



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

www.palmbeachbar.org

December 2013



The Board of
Directors
and Bar Staff
Wish You and Your
Family a Happy
Holiday Season!!



Mark your calendar for upcoming Membership Events

December 5:

Annual Holiday Party and Silent Auction

March 7, 2014:

Bench Bar Conference

April 22:

Law Day Luncheon with guest speaker
Former FL Supreme Court
Chief Justice Charles Wells

April 29:

Annual Judicial Reception

June 7:

Annual Installation Banquet



About 150 members and their families attended our first Family Day at the Zoo event. Pictured above are Rick Chaves, W and Jessica Mason, Julia Wyda, Jill Weiss and her daughter Eden. For more photos, please turn to page 21.

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 13 and are due back in the office by 5 p.m. on January 13. Petitions for director-at-large seats will be available on December 20 and are due back in the Bar office by 5 p.m. on January 21. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it to pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

Inside...

Administrative Orders.....	2
President's Message	3
YLS Past President Reception	4
Award Nominations Sought	5
Personal Injury Corner.....	6
Technology Corner	7
Professionalism Corner.....	8
Family Law Corner.....	9
Rules of Civil Procedure Corner	10

Diversity Corner	11
New Members.....	12
Real Life	13
Bankruptcy Corner.....	14
Real Property Report	15
Legal Aid's Golf Classic	16
North County Section	17
Probate Corner	19
Family Day at the Zoo	21
Bulletin Board.....	23

THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

JILL G. WEISS
President

www.palmbeachbar.org

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Executive Director

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Theodore S. Kypreos, President-elect

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Gregory P. Huber
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Miles A. McGrane IV
Matthew T. Ramenda

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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

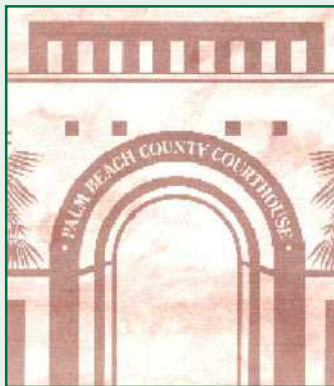
The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.



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

15th Judicial Circuit Administrative Orders

www.15thcircuit.com/adminorders



REVISED ADMINISTRATIVE ORDERS

11 Series: Internal Policies and Procedures

Administrative Order 11.110 - *Circuit Judges as Acting County Judges/County Judges As Acting Circuit Judges*. Amended October 1, 2013. For a six month period, each circuit judge is assigned and designated to hear county court cases brought before the judge as a temporary judge of the Palm Beach County Court. For a six month period, each county court judge is assigned and designated to hear circuit court cases brought before the judge as a temporary judge of the Fifteenth Judicial Circuit Court.

Transaction Committee to host its first Happy Hour

Members are invited to join the Transaction Law Committee for their first Cocktail Reception on Wednesday, January 15 from 5:30 p.m. to 7:00 p.m. at 264 in Palm Beach. The cost is \$25.00 and includes two drinks, plus food. Kindly RSVP online at www.palmbeachbar.org



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Mingle Bells: A Guide to Holiday Networking

By Jill G. Weiss

It is the beginning of December and one look at your calendar shows a full month of holiday parties, your best friend's holiday party, your significant other's holiday party, the PBCBA holiday party (December 5th), not to mention numerous holiday lunches and other events that dot the calendar. Just looking at a December calendar is an exhausting ordeal. 'Tis the season and we can all use a few mingle tips to help navigate the busiest business networking time of year.

1. Right or Left: where should you put your nametag?

It's a dilemma, but the answer is that nametags should be placed on the right hand side of your jacket, blouse or dress. It seems counterintuitive if you are right handed, since it is easier to place the name tag on the left, but the nametag goes on the right. When you are shaking hands each person can make direct eye contact while still seeing the nametag, thereby reinforcing the association between name and face. P.S. it helps if your nametag is not upside down or stuck to someone else's sleeve.

2. I know I met him, but damn if I can remember the name...

We have all been there. A person comes up to you at a nametagless holiday party... "Jill, how are you?" You stand there searching your memory but cannot remember their name to save your life. Worse, you are afraid you are going to call them an entirely incorrect name. So what do you do? If you are lucky enough to have a person standing next to you whose name you can fortunately recall, just say, "I am great, do you know Mike?" Chances are your nameless acquaintance will offer both their hand and their name to Mike, thereby saving you more distress and potential embarrassment. Of course, if you do not have a handy wingman – or can't find someone to rope into your conversation – , you may just have to 'fess up, blaming it on your lack of ability to remember names and simply ask.

3. "I know you are not interested in what I have to say, but stop looking over my shoulder..."

Even the best of us are not sparkling conversationalists all the time. Sometimes we are tired, or cranky, or we have just used all our best words earlier in the day, leading to a horribly uninteresting conversation. So how do you get out of that boring conversation? One technique is appropriately called the "human sacrifice".¹ You grab some poor unsuspecting partygoer and drag him into the conversation in your place. While seemingly harsh, it is December and a new year's resolution to not do that again is right around the corner. A kinder gentler approach is the three step "smooth escape": take

control of the conversation, change the subject and then make your break.

4. Oops, did I just hit you with my Mary Poppins bag?

Ladies, carry a small purse or no purse at all. Nothing kills a holiday greeting worse than having to apologize for the bruise you just inflicted with your won't-fit-in-the-overhead-compartment-sized handbag. Parties can be crowded, so plan ahead by having a small purse (or none at all). Just be certain to have ample business cards, your car keys, some cash, lip gloss... Ok, a small purse. And, of course, your credit card for the Bar's annual holiday party silent auction.

5. What was I thinking when I got dressed this morning?

Who doesn't love a crisp white shirt? But during this holiday season, if you wear that lovely white blouse, be ever so attentive to what you eat and drink. Think clear liquids and one bite nibbles. Nothing red. Nothing drippy. Now if you happen to break this mingling rule to your detriment, carrying a Shout wipe or Tide stick can help reverse the party foul. (Also, see above: taking a whack from a carry-on purse can soil the outfit of even the most fastidious of party goers.)

6. OMG... I am actually enjoying myself

Finally, have fun. It's the holidays. Relax. Try and keep the conversation light, your imbibing responsible, and enjoy.

Wishing all of you a happy holiday season and a happy new year!

PS: One final tip – hand sanitizer. Keep it in your car and before you touch anything, sanitize. Holiday parties not only spread cheer, but, well, just use it. You can thank me later.

Board Meeting Attendance

	August	September	October
Barnes	X	Phone	Phone
Huber	X	X	X
Kypreos	X	X	X
Mason	X	X	X
McElroy	X	X	X
Pressly	X	X	X
Rabin	X	X	X
Reagan	X	X	X
Stewart	X	X	X
Weiss	X	X	X
Whittles	X	X	X
Wyda	X	X	X
Xenick	X	X	X

¹ Mingle All the Way Through the Holiday Parties, Steven Inskeep, www.npr.com, December 2006.



Tuesday, December 3, 2013 11:30—1:30
Palm Beach County Bar Association
1507 Belvedere Road

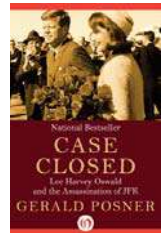


PALM BEACH COUNTY & THE JFK ASSASSINATION: A CORONER'S INQUEST

Did you know that Palm Beach County played a remarkable role in the JFK Assassination? Were you aware that county court judges may preside over a public inquest regarding any death in the jurisdiction which could be referred to the medical examiner? Timed with the 50th anniversary of the assassination of President Kennedy, this seminar will focus on Florida's rarely-invoked inquest procedure and the public inquiry into the April 1977 death of George de Mohrenschildt (the alleged "best friend" of Lee Harvey Oswald) in Manalapan. The panel will also discuss the various government investigations/reviews, from the Warren Commission to the JFK Act, and how the Palm Beach Inquest played a role in assisting the House Select Committee on Assassinations' investigation.

11:30 – 11:45a Welcome and Opening Remarks – David Blutworth, former prosecutor; Gerald Posner, lawyer & author of "Case Closed"; Christopher B. Hopkins, Akerman Senterfitt, chairperson.

11:45 – 12:30p Overview of Government Investigations into the JFK Assassination – Gerald Posner is a NY & DC lawyer who has written eleven books, including the Pulitzer Prize-finalist, "Case Closed." He will discuss the federal government's investigations into and collection of records about the Kennedy assassination including the Warren Commission, Church Committee, Rockefeller Committee, House Select Committee and Assassination Records Review Board.



12:30 – 1:15p Palm Beach Inquest: In Re Death of George de Mohrenschildt – David Blutworth, the prosecutor who petitioned for and brought this inquest before Judge Harold Cohen (ret.), will discuss the procedures and merits of a county court inquest and his experience in this April 1977 inquest, which drew national attention to Palm Beach County.

1:15 – 1:30p Panel Discussion: Questions and Answers

This course has been approved for 2.0 General CLER Hours/

1.5 Criminal Appellate Law or 1.5 Criminal Trial Law Certification Credit from The Florida Bar.

Early registration cost for the seminar, which includes lunch is **\$60** for PBCBA member attorneys/paralegals;

\$100 for non-PBCBA member attorneys/paralegals if registered by 11/28/13; 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.

Thank you to our sponsor:



PAYMENT OPTIONS:



If paying by credit card, please go to our secure website to register: www.palmbeachbar.org



If you can't leave your office, you can attend this via live webinar by registering here <http://www.palmbeachbar.org>. **PLEASE NOTE: If you register for the webinar, you cannot attend the live version.**



If paying by check, please send payment, along with this form, to the Bar office.



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

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) (JFK Seminar 12/3/13) Cost is the same as listed above. Please fill out form above and send to this address:

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

Young Lawyers Past President Reception



Current YLS President Julia Wyda presents a gift to Immediate Past President Lee McElroy and thanks him for a great year of service to the young lawyers.



Laura Kenney, Jean Francis, Rick Davis, Megan Schmidt and Christine Bialczak



Judges John Kastrenakes, Paul Hyman, Stephen Rapp, Alan Forst with Julia Wyda



Jeanette Hallak, Saeid Mirzadeh and Masimba Mutamba



YLS Secretary Lou Delgado, and Board Members Andrea Robinson and Leanna Lalla



Christa McCann, Amber Curtis, Krista Downey and Sarah Jeck

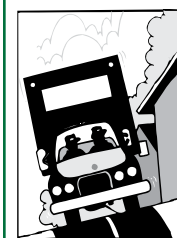
Buy a Brick for the New Year!

The entrance to the Bar Office is paved with engraved bricks, which are seen by hundreds of attorneys and judges who visit our building for meetings and seminars on a weekly basis. The bricks are personally engraved in a variety of ways. Some include law firm names, others are engraved with the names of children and spouses and some were purchased in memory of loved ones. If you haven't already purchased a brick, please do so! Your brick will be placed along the walkway for the life of our building. Bricks are sold in two sizes, 4" x 4" for \$1,000.00 and 8" x 8" for \$2,500.00. To purchase your signage, or for further details, call Lynne at 687-2800.

Upcoming CLE Seminars

Your CLE Committee Chairs have been very busy at work planning live CLE seminars for our membership for this year. For more information about these seminars, please visit the Bar's website: palmbeachbar.org

- December 3: JFK Assassination Seminar
- December 6: Personal Injury Law Luncheon Seminar
- December 13: Elder Law Seminar
- December 18: Criminal Law Luncheon Seminar
- January 14: Personal Injury Law Seminar
- January 15: Criminal Law Luncheon Seminar
- January 17: Technology Seminar
- January 24: Criminal Law Seminar
- January 31: Appellate Law Seminar
- February 10: ADR Seminar
- February 14: Employment Law Seminar
- February 19: Criminal Law Luncheon Seminar
- February 24: Employment Law Seminar
- February 28: Workers' Comp Seminar
- March 14: Employment Law Seminar
- March 19: Criminal Law Luncheon Seminar
- April 4: Family Law Seminar
- April 10: Elder Law Dinner Seminar
- April 11: Technology Seminar
- April 16: Criminal Law Luncheon Seminar
- April 24: Securities Law Seminar
- March 21: Paralegal Seminar
- May 21: Employment Law Seminar
- June 6: Community Association Law Seminar
- June 20: Employment Law Seminar



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

The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:



"Deposition Skills: Dealing with Difficult Counsel and Witnesses"

Friday, December 6, 2013 - 11:45am - 1:00 p.m.
Bar Association Office, 1507 Belvedere Road, WPB, FL

Program Schedule

- | | |
|-------------------------|--|
| 11:45 a.m. - 12:00 p.m. | Lunch / Late Registration and Check In |
| 12:00 p.m. - 12:05 p.m. | Welcome & Opening Remarks - <i>Michael W. Shiver, Jr., Esq., Steinger, Iscoe & Greene, P.A.</i> |
| 12:05 p.m. - 1:00 p.m. | Deposition Skills: Dealing with Difficult Counsel and Witnesses |

*This knowledge-packed luncheon will provide a "masters class" on the how and why of professionally and ethically dealing with difficult and obstructive opposing counsel and witnesses in depositions. We are proud to present **Judge Meenu Sasser** of the 15th Judicial Circuit in and for Palm Beach County, as well as a "who's who" of the PBC plaintiff and defense bars – **Joseph Galardi, Esq.** of Beasley, Hauser, Kramer & Galardi, P.A., and **Barry Postman, Esq.** of Cole Scott & Kissane. Our panel will not only discuss specific, actionable ways of effectively controlling your next deposition, but will be available to answer your direct questions.*

This will be a shining opportunity for the newer attorney to see how these true professionals manage their opposition in key depositions, and a chance for the experienced practitioner to ensure their practice is truly state of the art in this area.

SPONSORED BY:

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This course is expected to receive **1.0 CLER including 1.0 Ethics** from The Florida Bar.

Early Registration cost is **\$40** for PBCBA members/paralegals; **\$80** for non-PBCBA members/paralegals if registered by 11/25/13; add \$15 to registration fee after that date.

Can't leave your office? Attend this via live **WEBINAR**: register here <http://www.palmbeachbarcle.org/>

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



BY CHECK
Return this form



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



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: _____ Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (12/6/13 PI) 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. Telephone: (561) 687-2800

Awards to be presented at Bench Bar Conference — Nominations Requested

Two awards will be presented at the March 7, 2014 Conference: the 3rd Annual **Judge Edward Rodgers Diversity Award** and the **13th Annual Professionalism Award**. Members are encouraged to nominate a member or organization for either of these prestigious awards.

The Professionalism Award recognizes an attorney who is a member of the PBCBA that has demonstrated or promoted outstanding professionalism in Palm Beach County, as defined by exemplary ethical conduct, character and integrity, respect for the legal system and all of its participants, commitment to maintaining the highest levels of professional competence, courtesy and civility, and commitment to serving clients, the community and the public good. **The deadline to submit nominations is February 1.**

Criteria for the **Diversity Award** requires that the recipient should be a person (must be a PBCBA member) or organization who:

1. Demonstrates a consistent pattern of (either the individual or organization)'s commitment to the recruitment, retention and promotion of individuals of underrepresented populations;
2. Cultivates and promotes diversity and gender initiatives that establish and foster a more inclusive and equitable work environment;
3. Promotes and facilitates education, community outreach and social engagement with and between people of varying ethnic or religious backgrounds, gender, socioeconomic status, sexual orientation, and/or physical and mental capabilities so that persons of diverse background can enter and prosper in the legal field;
4. Exhibits visionary and insightful leadership to confront and resolve inequities through strategic decision-making, allocation of resources, and establishment of priorities;
5. Outlines defined goals, actions steps and accomplishments toward achieving a work environment that recognizes, promotes and encourages a diverse workforce at all levels throughout an organization;
6. Implements and carries out best practices that support diversity and inclusion goals.

The deadline to submit nominations is February 1.

Applications for either of these awards can be found on the Bar's home page at palmbeachbar.org.

Nominations Sought For 2014 Pro Bono Night Awards

The 26th Annual Pro Bono Recognition Evening will be held on Saturday Evening May 10, 2014 at the Palm Beach County Convention Center. Anyone wishing to nominate an attorney, support staff member, law firm, individual or group for a Pro Bono Award for exemplary pro bono work in 2013 please fill out the form below. Reasons for the nomination should accompany this form and client names are not necessary. Client names will not be used for any press releases or for the program the night of the event without the client's written consent.

-----Nominating Form-----

Name of Nominee: _____

Firm Name: _____

Address: _____

Phone Number: _____

Reason for nomination: _____

Please mail nomination by January 1st to: Kimberly Rommel-Enright, Esq., Pro Bono Coordinator, Legal Aid Society of Palm Beach, County, Inc., 423 Fern Street, Suite 200, West Palm Beach, FL 33401. If you have any questions regarding these awards, please call Kim at 655 - 8944 ext. 265 or e-mail her at kenright@legalaidpbc.org.

Robert Bertisch, Executive Director

Circuit Court Report CIVIL DIVISIONS • As of October 23, 2013

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA BLANC	02-14	02-14	12-13	1233
AB GILLEN	04-14	04-14	11-13	1311
AD G. KEYSER	03-14	03-14	02-14	1392
AE FINE	02-14	02-14	12-13	1461
AF J. KEYSER	04-14	04-14	11-13	1222
AG CROW	05-14	03-14	11-13	1345
AH BROWN	03-14	03-14	12-13	1247
AI SASSER	02-14	01-14	10-13	1088
AJ J. MARX	01-14	01-14	12-13	1141
AN COX	06-14	06-14	01-14	1452
AO BRUNSON	02-14	01-14	11-13	1393

SOLO & SMALL FIRM PRACTITIONERS CLE & COCKTAIL MIXER

presented by the Solo & Small Firm Committee

Wednesday, January 8, 2014

4:00 p.m. to 6:00 p.m.

Abacoa Golf Club

105 Barbados Drive, Jupiter



Just Opened Your Own Practice And Have Questions?

Join us for this Solo & Small Firm Mixer including an open discussion on what has and what has not worked in starting and maintaining practices.

We'll talk about purchasing office supplies, latest computer and technology, malpractice and liability insurance.

Plus, one lucky member will win a Weekend Jag Drive courtesy of Alpine Jaguar!

Sponsored by:



Bob Greenberg - CLTC
MetLife Insurance Services

KING & CHAVES, LLC

Take advantage of your early registration price of \$20.00. Price goes up by \$5.00 after 1-6-14.



Name: _____

Telephone: _____ Email: _____

Address: _____



Delayed Discovery for Sexual Abuse

By Ted Babbitt

In Hearndon v. Graham, 767 So. 2d 1179 (Fla. 2000), the Florida Supreme Court applied the delayed discovery doctrine to allow a

plaintiff to bring an intentional tort action against her stepfather for sexual abuse that she suffered as a child. In that case, the plaintiff alleged that the trauma itself caused suppression of her memory for many years resulting in traumatic amnesia which prevented the filing of the lawsuit within the applicable statute of limitations.

In Cisko v. Diocese of Steubenville, 38 Fla. L. Weekly D1902 (Fla. 3rd DCA, Sept. 4, 2013) the Third District Court of Appeals declined to apply the delayed discovery doctrine to an allegation of negligence against a Catholic Diocese for negligent supervision of two priests who allegedly committed physical and sexual abuse on the plaintiffs over 40 years before the filing of the suit. As in Hearndon, the plaintiffs in Cisko alleged traumatic amnesia which they claimed

blocked their memory of the abuse which had occurred in 1966 and 1967 until May of 2005.

The Third District relied upon the Supreme Court's opinion in Davis v. Monahan, 832 So. 2d 708 (Fla. 2002) in which the Hearndon opinion was described as follows:

While we applied the delayed discovery doctrine to causes of action arising out of childhood sexual abuse and repressed memory in Hearndon, we did so only after considering the unique and sinister nature of childhood sexual abuse... We also considered the Legislature's endorsement in amending section 95.11(7), Florida Statutes (1999), to include intentional torts based on abuse...

In Cisko the Third District points out that as pointed out in Davis, the Legislature has failed to expand its amendment of Fla. Stat. 95.11(7)

beyond intentional torts. The Cisko Court concludes that the Supreme Court's opinion in Hearndon was both limited to its facts and specifically to claims of childhood sexual abuse amounting to an intentional tort. The Cisko Court's reasoning is consistent with the Fourth District's opinion in Doe v. Sinrod, 90 So. 3d 852 (Fla. 4th DCA 2012) which refused to apply the reasoning of Hearndon to an action against a School Board because of sexual abuse by one of its employees.

The opinion of the Supreme Court in Hearndon, *supra*, provides for the tolling of the statute of limitations in cases of sexual abuse based upon traumatic amnesia. The District Courts have refused to extend that reasoning beyond causes of action based upon intentional tort. To the contrary, the Hearndon case has been viewed as limited to its facts and not applicable to causes of action other than intentional torts based upon sexual abuse.

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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Jupiter Gardens 250 S. Central Blvd, Ste. 104 Jupiter, Florida 33458

Locations in West Palm Beach & Jupiter, Florida

Telephone (561)653-0008 Facsimile (561)653-0020 Toll free (877)907-2688



The Elder Law Affairs Committee of the Palm Beach County Bar Association presents:

"The 16th Annual Elder Law Seminar"

Friday, December 13, 2013 - 8:00a.m. - 2:00p.m.
Bar Association Offices - 1507 Belvedere Rd., WPB 33406

Program Schedule

8:00am - 8:20am	Late Registration - Check In
8:20am - 8:30am	Welcome - Opening Remarks - Benjamin H. Greenberg, Esq., Chair PBCBA Elder Law Affairs Committee, Greenberg Elder Law Services, LLC, Delray Beach, FL
8:30am - 9:10am	Guide to Spotting Client Issues and Opportunities: Veteran's Compensation and Pension, the Basics of Medicaid Eligibility for Nursing Home Care - Gregory G. Glenn, Esq., Certified Elder Law Attorney, Elder Law Foundation, Gregory Glenn PA, Boca Raton, FL
9:10am - 9:55am	Medicaid and Florida Legislative Update - Ellen S. Morris, Esq., Elder Law Associates, PA, Boca Raton, FL
9:55am - 10:10am	Break
10:10am - 11:00am	The Capacity of Trust Litigation: Understanding the Issues - Peter J. Forman, Esq., Gutter Chaves Josepher Rubin Forman Fleisher Miller, Boca Raton, FL
11:00am - 11:50am	Annual Tax Law and Ethics Update - Michael A. Lampert, Esq., Michael A. Lampert, P.A., Florida Bar Board Certified Tax Attorney, West Palm Beach, FL
11:50am - 12:20pm	LUNCH (included in registration)
12:20pm - 1:10pm	Elder Law Mediation and Shared Family Decision Making - Elinor Robin, PHD, Circuit Court Certified Mediator, Mediation Training Group, Inc., Boca Raton, FL
1:10pm - 2:00pm	Crimes Against Seniors, Prevention and Prosecution - Michael Rachel, Assistant State Attorney for the 15th Judicial Circuit, Chief of Economic Crimes; and Kathryn Lewis-Perrin, Assistant State Attorney for the 15th Judicial Circuit

SPONSORED BY:



Estate & Trust Litigation



THE PRIVATE BANK

This course is expected to receive 6.5 CLER including 1.0 Ethics credits / Certification credits are pending from The Florida Bar.

Early registration cost for the seminar, **including lunch**, is **\$175** for PBCBA members/paralegals, **\$215** for non-PBCBA members/paralegals, if registered by 12/6/13. **Add \$25 to registration fee after that date.**

Can't leave your office? Attend this via live **WEBINAR:** register here <http://www.palmbeachbarcle.org/>

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.



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: _____ e-mail: _____

___ I will not be able to attend the seminar but would like to order the CD Rom. (allow four weeks for delivery) (Elder Law 12/13/13)

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



Lawyer's Guide to iOS 7, Part II

By Christopher B. Hopkins

In late October 2013, Apple revealed that nearly 65% of iPad and iPhone owners had updated to iOS 7. In the last several months, Apple has released two new iPhones and two new iPads. Given the high adoption rate of "iDevices" by lawyers, there is a good chance you will be holding a new phone or tablet this holiday season.

Part one of our *Lawyers' Guide to iOS* is available at palmbeachbar.org or internetlawcommentary.com. The following additional tips (while not all new to iOS 7) should complete your Jedi training to master your Apple device.

Make iOS text larger: The new iOS 7 font is a bit thinner than the old typeface. Too small for aging eyes? Go the Settings, Text Size, and try out different sizes.

Type ".com" with 1 tap: If you are typing a website address in your iDevice browser, you do not need to type out ".com." Instead, hold down "." and a small dialog box will pop up and allow you to select .com, .net, and others.

iPhone 5s – Not for the Paranoid or Criminals: as we have discussed in prior articles (Can The Government Compel Your Client to Decrypt a Harddrive? <http://bit.ly/He3vxQ>), the Fifth Amendment provides testimonial-based protections whereby a person might avoid being compelled to hand over a password to allow access to a drive or device. But a fingerprint has long been held to be non-testimonial and the government can compel a fingerprint. If your clients want to passcode protect their iDevices from the government, advise them to passcode protect the device but to not turn on the fingerprint access for the iPhone 5s. Otherwise, your client might resist handing over the passcode but might be compelled to give fingerprint access!

Calendar by 1 or 5 Minute Increments: In the Calendars app, you can schedule by 1 or 5 minute increments. Hit the "+" to add a new appointment. When the "Add Event" window appears, tap on "starts." If you double-tap the scroll wheel, you can change between 1 and 5 minute increments.

Apps Near You -- It used to be, to find new apps, you would either have to look at "top charts" in the App Store app or search by name. Here's a new twist: find out what apps are popular in your location. This can provide some apps specific to your hometown, on the one hand, but also can produce interesting results as you travel to new places. Here in West Palm, I learned about several TV news station apps and that there is a TriRail app.

Use Caps Lock: Really want to yell at someone ALL IN CAPS? Instead of holding down Caps while typing, double-tap Caps to lock it on and then type. Tap it again to turn it off. Use sparingly, please.

Stop Using Apple Maps: while Apple will open address and location-links in its own Maps app, do not use it. The Maps app continues to be unreliable. Download Google Maps and cut-and-paste the address into that app. I have used Maps several

times and been mis-directed. Google Maps has not presented a problem.

Organize Multiple Email Accounts: If your iDevice is connected to your work, personal, and other email boxes, you can organize them. Tap the Mail app and hit the arrow in the upper left corner to reach the "mailboxes" page. Hit "edit" to the right of "mailboxes" and uncheck All Inboxes and VIP. Then, using the sliders on the right, use the sliders to prioritize your inboxes. Hit Done.

Short or Long Names in Mail or Messages: When you text or email with someone, iOS truncates their name down to their first name. But what if you email or text with different people with the same name? To always see full names, go to Settings / Mail, Contacts, Calendars / Contacts. Select "short names" and turn off.

Apply Instagram-like Filters in Photos: Want to play with tinted or colored filters in your photos? In the Camera app, tap the three overlapping circles in the bottom right corner. Test out one of the eight filters ("normal" is in the middle). Alternatively, after you take a "normal" picture, open the Photos app, select your photo, hit "edit" in the top right, and select the overlapping circles on the bottom center. You can apply the filter from here.

Create Keyboard Shortcuts: Do you type the same thing over and over? Create abbreviated keyboard shortcuts so you can type things like "omw" for "on my way." Go to Settings / General / Keyboard and scroll down to Add New Shortcut. Put your phrase on top and then your abbreviated version below. Next time you type the abbreviation in an email or text, it will magically turn into the longer version.

Child-Proof Your Device: Do you often hand your device over to a child to play Plants versus Zombies? Go to Settings / General / Restrictions to set a restrictions-specific passcode (does not have to be the device passcode) and then turn off everything -- from phone calls to in-app purchases -- you do not want the youngster to use. Turn the Restrictions off when you regain control of your device.

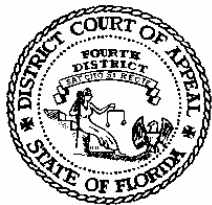
Impress Your Kids: Siri is linked to the search engine Wolfram Alpha, which has just added the entire library of... Pokemon. Ask Siri about any Pokemon creature and she'll give you their bio.

Christopher B. Hopkins is a shareholder at Akerman Senterfitt. Siri will not connect you but you can send an email to christopher.hopkins@akerman.com.

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The Palm Beach County, South Palm Beach County and Broward County Bar Associations present:

Inside the Appellate Court: An Afternoon with the Judges of the Fourth DCA



Friday, January 31, 2014

11:00 a.m. - 6:00 p.m.

Boca Raton Country Club, 17751 Boca Club Blvd., Boca Raton, FL 33487

Program Schedule

- 11:00 am - 11:25 pm **Registration / Check-In**
- 11:25 am - 11:30 am **Welcome and Introductions** - Sue-Ellen Kenny, Esq., Law Office of Scott Glassman, P.A., Appellate Practice Committee Chairperson
- 11:30 am - 12:15 pm **Lunch with Keynote Speaker "Brief Writing for the Electronic Reader"** - Robert Dubose, Esq., Alexander Dubose & Townsend, LLP
- 12:15 pm - 12:25 pm **BREAK**
- 12:25 pm - 1:15 pm **"Scoring a Slam Dunk With an Appellate Panel" - Effective Oral Argument** - Honorable Robert M. Gross, Fourth District Court of Appeal
- 1:15 pm - 1:45 pm **Meet Your New Judges (moderated discussion)** - Honorable Judges Alan O. Forst, and Honorable Mark W. Klingensmith, Fourth District Court of Appeal
Moderated by: Chief Judge Dorian K. Damoorgian, Fourth District Court of Appeal; and Jack J. Aiello, Esq., Board Certified Appellate Practice Attorney, Gunster
- 1:45 pm - 2:15 pm **Legal Jeopardy** - Honorable Jonathan D. Gerber, Fourth District Court of Appeal
- 2:15 pm - 2:30 pm **BREAK**
- 2:30 pm - 3:15 pm **Daubert in Florida** - Speaker: Stephen E. Mahle, Esq.; Special Appearance by the Honorable Burton C. Conner, Fourth District Court of Appeal
Moderator: John J. Uustal, Esq., Board Certified Civil Trial Attorney, Kelley Uustal
- 3:15 pm - 4:15 pm **Moderated Panel Discussion** - Chief Judge Dorian K. Damoorgian, Honorable Judges Martha Warner, W. Matthew Stevenson, Robert M. Gross, Melanie G. May, Jonathan D. Gerber, Spencer D. Levine, Burton C. Conner, Alan O. Forst and Mark W. Klingensmith, Fourth District Court of Appeal.
Moderated by: Jack J. Aiello, Esq., Board Certified Appellate Practice Attorney, Gunster
- 4:15 pm - 6:00 pm **Cocktail Reception / Welcome New Judges**

.....
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The cost of the seminar, lunch and reception is **\$135** if registered by **1/24/14**; **\$175** after that date;

Govt. attorneys & law clerks \$110.00 if registered by 1/24/14; \$135.00 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.

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

PROFESSIONALISM COUNCIL

Per Administrative Order No. 2.105-6/13, In Re: Fifteenth Circuit Professionalism Council, when an attorney appears before the Council because of conduct inconsistent with the Standards of Professional Courtesy or the Ideals and Goals of Professionalism, a summary of that meeting is to be published in the Bar Bulletin with the name(s) redacted.

Re: Fifteenth Judicial Circuit Professionalism Panel

Dear Attorney:

This letter serves as a follow up to your meeting on August 26, 2013 with the Fifteenth Judicial Circuit Professionalism Panel ("Panel"). You were asked to appear before the Panel to address what appeared to be unprofessional e-mail communications between you and opposing counsel during a family law matter. This letter sets forth the Panel's findings. It is intended to point out to you the unprofessional nature of your communications and to remind you of the importance of civility and professional conduct between attorneys.

As the Panel discussed with you, your e-mail communications to opposing counsel included, among several others, the following comments:

"Prove me wrong counselor, make me a reasonable settlement offer... Prove me wrong. Tell me that you will have your client voluntarily comply with the recommended treatment without a judge's order. You can't can you? I didn't think so?"

"...you are just the gift that keeps on giving - can't wait to see the judge and let her know how unethical and unprofessional you are. How do you sleep? Geez get a life dude."

"If you are unable to discuss a little bridge - the - gap alimony for a short term marriage with what you have then you are truly incompetent. You're (sic) incompetence explains why you failed to advise your client to follow Dr. ____'s recommendations. Don't be a fool..."

As the Panel discussed with you, the Standards of Professional Courtesy provide that attorneys should refrain from criticizing or denigrating opposing counsel. Additionally, the Oath of Admission to the Florida Bar provides "[t]o opposing parties and their counsel, I pledge... civility... in all written and oral communications." Your e-mail communications to opposing counsel appeared to show a complete disregard of your duty of civility.

In your written submission to the Panel you attempted to justify your actions as "the sort of average communications that happen commonly between legal adversaries in highly contested family cases." As the Panel explained, irrespective of how tense or highly contested your case may be, there is absolutely no excuse for the use of such denigrating and demeaning language in e-mail communications. The Panel recommended that in the future you carefully read your e-mail communications before sending them, critiquing both the tone and substance of them to

ensure that they speak only to the necessary substance and not personally degrade your opposing counsel.

Your written response to the Panel also attempted to justify your actions by arguing that the communications occurred in the course of a confidential settlement discussion and therefore could not violate the rules of professionalism. As was discussed, professionalism and courtesy extend to everything an attorney does in his or her practice. There is never an appropriate time to be unprofessional. Attorneys must treat one another, and all members of the public, with candor and civility in the courtroom, outside the courtroom, and in attorneys' private non-professional lives, as well as in communications that might otherwise be privileged. There is never a privilege to act uncivily.

Finally, the panel reminds you that the Supreme Court of Florida mandated that all Circuits create a local professionalism panel to receive and resolve professionalism complaints. The Fifteenth Judicial Circuit Professionalism Panel serves in this role. Pursuant to the Supreme Court mandate, the Panel also has discretion to refer any appropriate complaints to the Florida Bar Attorney Consumer Assistance and Intake Program (ACAP). We remind you of this fact because in your written response to the allegations of unprofessional conduct, you claimed that your e-mail comments were made in response to what you believed "was a baseless motion for contempt done in extreme bad faith" which your opposition "voluntarily withdrew." Your opposing counsel has since written to the Panel to explain that the motion for contempt was not withdrawn but was granted by the Court and that your client was found to be in direct civil contempt for failure to comply with the Court's Order. Ultimately, if you have knowingly made a material misrepresentation to the Panel, the Panel has the discretion to refer any appropriate complaints to ACAP.

A primary focus of the work of the Panel is to educate members of the Fifteenth Judicial Circuit as to the importance of civility in daily practice. In light of your experience with the Panel, it is the Panel's expectation that you will no longer proceed in an unprofessional fashion when exchanging written communications with your opposing counsel and that you will adopt a civil tone in all of your correspondence regardless of the heated nature of the controversy.

Very truly yours,

Michael D. Mopsick, Co-Chair
Palm Beach County Bar Association Professionalism Committee
For the Fifteenth Judicial Circuit Professionalism Panel

YLS Sidebar Series

When: January 22, 2014

Where: Chambers of Judge Meenu Sasser

Time: 11:45-1:00 p.m.

Topic: Summary Judgment Presentation

Space is limited. Visit the Bar's website for more details.



The Palm Beach County Bar Association's
Technology Practice Committee Presents:

"Visual Evidence/Trial on a Shoestring Using iPad"

Friday, January 17, 2014 - 11:45a.m. – 1:00p.m.

Bar Association Offices
1507 Belvedere Road, WPB, FL

Program Schedule

- 11:45 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 12:00 p.m. - 12:05 p.m. **Welcome & Opening Remarks** - *Edwin M. Walker, III, Esq., Walker Law Firm, P.A. Committee Chair*
- 12:05 p.m. - 12:15 p.m. **Equipment and software needed to present visual evidence to the Jury without the need of support staff** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:15 p.m. - 12:20 p.m. **Downloading evidence to the iPad** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:20 p.m. - 12:45 p.m. **Presenting evidence to the Jury through the iPad including pictures, documents, google earth, having witness highlight, zoom in and out, and annotate evidence live for the jury while on the stand** -
Ryan J. Wynne, Esq., Slinkman & Slinkman, P.A.
- 12:45 p.m. - 1:00 p.m. **Open floor for question and answer session**

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



Using a Lis Pendens to Control “Divorce Terrorists”

By Christopher R. Bruce

By now, most readers of this article have seen or heard of the criminal investigation reality show “48 Hours”. The premise of the show is that what happens in the first 48 hours of a homicide investigation is critical to finding the killer. If investigators don’t work hard to handle matters correctly in the first 48 hours, finding and bringing the killer to justice may never happen. Although divorce is not a homicide (some may disagree), the “48 Hours” theme is more applicable to divorce cases than most may think.

If a practitioner does not handle matters correctly in the beginning of a divorce case, “divorce terrorist”¹ spouses will take action to move and hide assets after being served with a divorce petition. Once significant assets have been secreted (which can happen immediately thanks to smartphones) it is an expensive uphill battle to “find the money”. Further, a divorce terrorist’s go-to act of cutting off financial support after draining marital bank accounts causes many financially dependent spouses to accept grossly inadequate divorce settlements. They do so based on constant threats from their divorce terrorist spouses (who often subjected them to emotional abuse during the marriage). The threat that “*the assets will never be found and you will not be able to support yourself or the children if you do not settle now*” really happens. Worse yet, it works.

Practitioners can control divorce terrorists and create an incentive for timely settlement through the proper use of a *lis pendens*. For minimal filing and process server fees and a little extra work upfront a *lis pendens* allows practitioners to preserve (freeze) bank accounts at the initiation of a divorce lawsuit. Common sense dictates it is more difficult for divorce terrorists to cause trouble when they cannot “take the money”. When the divorce terrorist is neutralized, practitioners have a greater probability of efficiently negotiating a timely and fair settlement for their financially dependent clients.

Legal Background

Florida Statute §48.23 provides the legal authority for a *lis pendens*. §48.23(1) explains that a state or federal lawsuit operates as a *lis pendens* on any real or personal property affected by the lawsuit “only if a notice of *lis pendens* is recorded in the official records of the county where the property is located”. The *lis pendens* is authorized in a divorce case by virtue of marital assets (regardless of title) being subject to equitable distribution upon divorce. Florida appellate courts have approved of the use of *lis pendens* to preserve property in divorce cases. See, e.g., *Bardino v. Bardino*, 670 So. 2d 183 (Fla. 3d DCA 1996).

Practice Tip: A common misconception is that a *lis pendens* only applies to real estate. §48.23 clearly states a *lis pendens* applies to personal property, which includes bank accounts.

Process & Procedure

Controlling a divorce terrorist with a *lis pendens* requires the practitioner to make sure proper notice is issued to financial institutions before the terrorist is tipped off to a pending divorce.

Keeping clients quiet about the forthcoming divorce and using the procedure below helps prevent divorce terrorists from moving assets at the initiation of a divorce case:

Step #1: File *lis pendens* with divorce petition.

Step #2: Obtain certified copy of filed *lis pendens* and record with Clerk of Court.

Step #3: Serve local bank branch with copy of *lis pendens* and a cover letter requesting the bank to freeze the relevant accounts. It is also a good idea to then fax a copy of *lis pendens* and a return of service to the bank’s legal department.

Step #4: (Preferably) Obtain confirmation from the bank that the accounts are frozen.

Step #5: Serve the divorce petition.

Bottom Line

Filing a *lis pendens* is a simple method for practitioners to preserve marital assets at the initiation of a divorce case. Nearly all financial institutions will honor a *lis pendens* and initially freeze financial accounts. Although there is some work involved, the *lis pendens* procedures are much less burdensome and costly than filing for injunctive relief. Taking this step can be imperative to negotiating adequate settlements for a client who is financially dependent and has a history of being subjected to threats and emotional abuse from their spouse. When the accounts are frozen the playing field is leveled and the divorce terrorist’s intimidation campaign is significantly disarmed.

FN1: A “**divorce terrorist**” is a nefarious individual, usually a narcissist, who, amongst other sinister traits, hides/misrepresents their income or assets to enhance efforts meant to intimidate their spouse into taking an unfair financial settlement. Other words unfit for print are commonly used to describe these individuals.

Christopher R. Bruce is a divorce and appellate attorney with Nugent Zborowski & Bruce. The firm’s practice is limited to resolving matrimonial matters through mediation, litigation and related appeals. Christopher R. Bruce can be reached at (561) 844-1200 or cbruce@nugentlawfirm.com.



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Bar President Jill Weiss Declares December 11 SPA DAY!

You've worked hard this year so why not take a well deserved break and join us for our first Spa Day with a Luncheon & CLE!

Wednesday, December 11, 2013

Noon

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Program Schedule:

Noon-1:15: Lunch and CLE Presentation

Topic: The Skinny on Social Media for Palm Beach Law Firms

Attend this one hour luncheon and learn about Social Media by the numbers and active users, including information on Facebook, Twitter, Linkedin and Foursquare. We'll also discuss how Social Media works for law firms and what's allowed and what's not. Learn about setting a schedule, defining your audience and using appropriate jargon. Plus, we'll teach you easy steps to do it yourself!

In addition to lunch and CLE, you'll receive a complimentary sample travel bag, plus one of the following treatments: Swedish Massage, Deep Cleaning Facial or Coconut & Sugar Body Scrub. You select your service.

Services will be scheduled at 2:00 p.m. and 3:00 p.m. Space is limited and will be given on a first come first serve basis.

Cancellation must be made 48 hours prior to service.

Amended Federal Rule 45: Subpoena

By Matt Triggs and Jonathan Galler

Being served is a good thing. If you're in a restaurant, that is. That's why we tip the wait staff.

Being served with a federal subpoena, however, is usually not as pleasant. That's probably why we don't tip process servers.

Whether you are the one being served with a subpoena or the one serving it, you will certainly want to know about some recent amendments to Federal Rule of Civil Procedure 45 that took effect on December 1, 2013.

Issuance, Service and Compliance

Perhaps the most significant change is that Rule 45(a)(2) now provides that the subpoena must be issued from the court where the action is pending, not the court in which the subpoena is served. Further, Rule 45(b)(2) expressly provides that the subpoena issued from the presiding court may be served anywhere within the nation.

If the witness is a non-party, the witness can be compelled to travel for a deposition or a hearing or trial only within 100 miles of where he or she resides, works, or personally transacts business. Notwithstanding that limitation, a non-party witness can be compelled to attend a trial within the state in which he or she resides – even if it requires more than 100 miles of travel – so long as the witness would not incur “substantial expense.” See Rule 45(c)(1).

If the witness is a party or a party's officer, he or she can be compelled to travel, for purposes of appearing for a deposition, hearing or trial only within his or her state of residence or within 100 miles of where he or she resides, works or personally transacts business. See Rule 45(c)(1). This amendment was intended to resolve a conflict in the case law over whether a party's officer could be compelled to travel more than 100 miles from out of state to appear at trial. See Advisory Committee Note on Subdivision(c).

The Note on Subdivision (c) also reiterates that the depositions of parties, and officers, directors and managing agents of parties do not require the use of a subpoena. *Id.*

Motions to Quash or Modify

In which court may the subpoenaed party move to quash or modify the subpoena?

Amended Rule 45(d)(3)(B) establishes a presumption that such disputes will be handled by the court in the district where the subpoena was served. In other words, the witness will usually be permitted to fight the subpoena on his or her own turf, thereby minimizing the burden on the witness.

If the witness files a motion to quash or modify the subpoena, the court in which the subpoena was served may transfer the motion back to the court presiding over the action in only two situations: where the witness consents or where the court finds that there are “exceptional circumstances.” See Rule 45(f).

The Advisory Committee Note on Subdivision (f) emphasizes that a motion to quash or modify should be transferred only where the reasons for doing so outweigh the interests of the witness in having the motion resolved locally, such as where identical issues are likely to arise in the same action in many different districts.

Rule 45(f) also provides that if the motion to quash or modify is



transferred, the non-party witness' lawyer is automatically admitted to practice, for purposes of litigating over the motion, in the court in which the action is pending. *Id.* The Advisory Committee Note urges the transferee judge to permit telephonic appearances by the lawyer for the non-party witness.

Interestingly, the Advisory Committee Note also states that the judge in the district in which the subpoena was served “may find it helpful to consult with the judge in the issuing court presiding over the underlying case while addressing subpoena-related motions.”

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



Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.

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Modified Work Arrangements to Accommodate Female Attorneys

By Karly Wannos

Many attorneys struggle with maintaining a work/life balance. In particular, young female¹ attorneys face unique struggles with this balance when it comes time to start a family. The concern for these attorneys is that there is a perception that they will have to trade professional success for personal fulfillment. In some circumstances, a modified or remote work arrangement between the female attorney and employer will serve to accommodate the needs of both parties.

As of September 2013, there were 96,412 members of the Florida Bar. Of the total members, 36% were female attorneys. Of the total membership, 26% were of the traditional age range where one would start and raise a family. *See September 2013 Florida Bar Demographics*. Accordingly, it is beneficial for employers to acknowledge this segment of female attorneys, and consider whether implementing a modified or remote work arrangement will benefit them.

Although working in a traditional physical office is important and often necessary, there are many benefits to *both* legal employers and female attorneys in favor of allowing the attorney to work in some sort of remote capacity away from the physical office. Whether it be working from a remote location (full-time or part-time), working from a home office, a flex-time arrangement, or some variation thereof, the benefits to both the legal employer and the female attorney, in some circumstances, may accommodate and provide substantial value to both parties.

For example, research tends to suggest that employees who work remotely can be more productive than their in-office counterparts.² Moreover, plenty of businesses, both large and small, have found that telecommuting can create a best-of-both-worlds environment that fosters happier, more productive and more loyal employees.³ The benefits to the female attorney range from allowing more time with family, less stress, a quieter atmosphere with less distractions and avoiding the cost and time restraints associated with traffic. The benefits to the legal employer include a reduction in sickness and employee time off, less restrictions and requirements for office space, and greater employee retention, thereby reducing the cost to the employer of hiring new employees.

Some legal employers in Palm Beach County have already implemented a few of the following modified work arrangements for attorneys:

Working Remotely (full-time) - this option maintains most of the consistency for the employer with regard to amount of work production, while still enabling the attorney the flexibility and income which she is accustomed to.

Flex Time- this option allows the attorney to maintain consistency with amount of hours worked, but allows the attorney to work at different times of day (i.e.: if the lawyer

needs to work early mornings or late evenings in order to raise a family).

Traditional Part-Time Work- this option is viable, but less desirable to both parties, as it reduces the work production from the attorney, and potentially reduces her income and benefits, as well.

Working Remotely 2-3 days/week (or a variation thereof)- this option appears to be the most viable for attorneys, due to the need to meet with clients, attend hearings, etc.

It is important to keep in mind that working remotely or allowing a flex-time type of arrangement does come with its drawbacks. Young female attorneys typically have a concern that working remotely will most likely impair their chances for substantial career advancement. On the other hand, employers may have a concern that the attorney's productivity will decrease, and the attorney might be excluded from the benefits of workplace culture and the need to bounce legal theories off of other senior attorneys. However, solutions for many of these concerns can be discussed and addressed prior to and during the implementation of such modified-work programs.

Finally, with the increase in access to technology, such as internet, telephone, videoconferencing and document sharing software, these types of accommodations for female attorneys are becoming more of a reality. Of course, working remotely or allowing flex-time does not always prove to be a viable option for everyone. Each business will need to evaluate its culture, management practices, and individual employees, and make the best decision for the success of their respective business. Is a modified work arrangement right for you?

Karly Wannos is the managing shareholder of The Wannos Law Firm, P.A., and handles labor and employment matters. She serves on the Committee for Diversity and Inclusion and on the Board of Directors for the Florida Association of Women Lawyers, Palm Beach County Chapter.

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¹ While this article focuses specifically on female attorneys and diversity, it is recognized that there are circumstances where male attorneys would be faced with similar struggles, and therefore, should be afforded similar accommodations.

² Forbes. "Top 10 Benefits of Working from Home" 2012. <http://www.forbes.com/sites/kevinkruse/2012/12/18/benefits-working-from-home/>

³ Id.

A VIEW FROM THE BENCH: PROFESSIONALISM FROM THE JUDGE'S PERSPECTIVE

Presented by the North County Section

Friday, February 7, 2014

11:45 a.m. to 1:15 p.m.

Palm Beach Gardens Marriott
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Palm Beach Gardens

Attend this one hour CLE Luncheon and find out what Judges are saying about Civility and Professionalism; Standards of Professional Conduct; Scheduling and Discovery Issues; Disputes Between Parties and Conduct Toward Other Attorneys.

Bring questions as there will be time for Q and A.

As a bonus for attending, one lucky member will win a one night stay with breakfast for two at the Palm Beach Gardens Marriott!



Participating Judges include 4th DCA Judge
Jonathan Gerber, Circuit Court Judge Meenu Sasser and
Chief Bankruptcy Judge Paul Hyman

Lunch sponsored by ROSEN P.A.



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Early registration for NCS members is just \$25.00; attorneys who are not NCS members
are welcome for \$35.00. Add \$5.00 if registered after 5:00 p.m. on 2.4.14

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Welcome New Members!

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

Linda Anderson Alley: University of Florida, 1998; Associate in Schlesinger Law Offices, P.A., Ft. Lauderdale.

Thomas P Angelo: University of Virginia, 1987; Partner in Angelo & Banta, P.A., Ft. Lauderdale.

Gillian C. Batay-Csorba: FL Coastal School of Law, 2012; Associate with Tama Beth Kudman, P.A. in West Palm Beach

Zane Berg: University of Florida, 2011; Associate in Schlesinger Law Offices, P.A., Ft. Lauderdale.

Alan M. Burger: California Western, 1989; Partner in McDonald Hopkins, LLC, West Palm Beach.

Brenna M Caballero: Florida Coastal School of Law, 2011; Associate in Quinteiros, Prieto, Wood & Boyer, P.A., West Palm Beach.

James W. Carpenter: University of Florida, 1987; Associate in Angelo & Banta, P.A., Ft. Lauderdale.

Whitney Carroll: Nova Southeastern University, 2013; Associate in Ciklin, Lubitz, Martens & OConnell, West Palm Beach.

Brittany Chambers: Nova Southeastern University, 2011; Associate in Schlesinger Law Offices, P.A., Ft. Lauderdale.

Natalia Cintas: Law Student Membership; St. Thomas University, Miami.

Sherri-Ann Grant-Clarke: Law Student Membership; Florida State University, Tallahassee.

Samuel Cohen: Florida Coastal School of Law, 2013; North Palm Beach.

Michael S. Del Sontro: University of Miami School of Law, 2013; Fourth District Court of Appeal

Nikki Devidze: Nova Southeastern University, 2012; Associate in Mallory Law Group, Jupiter.

Cash Alexander Eaton: Nova Southeastern University, 2013; Associate in Catherine Eaton, Esq., P.A. West Palm Beach.

Eric C. Edison: Northwestern University, 2003; Associate in Angelo & Banta, P.A., Ft. Lauderdale.

Guillermo Flores Jr.: Florida A&M University, 2010; Sole Practitioner, Jupiter.

Jonathan Freidin: George Washington University; U.S. District Court, West Palm Beach.

Allegra Fung: St. Thomas University, 2000; Associate with Korte & Wortman, P.A., West Palm Beach.

Jonathan Gdanski: Benjamin N. Cardozo School of Law; Schlesinger Law Offices, P.A., Ft. Lauderdale.

Jeffrey L Haberman: Benjamin N. Cardozo School of Law; Schlesinger Law Offices, P.A., Ft. Lauderdale.

Leonard Haberman: Widener University, 1994; Associate in the Law Offices of Craig Goldenfarb, West Palm Beach.

Steven J. Hammer: Nova Southeastern University; Schlesinger Law Offices, P.A., Ft. Lauderdale.

Drew L. Kapneck: Nova Southeastern University, 2013; Boca Raton.

Kathe Kozlowski: University of Miami, 1987; Sole Practitioner, Miami.

Ryan Lumbreras: Barry University School of Law, 2009; Associate in Connolly, Geaney, Ablitt & Willard, P.C., West Palm Beach.

Luschka M Montijo: University of Louisville, 2013; Associate in The Stafford Firm, P.A, Lake Worth.

Charles Bland Patrick: American University, 1972 Associate in Schlesinger Law Offices, P.A., Ft. Lauderdale.

Rachel Popper: Nova Southeastern University, 2013; West Palm Beach.

Alan L Raines: Michigan State University, 2001; Associate in Jay Steven Levine Law Group, Boca Raton.

Andrew Rothstein: Nova Southeastern University, 2012; Associate in De Varona Law, Boca Raton.

Ryan S. Shipp: Thomas Cooley; 2008; Associate with Kubicki Draper in West Palm Beach

Shayla N. Waldon: University of Miami, 2013; Associate in Akerman, West Palm Beach.

Jeffrey L. Welt: St. Thomas University, 1987; Partner in Welt & Rheume, P.A., Hollywood.

Kelly L. Wright: University of Miami, 2000; Associated with Hinman, Howard & Kattell, LLP, Jupiter.

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WELCOME

Rethinking Your Elevator Pitch: Why do you do what you do?

By Nora Riva Bergman

"People don't buy what you do, they buy why you do it."
— Simon Sinek

Why do you do what you do? I know that may sound like a crazy question. But when was the last time you thought about why you do what you do? Why did you choose to become an attorney? Why do you practice in the area of law that you do? Why do you come to the office every day? When you think about creating your elevator pitch, WHY is the perfect place to start. Here's why.

Most attorneys can speak about WHAT they do. They litigate. They help people create estate plans. They work on real estate deals. They draft contracts. It makes perfect sense to know what you do and to be able to speak about it. When you meet someone at a party, they ask, "So, WHAT do you do?" They don't ask, "So, tell me WHY do you do what you do?" But, if they did ask that question, how would you answer?

Most attorneys can also speak about HOW they do what they do. They can speak to you about their team. They may even speak in terms of a value proposition and what makes their firm unique. These things are important. And don't get me wrong, you should be able to speak authentically about WHAT you do and HOW you do it. But before you get to the WHAT and the HOW, you should know WHY you do what you do.

Why is WHY so important? Because so few people – or businesses – can explain why they do what they do, and those who can have a distinct advantage over those who can't. In his book, *Start with Why: How Great Leaders Inspire Everyone to Take Action*, author Simon Sinek makes a powerful case for the power of why.

Sinek studied how great leaders communicate and created the concept of "The Golden Circle." Think in terms of three concentric circles. The outer-most circle is the "what." Any person or company can tell you WHAT they do. The middle circle is the "how." The HOW is a bit trickier, and most companies explain HOW they do

what they do by differentiating themselves from the competition. At the core of The Golden Circle is the WHY. Your WHY is your purpose. Your WHY is what you believe. The WHY for any business is not to make money. Money is the result of why you do what you do. Money and profits flow from WHY you do what you do.

So let's apply The Golden Circle to an attorney's elevator pitch. First, here's an elevator pitch from a family law attorney who doesn't start with WHY.

"I've been practicing in the area of Family Law for over 20 years. I work with a great team, and we focus on handling our cases as efficiently and effectively as possible. We're proud to provide excellent client service."

Now here's another elevator pitch for the same family law attorney, but this pitch starts with WHY.

"You know what I love about being a Family Law attorney? Every day everyone in my office comes to work knowing that we are going to make a difference in the lives of the people we work with. Getting divorced is really rough and every single one of us is committed to helping our clients and their families move through the process with as little pain as possible."

If you were making a referral to a Family Law attorney, who would you choose? How would your elevator pitch sound if you started with why? I bet it would be better.

Nora is a business coach and practice advisor with Atticus. She has practiced as an employment law attorney and certified mediator and has served as an adjunct professor at both Stetson University College of Law and the University of South Florida. She has also served as the Executive Director of the St. Petersburg Bar Association. Nora is a graduate of the Leadership Development Institute at Eckerd College, and is certified in the Conflict Dynamics Profile® developed by Eckerd to help individuals and organizations learn how to deal with conflict constructively. She is also certified in Lean Six Sigma the DISC Behavioral Style Assessment. Visit Nora online at www.reallifeppractice.com and www.atticusonline.com.

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Introduce The Law Related Education Committee to Your Community!

By Chair, Liz Herman of Rosenbaum Mollengarden, PLLC

The Law Related Education Committee continues its mission to reach out to our community and educate adults about civics and the role of the courts. We are working hard to reverse the statistics that reveal, for example, that 75% of those polled did not know what the judicial branch does and 71% did not know what is the supreme law of our land. These are our jurors and fellow voters! The Committee members and volunteers have been giving educational, interactive presentations to groups throughout Palm Beach County. Our past speakers bring back tremendously positive feedback:

"It was a great experience and the members of the Wellington Rotary Club

were extremely appreciative."

— Greg Huber of Zele Huber, P.A.

"The presentation was a rewarding experience. The audience was very excited to discuss the Constitution, and my own understanding of the Constitution was enriched by the discussion."

— John J. Bajger, Assistant Attorney General, on presenting to the Kiwanis Club of Boynton Beach with Jared Levy of Dimond Kaplan & Rothstein, P.A.

"The dialogue focused on our responsibilities as citizens to know our laws, educate our fellow citizens, and actively participate in our government by being an involved witness or willingly serving on a jury."

— Sherri Collins, Assistant State Attorney, on speaking to the Royal Palm Beach



Rotary Club.

Contact Liz Herman at YHerman@rmlaw.com or 561.653.2900 if you could suggest another community group to which we could present.



There May Be a Limit on Limitations

by Jason S. Rigoli

Sections 544, 548 and 550 of the Bankruptcy Code give bankruptcy trustees the ability to avoid and recover “fraudulent transfers.” There are essentially two categories of fraudulent transfers: (i) constructive, where a debtor transfers property to a third-party when it is insolvent, or as a result of the transfer renders itself insolvent and in return received no or little consideration from the recipient of the transfer, 11 U.S.C. § 548(a)(1)(B); and (ii) actual fraud, where the debtor transfers property to a third-party with the *intent* to “hinder, delay or defraud” creditors. 11 U.S.C. § 548(a)(1)(A).

There are, however, limits on the authority granted to the trustee to avoid these transfers. See generally, 11 U.S.C. § 546. In particular under section 546(e), there is a limitation on the trustee’s authority to avoid certain “margin” or “settlement” payments made in connection with a securities contract, where a trustee is avoid under a theory of constructive fraud. 11 U.S.C. § 546(e). Section 546(e) states:

Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title, made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, or that is a transfer made by or to (or for the benefit of) a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency, in connection with a securities contract, as defined in section 741(7), commodity contract, as defined in section 761(4), or forward contract, that is made before

the commencement of the case, except under section 548(a)(1) (A) of this title.

Id. Congress’ intent in enacting this “safe harbor” provision was to “ensure honest investors will not be liable if it turns out that a leveraged buyout (LBO) or other standard business transaction technically rendered a firm insolvent.” *Peterson v. Somers Dublin, Ltd. (In re Lancelot Investors Fund, L.P.)*, 729 F.3d 741, 748 (7th Cir. 2013).

However, because of the broad language, and terms used in section 546(e), which are undefined in the Bankruptcy Code, some courts have applied this limitation to a wider range of transactions than what Congress may have originally intended. See, *Lancelot Investors*, *supra*. (Prepetition redemption payments made to investors by Chapter 7 debtor-hedge funds, which were operated as a second-tier Ponzi scheme, fell within the Bankruptcy Code’s “safe harbor” exception to the avoidability of settlement payments or transfers made to financial participants in connection with securities contracts, and so the payments could not be recovered by trustee except as “actually fraudulent” transfers.). See also, *In re Quebecor World (USA) Inc.*, 719 F.3d 94, 98-99 (2d Cir. 2013) (Prepetition payment in amount of \$376 million which Chapter 11 debtor had wire-transferred from its bank account to financial institution acting as trustee for noteholders came within statutory safe harbor from trustee’s avoidance power.); *QSI Holdings, Inc. v. Alford (In re QSI Holdings, Inc.)*, 571 F.3d 545, 550-51 (6th Cir.2009) (Same.); *Contemporary Indus. Corp. v. Frost*, 564 F.3d 981, 987 (8th Cir.2009) (Same.); *Lowenschuss v. Resorts Int’l, Inc. (In re Resorts Int’l, Inc.)*, 181 F.3d 505, 516 (3d Cir.1999) (Same). *Cf. Munford v. Valuation Research Corp. (In re Munford, Inc.)*, 98 F.3d 604, 610 (11th Cir. 1996) (A financial institution must acquire a beneficial interest in the transferred funds or securities for the safe harbor to apply).

The United States Bankruptcy Court for the Southern District of New

York recently applied at least some limit to this safe harbor. See, *In re Arbco Capital Management, LLP*, -- B.R. --, 2013 WL 5346090 (Bankr. S.D.N.Y. 2013). In *Arbco*, the Chapter 7 trustee for a debtor which carried out a Ponzi scheme sued the clearing agent through which the debtor carried out its securities trading activities to avoid and recover fraudulent and preferential transfers as well as common law aiding and abetting. *Id.* at *1-2. The clearing agent filed a motion to dismiss raising the safe harbor defense and the *Arbco* court denied the request as to the constructive fraud allegation. *Id.* at 6-8. The court found that where a participant, in certain contexts, is “willfully blind” or has displayed a “conscious avoidance” (the equivalent of “willful blindness”) of the “fraud” of the transferor, that could be sufficient to satisfy the actual knowledge requirement and remove the participant from the safe harbor of section 546(e). *Id.* (citing *SIPC v. Bernard L. Madoff Inv. Securities LLC (In re Madoff Securities)*, 2013 WL 1609154 (S.D.N.Y. 2013)).

This article cannot cover the full breadth of the issues arising in connection with section 546(e), however, while section 546(e) does appear to be quite broad, there does appear to be an limit on how large this safe harbor may be.

This article submitted by Jason S. Rigoli, Furr and Cohen, P.A., One Boca Place, Suite 337W, 2255 Glades Road, Boca Raton, FL 33431, jrigoli@furrcohen.com

Need a last minute holiday gift?



Movie tickets make great gifts for teachers, babysitters, clients and family! Savings are available through the Bar office for Muvico and Regal Theaters for \$8.00 each.

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Real Property and Business Litigation Report



By Manuel Farach

Fi-Evergreen Woods, LLC v. Robinson, – So.3d –, 2013 WL 5493462 (Fla. 5th DCA 2013).

The Florida Arbitration Code does not require a signature to a written agreement to arbitrate; parties may indicate their intention to arbitrate by words and conduct. Parol evidence regarding identity, capacity and relationship

with another is permitted even when document is patently ambiguous, i.e., ambiguity is apparent on document's face.

Metnick & Levy, P.A. v. Seuling, – So.3d –, 2013 WL 5450970 (Fla. 4th DCA 2013).

Failing to pay debts due under a contract in Florida satisfies both the long-arm jurisdiction and minimum contacts requirements to be haled into Florida to defend.

Miccosukee Tribe of Indians of Florida v. Lewis, – So.3d –, 2013 WL 5474581 (Fla. 3d DCA 2013).

Florida Rule of Judicial Administration 2.514 (b) provides additional time to act after service of a pleading or notice, but not after rendition of an order.

Village Carver Phase 1, LLC v. Fidelity Nat.Title Ins. Co., – So.3d –, 2013 WL 5429585 (Fla. 3d DCA 2013).

The Marketable Record Title Act may eliminate the rights under Fla. Stat. § 704.08 of ingress and egress to cemeteries. Thus, there is no coverage under a title policy for breach for a deed recorded before the root of title under M.R.T.A. Furthermore, title policies do not protect against future occurrences.

Aegis, LLC v. Mawji, – So.3d –, 2013 WL 5575231 (Fla. 5th DCA 2013).

Any filing within the sixty day period set forth by Florida Rule of Civil Procedure 1.420 (e) is sufficient to avoid dismissal; the filing does not need to move case forward.

Wells Fargo Bank, N.A. v. Morcom, – So.3d –, 2013 WL 5575634 (Fla. 5th DCA 2013).

Mortgagee is not required to be both the holder and owner of promissory note in order to have standing to foreclose; being holder of note indorsed in blank is sufficient even if foreclosing party is not the owner.

Office of Ins. Regulation and Financial Services Com'n v. Secure Enterprises, LLC, – So.3d –, 2013 WL 5584266 (Fla. 1st DCA 2013).

Manufacturer, in order to establish standing to challenge rules adopting certain forms for windstorm resistant products, must meet either the "substantially affected" or "zone of interest" tests for standing.

Bennett v. Deutsche Bank Nat. Trust Co., – So.3d –, 2013 WL 5538764 (Fla. 4th DCA 2013).

On rehearing, the Fourth District clarifies its earlier opinion and holds that Fla. Stat. § 673.3081 (1) is a "bursting bubble" presumption that allows a holder of an instrument to presume the validity of a signature unless signer presents evidence to the contrary.

ASAP Services, LLC v. SA Florida Intern., LLC, – So.3d –, 2013 WL 5566680 (Fla. 3d DCA 2013).

Post-judgment motion to set aside a final judgment does not toll Florida Rule of Civil Procedure 1.525 requirement to file attorney's fees motion within 30 days of judgment.

Alpha Data Corp. v. HX5, L.L.C., – So.3d –, 2013 WL 5663214 (Fla. 1st DCA 2013).

Only a clear understanding of the parties that an oral contract was not to be performed within a year brings the contract into the Statute of Frauds; contracts for indefinite periods of time generally do not fall within Statute of Frauds.

Caruso v. Knight, – So.3d –, 2013 WL 5628653 (Fla. 4th DCA 2013).

Disqualification of counsel is a drastic remedy, and having access to plaintiff's employee records arising out of prior proceedings is not privileged information requiring removal.

Florida Dep't of Agriculture and Consumer Services v. Mendez, – So.3d –, 2013 WL 5628727 (Fla. 4th DCA 2013).

Presumption that state agency, when exercising police power, is seeking to prevent public harm does not mean that a compensable taking has not occurred.

Hernandez v. Colonial Grocers, Inc., – So.3d –, 2013 WL 5762986 (Fla. 2d DCA 2013).

A contract containing both an arbitration provision for statutory claims and a prevailing party attorneys' fees provision is void and unenforceable when the statute awards fees only to a prevailing plaintiff.

Wadsworth v. JP Morgan Chase Bank, N.A., – So.3d –, 2013 WL 5729754 (Fla. 4th DCA 2013).

Mediation is not required prior to summary judgment of foreclosure when a case is filed outside of timeframe of mandated mediation ordered by the Florida Supreme Court.

Juvonen v. United Prop. and Cas. Ins. Co., – So.3d –, 2013 WL 5729808 (Fla. 4th DCA 2013).

Insurer must pay contractor overhead and profit expenses for post-hurricane repairs.

Careplus Health Plans, Inc. v. Interamerican Medical Center Group, LLC, – So.3d –, 2013 WL 5735342 (Fla. 3d DCA 2013).

An arbitration provision in a later contract does not cover disputes arising from earlier contracts; whether a claim is subject to arbitration is for court to decide.

Barber v. America's Wholesale Lender, – Fed.Appx. –, 2013 WL 5686757 (11th Cir. 2013).

When loan instruments indicate the loan will be securitized and sold, borrower has no right to a modification or to negotiate with only its original lender.

Manuel Farach is Of Counsel to Richman Greer, P.A. in West Palm Beach and practices in the areas of Real Estate, Business Litigation and Appellate Law. Request the Weekly Update by sending an email to mfarach@richmangreer.com and writing "Request Update" in the subject line.

Gunster Wins Legal Aid's 13th Annual Cup of Justice Golf Classic

The Legal Aid Society of Palm Beach County's 13th Annual Cup of Justice Golf Classic supports its Educational Advocacy Project. The project's mission is to ensure positive educational outcomes for disabled children attending Palm Beach County schools.

Attorney Robert Shalhoub once again chaired the October 14th tournament at Bear Lakes Country Club. The presenting sponsor of the event was Sabadell United Bank.

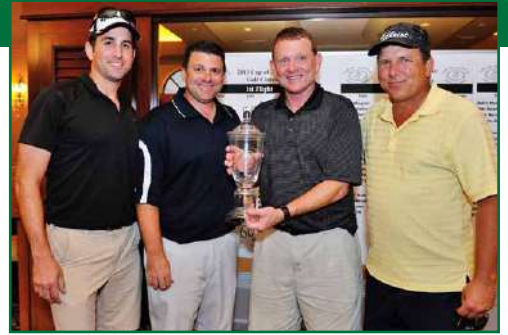
The luncheon sponsor was Florida Crystals and the dinner sponsor was Caler, Donten, Levine, Cohen, Porter & Veil, P.A. Other major sponsors included Colodny, Fass, Talenfeld, Karlinsky, Abate & Webb, P.A.; Daily Business Review; Furr & Cohen, P.A.; Gilbert | Yarnell; Haile, Shaw & Pfaffenberger, P.A.; Law Office of Benjamin T. Hodas, LLC; Legal Graphicworks; Moore, Ellrich & Neal, P.A.; Schwed, Adams, Sobel & McGinley, P.A., Schwed, Kahle &

Kress, P.A. & UBS Financial Services - Christian D. Searcy, Jr.

The golf tournament committee members included Richard Benrubi, Esq.; Bob Bertisch, Esq.; Harreen Bertisch; Scott Bester; Ric Collier; Alton Finnis; Ben Hartman; Devin Krauss; David McClymont; Scott Murray, Esq.; Cyrus Niakan, Esq.; Linda Norris; Grier Pressly, Esq.; Paul Shalhoub, Esq.; Michael Spillane; Vicky Vilchez, Esq.; Gary Woodfield, Esq.; Colin White, Esq. and Greg Zele, Esq.

Gunster was awarded the "Cup of Justice" trophy after an outstanding round of golf. Other winners included PBG Roughriders (Flight A—1st Place); Gunster (Flight B—1st Place); Dr. Ryan Grand - Palm Beach Physical Medicine (Flight C—1st Place).

Greg Curley, Esq. won "Closest to the Pin" & Robbie Wight won "Longest Drive".



Chris Benvenuto, Joseph Santoro, Joseph Curley, Greg Curley



Jason Guari, Michael Napoleone, Gregory Cohen, Steve Madsen

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WELCOMES OUR NEWEST ATTORNEY



Amy Bloom

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The Palm Beach County Bar Association's Alternative Dispute Resolution Committee Presents:



"The Yin and Yang of Mediation: The Mediator and The Attorney"

Monday, February 10, 2014 - 8:00a.m. – 4:30p.m.

Bar Association Offices
1507 Belvedere Road, WPB



Program Schedule

- 8:00a.m. – 8:30a.m. **Late Registration/Check In**
- 8:30a.m. – 8:40a.m. **Welcome & Opening Remarks** - *Amber E. B. McMichael, Esq., Clarfield, Okon, Salomone & Pincus, PL., Certified Circuit Civil, Appellate and Family Mediator, Committee Chair*
- MEDIATOR SEMINAR:**
- 8:40a.m. – 9:30a.m. **Cultural Diversity** - *George F. Knox, Jr., Esq., Certified Circuit Civil Mediator and Professor at FIU College of Law*
- 9:30a.m. – 10:20a.m. **Promoting Your Mediation Practice and Complying with the Rules** - *Cathleen A. Scott, Esq., Cathleen Scott & Associates P.A., Board Certified Labor and Employment Law Attorney*
- 10:20a.m. – 10:30a.m. **BREAK**
- 10:30a.m. – 11:20a.m. **Domestic Violence** - *Eunice I. Baros, Esq., Certified Circuit Civil Mediator*
- 11:20a.m. – 12:10p.m. **Mediator Practice Tips from the Attorney Point of View** -
Panel Moderated by Amber E. B. McMichael, Esq., Clarfield, Okon, Salomone & Pincus, PL

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ATTORNEY SEMINAR:

- 12:10p.m. – 1:00p.m. **ADR Ethics: Recent Case Law & MEAC Update** - *W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., P.A., Certified Circuit Civil and Family Mediator, Board Certified Civil Trial Lawyer Emeritus*
- 1:00p.m. – 1:50p.m. **What to Expect from your Mediator** - *Michael D. Mopsick, Esq., Shapiro Blasi Wasserman & Gora, P.A., Certified Circuit Civil Mediator*
- 1:50p.m. – 2:00p.m. **BREAK**
- 2:00p.m. – 2:50p.m. **When Should You Mediate?** - *William J. Cea, Esq., Becker & Poliakoff P.A., Certified Circuit Civil Mediator, Board Certified Construction Law Attorney*
- 2:50p.m. – 3:40p.m. **Preparing for Mediation and Tips for Session** - *Louis L. Williams, Esq., Matrix Mediation, LLC, Certified Circuit Civil Mediator*
- 3:40p.m. – 4:30p.m. **Closing the Deal—What Works & What Doesn't** - *Theodore A. Deckert, Esq., Theodore A. Deckert P.A., Certified Circuit Civil and Family Mediator*

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This course is expected to receive **9.0 CLER** including **1.0 Ethics credits**. Certification credits are pending from the Florida Bar.

Early registration cost is **\$240** for PBCBA members/paralegals; **\$280** for non-PBCBA members/paralegals if registered by 2/3/14; add \$25 late fee after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

Can't leave your office? Attend this via live webinar; register here <http://www.palmbeachbarcle.org/>

"This course is eligible for up to 9.0 CME hours; Diversity and Domestic Violence credits are pending. Mediators are required to self report those hours applicable to their areas of certification at the time of their renewal. For more info on the CME requirement, visit, www.flcourts.org, select Alternative Dispute Resolution/Mediation."

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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CLE

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: _____ Email Address: _____

I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/10/14 ADR) 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.

North County Section & FAWL Raise Money During Breast Cancer Awareness Month

Members of the North County Section recently partnered with members of FAWL by hosting a Pink Party at Red Tapas Bar and Grille in Palm Beach Gardens. Close to 100 members attended the mixer and raised \$2,500.00 for the Smiley Wiley Breast Cancer Foundation, which provides financial assistance to women and men with breast cancer who cannot meet their own costly health insurance deductibles.



Ashley Peyton (Smiley Wiley); Dan Zuniga (NCS Director) Nicole Hessen (President Elect FAWL); Todd Stewart (NCS President) and Lindsay Mesches (Smiley Wiley)



Mitch Beers and Jerry Beer



Joanne O'Connor and Bruce Reinhart



John Carroll, Harriet Freeman, Andrew Pastor and Cindy Sojka



Gary Lesser and David Glatthorn



Enrique Nieves and Judge Rosemarie Scher

North County Section Welcomes the New Year with a Cocktail Reception

**Thursday, January 23
5:30 p.m. to 7:00 p.m.
Marriott, Singer Island**



Early registration is \$20.00 for NCS Members and complimentary for the Judiciary. Attorneys who are members of the PBCBA, but not members of the NCS (and spouses) are welcome for \$30.00.

RSVP online at www.palmbeachbar.org

Sponsored by Visual Evidence, Law Office of Mitchell J. Beers, D'Amore Law Firm, P.A. and Fox Rothschild LLP

FMCSA Legislative Update Event

By Salesia Smith-Gordon

F. Malcolm Cunningham Sr., Bar Association in West Palm Beach recently held its first annual "Legislative Update - What Happens in Tallahassee Doesn't Stay in Tallahassee" panel discussion. Held on October 18, 2013 at the Palm Beach County Bar Association, the panel discussion was well attended. Recognizing the dynamics of lawmaking and law enforcement, attendees of the event engaged in open dialogue with the distinguished panel of legislative leaders (Sen. Jeff Clemens, Minority Leader Rep. Mark Pafford, Rep. Bobby Powell, and Rep. Dave Kerner), State Attorney Dave Aronberg, school board member (Marcia Andrews), and lobbyists (Yolanda Cash-Jackson and Vernon Crawford).

The goal of the panel discussion was to inform and engage our legal community regarding legislative priorities and key initiatives for 2014, particularly for Palm Beach County. Discussions spanned broad topics which included 'Stand Your Ground' law, budget and appropriations, restoration of civil rights, gubernatorial appointment process, K-12 education common core to charter schools, red light camera and prescription pill mills. The well attended event was held with the support of the Palm Beach County Bar Association's Committee for Diversity and Inclusion and Becker & Poliakoff. The Cunningham Bar will host the legislative update as an annual event. For more information regarding the F. Malcolm Cunningham, Sr. Bar Association, visit www.cunninghambar.org.



Photographed (l-r) seated: Marcia Andrews, FMCSA Pres. Jean Marie Middleton, Vernon Crawford, Yolanda Cash-Jackson. Standing (l-r) event chair & FMCSA Treasurer, Kalintha Dillard, Sen. Jeff Clemens, Rep. Dave Kerner, Rep. Mark Pafford, FMCSA Immed. Past Pres. Salesia Smith-Gordon. Not pictured: Rep. Bobby Powell and Palm Beach Co. State Attorney Dave Aronberg. (Photograph courtesy of Carol Porter.)

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Objections To Less Restrictive Alternatives To A Guardianship

By: David M. Garten

In any order declaring a person incapacitated, the court must find that alternatives to guardianship were considered and that no alternative to guardianship will sufficiently address the problems of the ward. See, §744.331(6)(b), F.S. The obvious import behind this statute is to require the appointment of a guardian only when no other lesser intrusion on the privacy of the ward will accomplish the purpose of protecting the ward's property. See, *Smith v. Lynch*, 821 So. 2d 1197 (Fla. 4th DCA 2002).

A trust, trust amendment, or durable power of attorney may be considered a lesser restrictive alternative to a guardianship. To prevent the Court from considering these documents as a lesser restrictive alternative prior to the appointment of a guardian, an interested person may file a verified statement which states: (1) that he or she has a good faith belief that the alleged incapacitated person's trust, trust amendment, or durable power of attorney is invalid; and (2) facts constituting a reasonable basis for that belief. See, Fla. Pro. R. 5.550(c).

In *Searle v. Bent*, 2013 Fla. App. LEXIS 14798 (Fla. 2nd DCA 9/18/13), the Ward (Ms. Searle) was an elderly widow of considerable financial means. The Ward's daughter, Ms. Bent, petitioned to have the Ward deemed incapacitated due to her poor physical and mental health and because of a concern that the Ward was being exploited by her caretakers. During the proceedings, Ms. Bent filed a "Verified Statement by Interested Person Pursuant to F.S. § 744.331(6)(f)." In her affidavit, Ms. Bent alleged that her mother's durable power of attorney and various estate planning documents executed after December 3, 2006 were invalid because of her lack of mental capacity or because the documents were the product of undue influence. The verified statement contained numerous facts regarding the Ward's mental and physical condition, as well as findings made by medical experts regarding her mental capacity and need for a guardian.

Following the adjudicatory hearing, at which extensive evidence was presented, the trial court issued a detailed order finding the Ward to be incapacitated and in need of a plenary guardianship. The order stated, in part, that based on the totality of the evidence, the verified statement filed by Ms. Bent established a reasonable factual basis to believe that the Ward's trust, trust amendments, and durable power of attorney were invalid and thus not an alternative to guardianship.

On appeal, the Ward alleged the trial court erred in relying on the allegations in Ms. Bent's verified statement instead of considering less restrictive alternatives to guardianship as required by statute. She claims the trial court's actions violated her right to due process by "effectively invalidating her entire estate plan" [including her estate planning documents executed prior to December 3, 2006] based solely on the filing of an affidavit. The appellate court, in affirming the lower court, reasoned in part as follows:

"When the language of the statute is clear and unambiguous and conveys a clear and definite

meaning... the statute must be given its plain and obvious meaning." Fla. *Convalescent Ctrs. v. Somberg*, 840 So. 2d 998, 1000 (Fla. 2003) (quoting *Holly v. Auld*, 450 So. 2d 217, 219 (Fla. 1984)). We conclude that, by relying on Ms. Bent's verified statement to determine there were no alternatives to guardianship that would adequately protect Ms. Searle's interests and welfare, the trial court complied with the plain language of section 744.331(6)(f). Although Ms. Searle executed numerous estate planning documents dating back to 2004, the trial court found that the allegations in Ms. Bent's verified statement called the validity of those documents into question. Thus, under the statute, the trial court was prohibited from considering the documents as an alternative to guardianship.

We disagree with Ms. Searle's contention that the trial court's reliance on the verified statement "effectively invalidate[d] her entire estate plan." There is nothing in section 744.331(6)(f) that invalidates the challenged documents. As the trial court explained in its order: "The court is not required to determine the validity of the challenged documents at this time and renders no opinion on the truth or falsity, sufficiency or insufficiency of the allegations. In accordance with this finding of good faith and reasonable factual basis, the court may not deem the trust, the trust amendment or the durable power of attorney alternatives to the appointment of a guardian."

Moreover, the trial court is not prohibited from reviewing the continued need for a guardianship if Ms. Searle's documents are later determined to be valid, or if alternatives to guardianship arise which will sufficiently address her needs. See § 744.462 (providing that the court shall review the continued need for a guardian if the ward's durable power of attorney, trust, or trust amendment is determined to be valid, or if a petition is filed alleging there is an alternative to guardianship that will meet the needs of the ward).

Practice Pointer: An interested person may object to the verified statement by challenging the moving party's "good faith belief" that the alleged incapacitated person's Trust and POA are invalid, and the facts supporting that belief. In *Searle*, the challenge to the verified statement was made at the adjudicatory hearing; however, there is no prohibition against challenging the verified statement prior to the adjudicatory hearing.

Assuming the Court refuses to consider less restrictive alternatives prior to the appointment of a guardian, the issue can be raised after the appointment of a guardian. At any time after the appointment of a guardian, an interested person may file a verified petition stating that there is an alternative to guardianship that will sufficiently address the problems of the ward, in which case the court shall review the continued need for a guardian and the extent of the need for delegation of the ward's rights. See, Fla. Prob. R. 5.685 and §744.462, F.S.

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Family Day at the Zoo

Members and their families recently enjoyed a wonderful day at the Palm Beach Zoo, which was made possible by the following sponsors:



Alexandra & Joel Weissman sponsored our private Wings Over Water Bird Show. Shortly after the show started the program was cancelled and we were asked to leave the stadium. You see one bird refused to come out of his cage and then a Vulture attacked a Swan and tried to escape! We were told the birds were not used to performing in front of so many people and this had never happened.



Melissa and Bill Lazarchick. Thanks to Kaufman, Rossin & Co. for sponsoring our up close and private Animal Encounter with an Owl, Snake and Sloth.



Palm Beach County Paralegal Association provided complimentary Carousel Rides. Representing the Association were Linda Wells and Donna Cooper

Lunch was sponsored by Lytal Reiter Smith Ivey & Fronrath; Legal GraphicWorks and Sabadell United Bank.

Additional pictures can be found on the Bar's Facebook page.



Gary Lesser's firm of Lesser Lesser Landy & Smith provided Face Painting.



Kristy, Parker and Grier Pressly. Grier's firm of Pressly & Pressly sponsored our private, behind the scene tour of the Jaguar Exhibit



Dean Xenick from Burman Critton Luttier & Coleman whose firm sponsored the Tattoo Artist.



Karen Holloway (left) from Northwestern Mutual and Julia Wyda. Northwestern sponsored our Ice Cream Cart.



Complete Legal Investigations provided us with soft drinks throughout the day. Thank you to Wendy Murnan (left) and Mark Murnan (right)

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HEARSAY

Stephen Fischer, Esquire and **Patrick Massa**, Esquire of Matrix Mediation, LLC were recognized by the Florida Bar Board of Legal Specialization & Education at The Florida Bar Annual Convention in June 2013 for achieving the milestone of being Board Certified for 30 years. They both earned Board Certification in Civil Trial in 1983.

Patricia A. Leonard, a Litigation Shareholder with Greenberg Traurig, LLP, has been appointed Chair of the 15th Circuit Judicial Grievance Committee "G." Leonard was also elected Co-Vice Chairperson of the 4th District Court of Appeal Judicial Nominating Commission.



Leonard P. Haberman, a former Solo Plaintiff Practitioner of Medical Malpractice and General Personal Injury, has joined The Law Offices of Craig Goldenfarb, P.A. as a Civil Trial Lawyer. Mr. Haberman has tried over 30 cases

to verdict and lead over 300 arbitration cases spanning three states in his 20 year career.

Raymond E. Kramer, III, an Attorney at Beasley Hauser Kramer & Galardi, P.A., has been appointed the Vice President of District Operations for the Boy Scouts of America's Gulf Stream Council. The firm also welcomes **Amy Bloom** to its West Palm Beach office. Ms. Bloom has 12 years of experience in Commercial Litigation.



Bradley W. Biggs, Esq., announces the opening of his new law practice, Bradley W. Biggs, P.A., focusing on areas related to his Board Certification in City, County and Local Government Law and his State Mediation Certifications. He currently represents the Village of Golf and the Town of South Palm Beach.

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CALENDAR December 2013

Tuesday, December 3,
11:30am – 1:00pm
JFK Seminar
Bar Association Office

Wednesday, December 4,
11:45am – 1:00pm
Judicial Luncheon
Main Courthouse,
North end of cafeteria

Thursday, December 5
PBCBA Holiday Party
Frenchman's Reserve,
Palm Beach Gardens

Friday, December 6,
11:45am – 1:00pm
**PI Wrongful Death
CLE Seminar**
Bar Association Office

Tuesday, December 10,
Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Wednesday, December 11,
Noon – 1:00pm
**Professionalism
Committee Meeting**
Bar Association Office

Wednesday, December 11- 13
**The Florida Bar Board of
Governors Meeting**
Ft. Lauderdale

Wednesday, December 11,
Noon – 4:00pm
Spa Day/CLE
PGA Resort

Thursday, December 12,
Noon – 1:00pm
**Transaction Law
Committee Meeting**
Bar Association Office

Thursday, December 12,
6:00pm – 9:00pm
**South County Bar
Holiday Party**
Ruth's Chris in Boca Raton

Friday, December 13,
8:00am – 2:00pm
Elder Law CLE Seminar
Bar Association Office

Friday, December 13,
Noon – 1:00pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room

Monday, December 16,
5:00pm – 7:30pm
**PBCBA Board of
Directors Meeting**

Tuesday, December 17,
Noon – 1:00pm
CDI Committee Meeting
Bar Association Office

Wednesday, December 18,
11:30am – 1:00pm
**Criminal Law Practice
Committee Luncheon**
Main Courthouse,
North end of cafeteria

Thursday, December 19,
Noon – 1:00pm
BBC Committee Meeting
Bar Association Office

Friday, December 20,
Noon – 1:00pm
Cunningham Bar Meeting
Law Library
Conference Room

Wednesday, December 25
Christmas - Court Holiday
Bar Association
Office Closed

Wednesday, December 25 –
January 1, 2014
**Christmas Holidays
Bar Office Closed**