVERED AVAILABLE
\$70/SPACE/MONTH



2 BLOCKS
FROM THE NEW
ALL ABOARD FLORIDA
TRAIN STATION

For more information, please contact:

TARA ENGLAND

561 227 2017

tara.english@cushwake.com

MICHAEL OSIECKI

561 227 2060

michael.osiecki@cushwake.com



CUSHMAN &
WAKEFIELD

Cushman & Wakefield of Florida, Inc.
303 Banyan Blvd., Suite 301, West Palm Beach, FL 33401
cushwakesouthfl.com

UMC Coffee and Bagels with the Judges

For the past several months, the Judicial Relations Committee has hosted “Coffee and Bagels with the Judges. The series is a fun, casual coffee hour meant to foster relationships and dialogue between the judiciary and members of the Bar. Be sure to register to join us for the next one on Wednesday, May 10.





Homeowner's Coverage

by Ted Babbitt

Sebo v American Home Assurance Co.,
41 Fla. L. Weekly

S582 (Fla. 2016) answers the question of what coverage exists in a homeowner's policy when there are damages caused by multiple perils, some of which are excluded from coverage and some of which are not. This case came before the Supreme Court on the basis of a conflict in *American Home Assurance Co. v Sebo*, 141 So. 3d 195 (Fla. 2nd DCA 2013) and *Wallach v Rosenberg*, 527 So. 2d 1386 (Fla. 3d DCA 1988).

The underlying facts of *Sebo* were that the insured purchased a home in Naples, Florida, and had it insured by the defendant insurance company under an "all risk" policy. The home was valued at \$8 million. Shortly after taking residence, the home literally began to fall apart with major water leaks caused by serious design and construction defects. After rain caused serious damage, Hurricane Wilma struck the home and further damaged it. Insurance coverage excluded coverage for negligent design and construction but included coverage for hurricane damage.

The Second District reversed the jury finding of insurance coverage by applying the Efficient Proximate Cause (EPC) theory. The EPC analysis holds that where there is a concurrence of different perils, the efficient cause, that is the one that set the others in motion, is the cause to which the loss is attributable. Thus, the Second District concluded that because the construction defects were excluded under the policy and those defects set in motion the eventual loss during the hurricane, no coverage existed.

In *Wallach*, *supra*, the Third District applied the concurrent cause doctrine (CCD) to find coverage where a sea wall collapsed and led to a portion of the insured's sea wall crumbling. The policy contained an exclusion for loss resulting from earth movement or water damage. The concurrent cause doctrine provides coverage where there is a combination of insured and uninsured risk but the insured risk is a concurrent cause of the loss even if it is not the prime or efficient cause.

In *Sebo*, the Supreme Court concluded that there was no dispute but that the rain water caused by defective construction combined with the hurricane winds caused the damage to the insured's property. The Court found that where there is a concert of causes, it is not feasible to apply the EPC Doctrine because there really is no efficient cause that can be determined.

Also not in dispute is that the rainwater and hurricane winds combined with the defective construction to cause the damage to Sebo's property. As in *Partridge*, there is no reasonable way to distinguish the proximate cause of Sebo's property loss – the rain and construction defects acted in concert to create the destruction of Sebo's home. As such, it would not be feasible to apply the EPC doctrine because no efficient cause can be determined. As stated in *Wallach*, "[w]here weather perils combine with human negligence to cause a loss, it seems logical and reasonable

to find the loss covered by an all-risk policy even if one of the causes is excluded from coverage." *Wallach*, 527 So. 2d at 1388. Furthermore, we disagree with the Second District's statement that the CCD nullifies all exclusionary language and note that AHAC explicitly wrote other sections of Sebo's policy to avoid applying the CCD. Because AHAC did not explicitly avoid applying the CCD, we find that the plain language of the policy does not preclude recovery in this case.

While this Court quashed the Second District's opinion thereby nullifying its application of EPC in this case, it remains to be seen as to whether a homeowner carrier could write its policy so that only CCD rather than EPC can be utilized in analyzing loss.

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.

MCCABE RABIN, P.A. ATTORNEYS AT LAW



Ryon McCabe

rmccabe@mccaberabin.com



Adam Rabin

arabin@mccaberabin.com



Robert Glass

rglass@mccaberabin.com

**Business Litigation & Disputes
Securities Arbitration
Whistleblower/Qui Tam Litigation**

561-659-7878 or 877-915-4040 (toll free)

Centurion Tower 1601 Forum Place, Suite 505 West Palm Beach, FL 33401

www.McCabeRabin.com

BUSINESS, SECURITIES & WHISTLEBLOWER LITIGATION

CDI Road to the Bench

The PBCBA's Committee for Diversity and Inclusion, together with the F. Malcolm Cunningham, Sr. Bar Association, and the PBC Hispanic Bar Association recently held its "Road to the Bench" panel discussion. This informative program was followed by a reception.



CLE On-Demand: Anytime & Anywhere

The PBCBA's seminars are available for immediate delivery through our website. You can purchase any of our seminars in MP3 format for immediate download, or you can still request a CD that will be mailed to you. We have a large library of courses recorded not only from our seminars but also those presented by the Orange County, Hillsborough County and Clearwater Bar Associations.

If your CLE deadline is coming up, be sure to check out our site to order your CLE today!

www.palmbeachbar.org



When They Go Low, We Go High (Subtitled: Yet another supermodel plagiarizes Michelle Obama)

by Terry Resk

Those words resonated with me like no other political speech ever had. Upon hearing Michelle Obama's words, I immediately thought (1) that I should live more consistently by this sentiment, (2) that this philosophy exemplifies the Bar's Professionalism Expectations, and (3) that this precept is "easier said than done." So just why is it so difficult to take the high road? Pressure from clients and fellow attorneys? A mistaken but ingrained perception that, to be effective, we must be aggressive? Pride, coupled with a propensity to argue?

As difficult as it is, remember that you do not need your client's approval to be professional, civil or even courteous. It is your obligation regardless of your client's desire for total war. A "lawyer should not be governed by the client's ulterior motives... , and should not "permit a client's ill will... to become that of the lawyer." Professionalism Expectations 7.1; 7.4 (approved by the Florida Board Bar of Governors January 30, 2015). In fact, lawyers have an affirmative duty to counsel clients against using tactics designed to hinder the process or to harass adversaries and should withdraw if the clients insist on such tactics. Professionalism Expectations 7.5.

Pressure even comes from other attorneys - often, it seems, from those who are not litigators and don't have to worry about their reputation among the judiciary or their relationships with other litigators. I will never forget the tongue lashing I received as a young lawyer when I prepared one complaint containing several counts instead of many different complaints against the same defendants. The senior, real estate attorney, finally relented, but not before lamenting that, "they can always do it to me; why can't I do it to them?"

We have all seen movies featuring overly aggressive attorneys engaging in "scorched earth" litigation. We can easily dismiss as unrealistic the

scenes involving shoot outs in which, miraculously, the good guy emerges unscathed, and we even question the wisdom of engaging in such battles. Why can't we similarly recognize the folly of bully litigation? You wouldn't try the gunfight in real life; don't try it in the courtroom either.

Attorneys have always been told that we have a duty to zealously represent our clients, but often mistakenly equate "zealousness" with aggressiveness rather than with fervor. Merriam Webster defines "zealousness" as "marked by fervent partisanship... characterized by zeal," and defines zeal as "eagerness and ardent interest in pursuit of something." https://www.merriamwebster.com/dictionary/zeal;_zealous (last visited February 10, 2017). Absent from the definition of zealous are terms such as argumentative and contentious.

In fact, "[o]ver 20 years ago, the ABA's Model Rules intentionally eliminated an express duty to zealously advocate and replaced it with a duty to represent one's client with 'reasonable diligence.'"

the drafters [of the Model Rules] advise: 'a lawyer's obligation zealously to protect and pursue a client's legitimate interests... must include 'a professional, courteous, and civil attitude... while lawyers must act with zeal in advocacy... [they are] not bound...to press for every advantage that might be realized for a client.'...

Attorneys who excuse aggressive tactics because they are zealously advocating for their clients stand on shaky ethical ground and flatly ignore requirements for professionalism and civility....

Francine Griesing & Ashley Kenney, *Taking the High Road: How to Deal Ethically with Bullies Who Don't Play by the Rules*: 2012 ABA Section of Litigation Corporate Counsel, CLE Seminar Hollywood, Florida (February 14-17, 2013) (citations omitted).

How many times have you engaged

in less than professional banter because "he started it?" So what? Let it go! The next time I want to answer fire with fire, I will make a concerted effort to recall a seemingly unrelated practice which always made my son laugh. When the driver of another car honked or otherwise (unjustifiably) expressed displeasure with my driving skills, I didn't reciprocate in kind, but instead waved enthusiastically and smiled as if he were a lifelong friend. This not only diffused rather than escalated the encounter, but confused and frustrated the other driver. Sometimes, I even got a wave back.

Therefore, if your pride is making it difficult for you to "go high," do it anyway. You may improve your relationship with opposing counsel as he adopts your tone; if nothing else, you will frustrate him and keep your own blood pressure under control. More importantly, do it because it will benefit both you and your client in the long run - not to mention future clients as you build a reputation of reasonableness. Most importantly, "go high" because it is the right thing to do!

Want to see
a movie?



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:

Muvico (Carmike) Theater
\$8.00 each

Regal Theaters
\$8.50 each

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

PRICES ARE SUBJECT TO CHANGE

LIFELONG DEDICATION TO PROTECTING THE PRACTICE OF LAW



STATEWIDE LEGAL COMMUNITY LEADERSHIP ROLES

Chair Real Property Probate & Trust Law Section of the Florida Bar

Protected Trust Account Privacy

Expanded Board Certification

Preserved Ability to Petition Local Government

Less Expensive and More Timely CLE

Law for Lawyers Program

Advanced Fellowship Program

RPPTL Legislative Chair (29 Bills Enacted into Law in 2 Years)

Bar Committee Chairs

CLE Presenter: Local, State and National

VOTE MICHAEL GELFAND

Florida Bar Board of Governors

(E-Balloting starts May 22)

LOCAL BAR LEADERSHIP ROLES

Judicial Nominating Commission

Cunningham Bar & FAWL: JNC Process Presenter

First Electronic Access to Clerk's Records Committee Co-Chair

Palm Beach County Bar Law Week: Speaker & School Presenter

Palm Beach County Bar Literacy: Classroom Presenter

Mentoring New Attorneys

Palm Beach County Bar Committee Chairs

Palm Beach County Bar "Art of Motion Calendar" Mentor / Presenter

COMMUNITY LEADERSHIP ROLES

Magistrate: Youth Court

Law Magnet Program: Palm Beach Lakes High School

Special Master: Boca Raton

Construction Oversight Committee: PBC School District

Successful Advocate for New Adult Ed Campus

Chair: Youth Orchestra of Palm Beach County

SMALL LAW FIRM OWNER SINCE 1991

VOTE GELFAND to continue protecting Palm Beach and Florida attorneys!



North County Section to host



SOCIAL MEDIA DISCOVERY

"Great, I have this social media evidence, how do I authenticate it? And, how do I get it into evidence?"

TUESDAY, MAY 23, 2017

11:30 to 1:00 p.m.

PALM BEACH GARDENS MARRIOTT

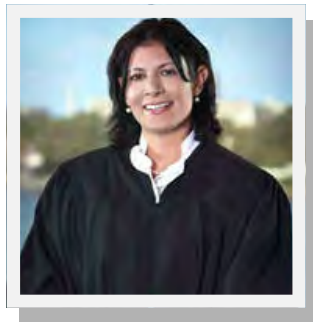
4000 RCA Blvd.

Palm Beach Gardens

Including CLE credit!

General 1.0, Ethics 1.0 and Technology 1.0

Presenting Speakers:



CIRCUIT JUDGE MEENU SASSER AND ATTORNEY SPENCER KUVIN

Attend this one hour CLE and get tips on responding to social media discovery, find out about your legal obligation to preserve social media information and learn ethical issues involved in handling responses to social media discovery requests. Plus, the admissibility of social media discovery at trial will be discussed as well as important cases that have ruled on social media discovery matters.

Sponsored by:



**Sabadell
United Bank**



RSVP Online @www.palmbeachbar.org

NCS Member Price: \$35.00 includes lunch and CLE credit from The Florida Bar

Attorneys who are not Section members: \$50.00

Price increases by \$5.00 after 5/18/17



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



Hot Topics in Employment Law: What Your Clients Need to Know

Thursday, May 25, 2017, 12:30p.m. - 5:30 p.m.

LOCATION: Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., West Palm Beach, FL

12:30p.m. - 12:55p.m. **Late Registration, Check-in**

12:55p.m. - 1:00p.m. **Welcome and Introductions:** G. Joseph Curley, Esq., Gunster, Yoakley & Stewart, P.A., Employment Law CLE Committee, Chair

1:00p.m. - 1:50p.m. **Hot Topics in Discrimination:** Shayla Waldon Esq., and Arlene Kline, Esq., Akerman

1:50p.m. - 2:40p.m. **Workers' Compensation—What Companies Need to Know:**
Judge Thomas Hedler, Office of Judges of Compensation Claims

2:40p.m. - 2:50p.m. **Break**

2:50p.m. - 3:40p.m. **Protecting the Company's Interests—Non-Compete Update:**
Joseph Santoro, Esq., Gunster, Yoakley & Stewart, P.A.

3:40p.m. - 4:30p.m. **Update on Trade Secrets Law—Making the Federal Defend Trade Secrets Act Work for You:** G. Joseph Curley, Esq., Gunster, Yoakley & Stewart, P.A.

4:30p.m. - 4:40p.m. **Break**

4:40p.m. - 5:30p.m. **Dueling Perspectives—an FLSA Analysis:** Cathleen Scott, Esq., Scott Wagner and Associates, P.A. and Holly Griffin, Esq., Gunster, Yoakley & Stewart, P.A.

Sponsors:



5.0 CLER; 1.0 ethics. Certification credits: 4.0 Labor & Employment law and 1.0 Workers' Compensation. \$150 PBCBA members/paralegals, \$ 190 non-PBCBA attorney members/paralegals. Those registering after 5/18/17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

**HOW TO
REGISTER**

BY CHECK
Return this form

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



Materials will be emailed prior to the seminar

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar, but would like to order the CD (if available). The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800.
(5.25.17 Employment seminar)



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



Preservation of Error for Trial Attorneys

Thursday, June 8, 2017 , 2:45 p.m. - 5:00 p.m.

Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard

2:45 - 3:00 p.m.

Late Registration/Check In

3:00 - 4:00 p.m.

This highly interactive presentation will review the steps needed to create an appealable record in a variety of situations including jury selection, evidence, directed verdicts, jury instructions, and closing argument. Bring a cell phone or other internet connected device to participate. Following the overview, a panel of appellate and trial experts will discuss the practicalities of making the record and answer your questions.

Panelists

**Donna Eng, Esq., Sue-Ellen Kenny, Esq.,
Kara Berard Rockenbach, Esq., and Rebecca Mercier Vargas, Esq.**

4:00 p.m. - 5:00 p.m.

Reception

Sponsors



Credit: 1.0 CLER, plus 1.0 Certification credits in Appellate Practice. Cost: \$ 25 PBCBA members/paralegals; \$ 65 non-PBCBA attorney members/paralegals. After 6/1/17, add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

HOW TO REGISTER

BY CHECK
Return this form

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



**Materials will be emailed to
registrants prior to the seminar**

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar. IF AVAILABLE, I would like to order the CD. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, 1507 Belvedere Rd., W. Palm Beach, FL 33406. 561-687-2800. (6.8 Appellate) . **Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406**



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



28th Annual Community Law Seminar

Friday, June 9, 2017, 7:45a.m. - 1:00p.m.

LOCATION: Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., WPB

7:45a.m. - 8:00a.m. **Late Registration and check-in**

8:00a.m. - 8:05a.m. **Welcome:** Tanique G. Lee, Esq., Committee Chair, Gelfand & Arpe, P.A.

8:05a.m. - 8:35a.m. **Lien Priority in Community Associations and Ethical Considerations:**
Steven D. Rubin, Esq., Florida Bar Board Certified Real Estate Lawyer,
Florida Supreme Court Certified Circuit Mediator, Steven D. Rubin, Esq., Law Offices of
Steven D. Rubin

8:35a.m. - 10:10a.m. **Bankruptcy Basics and Impact of Bankruptcy on Associations...
What Every Association Attorney Should Know:** Nadine V. White-Boyd, Esq.,
White-Boyd Law, P.A. and Malinda Hayes, Esq., Markarian, Frank & Hayes, P.A.

10:10a.m. - 10:20a.m. **Break**

10:20a.m. - 11:15a.m. **What's New in Fair Housing, Criminal Record and Marijuana:**
Pamela Guerrier, Esq., Director, Palm Beach County Office of Equal Opportunity

11:15a.m. - 12:00p.m. **Responding to Requests for Reasonable Accommodation:
A Defense Guide:** Kyle T. Berglin, Esq., Boyd Richards Parker & Colonnelli, P.L.

12:00p.m. - 1:00p.m. **Legislative & Case Law Update: Practical and Ethical Implications:**
Michael J. Gelfand, Esq., Florida Bar Board Certified Real Estate Attorney, Florida
Supreme Court Certified Mediator: Civil Circuit Court & Civil County Court, Fellow,
American College of Real Estate Lawyers, Gelfand & Arpe, P.A.

Sponsor:



5.5 CLER, plus 2.0 ethics. Certification credits: 5.5 Condominium and Planned Land Development Law. Cost \$ 190 PBCBA members/ paralegals; \$ 230 non-PBCBA attorney members/paralegals. After 6/2/17, add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

HOW TO REGISTER

BY CHECK
Return this form

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



Materials will be emailed to registrants prior to the seminar

Name: _____ Email address: _____

Address: _____ Phone: _____

____ I will not be able to attend the seminar, but would like to order the CD (if available). The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. (6.9 Community law).



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



E-Discovery Cost Shifting

Thursday, June 29, 2017, 11:30 a.m. - 1:00 p.m.

Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., West Palm Beach

11:30 a.m. - 11:55 a.m.
Late Registration / Lunch

11:55 a.m. - 12:00 p.m.
Welcome and Opening Remarks
Kent Frazer, Esq., Akerman; Business Litigation CLE Chair

12:00 p.m. - 1:00 p.m.
Guest Speaker: Gregory S. Weiss, Esq.,
Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A.

- **2012 E-Discovery Amendments to Florida Rules of Civil Procedure**
- **Case Law Interpreting Florida E-Discovery Amendments**
- **Federal Rules Addressing E-Discovery**
- ***Zubulake*: Landmark Decision in the Area of E-Discovery**
- **Cost-Shifting Pursuant to Federal Rules**
- **Florida Post-*Zubulake***
- **Judge Meenu Sasser's ESI Standing Order**

Sponsors



1.0 CLER; Certification credits: 1.0 Business Litigation and .5 Civil Trial

\$ 25 PBCBA members/paralegals, \$ 65 for non-PBCBA attorney members/paralegals. Those registering after 6/22/17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

**HOW TO
REGISTER**

BY CHECK
Return this form

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



**Materials will be emailed to
registrants prior to the seminar**

Name: _____ Email address: _____

Address: _____ Phone: _____

_____ I will not be able to attend the seminar, but would like to order the CD. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow four weeks for delivery. PBC Bar Association, 1507 Belvedere Rd., W. Palm Beach, FL 33406. 561-687-2800.
(6.29 Business Litigation seminar)

STOP REFERRING PERSONAL INJURY CASES ON A HANDSHAKE

Lawyers all over Florida are glad they refer us cases because:

1. They receive a written agreement to sign (as required by the Florida Bar), confirming their 25% referral fee
2. They receive regular notifications of how the case is going, including a copy of our demand letter
3. They get to review and sign our settlement statement, proving how much the case settled for

Do you currently receive this level of service? You should.

If you would like to establish a professional referral relationship with our firm, contact Tom Copeland at 561-697-4440, or email him at TCopeland@800GOLDLAW.com.



LAW OFFICES OF

CRAIG GOLDENFARB, P.A.

PERSONAL INJURY · WRONGFUL DEATH · NURSING HOME ABUSE

SERVING ALL OF FLORIDA

Main Office in West Palm Beach

1-800-GOLD-LAW

800GOLDLAW.COM

*** Ad Rates ***

CLASSIFIED ADVERTISING RATES: TO PLACE AN AD: 1) Please E-mail all ads to: mjohnson@palmbeachbar.org 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 e-mailing: mjohnson@palmbeachbar.org. 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.

PROFESSIONAL ANNOUNCEMENTS:

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

GREGORY TENDRICH, Esq.:

"AV Preeminent" rated, FINRA Arbitrator and Mediator, Certified County Court Mediator and former Series 7 licensed VP & Asst. General Counsel to national and regional stock brokerage firms. All securities & investment related matters involving the recovery of losses due to stock broker fraud, misrepresentation, churning and unsuitable recommendations, in addition to representation of advisors in SEC, FINRA, regulatory enforcement, contract and employment matters. (561) 417-8777 or visit www.yourstocklawyer.com

GREY TESH: "Law is not black or white, it's Grey." Passionate, caring, truthful, prepared. Soul (sic) practitioner. Criminal Defense (Board Certified in Criminal Trial) and Personal Injury. Over 100 jury & non-jury trials to verdict. Federal & State | 515 N. Flagler Drive | greytesh.com (561) 686-6886

MISCELLANEOUS

The Palm Beach County Christian Legal Society will hold a luncheon on Thursday, May 25, at 12 PM at Don Ramon's restaurant, 7101 S. Dixie Highway, West Palm Beach, FL 33405. Questions, please call 561-793-3703

OFFICE SPACE

Professional office space available immediately in a Class A Building in the heart of Wellington. Office space is within a well-established legal setting and is available with or without administrative space. Space includes access to two conference rooms and reception area. Contact Taryn-561-753-5996.

EMPLOYMENT

Skilled Legal Secretary/Paralegal: AV rated RE Law Firm seeking tenacious, accomplished, high energy professional possessing talent in resolving competing priorities, motivated and inherently an innovative problem solver will undoubtedly succeed. Experience in Real Estate Sales, Residential/Commercial Landlord-Tenant is a plus. Competitive salary based on experience and great benefits. Please e-mail resumes to: dsetaro@barfieldpa.com

Partnership opportunity. Established full-service New York law firm invites self-sufficient lawyers and small firms with portable business to discuss partnership opportunities in its CityPlace, West Palm Beach office. Attorneys will also have use of firm's Manhattan and regional offices. Please respond in confidence to bkoch@mclaughlinstern.com

HEARSAY

Guy Quattlebaum, a litigation partner at Akerman LLP in West Palm Beach, has been appointed by the Palm Beach County Sports Commission as chairman of its newly established scholarship program for local athletes attending universities in the Fall.



West Palm Beach attorney **Michelle Suskauer** has been chosen as president-elect designate of The Florida Bar. Suskauer will be sworn in as president-elect at the Bar's annual convention in Orlando on June 23.

15th Annual Jurist of the Year

Presented by the North County Section

Thursday, May 18, 2017

5:30 p.m. to 8:00 p.m.

Ruth's Chris Steak House, 661 U.S. 1

North Palm Beach

Cost: NCS Members \$65.00 - Judges Complimentary

PBCBA Members and Spouses \$75.00

RSVP online @ www.palmbeachbar.org

Sponsored By:



KLETT, MESCHES & JOHNSON, P.L.





PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

1507 Belvedere Road, West Palm Beach, FL 33406

PRESORT STD
US POSTAGE
PAID
WEST PALM BCH FL
PERMIT NO. 66

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 RICO

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
ADAM T. RABIN
JILL G. WEISS
THEODORE S. KYPREOS
J. GRIER PRESSLY III

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

CALENDAR May 2017

Monday, May 1 – 5
Law Week

Monday, May 1, 10:30am – 12pm
**New Attorney
Induction Ceremony**
4th DCA

Tuesday, May 2, 12pm – 1pm
**Transaction Law
Committee Meeting**
Becker & Poliakoff PA

Tuesday, May 2, 5:30pm – 7pm
Judicial Reception
Harriet Theater at City Place

Wednesday, May 3, 5:30pm – 6pm
**South County Bar Association
Board Meeting**
Boca Raton

Thursday – Saturday, May 4-6
**Young Lawyers Division Board
of Governors Meeting**
Hammock Beach –
Palm Coast, FL

Friday, May 5, 8:30am – 9:30am
ADR Committee Meeting
TBA

Friday, May 5, 12pm – 1pm
**Federal Bar Association
Luncheon**

The Colony Hotel
Monday, May 8, 8am – 8:30am
Small Claims
Glades Road Branch Library

Tuesday, May 9, 12pm – 1pm
YLS Board Meeting
515 N. Flagler Drive
Conference Room

Wednesday, May 10
7:45am – 8:15am
UMC Coffee with the Judges
North End Cafeteria

Thursday, May 11, 5:30pm – 7pm
**YLS Happy Hour Fishing
Tournament Kick Off Party**
Yacht Club

Friday, May 12
Federal Bench and Bar
Hollywood

Friday, May 12, 4pm – 4:30pm
Judge Ferrara Robing
Courthouse

Tuesday, May 16, 12pm – 1pm
CDI Meeting
Courthouse Law Library

Tuesday, May 16, 12pm – 1pm
NCS Board Meeting
Duffy's NPB

Wednesday, May 17, 11:30am – 1pm
Solo Luncheon
TBA

Wednesday, May 17, 12pm – 1pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room

Thursday, May 18, 12pm – 1:30pm
**Unified Family Practice
Committee Meeting**
Judicial Conference Room

Thursday, May 18, 5:30pm – 8pm
Jurist of the Year
Ruth's Chris NPB

Friday, May 19
Real Estate Seminar
4th DCA

Tuesday, May 23, 11:30am – 1:30pm
NCS CLE Luncheon
PBA Marriott

Tuesday, May 23, 5:30pm – 7pm
Legal Aid Board Meeting
Legal Aid Offices

Tuesday, May 23, 12pm – 1pm
Law Related Education Meeting
TBA

Wednesday, May 24, 11:45am – 1pm
FAWL Membership Luncheon
Kravis Center, Cohen Pavilion

Wednesday, May 24, 5pm – 6:30pm
Board Meeting
515 N. Flagler Dr. 10th Floor

Wednesday – Friday, May 24-26
Board of Governors Meeting
The Westin Key West Resort &
Marina, Key West FL

Thursday, May 25
Employment Law Seminar
4th DCA

Friday, May 26, 12pm – 1pm
Circuit Civil Committee
Judicial Conference Room

Wednesday, May 31
11:30am – 4pm
CDI Summit
Marriott WPB

Wednesday, May 31, 1pm – 2:30pm
Landlord / Tenant
West Boynton Branch