



# PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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OFFICIAL PUBLICATION OF THE PALM BEACH COUNTY BAR ASSOCIATION

MAY

2018



## Huber to be sworn in as President June 9

Please save the date and join us for the Bar's annual Installation Banquet. This year's event will be held on Saturday, June 9th at the Breakers Hotel in Palm Beach. This special evening is one of our largest and most well attended event. Gregory P. Huber will be sworn in as the Bar's 96th president. We look forward to seeing you.

*Reserve your seat by registering online at:  
[www.palmbeachbar.org](http://www.palmbeachbar.org)*

## YOUR MEMBERSHIP COUNTS! RENEW YOUR DUES TODAY!

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

Dues statements have been emailed out, if you have not received yours, please visit our website: [www.palmbeachbar.org](http://www.palmbeachbar.org) and renew.

As a member of the Palm Beach County Bar Association, you have several opportunities throughout the year to network with fellow colleagues, hear from our judiciary during our annual Bench Bar Conference, fellowship through learning at our many CLE programs, participate in fundraising activities, share in the fun at many of our events and much more.

## YLS Golf Tournament



YLS will host its Third Annual Golf Tournament on May 11 at Mayacoo Lakes Country Club in West Palm Beach. Proceeds from the tournament will support YLS's annual "Back to School Program" where school supplies and snacks will benefit underprivileged school children in Palm Beach County. Help us raise money for this worthy cause as you show off your skills on the green. Registration and sponsorship information available at [www.palmbeachbar.org](http://www.palmbeachbar.org)

## MEMBER BENEFITS



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# The Bulletin

Palm Beach County  
Bar Association

Rosalyn Sia Baker-Barnes  
President

Carla Tharp Brown  
Executive Director

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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

May 4:  
Law Day Luncheon:  
Human Trafficking

May 11:  
YLS GOLF TOURNAMENT

May 17:  
NCS 16th Annual Jurist of the Year

June 9:  
96th Annual Installation Banquet

June 23:  
2018 YLS Scales of Justice  
Fishing Tournament

## Judicial Rotation

### CIRCUIT JUDGE ASSIGNMENT CHANGES

*Effective May 7th, 2018:*

- Judge Meenu Sasser will be assigned to Circuit Civil Division AK, in the Main Courthouse, Courtroom 10A
- Judge Daliah Weiss will be assigned to Felony Division S, in the Main Courthouse, Courtroom 10G
- Newly appointed Judge, Carolyn Bell, will be assigned to Juvenile Division JK, in the Main Courthouse, Courtroom 3B

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## Law Day Luncheon

### TOPIC: HUMAN TRAFFICKING

Keynote Speakers: **Justin Hoover**, Assistant State Attorney 15th Judicial Circuit talks about Human Trafficking right here in our own backyard

**Shanika Ampah**, Victim of Human Trafficking Shares Her Personal Story



**FRIDAY, MAY 4, 2018**

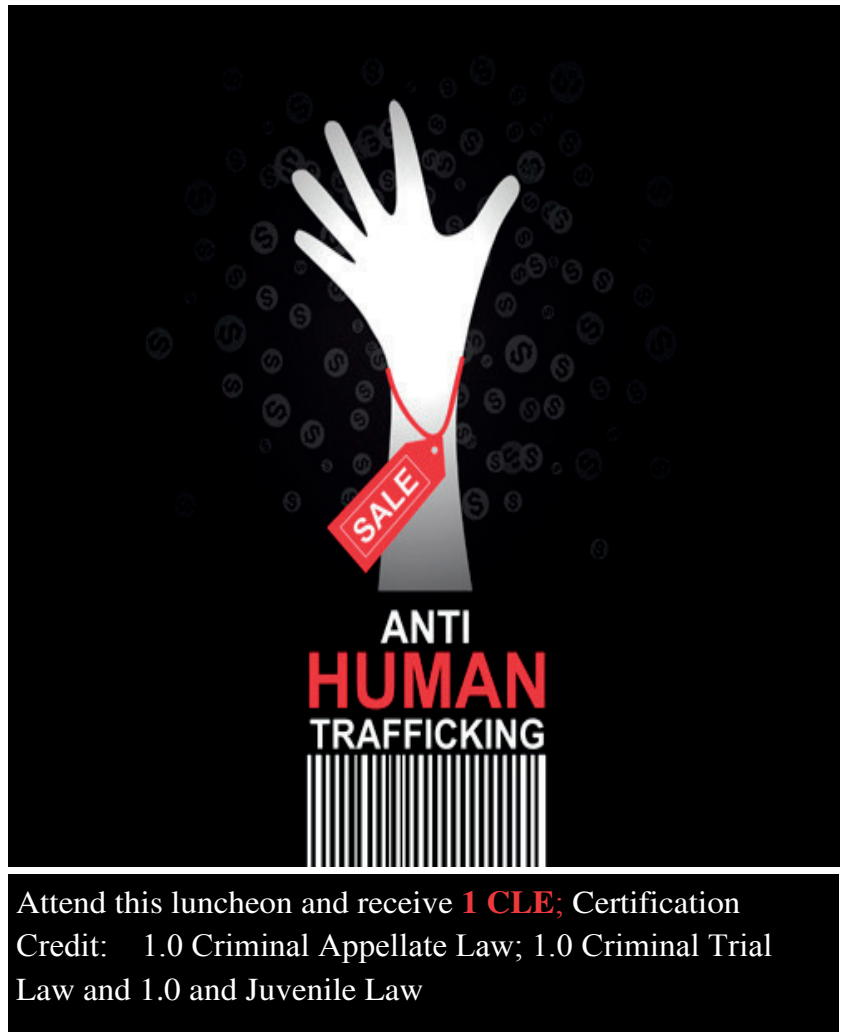
**11:45 AM - 1:00 PM**  
**Embassy Suites Hotel**  
**1601 Belvedere Road**  
**West Palm Beach**

\$40.00 for PBCBA members  
and complimentary for Judges

Attorneys who are not PBCBA  
members are welcome for \$55.00.

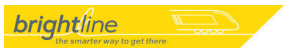
**RSVP: [www.PalmBeachBar.org](http://www.PalmBeachBar.org)**

*There will be plenty of parking at the hotel,  
including top level of the garage—free!*



Attend this luncheon and receive **1 CLE**; Certification Credit: 1.0 Criminal Appellate Law; 1.0 Criminal Trial Law and 1.0 and Juvenile Law

Luncheon supported by:



**IBERIABANK**



*Did you know Florida was recently ranked number 3 in the number of reported human trafficking cases?*

Shanika Ampah was just 11 years old when it happened to her. “After being sexually abused at home I was that runaway girl,” she said. Like many others, Shanika resorted to prostitution. After spending seven years being abused, she escaped at the age of 18.

Today, Shanika is a mother of eight children, nurse, advocate and survivor. She is founder and director of Guiding Light Outreach Inc., in Miami, which is the parent organization of Yeshua’s A.R.M.S. a place that brings awareness, recovery and mentors survivors of sexual abuse and sex trafficking.

Shanika joins us to tell her story of modern day slavery so this doesn’t happen to anyone else.

Justin Hoover, Esq., will also speak. Justin is a prosecutor for the 15<sup>th</sup> Circuit where he serves in the Special Victims Unit. Justin joins us to talk about the real world of commercial sex trafficking taking place right here in Palm Beach County.

Join us on Friday, May 4 from 11:30 a.m. to 1:00 p.m. at the Embassy Suites Hotel in West Palm Beach. This event is expected to sell out. Purchase your ticket online today at [www.palmbeachbar.org](http://www.palmbeachbar.org).



# PRESIDENT'S Message

## Celebrating Our Judiciary



**Rosalyn Sia Baker-Barnes**  
2017-18 PBCBA President

By the time you read this message, we will have just celebrated our Annual Judicial Reception, celebrating our judiciary which is one of the most respected in the State. Just last month, we honored one of our own, District Judge Daniel T.K. Hurley, naming the Palm Beach County Courthouse after Judge Hurley for his exemplary service on our Courts. Our 15th Circuit Judiciary is led by Chief Judge Krista Marx, who recently addressed the bar and gave the State of the Court address at our Bench Bar Conference. What we learned is that our local State and Federal Courts are ever changing, resulting in a near constant state of flux. Between 2017 and early 2019, 12 Judges or Quasi-Judicial Officers will have retired or resigned from the bench, including the following-

- Circuit Judge Richard Oftedal- retired 2017
- Circuit Judge Moses Baker, Jr.- retired 2017
- Circuit Judge Thomas Barkdull- retired 2017
- Circuit Judge David French- retiring 2018
- Circuit Judge Catherine Brunson- retiring 2018
- Circuit Judge Peter Blanc- retiring 2018
- County Court Judge Nancy Perez- retiring 2018
- County Court Judge Peter Evans- retiring 2018
- Circuit Judge James Ferrara- resigned 2017
- U.S. District Judge Paul Hyman- retired 2017
- U.S. Magistrate Judge James Hopkins- retired 2018
- 15th Circuit General Magistrate Linda Goodwin- retiring 2018

What is even more compelling than the number of Judges, is the amount of relative experience each one of these Jurists brought to our bench, and the positive impact they have had on our Courts and our community. This year, through our "You've Been Served" Initiative, we have focused on honoring lawyers who have given back to our community. In honor of these Judges, I thought I'd share with you a tidbit about each of them, to express our association's appreciation for their service.



Judge Richard Oftedal: upon his retirement, Judge Oftedal was the longest serving Circuit Judge, serving for 29 years, and having served in every division of the Court except the juvenile division. Judge Oftedal served with distinction, particularly during the housing crisis when he headed the foreclosure division created to handle the onslaught of foreclosure cases. Judge Oftedal received consistently high ratings on bi-annual Judicial evaluations.



Judge Moses Baker (happens to be my Dad): served with distinction for over 23 years, mostly in the juvenile division where he oversaw delinquency and dependency cases. He is known for establishing the Alternative to Suspension Program for at-risk students, and truly enjoyed presiding over adoptions. He is the recipient of the Florida Department of Children & Families William E. Gladstone Award, honoring the Judge who has made the greatest contribution to serving dependent children and their families.



Judge Thomas Barkdull: served the Circuit Court for 21 years, most recently in the civil division. Judge Barkdull like me comes from a legacy of lawyers, his father served for many years on the Third District Court of Appeal. Judge Barkdull embraced his family's legacy and served with distinction. He has been Honored by our North County Section as Jurist of the Year.



Judge David French: serving for 11 years, Judge French currently serves in the civil division, and has served in the Probate and Family divisions of the Court. Judge French has served with distinction, after a highly successful career as a Civil Trial Lawyer. He has been Honored by South Palm Beach County Bar Association as Jurist of the Year.



Judge Catherine Brunson: the first African American female to serve on the Circuit Court, Judge Brunson served with excellence for 23 years, currently serving in the family division. She has also recently served in the Circuit Division, and she is also known for her patience and dedication to justice. She has received numerous honors and awards, most recently by the F. Malcolm Cunningham, Sr. Bar Association as its Legacy Award recipient.



Judge Peter Blanc has served our citizens as both a County and Circuit Judge for 28 years, and as Chief Judge, for four years. He stands for the principles of professionalism, preparedness and justice, and was a proponent of the bar's efforts to promote Civility, under the leadership of Past President Adam Rabin. Judge Blanc has also been honored by our North County Section as Jurist of the Year.



Judge Nancy Perez: the first Hispanic American Judge in Palm Beach County, has excelled in our County Court for 27 years, often presiding over cases involving pro se litigants. She is well-known for taking the time and having the compassion to ensure that all citizens feel that they are received a full and fair opportunity to have their concerns addressed in a Court of law. She is a recipient of the Palm Beach County Hispanic Bar Association's Chief Justice Labarga Leadership Award.



# NEW MEMBERS

## MAY 2018

Juan Asconape  
Indiana University, 2001;  
Associate in Schwed, Adams, Sobel  
& McGinley  
Palm Beach Gardens

Patrick Morgan Bailey  
Florida State University, 2017;  
State Attorney's Office  
West Palm Beach

Rachel R. Bausch  
Nova Southeastern University, 2013;  
Village of Wellington

Timothy H. Birnbaum  
Affiliate Membership  
West Palm Beach

Mallorye G. Cunningham  
Howard University, 1982  
Solo Practitioner  
West Palm Beach

Callie Jean Grossman  
Suffolk University, 2016  
Associate in Howard S. Grossman,  
P.A.  
West Palm Beach

Laura D. Maxwell  
Florida International University, 2017  
Greenberg Traurig, P.A.  
West Palm Beach

Sylvie Rampal  
Affiliate Membership  
Southwest Ranches, FL

Nydia Benitez Serrano  
Florida Registered Paralegal Member  
West Palm Beach

Blake P. Swan  
Catholic University, 2009  
Associate in Schwed, Adams, Sobel  
& McGinley  
Palm Beach Gardens

Gemma Torcivia  
Law Student Membership  
West Palm Beach

Adam Zhamukhanov  
University of Miami, 2013  
Associate in Cole, Scott & Kissane,  
P.A.  
West Palm Beach

*Welcome!*

## BOARD Meeting Attendance

### 2017-2018

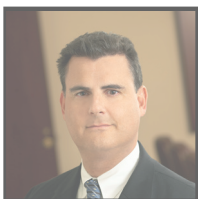
	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER	JANUARY	FEBRUARY	MARCH
BARNES	X	X	X	X	X	X	X	X	X
CALLOW	X	X	X	X	X	X	X	X	X
DEMERY	X	X	PHONE	X	PHONE	X	X	X	X
HUBER	X	X	X	X	X	X	X	X	X
LEWIS	X	X	X	X	PHONE	X	PHONE	X	X
MASON	X		X	X	PHONE		PHONE		
McELROY		X	X	X	X	X	X	X	X
REAGAN		X	X	X	X		X	X	X
SMITH, G.	X	X	X	X	PHONE	X	X	X	X
SMITH, S.	PHONE		X	PHONE	PHONE	X	X	X	X
WHITTLES	X	X	X	X	X	X	X	X	X
WYDA	X	X	X	X	X		X	X	X
XENICK		X	X	X	X		X	X	X

# Celebrating Our Judiciary (con't)



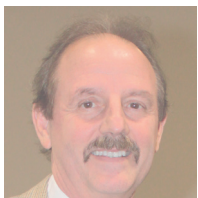
Judge Peter Evans: is in his 29th year of service on our County Court. Judge Evans has served in every County Court division. He is an active and renowned Judicial educator, serving on

the faculty of the National Judicial College, Florida Judicial College and Florida Conference of County Court Judges. He is the recipient of the Florida Conference of County Court Judges highest award, the Harvey Foye Memorial Award, honoring judges who have distinguished themselves through scholarship, service to the bench and service to the community.



Judge James Ferrara: served for a relatively short period of time, but served with distinction, overseeing foreclosure cases. Upon his resignation, he explained that it was an

honor to serve the citizens of Palm Beach County.



U.S. District Judge Paul Hyman- served our Southern District Bankruptcy Court for over 25 years, and served as Chief Judge. Judge Hyman served

with excellence, and is a recipient of the 2014 Ryskamp Award for service to the legal community.



U.S. Magistrate Judge James Hopkins- served as a United States Magistrate for 15 years, and was known for his thoughtful and careful approach to

Justice. Judge Hopkins has a keen interest in international law, and has traveled extensively internationally, lecturing on many topics including how Justice is administered in international Courts of law, and often meeting extensively with leaders of those Courts.



15th Circuit Magistrate Linda Goodwin- served as 15th Circuit Magistrate/ Hearing Officer for 14 years, presiding over child support enforcement cases, and handling other family law matters. Many

of our citizens' only interaction may be with a general magistrate, and she has played an

important role, and a positive one, in shaping our community's view of our judiciary.

We have already welcomed several new Judges to our Circuit this year-- Judge James Nutt who comes to us after over 20 years in excellent Public Service with the South Florida Water Management District; Judge Joe Curley who established a brilliant career as a litigator at Gunster, our newest jurists, Judge Carolyn Bell, who demonstrated an illustrious record of public service as an Assistant United States Attorney; and U.S. Magistrate Bruce Reinhart (appointed as a U.S. Magistrate Judge), appointed after an excellent career both as an Assistant US Attorney and as a private practitioner. As members of the bar and this association, I encourage you to get to know our new Judges at our monthly Coffee and Bagels with Judges, an award-winning program designed to encourage open communication and foster professional relationships between lawyers and our Court. Please also take the time to attend the Investiture ceremonies for our Judges. If you don't know them or haven't met one of our new Judges, the Investiture is an excellent opportunity to introduce yourself and learn more about them.

Finally, some of these seats will be determined by our electorate, so I encourage you as well to play an active role in that process. Congratulations to all of these jurists who have made their mark on our legal community, and those who are just beginning their journey. I wish you all the best.



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## Law Week Committee Presents FREE Legal Education During Law Week:

Immigration Legal Screening Clinic  
Tuesday, May 1, 2018  
Lantana Branch Library, 4020  
Lantana Road, Lake Worth  
RSVP: 561.304-4500

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Family Law  
Thursday, May 3, 2018  
Gardens Branch Library, 11303  
Campus Drive, Palm Beach Gardens  
RSVP: 561.626.6133

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Homeowners Rights Seminar:  
Unable to pay your mortgage or  
Association dues?  
Thursday, May 3, 2018  
2:00 pm to 3:00 pm  
Hagen Ranch Road Library, 14350  
Ranch Road, Delray Beach  
RSVP: 561.894.7500

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## LAW DAY LUNCHEON: A DISCUSSION ON HUMAN TRAFFICKING

Friday, May 4th  
11:45am - 1:00pm

Embassy Suites Hotel



**DONNA GREENSPAN SOLOMON**

## Arbitration Case Law Update

The following are recent cases of interest regarding arbitration issues:

*Managed Care Ins. Consultants, Inc. v. United Healthcare Ins. Co.*, 228 So. 3d 588, 589–90 (Fla. 4th DCA 2017). Court did not err in denying motion to vacate award where arbitrator's husband's medical practice had business connection with a party. Arbitrator was not obligated to disbelieve husband and investigate further; she did not have actual knowledge of the relationship or potential conflict; nor was there any actual bias shown.

*Boardwalk Properties Mgmt., INC. v. Emerald Clinton, LLC*, 42 Fla. L. Weekly D2221 (Fla. 4th DCA Oct. 18, 2017). Arbitrator exceeded authority under arbitration provision by determining ownership interests not pertinent to resolution of issue submitted to arbitration.

*Lucky Star Horses, Inc. v. Diamond State Ins. Co.*, 233 So. 3d 1159 (Fla. 3d DCA 2017). Insurer did not waive right to arbitrate the value of stallion, despite the passage of time, filing of numerous pleadings, and taking of depositions, where insurer timely moved to compel arbitration after party to arbitration clause was brought into the case.

*Chaikin v. Parker Waichman LLP*, 42 Fla. L. Weekly D2165 (Fla. 2d DCA Oct. 11, 2017). Employer waived right to compel arbitration of counterclaims filed by former employee where employer had sued on its arbitrable claims in court.

*Saunders v. St. Cloud 192 Pet Doc Hosp., LLC*, 224 So. 3d 336 (Fla. 5th DCA 2017). Employee's claims not related directly to employment contract were not subject to provision to arbitrate all claims "arising out of or related to" the contract. Mere fact that employment-related claim would not have arisen but for existence of the contract does not transform tort claim into one "arising out of or relating to" the agreement.

*Newman for Founding Partners Stable Value Fund, LP v. Ernst & Young, LLP*, 231 So. 3d 464 (Fla. 4th DCA 2017). Receiver bound by delegation clause requiring arbitrability claims to be decided by arbitrator.

*Inspired Capital, LLC v. Conde Nast*, 225 So. 3d 980 (Fla. 3d DCA 2017). Claim "relates to" contract for purposes of arbitration clause where resolution of disputed issue requires either reference to, or construction of, a portion of the contract.

*Pierre by & through Pierre v. Waste Pro USA, Inc.*, 2D17-4395, 2017 WL 6761664, at \*1 (Fla. 2d DCA Dec. 1, 2017). Orders denying confirmation of arbitration awards are not appealable under Florida Rule of Appellate Procedure 9.130.

*Reunion W. Dev. Partners, LLLP v. Guimaraes*, 221 So. 3d 1278, 1280 (Fla. 5th DCA 2017). While arbitrability is generally an issue for trial courts to decide, courts must delegate the authority to the arbitrator if the parties' contract so provides.

*Obolensky v. Chatsworth at Wellington Green, LLC*, 4D16-3143, 2018 WL 1110892, at \*4 (Fla. 4th DCA Feb. 28, 2018). Severance of illegal provisions from arbitration agreement does not impermissibly rewrite agreement that contains severability clauses and where removed provision is neither the "financial" heart nor "true essence" of agreement.

*Northport Health Services of Florida, LLC v. Louis*, 5D17-335, 2018 WL 1122117, at \*2 (Fla. 5th DCA Mar. 2, 2018). Provision of arbitration agreement requiring application of Alabama Rules of Evidence at arbitration hearing did not go to the "very essence" of agreement and thus was severable because it concerned procedure and not substantive law or remedies under Florida law, to which the parties had specifically agreed.

*Lowe v. Nissan of Brandon, Inc.*, 43 Fla. L. Weekly D103 (Fla. 2d DCA Jan. 5, 2018). Arbitration may be compelled even where contract does not contain arbitration provision where contract is incorporated into another contract with arbitration provision.

*Lake City Fire & Rescue Ass'n, Local 2288 v. City of Lake City*, 1D17-2965, 2018 WL 1189854, at \*2 (Fla. 1st DCA Mar. 8, 2018). Arbitrator exceeded his power by reducing discipline imposed on firefighter where arbitration provision clearly and unambiguously limited arbitrator's power to determine only whether firefighter "engaged in the misconduct alleged."

*Palisades Owners' Ass'n, Inc. v. Browning*, 1D17-2129, 2018 WL 1341650, at \*1 (Fla. 1st DCA Mar. 15, 2018). Claims of breach of fiduciary duty by Owners' Association were specifically excluded from class of disagreements statutorily required to be submitted to arbitration.

*Florida Capital Group, Inc. v. Bishop*, 3D16-1775, 2018 WL 1074257, at \*1 (Fla. 3d DCA Feb. 28, 2018). Where trial court does not modify or correct arbitration award or vacate award pursuant to statute, it is required to "confirm the award as made."

*For additional ADR tips and resources, go to <http://www.palmbeachbar.org/adr/>*

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*Donna Greenspan Solomon is one of three attorneys certified by The Florida Bar as both Business Litigator and Appellate Specialist. Donna is a Member of the AAA's Roster of Arbitrators (Commercial Panel). She is a FINRA-Approved and Florida Supreme Court Qualified Arbitrator. She is also a Certified Circuit, Appellate, and Family Mediator. Donna is a Member of the Florida Supreme Court Committee on Standard Jury Instructions—Contract and Business Cases, and is the current Chair of the Business Litigation Certification Committee. Donna can be reached at (561) 762-9932 or [Donna@SolomonAppeals.com](mailto:Donna@SolomonAppeals.com) or by visiting [www.solomonappeals.com](http://www.solomonappeals.com)*





## Nailed it!

*It's not easy. Success takes preparation, research, expert opinion, resources, experience, and guts.*

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### THEODORE BABBITT

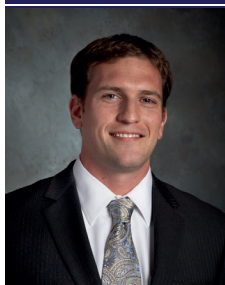
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JASON S. RIGOLI

## When Do You Get a Second Bite at the Apple? It Depends on How You Error.

In an unpublished opinion issued on February 6, 2017, the United States Court of Appeal for the Eleventh Circuit ("Eleventh Circuit" of "Court"), held that the filing of a dischargeability motion, rather than a complaint, was not fatal to the subsequent, untimely, dischargeability complaint filed by a creditor. *Beem v. Ferguson*, Case No. 16-11842, -- Fed.Appx. --, 2018 WL 718609 (11th Cir. Feb. 6, 2018). The question before the Eleventh Circuit was whether the "timely filed motion in the bankruptcy case functioned as an 'original pleading' to which the untimely adversary complaint related back." *Id.* at \*3.

### Procedure and Timing of Challenging Dischargeability

First, Rule 7001(6) of the Federal Rules of Bankruptcy Procedure requires that nondischargeability be pursued by adversary proceeding. And, Rule 7003 requires an adversary proceeding be commenced by the filing of a complaint. *Beem*, 2017 WL 718609 at \*3.

Rule 4007(c) of the Federal Rules of Bankruptcy Procedure states: "[A] complaint to determine the non-dischargeability of a debt under § 523(c) shall be filed no later than 60 days after the first date set for the meeting of creditors." This deadline can be extended for cause upon the filing of a motion by a party in interest. *Fed. R. Bankr. P. 9006(c)*. And, as the Eleventh Circuit has previously held, a bankruptcy court loses all discretion for extending the dischargeability deadline when the motion is filed late. *Beem*, 2017 WL 718609 at \*3 (citing *In re Alton*, 837 F.2d 457, 459 (11th Cir. 1988)).

### What Constitutes a "Pleading" and Satisfies the Requirements of Fed. R. Bankr. P. 7015

*Fed. R. Bankr. P. 7007*, incorporates *Fed. R. Civ. P. 7*, which identifies "pleadings," and a motion is not a pleading. *Fed. R. Civ. P. 7(a)*.

Based upon the rules set forth above, the appellant argued that the Bankruptcy Court erred in finding that the untimely complaint relates back to the

timely filed motion, because *Fed. R. Bankr. P. 7015*, incorporating *Fed. R. Civ. P. 15*, only applies to pleadings, *Fed. R. Civ. P. 15(c)(1)(B)*, and as stated a motion is not a pleading. *Fed. R. Civ. P. 7(a)*. The Eleventh Circuit held to the contrary, saying the appellant's argument is missing the analysis of another applicable rule of procedure.

### The Eleventh Circuit's Ruling

The Court looked to and relied upon Rule 8 of the Federal Rules of Civil Procedure, as incorporated by *Fed. R. Bankr. P. 7008*. The federal notice pleading standard is satisfied by a (i) short and plain statement of the ground for the court's jurisdiction; a short and plain statement of the claim showing the pleader is entitled to relief; and a demand for the relief sought. *Beem*, at \*4 (quoting *Fed. R. Civ. P. 8(a)* (internal quotations omitted)). And, "pleadings must be construed to do justice." *Id.* at \*4 (internal citations and quotations omitted).

The Court went on to state that the " 'Federal Rules reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.' " *Beem*, at \*4 (quoting *Conley v. Gibson*, 355 U.S. 41, 48, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957), abrogated in part by *Twombly*, 550 U.S. at 563, 127 S.Ct. 1955)).

In applying this analysis, the Eleventh Circuit held that by setting forth enough information in the motion to give the debtor notice of the relief being requested and the basis for that relief, the mere fact that the document filed by the creditor was captioned as a motion was not dispositive of whether it could be construed as a "pleading." *Id.* at \*5 (citing earlier opinions in which the Eleventh Circuit held that certain documents and filings constituted a complaint even though it was not titled as such.). Therefore, the Eleventh Circuit concluded that the complaint was timely because it related back to the motion, which was construed as the original pleading under *Fed. R. Civ. P. 15(c)*. *Id.* at \*5.

PBCBA BAR BULLETIN

## MEMBER BENEFITS

### American Safety Council

State Approved Online Courses including Florida Notary Service; Parent Education & Family Stabilization Course; Florida Online Traffic School; First Time Driver (D.A.T.A.) Course; Mature Driver Course; Judge Ordered Program and Advanced Driver Improvement Program. Refer your clients to the website and a small portion of the class fee is remitted to the PBCBA.

### PAYCHEX

Members of the Palm Beach County Bar Association (new enrollees only) are now entitled to receive at 50% discount off Paychex' services which includes payroll preparation and automatic payment of payroll taxes, plus electronic filing of quarterly and annual returns and HR benefits. Members will also receive 1 Free Month of Services, along with a waiver of your initial set up fee (\$200.00 Value). If you are interested in receiving this discount, please contact Romy Lidor at (561) 373-7602.

### PALM BEACH YACHT CLUB

The Palm Beach Yacht Club offers a discount to young lawyers (special dues category is valid through 39th birthday). Regular dues for an individual membership is \$1375, but this special offer for Young Lawyers (new members only) is \$500. To obtain an application for annual membership, please download a copy of the application here.

### PLANET GREEN

The Palm Beach County Bar Association raises funds by recycling inkjet cartridges, cell phones and other small electronic with Planet Green. Most of us have these recyclable items sitting around our homes collecting dust and now you can recycle them and help us raise money at the same time.

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



# Bankruptcy Trends and Judicial Reception

Presented by the Bankruptcy CLE Committee of the Palm Beach County Bar Association

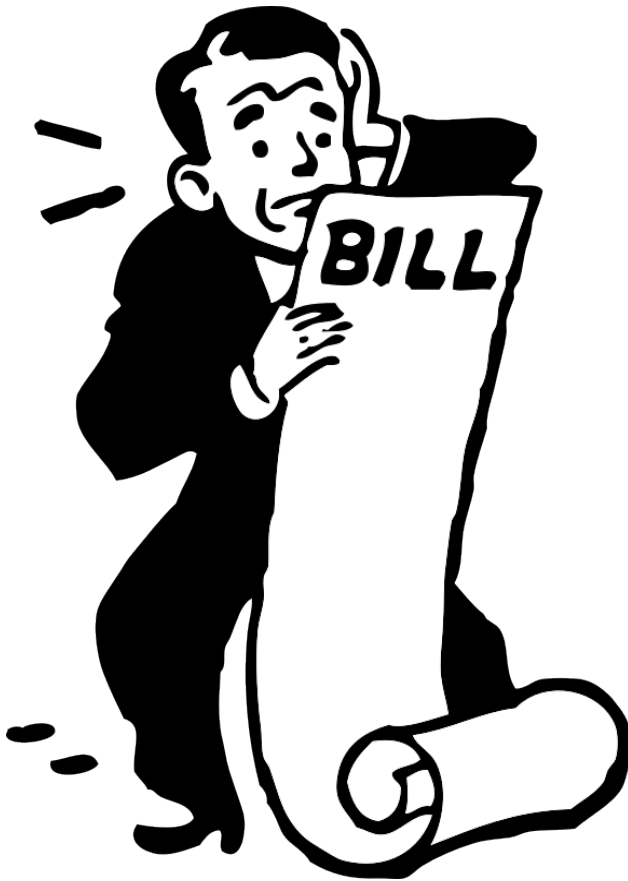
**Friday, June 22, 2018**

1:30 pm - 5:30 pm

**Fourth District Court of Appeal**

110 S. Tamarind Avenue

West Palm Beach, FL



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## Program Agenda:

**View from the Chapter 13 Trustee: Deciphering the new Chapter 13 plan; Do's and Don'ts in Chapter 13; Handling your chapter 13 case** with Robin Weiner, Chapter 13 Trustee.

The Honorable Judge Erik Kimball will provide **Tips on Adversary Proceedings and Contested Motions**, plus attendees will hear insights from judges.

**Perspective from the New Bankruptcy Judge - The Honorable Mindy Mora**

**Debtor vs Creditor Rights - FDCPA - How do you file it? Sanctions** with Steven Newburgh, Esq., McLaughlin & Stern LLP

And, we'll end the program with a cocktail reception

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Credit: 3.5 CLER; Certification credit: 3.5 in Business Litigation. Cost: \$100.00 for PBCBA members and \$140.00 for non-members. Those registering after June 8, add \$10. Register online @ [palmbeachbar.org](http://palmbeachbar.org) or print this page and send along with check to: Palm Beach County Bar Association, P.O. Box 17726, West Palm Beach, FL 33416.

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Bankruptcy 6.22.18



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The Breakers Hotel, Palm Beach

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Gregory Huber will be sworn in as president, along with Jessica Callow as president-elect. Directors include Lindsay Demmery, Andrea Lewis, Lee McElroy, Jean Marie Middleton, Grasford Smith, Scott Smith, Julia Wyda, Dean Xenick and immediate past president Rosalyn Sia Baker-Barnes. Also included on the Board are David Steinfeld, North County Section President and John "Jack" Rice, Young Lawyers Section President.

Pre-registration is required and can be made online at [www.palmbeachbar.org](http://www.palmbeachbar.org).

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**Demystifying Judicial Nominations: Navigating the Appointment Process to the Bench or Judicial Nominating Commission**

The Palm Beach County Bar Association was pleased to be one of the sponsors for a recent FAWL luncheon to discuss the judicial appointment process.

Pictured left to right: Liz Herman, program chair, with speakers Raquel "Rocky" Rodriguez, Meredith Sasso and Paul Huck, Jr., and Lawonda Warren representing the Palm Beach County Bar Association's Committee for Diversity and Inclusion.



Lawonda R. Warren

# "Are Diversity and Lawyer Well-being Intertwined?"

I recently read the article, "Lawyer Well-Being: An Uncharted Path to Increasing Diversity and Inclusion," by Jayne Reardon and Bree Buchanan in the American Bar Association (ABA) Litigation Section's Diversity and Inclusion Newsletter. The article discusses how the promotion of the lawyer well-being promotes a diverse and inclusive workplace. In 2017, the National Task Force on Lawyer Well-Being published, "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change." It shed light on the need to focus on the well-being of lawyers. One of the recommendations to improve lawyer well-being is to increase diversity and inclusion. In support of this recommendation, the report noted that:

Research reflects that organizational diversity and inclusion initiatives are associated with employee well-being, including, for example, general mental and physical health, perceived stress level, job satisfaction, organizational commitment, trust, work engagement, perceptions of organizational fairness, and intentions to remain on the job. A significant contributor to well-being is a sense of organizational belongingness, which has been defined as feeling personally accepted, respected, included, and supported by others. A weak sense of belonging is strongly associated with depressive symptoms. Unfortunately, however, a lack of diversity and inclusion is an entrenched problem in the legal profession. The issue is pronounced for women and minorities in larger law firms.

The article led me to further evaluate what role the push for lawyer well-being in our legal profession plays to support diversity and inclusion of women and minorities in the legal profession. Are diversity and lawyer well-being intertwined?

The push for lawyer well-being stems from studies indicating that lawyers suffer from chronic stress, high rates of depression, suicide, and substance abuse issues. In 2016, the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation published a study of nearly

13,000 practicing lawyers, where it found that, "between 21 and 36 percent qualify as problem drinkers, and that approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively." In 2017, the Florida Bar Board of Governors created a Special Committee on Mental Health and Wellness of Florida Lawyers. The committee was formed to implement The Florida Bar's Strategic Planning Priority #5, which focuses on the mental health and wellness of Florida lawyers, and is tasked to come up with an action plan by May 2018.

One of the focuses of the committee is to de-stigmatize mental illness and substance abuse in the legal community. For minority lawyers, this stigma is magnified and exasperated. Some minority lawyers feel that there is a lack of belongingness at some firms and agencies. In preparation of this article, I interviewed two African-American attorneys, who wished to remain anonymous. The first attorney stated that she tends to overcompensate due to pressure and lack of diversity at her office. She sometimes feels that she is the only "one," and must be everywhere, over prepare, and over compensate to prove that she belongs. This sentiment is understandable as statistics show that as of 2017, 5% of the lawyers in the United States are African-American. This leads to burn out, increased stress and anxiety. The second attorney stated that he suffers from alcoholism and doesn't want to seek help because of the stigma associated with alcoholism. He also feels that his supervising attorney will be less sensitive to his issue due to his race.

After the interviews, I immediately thought of the statement, "A significant contributor to well-being is a sense of organizational belongingness, ..." located above. If lawyers feel that they do not belong, they especially will not feel comfortable seeking help for mental or substance abuse issues. More diversity in our field and the feeling of inclusion will encourage more minority lawyers to seek help.

Overall, the focus on lawyer well-being is extremely important to our society because it is difficult for lawyers to be zealous advocates or provide competent representation if we are mentally or emotionally unhealthy. The promotion of the well-being of lawyers in our profession is more than a hot topic, it is a path to a more diverse, inclusive, and sustainable workplace. If you find yourself in need of help coping with mental health or substance abuse issues, contact the Florida Bar's Help Line at 1-800-282-8981.

<sup>1</sup>*National Task Force on Lawyer Well-Being, The Path to Lawyer Well-Being: Practical Recommendations for Positive Change. (2017).*

<sup>2</sup>*Id. P. R. Krill, R. Johnson, & L. Albert, The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys, 10 J. ADDICTION MED. 46 (2016).*

<sup>3</sup>*American Bar Association National Lawyer Population Survey, 10-Year Trend in Lawyer Demographics. (2017).*

Lawonda R. Warren is a member of Palm Beach County Bar Association's Committee for Diversity and Inclusion, serves on the Bar's Judicial Campaign Practices Commission, and served as a Co-Chair for the 2018 Bench Bar Conference. She is also the Immediate President of the F. Malcolm Cunningham, Sr. Bar Association. Ms. Warren is an Assistant City Attorney/ Police Legal Advisor for the City of Delray Beach, FL. She can be reached at WarrenL@mydelraybeach.com.





**TERRY RESK**

If you ever have the chance to chat with Judge James Nutt at a social gathering – grab it! Whether you ask him about his trekking in Nepal, sixteen consecutive days in primitive wilderness, biking from Montreal to the Pacific Ocean, or riding his bicycle 580 miles through Alaska, his stories could keep you mesmerized for hours.

Judge Nutt even manages to make his professional career fascinating. While with the South Florida Water Management District, his ingenuity and perseverance resulted in taking a case involving the Clean Water Act to the United States Supreme Court. His pride in the District is apparent, and rightfully so. Few of us realize that it is the largest landowner in Florida with over 1600 employees at its peak. While at the District from 1995 until his December 2017 appointment to the Bench by Governor Scott, he handled a wide range of issues, practicing primarily in federal courts and becoming proficient in the appellate sphere. He is the only employee of the District ever to earn the Employee of the Year distinction two separate times.

As important as the District has been to the judge, his family has had an even greater influence on him. While his grandparents played a significant role in raising him, he gained a lifelong love of learning from his mother, a school teacher and dean with a Ph.D. in education. His father was a well-read ink artist and Virginia historian who also helped to fuel Judge Nutt's fascination with learning, arts and history, including that of his own family.

One of the judge's grandfathers served as an Ohio Senator, working to pass clean water legislation, while his other grandfather – a lobbyist for a chemical company – often had competing goals. It may be more than coincidental that forty years later, their grandson took a case involving the Clean Water Act to the United States Supreme Court.

Despite his world-wide experiences, Judge Nutt considers himself a country boy at heart, and has deep roots in South Florida. His family moved to Broward County when

he was 11, and he began his legal career here as an intern to Judge Payne. While his accomplishments are many, he is most proud of his involvement in - and leadership of - organizations and programs which help single mothers and abused women. It was through this work that he was recognized as the Domestic Violence Man of the Year.

Although Judge Nutt does not have much time for leisure since his investiture, he does love to read and ride bikes and enjoys travelling with his wife, Cheryl Kempf, who recently retired from FP&L after practicing with its legal department for over 20 years.

One thing that those appearing before Judge Nutt should keep in mind is that he believes that the "best lawyers make an effort to inform." In his courtroom, therefore, you should take the steps necessary to educate him about your case and the applicable law; in any other setting, however, I strongly suggest that you convince him to describe for you at least one of his many adventures (did I mention that he is also a licensed pilot?).

The breadth of experience which Judge Nutt gained while at the District prepared him well for the judiciary; as much as he continues to respect his long-time former employer and the work which it does, his transition to a judicial role was the logical next step. In addition to the legal challenges themselves, he enjoys the camaraderie among his fellow jurists. His deep appreciation for the law and its institutions will benefit all of us during his tenure on the Bench.

## Judge James Nutt



Judge James Nutt

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*Terry Resk is a shareholder of Haile Shaw & Pfaffenberger, practicing in its commercial litigation and appellate departments.*



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JOSEPH OSBORNE

### Individual Wrongful Death Actions are Appropriate for Inclusion In

*re: National Prescription Opiate Litigation*, MDL No. 2804

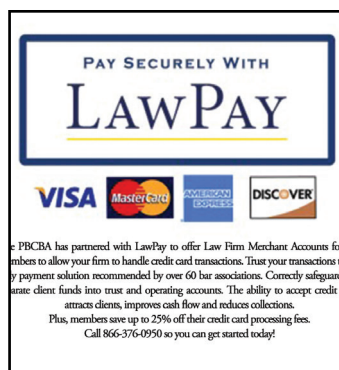
A rapidly growing series of lawsuits, which originated as public nuisance claims, involves government suing pharmaceutical manufacturers, distributors, and pharmacies over the costs associated with treating and fighting prescription opioid abuse in their communities. Prescribing practices for opioids were liberalized in the 1990s to relieve undertreated pain, but, in the past few years, opioid addiction and abuse has become a national concern. Several years ago, individuals brought personal injury or wrongful death claims against many of the manufacturers of opioids, but courts concluded that responsibility for prescription drug abuse largely rested with the physicians who overprescribed the painkillers and the individuals who took the drugs, many of which were obtained illegally. South Florida has been hit particularly hard by the opioid crisis. A report by the Florida Medical Examiner's Office found opioid-related deaths in the state increased 35 percent from 2016 to 2017. The majority of opioid lawsuits to date have been initiated by states, counties and cities. Those lawsuits seek to recover increased costs the states and municipalities allegedly incurred as a result of opioid addiction – e.g., costs associated with diagnosis and treatment of opioid addiction and overdose, increased law enforcement and police operations, and higher demands on hospitals, emergency rooms and prisons. The U.S. Judicial Panel on Multidistrict Litigation consolidated more than 100 lawsuits filed by counties, cities and other parties against opioid manufacturer and distributors into the *In re: National Prescription Opiate Litigation* MDL No. 2804 on December 4, 2017. The JPML assigned US District Judge Daniel Polster in the Northern District of Ohio to supervise the litigation.

On February 1, 2018, a transfer order was entered in *Hughes v. Mallinckrodtbrand Pharmaceuticals, Inc., et al.*, C.A. No. 4:17-2426, finding, in relevant part:

When we decided to create this MDL, we noted that, although the cases on the initial transfer motion were brought by political subdivisions, there were potential tag-along actions brought by individuals,

consumers, hospitals and third-party payors. *Id.* at \*3. Further, we recognized that “this litigation might evolve to include additional categories of plaintiffs and defendants, as well as different types of claims.” *Id.* The question now before us in *Hughes* is whether individual wrongful death actions are appropriate for inclusion in MDL No. 2804. We hold that, at this early stage, they are. Plaintiff in *Hughes* alleges that manufacturers of various prescription opioid medications improperly marketed and failed to warn about the unreasonably dangerous or defective nature of those drugs. *Hughes* therefore falls within the MDL's ambit.

The Plaintiff in *Hughes* brought her claims against manufacturers of opioid medications, healthcare entities and a physician for the death of her son who allegedly died as a result of an accidental overdose of Fentanyl and Methadone. The holding that individual personal injury and wrongful death actions are appropriate for inclusion in the MDL represents an been expanded and evolving avenue for Plaintiffs to pursue.



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**TED BABBITT**

## GUNS

This article is a departure from my usual comments on recent cases. Instead it is a discussion of the U.S. Supreme Court case of *District of Columbia v. Heller*, 554 U.S. 570, 128 S. Ct. 2783, 171 L. Ed. 2d 637 (2008). While it is unlikely that this discussion will be useful in your practice, it probably will be useful in legal discussions concerning Second Amendment rights in light of the shootings at Parkland and other massacres. It is not intended as a political statement but rather to give Palm Beach County Lawyers more information about questions they may face about this subject.

The Second Amendment of the United States states: A well-regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed.

In this case, the District of Columbia passed a law which effectively banned possession of handguns by non-law enforcement officials and required lawfully owned firearms to be kept unloaded, disassembled or locked when not located at a business place or being used for lawful recreational activities.

In a 5-4 decision, the Supreme Court struck down the District of Columbia statute as unconstitutional under the Second Amendment. The Supreme Court majority opinion was written by Justice Scalia who was joined by Justices Roberts, Kennedy, Thomas and Alito. Justices Stevens and Breyer filed separate dissenting opinions and Justice Stevens was joined in his dissent by Breyer, Ginsberg and Souter.

The case came to the Supreme Court after the District Court upheld the District of Columbia law but was reversed by the U.S. Court of Appeals for the District of Columbia by a 2-1 vote which reversed the lower court ruling in *Parker v District of Columbia*, 478 Fed. 3d 370 (D.C. Cir. 2007). The U.S. Appeals Court found that the District's total ban on handguns as well as its requirement that firearms in the home be kept nonfunctional even when necessary for self-defense violated the Second Amendment.

Both the plaintiffs and the District of Columbia petitioned the Supreme Court which accepted jurisdiction.

The Supreme Court's opinion struck down the District of Columbia's law finding that the right to bear arms was not limited to a well-regulated militia and instead included the right of individuals to bear arms for the lawful purpose of self-defense. The handgun ban contained within the District of Columbia law, according to the majority, amounted to a prohibition of an entire class of arms traditionally used by Americans for the lawful purpose of self-defense and that the requirement that firearms be rendered inoperative at all times was unconstitutional because it made those arms unusable for the lawful purpose of self-defense of one's home. The Court specifically held that the Second Amendment does not limit guns only to a militia and that while the Amendment clearly referred in its prefatory clause to a militia its operative clause preserved the right of people to keep and bear arms and thus to have such weapons and carry them not just in a military context.

Most interesting, in light of the current argument about the sale of assault type weapons such as the AR15 which has been used with some frequency in recent massacres including the Parkland shootings, the majority opinion specifically confirms the National Firearm's Acts restrictions on machine guns and at 2815 states

...the Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes, such as short barreled shotguns.

The majority opinion is careful to explain that the Second Amendment does not give an unlimited right to any kind of weapon. At 2816, the Court holds

Like most rights, the right secured by the Second Amendment is not unlimited. From Blackstone through the 19th-century cases, commentators and courts routinely explained that the right was not a right to keep and carry any weapon whatsoever in any manner whatsoever and for what purpose. See, e.g., *Sheldon*, in 5 *Blume* 346; *Rawle* 123; *Pomeroy* 152-153; *Abbott* 333. For example, the majority of the 19th-century courts to consider the question held that prohibitions on carrying concealed weapons were

lawful under the Second Amendment or state analogues. See, e.g., *State v. Chandler*, 5 La. Ann., at 498-490; *Nunn v. State*, 1 Ga., at 251; see generally 2 *Kent* 340, n 2; *The American Students' Blackstone* 84, n 11 (G. Chase ed. 1884). Although we do not undertake an exhaustive historical analysis today of the full scope of the Second Amendment, nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, or laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.

We also recognize another important limitation on the right to keep and carry arms. Miller said, as we have explained, that the sorts of weapons protected were those "in common use at the time." 307 U.S., at 179, 59 S. Ct. 816, 83 L. Ed. 1206. We think that limitation is fairly supported by the historical tradition of prohibiting the carrying of "dangerous and unusual weapons."

In a footnote, the Supreme Court opens for interpretation what other limitations Congress or the States could enact by stating:

We identify these presumptively regulatory matters only as examples; our list does not purport to be exhausted. At 2817.

In the weeks since the Parkland shootings I have heard many people, including myself, argue that the Second Amendment's plain language limits the right to bear arms to a well-regulated militia. The *Heller* opinion puts an end to that argument but makes it clear that the Second Amendment's right to bear arms is not unlimited and that reasonable regulatory laws can be enacted. Future courts, legislatures and Congress will be faced with the question of just how far those regulations should or can go in interpreting the Second Amendment.

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.



Wednesday, May 30, 2018

12:00 p.m.— 5:00 p.m.

Fourth District Court of Appeal  
110 S. Tamarind Avenue, W. Palm Beach, FL

## An A to Z Trial Lawyer's Guide to Preserving and Surviving Appellate Scrutiny at Every Phase of Trial

Presented by the Personal Injury/Wrongful Death Committee of the Palm Beach County Bar Association

### Do's and Don'ts of:

**12:00:** Check in/Late Registration/Lunch

**12:20: Welcome and Introduction:** Brian R. Denney, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., Board Certified in Civil Trial Law

**12:30: Jury Selection:** Judge Dorian K. Damoorgian and Kara Berard Rockenbach, Esq., Link & Rockenbach, P.A.

**1:20: Opening and Closing Argument:** F. Gregory Barnhart, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., Board Certified in Civil Trial Law

**2:10 Break**

**2:25: Motion Practice and Witness Presentation:** Andrew A. Harris, Esq., Burlington & Rockenbach, P.A., Board Certified in Appellate Practice

**3:15 Break**

**3:30: Appellate Perspective: How a Trial Lawyer Presents and Preserves Professionally:** Moderated by Kara Berard Rockenbach, Esq., Link & Rockenbach, P.A. *Featuring a panel of Fourth District Court of Appeal Judges including:* Judge Jonathan D. Gerber, Judge Melanie G. May and Judge Jeffrey T. Kuntz



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DAVID M. GARTEN

# Substitution Upon Death - Who, What, When, Where, And How.

Fla. R. Civ. P. 1.260 sets forth the procedure to follow when a party dies during the course of litigation. Pursuant to the Rule, upon the death of one of the litigants, a suggestion of death must be timely filed in the pending case; otherwise, the action may be dismissed as to the deceased party. The Rule only specifies who should file the motion for substitution. The Rule does not specify who should file the suggestion of death. Rule 1.260(a)(1) reads in relevant part:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by any party or by the successors or representatives of the deceased party.... Unless the motion for substitution is made within 90 days after the death is suggested upon the record by service of a statement of the fact of the death in the manner provided for the service of the motion, the action shall be dismissed as to the deceased party.

In *Feller v. R.J. Reynolds Tobacco Co.*, 2018 Fla. App. LEXIS 2160; 2018 WL 844125 (Fla. 3rd DCA 2/14/18), Mr. Feller filed a lawsuit against the tobacco companies. On 4/30/15, while the case was pending, Mr. Feller died, and his counsel notified the tobacco companies of the death. On 4/5/16, almost a year following Mr. Feller's death, the trial court issued a notice of lack of prosecution and set a hearing. In response, on 4/8/16, Mr. Feller's counsel filed a Notice of Record Activity which stated, in part, that Mr. Feller passed away on 4/30/15. The trial court concluded that Mr. Feller's Notice of Record Activity constitutes a suggestion of death upon the record because it contained a "statement of the fact of the death" of Mr. Feller thereby triggering the ninety-day period set forth in rule 1.260(a)(1). The trial court ordered that Mr. Feller's case remain pending.

On 4/15/16, Mr. Feller's wife, as the proposed PR of Mr. Feller's estate, filed her initial motion to substitute a party, to change the style of the case, and to amend the complaint. At the 5/9/16 hearing on the initial motion for substitution, the parties acknowledged that Mr. Feller's widow had

not yet been appointed as PR. The trial court ruled that, because Mr. Feller's wife had not yet been appointed, the initial motion for substitution was "futile," and therefore, it denied the motion without prejudice.

On 8/11/16, the administrator ad litem for Mr. Feller's estate filed a second motion for substitution. The tobacco companies opposed the second motion for substitution, arguing that the ninety-day period set forth in rule 1.260(a)(1) was triggered on 4/8/16, when Mr. Feller's counsel filed the notice of record activity which included "a statement of the fact" of Mr. Feller's death. Thus, the tobacco companies argued that because the second motion for substitution, which was filed on 8/11/16, was not filed within ninety days of the notice of record activity, Mr. Feller's case should be dismissed as no excusable neglect can be shown for failing to file a timely motion for substitution. Mr. Feller's counsel contended that the notice of record activity did not constitute a suggestion of death upon the record, and therefore, the ninety-day period set forth in rule 1.260(a)(1) had not been triggered. Following a hearing, the trial court dismissed Mr. Feller's action with prejudice pursuant to rule 1.260 and denied as moot the second motion for substitution. Mr. Feller's appeal followed. There were two issues on appeal: (1) whether the ninety-day period set forth in rule 1.260(a)(1) was triggered; and (2), whether the ninety-day period was extinguished by the filing of the initial motion for substitution.

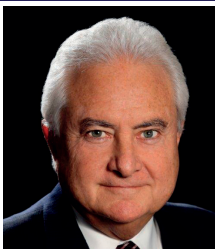
(1) Was the ninety-day period triggered? The court found that the initial motion for substitution clearly qualifies as a suggestion of death upon the record and thereby triggered the ninety-day period because it was specifically filed pursuant to rule 1.260(a)(1) and states that Mr. Feller had died on 4/30/15 and as a result, Mr. Feller's wife was seeking to be appointed as PR of his estate and to be substituted as the plaintiff in the lawsuit against the tobacco companies. The court reject Mr. Feller's counsel's argument that the motion for substitution did not trigger the ninety-day period because it was not formally styled as a "suggestion of

death" because the rule does not spell out any specific requirements for the content of the suggestion of death. All that is required is that the notice contain sufficient information necessary for any other party to move for substitution.

(2) Was the ninety-day period extinguished by the filing of the initial motion for substitution? The court found that there is no dispute that Mr. Feller's counsel timely filed a motion for substitution. The tobacco companies, however, argue that, because the motion for substitution sought to substitute Mr. Feller's wife and she had not been appointed as the PR of the estate and was not subsequently appointed, Mr. Feller's wife was not a "proper party," and therefore, the initial motion for substitution filed within the ninety-day period did not satisfy the requirements of rule 1.260(a)(1), thus requiring dismissal of Mr. Feller's lawsuit against the tobacco companies.

The court determined that the rule does not require that the motion for substitution be made by the "proper party" to be substituted in order to satisfy the requirement that a motion for substitution. Rather, it only requires that a motion for substitution be "made" within ninety days by any party or by the successors or representatives of the deceased party. The court concluded that because the initial motion for substitution in the instant case was "made" within ninety days after the death of Mr. Feller was suggested upon the record, the ninety-day expiration period was "extinguished." Thus, dismissal of the action was no longer appropriate under rule 1.260(a)(1).

Ruling: Based on the above analysis, the court conclude that: (1) Mr. Feller's death was suggested upon the record, thus triggering the ninety-day period set forth in rule 1.260(a)(1), and (2) because the initial motion for substitution was "made" within ninety days after Mr. Feller's death was suggested upon the record, the ninety-day expiration period was extinguished. Thus, as a matter of law, the trial court erred by granting the tobacco companies' motion to dismiss because dismissal was no longer an option under rule 1.260(a)(1).



Michael D. Mopsick

# THE FLORIDA SUPREME COURT AND THE NEW FRONTIER: IS "OBNOXIOUS" THE NEW "UNETHICAL"?

Our Supreme Court continues its campaign to restore and raise the standard of civility and professionalism in the practice of law. In doing so, the Court is blurring the lines between unethical conduct which violates the Rules of Professional Conduct (the "Bar Rules"), and conduct that is unprofessional and uncivil. The Court has been riding the crest of a sea change in the way lawyers will be held accountable with their licenses for "unprofessional" behavior that a few short years ago might only have resulted in reprimand or a short suspension. The message is clear: you can lose your license to practice law for being obnoxious, particularly if your behavior is cumulative and found to be "prejudicial to the administration of justice".

*The Florida Bar vs. Ratiner*, No. SC13-539, \_\_ So. 3d \_\_, (Fla. Feb. 22, 2018), is the latest example of the severity of the Justices' reaction to incivility and unprofessional conduct in the courtroom. While the Court and the Florida Bar, in disciplinary proceedings, have long referred to Bar Rules 4-3.5(c) (conduct intended to disrupt a tribunal); Rule 4-8.4(d) (conduct that is prejudicial to the administration of justice); and Rule 4-8.4(a) (violating or attempting to violate the Rules of Professional Conduct), the Court appears now more likely to refer to those rules to reject a referee's recommendation of several months' suspension and impose the ultimate penalty of disbarment, as in *Ratiner*, or suspensions calculated in years, not months, particularly in cases of cumulative previous misconduct in the courtroom. See, e.g., *The Florida Bar vs. Norkin*, 132 So. 3d 77 (2013) (rejection of recommended three-month suspension and imposition of two-year suspension; *The Florida Bar vs. Committee*, 136 So. 3d 1111 (2014) (rejection of recommended 91-day suspension and imposition of three-year suspension).

Here is what the Court had to say in *Norkin*: Screaming at judges and opposing counsel, and personally attacking opposing counsel by disparaging him and attempting to humiliate him, are not among the types of acceptable conduct but are entirely

unacceptable. One can be professional and aggressive without being obnoxious. Attorneys should focus on the substance of their cases, treating judges and opposing counsel with civility, rather than trying to prevail by being insolent toward judges and purposefully offensive toward opposing counsel....We do not tolerate unprofessional and discourteous behavior. We do not take any pleasure in sanctioning Norkin, but if we are to have an honored and respected profession, we are required to hold ourselves to a higher standard. (132 So. 3d, at 92, 93).

The Court does not seek to deprive you of your license to practice your profession; it wants to teach you how to avoid that result. The Panel system is one of the tools designed to achieve that end. On June 6, 2013, the Court, by Justice Lewis, issued an order entitled "In Re: Code for Resolving Professionalism Complaints" (No. SC13-688), in which the Court mandated the creation, in every Circuit, of a system of professionalism tribunals, named "Panels", to hear and resolve complaints about an attorney's lack of civility or exhibition of unprofessional behavior, hopefully before that conduct can repeat itself and result in the kind of extreme discipline we have seen in recent cases. Palm Beach County was way ahead of the game. A mechanism created during the 1990's was already in place for hearing such complaints. Named the Professionalism Council, and administered by the Professionalism Committee, it served, along with a handful of other such programs around the state, as a prototype for the Professionalism Panels now mandated for every Circuit in the State. The concept as functioning here needed only a designation by the Chief Judge, a change of name, and a little tweaking, and we were up and running. Its focus was, and remains, not punishment but education. The goal is and was to find "teachable moments", opportunities for counseling, mentoring, and guiding lawyers so that they never become the repeat offenders whose names adorn this and other commentaries on bad behavior.

Most importantly, the new Code, and our local Administrative Order implementing it (AO No. 2.105-11/16) added significant new teeth. The Panel is empowered to refer matters to ACAP, the Florida Bar's intake arm for screening potential violations of the Rules of Professional Conduct.

What has been striking to members of some Panels over the past several years, including the one most recently concluded, is that many of the attorneys who were asked to appear were grateful for the opportunity to do so and had been completely unaware of the purpose of the Panel program or even its existence. Many who entered the meeting room were initially defensive or even belligerent, but they learned from the manner in which the proceedings were conducted that this was an opportunity to learn and to avoid being referred to the disciplinary system, and that the panelists were there primarily to help and to guide.

We are on the frontier of a rediscovery of our professional identity. "Got Civility?" is not just a slogan; it is a reminder of what you must have in order to retain your privilege to be one of the guardians of the Rule of Law.



MANNY FARACH

# Florida Real Property and Business Litigation Report

U. S. Bank N. A. v. Village at Lakeridge, LLC, Case No. 15-1509 (2018).

A bankruptcy court's determination of a mixed question of law and fact (such as who is a non-statutory "insider" under the Bankruptcy Code) is reviewed under a "clear" error" and not a de novo standard of review.

Hemingway Villa Condominium Owners Association, Inc. v. Wells Fargo Bank, N.A., Case No. 3D17-926 (Fla. 3d DCA 2018).

The Third District adopts Beltway Capital, LLC v. Greens COA, Inc., 153 So. 3d 330 (Fla. 5th DCA 2014), and holds that a "first mortgagee" for the purposes of the Safe Harbor provision regarding association fees "is simply one who holds the first mortgage, whether that be the original lender or a subsequent holder."

Meyrowitz v. Andrew M. Schwartz, P.A., Case No. 4D17-1983 (Fla. 4th DCA 2018).

The "tried on the following docket" exception of the requirement Florida Rule of Civil Procedure 1.442's requirement that a Proposal for Settlement is timely only if made 45 days before the beginning of the trial docket or the date of trial, whichever is earlier, is if all parties know the case is to be tried on a following docket.

Deutsche Bank Trust Company Americas v. Merced, Case No. 5D16-3486 (Fla. 5th DCA 2018).

Proof of contractual authority to testify is not required for a witness to lay the predicate to testify under the Business Records Exception to the Hearsay Rule because a witness may testify to matters within his or her personal knowledge.

Tobinick v. Novella, Case No. 16-16210 (11th Cir. 2018).

The "exceptional case" standard for awarding attorney's fees in Patent Act cases as set forth in Octane Fitness, LLC v. ICON Health & Fitness, Inc., 572 U.S. \_\_\_, (2014), also applies to Lanham Act cases.

Fincantieri-Cantieri Navali Italiani S.p.A. v. Yuzwa, No. 3D16-1015 (Fla. 3d DCA 2018).

Florida courts do not have long-arm jurisdiction over a lawsuit brought by a Canadian citizen against an Italian shipbuilder for injuries sustained in

international waters in the Pacific Ocean on a cruise ship built in Italy which was owned by a Washington corporation when the injuries occurred.

Nationstar Mortgage, LLC v. Yesenia Silva, Case No. 3D16-1936 (Fla. 3d DCA 2018).

A foreclosing lender is not required to send a new notice of default if the default date in the foreclosure complaint is changed, and substantial compliance with a condition precedent is sufficient unless the party to whom the notice is directed can demonstrate prejudice, e.g., attempts to pay in a mortgage foreclosure context.

Citigroup Mortgage Loan Trust Inc. v. Scialabba, Case No. 4D17-401 (Fla. 4th DCA 2018).

Substantial compliance with a condition precedent is sufficient unless the party to whom the notice is directed can demonstrate prejudice, e.g., attempts to pay in a mortgage foreclosure context.

CSC Serviceworks, Inc. v. Boca Bayou Condominium Association, Inc., Case No. 4D17-0974 (Fla. 4th DCA 2018).

An association disconnecting, but not removing, a prior servicer's laundry equipment from a condominium association laundry room does not constitute an unlawful detainer by the association.

Palisades Owners' Association, Inc. v. Browning, Case No. 1D17-2129 (Fla. 1st DCA 2018).

A dispute between a property owner and an association alleging breaches of fiduciary duty by the association is more complex than garden-variety community association disagreements and falls outside the arbitration requirements of Florida Statute section 718.1255(1).

Ocean Concrete, Inc. v. Indian River County, Board Of County Commissioners, Case No. 4D16-3210 (Fla. 4th DCA 2018).

A determination whether inordinate government regulation violates the anticipated use provision of the Bert Harris Act, Florida Statute section 71.001, must be made without considering the economic viability of the anticipated use.

McMichael v. Deutsche Bank National

Trustee Company, Case No. 4D16-3879 (Fla. 4th DCA 2018).

A party who fails to read a contract before signing it cannot claim "unclean hands" regarding the provisions contained in the contract.

Baker v. Economic Research Services, Inc., Case No. 1D16-4139 (Fla. 1st DCA 2018).

A forum selection clause survives termination of the contract which contains the clause.

Mullen v. Bal Harbour Village, Case No. 3d17-1144 (Fla. 3d DCA 2018).

A development order may not, according to the dictates of Florida Statute section 163.167(8)(a), be subject to the will of the voters through referendum and must instead be reviewed under a quasi-judicial process.

Stein v. BBX Capital Corp., Case No. 4D16-4309 (Fla. 4th DCA 2018).

Absent specific allegations of fraud or material misrepresentations in the appraisal or sale process, an aggrieved shareholder is limited to her appraisal rights under Florida Statute section 607.1302 when a company sells its shares.

Rouffe v. Citimortgage, Inc., Case No. 4D16-3583 (Fla. 4th DCA 2018).

A third party to the note and mortgage may contest the amounts due but may not contest liability under the note and mortgage.

Liukkonen v. Bayview Loan Servicing, LLC, Case No. 4D16-4193 (Fla. 4th DCA 2018).

A modification agreement is not a negotiable instrument like a promissory note, and thus the original need not be introduced into evidence to satisfy the Best Evidence Rule; Rattigan v. Central Mortgage Co., 199 So. 3d 966 (Fla. 4th DCA 2016), is distinguished.

Trigeorgis v. Trigeorgis, Case No. 4D17-0262 (Fla. 4th DCA 2018).

The filing of a "Notice of Interest" (not a lis pendens associated with an action) is not a disparagement of title if the statement contained in the Notice is true or if plaintiff cannot prove that the alleged falsehood induced others to not deal with plaintiff.



# Under the Umbrella of Real Estate

Presented by the Real Estate CLE Committee of the Palm Beach County Bar Association

Friday, May 18, 2018  
9:00 a.m. to 6:00 p.m.

Fourth District Court of Appeal  
110 South Tamarind Avenue  
West Palm Beach, FL



## MORNING:

9:00: Check-in / Registration/ Welcome - Leanna Lalla, Esq., Sundarsingh Law, P.L.

### 9:30: **COMMERCIAL EVICTIONS**

How to Evict a Commercial Tenant (Including collecting damages/unpaid rents/future rents) - Mandell Sundarsingh, Esq., Sundarsingh Law, PL

### 10:00: **RESIDENTIAL LANDLORD TENANT DISPUTES**

Most of Everything you should know about Florida Statute Chapter 83, Part II (Residential Landlord/Tenant Tenancies) - Lloyd Comiter, Esq., Law Offices of Comiter, P.A.

### 10:40: **QUIET TITLE**

What you Should Know Before Taking a Quiet Title Action/How to Quiet Title - Michael J Posner, Esq., Ward, Damon, Posner et al; Board Certified in Real Estate

11:15: Break

### 11:30: **CYBERCRIME AWARENESS**

Attorney's ethical responsibilities, including laws and regulations, and measures for protection for cyber protection of trust wiring and personal information - John Gonzalez, Fidelity National Title Group

12:00: Lunch

## AFTERNOON:

### 1:00: **HOW DOES BANKRUPTCY AFFECT TITLE**

Including (i) stay relief relating to an action involving real property; and (ii) assumption and rejection of commercial leases of real property - Marta Suarez-Murias, Esq., Breton, Lynch, Eubanks & Suarez-Murias PA

### 1:50: **UNDERSTANDING MUNICIPAL CODE ENFORCEMENT**

A brief "practical" understanding of the municipal code enforcement process, how to determine lien priority in light of recent case law, and advice for defending clients in municipal code enforcement proceedings and negotiating lien payoffs - Thomas Mullin, Esq., and Jack Rice, Esq., Nason Yeager Gerson White & Lioce, P.A.

2:50: Break

### 3:00: **WHAT CAN YOU DO WHEN YOUR CLIENT GETS SCREWED BUYING A HOUSE**

Litigating and defending claims of a seller's failure to disclose material defects unobservable to buyers in residential real estate matters under the residential purchase and sales agreement - David Steinfeld, Esq., Law Office David Steinfeld, P.L.

### 4:00: **2017 CASE LAW AND STATUTORY UPDATE**

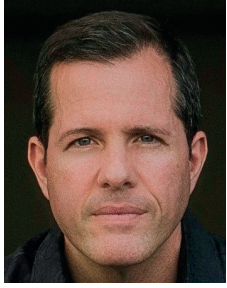
Recent Developments in Florida Real Estate Law from both the Case Law and Statutory Fields - Manual Farach, Esq., McGlinchey Stafford, PLLC; Board Certified in Real Estate and in Business Litigation

5:00: Reception

7.5 CLER; .5 Ethics; .5 Technology. 7.5 Certification credits in Real Estate, Business Litigation, and Condominium and Planned Land Development Law. Cost: \$ 240 members; \$ 280 non-members. Those registering after 5/11/18 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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\_\_\_\_\_, I will not be able to attend the seminar, however 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. 5/18/18 Real Estate law



**BRIAN MOSKOWITZ**

## WHAT'S GREAT ABOUT THIS?

What's great about this? Nothing.

That was my answer years ago when a friend asked me what was great about my divorce. At the time I was focused on the feeling of loss and how I had failed. But then he challenged me to find the silver lining. To find an empowering meaning. To find what was great about it.

Once again I said "nothing." Then he asked, what COULD be great about it? What have you learned? Where have you grown? Who have you been able to help because of what you've been through?

Now some answers started to percolate in my head: we settled instead of going to court, we put our children's needs before our own needs, I was a lot happier which made be a better parent, it cleared the way for me to meet the right partner, I learned how to be better at relationships, I was able to spend more quality time with my children, and I learned who my true friends were.

Don't get me wrong, I'm not saying that getting divorced was great. I'm saying that my divorce was just that, a divorce. It is what it is and nothing was going to change that fact. I could wallow in sorrow and have a pity party for myself or I could learn the lessons from it, integrate those lessons into my life, and then share them with others.

You have the same choice in your life whenever faced with adversity or a devastating loss. No matter how horrible and awful the situation is, it could always be worse. You can always find an empowering meaning and then use what you've learned to grow as a person and to help others.

Whenever something bad happens ask yourself these four questions :

- 1.What really happened?
- 2.What do I need to learn from this?
- 3.How can I integrate what I've learned?
- 4.How can I share what I've learned to help other people?

I've used these questions to help my children overcome stress and anxiety about school and I've used them to help others overcome the devastating loss of loved ones. You can use them to overcome any situation. Accept what is, learn the lesson, integrate it into your life, and then take what you've learned and share it with others.

So whatever you have going on in your life or practice right now, ask yourself "What's great about this?"

*Brian M. Moskowitz is the Founder of Attorney Revolution - a solo practitioner in Boca Raton, and a member of our Solo and Small Firm Committee. Brian can be reached at [brian@attorneyrevolution.com](mailto:brian@attorneyrevolution.com)*



### **W. Jay Hunston, Jr.**

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- Fla. Cert. Circuit Civil, Appellate & Family Mediator
- Member, AAA Roster of Neutrals for Commercial and Construction Arbitration and Mediation
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*'Thank you to my friend and mentor Steve Linder for sharing these questions, and so many other tools and strategies, with me.*



# MENTAL WELLNESS & HEALTH Luncheon



Health and Wellness Luncheon a great success!

It's easy to talk about a broken arm or cold, but it's not easy talking about mental health. With the importance of mental health and wellness for attorneys, the Palm Beach County Bar Association, along with several local diversity bar associations, recently hosted a Health and Wellness Luncheon at the beautiful Admirals Cove Country Club in Jupiter. If you were unable to attend, there is future programming planned. We'll keep you posted on dates and times



Shannon Sagan and Elisha Roy



Michael Higer (Fl Bar President) and Sia Baker-Barnes (PBCBA President)



Judge Sherri Collins and Judge Caroline Shepherd



Lauren Johnson and Rina Clemens



Dr. Deborah Day (Round Table)



Charlie Hugh-Jones (Round Table)



Brian Moskowitz



Dr. Scott Weinstein



Ronald Ponzoli



# STOP REFERRING PERSONAL INJURY CASES ON A HANDSHAKE

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## NORTH COUNTY Section

### NCS Casino Night



Preston Fields, Elvis Presley and Malinda Hayes



Misty and Rick Chaves



Wayne Richter, W Mason and Nick Johnson



David and Nicole Kruegel



North County Section recently hosted Cocktails, Dinner and Casino games at the beautiful Admirals Cove Country Club. A good time was had by all!

Gabrielle Jackson, Michael Gelfand and Tanique Lee



Door Prize Winners!  
Brooke Grogan, Francisca Canas and Leslie Metz



### 16th Annual Jurist of the Year

Presented by the North County Section

**Thursday, May 17, 2018**

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

**Ruth's Chris Steak House**

661 U.S. Highway One

North Palm Beach

Cost: NCS Members \$65.00 - Judges Complimentary

Spouses \$75.00 ~ Attorneys who are non-Section members \$75.00

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Price increases after 5/14/18



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The Paralegal  
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Spring Meet and Greet  
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## YOUNG LAWYERS Section

### YLS Quantum House Visit

It was a great joy to see children smile, while egg hunting and decorating cookies, at our annual PBCBA Young Lawyers Section Easter/Passover event. Approximately 15 families were also served dinner.



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### YLS Fishing Tournament

YLS will host its Ninth Annual Fishing Tournament on June 23 at the Palm Beach Yacht Club in West Palm Beach. Proceeds from the tournament will benefit the Legal Aid Society's Educational Advocacy Project and the AustinBlu Foundation. Help us raise money for these worthy causes. Meet you at the pier.

Registration and sponsorship information  
available at  
[www.palmbeachbar.org](http://www.palmbeachbar.org)

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

## Bracing for the Storm: Preparing for a Hurricane and Aftermath



Wednesday, May 16, 2018, 8:30 a.m. - 12:00 p.m.

Fourth District Court of Appeal, 110 S. Tamarind Avenue, W. Palm Beach, FL

This seminar will focus on planning, risk allocation, and the practical/legal issues presented before, during and after hurricane events from both the owner and contractor perspectives.

8:30 a.m. - 9:00 a.m. **Late registration / Check In**

9:00 a.m. - 9:05 a.m. **Welcome and Opening Remarks** - William J Cea\*, Esq., Florida Certified Circuit Civil Mediator; Becker & Poliakoff, P.A.; Chair, Construction Law Committee

9:05 a.m. - 9:55 a.m. **Before the Cone "May Day": What's Necessary Before Hurricane Season** (This topic will address the measures that should be taken by owners and contractors prior to hurricane season. For example, the types of insurance coverages that should be in place, and ensuring that sufficient labor and materials will be available in case of a state of emergency. Additionally, attention will also be given to the contractual provisions and business considerations that parties should address in anticipation of storm events.) - Mike Heitman\* Esq., Owen, Gleaton Egan, Jones & Sweeney, LLP

9:55 a.m. - 10:45a.m. **You're in the Cone - Securing Business and Job Sites** (Once the weather forecasters conclude that an area is in the projected path of a hurricane, steps must be taken to secure job sites, and businesses. This segment will explore what those steps are, and how property owners can position themselves in case property damage occurs and insurance claims or lawsuits become necessary. This will include steps to take for owners and contractors involved in ongoing construction projects that may be affected by the hurricane.) Mark J. Stempler, Esq.\*, Becker & Poliakoff, P.A.

10:45 a.m. - 10:50a.m. **Break**

10:50 a.m. - 11:40 a.m. **The Aftermath – Protecting Owners and Construction Industry**

**Professionals** (An overview of a lawyer's guide on tips and tricks for dealing with clients and contractors in the aftermath of a natural disaster. The presentation will be separated in two subparts - 1. Advice for lawyers providing legal counsel to property owner clients; and 2. Advice for lawyers providing legal counsel to construction industry professionals.) Daniel E. Levin\*, Esq., Cole, Scott & Kissane, P.A and John A. Chiocca\*, Esq., Cole, Scott & Kissane, P.A,

11:40 a.m. - 12:00 p.m. **Question/Answer Session & Closing Remarks**

Sponsor



\*All Board Certified in Construction Law

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Credit: 3.0 CLER; 3.0 Certification credits in construction law. Cost: \$ 90 members; \$ 130 non-members. Those registering after 5/9/18 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 Appellate Practice Committee of the Palm Beach County Bar Association  
*presents:*



## MAKING EXTRAORDINARY WRITS MORE THAN ORDINARY

**FRIDAY, JUNE 1, 2018**

**Fourth District Court of Appeal, 110 South Tamarind Avenue, West Palm Beach**

**11:30: Check-in and Lunch**

**Noon: Program**

**Program:** This one (1) hour session is geared toward appellate practitioners and judges as well those who want to learn more about writ practice in the Fourth District Court of Appeal. Topics will include: the various types of writs, their applicable time requirement, jurisdiction, effectively presenting arguments to the court, effectively opposing arguments presented to the court, and the technical requirements of appendices. This is also a great “crash course” for trial attorneys on how to effectively handle writs in the Fourth District Court of Appeal.

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

12:00 - 12:05 p.m.: **Welcome remarks:**

Samuel Walker, Esq., CPLS, P.A., Chairperson, Appellate Practice Committee

12:05 - 12:45 p.m.: **Making Extraordinary Writs More than Ordinary**

Judge Robert M. Gross, Judge Melanie G. May, and Joe Levis, Central Staff Director, will discuss all things writ. The panel will advise attorneys of the keys to effectively obtaining or opposing extraordinary writs.

12:45 - 1:00 p.m.: **Questions and Answer Segment**

*This program graciously sponsored by:*



1.0 CLER; 1.0 certification credit in Appellate Practice. Cost: \$35 members; \$75 non-members. Those registering after 5/25/18 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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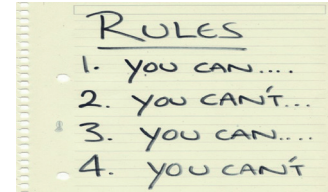


# THE 29TH ANNUAL COMMUNITY ASSOCIATION LAW SEMINAR

Friday, June 8, 2018

7:30 a.m. to 1:00 p.m.

Fourth District Court of Appeal, 110 S. Tamarind Ave., W. Palm Beach, FL



**7:30 am Late Registration / Check in / Light Breakfast**

**7:55 am Welcome** - Tanique G. Lee, Esq., Committee Chair, Gelfand & Arpe, P.A.

**8:00 am Current Trends in Fair Housing** - Pamela Guerrier, Esq., Director, Palm Beach County Office of Equal Opportunity

**8:50 am Different Rules for Different Folks: Private Clubs and Exemptions From Discrimination Laws** - Larry Corman, Esq., Greenspoon Marder, P.A.

**9:35 am Coverage Denied: Get Your Client's Insurance Claims Paid** - Edrick E. Barnes, Esq., Law Office of Edrick E. Barnes, P.A.

**10:20 am Break**

**10:30 am Construction Defects Claims-How to Get the Ball Rolling, Steps necessary to evaluate, preserve, and initiate construction defect claims** - William J. Cea, Esq., Becker & Poliakoff, P.A.; Florida Bar Board Certified in Construction; Florida Supreme Court Certified Circuit Civil Mediator

**11:20 am Why You Need a Written Data Breach Policy, How to Get One, and What Bad Things Can Happen if You Don't** - Robert W. Wilkins, Esq., Jones, Foster, Johnston & Stubbs, P.A.; Florida Bar Board Certified in Civil Trial and Business Litigation

**12:10 pm Legislative & Case Law Update: Practical and Ethical Implications** - Michael J. Gelfand, Esq., Gelfand & Arpe, P.A.; Florida Bar Board Certified in Real Estate; Florida Supreme Court Certified Mediator: Civil Circuit Court and Civil County Court; Fellow, American College of Real Estate Lawyers

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6/8/18 Community Law

## Palm Beach County Bar Association CLE Ordering

Purchase CD's, recorded at previous seminars for CLE hours. MP3, MP4 and DVD formats are available for some seminars. Visit the Bar's website to see which seminars are available in MP3 and MP4 format.



### IN NEED OF CLER CREDIT? WE CAN HELP!

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audio CD's recorded at previously held live seminars of the Association.

We also have copies of audio CD's of live seminars from the Orange Co. Bar Assoc. (OCBA), Clearwater Bar Assoc.(CBA), Hillsborough Co. Bar Assoc.(HCBA), and the Dade Co. Bar Assoc. (DCBA).

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	Course Title	Credit General	Ethics Hours	Certif. Credit	PBCBA Member	Non Member	Expires
<input checked="" type="checkbox"/>	<b>ADR (2)</b>						
	<a href="#">2.12.18 Evolving Trends in ADR: Cooperation is the...</a>	9.0	3.0	Yes	\$275.00	\$315.00	08/12/19
	<a href="#">2.13.17 ADR – A Help Not A Hurdle</a>	8.5	1.0	Yes	\$240.00	\$280.00	08/12/18
<input checked="" type="checkbox"/>	<b>Appellate (8)</b>						
	<a href="#">1.22.18 How to Market an Appellate Practice</a>	1.0	0.5		\$35.00	\$75.00	07/22/19
	<a href="#">2.2.18 Outstanding Appellate Advocacy Seminar</a>	1.0		Yes	\$35.00	\$75.00	08/02/19
	<a href="#">2.21.18 Vehicular Homicide Prosecution: Closing Ar...</a>	2.0		Yes	\$60.00	\$100.00	08/21/19
	<a href="#">2.26.18 Admissibility of Expert Testimony Under Da...</a>	1.0		Yes	\$30.00	\$70.00	08/26/19
	<a href="#">3.2.18 The Art of Objecting &amp; Preserving Error for...</a>	2.5	1.0	Yes	\$75.00	\$115.00	09/02/19
	<a href="#">6.28.17 Proposals for Settlement</a>	1.0		Yes	\$25.00	\$65.00	12/27/18
	<a href="#">6.8.17 Preservation of Error for Trial Attorneys</a>	1.0		Yes	\$25.00	\$65.00	12/07/18
	<a href="#">Technical Writing for E-Reading</a>	1.0			\$25.00	\$65.00	07/11/18
<input checked="" type="checkbox"/>	<b>Bankruptcy (2)</b>						
	<a href="#">12.8.17 View of Bankruptcy Practice – Interaction...</a>	5.0		Yes	\$165.00	\$205.00	06/07/19
	<a href="#">6.1.17 From the Horse's Mouth–THE HONORABLE ERIK P...</a>	4.5	0.1	Yes	\$125.00	\$165.00	11/30/18
<input checked="" type="checkbox"/>	<b>Business Law (1)</b>						
	<a href="#">Ethical Limits in e-Discovery &amp; How to Avoid Sanct...</a>	1.0	1.0	Yes	\$40.00	\$80.00	06/08/18
<input checked="" type="checkbox"/>	<b>Civil Trial (2)</b>						
	<a href="#">1.19.17 Daubert Challenges in State and Federal Co...</a>	1.0		Yes	\$25.00	\$65.00	07/18/18
	<a href="#">12.6.16 Introduction to Qui Tams</a>	1.0			\$25.00	\$65.00	06/05/18
<input checked="" type="checkbox"/>	<b>Commerical and Business Litigation(3)</b>						
	<a href="#">12.14.17 Mediating Business Cases: Strategies, Ana...</a>	1.0		Yes	\$35.00	\$75.00	06/13/19

	<a href="#">6.16.17 LLC Member Disputes</a>		5.5	0.5	Yes	\$150.00	\$190.00	12/16/18
	<a href="#">6.29.17 E-Discovery Cost Shifting</a>		1.0		Yes	\$25.00	\$65.00	12/28/18
<input checked="" type="checkbox"/>	<b>Community Association Law(1)</b>							
	<a href="#">6.9.17 28th Annual Community Law Seminar</a>		5.5	2.0	Yes	\$190.00	\$230.00	12/08/18
<input checked="" type="checkbox"/>	<b>Construction Law(1)</b>							
	<a href="#">02.16.17 Annual Construction Law Committee Half Da...</a>		4.0	1.0	Yes	\$135.00	\$175.00	08/15/18
<input checked="" type="checkbox"/>	<b>Criminal Law(1)</b>							
	<a href="#">4.19.17 Domestic Violence: It's Not Just the Victi...</a>		2.0			\$60.00	\$100.00	10/18/18
<input checked="" type="checkbox"/>	<b>Diversity (2)</b>							
	<a href="#">3.31.17 Road To The Bench</a>		2.5			\$25.00	\$40.00	09/30/18
	<a href="#">8.1.17 Are We As Diverse As We Think?</a>		4.0			\$75.00	\$115.00	02/01/19
<input checked="" type="checkbox"/>	<b>Elder Law Affairs(3)</b>							
	<a href="#">02.20.17 Long Term Care in Florida</a>		1.0		Yes	\$35.00	\$75.00	08/19/18
	<a href="#">11.9.17 20th Annual Elder Law Seminar</a>		7.5	0.5	Yes	\$245.00	\$285.00	05/08/19
	<a href="#">The 19th Annual Elder Law Seminar</a>		6.0	1.0	Yes	\$165.00	\$205.00	06/08/18
<input checked="" type="checkbox"/>	<b>Estate and Probate(3)</b>							
	<a href="#">07.10.17 Estate, Guardianship &amp; Trust Accounting</a>		1.0		Yes	\$35.00	\$75.00	01/10/19
	<a href="#">1.13.17 From the Newlywed to the Nearly Dead: The...</a>		1.0		Yes	\$25.00	\$65.00	07/12/18
	<a href="#">2.9.17 Guardianship Bootcamp</a>		7.5	1.0		\$250.00	\$290.00	08/09/18
<input checked="" type="checkbox"/>	<b>Family Law (4)</b>							
	<a href="#">1.18.17 Collection, Enforcement &amp; Modification of...</a>		4.0		Yes	\$100.00	\$140.00	07/18/18
	<a href="#">10.27.17 Pre-Nuptial Agreements &amp; Marital Settleme...</a>		5.0	1.0	Yes	\$175.00	\$215.00	04/27/19
	<a href="#">3.6.17 Same Sex Couples: Unique Issues or Practice</a>		1.0		Yes	\$25.00	\$65.00	09/15/18
	<a href="#">Procedural Ins and Outs of Child Support Cases Inv...</a>		1.0		Yes	\$25.00	\$65.00	05/16/18
<input checked="" type="checkbox"/>	<b>General Law (9)</b>							
	<a href="#">1.19.18 E-Discovery: Practical, Paperless and Beyo...</a>		2.0			\$60.00	\$100.00	07/19/19
	<a href="#">1.30.18 Practical Tips for Female Lawyers</a>		1.0			\$30.00	\$70.00	07/30/19
	<a href="#">11.28.17 Emerging Issues in Florida Evidence</a>		2.0		Yes	\$60.00	\$100.00	05/27/19
	<a href="#">2.5.18 Vehicular Homicide Prosecution: Direct Cros...</a>		2.0		Yes	\$35.00	\$75.00	08/05/19
	<a href="#">3.14.18 30(B)(6) Depositions: Cutting to the Chase</a>		1.0		Yes	\$30.00	\$70.00	09/14/19
	<a href="#">3.22.17 Presenting Powerfully Effective Opening St...</a>		2.0	1.0		\$60.00	\$100.00	09/21/18
	<a href="#">4.20.17 Cannabis Law Summit</a>		4.5			\$125.00	\$165.00	10/20/18
	<a href="#">4.4.17 Is Subscription Licensing Killing the First...</a>		1.0			\$25.00	\$65.00	10/03/18
	<a href="#">8.29.17 Power of Analogy &amp; Holding All the Cards i...</a>		1.0	1.0	Yes	\$40.00	\$80.00	02/27/19
<input checked="" type="checkbox"/>	<b>Intellectual Property(1)</b>							
	<a href="#">2.2.17 The USPTO</a>		2.0	0.1	Yes	\$55.00	\$95.00	08/01/18
<input checked="" type="checkbox"/>	<b>Juvenile Law (1)</b>							
	<a href="#">2.6.17 The Adolescent Brain: How Research and Deve...</a>		1.0		Yes	\$25.00	\$65.00	08/05/18
<input checked="" type="checkbox"/>	<b>Labor and Employment Law(3)</b>							
	<a href="#">04.03.17 EEOC's New Strategic Enforcement Plan</a>		1.0			\$35.00	\$75.00	10/02/18
	<a href="#">1.12.17 How to Handle the Vocational Expert Prior...</a>		1.0			\$25.00	\$65.00	07/11/18



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<input type="checkbox"/>	2.17.17 Workplace Violence		2.5		Yes	\$65.00	\$105.00	08/16/18
<input type="checkbox"/>	Misc. CLE (0)							
<input type="checkbox"/>	New Members/Young Lawyers(0)							
<input checked="" type="checkbox"/>	PI Wrongful Death(4)							
	11.16.17 Wrongful Death 101		5.5		Yes	\$170.00	\$210.00	05/15/19
	12.8.16 How To Get Medical Records Electronically		1.0	0.5	Yes	\$35.00	\$75.00	06/07/18
	2.1.18 Medical School for Lawyers		7.0		Yes	\$215.00	\$255.00	08/01/19
	PIP Hotline Issues – Plaintiff's and Defendant's		1.0		Yes	\$25.00	\$65.00	05/02/18
<input checked="" type="checkbox"/>	Professionalism (3)							
	1.25.17 A Conversation about Professionalism with...		2.0	1.0	Yes	\$60.00	\$100.00	07/24/18
	2.9.18 Ethics, Professionalism and Technology		4.0	3.0	Yes	\$120.00	\$160.00	08/09/19
	2.9.18 Professionalism Expectations		1.0	1.0		\$30.00	\$70.00	08/09/19
<input checked="" type="checkbox"/>	Real Estate (3)							
	04.20.17 Navigating a Brave New World: Buyers, Sel...		1.0		Yes	\$35.00	\$75.00	10/19/18
	1.27.17 How to Compel Surrender of Real Property i...		1.0			\$25.00	\$65.00	07/26/18
	5.19.17 Real Estate for the Current Times		7.5		Yes	\$215.00	\$255.00	11/18/18
<input type="checkbox"/>	Securities Law (0)							
<input checked="" type="checkbox"/>	Tax Law (1)							
	06.23.17 Avoiding Malpractice: Mastering the Art o...		1.0		Yes	\$35.00	\$75.00	12/22/18
<input checked="" type="checkbox"/>	Technology (11)							
	04.19.17 Technically Speaking: Boomers, Xers and...		2.0	2.0	Yes	\$105.00	\$145.00	10/19/18
	05.12.17 Beyond the Desktop: Preservation & Digita...		1.0		Yes	\$35.00	\$75.00	11/11/18
	05.16.17 Cyber Attacks and Ransomware		1.0		Yes	\$50.00	\$90.00	11/15/18
	07.26.17 Social Media Series Part 2: Client Conduc...		1.0		Yes	\$50.00	\$90.00	01/25/19
	1.24.17 Social Media Discovery					\$25.00	\$65.00	07/23/18
	12.12.16 Ethics: E-filing, E-service, E-access Und...		1.0	1.0		\$40.00	\$80.00	06/11/18
	12.16.16 Understanding and Using Metadata		1.0		Yes	\$40.00	\$80.00	06/15/18
	2.24.17 You've Been Hacked		1.0			\$25.00	\$40.00	08/23/18
	2.7.17 Common Security Threats		1.0			\$25.00	\$65.00	08/06/18
	5.23.17 Social Media Discovery		1.0	1.0	Yes	\$35.00	\$50.00	11/22/18
	Law Firm & PLL Complying with Privacy and Data		1.0	1.0	Yes	\$40.00	\$80.00	05/16/18
<input checked="" type="checkbox"/>	Worker's Compensation(2)							
	10.25.17 How to Reach the Iron Throne – Workers' C...		5.5	1.0		\$175.00	\$215.00	04/24/19
	2.6.17 Worker's Comp – JCC Procedures		1.0			\$25.00	\$65.00	08/05/18

Please contact Eva Gray: [egray@palmbeachbar.org](mailto:egray@palmbeachbar.org) with any questions or for additional information.

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Personal Injury  
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.....  
The Palm Beach County Bar Association  
presents  
Small Claims and  
Landlord Tenant lectures  
  
**FREE!**  
Next program:  
Tuesday, May 22, 2018  
6:30 p.m.  
West Boynton Beach Branch Library  
9451 Jog Road,  
Boynton Beach  
.....

Miscellaneous

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

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# CALENDAR OF EVENTS

## MAY 2018

Tuesday-Thursday, May 1-May 3  
8:00 am  
Shadow a Judge

Tuesday, May 1  
6:00-7:00  
Immigration Clinic for Law Week  
Lantana Library

Thursday May 3  
2:00pm  
Homeowner Clinic for Law Week  
Delray Public Library

Friday, May 4  
8:30am – 9:30am  
ADR Committee Meeting  
515 N Flagler Dr

Friday, May 4  
11:30am – 1:00pm  
Law Day Luncheon

Monday, May 7  
11:00am -11:30am  
New Attorney Induction Ceremony  
4th DCA

Tuesday, May 8  
7:45am-8:15  
UMC Coffee  
North End Cafeteria

Tuesday, May 8  
11:30am-1:00pm  
NCS Board Meeting

Tuesday, May 8  
12:00pm-1:00pm  
YLS Board Meeting  
515 N Flagler Dr

Wednesday, May 9  
12:00pm -1:00pm  
Professionalism Committee Meeting  
4th DCA

Thursday-Sunday, May 10-May 13  
Florida Bar YLS Board of Directors  
Duck Key, Florida

Thursday, May 10  
12:00pm-1:00pm  
Construction Law Committee  
Becker & Poliakoff

Thursday, May 10  
1:00pm – 1:30pm  
Judicial Campaign Conduct Forum  
Judicial Conference Room

Friday, May 11  
YLS Golf Tournament  
Mayacoo Lakes Country Club

Saturday, May 12  
7:00pm-10:00pm  
Legal Aid Pro Bono Night

Monday, May 14  
11:30am-1:00pm  
Committee Chair Meeting  
515 N Flagler Dr

Tuesday, May 15  
12:00pm-12:30pm  
CDI Meeting  
Judicial Conference Room

Wednesday-Sunday, May 16-May 20  
Florida Bar Board of Governors  
Meeting  
Key West

Wednesday, May 16  
8:30am-9:30  
Construction Law Committee  
Meeting

Thursday, May 17  
12:00pm-1:00pm  
Unified Family Practice Committee  
Meeting  
Judicial Conference Room

Thursday, May 17  
5:30pm-8:00pm  
NCS 16th annual Jurist of the Year

Friday, May 18  
9:00am – 6:00pm  
Real Estate Seminar  
4th DCA

Friday, May 18  
11:45am-1:00pm  
Federal Bar Association Luncheon  
Colony Hotel

Monday, May 21  
5:00pm-6:00pm  
Bar Board Meeting

Tuesday, May 22  
5:30pm-7:00pm  
FAWL New Member Happy Hour  
Buccan

Tuesday May 22  
5:30pm-7:00pm  
Legal Aid Board Meeting  
Legal Aid Office

Thursday, May 24  
12:00pm-1:00pm  
Judicial Relations Committee  
Meeting  
Judicial Conference Room

Wednesday, May 30  
12:00pm-4:30pm  
PI / Appellate Seminar  
4th DCA

Thursday, May 31  
11:45am-1:15pm  
FAWL Board Installation Luncheon  
Kravis Center

Thursday, May 31  
5:30pm-7:00pm  
YLS Happy Hour  
Yacht Club



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