



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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Newly robed Judge Luis Delgado is no stranger to the courtroom



Before his recent election onto the bench, Judge Delgado practiced in front of the county and civil benches of Palm Beach County, first as a State Attorney and then in the private sector, where he practiced in both the civil and criminal divisions. Throughout his career as an attorney, Judge Delgado has exhibited an ability to zealously advocate for his clients while cultivating professionalism amongst his fellow attorneys and maintaining respect for the judiciary.

Judge Luis Delgado was born in Lima, Peru. Around the age of five and in the midst of violent political turmoil, his Father, Luis, Sr. and his mother, Elsa, made a courageous decision to leave the comforts and luxuries of their home in Lima and relocate the family to West Palm Beach, Florida. When discussing the influence his parents have had on his life, Judge Delgado cannot help but become visibly emotional as he discussed the incalculable sacrifices his parents made to assure his and his siblings safety. He harbors deep appreciation and profound gratitude for all of his parents' hard work in providing for their family in a new city, where, initially, neither parent spoke the language. He is beyond thankful for the strong principles that were instilled in him and he considers his parents as his "moral compass". He often finds himself pondering, when faced with ethical dilemmas, "what would my parents do?"

Story Continued on Page 17

First You've Been Served "YBS" Award Recipient



Stan Klett, Jr. with his father Stan Klett, Sr.

For many years, Stan (left) along with his dad who has since passed away; repaired hundreds of old bicycles for underprivileged children. Read more about Stan's community service on page 17

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The Bulletin

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

Mark Your Calendar

October 3:
Membership Luncheon
Guess Speaker: Michael Higer

October 12:
NCS Happy Hour

October 18:
YLS | Diversity Luncheon

October 19:
YLS Happy Hour

October 20:
Solo/Small Firm Luncheon

November 11: Office Closed
Veteran's Day

November 14:
UMC Coffee w/ the Judges

November 7:
NCS Happy Hour

November 23-24: Office Closed
Thanksgiving

December 7: Save the Date
Holiday Party Kravis Center

Circuit Civil Divisions and AW

Over the next couple of months, Division AW cases (foreclosure) will be redistributed to the Circuit Civil divisions and AW will no longer exist. Additionally, effective October 1, 2017, the Chief Judge has directed the creation of a twelfth Circuit Civil division, division "AK." The Judge of that division is to be determined. Please continue to monitor the Fifteenth Judicial Circuit website for more information.

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PRESIDENT'S Message

Unity in Diversity



Rosalyn Sia Baker-Barnes
2017-18 PBCBA President

"There is diversity in unity, not a uniformity. The parts do not look alike, they do not function alike, yet, they are all important, needed, interdependent, and all work toward the same end." Author unknown

When I was in elementary school, I had my first exposure to racism, but I didn't understand it at the time. I was the only black child in my class, but I had loving teachers and my school environment was one where I didn't have to worry about being different, we embraced our differences. That was until everything changed. A student came to class one day and invited everyone in the class to a birthday party, everyone except me. When I came home and told my parents, they were furious, they knew the reason, even if I didn't. But it's not the negative in this situation I remember so much, it's the positive. While my mother was in the Principal's office (the same day!) expressing her anger at this situation, another parent overheard and realized that her child, who was also in the class, had received the invitation. She immediately came over to my Mom and said, "If Sia can't go to the party, my child will not go either." Word spread and soon, all of the parents rallied behind my mother in UNITY. Instead of removing me from that environment and further dividing us, my parents, together with the other parents in the class, embraced unity. They demonstrated how we can change perceptions and treatment by learning from each other, both from our differences, and how in so many ways, we are similar. My understanding of the concept of unity in diversity began with this experience.

According to the most recent census data, minorities currently represent nearly 1/3 of the U.S. population, and are expected to become the majority by 2042. There are increasing numbers of dual-income families, as well as single working mothers, who represent a significant portion of the workforce. Generationally, Americans are living longer and retiring later, which could result in up to four generations working side-by-side at one time. This is especially true in the legal field, where lawyers tend to retire much later than others in the workforce. When one considers other factors that make us diverse such as language, culture and religion, it is easy to see the benefits of having a diverse law firm.

There are a number of benefits of diversity in law firms and legal practices. One example is increased productivity from diverse lawyers working together toward a common goal, utilizing their unique skill sets and ability to communicate to diverse audiences. Diverse law firms have a unique ability to attract and retain talent by fostering an inclusive environment. Lawyers that feel included, like they belong and are part of the team tend to stay longer and enjoy their practice environment. Finally, diverse law firms can improve client satisfaction by having diverse lawyers and staff. We represent clients from all walks of life, many of whom have cultures, traditions, and practices that may be different from ours. Most law firms now have multi-lingual staff members because of the need to communicate in a multi-lingual world. We recognize that our clients are most comfortable when they can effectively communicate with us, and we are better advocates when we can effectively communicate our clients' stories.

I encourage you to promote Unity in our practice and in our communities by embracing diversity. Join us in our efforts by attending and engaging with our Committee for Diversity and Inclusion (CDI). If you are looking for a new lawyer, consider advertising your position with our Diversity Placement Database, designed to connect local law firms with candidates from all backgrounds. This fall we are accepting applications for our Diversity Internship Program, designed to benefit both law firms and law students with opportunities to work at local law firms and agencies during the summer months. Several of our interns have now graduated from law school and are practicing here in Palm Beach County. Finally, consider joining the CDI as a committee member. There you will have the opportunity to meet lawyers from a variety of backgrounds and practice areas, and help us develop new ways to meet these challenges. To learn more about our efforts, visit www.palmbeachbar.org/diversity.

I hope you all will attend our Diversity Luncheon on October 18, 2017, which will be a candid discussion of where we stand in Palm Beach County, and how, we through unity, can embrace all facets of diversity in our legal community.

A handwritten signature in blue ink that reads "Sia Barnes".

EXECUTIVE Director Message



CARLA THARP BROWN

One Year and Counting

Wow! It's been one year since I received a call from our Immediate Past President, John Whittles with an offer to become the third Executive Director of the Palm Beach County Bar Association, after long time Executive Director, Patience Burns retired. So much has happened in a short period of time. I've attended over one hundred meetings and events, to include my first bar prom, where our first African American Female President, Rosalyn Sia Baker-Barnes was sworn in. I've experienced two hurricanes, Mathew and Irma and the most significant event, the horrific burning of our bar building. What a humbling and challenging beginning? However, with all of these taxing occurrences, I'm proud to be among some of the most caring and resilient people. The day of the bar building fire, the Board of Directors and the Staff reacted quickly to the immediate needs of our members. This permitted all scheduled events, meetings and CLE Seminars to continue without interruption. Recently, I learned our response was so rapid, that the devastation of the situation was almost masked to our members and many did not realize the seriousness of the situation until weeks later. As I reminisce, I also must begin to anticipate a year of great expectations with the following goals in mind; keeping the traditions of our historical achievements without losing site of meeting the future needs of our members as the legal landscape continues to evolve. I challenge you to stay involved and continue to serve one another and our community in this new year!

BOARD Meeting Attendance

2017-2018

	JULY	AUGUST
BARNES	X	X
CALLOW	X	X
HUBER	X	X
LEWIS	X	X
MASON	X	
McELROY		X
REAGAN		X
SMITH, G.	X	X
SMITH, S.	PHONE	
WHITTLES	X	X
WYDA	X	X
XENICK		X

NEW MEMBERS

OCTOBER 2017

James R. Ackley:
University of Miami, 1982;
Solo Practitioner, West
Palm Beach.

Guerly Adonia: Law
Student Membership, Lake
Worth.

Sarina M. Alba: Law
Student Membership,
Wellington.

Nicholas Bangos: Samford
University, 1989; Solo
Practitioner, Palm Beach
Gardens.

Nicholas R. Bixler: Nova
Southeastern University,
2016; Associate in Cole,
Scott & Kissane, West Palm
Beach.

Patricia Chronicle: Florida
International University,
2013; Associate in Nason
Yeager Gerson White &
Lioce, P.A., Palm Beach
Gardens.

Alexandra De La Flor:
Notre Dame University,
2015; Office of the Attorney
General, West Palm Beach.

Michael P. De Simone:
New York University, 1988;
Associate in Lock Lord,
LLP, West Palm Beach.

Cornelia Dean:
Northeastern University,
2016; Integrated
Dermatology Group, Boca
Raton.

Elizabeth M. Galbavy:
Stetson University, 2009;
Associate in Scott, Wagner
and Associates, P.A.,
Jupiter.

Neal L. Canon: Indiana
University, 1983; Partner in
Canon & Hessen, P.A., West
Palm Beach.

Mark W. Haranzo: Stetson
University, 1985; Associate
in Holland & Knight, West
Palm Beach.

John C. Hopkins: Law
Student Membership, West
Palm Beach.

Matthew D. Kobren:
University of Florida,
2001; Partner in Glotzer &
Kobren, P.A., Boca Raton.

Gordon Koegler: Thomas
Cooley Law School, 1992;
Solo Practitioner, Ft.
Lauderdale.

Shawn G. McCloskey: Nova
Southeastern University,
2014; Associate Adelman
& Adelman, P.A., Coral
Springs.

William Braedyn Pruitt:
Stetson University, 2014;
Associate in Pruitt &
Pruitt, P.A., West Palm
Beach.

Pauline E. Robinson:
Florida A&M University,
2010; Florida Rural Legal,
Ft. Lauderdale.

V. Danielle Williams:
Florida International
University, 2009; Office of
the Public Defender, West
Palm Beach.

Alana Brean Weatherstone:
Florida State University,
2013; Associate in Gordon
& Doner, Palm Beach
Gardens.

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december	october 25

***If the deadline date falls on a
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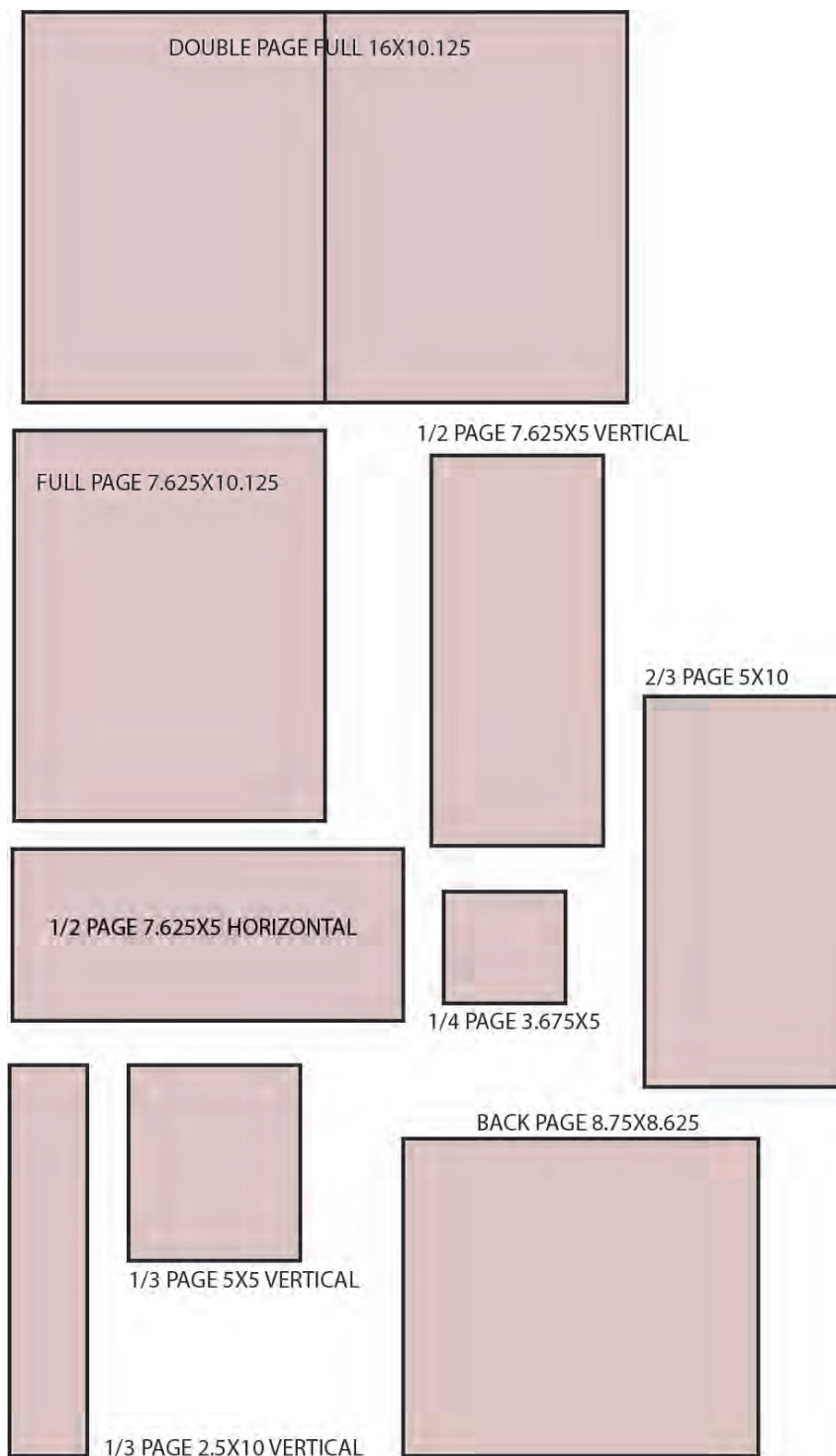
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THEODORE A. DECKERT

October is Conflict Resolution Month: A Reminder “It’s Us or Them” is Not the Only Alternative

2017 has presented very dramatic examples of different ways to approach the challenges of conflict in our lives and our societies, be they personal, religious, societal, local, national or international. We are in the midst of a time in our history where the need to be heard and respected, individually or as part of the group with which we identify as “us” has risen to the point that “fighting for us” is viewed by many as a better way for “us to be heard” than dialogue with those we see as “them.” October is recognized by various groups around the world as Conflict Resolution Month to promote and celebrate peaceful conflict resolution practices worldwide and it is a good reminder that the “it’s us or them”, “winner or loser” perspectives are not the most effective way to achieve the best long term outcome for all concerned.

Diplomacy and negotiation have long been recognized as better than force as the way to resolve political and other national and international disputes. Various forms of “Alternative Dispute Resolution” (ADR) have been incorporated into many treaties and other agreements. As most lawyers are aware, ADR, and in particular mediation, has become more and more common in the legal world over the last few decades. Whether by contract, statute or rule, it is often the first resolution process parties with a dispute must utilize before they can “go to court.” As such, it has grown from the “alternative” into the primary process for resolving many types of personal, business or other disputes and it continues to be recognized and implemented more and more for all manner of disputes.

The Association for Conflict Resolution, commonly known as ACR, established the third Thursday in October as “Conflict Resolution Day” in 2005. I have been a member of ACR for many years and as described on its website, “www.acrnet.org”, ACR is a national professional

association for mediators, arbitrators, educators and other conflict resolution practitioners. ACR was formed in 2001 when several professional dispute resolution organizations merged. ACR works in a wide range of settings throughout the United States and around the world enhancing the practice and public understanding of conflict resolution.

Conflict Resolution Day this year is October 19. Per the ACR website, Conflict Resolution Day was conceived by ACR to:

- Promote awareness of mediation, arbitration, conciliation and other creative, peaceful means of resolving conflict;
- Promote the use of conflict resolution in schools, families, businesses, communities, governments and the legal system;
- Recognize the significant contributions of (peaceful) conflict resolvers; and
- Obtain national synergy by having celebrations happen across the country and around the world on the same day.

Additional information about the ACR Conflict Resolution Day programs and activities can be found by clicking on the “Education” Tab at the ACR website mentioned previously.

In addition to ACR’s Conflict Resolution Day, In 2011 the American Bar Association declared the third week of October “ABA Mediation Week” building on the efforts of ACR and many other national, state, and local organizations which have traditionally celebrated conflict resolution during the month of October. ABA Mediation Week this year is October 15-21. The theme for ABA Mediation Week this year is “Mediation, Civility, and the Power of Understanding.” Per the ABA website, “The ABA Mediation Week initiative is a celebration of the strides we have made in institutionalizing mediation as one of several appropriate dispute resolution processes.” Information and resources for programs and

activities can be found at the ABA Mediation Week website:

“https://www.americanbar.org/groups/dispute_resolution/events_cle/mediation_week.html”

Several states recognize October as Conflict Resolution Month each year. While Florida has not yet done so, Florida has celebrated Mediation Week. For several years the Governor has issued a proclamation recognizing Mediation Week in Florida. As of the time this article is being written The Florida Dispute Resolution Center has requested Governor Scott issue a proclamation declaring Mediation Week in the State of Florida which hopefully will have been issued by the time this article is published. Locally, City of West Palm Beach, Palm Beach County Commission and Palm Beach County School Board will be issuing Mediation Week proclamations. Thank you to West Palm Beach Mayor Jeri Muoio and Palm Beach County Mayor Paula Burdick, and School Superintendent Dr. Robert Avossa for sponsoring these proclamations.

Our ADR Committee of the Palm Beach County Bar Association has over the years also organized various community activities to promote mediation during Mediation Week. This year there is an essay contest for public middle and high school students to write about this year’s ABA mediation week theme. As in past years, the committee offers speakers to civic, business and other organizations as part of its goal to promote ADR and inform our local community about ADR. Anyone who knows a group that would like someone to speak about ADR should email me at “ted@matrixmediation.com”. For articles and many other resources about mediation and ADR, please go to the ADR Committee webpage at <http://www.palmbeachbar.org/adr>.

* Theodore A. Deckert, Esq. is a Past Chair of the Palm Beach County Bar Association ADR Committee and a Past President of The Florida Academy of Professional Mediators. He has been a full time Mediator and Third Party Neutral affiliated with Matrix Mediation LLC since 2008. He has been a Florida Supreme Court Certified Circuit Civil & Family Mediator since 2000 and prior to becoming a full time mediator, he was a civil trial attorney since 1976 and a Florida Bar Board Certified Civil Trial Lawyer for 25 years. He has helped thousands of people resolve virtually every type of civil dispute.

The Elder Affairs Committee of the
Palm Beach County Bar Association Presents

20th Annual Elder Law Seminar

Thursday, November 9, 2017; 8:00 AM - 4:00 PM
Fourth District Court of Appeal, 1525 Palm Beach Lakes Blvd., WPB

8:00 a.m. – 8:20 a.m. **Late Registration and Check-In**

8:20 a.m. – 8:30 a.m. **Welcome & Opening Remarks** – Heather Boyer Samuels, Esq.,
Solkoff Legal, P.A., and Tequisha Y. Myles, Esq., Legal Aid Society of Palm Beach
County, Co-Chairs, PBCBA Elder Law Affairs Committee

8:30 a.m. – 9:20 a.m. **Changes in the Medicaid Home Care, Waiver, and Wait List Prioritization** -
Kim Clawson, Area Agency on Aging

9:20 a.m. – 10:10 a.m. **VA Aid and Attendance: Putting together a Fully Developed Claim** -
Greg Glenn, Esq., Gregory Glenn, P.A.

10:10 a.m. – 10:20 a.m. **Break**

10:20 a.m. – 11:10 a.m. **Tax Law and Ethics Update** - Michael A. Lampert, Esq., Florida Bar Board
Certified in Tax Law; Michael A. Lampert, P.A.

11:10 a.m. – 12:00 p.m. **Elder Mediation** - Dr. Elinor Robin and Susan Dubow

12:00 p.m. – 1:00 p.m. **Lunch**

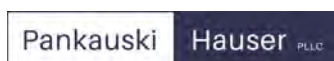
1:00 p.m. – 1:50 p.m. **Legislative & Case Law Update** - Allison Sabocik, Esq., Pankauski-Hauser PLLC

1:50 p.m. – 2:00 p.m. **Break**

2:00 p.m. – 2:50 p.m. **Effectively using Technology in your Elder Law Practice** -
Daniel A. Turner, Esq., Turner Elder Law, P.L.

2:50 p.m. – 4:10 p.m. **Elder Law Litigation Panel**: Brett Barner, Esq., Barner & Barner, P.A.,
David R. Schwartz, Florida Bar Board Certified in Elder Law,
David R. Schwartz, P.A., and Jami L. Huber, Esq., Jami L. Huber, P.A.

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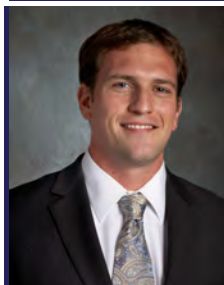


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____ I will not be able to attend the seminar. IF AVAILABLE, I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow 1 week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 11/9/17 Elder Law seminar



JASON S. RIGOLI

2017 Rules of Bankruptcy Procedure Amendments

Beginning December 1, 2017, several new rules of procedure go into effect and may substantially effect the rights of creditors. The underlying principle: “just, speedy, and inexpensive” proceedings. Bankruptcy Rules 1001, 1006, 1015, 2002, 3002, 3007, 3012, 3015, 4003, 5009, 7001, and 9009 are being amended and a new rule is implemented 3015.1.

I. Filing Proofs of Claim Is Drastically Changing

Rule 3002 has been amended in four significant ways: (i) secured creditors must file proofs of claim to have an allowed claim; (ii) the bar date for filing non-governmental proofs of claim is shortened; (iii) the exception to the bar date for insufficient notice is expanded; and (iv) a two-stage deadline has been created for mortgage proofs of claim secured by the debtor’s principal residence.

a. Secured Creditors MUST File Proofs of Claim

Rule 3002(a) is amended to clarify two points generally established through case law: (i) that secured creditors must file a proof of claim in order to have an allowed claim in a case and subject to treatment under a plan; and (ii) that failure of secured creditor to file a claim does not render the lien void nor “effect any change of law with respect to claims subject to setoff under § 553.” See Fed. R. Bankr. P. 3002, Advisory Committee Notes 2017 Amendments.

b. Claims Bar Date is Shorter and Runs from Date of Order for Relief

Rule 3002(c) is amended to reduce the claims bar date in voluntary Chapter 7, 12, and 13 bankruptcy cases from 90-days to 70-days. And, the 70-days begins to run from the date of the entry of the order of relief or date of conversion to a case under chapter 12 or chapter 13, instead of the first date set for the § 341 meeting of creditors. In an involuntary chapter 7 case the deadline to file a proof of claim is 90-days from the date of the entry of the order of relief.

c. Mortgagees of Principal Residence Have Two-Stage Filing Date

Mortgagees have a two-stage deadline for filing mortgage proof of claim secured by an interest in the debtor’s principal residence. “Th[e] proofs of claim must filed with the appropriate Official Form Mortgage attachment within 70-days of the order for relief.” See Fed. R. Bankr. P. 3002, Advisory Committee Notes 2017 Amendments. The additional documents evidencing the claim, required under Rule 3001(c)(1) and (d), must be filed within 120-days of the order for relief.

II. Objections to Claims

Rule 3007(a) is amended to clarify that Fed. R. Bankr. P. 7004 does not apply to most claim objections. “Instead, a claimant must be served by first-class mail addressed to the person whom the claimant most recently designated on its proof of claim to receive notices, at the address so indicated.” See Fed. R. Bankr. P. 3007, Advisory Committee Notes 2017 Amendments. If, however, the claimant is the United States, an officer or agency of the United States, or an insured depository institution, service must also be made according to the method prescribed by the appropriate provision of Rule 7004.” Id.

Furthermore, subdivision (a) no longer requires a hearing on every objection. The rule requires the objecting party to provide notice and an opportunity for a hearing, and permits local practices requiring the claimant to timely file a response to obtain a hearing.

III. Chapter 12 and Chapter 13 Plans

Rule 3015 is amended and reorganized. Subsection (c) is amended to require the use of an Official Form unless a Local form is adopted pursuant to the new Rule 3015.1. Subsection (g) is amended to set out two effects of confirmation:

(i) the amount of a secured claim under § 506(a) may be determined through a plan in accordance with Rule 3012, without the need for a claim objection, and controls over a contrary proof of claim and over the scheduled amount submitted by the debtor; and (ii) can term terminate the automatic stay.

IV. Filing Fees can be paid in installments

Rule 1006 is amended to allow debtors to pay filing fees in installments. No portion of the fee is required to be paid at filing, but the petition must be accompanied by the Official Form stating that the debtor cannot pay the fee except in installments.

As stated above, there are several other amendments to the Bankruptcy Rules for practitioners to be aware of beginning December 1, 2017.

Subject to any legislative action being taken by Congress prior to December 1, 2017.

*This article submitted by Jason S. Rigoli, Esq., Furr Cohen, 2255 Glades Road, Suite 337W, Boca Raton, FL 33431, jrigoli@furrcohen.com.





VIEW OF BANKRUPTCY PRACTICE:

The interaction between bankruptcy and state court practice

Wisdom from the bankruptcy world for paralegals, non-bankruptcy practitioners, experienced and new Bankruptcy Practitioners

Friday, December 8, 2017, 12:00 p.m. - 6:00 p.m.

Fourth District Court of Appeals, 1525 Palm Beach Lakes Blvd, W. Palm Beach, FL

12:00 p.m. - 12:25 p.m. **Lunch / Check In / Registration**

12:25 p.m. - 12:30 p.m. **Welcome and Opening Remarks**, Nadine V. White-Boyd, Esq.,
Bankruptcy CLE Committee Chairperson

12:30 p.m. - 1:30 p.m. **Technology Compliance in Bankruptcy and other Courts** - Cameron
Cradic and Sean Kilmartin

1:30 p.m. - 2:30 p.m. **Exceptions to Discharge – 11 USC 523(a)(4)** – Malinda Hayes, Esq.
Exceptions to Discharge - 11 USC 523(a)(6) - Eric Rosen, Esq.

2:30 p.m. - 2:45 p.m. **Break**

2:45 p.m. - 4:00 p.m. **Ethics and Professionalism – “Stop Dabbling in Bankruptcy:
What Every Lawyer and Paralegal Need to Know”** - US Trustee Heidi
Feinman, Chapter 7 Trustees Michael Bakst, Esq. and Deborah
Menotte. Moderated by Julianne R. Frank, Esq.

4:00 p.m. - 5:00 p.m. **One on One with Hon. Judge Paul G. Hyman** - David Carter, Esq.

5:00 pm. - 6:00 p.m. **Reception**

Sponsors



Expected credit: 5.0, plus 1.0 Ethics Cost: \$165 members; \$205 non-members. Those registering after 12/1/17 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

Name: _____ Email address: _____

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_____ I will not be able to attend the seminar. IF AVAILABLE, I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow 1 week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 12/8/17 Bankruptcy seminar

APPELLATE ADVOCATE OF THE YEAR

PBCBA Outstanding Appellate Advocacy Seminar Contest for Appellate Advocate of the Year **Deadline for Submissions October 31, 2017**

The appellate practice committee of the PBCBA will be presenting a CLE on Outstanding Appellate Advocacy. As part of the CLE, the PBCBA is hosting a contest for Outstanding Appellate Advocate of the Year. Appellate attorneys are invited to submit briefs which will be reviewed by three retired Fourth DCA judges. The judges will select three briefs which will be discussed during the Seminar, tentatively scheduled for February 2, 2018. The judges may select one winner who will receive the PBCBA Outstanding Appellate Advocate of the Year Award. The winner will be announced at the Seminar. Please see below rules regarding submissions:

Submission Rules

- °Must be a member of PBCBA;
- °One brief per attorney;
- °Brief must be from a case decided by the Florida Supreme Court, any DCA, or the 15th Circuit appellate division;
- °Opinion must have been issued between January 1, 2015 – December 31, 2016;
- °Submitter should submit a copy of the Brief or Answer Brief, as well as the Opinion;
- °The author's name should be redacted from the Brief/Answer Brief;
- °Submitter should fill out a submission form located on the Appellate Practice Committee section of the PBCBA website;
- °Submissions, as well as the submission form, should be emailed to appellatecontest@palmbeachbar.org. Any questions regarding the contest may be sent to appellatecontest@palmbeachbar.org, as well.

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How to Market an Appellate Practice

The Appellate Practice Committee of the PBCBA will present, "How to Market an Appellate Practice", on Monday, November 13, 2017 from 11:30 a.m. - 1:00 p.m., at the Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard in West Palm Beach. The expected credit is 1.0 CLER. The cost is \$35 for members and \$75 for non-members. Registration is currently available at www.palmbeachbar.org. You may also register by mail by sending your registration to P.O. Box 17726, West Palm Beach, FL 33416. Look for further updates on the Bar's web-site and the November Bar Bulletin for more details.



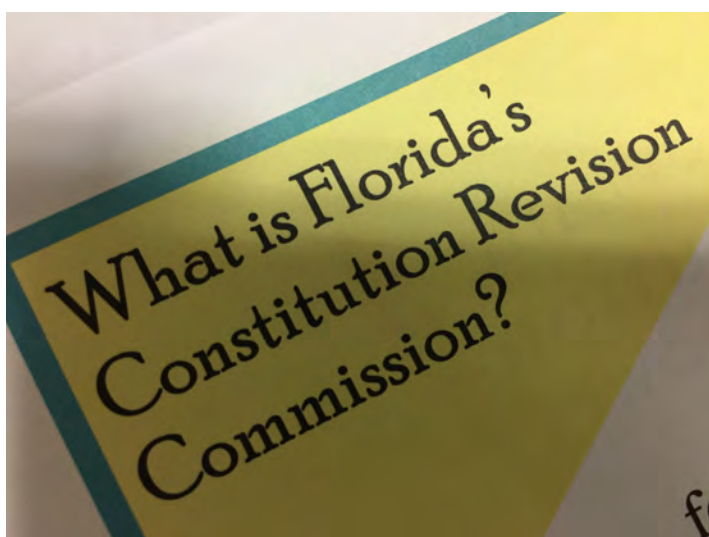
LAW RELATED EDUCATION BENCHMARK Training

What is the Rule of Law? Could you Pass the Test?

BENCHMARKS: RAISING THE BAR ON CIVICS EDUCATION

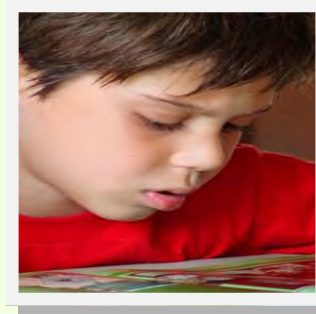
Law Related Education Chair Andrew Kwan (left) and PBCBA President-Elect Greg Huber (right) welcomed Annette Boyd Pitts, executive director of the Florida Law Related Education Association. Annette, who is recognized nationally for her civics education programs, was recently in town teaching Benchmarks to our members.

Another group of members are trained and ready to speak to businesses, community groups and organizations about civics education. Presentations are interactive and fun! Interested in a speaker? Contact Law Related Education Chair Andrew Kwan at kwan@beasleylaw.net



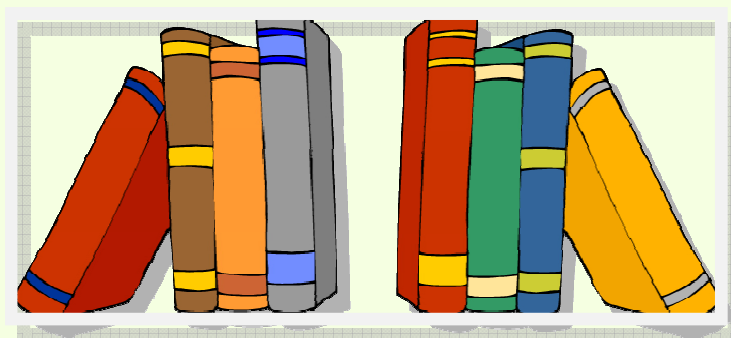
Andrew Kwan, Annette Boyd-Pitts, Greg Huber





FIFTH ANNUAL THANKSGIVING TEDDY BEAR & BOOK DRIVE

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DENISE MUTAMBA



JEAN MARIE MIDDLETON

2017 DIVERSITY LUNCHEON A Candid Discussion

SAVE THE DATE!

Have We Embraced All Facets of Diversity in the Legal Community?

On Wednesday, **October 18, 2017**, the Palm Beach County Bar Association's Young Lawyer's Section and Committee for Diversity and Inclusion collaborate to present a Diversity Luncheon.

This year's luncheon draws attention to a number of largely overlooked categories of exclusions with regard to protected classes of individuals. The event offers provocative and informative discussions on current trends that continue to evolve and expand the definition of diversity within the LGBTQ legal community.

Topics include employment discrimination, healthcare coverage exclusions, fair housing, Religious Freedom Restoration Act and public accommodations for gender identity.

Notable Palm Beach County panelists will lend their expertise and personal experiences in explaining recent case law and examining how it directly impacts attorneys, their practice areas and client rights.

For more information, contact
Denise Mutamba at dmutamba@legalaidpbc.org or
Carla Tharp-Brown at ctbrown@palmbeachbar.org.

*Jean Marie Middleton, Esq. and Dean Xenick, Esq.
Co-Chairs, Committee for Diversity and Inclusion*

*Denise Mutamba, Esq. and Andrea Lewis, Esq.
Co-Chairs, Young Lawyers Section Diversity Luncheon*

JUDICIAL Profile Corner

MISTY T. CHAVES | JAMES P. PAGNI

Newly robed Judge Luis Delgado is no stranger to the courtroom (cont.)

Judge Delgado spent his formative years in West Palm Beach, graduated high school and made the decision to serve his Country by enlisting in the United States Marine Corps. Unfortunately, his enlistment was delayed due to a shoulder injury he sustained playing high school football. While waiting for the injury to heal, he matriculated to the University of Florida where he earned dual degrees – a Bachelors of Science in Journalism and a Bachelors of Art in Political Science, both bestowed in 2004. While studying at UF, he re-executed his contract with the United States Marine Corp first as a reservist, later completing three years of active duty.

Following graduation, Judge Delgado was accepted into the University of Florida College of Law and commenced classes in the Fall, 2004. However, his law career was interrupted by a call from his Country. After only completing a couple weeks of law school, Judge Delgado was summoned to active duty. He was deployed and spent a year overseas, serving his Country. In recognition of his courageous actions and his dedication to duty, Judge Delgado was awarded a “combat distinguishing device” by the United States Armed Forces. A “combat distinguishing device” is a tremendous honor—it is a bronze capital “V”, denoting an award for heroism and valor in combat.

Upon returning from his tour of duty, Judge Delgado resumed his legal studies in the fall of 2005, earning his Juris Doctorate in 2008. He was Honorably Discharged from the United States Marine Corp. in 2007.

After law school, Judge Delgado returned to his home in Palm Beach County and, continuing his public service, took a position with the state attorney’s office as a prosecutor where he remained for the next four (4) years. In 2012, he tendered his resignation for personal, family reasons and took a position in the private sector with the well-respected firm of Lesser, Lesser, Landy and Smith.

While pursuing his law career, Judge Delgado dedicated time to serve as President of the Hispanic Bar Association and the Palm Beach County Bar, Young Lawyers Section. In addition, he sat on the Board of Governors Young Lawyers Division for the Florida Bar. Ultimately, Judge Delgado opened his own firm, Delgado Law, and practiced criminal

defense until his life-changing decision to run for a judicial seat.

As Judge Delgado would agree, sometimes life has ways of steering you down certain paths. During his first years practicing in front of the bench, he acquired a respect and admiration for those sitting on the bench that would ultimately lead him to run for a judicial seat. He admired the judges in front of whom he was practicing as they were even-tempered, knowledgeable, and fair handed while they issued rulings that affected a person’s life and liberty. As a firm believer that, in life, “you don’t get anything that you don’t ask for”, when Judge Delgado heard of a seat soon to be vacated by a retiring judge, he immediately announced his intent to run for the judicial position. Judge Delgado was elected by the citizens of Palm Beach County to the Circuit Court on November 8, 2016.

Adriana Gonzalez considers herself not only a colleague of Judge Delgado’s (having served on the Hispanic Bar Association Board of Directors with him for many years), but also a friend. She describes Judge Delgado as a caring, hard-working, honest man with the utmost integrity. “He cares deeply for the community that he serves and always strives to do the right thing.” She continues, expressing what a positive role model he is and perhaps paying the highest of compliments: “if my two young sons grow up to be like Lou Delgado, I would be the proudest mother.”

Judge Delgado currently sits in Juvenile Division, “JS” at the South County Courthouse, handling Juvenile, Dependency and Uniform Family cases. He demands civility in his division, noting that “ideas” may be fair game for “attack”, but fellow members of the Bar and those persons who find themselves involved in the legal system, are not. He finds his most daunting challenges and his greatest rewards are often found within the Dependency cases. The children entangled in Dependency cases typically did not ask to be part of the legal system and yet they often have the most to gain through the system. Judge Delgado recognizes the gravity of the decisions he is tasked with making; decisions that can change a child’s life in an instance – and hopefully for the better.

If you have had the pleasure of practicing in front of Judge Delgado, you may have noticed the bookcase in his Courtroom. Judge Delgado believes in the transformational power of reading

by children and to children. As an avid reader himself, he will often stop the ongoing proceedings and take an opportunity to address the child or children in his courtroom: “What is the last book you read?” “Do you read to your little brother or sister?” “If I let you take one of these books home, will you read it and tell me about it next time I see you?” The enormous responsibility to serve as a positive role model and to encourage the children who come before him is not lost on Judge Delgado. He is passionate for the job he performs and compassionate for the public he serves. He wears the robe with honor and humility, thankful that he has been given the privilege to arduously labor for the community he serves.



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YOU'VE BEEN SERVED Corner



JESSICA CALLOW

YBS- Public Awareness of Attorney Volunteerism...

The PBCBA launched an educational campaign called "You've Been Served!" One purpose of the campaign is to encourage volunteerism and reward our members who have had the greatest impact on our community. As such, it is with great honor that the PBCBA recognizes member and Past-President, Stanley "Stan" Klett, Jr., as the first recipient of the You've Been Served! Award.

Stan, a business litigation attorney with the firm Klett, Mesches & Johnson, P.L., provides exemplary service to our community. Many PBCBA members know Stan as the founder of our bar's Holiday Party and silent auction held every December. Kicked off in 1994, the event raises thousands of dollars for abused and neglected children. Stan continues to work tirelessly to gather donations for the silent auction.

With his father, Stan also started a holiday party in 1994 that has provided gifts to thousands of abused and neglected children and young adults in Palm Beach County. The holiday party served over 400 children in 2016 alone.

Additionally, Stan is a past Chairman of the Board of Directors of the Lighthouse for the Blind of the Palm Beaches, Inc., a not-for-profit corporation he served on from 1994-2014. Stan also served on the Board of Directors for the Friends of Abused Children, which is now known as Friends of Foster Children of Palm Beach County, from 2005-2017.

Stan will be recognized for his service at the PBCBA's Membership Luncheon on October 3, 2017. Please join us in commending Stan for his service.



Stan Klett, Jr. at Holiday Party for Friends of Abused Children sponsored in part by NCS



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TED BABBITT

FINAL WORD ON MEDICAL MALPRACTICE CAPS

In *North Broward Hosp. Dist. v. Kalitan*, 219 So. 3d 49 (Fla. 2017) the Court affirmed the decision of the Fourth District Court of Appeals in *North Broward Hosp. Dist. v. Kalitan*, 174 So. 3d 403 (Fla. 4th DCA 2015) which held Fla. Stat. 766.118 unconstitutional. The Fourth District relied upon the Supreme Court opinion in the *Estate of McCall v. United States*, 134 So. 3d 894 (Fla. 2014) in which the Florida Supreme Court held the cap on noneconomic damages in a wrongful death suit provided in § 766.118 violated the Equal Protection Clause of the Florida Constitution, Article 1, Sec. 2. The case involved a botched anesthesia where one of the anesthesia tubes perforated plaintiff's esophagus and went undetected despite severe pain. After a drug induced coma for several weeks, plaintiff was left with serious permanent sequelae. The jury returned a verdict for \$5,000,000.00 including \$2,000,000.00 for past pain and suffering and \$2,000,000.00 for future pain and suffering. These numbers exceeded the cap contained within the above statute. The *McCall* case determined that the cap on wrongful death noneconomic damages in Fla. Stat. 766.118 violated the Equal Protection Clause but the *North Broward* case raised the same question with respect to personal injury cases. In *McCall*, the Supreme Court responded to questions by the United States Court of Appeals for the Eleventh Circuit by holding that the malpractice cap "imposes unfair and illogical burdens on the injured parties" and "does not bear a rational relationship to the stated purpose that the cap is reported to address, the alleged medical malpractice crises in Florida." In holding the caps unconstitutional, the *McCall* Court at 54 stated:

Section 766.118 Florida Statutes, has the effect of saving a modest amount for many by imposing devastating costs on a few – those who are the most grievously injured, those who sustain the greatest damage and loss, and multiple claimants for whom judicially determined noneconomic damages are subject to

division and reduction simply based upon the existence of the cap. Under the Equal Protection Clause of the Florida Constitution, and guided by our decision in *[St. Mary's Hospital, Inc. v. Phillippe]*, 769 So.2d 961 (Fla. 2000), we hold that to reduce damages in this fashion is not only arbitrary, but irrational, and we conclude that it "offends the fundamental notion of equal justice under the law."

Significantly in *North Broward* the Supreme Court cited with approval *McCall*, supra, at 55

The plurality opinion then declared that even if the Legislature's findings were true, "section 766.118 still violates Florida's Equal Protection Clause because the available evidence fails to establish a rational relationship between a cap on noneconomic damages and alleviation of the purported crisis." *Id.* at 909. The opinion observed a lack of evidence establishing a direct correlation between caps and reduced malpractice premiums. Thus, it adopted the reasoning of the Texas Supreme Court, which addressed whether caps on damages would lower insurance premiums, observing: "[i]n the context of persons catastrophically injured by medical negligence, we believe it is unreasonable and arbitrary to limit their recovery in a speculative experiment to determine whether liability insurance rates will decrease." *Id.* at 912 (quoting *Lucas v. United States*, 757 S.W. 2d 687, 691 (Tex. 1988)).

This conclusion is significant because it means that the Florida Legislature cannot repair the defects in the cap statute. While it is highly doubtful that a medical malpractice crises really existed that justified the passage of caps, the Court has held that even if it did the utilization of caps as a means for reducing malpractice premiums is illogical.

The Court held that there was no rational basis to justify continued application of a noneconomic

damage cap in medical malpractice cases. In order to satisfy the rational basis test, the statute had to bear a rational and reasonable relationship to its legitimate objective.

In *North Broward* at 56, the Court found However, we disagree and hold that the caps in section 766.118 violate equal protection under the rational basis test because the arbitrary reduction of compensation with regard to the severity of the injury does not bear a rational relationship to the Legislature's stated interest In addressing the medical malpractice crises.

In language that is unequivocal and devastating to the application of any new caps devised by the Legislature, the Court held at 57

The caps under section 766.118 do not pass the rational basis because "[i]n the context of persons catastrophically injured by medical negligence, we believe it is unreasonable and arbitrary to limit their recovery in a speculative experiment to determine whether liability insurance rates will decrease." *McCall*, 134 So. 3d at 912 (quoting *Lucas*, 757 S.W. 2d at 691). Moreover, we "fail to see how singling out the most seriously injured medical malpractice victims for less than full recovery bears any rational relationship to the Legislature's stated goal of alleviating the financial crisis in the medical liability insurance industry."

North Broward Hosp. Dist. v. Kalitan, supra, puts an end to the saga of caps in medical malpractice cases. Absent complete reversal by a new court, it is illogical to conclude that any cap devised by the Legislature in any personal injury action would survive the conclusions set forth in *McCall* and *North Broward Hospital District*. This case puts an end to caps on personal injury cases in Florida.

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

The Personal Injury/Wrongful Death CLE Committee of the Palm Beach County Bar Association Presents

Wrongful Death 101: From Sign-up Through Trial



Thursday, November 16, 2017, 11:30a.m. - 5:00p.m.

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

11:30 a.m. - 12:00p.m. **Check-In / Late Registration / Lunch**

Brian Sullivan, Esq., Sullivan Law P.A., Chairperson, Personal Injury/Wrongful Death CLE Committee

12:00 p.m. - 1:00p.m. **Working up the Wrongful Death Case Pre-Suit**

Craig M. Goldenfarb, Esq. Law Offices of Craig Goldenfarb, P.A.

1:00 p.m. - 2:00p.m. **The Medical Examiner's Role in the Wrongful Death Case**

Barbara C. Wolf, M.D., Forensic Pathologist, District Medical Examiner at District 5 Medical Examiner's Office

2:00 p.m. - 2:15p.m. **Break**

2:15 p.m. - 3:15p.m. **Defending the Wrongful Death Case**

Barry Postman, Esq., Cole, Scott & Kissane, P.A.; Board Certified Civil Trial Lawyer

3:15 p.m. - 4:15p.m. **Pursuing the Wrongful Death Case from the Plaintiff's Side**

F. Gregory Barnhart, Esq., Searcy, Denney, Scarola, Barnhart & Shipley, P.A.; Board Certified Civil Trial Advocacy by The Florida Bar

4:15 p.m. - 5:00p.m. **Panel Discussion**

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Credit: 5.5 CLER, plus 5.5 civil trial certification credits. Cost: \$170 members; \$210 non-members. Those registering after 11/9/17 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

Name: _____ Email address: _____

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DAVID M. GARTEN

Smith v. Smith, 2017 Fla. LEXIS 1759 (Fla. 8/31/17)

The Fourth District Court of Appeal certified the following question to be of great public importance:

WHERE THE FUNDAMENTAL RIGHT TO MARRY HAS NOT BEEN REMOVED FROM A WARD UNDER SECTION 744.3215(2)(a), FLORIDA STATUTES, DOES THE STATUTE REQUIRE THE WARD TO OBTAIN APPROVAL FROM THE COURT PRIOR TO EXERCISING THE RIGHT TO MARRY, WITHOUT WHICH APPROVAL THE MARRIAGE IS ABSOLUTELY VOID, OR DOES SUCH FAILURE RENDER THE MARRIAGE VOIDABLE, AS COURT APPROVAL COULD BE CONFERRED AFTER THE MARRIAGE?

FACTS: In 2010, Alan Smith (Alan) was involved in an automobile accident in which he suffered head trauma. According to Alan's daughter, Alan was no longer competent to handle his financial affairs or care for his property as a result of his diminished mental capacity. In April 2010, Alan was determined to be partially incapacitated. Alan's right to contract and his right to manage property were removed and delegated to John Cramer, who was appointed to be Alan's limited guardian of property. However, the court specifically found there was "no incapacity on the part of [Alan] that would warrant a guardian of a person."

Glenda Martinez Smith (Glenda), met and became engaged to Alan before he was deemed incapacitated. In 2009, the year prior to his accident, Alan executed a Designation of Health Care Surrogate, Living Will Declaration, and a durable power of attorney naming Glenda as his health care surrogate, preneed guardian, and Agent. In December 2011 (8 months after Alan was determined to be partially incapacitated), Glenda and Alan were married. Court approval was not obtained prior to the marriage ceremony. However, Glenda asked Cramer to seek court approval on two separate occasions, but Cramer refused.

The Ward's Right To Marry During A Guardianship When The Right To Contract Has Been Removed

Alan's court-appointed counsel, Lynne Hennessey, filed a petition for annulment in early 2013 based solely on the assertion that the marriage was void because court approval had not been obtained prior to the act of marriage. Glenda then moved to ratify the marriage, and Hennessey moved for summary judgment. After a hearing, the court denied Glenda's motion and granted Hennessey's motion. Glenda appealed the final judgment of annulment, arguing, in part, that neither the statute nor the order that removed Alan's right to contract explicitly required prior court approval, and as such, the marriage could be ratified by obtaining approval after the marriage was solemnized.

ANALYSIS: The sole issue before the Court was whether the failure to obtain court approval pursuant to § 744.3215(2)(a) rendered the ward's marriage "void" or "voidable." To resolve this issue, the Court first discuss the meaning of the terms "void" and "voidable" as traditionally defined by Florida precedent in the marital context. Then, it looked to the plain language of § 744.3215(2)(a) and the legislative history of the Florida Guardianship Laws to ascertain whether the Legislature intended either of these terms to apply to the disputed provision.

CONCLUSION: After a thorough four-page analysis, the Court concluded that a ward's failure to obtain court approval prior to exercising the right to marry does not render the marriage void or voidable. Instead, pursuant to § 744.3215(2)(a), court approval is required before a ward whose right to contract has been removed may enter a valid marriage. Any marriage entered into without court approval is invalid. However, the statute does not prevent the ward or the intended spouse from seeking court approval after marrying in order to ratify the marriage.

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AVERY S. CHAPMAN

Whether you litigate in federal or state court, chances are you will find yourself in a contentious trial, with an aggressive adversary, yet locked in a room with that adversary late one evening. If you cannot recall that happening to you, see if these words refresh your recollection: jury instructions and verdict form. You will likely now have recalled that at some point during your most contested jury trial, with emotions running high and everything on the line, you will have spent some quality time with your adversary working out a joint set of jury instructions and agreed verdict form.

Generally and even if the court requested the documents earlier, you cannot avoid this late night exercise by drafting and submitting ahead of trial. Evidence and testimony adduced at trial, legal rulings and timing issues often drive significant revisions to whatever you have previously drafted or submitted. What that means for the trial attorney is that the history of your conduct and demeanor with your adversary during the course of litigation and trial will definitely affect your adversary's willingness to compromise and get to "yes" on issues in the instructions and verdict form that are important to you, your case and your client. If the past tenor of your pretrial or trial discourse has been acrimonious, it is somewhat unreasonable to expect the courtesy of an adversary, who will suddenly embrace all of your suggested revisions and amendments with open arms as you go through the long evening of creating the joint jury instructions and verdict form. In other words, you may believe you have won the war of words before that evening, only to lose the battle in the last moment.

While professionalism is paramount in so many areas of the practice of law, its absence during litigation and trial has the most profound consequences for a client. Jury instructions and the verdict form are the only road maps the jury has with them in their room during deliberation. Most trial attorneys will tell you not to underestimate the importance of the content and the impact the instructions and verdict form will have upon the jury's decisions. Therefore, you want the instructions and the form to reflect your client's position on the law as it applies to the facts of your case.

Unexpected Teamwork in Jury Trials ¹

While there are certain pattern jury instructions available, which reduce some of the disagreements as to form, those pattern instructions are neither complete nor perfectly applicable without revision in all factual circumstances. You will have to negotiate in a collaborative fashion with your adversary over the ultimate instructions given to the jury. The instructions will then drive the formulation of the verdict form and so your final draft of the the instructions will affect the final verdict form.

This is not to say that professionalism during your litigation and trial conduct should be driven merely by self-interest. Rather, keep in mind your ethical duty to your client to effectively represent that client. To effectively and zealously advocate for your client, you should be sure to comport yourself in a manner that will not detrimentally affect your ability to achieve the desired results of your client.

If you have previously dampened the atmosphere of collegiality and collaboration with your adversary during the litigation and trial, you have harmed your client's chances of success. In other words, professionalism during litigation and trial is not only an aspiration for all trial lawyers, but also the hallmark of a successful trial lawyers. Be sure to measure your conduct before and during trial with this ideal in mind. At some point during a matter, you are going to be locked in a room with your adversary late at night.

Avery S. Chapman, Esq. of Chapman Law Group, PLC, is a member of the Palm Beach County Bar Association Professionalism Committee. Mr. Chapman practices in Wellington, Florida where he counsels members of the business and equine communities on a wide range of matters including complex litigation and business law.

South Florida voluntary bar associations have recognized the importance of professionalism in a multitude of venues in their Joint Resolution of South Florida Voluntary Bar Associations, executed by Judges of the United States District Court, Southern District of Florida, Civil and Bankruptcy Divisions, Judges of the Florida State Fifteenth, Eleventh, Seventeenth and Nineteenth Judicial Circuits, and thirty-five voluntary bar associations. See: <http://www.fedbar.org/Chapters/Palm-Beach-Chapter/Joint-Resolution-of-South-Florida-Voluntary-Bar-Association-Regarding-Lawyer-Civility.aspx?FT=pdf>

See Comment to RULE 4-1.3: "A lawyer should pursue a matter on behalf of a client despite opposition, obstruction, or personal inconvenience to the lawyer and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. A lawyer is not bound, however, to press for every advantage that might be realized for a client. ... The lawyer's duty to act with reasonable diligence does not require the use of offensive tactics or preclude the treating of all persons involved in the legal process with courtesy and respect." [emphasis added].



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Going Green!



Photo: Kevin Smith and Chase Nugent

The PBC Bar Association raises funds by recycling ink jet cartridges, cell phones, and other small electronic with Planet Green. Most of us have these recyclable items sitting around our homes collecting dust. Why not recycle them and help us raise money at the same time? Shown gathering donated items to deliver for recycling are Kevin Smith and Chase Nugent.

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



Mediating Business Cases: Strategies, Analysis and Advice from the Experts

Thursday, December 14, 2017, 11:30 a.m. - 1:00 p.m.

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

11:30 a.m. - 12:00 p.m. **Check In / Late Registration / Lunch**

Welcome: William B. Lewis, Esq., Morgan & Morgan, Committee Chairperson

12:00 p.m. - 1:00 p.m. **Panel Discussion** with *Circuit Judge (Retired) Kenneth D. Stern, Esq., Stern Dispute Resolution; Bruce G. Alexander, Esq., Board Certified in Construction Law; Ciklin, Lubitz & O'Connell; and Jeffrey S. Grubman, Esq., JAMS ADR*

Moderated by Raymond E. Kramer III, Esq., Beasley Kramer & Galardi, P.A.

Topics:

- Selection of a business mediator
- Tips for mediator's summaries
- How to effectively present your client's case
- Technology in mediation
- Strategies for negotiation of business cases in mediation
- Recruiting the mediator as your ally

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Credit: 1.0 CLER, plus 1.0 Business Litigation Certification Credit. Cost: \$35 members; \$75 non-members. Those registering after 12/7/17 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. [Register online at www.palmbeachbar.org](http://www.palmbeachbar.org) or by mail (return this form with your check)

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Florida Real Property and Business Litigation Report



MANNY FARACH

Dabas v. Boston Investors Group, Inc., No. 3D16-2672 (Fla. 3d DCA 2017).

The difference between void and voidable is important for purposes of Florida Rule of Civil Procedure 1.540(b) (4); a judgment is void only if the trial court lacked subject matter jurisdiction, the trial court lacked personal jurisdiction over the person, or the trial court permitted a violation of the due process guarantee of notice and opportunity to be heard.

National Collegiate Student Loan Trust 2007-1 v. Lipari, Case No. 5D16-156 (Fla. 5th DCA 2017).

The giving of notice of assignment under Florida Statute section 559.715 is not a condition precedent to filing suit for collection of a student loan when the assignee takes all rights in the consumer debt.

Provitola v. Comer, Case No. 5D16-3027 (Fla. 5th DCA 2017).

The obstruction of a public street is a public nuisance and individuals cannot maintain an action for the obstruction unless they have suffered a special injury.

FF Cosmetics FL, Inc. v. City of Miami Beach, Case Nos. 15-14394 & 15-15256 (11th Cir. 2017).

The commercial First Amendment rights of retailers to distribute handbills and solicit business on public sidewalks outweighs the interests of municipality in aesthetics and order.

Schweitzer v. Comenity Bank, Case No. 16-10498 (11th Cir. 2017).

The Telephone Consumer Protection Act, 47 U.S.C. § 227 et seq., allows for the partial revocation of consent to be called by an automatic telephone dialing system.

Whitney Bank v. Grant, Case No. 1D16-5112 (Fla. 1st DCA 2017).

The five-year statute of limitations period in Florida Statute section 95.11(2)(b), and not the one-year statute of limitations of Florida Statute section 95.11(5)(h), applies in actions for deficiency proceedings arising out short sales (as opposed to deficiency actions arising out of a foreclosure sale).

Emerald Coast Utilities v. Bear Marcus Pointe, LLC, Case No. 1D15-5714 (Fla. 1st DCA 2017).

There is no “excusable neglect” to permit the filing of belated appeal when the error to timely see the final judgment email is due to the law firm’s computer system not being correctly configured to receive and store emails.

The Bank of New York Mellon v. Simpson, Case No. 3D16-2445 (Fla. 3d DCA 2017).

Generalized allegations of fraud in an industry without specific allegations of fraud in the case at bar are not sufficient to support a Florida Rule of Civil Procedure 1.540 motion for relief based on fraud of a party.

Bivens v. Bank of America, N.A., Case No. 16-15119 (11th Cir. 2017).

Failing to timely respond to a borrower’s Qualified Written Request (“QWR”) under 12 U.S.C. § 2605(e) is not a violation of the Real Estate Settlement Procedures Act, 12 U.S.C. 2601 et seq., if the borrower sends his QWR to an address other than the one the servicer designates to receive QWRs.

Platinum Luxury Auctions, LLC v. Concierge Auctions, LLC, Case No. 3D16-1958 (Fla. 3d DCA 2017).

A settlement agreement with a confidentiality and non-disparagement provision does not require the removal from a website those disparaging remarks existing on the website both before and after the parties entered into the settlement agreement.

New Day Miami, LLC v. Beach Developers, LLC, Case No. 3D17-1071 (Fla. 3d DCA 2017).

An order on a Florida Rule of Civil Procedure 1.540 motion may be an appealable final order, but a motion for rehearing directed to the order does not toll appellate time periods due to Florida Rule of Appellate Procedure 9.130(a)(5) which holds that “[m]otions for rehearing directed to these orders will not toll the time for filing a notice of appeal.”

Pedro v. Equifax, Inc., Case No. 16-13404 (11th Cir. 2017).

It is not objectively unreasonable for a credit reporting agency to interpret section 1681e(b) of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq., to permit reporting an account for which a consumer is an authorized user.

DNJS Holdings v. Pet Doctors Operating, LLC, Case No. 1D16-5859 (Fla. 1st DCA 2017).

Certiorari may be granted to compel discovery when not giving discovery would eviscerate the petitioning party’s trial court case.

Omes v. Ultra Enterprises, Inc., Case No. 3D16-338 (Fla. 3d DCA 2017).

A shareholder loses all rights as a shareholder pursuant to Florida Statute section 607.1323(1) and is only entitled to the value of their shares once the shareholder deposits their certificates, or in the case of uncertificated shares, returns the executed forms.

Garcia v. Christiana Trust, Case No. 3D16-735 (Fla. 3d DCA 2017).

A general reservation of jurisdiction in a final judgment typically reserves jurisdiction for deficiency judgments only; retention of jurisdiction for other reasons must be specifically reserved.

Law Offices of Herssein and Herssein, P.A. v. United Services

Automobile Association, Case No. 3D17-1421 (Fla. 3d DCA 2017).

A “Facebook friendship” between a judge and a lawyer does not signify a true friendship, and is not, without more, sufficient to disqualify the judge from pending case where the Facebook friend is one of the lawyers.

Llano Financing Group, LLC v. Yespy, Case No. 4D16-2007 (Fla. 4th DCA 2017).

Assignment of a note and mortgage does not automatically assign third party negligence claims arising out of the note and mortgage.

Victorville West Limited Partnership v. The Inverrary Association, Inc., Case No. 4D16-2266 (Fla. 4th DCA 2017).

A restrictive covenant will be enforced despite changed conditions if the restriction was for the benefit of and continues to benefit the dominant estate.

The Technology Committee of the Palm Beach County Bar Association
Presents

IPAD for Litigators - 2.0



Monday, October 23, 2017, 11:30 - 1:00 p.m.

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

Welcome and Announcements: Chioma Deere, Esq.,
Williams Leinger & Cosby, P.A.

Guest speaker: Spencer Kuvin, Esq., Law Offices of Craig Goldenfarb, P.A.

- Advanced techniques using iPad at trial, including hands on practice with your own iPad (or using the instructor's iPad) and the use of Trialpad application
- Advanced use of PowerPoint for mediation and limited use at trial
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Four Bars: One Giant PINK Party



Four Bars: One Giant PINK Party

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YLS Annual Back to School Donation Day

Kudos to our Young Lawyers for kicking off the school year in such a meaningful way. During the first week of school, a group of volunteers hand delivered and distributed 350 goody bags filled with healthy snacks and school supplies to every student at Washington Elementary in Riviera Beach. A special thank you to Office Depot for providing the supplies at a discount and to Searcy Denney Scarola Barnhart and Shipley for contributing the bags.



Rachel Bentley, YLS President Andrea Lewis, Mike Kranz, Chelsea Furman, Denise Mutamba, Masimba Mutamba and principal Sandra Edwards



YLS Back to School co-chairs Masimba and Denise Mutamba



Masimba Mutamba



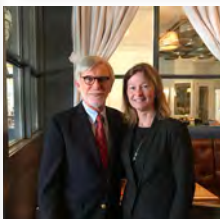
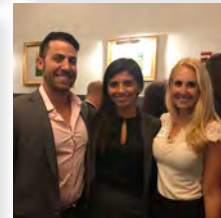
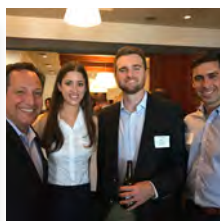
Mike Kranz

YLS SIDEBAR SERIES



Speaking at the Young Lawyer's Section's Sidebar Series in August was Keith Mitnik from Morgan & Morgan. Mr. Mitnick spoke on Cross Examination. Shown (l-r) Jennifer Lipinski, Andrea Lewis, Keith Mitnik, Judge Meenu Sasser and Dane Leitner.

YLS HAPPY HOUR WITH FEDERAL BAR



Ciklin Lubitz & O'Connell

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Ciklin Lubitz & O'Connell welcomes **Elisha D. Roy** and **Jonathan B. Butler** as newly-hired partners.

Ms. Roy concentrates her practice solely on marital and family law issues. She is a Board Certified Specialist in Marital and Family Law and is a Fellow of both the American Academy of Matrimonial Lawyers, and International Academy of Family Lawyers.

Mr. Butler is an AV Preeminent rated trial attorney with over 20 years of experience in complex business and securities litigation, arbitration and regulation.



Elisha D. Roy



Jonathan B. Butler

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The Family Law CLE Committee of the Palm Beach County Bar Association
Presents

Prenuptial Agreements and Marital Settlement Agreements



Friday, October 27, 2017, 7:45 a.m. - 12:30 p.m.

Fourth District Court of Appeal, 1525 Palm Beach Lakes Boulevard, W. Palm Beach, FL

- 7:45 a.m. - 8:00 a.m. **Check in and Late registration** (light snack and coffee provided)
- 8:00 a.m. - 8:05 a.m. **Welcome and Announcements** - Cathy Lively, Esq., Lively Law Firm
Chairperson, Family Law CLE Committee
- 8:05 a.m. - 8:15 a.m. **QDRO** - Matthew Lundy, Esq., Lundy Law Firm
- 8:15 a.m. - 8:45 a.m. **Drafting Marital Settlement Agreements: Tips and Traps** -
Erskine Rogers III*, Esq., Hicks & Motto
- 8:45 a.m. - 9:15 a.m. **Enforcement of a MSA** - Magistrate Diane Kirigin*
- 9:15 a.m. - 9:20 a.m. **Break**
- 9:20 a.m. - 9:50 a.m. **Tips for Drafting a Prenuptial Agreement** -
Robert M.W. Shalhoub*, Esq., Robert M.W Shalhoub, P.A.
- 9:50 a.m. - 10:20 a.m. **Enforcement of a Prenuptial Agreement** - Judge Catherine Brunson
- 10:20 a.m. - 10:30 a.m. **Break**
- 10:30 a.m. - 11:20 a.m. **Professionalism Presentation** - Kara Berard Rockenbach, Esq., Methe &
Rockenbach, P.A.
- 11:20 a.m. - 11:50 a.m. **Case Law Review: Agreements** -
Eddie E. Stephens*, Esq., Ward Damon Posner Pheterson & Bleau
- 11:50 a.m. - 12:30p.m. **Panel Discussion**

*Florida Bar Board Certified in Marital and Family Law

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Credit: 5.0 CLER, plus 1.0 ethics and 5.0 Certification credits in Marital and Family Law. Cost: \$175 members; \$215 non-members. Those registering after 10/20/17 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. [Register online at www.palmbeachbar.org](http://www.palmbeachbar.org) or by mail (return this form with your check)

Name: _____ Email address: _____

Address: _____ Phone: _____

_____ I will not be able to attend the seminar. IF AVAILABLE, I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow one week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 10.27.17 Family law

The Workers' Compensation CLE Committee of the Palm Beach County Bar Association Presents



How to Reach the Iron Throne - A Workers' Compensation Claim from Start to Finish!

Wednesday, October 25, 2017, 11:30 a.m. - 6:00 p.m.

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

Program Schedule

11:30 a.m. - 11:50 p.m. **Check In / Late registration / Lunch**

11:50 a.m. - 12:00 p.m. **Welcome and Announcements:** Nicole Hessen, Esq., Workers' Compensation CLE Committee Chairperson

12:00 p.m. - 12:50 p.m. **Professionalism Presentation:** Professionalism Committee member

12:50 p.m. - 1:40 p.m. **Amassing your Army - Motion & Pretrial Procedure:** Moderated by Judge Carol Stephenson. Panel: Andrew Borah, Esq., Lloyd Basso, Esq., Michele Leissle, Esq., and Marc E. Golden, Esq.

1:40 p.m. - 1:50 p.m. **Break**

1:50 p.m. - 2:40 p.m. **Formulating your Strategy for Battle – Depositions & Evidence:** Moderated by Judge Gregory Johnsen. Panel: Richard Unger, Esq., Hillarey McCall, Esq., Kenneth Ehrlich, Esq., and Paolo Longo, Jr., Esq.,

2:40 p.m. - 3:30 p.m. **Meet at the Battlefield – Trial Practice & Memo of Law:** Moderated by Judge Thomas Hedler. Panel: David Rigell, Esq.; Aaron Bass, Esq., Louis Pfeffer, Esq., and Brian Vassallo, Esq.

3:30 p.m. - 3:40 p.m. **Break**

3:40 p.m. - 4:30 p.m. **Making Uneasy Alliances (Q & A)** - Judge Hedler, Judge Johnsen, Judge Owens, Judge Stephenson on Settlements. Moderated by: Christine Tomasello, Esq.

4:30 p.m. - 5:00 p.m. **Presentation of Gift from PBC Bar Association to all three WPB Judges of Compensation Claims:** Nicole Hessen, Esq., and **Presentation of the Kennie Edwards Award** - Michael Celeste, Esq.

5:00 p.m. - 6:00 p.m. **Networking Reception**

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Credit: 5.5 CLER, plus 1.0 ethics. Cost \$ 175 members/paralegals; \$ 215 non-members/paralegals. Those registering after 10/18/17 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. [Register online at www.palmbeachbar.org](http://www.palmbeachbar.org) or by mail (return this form with your check)

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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, November 2, 2017, 12:30p.m. - 5:30 p.m.
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:** Shayla Waldon, Esq., Akerman LLP,
Employment Law CLE Committee, Chair
- 1:00p.m. - 1:50p.m. **Update on Trade Secrets Law - Making the Federal Defend Trade Secrets
Act Work for You:** Sarah M. DeFranco, Esq., Akerman LLP
- 1:50p.m. - 2:40p.m. **Protecting the Company's Interests - Non-Compete Update:** Speaker TBA
- 2:40p.m. - 2:50p.m. **Break**
- 2:50p.m. - 3:40p.m. **Workers' Compensation - What Companies Need to Know:**
Judge Thomas Hedler, Office of Judges of Compensation Claims
- 3:40p.m. - 4:30p.m. **Hot Topics in Discrimination:** Shayla Waldon, Esq., and Melissa Zinkil, Esq.,
Akerman LLP
- 4:30p.m. - 4:40p.m. **Break**
- 4:40p.m. - 5:30p.m. **Dueling Perspectives - an FLSA Analysis:** Mark J. Berkowitz, Esq., Mark
J. Berkowitz, P.A, and Jean Marie Middleton, Esq., Senior Attorney -
Employment & Labor Litigation, Office of General Counsel, School District of
Palm Beach County

Sponsors:



Expected credit 5.0 CLER; 1.0 ethics, plus certification credits. \$165 PBCBA members/paralegals; \$ 205 non-PBCBA attorney members/paralegals. Those registering after 10/26/17 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

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BULLETIN Board

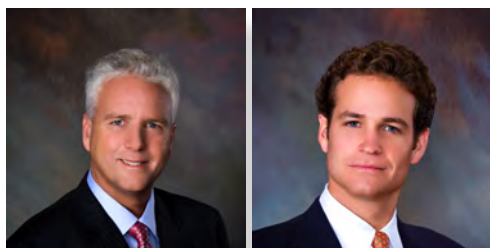
Professional Announcements:

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Hearsay



Jones, Foster, Johnston & Stubbs, P.A. announces that firm Shareholders Robert W. Wilkins and James C. Gavigan, Jr. were participants in the Palm Beach County Judicial Relations Presentation entitled Electronically Stored Information (ESI) Discovery, Florida and Federal Courts Compared.



Jenks & Harvey LLP, is pleased to announce that Robert J. Harvey who was previously appointed to the Judicial Nominating Commission for the Fifteenth Judicial Circuit, has been elected the commission's vice chair.



Lauren Johnson joined McCabe Rabin, P.A. as an associate. Lauren is a former law clerk for Florida Supreme Court Chief Justice Jorge Labarga and U.S. Magistrate Judge William Matthewman.



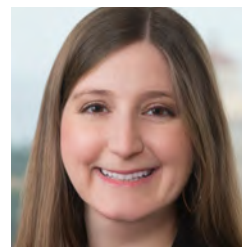
Jones, Foster, Johnston & Stubbs, P.A. announces that firm Board Member, Tasha K. Dickinson has been admitted to practice in the State of New York



The Personal Injury Law Firm of Lesser Lesser Landy & Smith was presented a City Proclamation by West Palm Beach Mayor Jeri Muoio declaring August 2017 the Celebration of Lesser Lesser Landy & Smith's 90th Anniversary. The firm was founded by Gary Lesser's grandfather Joe Lesser in 1927 in West Palm Beach



Ciklin Lubitz & O'Connell is proud to announce Elisha D. Roy and Jonathan B. Butler have joined the firm as partners. Ms. Roy is a Board Certified Specialist in Family & Marital Law. Mr. Butler brings over 20 years' experience his practice emphasizes on complex business and securities litigation, arbitration and regulation matters.



Kathryn B. Rossmell has been selected to join the 2018 Class of Leadership Engage. Kathryn is one of only forty other professionals who were chosen for their leadership and service within Palm Beach County and beyond.

Pressly, Pressly, Randolph & Pressly, P.A. is pleased to announce that Stephen G. Vogelsang, Esq. has joined the firm. Steve brings 30 years of experience representing high net worth families in Palm Beach County with their gift, estate planning and estate administration needs.

The Law Offices of Craig Goldenfarb, P.A. has announced that their Emanuel McMiller Scholarship for Higher Education for 2017 has been funded with \$10,000. The purpose of the scholarship is to help at-risk high school graduates apply to and attend college.

Akerman LLP, a top 100 U.S. law firm serving clients across the Americas, today announced 77 of its South Florida lawyers ranked in The Best Lawyers in America 2018 list

Jones, Foster, Johnston & Stubbs, P.A. announces that 17 lawyers were recently selected by their peers for inclusion in The Best Lawyers in America© 2018

Miscellaneous

NOTICE OF DEATH: JEANNE (LAMBERT) MELLIES of Delray Beach, FL. Her assigned beneficiaries and relatives are attempting to locate the attorney who may have drafted the WILL TO HER ESTATE, which is LOST. The executor has yet to file these documents in Palm Beach Probate Court. Kindly requesting anyone with knowledge regarding this matter call (401) 885-2208.

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

CALENDAR OF EVENTS

OCTOBER 2017

OCTOBER

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12:00PM – 01:30PM

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WEDNESDAY, OCTOBER 4-8

FL BOARD OF GOVERNOR'S
MEETING
BOSTON MA

WEDNESDAY, OCTOBER 4

12:00PPM – 1:00PM

PROFESSIONALISM COMMITTEE
MEETING
4TH DCA

THURSDAY, OCTOBER 5

5:30PM – 7:00PM

PARALEGAL MEET AND GREET
BRADLEY'S

FRIDAY, OCTOBER 6

6:00PM – 7:00PM

IPF – INNOCENT PROJECT OF
FLORIDA
KELSEY THEATER

MONDAY, OCTOBER 9

COLUMBUS DAY

COUNTY BUILDINGS CLOSED

MONDAY, OCTOBER 9

LEGAL AID GOLF TOURNAMENT

TUESDAY, OCTOBER 10

11:30AM – 1:00PM

NCS BOARD MEETING

TUESDAY, OCTOBER 10

12:00PM- 1:00PM

PARALEGAL COMMITTEE MEETING
515 N FLAGLER DRIVE

TUESDAY, OCTOBER 10

12:00PM – 1:00PM

YLS BOARD MEETING

515 N FLAGLER DRIVE CONFERENCE
ROOM

TUESDAY, OCTOBER 10

6:30PM- 7:30PM

LANDLORD TENANT PROGRAM
SUMMIT LIBRARY

WEDNESDAY – SATURDAY

OCTOBER 11-14

THE FLORIDA BAR FALL MEETING
TAMPA AIRPORT MARRIOTT

THURSDAY, OCTOBER 12

5:30PM – 7:00PM

NCS HAPPY HOUR
CABO FLATS, JUPITER

FRIDAY, OCTOBER 13, 12:00PM - 1:00PM

CONSTRUCTION LAW COMMITTEE
MEETING
BECKER & POLIAKOFF

TUESDAY, OCTOBER 17,

12:00PM – 1:00PM

CDI MEETING
AMERICAN LUNG ASSOCIATION

WEDNESDAY, OCTOBER 18

11:30AM – 1:00PM

YLS | CDI DIVERSITY LUNCHEON
MARRIOTT WPB

THURSDAY, OCTOBER 19

12:00PM – 1:00PM

JUDICIAL RELATIONS COMMITTEE
MEETING

THURSDAY, OCTOBER 19

5:30PM – 7:00PM

YLS HAPPY HOUR
MORTON'S STEAK HOUSE

THURSDAY, OCTOBER 19

5:30PM – 6:00PM

LAWYERS HAVE HEART
COOPER BLUES

FRIDAY, OCTOBER 20

11:30AM – 1:00PM

SOLO AND SMALL FIRM LUNCHEON
AMERICAN LUNG ASSOCIATION
2701 N AUSTRALIAN AVE

MONDAY, OCTOBER 23

11:30AM – 1:00PM

TECH SEMINAR
4TH DCA

TUESDAY, OCTOBER 24

5:30PM-7:00PM

LEGAL AID BOARD MEETING
LEGAL AID BUILDING

WEDNESDAY, OCTOBER 25

WORKER'S COMP SEMINAR
4TH DCA

WEDNESDAY, OCTOBER 25

12:00PM – 1:00PM

REAL ESTATE COMMITTEE MEETING
515 N FLAGLER DR GL ROOM

WEDNESDAY, OCTOBER 25

5:00PM – 6:00PM

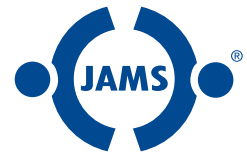
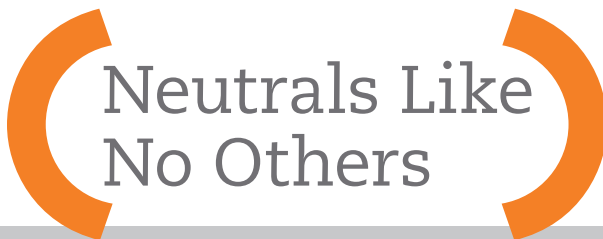
BAR BOARD MEETING



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PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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