



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

April 2012



Save the Date!

Please join us for our Annual Installation Banquet on Saturday, June 2 at the Breakers Hotel in Palm Beach. A cocktail reception will be held from 7:00 - 8:00 p.m. with dinner and dancing immediately following. Celebrate this special occasion as Adam Rabin is sworn in as president along with our slate of directors. Invitations will be mailed at the end of the month. Law firms interested in sponsoring this event should contact Lynne Poirier at the Bar Office (687-2800).



Mark your calendar for upcoming Membership Events

Annual Judicial Reception

May 1
The Harriet at City Place

Law Day Luncheon

May 4
West Palm Beach Marriott
Guest Speaker: Elizabeth Smart

Annual Installation Banquet

June 2
The Breakers Hotel, Palm Beach



Elizabeth Smart to speak May 4

Please join us for our annual Law Day Luncheon on Friday, May 4 from 11:45 to 1:00 at the Marriott Hotel in West Palm Beach. The keynote speaker will be Elizabeth Smart. You may remember Elizabeth was kidnapped from her parent's Salt Lake City home in 2002. She was just 14 years old. Smart was found alive nine months later about 18 miles from her home in the company of Brian Mitchell and Wanda Barzee. Mitchell and Barzee were indicted for her kidnapping, but initially were ruled unfit to stand trial. They were eventually convicted.

The abduction of Elizabeth and her recovery were widely reported and were the subject of a made for television movie

and a published book.

This luncheon is expected to sell out. To reserve your seat, RSVP online at www.palmbeachbar.org.

Sponsors for the luncheon include Complete Legal Investigations, Daskal Bolton, Sabadell United Bank and Visual Evidence.

Don't Forget to Vote - Bar elections taking place online

This year's election for the Board of Directors is being conducted electronically. Voting will begin on April 5 and will end on April 16 at 5 p.m. Winners will be announced via e-mail and will be posted on the Bar's website.

There are seven members running for five seats: Jessica Callow, Ettie Feistmann, Greg Huber, Theo Kypreos, Maureen Martinez, Ned Reagan and John Whittles.



Dues Statements Mailed

Annual membership dues statements have been mailed to all PBCBA members for fiscal year 2012-2013, which begins July 1. If you did not receive a bill, contact Shoshanah at the Bar Office (687-2800) or sspence@palmbeachbar.org

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THE

BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

JOHN M. HOWE
President

www.palmbeachbar.org

PATIENCE A. BURNS, CAE
Executive Director

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Adam T. Rabin, President-elect

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

LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.

Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1507 Belvedere Road
West Palm Beach, FL 33406



The following letter was sent to Tami L. Augen, Esq. and Eric C. Cheshire, Esq. from Circuit Judge Jack Cox

Dear Ms. Augen and Mr. Cheshire:

First of all let me just say that I appreciate very much the way that each of you, as attorneys, conducted yourselves in the recent hearing in my new division. You each were obviously well prepared and I very much appreciate that.

I, however, wanted to stop to write you this letter to comment on something that Ms. Augen did which truly deserves comment.

During the course of the hearing, Ms. Augen made a representation to the Court relative to the former husband's payment of "all" of the child support since the General Magistrate's report was issued. In a very professional way, Mr. Cheshire indicated that he believed that was incorrect. Clearly Ms. Augen believed that her statement was correct at the time that she made it, but upon further examination and inquiry she discovered that it was not accurate.

Some lawyers would have simply walked away from the hearing, and after making the discovery that their information was incorrect would have done nothing.

Attorney Augen however, filed a notice of correction setting forth specifically the statement made, correcting the statement with a completely accurate statement, and filed the notice under her signature in the court file with a copy to Mr. Cheshire, the opposing attorney.

Ms. Augen, I have rarely seen this level of professionalism.

*Very truly yours,
Jack Schramm Cox
Circuit Judge*



JEFFREY
GRUBMAN, P.A.

Mediator | Arbitrator



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- FEDERAL COURT CERTIFIED MEDIATOR (SOUTHERN DISTRICT OF FLORIDA)
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- FORMERLY PRACTICED LITIGATION WITH MORGAN LEWIS AND RUDEN MCCLOSKEY

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The Steep Price of Dishonesty

By John M. Howe

Unfortunately, what follows is a true story. I recently visited a local neighborhood restaurant to buy one of my favorite Greek wraps. While I was placing my order, a nicely dressed elderly gentleman entered and joined the line. It was readily apparent that this gentleman was known and well-regarded by all the staff and other patrons at the establishment. Everyone greeted him enthusiastically with calls of "Hey Fred!", "Fred, my friend, how are you?", "Freeeed"... , etc. While the others exchanged pleasantries with Fred, and while I finished placing my order, a pretty young woman (we'll call her "Halle") entered the restaurant and joined the line.

As I had never been in that restaurant before, I turned away from the counter to check out the rest of the restaurant. When I turned back around, Fred was walking away from the front counter, and Halle was placing her order. On the floor, close to the area Fred was leaving (and where Halle was placing her order), I noticed a small heap of cash. Seeing Fred casually walking away from the cash holding a few bills in his hand, and Halle apparently not having yet paid, I assumed it was Fred who had dropped the money. I tapped Fred on the shoulder and said, excuse me Sir, is that your money on the floor?" Fred turned around, looked at the cash, and said, "Oh yes, thank you very much." Fred picked up the money, walked to a table, counted the money, and placed it into his wallet with the change he had gotten from the cashier. I will say, it felt good to have helped Fred, who could have been anyone's granddad.

When I turned back around, however, I overheard Halle, seemingly embarrassed, explain to the clerk that she must have left her money in her car. She walked (hurriedly) to her car (her pooch waiting patiently inside) and rummaged through what must have been a purse or glove compartment. Apparently not finding what she was searching for, Halle stood by her car perplexed for a moment.

She then speed-walked across the street to the cleaners, which, I was now beginning to believe, must have been her last stop. Seconds later, she emerged from the cleaners, looking desperate. She stood in thought for a moment and then started back toward the restaurant where Fred and I were still waiting for our orders. It was now becoming clearer to me what had happened. "Freddy-Fred-Fred-Fred...", I thought. Now came the proverbial moment of truth.

Halle re-entered the restaurant. In my mind, I was rooting for Fred. I was hoping he would say something like, "Was that your money on the floor, Dear?" However, he did not. Halle asked, already suspecting, "Did anyone see any money on the floor?" Fred still sat stoically looking straight ahead in silence. I conspicuously made eye contact with Halle and pointed my eyes in Fred's direction. Halle, picking up on my stare, asked Fred "Did you pick up some money right there (on the floor)?" Fred looked aghast asking, "Wha-what?...Me?" Halle asked me if I had seen her money on the floor. I answered "Yes, I did", still looking at Fred. She then asked Fred to return her money, describing the specific denominations of her \$52. Fred sheepishly opened his wallet, and the currency Halle had described, and which I had seen him pick up, was in it. Fred slowly removed the money and returned it to her. The restaurant employees, other patrons, Halle and I, spent the next five minutes in the most uncomfortable silence I have felt for some time. I was simultaneously disappointed and sorry for Fred at that moment because he had lost so much, just like that, with one act of dishonesty. I was happy that Halle had gotten her lunch money back, but I felt much more sadness for Fred's loss. He lost his priceless good name over \$52.00.

How will Fred feel every time he goes back to that establishment? How will he be perceived from now on when he walks through the door? What will happen if anything goes missing when Fred he is around? Fred's good name is dead.

Be honest with your opposing counsel. Be honest to the court. Be decent to people you don't like. Point out mistakes in agreements that are in your favor. Take the high road. Don't forfeit your good name like Fred.



Featured Board Member

This month's featured director is C. Wade Bowden. It has been a great pleasure knowing and working with Wade on various Bar projects. He attended law school at Boston University and has practiced in the area of Commercial Litigation for the past 16 years. He recently joined the West Palm Beach office of Greenberg Traurig. Wade is married to the lovely Ansley K. (a corporate attorney and mom), and together, they are the parents of Eric (9) and Ian (5). The Bowden Family pet is a 3 ½ year old Cavachon named Barkley. When he isn't strolling the halls of GT in his legal cape, Wade enjoys scuba diving, Kempo Karate with his boys (Yellow Belt), skeet shooting, golf and travel with family. He says there is nothing else interesting about him that we don't already know. Wade, being Wade, has a personal creed/quote that is too long to publish here in its entirety, but it is one by Theodore Roosevelt and begins and ends as follows: "It is not the critic who counts; ...So that this place shall never be with those cold and timid souls who know neither victory nor defeat." (I encourage you to look up the quote because it's pretty awesome.) Wade, you are neither cold nor timid when it comes to Bar work, and it has been great working with you!

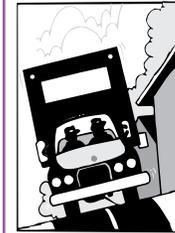


A luncheon was recently held for our Historical Committee: Skip Smith, Ernie Simon, Shep Lesser, Judge Bill Owen, Judge Roger Colton, Phil Crenshaw, Joel Daves, Malcolm Cunningham, Judge Emery Newell, John Farrell, Jim Watt, Chubby Damsel, Bill Pruitt and Ted Prior.



Justice Teaching

For information about Justice Teaching please contact Judge Jonathan Gerber at **561-242-2053, gerberj@flcourts.org** or visit the website at <http://www.justiceteaching.org>.



Have you recently moved?
Be sure to send your updated address, phone and email info to sspence@palmbeachbar.org

Volunteers needed to serve on committees

This is the time of year that the president-elect Adam Rabin will begin working on appointing volunteers to serve on the various Bar committees. Your involvement is essential to the success of this organization. Please give us the benefit of your ideas and talents by volunteering to serve on one or more of our committees. If you are currently serving on a committee, please be sure to fill out the form to indicate your willingness to continue serving. Committee preference forms were recently e-mailed to all Bar members. Additionally, the form is also available on-line at the Bar's web site – www.palmbeachbar.org. Please take the time to volunteer to serve YOUR Bar Association.

In Memoriam



Judge John Dell
Retired 4th DCA Judge
1932 - 2012



Judge I.C. Smith
Retired County Court Judge
1922 - 2012



Flower Sponsor of the Month

As you know the Bar recently moved to its new location at 1507 Belvedere Road in West Palm Beach. The old Denney's is not what it used to be! With nearly 6,000 square feet and state of the art equipment for CLE seminars and meetings our members are enjoying the new space. If you would like to show your support, and receive name recognition in the reception area, become a *Flower Sponsor of the Month*. Thank you to LexisNexis (March) and A Better Digital (April). For details call Lynne at 687-2800.

Capital Campaign – Thank You to Those Who Have Contributed!

Personalized Bricks Purchased (As of 2/25/12)

Akerman
 Adams, Coogler, Watson, Merkel, Barry & Keller, P.A.
Babbitt, Johnson, Osborne & LeClainche, P.A.
Beer, Jerald
Bertisch, Robert & Harreen
Breton, Lynch, Eubanks & Suarez-Murias, P.A.
Brewer, Carol McLean
Burns, John L.
Burns, Tom & Patience
Casey, Patrick J.
Clark, Fountain, LaVista, Prather, Keen & Littky-Rubin
Coleman, Greg & Monica
Colton, Roger B.
Cortvriend, Sarah
Deckert, Ted
Downey, Edward
Farrell, John
Fine, Edward
Fox Rothschild
FPL
Gamot, Melinda
Gerber, Jonathan & Tracy
Glickman, Garry
Glickman, Witters & Marell
Gordon & Doner, P.A.
Hispanic Bar Association
Howe, John
Hunston, Jay and Jane
Jenks, Debra & Robert Harvey
Jones Foster Johnston
 (In memory of John McCracken)
Kenwood, Joel
Klett, Stan
Koehler, Dennis
Kreusler-Walsh Compiani & Vargas, P.A.
Kypreos, Theo & Jennifer
LaBovick Law Group
Law Offices of Irwin J. Block PLLC
Law Offices of Robin Bresky
Lazarus, Jason
Legal Aid Society of Palm Beach County
Leopold Law
Maschler, Matthew H.
Massa, Patrick
McBane, Louis R.
McCabe Rabin
McCall, Wallace
McClosky, D'Anna & Dieterle, LLP
McHale & Slavin
Murray & Guari
Murrell, Donnie
Napoleone, Michael
Neal, Ginny R.
Palm Beach Spine & Diagnostic Institute
Pateman, Mark
PBC Chapter of Paralegal Association
Pineiro Byrd PLLC
Pressly & Pressly
Prior, Ted
Proskauer Rose LLP
Rock Legal Services & Investigations
Royce, Catherine S.
Royce, Raymond W.
Rutherford Mulhall, P.A.
Sabadell United Bank
Sasser, Tom & Meenu
Schutz & White LLP
Shalloway & Shalloway
Shutts & Bowen LLP



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

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

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

Additional rooms are still available!

Would you like to have a permanent place in the Bar's new building?

For further information regarding naming rights or to purchase a brick, please contact Lynne Poirier at the Bar Office or scan the QR Code here with your Smartphone or go to palmbeachbar.org/capital_campaign.php



Signature Court Reporting
Small, Michael, Lisa Small & J.D. Small
Smith, Amy
Smith, D. Culver
Smith, Scott & Molly
Sorgini & Sorgini, P.A.
South Palm Beach County Bar Association
Stewart, Todd
Stuart Manoff & Associates
Stubbs, Sidney

Suskauer, Michelle
Trefry, Allen
U.S. Legal Support
Walsh, Michael P.
Weiss, Jill
Weissman, Joel & Alexandra
Whittles, John
Wroble, Art & Mary Ellen
Zele Huber

2012-2013 Board of Directors Election Candidates' Statements

As has been done in the past several years, the Bar's elections for Board of Directors will be conducted online. This year there are seven (7) members running for five (5) Board seats. Each member in good standing will receive an email with information on how to vote (**please be sure to set your spam filters to pre-approve anything from ballotboxonline.com**). Voting will begin on April 5 and voting will end at 5 p.m. on April 16. The winners will be announced via email and will also be posted on the Bar's website. To assist you in making your selection, please take the time to read the information about the candidates below. Successful candidates will be sworn in at the Bar's annual installation banquet at the Breakers Hotel on June 2.



Jessica M. Callow

Firm: Casey Ciklin Lubitz Martens & O'Connell

Year admitted to practice: 2004

Law School: University of Florida

Year joined PBCBA: 2004

What do you feel you can contribute to the Association as a Board member?

I believe I am qualified for a position on the Palm Beach County Bar Association's Board of Directors and hope you agree.

I have held a number of leadership positions in the Bar Association that, I believe, have prepared me for the Board of Directors. In 2007, I Co-Chaired the Law Week "Ask a Lawyer" program. In 2009, I Co-Chaired the Inaugural Diversity Summit and subsequently Co-Chaired the Diversity Committee from 2010 to 2011. I am also a Past President of the Palm Beach County chapter of FAWL (2009-2010) and am currently President-Elect of the Craig S. Barnard chapter of the American Inns of Court. My experiences in these positions have shown that I am capable, organized and reliable, which are important traits for a Director. My leadership experience has also given me an insight as to the issues that are important to attorneys in our community and I would appreciate the opportunity to be your voice in our Bar Association.

Our Bar Association is one of the premier organizations in the State. As a Director, I will do all that is in my power to continue those traditions of excellence by encouraging more attorney involvement in the Bar Association, organizing, promoting and attending Bar Association events and actively participating in the development and execution of Bar Association programs. If I am privileged enough to serve on your Board of Directors, I will tirelessly work to make you proud you elected me. Thank you for this opportunity!



Ettie Feistmann

Firm: Michael C. George, P.A.

Year admitted to practice: 1991

Law School: Nova Southeastern Law School

Year joined PBCBA: 2009

What do you feel you can contribute to the Association as a Board member?

I am currently a partner in a private law firm, concentrating on Criminal Defense and Personal Injury cases. I handle trial and appellate cases. I also have an AV Martindale-Hubbell rating. Before entering the private sector, I served as a public servant for over 20 years. I served in the military (Israeli Defense Force) and I was honorably discharged - Corporal. After two Judicial Clerkships, I served as the Assistant City Attorney for the City of Lake Worth, Assistant Attorney General, and Assistant State Attorney. I tried over 200 jury trials and handled over 400 appeals, both in federal and state courts. I argued in the Fourth District Court of Appeal and the Florida Supreme Court.

I have been an active member of the Palm Beach County Bar Association since 2009, and presently I am serving on the following committees: Judicial Relations; Membership; Diversity; Bench Bar; Criminal Practice, Co-Chair; F. Malcolm Cunningham Bar, Hispanic Bar; and Professional Ethic (2009-2011); The Federal Bar (2009-2011).

I am affiliated with other organizations: Craig S. Barnard American Inn of Court (board of directors and group leader); Florida Association for Women Lawyers; Executive Women of the Palm Beaches; National Organization for Women; Voters' Coalition; and League of Women Voters (on board of directors).

I am fluent in English, Hebrew and Spanish. My legal experience includes civil, criminal, trial and appellate law, in both the private and government sectors. I strongly believe that I am a good candidate to the Board of Directors.

North County Section presents its

10TH ANNUAL

Jurist of the Year

Thursday, May 17

5:30 pm to 8:00 pm

Ruth's Chris Steak House

North Palm Beach

RSVP online at www.palmbeachbar.org



Solos Just Wanna Have Fun!

It's 5:00 somewhere! Misty Chaves, chair of our Solo & Small Firm Practitioners Committee, treats members to beer and wine during a Friday afternoon lunch and learn program. Our last event for the year is scheduled for May 24 from 11:45 a.m. to 1:00 p.m. Don't miss it!

2012-2013 Board of Directors Election Candidates' Statements



Gregory P. Huber

Firm: Zele Huber Trial Attorneys, P.A.

Year admitted to practice: 1997

Law School: Stetson College of Law

Year joined PBCBA: 2004

What do you feel you can contribute to the Association as a Board member?

Upon moving to Palm Beach County in 2004, I quickly became impressed with the PBCBA's efforts to foster relationships

between the Judiciary and the Bar, improve the image of attorneys in the community and provide continuing educational opportunities to its members. Through the years, I have had the opportunity to help advance the PBCBA's goals by serving on several committees including: the Law Week Committee, Independence of the Judiciary, the Client Relations Committee, the Professionalism Committee and the Judicial Relations Committee.

I am most proud of my work on the PBCBA's annual Bench Bar Conference which provides exceptional legal education, direct interaction with the Judiciary and networking opportunities to its attendees. I am privileged to be the co-chair of the 2012 Bench Bar Conference and humbled to be involved in building upon the many successes of the previous Bench Bar Conferences. Last year I also worked on the Bench Bar Conference as the co-chair of the personal injury section and prior to that participated as a panelist for the personal injury section.

In addition to my service to the PBCBA, as the owner of a small firm, I believe I would bring a unique perspective to the Board. I have enjoyed serving the PBCBA through my work on the various committees and would be honored to continue my service to the members of PBCBA as Board member. I sincerely appreciate your consideration.



Theo Kypreos

Firm: Jones, Foster, Johnston & Stubbs, P.A.

Year admitted to practice: 2002

Law School: University of Florida

Year Joined PBCBA: 2002

What do you feel you can contribute to the Association as a Board member?

I have been fortunate to serve as a member of the PBCBA Board of Directors since 2009. I have learned that being a Board

member is much more than attending monthly meetings and occasional social functions. It means committing to every aspect of the PBCBA, including budgetary and fiscal decisions, outreach programs, member benefits, CLE programming, and long-range planning. For these reasons, I have also elected to volunteer on multiple PBCBA committees in addition to my Board service. Most recently, I had the pleasure of serving on the PBCBA's Building Committee. Through this experience, I was able to help make a longtime goal of the PBCBA become a reality with the purchase, renovation and opening of the Bar's new building.

Prior to serving on the PBCBA Board of Directors, I served on the Young Lawyers Section executive committee for eight years. As YLS President, I committed to getting our membership more involved in the PBCBA and our community. During my tenure, the YLS regularly engaged in community service projects, launched its annual fishing tournament benefiting AMI Kids Palm Beach, and received the ABA's YLD 1st Place Award of Achievement for Outstanding Activities.

It is imperative that we, as attorneys, take actions to improve the reputation of our profession. I have been and will remain committed to this goal, and I humbly ask that you allow me an opportunity to continue serving our community and profession by re-electing me to the PBCBA Board of Directors.

Thank you for your consideration and support!

Circuit Court Report CIVIL DIVISIONS • As of February 15, 2012

| DIVISION | JURY TRIALS | NON-JURY TRIALS | MOTIONS | CASES PENDING |
|----------------|-------------|-----------------|---------|---------------|
| AA KELLEY | 06-12 | 06-12 | 03-12 | 1440 |
| AB KASTRENAKES | 08-12 | 08-12 | 04-12 | 1557 |
| AD FRENCH | 06-12 | 06-12 | 04-12 | 1764 |
| AE MCCARTHY | 12-12 | 12-12 | 03-12 | 1812 |
| AF KEYSER | 08-12 | 08-12 | 04-12 | 1630 |
| AG CROW | 09-12 | 06-12 | 04-12 | 1875 |
| AH BROWN | 06-12 | 06-12 | 04-12 | 1454 |
| AI SASSER | 07-12 | 04-12 | 02-12 | 1135 |
| AJ ROSENBERG | 07-12 | 07-12 | 04-12 | 1258 |
| AN McSORLEY | 07-12 | 07-12 | 05-12 | 1680 |
| AO BRUNSON | 07-12 | 06-12 | 03-12 | 1617 |

Board Meeting Attendance

| | Retreat | Aug | Sep | Oct | Nov | Dec | Jan | Feb |
|-----------|---------|-----|-----|------|-----|-----|-----|-----|
| Barnes | x | x | x | x | x | x | x | x |
| Bowden | x | x | x | x | x | x | x | x |
| Bresky | x | x | x | x | x | x | | x |
| Guari | x | x | x | x | x | x | x | x |
| Howe | x | x | x | x | x | x | x | x |
| Kypreos | x | x | | x | x | x | x | x |
| Lazarus | x | x | x | x | x | x | x | x |
| Napoleone | x | x | x | x | x | x | x | x |
| Ponzoli | x | x | x | Buck | x | x | x | x |
| Pressly | x | x | x | x | x | x | x | x |
| Rabin | x | x | x | x | x | x | x | x |
| Weiss | x | x | x | x | x | x | x | x |
| Whittles | x | x | x | | x | x | x | x |



Maureen Martinez

Firm: *William Leininger & Cosby, P.A.*
Year admitted to practice: 1997
Law School: *Nova Southeastern Law School*
Year joined PBCBA: 1997

What do you feel you can contribute to the Association as a Board member?

I have taken on leadership roles in volunteer organizations most of my life, beginning in high school and throughout my legal career. However, since being blessed with the birth of my first child in mid 2010, I decided to focus on motherhood rather than actively participate in volunteer organizations. Now, two years later, I am ready to get involved again and am able to commit the time necessary to serve the members of the PBCBA as a board member.

In addition to leadership roles, I have actively participated in PBCBA committees, such as the Law Week Committee of which I have been an active member for years, and served as chair/co-chair since 2007. As it pertains to executive boards, I have served on the board of many organizations including the American Inns of Court, the Palm Beach County Justice Association, the Florida Justice Association and the Palm Beach County Bar Association. I served the members of these organizations while conducting myself professionally and ethically and would do the same for you as a PBCBA board member if given the opportunity.

I understand the role of a board member and the ultimate duty to members and community. If elected, I promise to contribute to the PBCBA through service founded on professionalism, commitment, loyalty and reason. Therefore, I ask that you cast one of your votes for me. Thank you.



Edward D. "Ned" Reagan

Firm: *Edward D. Reagan PA*
Year admitted to practice: 1994
Law School: *Thomas M. Cooley Law School*
Year joined PBCBA: 1999

What do you feel you can contribute to the Association as a Board member?

I presently Co-Chair the Criminal Committee of the PBCBA. As Co-Chair, I have worked hard with not only the current board member assigned to the Bench Bar Conference, but with all other Co-Chairs of each committee in order to address the individual needs of each practice area as well as the Association in general. I am honored to work with such fine and committed individuals.

I have served on the North County Section of the PBCBA since 2000 and currently serve as Immediate Past President. It is important that our Board be made up of strong committed leaders to advance the directives of our Bar to insure its continued success. I have demonstrated my leadership skills and my commitment to the PBCBA by actively participating with the North County Section over the past 11 years.

I have worked as a volunteer attorney with Legal Aid; as an Assistant Public Defender and as a solo criminal defense practitioner. I bring a unique perspective to the Board and it will be my focus to address the needs of the entire membership. I have been a member and served on the executive board of the Craig S. Barnard, American Inns of Court LIV. I have worked hard at advancing the reputation of our legal community. I welcome the opportunity to serve the members of the Association and I humbly ask for your vote so that I may continue my service to the PBCBA.



John Whittles

Firm: *Richman Greer, P.A.*
Year admitted to practice: 1999
Law School: *Nova Southeastern University*
Year joined PBCBA: 2000

What do you feel you can contribute to the Association as a Board member?

Members: I will continue to contribute practical leadership to the Board. I have been a Director on the Board from 2008 to the present, having previously served as President of our Bar's Young Lawyers Section. As a Director, I chaired the Board's efforts in 2010 and 2011 to safely invest and protect that Bar's cash reserves. I was also Chairperson of our Bench Bar Conference in 2011 and, in recent months, chaired the Board's subcommittee on director term limits. I feel very proud to be a part of a Board of Directors that purchased a new home for our Bar, and, at the direction of Chief Judge Peter Blanc, spearheaded the local effort in the statewide residential mortgage foreclosure mediation program. This Board has been proactive and decisive in making this organization better for its members and I would love the opportunity to continue to serve. (I also make a mean lasagna!) John

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Defining “Defalcation” in the Context of Dischargability

By Marc P. Barmat

A central purpose to the filing of a bankruptcy is to provide an individual debtor with the opportunity to discharge their debts and obtain a fresh start. However, not all debts are dischargeable under the Bankruptcy Code. One category of debt which is not dischargeable is a debt “for fraud or defalcation while acting in a fiduciary capacity...” 11 U.S.C. § 523(a)(4). However, until the recent ruling in the case of In re Bullock (Bullock v. BankChampaign, N.A.), 2012 WL 446279 (11th Cir.), the precise meaning of the term “defalcation” was not entirely clear, in the Eleventh Circuit.

In deciding In re Bullock, the Eleventh Circuit recognized a split among the circuits regarding the meaning of defalcation under § 523(a)(4). The Fourth, Eighth, and Ninth Circuits concluded that even an innocent act by a fiduciary can be a defalcation. In re Uwimana, 274 F.3d 806 (4th Cir. 2001); In re Cochrane, 124 F.3d 978 (8th Cir. 1997); In re Sherman, 658 F.3d 1009 (9th Cir. 2011). The Fifth, Sixth, and Seventh Circuits require a showing of recklessness by the fiduciary. In re Harwood, 637 F.3d 615 (5th Cir. 2011); In re Patel, 565 F.3d 963 (6th Cir. 2009); In re Berman, 629 F.3d 761 (7th Cir. 2011). The First and Second Circuits require a showing of extreme recklessness. In re Baylis, 313 F.3d 9 (1st Cir. 2002); In re Hyman, 502 F.3d 61 (2d Cir. 2007). The Third Circuit has not addressed the issue, and the Tenth Circuit made a brief statement in an unpublished opinion that defalcation requires some portion of misconduct. In re Millikan, 188 F.App’x 699 (10th Cir. 2006). Ultimately, the Eleventh Circuit aligned itself with the Fifth, Sixth and Seventh Circuits and found that defalcation under §523(a)(4) requires more than mere negligence, i.e., defalcation requires a known breach of a fiduciary duty, such that the conduct can be characterized as objectively reckless. Id. at 5.

In In re Bullock, the debtor was the trustee and beneficiary of his father’s trust. The debtor engaged in self-dealing by using the cash value of a trust life insurance policy as collateral for loans. Id. at 1. Thereafter, the trustee’s brothers, who were also beneficiaries to the trust, successfully sued the debtor alleging a breach of his fiduciary duty by engaging in self-dealing. Id. In awarding damages for the self-dealing, the trial court stated that the debtor/trustee did “not appear to have a malicious motive in borrowing funds from the trust” but that cannot “excuse him from liability.” Id. Thereafter, the debtor filed a chapter 7 bankruptcy seeking to discharge the judgment against him. Id. at 2. However, the bankruptcy court found the debt arose from fraud or defalcation while the debtor was acting in a fiduciary capacity and therefore ruled that the debt was not dischargeable, pursuant to §523(a)(4). Id. The district court affirmed the

bankruptcy court’s decision which was then appealed to the Eleventh Circuit.

In applying the recklessness standard for defalcation, the Eleventh Circuit concluded that the bankruptcy court was correct in determining that the debtor committed a defalcation by making the loans while he was the trustee of his father’s trust. Id. at 5. The Eleventh Circuit found that because the debtor was the trustee of the trust, he certainly should have known that he was engaging in self-dealing, given that he knowingly benefitted from the loans. Thus, the court concluded, his conduct could be characterized as objectively reckless, and as such, it rose to the level of a defalcation under § 523(a)(4). Id.

This article was submitted by Marc P. Barmat, Furr and Cohen, P.A., One Boca Place, Suite 337 West, 2255 Glades Road, Boca Raton, FL 33431; mbarmat@furrcohen.com

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Tribute to a Mentor

By D. Culver "Skip" Smith III
On behalf of the Professionalism Committee

Discussions of enhancing professionalism in the legal profession often decry the lack of mentoring for new lawyers. My first permanent, private-practice employer was John Dell, who passed away in February after a long and honorable career as a lawyer and appellate judge. He was a sole practitioner when he hired me in 1972 upon my return to West Palm Beach following a stint on active duty in Navy JAG. He was more than an employer – he was a mentor.

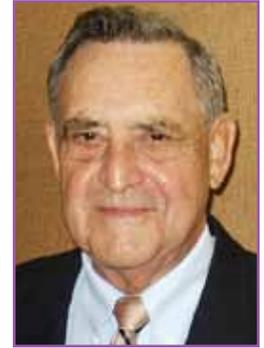
Good mentors come in different styles. John's was not simply being available to answer questions when his time permitted. He checked on my progress – as a lawyer – every day. He took me everywhere he went: court, client meetings, witness conferences, bar functions, social gatherings with colleagues. I will never forget how he would prepare bills for his highest-revenue clients and rather than mail them, actually present them personally at the clients' offices. He and the client would haggle about the bill – not real haggling, rather a tradition that they both enjoyed. John would agree to some small discount, and the client would write a check on the spot. John did not just tell me how to do things – he showed me. I have had others for varying periods and ways: Jim Paine, Bill Foster, John Farrell – and still others, including peers, often by example alone.

How many lawyers today can say that? Law schools churn out graduates in numbers that far exceed the job market for them, leaving them in increasing numbers to fend for themselves. What to do?

The Palm Beach County Bar Association Professionalism Committee has formed a subcommittee, chaired by Amy Borman, to create and implement mentoring programs to benefit newly admitted lawyers with connections to Palm Beach County. Law firms create mentoring structures or programs, then honor them to profoundly varying degrees. Law firms of all sizes, with the exponential increase in economic

pressures and demands in recent years, provide mentoring if and when it suits them – and often only to address some misstep that has embarrassed the mentor or the firm.

Bar-association and law-firm programs can achieve only so much. It boils down to individual responsibility for the health of our profession and its ability to serve its clientele and the public interest. Whatever I may have accomplished as a lawyer, I am most proud of and have derived the most fulfillment from the times when I have had a positive influence on a younger lawyer. As with a teacher, that influence will never end. Be a mentor, create a mentor.



Good mentoring doubtless is occurring every day in our legal community, but how much? Let's encourage – and perform – more of it. We owe it to the profession, we owe it to the community, we owe it to ourselves. Just do it.



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Don't Delay In Requesting A Family Allowance

By David M. Garten, Esq.

Sec. 732.403, F.S. reads in relevant part: [I]f the decedent was domiciled in Florida at the time of death,

the surviving spouse and the decedent's lineal heirs the decedent was supporting or was obligated to support are entitled to a reasonable allowance in money out of the estate for their maintenance during administration. The court may order this allowance to be paid as a lump sum or in periodic installments. The allowance shall not exceed a total of \$18,000.

Before the Florida Probate Code was revised, the Code provided for a reasonable family allowance "if necessary for support." §733.20(1)(d), F.S. (1973). This language was removed

when the Code was revised; therefore, a surviving spouse is entitled to a family allowance without regard to the necessity of the allowance. However, the reasonableness of the allowance must still be established. A surviving spouse's needs are relevant in that decision. In a case involving very limited expenses, a reasonable allowance might be extremely small. See *DeSmidt v. DeSmidt*, 563 So. 2d 193 (Fla. 2nd DCA 1990). The probate court retains the authority to re-examine and modify an award, either upward or downward as circumstances may require during the course of administration of the estate. See *Valdes v. Estate of Valdes*, 913 So. 2d 1229 (Fla. 3rd DCA 2005). The death of any person entitled to a family allowance terminates the right to that part of the allowance not paid. Refer to §732.403, F.S. If a recalcitrant personal

representative refuses to pay the family allowance, the beneficiary may be able to recover her attorney's fees for the time spent securing her family allowance. See *Hoyt v. Hoyt*, 814 So. 2d 1254 (Fla. 2nd DCA 2002).

Because a family allowance is a Class 5 expense of the estate (refer to §733.707, F.S.), the personal representative may be able to defer payment of the family allowance until after payment of the Class 1 – 4 expenses. Additionally, there could be a substantial delay in payment if the estate or revocable trust is involved in protracted litigation.

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Rule 1.240: Interpleader

By Matt Triggs and Jonathan Galler

For most people, a discussion about interpleader is the conversational equivalent of a dose of Ambien. But insomniacs aren't the only ones who can benefit from a review of the interpleader rule. Most litigators could use an occasional refresher as well.

The equitable remedy of interpleader, codified in Rule 1.240, is used to determine the rights of parties each of whom claim the right to distribution of the same fund or property that is held by a disinterested third person.¹

The rule provides, in part, as follows: Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

The recent appellate case of *Rainess v. Estate of Machida* arose from an interpleader action brought by Bank of America to determine the beneficiaries of an IRA worth in excess of \$1.5 million.² Following the death of the account holder, the bank was unable to locate the paperwork establishing the beneficiaries. Competing evidence suggested either that the account holder's husband was the sole beneficiary or that he and the account holder's nephew were each 50% beneficiaries. The trial court ultimately determined that each was a 50% beneficiary. On appeal, the Third District addressed several interesting aspects of an interpleader action.

Plaintiff Must Be Exposed To Present Or Future Multiple Liability

The husband in *Rainess* claimed that the action was improper because the bank failed to satisfy all common law elements of an interpleader. However, as the Third District pointed out, the common law standard was superseded by Rule 1.240, which clearly articulates but one requirement for the commencement of an interpleader action: that the stakeholder is or may be exposed to double or multiple liability.³ In fact, Rule 1.240 expressly rejects at least one of the common law elements by providing that [i]t is not ground for objection to the joinder that the claim of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another....⁴

Notably, the interpleader action may be premised not just on present exposure to multiple liability, but on potential, future exposure to multiple liability. But the plaintiff must have a reasonable and bona fide fear of exposure to multiple liability at the time interpleader is sought. In other words, a stakeholder may not interplead based on an unreasonable fear of a merely hypothetical claim that lacks merit grounded in law or in fact.⁴

An interpleader action typically proceeds in two stages.

¹ *Zimmerman v. Cade Enterprises, Inc.*, 34 So. 3d 199, 201-02 (Fla. 1st DCA 2010).

² 2012 WL 283089 (Fla. 3d DCA Feb. 1, 2012).

³ *Id.* at 4 (internal quotation marks omitted). As the Court also noted, some Florida courts nevertheless continue to cite the common law elements instead of the rule.

⁴ *Id.* at 4 (internal quotation marks and citations omitted).



The first stage involves a determination as to whether a plaintiff meets the only element of the cause of action required. During the second stage, the court determines the merits of the competing claims to the property at issue.⁵

Interpleader Is An Equitable Action

The *Rainess* Court was also called upon to address whether interest could be awarded in conjunction with a decision as to entitlement to the funds at issue. Because interpleader is an equitable proceeding, the Third District concluded that interest was not awardable. Specifically, because the trial court's determination that the husband was a co-beneficiary of the IRA did not constitute an award of *damages*, the Court concluded that interest was not awardable. In the case of pre-judgment interest, such an award is only proper where a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses.⁶ Similarly, the *Rainess* Court reversed the trial court's award of post-judgment interest because section 55.03(2), Florida Statutes, provides for an award of post-judgment interest only in connection with a judgment for money damages, an order for a judicial sale, or any process or writ of execution.⁷

Plaintiff May Be Awarded Attorneys Fees

A plaintiff may be entitled to attorneys' fees and costs in an interpleader action, but the plaintiff must prove his or her disinterest in the interpleaded property and, further, must show how that he or she did nothing to cause the conflicting claims or to create the exposure to multiple liability.⁸

In *Rainess*, the Third District affirmed the trial court's denial of the bank's motion for attorneys' fees on the ground that the bank's recordkeeping had contributed significantly to the need for the interpleader action.⁹

Federal Interpleader Rule

Finally, because Rule 1.240 is virtually identical to its federal counterpart – Fed. R. Civ. P. 22 – Florida courts have held that cases interpreting the federal rule are persuasive in cases arising under the Florida rule.¹⁰

Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation.

⁵ *Zimmerman*, 34 So. 3d at 203.

⁶ *Rainess*, at 5 (citations omitted).

⁷ *Id.* at 9.

⁸ *Id.* at 8 (internal quotation marks and citations omitted).

⁹ *Id.* at 8.

¹⁰ *Id.* at 9, n.4; *Newkirk Constr. Corp. v. Gulf County*, 366 So. 2d 813, 816 n.2 (Fla. 1st DCA 1979).



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Welcome New Members!

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

Robert Branson - San Diego, CA; University of Florida, 1989; Sole Practitioner, Branson Law, Orlando.

Matthew Brenner, Whittier Law School, 1999; Legal Aid Society of Palm Beach County.

Kristen Cantrell - OH; University of Toledo, 2009; Legal Aid Society of Palm Beach County

Trisha P. Carrico - West Palm Beach, FL; Suffolk University, Law Student Membership; Boston, MA.

Katherine B. Cohen - Tampa, FL; Florida International University, 2011; Associate in Charles Williams Attorney at Law, Lake Worth.

Aaron R. Coven - Dayton, OH; Nova Southeastern University, 2005; Sole Practitioner, Lake Worth.

Brittany A. Dancel - Cold Spring, NY; Florida International University, Law Student Membership; Boca Raton.

Jacqueline Delgado - Miami, Florida; St. Thomas University, 2007; Sole Practitioner, Delgado Law, West Palm Beach.

Eric J. Eves - Niagra Falls, Ontario; University of Miami, 2011; Coral Gables.

Matthew Girardi - Boynton Beach, FL; Florida State University, 2009; Associate in the Law Office of Drake Ozment West Palm Beach.

Alexander Gonano -

Stuart FL; Nova Southeastern University, 2010; Associate in Aldridge Connors, LLP, Boca Raton.

Gina M. Gradinette - New Haven, CT; Florida Coastal School of Law, 2011; Legal Aid Society of Palm Beach County.

John P. Heekin - Ft. Myers, FL; Catholic University of America, 2011; West Palm Beach.

Nadine Heitz - Toronto, Canada; North Western California University, Law Student Membership; Lake Worth.

Sarah A. Jeck - West Palm Beach, FL; University of Florida, Law Student Membership; Gainesville.

William Matthew Kearce - Bowling Green, KY; Nova Southeastern University, 2005; Partner in Pigott, Pigott & Kearce, P.A., Lake Park.

Phyllis Kotey - West Palm Beach, FL; University of Florida, 1985; Government Attorney with Florida International University College of Law, Miami.

David Majcak - New Hartford, NY; Florida Coastal School of Law, 2008; Associate in Eric N. Klein & Associates, P.A., Boca Raton.

Marcos Martinez - Brownfield, TX; Notre Dame Law School, 2011; Associate in Beller Smith, P.L., Boca.

Charles Sanders McNew - Portsmouth, VA; University of Virginia, 1984; Associate in Proskauer Rose, LLP, Boca Raton.

Michele Leisun Nihiser - Ft. Huachuca, AZ; Nova Southeastern University, 2010; 15th Judicial Circuit of FL, Delray Beach.

Elio Novoa - Baltimore, MD; Emory University, 2010; 15th Judicial Circuit of FL, West Palm Beach.

Aniska Petit-Frere; Thomas M. Cooley, 2010; Guardian Ad Litem Program, Port St. Lucie.

Lorraine Powers - FL; Thomas M. Cooley, 1999; Associated with the IMSC Group, West Palm Beach.

Aubin Wade Robinson; University of Miami, 1993; Partner in Robinson & Whitmore, P.A., Royal Palm Beach.

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Paul H. Tocker - New York, NY; Brooklyn Law School, 1965; Sole Practitioner, Delray Beach.

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Real Property and Business Litigation Report

February 2012 Summary

Submitted by Manuel Farach



Irizarry v. Moore, – So.3d –, 2012 WL 315844 (Fla. 5th DCA 2012).

Repeated instances of improper conduct by counsel may deprive parties of a fair trial, even when each instance, standing by itself, would not result in reversal.

Orange County v. Buchman, – So.3d –, 2012 WL 315869 (Fla. 5th DCA 2012). A trial judge stating to the jury that a party is bound by a particular piece of evidence constitutes an improper comment on the weight of evidence in violation of Fla. Stat. § 90.106.

Palm Bay 17, LLC v. First Bank of Puerto Rico, – So.3d –, 2012 WL 315872 (Fla. 5th DCA 2012).

A person may only be served by mailing to a private mailbox under Fla. Stat. § 48.031 (6) if the only address discoverable through search of private records is the private mailbox.

Southeast Floating Docks, Inc. v. Auto-Owners Ins. Co., – So.3d –, 2012 WL 301029 (Fla. 2012).

Florida's offer of judgment statute, Fla. Stat. § 768.79, is primarily a substantive statute, and thus is not applicable in situations where parties have agreed the substantive law of another state applies.

Suntrust Banks, Inc. v. Cauthon & McGuigan, PLC, – So.3d –, 2012 WL 301054 (Fla. 1st DCA 2012).

An escrow/trust account holder is not entitled to injunction against bank charging back against the account, even if the money in the account belongs to third parties and not the account holder.

Cukierman v. BankAtlantic, – So.3d –, 2012 WL 280408 (Fla. 3d DCA 2012).

A guarantor of a mortgage with no interest in the real property is a proper, but not necessary party to a mortgage foreclosure. Accordingly, a guarantor with no interest in the real property has no standing to contest a foreclosure sale.

Rainess v. Estate of Machida, – So.3d

–, 2012 WL 283089 (Fla. 3d DCA 2012). Florida Rule of Civil Procedure 1.240 supersedes prior common law and establishes there is only one requirement for a party to be permitted interpleader, i.e., that the stakeholder is or may be exposed to double or multiple liability. However, a stakeholder must establish that it is disinterested and did not cause the dispute in order to be entitled to attorneys' fees for the interpleader action.

Harbor Landing Condominium Owners Ass'n, Inc. v. Harbor Landing, L.L.C., – So.3d –, 2012 WL 254971 (Fla. 1st DCA 2012).

Fla. Stat. § 718.203 (2) imposes an implied warranty against "suppliers," but not manufacturers, of items used in condominium construction.

Bank of New York v. Moorings At Edgewater Condominium Ass'n, Inc., – So.3d –, 2012 WL 385491 (Fla. 2d DCA 2012).

Any flat, unconditional fine, not meant to compensate the injured party and imposed after a finding of contempt, is criminal contempt if contemnor has no opportunity to reduce or avoid the fine through compliance. Accordingly, a contempt fine against a lender and its counsel for failure to pay association dues during litigation is indirect criminal contempt which must contain a purge provision.

Duke v. HSBC Mortg. Services, LLC, – So.3d –, 2012 WL 385512 (Fla. 4th DCA 2012).

On rehearing, the court further clarified its earlier opinion reversing entry of summary judgment and stated that that it is plaintiff's burden to provide an original note to the court or otherwise re-establish the note, even if the court papers demonstrate the original note was lost by the court.

Phadael v. Deutsche Bank Trust Co. Americas, – So.3d –, 2012 WL 385608 (Fla. 4th DCA 2012).

The defense of lack of standing at time of institution of foreclosure suit is waived if not raised in an answer, and may not be resuscitated through a motion under Florida Rule of Civil Procedure 1.540.

Beaumont v. Bank of New York Mellon, – So.3d –, 2012 WL 511288 (Fla. 5th DCA 2012).

Party seeking to re-establish a lost promissory note under Fla. Stat. § 673.3091 must prove who lost the note, when it was lost, who had right to enforce the note when lost, who owned the note, and provide adequate protection to the obligor on the note. Additionally, judgment cannot be entered on behalf a party who has been dropped from the litigation.

Bendross v. Readon, – So.3d –, 2012 WL 469832 (Fla. 3d DCA 2012).

Religious organizations, like other non-profit organizations, are controlled by Florida Statutes Chapter 617, and the Ecclesiastical Abstention Doctrine is not violated when litigation involves applying neutral principles of law without inquiry into religious doctrine.

In re Bullock, – F.3d –, 2012 WL 446279 (11th Cir. 2012).

"Defalcation" under 11 U.S.C. § 523 (a) (4) refers to the failure of a fiduciary to produce entrusted funds. "Defalcation" need not rise to the level of fraud, embezzlement or misappropriation, but does require more than mere negligence and can be characterized as being objectively reckless.

Best v. Education Affiliates, Inc., – So.3d –, 2012 WL 555490 (Fla. 4th DCA 2012).

Arbitrators are to determine whether an agreement violates public policy when the arbitration agreement delegates authority to the arbitrator to determine the enforceability of the arbitration agreement.

Marmet Health Care Center, Inc. v. Brown, – S.Ct. –, 2012 WL 538286 (2012).

A categorical prohibition against arbitration of certain types of claims (e.g., nursing home claims) violates the Federal Arbitration Act.

In re Jennings, – F.3d –, 2012 WL 555875 (11th Cir. 2012).

Transfer of property in order to avoid execution by perfected creditors constitutes willful and malicious "injury to property" under bankruptcy code section 11 U.S.C. § 523 (a) (6).

Party at Woodfield Country Club Benefits Legal Aid

Robin and Dr. Ken Bresky, together with the South Palm Beach County Bar Association, hosted a gift gathering cocktail party at the Woodfield Country Club on February 10, in Boca Raton to benefit the Legal Aid's Pro Bono Recognition Evening. Over 115 supporters of Legal Aid enjoyed the festivities and donated over 100 gifts to be auctioned at this year's event, which will be held on



Circuit Court Judges Janis and Gregory Keyser with Rita and Ted DiSalvo



Ken and Robin Bresky

May 19, 2012 at the Palm Beach County Convention Center. The 24th annual celebration honors outstanding volunteer attorneys and law firms and raises much needed funds to benefit Legal Aid's 17 programs. In addition to the silent auction and awards ceremony, guests will be entertained by students from the Dreyfoos School of the Arts.

Photos by Tracey Benson

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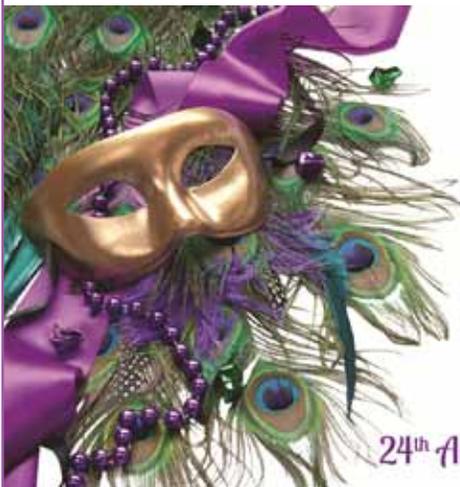
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Intervening Cause Instruction for Negligent Medical Treatment

by Ted Babbitt

When a plaintiff is injured in an automobile accident and obtains medical treatment for the injuries, the physician who provides that medical care is often put on trial in a subsequent personal injury suit arising from the accident. It is common practice for defendants in automobile cases to hire expert witnesses who criticize the treating physician's decisions and suggest to the jury that plaintiff's complaints come from the negligent medical treatment rather than from the initial injury.

The seminal case on this scenario is the Florida Supreme Court case of Stuart v. Hertz Corp., 351 So. 2d 703 (Fla. 1977). In that case the Supreme Court stated at 707:

Where one who has suffered personal injuries by reason of the negligence of another exercises reasonable care in securing the services of a competent physician or surgeon, and in following his advice and instructions, and his injuries are thereafter aggravated or increased by the negligence, mistake, or lack of skill of such physician or surgeon, the law regards the negligence of the wrongdoer in causing the original injury as the proximate cause of the damages flowing from the subsequent negligent or unskillful treatment thereof, and holds him liable therefor.

Where is the line drawn as to when an instruction must be given to the jury informing them of the Stuart v. Hertz doctrine? In the recent case of Tucker v. Korpita, 36 Fla. L. Weekly D2494 (Fla. 4th DCA, Nov. 16, 2011). The Fourth District tried to determine just where that line is drawn. The case under discussion was a rear end collision wherein the plaintiff had undergone a discectomy following the injuries suffered in the automobile accident. Defendants put witnesses on the stand who testified that the performance of a discectomy under these circumstances was not only totally contraindicated but could arguably make things worse. Plaintiffs requested the following jury instruction from Emory v. Florida Freedom Newspapers, 687 So.2d 846 (Fla. 4th DCA 1997).

Where one who has suffered personal injuries as a result of the negligence of another seeks medical treatment from a physician or surgeon, and the injured person's injuries are thereafter aggravated or increased by the negligence, mistake or lack of skill of such treatment, the law regards the negligence of the one causing the original injury as the proximate cause of the damages flowing from the later negligent, unskillful, or unsuccessful treatment of the physician or surgeon.

The trial court refused to give the instruction and the Fourth District reversed. In Tucker, *supra*, at D2495, the Court held:

We, therefore, find that the specific testimony presented to the jury mandated the intervening cause instruction as requested. The specific testimony in

this case went beyond merely questioning the medical advisability of the treatment advocated by appellant's experts, or questioning the wisdom of the diagnosis, prognosis, or causal relationship between the purported injuries and the alleged incident. Rather, appellee's experts concluded that the treatment utilized by appellant's experts "would make things worse or could make things worse clinically." The former scenario may not generally require an intervening cause instruction, while the latter situation, like in the case at bar, should result in the instruction being given as requested.

As in Emory, the admission of testimony regarding inappropriate medical treatment, and the fact that it specifically could "accelerate the degenerative process" in appellant according to the appellee's expert witness, "created a reasonable possibility that the jury was indeed misled" in the absence of a jury instruction addressing the issue." 687 So. 2d at 848. As such, we reverse and remand for a new trial.

Testimony such as that presented in the case under discussion puts the plaintiff in the untenable position of not only having to prove liability in the automobile case but also forces the plaintiff to defend the medical treatment provided by the treating physician. It is almost as if the treating physician were being sued for malpractice creating a trial within a trial in the automobile case. Stuart v. Hertz, *supra*, has been the law in Florida for 35 years. The logic of that opinion is inescapable. The tortfeasor, having set in motion by negligent acts an injury, should be held liable for all of the consequences of that injury. Stuart v. Hertz specifically argued that absent such a finding plaintiffs would be forced to defend malpractice issues in what should be a simple automobile case. Absent negligence on the part of the plaintiff in obtaining medical care, the law places the burden of injuries on the defendant who caused them and not on the plaintiff who was simply seeking relief from those injuries. This case amplifies the Stuart v. Hertz opinion and makes it clear that when a defendant interjects the issue of causation based upon medical care obtained by a plaintiff, the plaintiff is entitled to an instruction that even if the injuries were made worse by the medical care obtained by the plaintiff, the defendant remains liable for the entire injury.

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

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**Submitted by
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Delegate Donnie
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All right, let's just get this out of the way up front – it wasn't all work and no play in New Orleans. (How could it be in a city where

it's against the law to be in public *without* an open container of alcohol?) Three things you should not miss when visiting the Crescent City:

1. A Bloody Mary at the Organic Banana Bar in the French Market. (At the moment my vote for Best in the World—but the search continues.);
2. The \$3.00 all day pass on the trolley cars. (The best tour for the money of any city anywhere);
3. Café du Monde. (Where trying to share a single order of beignets might lead to a divorce).

Enough frivolity.

Prior to every meeting of the House of Delegates, The Florida Bar holds a caucus (at the ungodly hour of 7:30 a.m.). Your faithful correspondent attended, you can verify this with William Shepherd or Scott Hawkins, both of whom were also present. Actually, they both participated, I more or less observed from the back row.

Usually, the caucus reviews issues on the House agenda. However, two ominous topics were discussed at the caucus that are of particular importance to Florida lawyers and were not on the agenda of the House of Delegates.

First, ABA Past President Stephen Zack pointed out the proliferation of super PACs after the Citizens United decision. He then pointed out that Florida has merit retention for judges. Justices Pariente, Quince and Lewis are all up for merit retention in 2012. Imagine the impact a super PAC could have on a merit retention vote. If the Republican primary is any indication, super-PACS seem to have a special gift for attack ads. As lawyers we should be prepared for this battle. We may not be able to out-spend a special interest super-PAC, but we can certainly do our best to educate the public to what is at stake. It is our duty as lawyers to preach the importance of a free and independent judiciary to our fellow citizens. The onslaught is coming, we have to be prepared.

In the same vein, Talbot "Sandy" D'Alemberte brought up proposed Amendment 5 of the Florida Constitution, which will be on the ballot this fall. Among other things, Amendment 5 will provide for Senate confirmation hearings for state

court judicial appointees. Obviously, this provision will add a dose of politics into any judicial appointment even greater than already exists.

It was especially painful to hear Amendment 5 described by Sandy D'Alemberte. For those of you who don't know him, Mr. D'Alemberte has served the State of Florida in a number of roles. A Florida native, D'Alemberte served in the Florida legislature, chaired a Constitutional Revision Commission, was President of Florida State University, Dean of Florida State College of Law, was President of The Florida Bar and President of the American Bar Association. He worked along with Rueben Askew, Lawton Chiles and others to create the Judicial Nominating system and merit retention system that has been a part of our state constitution since the mid-seventies. Their efforts were inspired by the scandals that rocked the Florida Supreme Court when Justices ran for election. Sandy and the others set out to remove as much of the politics from the process as possible. The last forty years of honest, efficient state court operations are testament to the success of the system they devised and put in place. It should cause us all concern to see this system tampered

with in a way that blatantly attempts to interject politics back into the process of selecting judges.

One last topic: Ethics 20/20. The House of Delegates received a report from Carolyn Lamm, Chair of the Ethics 20/20 Commission. The commission is doing a top-to-bottom review of the ABA Model Rules of Professional Responsibility. I would urge you all to pay close attention to this committee. The topics being "reviewed" includes: technology (maintaining client confidences and marketing); outsourcing (lawyers in India or Iowa); mobility (admissions/conflicts); globalization; and the five hundred pound gorilla: alternative law practice structures (non-lawyer partners). I don't mean to sound like Chicken Little, but the very willingness to discuss some of these topics implies that fundamental changes to the practice of law are on the way.

Preliminary reports are available on-line through the ABA website. The Commission has held public hearings and plans to start rolling out proposed changes by August. The Commission welcomes in-put. You owe it to yourself to review the proposals. Speak out, be heard. It is your profession.

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Judicial Profile: The Hon. Lisa S. Small

By Donna L. Eng

Judge Small was elected to Seat 33 of Circuit Court on August 24, 2010, and assumed the bench on January 4, 2011. When I asked Judge Small how she felt about her first year on the bench, she enthusiastically described it as “beyond expectations.”

Judge Small has resided in Palm Beach County since the age of 4, after moving here from Michigan with her parents and three siblings. The oldest child in her family, she attended the public high school Twin Lakes, which is now the site of the Dreyfoos School of the Arts. While in high school, she was a member of Twin Lakes’ national-champion Debate Team and captained and played #1 seed on the tennis team.

For college, Judge Small studied at Georgetown University’s Edmund Walsh School of Foreign Service where she began her path of public service as a Congressional Intern for three years. As part of the school’s Foreign Service requirements, she became certified proficient in Spanish and studied abroad at the Universidad de Madrid in Madrid, Spain.

When it came time to sit for the Foreign Service exam, Judge Small had a change of heart. After deciding that being in the Foreign Service would take her too far away from her close-knit family, Judge Small decided she would rather take the LSAT instead. She graduated from the University of Florida College of Law in 1991, and thereafter joined her father in the family practice, Small & Small, P.A., in Palm Beach. Later in 2006, Judge Small practiced law with her brother as well, when he joined the firm.

After graduating from law school, Judge Small became one of many members of the Small family who are lawyers. Judge Small’s father, grandfather, uncle, her two brothers, and several cousins are all attorneys. As a practicing lawyer for eighteen years, Judge Small focused on business litigation, real property, commercial and residential landlord/tenant litigation, construction matters, debtor/creditor matters, community association law, and probate litigation. Judge Small actually began working in her father’s law practice while she was in junior high school. Before the days of professional trial graphics, Judge Small put her model penmanship to work by making numerous demonstrative aids for her father’s hearings and trials.

Prior to assuming the bench, Judge Small was very active in the Palm Beach County and statewide legal community.



Judge Small became a member of the Palm Beach County Bar in 1993, served as President of the Young Lawyers Section from 2000-2001 and served as President of the Palm Beach County Bar Association from 2003 to 2004. Judge Small served on the Florida Bar Board of Governors, Young Lawyers Division, from 2001 to 2004, and on the Florida Bar Board of Governors from 2005 to 2011. She also served as President of the Palm Beach County Chapter of the Florida Association for Women Lawyers (“FAWL”) from 1998-1999. In 2010, the Palm Beach County Chapter of FAWL honored Judge Small as the recipient of the Florida Supreme Court Justice Barbara Pariente award for her commitment to the advancement of women in the legal community, professionalism and community service.

Judge Small and her husband, Anatole, have been together for over 20 years. They married in November of 1998, and welcomed son Aiden in 2007. They have several pets, including 2 rescue cats, a Beta fish, and 2 crayfish. No dogs... yet. Although Judge Small and Anatole were fortunate enough to travel widely before the birth of their son, she states that since his arrival, most of their trips are to Walt Disney World.

As you can guess, most of Judge Small’s time these days is spent on the bench in Family Division “FD.” However, when she does have spare time, she enjoys activities such as attending her son’s T-ball games, cooking, bird watching, playing tennis, following UF football, and following soccer from South America and Europe.

Judge Small states that her transition to the bench has been smooth. She explains that her smooth transition onto the bench, and into family law, is due to the sense of collegiality on the bench, and the great mentoring she has received from so many of the other Judges. Judge Small is committed to being prepared for every matter before her and being fair and impartial at all times. She notes that while she is still a “newer” Judge, she has learned a great deal, and looks forward to learning even more. Please join me in wishing Judge Small continued success in her new role as Circuit Court Judge.

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Public Defender Carey Haughwout Wins Professionalism Award

By Eunice Tall Baros

Meet Palm Beach County's third-term elected Public Defender Carey Haughwout (pronounced "How It" and not like some mystical character in a Harry Potter story). Carey is this year's Bar's Professionalism Award winner and rightly so.

For starters, Carey is an "AV" rated board-certified criminal trial lawyer. She currently supervises 200 people, including 120 assistant public defenders on a frugal \$15 million a year budget. Not only does she run five offices, she maintains an active representation of clients accused of the most serious crimes.

Carey is a much-sought-after speaker on trial practice and professionalism, yet she is accessible to her many assistants -- whether it be a casual meeting on the front steps of her office at 421 3rd Street in West Palm Beach, in the elevator going to her 6th floor office or by telephone from an appellate or trial attorney.

She is a former president of the Florida Association of Criminal Defense Lawyers, a fellow of the American College of Trial Lawyers and she serves on the Florida Bar Criminal Rules Committee. At the request of two governors, she served on the Domestic Violence Clemency Panel and on the committee which proposed minimum qualifications for counsel in capital cases at the request of the Supreme Court.

Carey Haughwout is modest, humble, unassuming and highly capable. "Her office is decorated with case files," jokes her legal assistant Kelly Manning. Though she doesn't have a "shrine wall" she values her numerous awards which surround her desk. Her mother's needlepoint is on the wall along with her father's watercolors and one sister's charcoal drawings. Carey muses, she has the art and the law. Few would contest that she has the "art of the law" as well.

When asked what motivates her she answers simply, "I love what I do."

Our clients are inspiring: I see people who amaze me at their ability to survive and to care about others when few have cared about them. I am constantly reminded that the world I see is not the world many others have the benefit of seeing. I work with inspiring people: folks who could make more money and have less stress but instead choose to advocate for the indigent."

Carey's efforts have been recognized with The Lord's Place Ending Homelessness Award, March of Dimes Women of Distinction Award, and ACLU Glasner Freedom Award.

"Carey and I have worked together for 25 years and she continues to amaze me by her zealous representation of our clients and her ability to empower all who work with her," says Barbara White, chief assistant public defender. "Palm Beach County is very fortunate to have such a dedicated Public Defender who embodies all the principles we stand for."

Cherry Grant, past Felony chief adds, "Although she certainly could opt out of representing people accused of crimes in favor of administrative duties, Ms. Haughwout consistently assigns herself the most difficult cases. Emotions are frequently high in these types of cases... Carey continues to litigate by relying on the law and preparation. As a result, judges and juries listen to what she has to say with respect, to the benefit of her clients and society at large. She practices with grace and a smile."

Indeed she does. Attorney Scott Richardson says, "Carey Haughwout is the epitome of a professional. I have known her for at least 20 years, first as a defense attorney, and for the last two years as First Assistant State Attorney. Her ethics, professionalism and advocacy skills are of the highest caliber."

Prior to being elected, Carey spent a decade practicing in Palm Beach County with her husband, attorney John Tierney. From 1985-90, she was a public defender in Tallahassee and West Palm Beach. From 1983-85, she was an associate in a general trial practice. She is a 1983 graduate with high honors from Florida State University College of Law. While an economics/sociology undergraduate at New College in Sarasota, Carey was the victim of a crime and because of that incident she began thinking about crime and punishment and related mental health issues. She began to look at the penal system in the United States and realized, that "we didn't pay enough attention to the causes of crimes."

Today Carey sees many more challenges than 30 years ago. She sees "a justice system that, by virtue of the tremendous caseload and inadequate resources, can allow efficiency to be more



Federal Judge Rosemary Barkett & Carey Haughwout

important than effectiveness, a system that can value process over justice." As to professionalism, she thinks the term is often "confused with civility. I believe professionalism is about advocacy," Carey says. "Our most important professional responsibility is to be a prepared, knowledgeable, and a vigorous advocate for our client within rules promulgated for the peaceful resolution of disputes."

Carey is probably most proud that she has been "mindful of deficiencies in the administration of justice and of the fact that the poor, and sometimes persons who are not poor, cannot afford adequate legal assistance," adds Paul Petillo, chief of PD appeals. "She has used her 'influence to ensure equal access to our system of justice for all those who because of economic or social barriers cannot afford or secure adequate legal counsel.'"

When not practicing law, Carey loves gardening, riding her horse, caring for her three special needs Labradors. She enjoys her husband's homemade tacos.



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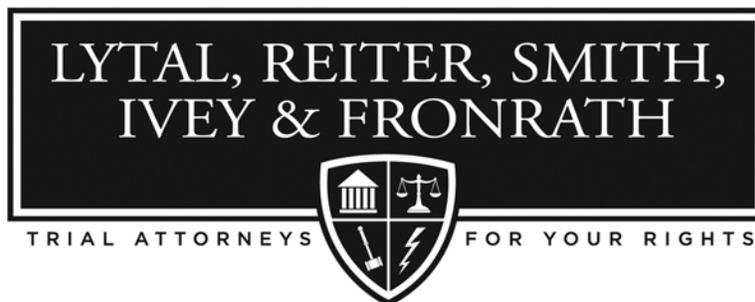
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MARINA D. PETILLO: Many of your clients and former clients would benefit from the services of a Parenting Coordinator who is also an experienced Marital/Family Law Attorney. For more information, please visit www.petilloparentingcoordinationandmediation.com Also available as a Family Law Mediator and Guardian/Attorney Ad Litem. Reasonable rates for all services. 800 Village Square Crossing, Suite 105, Palm Beach Gardens, FL 33410 (561) 656-2015. mpetilloesq@gmail.com

OFFICE SPACE

WOULD YOU LIKE TO SELL YOUR PALM BEACH COUNTY LAW PRACTICE? I may be interested in purchasing it. Call or email (561) 880-0155; Paul@paulburkhart.net. You are assured of strict confidentiality.

OFFICE SUBLEASE IN CENTURION TOWER: 1601 Forum Place, West Palm Beach. Includes office (one or two offices available), file space, secretarial station, copier/scanner, conference rooms and internet. Call Beth (561) 659-7878.

SOLO OFFICE 4 RENT: \$800/mo, includes lawyer's office, secretary space, conference room, free parking, cleaning, water, electric, T-1 phone line and internet \$60/mo, shared fax/copier/high speed scanner, I-95 & Southern Blvd. (561) 686-6886.

PROFESSIONAL OFFICE SPACE WEST PALM BEACH: 1,000 to 3,000 sq. ft. Private bathrooms/shower, kitchen. Connecting suites can be re-configured. Private covered balcony overlooking Intracoastal/Palm Beach. One-half block off Flagler Dr. Plenty of free parking. Below market rates. Move-in incentives including rent abatement and decorating allowance. (561) 603-0082.

OFFICE SPACE WPB – CBD: One block to Clematis. Close to Courthouse & City Hall. 1,500 to 30,000 SF avail. Very competitive rates! Call ACR (561) 775-1300 or dnewell@amcomrealty.com.

SPACE SHARING: Office space, East Boca Raton. Downtown private office, furnished conference room, secretarial area, waiting room and complete office, equipment-share with established law practice. Possible overflow/contract work arrangement available. Call Arthur D'Almeida (561) 368-4674.

HEARSAY



Nancy La Vista, a Board Certified civil trial attorney and a partner at the law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has been named the 2011 Trial Lawyer of the Year by the Palm Beach County chapter of the American Board of Trial Advocates (ABOTA).



Bruce E. Reinhart, a nationally recognized trial attorney and distinguished former federal prosecutor, has joined McDonald Hopkins, LLC as a member in the business advisory and advocacy law firm's White Collar Crime, Antitrust and Securities Litigation Practice.

APPEARANCES CAN BE DECEIVING



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Bulletin Board



Andrew Kwan has joined the law firm of Beasley, Hauser, Kramer & Galardi, P.A. as an associate. He concentrates his practice in complex business litigation in federal and state courts.



The law firm of Furr & Cohen, which is nationally recognized in the areas of bankruptcy and family law, has hired **Aaron A. Wernick** as an associate.



Kelly Shivery (f/k/a Kelly Sheehan) has joined McCabe Rabin as an investor-arbitration paralegal and is a Registered Paralegal with the Florida Bar. Kelly previously was a Senior Case Administrator at the Financial Industry Regulatory Authority's Southeast Regional Office (FINRA) and was an editor of FINRA's publication entitled the Neutral Corner.



Ronald Scott Kaniuk has joined Sachs Sax Caplan, P.L. as Senior Counsel practicing in the Community Association Practice Group. Mr. Kaniuk represents a variety of homeowner and condominium associations, as well as corporate clients, banks and direct private lenders and commercial real property owners.

Scott N. Richardson, Board Certified Criminal Trial Attorney, announces the opening of the Law Offices of Scott N. Richardson, P.A. specializing in criminal defense. 1551 Forum Place, Suite 300 E, West Palm Beach, FL 33401. (561) 471-9600; (561) 471-9655 (fax) Email: snr6253@gmail.com.

Richard M. Benrubi, partner at Liggio Benrubi, P.A., was recently elected to serve as Vice President of the Palm Beach Chapter of the American Board of Trial Advocates (ABOTA) for 2012.

MISCELLANEOUS

Investment Opportunities: We recently brokered for several Palm Beach attorneys "Hard Equity First Mortgages" (references upon request). A typical loan pays you 10% interest purchase money first mortgage, interest only, 5 year balloon. All loans closed with licensed title company with title insurance. If interested please contact Lenny Silvestri NMLS Lic #364688 Alternative Mortgage Group Lic # 392369 Telephone (561) 395-4264

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PALM BEACH COUNTY BAR ASSOCIATION
BULLETIN

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

CALENDAR
April 2012

| | | | |
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| <p>Wednesday, April 4, 11:45am - 1pm Commercial/Business Litigation CLE Seminar Judicial Conference Room, Main Courthouse</p> <p>Thursday, April 5, 11:45am - 1pm FAWL Luncheon West Palm Beach Marriott Info at www.pbcfawl.org</p> <p>Friday, April 6 Court Holiday - Good Friday Bar Office closed</p> <p>Tuesday, April 10, Noon - 1pm Young Lawyers Section Board Meeting Bar Association Office</p> <p>Wednesday, April 11, Noon - 1pm Business Law Practice Committee Meeting Bar Association Office</p> <p>Wednesday, April 11, Noon - 1pm North County Section Board Meeting</p> <p>Wednesday, April 11, Noon - 1pm Professionalism Committee Meeting Bar Association Office</p> <p>Thursday, April 12, 11:45am - 1pm Judicial Relations Committee Meeting Judicial Conference Room, Main Courthouse</p> | <p>Thursday, April 12, 5:30pm - 7:30pm FAWL Reception Info at www.pbcfawl.org</p> <p>Sunday, April 15, 11:30am - 2:30pm North County Section Caribbean Beach Party Hilton, Singer Island</p> <p>Tuesday, April 17, 11:45am - 1pm Unified Family Practice Committee Meeting Law Library, Main Courthouse</p> <p>Tuesday, April 17, 5:30pm - 6:30pm Inns of Court Meeting Judicial Conference Room, Main Courthouse</p> <p>Wednesday, April 18, 11:45am - 1pm Judicial Luncheon North end of Cafeteria, Main Courthouse</p> <p>Thursday, April 19, 11:30am - 1pm CDI CLE Speakers Bureau Training Bar Association Office – Classroom</p> <p>Thursday, April 19, 5:30pm - 7:30pm Annual Judicial Reception - Palm Beach Association of Criminal Defense Lawyers Mortons, West Palm Beach Info at www.pbacdgl.org</p> | <p>Thursday, April 19, 5:30pm - 7:30pm Young Lawyers Section Happy Hour</p> <p>Friday, April 20, 8:00am - 5pm South Palm Beach County Bar Association Golf Event Info at www.southpalmbar.org</p> <p>Friday, April 20, 11:30am - 1pm North County Section CLE Luncheon</p> <p>Friday, April 20, Noon - 2pm Palm Beach County Justice Association Lunch Meeting Info at www.pbctla.org</p> <p>Friday, April 20, 12 Noon Cunningham Bar Association CLE Meeting/General Meeting Info at www.cunninghambar.org</p> <p>Monday, April 23, 11:45am - 1:45pm Construction Law CLE Luncheon Bar Association Office</p> <p>Tuesday, April 24, Noon - 1:00pm CDI Committee Meeting Bar Association Office</p> | <p>Tuesday, April 24, 5:30pm - 6:30pm Legal Aid Board Meeting Bar Association Office</p> <p>Wednesday, April 25, 2pm - 5pm PI Wrongful Death CLE Seminar Bar Association Office</p> <p>Wednesday, April 25, 5pm - 6pm PBCBA Board of Directors Meeting Bar Association Office</p> <p>Thursday, April 26, 5:30pm - 7pm Federal Bench and Bar Conference Cocktail Reception Marriott, West Palm Beach Contact Chair Adam Rabin at (561) 659-7878 or Cathy Wade (305) 523-5015</p> <p>Friday, April 27 Federal Bench Bar Conference Palm Beach Convention Center Contact Chair Adam Rabin at (561) 659-7878 or Cathy Wade (305) 523-5015</p> <p>Saturday, April 28, 8am - Noon Law Week Softball Game</p> <p>Monday, April 30 – May 2, 9am - 4pm Dial-a-Lawyer Bar Association office</p> |
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The Palm Beach County Bar Association's Commercial and Business Litigation CLE Committee presents:



**Substantive Law and Practical Advice
from the Masters
in the Litigation and Trial of Business Disputes -
A Lunchtime Seminar Series**

January 18, 2012

March 1, 2012

April 4, 2012

May 9, 2012

11:45 a.m.—1:00 p.m.

Judicial Conference Room, Main Courthouse, WPB

Sponsored By: Sabadell United Bank



January 18, 2012 - "The Use of ADR in Business Litigation" - *L. Louis Mrachek, Board Certified Civil Trial and Business Litigation Lawyer, Page, Mrachek, Fitzgerald & Rose, P.A.*

(This course has been granted 1.0 CLER/1.0 Business Litigation Certification Credits by the Florida Bar)

BRING YOUR BUSINESS CARDS - DRAWING AT LUNCH FOR FLORIDA PANTHERS HOCKEY TICKETS

(Panthers vs Islanders (NY) - Sunday, March 25, 2012 - 5:00pm)

March 1, 2012- "Proving and Defending Against Damage Claims in Business Litigation" -

James W. Beasley, Jr., Beasley, Hauser, Kramer & Galardi, P.A.

(This course has been granted 1.0 CLER/ 1.0 Civil Trial Certification Credits by the Florida Bar)

April 4, 2012 - "Commercial Consultants, LLC v. BBA US Holdings, Inc.: A Case Study In Fee-Shifting Issues" - *John "Jack" Scarola, Board Certified Civil Trial and Business Litigation Lawyer, Searcy, Denney, Scarola, Barnhart & Shipley, P.A.*

(This course has been granted 1.0 CLER/ 1.0 Business Litigation Certification Credits by the Florida Bar)

May 9, 2012 - "View from the Bench" - *Judges TBA*

(This course has been granted 1.0 CLER by the Florida Bar)

The cost of each seminar is \$25 for PBCBA members/paralegals, \$65 for non-PBCBA members/paralegals if registered 7 days before each seminar; Add \$15 to registration fee after that date.

All refund requests must be made no later than 48 hours prior to the date of the seminar.

____ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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Please register me for the following (checked) seminar(s):

____ January 18, 2012 ____ March 1, 2012 ____ April 4, 2012 ____ May 9, 2012

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery). (Commercial/Business). Cost is the same as listed above, in addition to \$10 for shipping and handling.

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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800

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



**“Cross-Examining a Delay Expert -
What Every Construction Lawyer Needs to Know
About Critical Path Method Scheduling”**

Monday, April 23, 2012 - 11:45a.m. - 1:35p.m.

Bar Offices - **NEW LOCATION:** 1507 Belvedere Rd., WPB

Program Schedule

11:45am - 12:00pm **Check In / Late Registration / Lunch**

LUNCH SPONSORED BY:



12:00pm - 12:05pm **Welcome - Opening Remarks -** *Cristopher S. Rapp, Esq.,
Jones, Foster, Johnston & Stubbs, P.A., Construction Law CLE
Committee Chair*

12:05pm - 1:35pm **Cross-Examining a Delay Expert - What Every Construction
Lawyer Needs to Know About Critical Path Method Scheduling-**
*Linda Dickhaus Agnant, Esq., Board Certified Construction Law
Attorney, Casey Ciklin Lubitz Martens & O'Connell*

This course has been granted 2.0CLER/2.0 Construction Cert. credits from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$50** for PBCBA members/paralegals, **\$90** for non-PBCBA members/paralegals. **After 4/16/12, add \$10.00 late fee.**

All refund requests must be made no later than 48 hours prior to the date of the seminar.

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Telephone: _____

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City/Zip _____

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___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Construction Law Seminar 4/23/12) Cost is the same as listed above, **in addition to \$10 for shipping and handling.**

PAYMENT BY **CHECK** ONLY, WITH THIS FORM.

Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406.

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



“Walk a Mile in a Judge’s Shoes”
Friday, May 11, 2012 - 1:00p.m. - 5:30p.m.

Bar Offices - **NEW LOCATION:** 1507 Belvedere Road, WPB

Program Schedule

- 12:45pm - 1:00pm **Check In / Late Registration**
- 1:00pm - 1:05pm **Welcome - Opening Remarks** - *Todd S. Stewart, Esq., Board Certified Civil Trial Attorney, Law Offices of Todd S. Stewart, Circuit Civil Practice Committee Chairperson*
- 1:05pm - 3:15pm **From the Bench: What Judges do behind the scenes and what goes into them, such as Bar Grievances, appeals, hearing preparation, duty judge, writs, etc.** - *Honorable Donald W. Hafele, Honorable Robin L. Rosenberg, Fifteenth Judicial Circuit - Moderated by Mark A. Greenberg, Esq., Mark A. Greenberg, P.A.*
- 3:15pm - 3:30pm **BREAK**
- 3:30pm - 4:00pm **E-filing Update** - *Sharon R. Bock, Clerk & Comptroller of Palm Beach County, Clerk & Comptrollers Office*
- 4:00pm - 4:30pm **JNC Process** - *Michael J. Gelfand, Esq., Board Certified Real Estate Attorney, Former JNC Member, Gelfand & Arpe*
- 4:30pm - 5:30pm **Happy Hour**

SPONSORED BY: Signature Court Reporting
ARC Mediation
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This course has been granted 4.0 CLER from The Florida Bar.

The cost of the seminar is **\$100** for PBCBA members/paralegals, **\$140** for non-PBCBA members/paralegals. **After 5/4/12, add \$10.00 late fee.**

All refund requests must be made no later than 48 hours prior to the date of the seminar.

___ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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Materials will now be emailed to all registrants prior to the seminar

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Name: _____

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Email Address: _____

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Palm Beach County Bar Association, 1507 Belvedere Rd., West Palm Beach, FL 33406.

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



*"An Overview of Public Procurement in Florida -
from Advertisement through Bid Protests"*

Monday, May 14, 2012 - 11:45a.m. - 1:35p.m.

Bar Offices - **NEW LOCATION:** 1507 Belvedere Rd., WPB

Program Schedule

11:45am - 12:00pm **Check In / Late Registration / Lunch**

LUNCH SPONSORED BY:



12:00pm - 12:05pm **Welcome - Opening Remarks** - *Cristopher S. Rapp, Esq.,
Jones, Foster, Johnston & Stubbs, P.A., Construction Law CLE
Committee Chair*

12:05pm - 1:35pm **An Overview of Public Procurement in Florida - from
Advertisement through Bid Protests**
*William J. Cea, Esq., Board Certified Construction Law Attorney,
Florida Certified Circuit Civil Mediator, Becker & Poliakoff, P.A.*

This course is expected to receive 2.0 CLER from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$50** for PBCBA members/paralegals, **\$90** for non-PBCBA members/paralegals. **After 5/7/12, add \$10.00 late fee.**

All refund requests must be made no later than 48 hours prior to the date of the seminar.

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City/Zip _____

Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Construction Law Seminar 5/14/12) Cost is the same as listed above, **in addition to \$10 for shipping and handling.**

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Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406.



The Estate and Probate Law Continuing Legal Education Committee presents:

“The 29th Annual Estate and Probate Seminar - Part 2”

Wednesday, May 16, 2012 - 8:00a.m.- 12:30p.m.

Embassy Suites (formerly The Crown Plaza Hotel)
1601 Belvedere Road, West Palm Beach, FL



Program Schedule

- 8:00a.m. - 8:25a.m. **Late Registration and Check In**
- 8:25a.m. - 8:30a.m. **Welcome & Opening Remarks** - *John M. Severson, Esq., Florida Bar Board Certified Wills, Trusts & Estates Attorney, Burns & Severson, P.A., Committee Chair*
- 8:30a.m. - 9:30a.m. **Case Law Update** - *Speaker TBA*
- 9:30a.m. - 10:15a.m. **Legislative Update** - *William T. Hennessey, III, Esq., Gunster, West Palm Beach*
- 10:15a.m. - 10:30a.m. **BREAK**
- 10:30a.m. - 11:00a.m. **Tax Law/Ethics Update** - *Michael A. Lampert, Esq., Florida Bar Board Certified Tax Attorney, Michael A. Lampert, P.A.*
- 11:00a.m. - 11:30a.m. **Reformation - Ethics “Changing the Unchangeable”**- *Robert W. Goldman, Esq.*
- 11:30a.m. - 12:00p.m. **Title to Real Estate from Estate/Trust** - *Robert S. Kleinman, Esq., Florida Bar Board Certified Real Estate Attorney, Robert S. Kleinman, P.A.*
- 12:00p.m. - 12:30p.m. **Medical/Psychological Privilege in Estate and Trust Litigation/HIPPA** - *William E. Boyes, Esq. Florida Bar Board Certified Wills, Trusts & Estates Attorney, Boyes & Farina, and John Farina, Esq., Board Certified Wills, Trusts & Estates; Business Litigation; and Board Certified Civil Trial Advocate, Boyes & Farina*
- 12:30p.m. **LUNCH**

Sponsored By:



*Aycock Funeral Home Howard-Price Funeral Home
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estate & trust litigation

Sabadell United Bank



This course is expected to receive 4.5 CLER including 1.0 Ethics / Certification credits are pending from the Florida Bar.

The cost of seminar, which includes lunch, is \$125 for PBCBA member attorneys/paralegals;

\$165 for non-PBCBA member attorneys/paralegals if registered by May 9, 2012; add \$25 after that date.

All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

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Name: _____

Telephone: _____

Address: _____

City/Zip _____

Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Estate/Probate Seminar 5/16/12)
Cost is the same as listed above, **in addition to \$10 for shipping and handling**. PAYMENT BY **CHECK ONLY**, WITH THIS FORM.

Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406



The Palm Beach County Bar Association's
Bankruptcy Continuing Legal Education Committee Presents:

"Practicing Bankruptcy at a Higher Level: Crossroads"

Monday, May 21, 2012
8:30am - 4:00pm

Bar Association Offices - **NEW ADDRESS - 1507 Belvedere Road, WPB, FL 33406**

Program Schedule

8:30a.m. - 8:45a.m. **Late Registration/Check In**

8:45a.m. - 8:50a.m. **Welcome & Opening Remarks** - *Julianne R. Frank, Esq., Committee Chair, Frank, White-Boyd, P.A.*

8:50a.m. - 9:50a.m. **The Intersection of Foreclosure and Bankruptcy Law**—*Ronald S. Kaniuk, Esq., Sachs Sax Caplan, P.L..*

9:50a.m. - 10:00a.m. **BREAK**

10:00a.m. - 11:00a.m. **The Intersection of Marital and Bankruptcy Law** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A.*

11:00a.m. - 12:00p.m. **Trustee Perspectives** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A.*

12:00p.m. - 1:00p.m. **LUNCH**

1:00p.m. - 2:00p.m. **The Business in Distress** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A.*

2:00p.m. - 3:00p.m. **Tricks of the Skilled Litigator** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A.*

3:00p.m. - 4:00p.m. **Bankruptcy Practice for the Creditor Lawyer** – *Eric A. Rosen, Esq., Rosen & Winig P.A.*

SPONSORED BY:



This course is expected to receive **7.0 CLER credits from the Florida Bar**
The cost of the seminar, lunch included, is **\$175 PBCBA Members/paralegals; \$215 Non-PBCBA Members/paralegals** if registered by **5/14/12**; add **\$25** late fee after that date.

All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25.

___ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

Credit card registration payment not accepted by Fax to comply with PCI regulations

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___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Bankruptcy Seminar5/21/12)
Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK** ONLY, WITH THIS FORM.

Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406



The Palm Beach County Bar Association's
Community Association Law Continuing Legal Education Committee presents:

***THE SECOND TIME AROUND¹: REPEATS AND DO OVERS
IN THE COMMUNITY ASSOCIATION LAW ENVIRONMENT***
THE 23rd ANNUAL COMMUNITY ASSOCIATION LAW SEMINAR

Friday, June 8, 2012 8:55 a.m. – 12:00 p.m.

NEW LOCATION - Bar Association Office - 1507 Belvedere Rd., WPB

Program Schedule

| | |
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| 8:30am - 8:55am | Late Registration and Check In |
| 8:55am - 9:00am | Welcome - <i>Michael J. Gelfand, Esq., Florida Bar Board Certified Real Estate Attorney, Committee Chairperson, Gelfand & Arpe, P.A</i> |
| 9:00am - 9:30am | Is Creation Lovelier the Second Time Around: Practical and Ethical Issues When Revitalizing MRTA Extinguished Covenants Pursuant to the Homeowners' Association Act — <i>Steven D. Rubin, Esq., Florida Bar Board Certified Real Estate Attorney, Steven D. Rubin, P.A.</i> |
| 9:30am - 10:00am | Is Development Lovelier the Second Time Around: Practical and Ethical Concerns for Developer Representation post-Foreclosure and Turnover - <i>Steven L. Daniels, Esq., Arnstein & Lehr, P.A.</i> |
| 10:00am - 10:25am | Fines and Suspensions: New Covenant Enforcement Tools, Strategies and Ethics - <i>Bradley F. Rothenberg, Esq., Becker & Poliakoff, P.A.</i> |
| 10:25am - 10:35am | BREAK |
| 10:35am - 11:05am | Avoiding the Second Claim (and the First): Fair Housing Law Case Law Update and Ethical Expectations - <i>Pamela Guerrier, Esq., Palm Beach County Office of Equal Opportunity</i> |
| 11:05am - 12:00pm | Déjà Vu All Over Again? Case Law and Statutory Law Update: Practical and Ethical Implications - <i>Michael J. Gelfand, Esq., Florida Bar Board Certified Real Estate Attorney, Gelfand & Arpe, P.A.</i> |

¹ With apologies to the memory of Frank Sinatra.

**This course is expected to receive 3.5 CLER including 3.5 Ethics.
Certification credits are pending from The Florida Bar.**

The cost of the seminar is \$120 for PBCBA members/paralegals; \$160 for non-PBCBA members/paralegals if registered by 6/1/12; add \$25.00 late fee after that date.

All refund requests must be made no later than 48 hours prior to the date of the seminar.

Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

HOW TO REGISTER



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Materials will now be emailed to all registrants prior to the seminar

Credit card registration payment not accepted by Fax to comply with PCI regulations.

Name: _____

Telephone: _____

Address: _____

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Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD. (cost same as listed above/allow four weeks for delivery)
(23rd Annual Comm. Assn Seminar 6/8/12)

Palm Beach County Bar Assn., 1507 Belvedere Road, West Palm Beach, FL 33406.(561)687-2800



The Palm Beach County Bar Association's Employment Law Committee Presents:
"Third Annual Martinis and Migraines"

Wednesday, June 13, 2012 - 1:00pm—5:00pm
Bar Association office



Program Schedule

12:45 - 1:00pm - Late registration check-in

1:00 - 1:10pm - **Welcome & Opening Remarks** - *Cathleen A. Scott, Esq., Board Certified Labor & Employment Law Attorney, Employment Law CLE Committee Chairperson, Cathleen Scott & Associates, P.A.*

1:10 - 2:00pm - **Case Law Update & Hot Topics** - *Steven L. Schwarzberg, Esq., Schwarzberg & Associates*

2:00 - 2:50pm - **Litigating Non Competes & Other Restrictive Covenants** -
Gerard Joseph Curley, Jr., Esq., Board Certified Business Litigation Law Attorney, Gunster

2:50 - 3:00pm - **BREAK**

3:00 - 3:50pm - **Handling Class and Collective Actions** - *Daniel R. Levine, Esq., Shapiro Blasi Wasserman & Gora PA, Board Certified Labor & Employment Law Attorney*

3:50 - 4:20pm - **Tax Implications of Severance and Settlement Agreements from Employment Practitioner** -
Michael Tomberg, Esq., Tomberg Law Firm, P.L.

4:20 - 5:00pm - **Agency Update from EEOC, NLRA, and New Legislation Regarding Public Employee Cases** -
Cathleen A. Scott, Esq., Board Certified Labor & Employment Law Attorney, Cathleen Scott & Associates, P.A.

5:00 p.m. **Happy Hour:** *Share a Martini with colleagues Please drink responsibly*

Sponsored By:



This course has been granted **4.5 CLER / 3.5 Labor & Employment Certification credits from The Florida Bar.**

The cost of the seminar is **\$110** for PBCBA members/paralegals;

\$150 for non-PBCBA members/paralegals if registered by **6/6/12**; add \$15 to registration fee after that date.

All refund requests must be made no later than 48 hours prior to the date of the seminar.

___ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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Credit card registration payment not accepted by Fax to comply with PCI regulations.

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (6/13/12 Employ. Law.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800

Benchmarks: Raising the Bar on Civics Education

presented by the Law Related Education Committee



Thursday, April 19, 2012

11:30 a.m. to 1:30 p.m.

Bar Office

1507 Belvedere Road

West Palm Beach



TOGETHER, WE Can Make A Difference!

Presenters: Richard H. Levenstein, Esq. Kramer, Sopko & Levenstein, P.A.

The Florida Bar's Law Related Education Committee (2010 – 2011)

Annette Pitts, *Executive Director of Florida Law Related Education Association*

Michael Napoleone, *Immediate Past President*

According to a December 2005 survey conducted by the Florida Bar, just over half of Americans could identify the 3 branches of government, even with a multiple choice test. Furthermore, fewer than half of Americans understood the concepts of the separation of powers and checks and balances.

These startling statistics led the Florida Bar and its Judicial Independence Committee, in collaboration with the Florida Law Related Education Association, Inc., to launch an initiative, “*Benchmarks: Raising the Bar on Civics Education.*” The initiative is designed to provide judges and attorneys with activities that they can use to teach adults in civic and community organizations the fundamentals of government and judicial review of new and existing laws, the Bill of Rights, and knowledge about U.S. government and the courts. An informed public is fundamental to a vigorous democracy and an independent, impartial and fair judiciary.

Attorneys who undergo the training will be eligible to earn one ethics credit hour for each presentation that they give to adults in civic and community organizations for up to three presentations in a three-year reporting period.

Cost: \$35.00 includes lunch, plus CLE credit from The Florida Bar

RSVP online @ www.palmbeachbar.org

Register no later than 5:00 p.m. on 4.17.12 to avoid a \$5.00 late fee

