



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

February 2014



The YLS hosted their annual holiday party for 75 foster kids at the Marriott Hotel in West Palm Beach who graciously donated space for the party. Pictured with Santa (YLS President Julia Wyda) are: Lisa Kohring, Colleen Farnsworth, Dan Barsky, Reeva Oza, Leslie Arsenault Metz, Dane Leitner, Ryan Fogg, Ed Walker, Christine Bialczak, Alison Percy, Jamie Gavigan, Andrea Robinson, Lindsay Demmery, Cash Easton, Scott Perry and Greg Salnick. The members of the YLS have been providing toys to foster children for over 30 years.



Mark your calendar for upcoming Membership Events

February 3:

Joint Luncheon with Forum Club
with guest speaker U.S. Supreme Court
Justice Samuel Alito

March 7, 2014:

Bench Bar Conference; Luncheon guest
speaker will be Laurence Leamer, author of
fifteen books including five *New York Times*
bestsellers. Leamer is perhaps best known for
his trilogy on the Kennedys including
The Kennedy Women.

April 22:

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

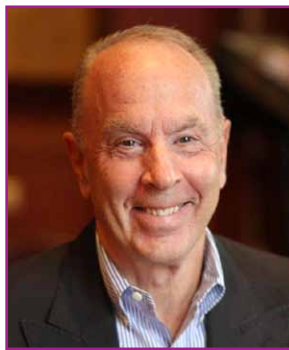
April 29:

Annual Judicial Reception

June 7:

Annual Installation Banquet

Bench Bar Conference Keynote Speaker Laurence Leamer



Author Laurence Leamer will be the keynote speaker for the March 7 Bench Bar Conference. Leamer is the author of fifteen books including five *New York Times* bestsellers. Leamer is perhaps best known for his trilogy on the Kennedys including *The Kennedy Women*. His book about Palm Beach, *Madness Under the Royal Palms*, was so controversial that the Palm Beach police chief said the author should hire security. That book sold more than any other volume in Palm Beach County in a quarter century. His 2013 book, *The Price of Justice*, received some of the best reviews of his career. John Grisham said the story of two Pittsburgh lawyers and their fifteen-year struggle for justice was "superb...it is a book I wish I had written." In a sense, Grisham has. His novel, *The Appeal*, was based in part on the story.

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THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

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

Advertising Information:
Shoshanah Spence • sspence@palmbeachbar.org

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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



NEW ADMINISTRATIVE ORDERS

3 Series: Civil

Administrative Order 3.313 - *Foreclosure Division Case Status Reporting Requirements*. Issued November 22, 2013. Directs the Clerk of Court to create codes for inactive pending and reopened foreclosure cases in accordance with Florida Supreme Court Administrative Order 13-51.

REVISED ADMINISTRATIVE ORDERS

5 Series: Unified Family Court

Administrative Order 5.107 - *Assignment of Newly Filed Cases in Unified Family Court South County Family Divisions "FX", "FY", and "FZ"*. Amended December 11, 2013. Establishes a reassignment of cases for the South County Family Divisions due to the reopening of South County Probate/Guardianship Division "IZ".

11 Series: Internal Policies and Procedures

Administrative Order 11.101 - *Assignment of Judges*. Amended December 2, 2013. Sets forth the new judicial assignments which will take effect January 21, 2014.

Administrative Order 11.109 - *Duty Judge Roster*. Amended November 25, 2013. Amends the Administrative Order for Duty Judge assignment.



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President's Message



Why You Should Attend the Bench Bar Conference...

By Jill G. Weiss

On March 7, the Palm Beach County Bar Association hosts its annual Bench Bar Conference at the Palm Beach County Convention Center chaired by Sarah

Shullman and Bill Lazarchick. The Conference attracts over 1,200 attorneys and members of the judiciary who practice all over Palm Beach County. It provides the opportunity for the bench and the bar to discuss various legal topics, and practices in a constructive and effective manner.

If you have not attended the Bench Bar in recent years (or think there is no reason for you to attend), there are a number of new sessions, sessions that have been revamped and a new focus on topics that are relevant to practitioners of all practice areas and experience.

Brand new to this years' conference is the addition of a session for Transactional Law attorneys and a session with focus on Alternative Dispute Resolution (ADR). The Bar's new Transactional Law session will include pertinent topics to those who practice real estate and corporate transactional work and will featuring Louis Conti, Chair of the Florida Bar Drafting Committee responsible for the new Florida Revised LLC Act. The ADR session will include topics for all practitioners and will focus on reaching a successful resolution for clients at mediation. Because mediation is mandated prior to trial, every litigator, regardless of practice area, is encouraged to attend this session.

The YLS will be hosting a session centered on professionalism that will feature a Jeopardy-style presentation and hypothetical situations with panel discussion to follow.

We will also be having some morning sessions dedicated to solo and small firm practitioners on such topics as

Marketing/Solo Media and Running a Law Office. In addition, there will be morning sessions for federal practitioners as well as probate practitioners. A session on E-Everything will focus on e-service and e-filing.

The Committee for Diversity and Inclusion will feature "speed dating". This will allow law in small groups to interact in a brief question and answer format with lawyers whose in various practice areas.

Other practice sessions such as personal injury, commercial and family will focus on practical skills and provide an interactive experience. The Bench Bar committee members have reached out to the judiciary not only for participation in this years' conference, but also to include the bench's input to come up with a framework of relevant and pertinent topics for the agendas. Many of the sessions will include participation from Fourth DCA judges.

The luncheon program will feature remarks from Chief Judge Jeffrey Colbath, the presentation of the Judge Edward Rodgers Diversity Award and the PBCBA Professionalism Award. This year's keynote speaker will be Laurence Leamer. Mr. Leamer, who in the past has written extensively on the Kennedys, has now authored "The Pride of Justice" which is the true story of how two lawyers spent 12 plus years bringing Don Blankenship, head of Massey Energy, to justice. He will talk about these two lawyers and their epic fight as well as about judicial reform and the Supreme Court opinion in *Caperton v. Massey*.

If you are a regular attendee, I am sure you will be excited by the changes in this year's program. If you have not attended or have not attended in recent years, please consider spending March 7th at the conference. I hope to see you all there.

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

Holiday Party Highlights...

Our annual Holiday Party was another tremendous success! The event was held at Frenchman's Reserve Country Club in Palm Beach Gardens for more than 300 members and we raised over \$17,000 for charity! All of the proceeds from the Silent Auction will benefit programs sponsored by our Young Lawyers and North County Sections.



Thank you to our auction chairs Noelle Pankey, W Mason and Leanna Lalla



Judges John Kastrenakes, Stephen Rapp and Matthew Stevenson



Jonathan Levy, David Glatthorn, Clerk & Comptroller Sharon Bock and Ken Pratt



Bar President
Jill Weiss,
Jonathan Wald,
Suzy Wald,
Bob Bertisch
and Vicky
Vilchez



Edward Marod



Jessica Mason and
Georgia Newman

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

- February 5: Judicial Luncheon
- February 10: ADR Seminar
- February 19: Criminal Law Luncheon Seminar
- February 24: Employment Law Seminar
- February 25: Bankruptcy Law Luncheon Seminar
- February 28: Workers' Comp Seminar
- March 14: Employment Law Seminar
- March 19: Criminal Law Luncheon Seminar
- March 27: Criminal Law Seminar
- April 4: Family Law Seminar
- April 10: Elder Law Dinner Seminar
- April 11: Technology Seminar
- April 16: Criminal Law Luncheon Seminar
- April 17: Judicial Luncheon
- April 24: Securities Law Seminar
- May 2: Employment Law
- May 7: Estate & Probate Seminar
- May 14: Judicial Luncheon
- May 16: PI Seminar
- May 21: Employment Law Seminar
- June 6: Community Association Law Seminar
- June 20: Employment Law Seminar





Recent Amendments to the Federal Rules of Bankruptcy Procedure

by Jason S. Rigoli

On December 1, 2013, six amendments to the Federal Rules of Bankruptcy Procedure went into effect. In addition, a number of new bankruptcy forms are now in effect. This is a brief synopsis of the recent amendments.

Amendments to Rules 1007(b)(7), 5009(b) and 4004(c)(1) Related to the Completion of the Personal Financial Management Course

Rule 1007(b)(7) has been amended to remove the obligation of a debtor to file the certification of financial-management course *if* the financial-management course provider has “notified” the court of the debtor’s successful completion of the course. The amendment is an attempt to reduce the number of cases dismissed without a discharge as a result of the debtor not filing the Form 23.

In connection with the amendment to Rule 1007(b)(7), Rules 5009(b) and 4004(c)(1) were amended. Rule 5009(b) has been amended to require the clerk to send a warning notice to an individual debtor within 45-days after the first date set for the first meeting of creditors where the debtor has not filed a Form 23 and the court has not been notified by the financial-management course provider. Rule 4004(c)(1) has been amended to provide that the court must delay the entry of a discharge for a debtor who has not filed a Form 23, only if the debtor was required to do so.

Amendments to Rules 9006(d), 9013 and 9014 Relate to Time for Serving Papers

Additionally, Rules 9006(d), 9013 and 9014 have been amended. The title of Rule 9006(d) has been amended by adding “Time for Motion Papers” and is consistent with the change to Rule 6 of the Federal Rules of Civil Procedure. In addition, the amendment to subsection (d) expands its application to address timing of the service of any written response to a motion, rather than just for opposing affidavits. The amended subsection (d) allows written responses to be filed “one day before the hearing.”

Consequently, Rule 9013, addressing the form and service of a motion, is amended to cross-reference to the time periods set forth in 9006(d). Likewise Rule 9014, addressing contested matters, is amended to cross-reference the time periods set forth in 9006(d).

However, the time periods set forth in Rule 9006(d) apply unless there are other limits fixed by another Federal Rule of Bankruptcy Procedure, court order or local rule. For the Southern District of Florida, Local Rule 5005-1(F)(1), has not been amended and therefore “[m]emoranda, affidavits and other papers for consideration at any hearing already set before the court, shall be *filed and served* so as to be received by the movant and the court not later than 4:30 p.m. on the second business day prior to the hearing ...” Local Rule 5005-1(F)(1).

Amendment to Rule 45 of the Federal Rules of Civil Procedure - Subpoenas

Finally, Rule 45 of the Federal Rule of Civil Procedure, governing subpoenas, and made applicable through Rule 9016 of the Federal Rules of Bankruptcy Procedure, was amended to simplify the issuance and service of subpoenas.

As of December 1, 2013, Rule 45 recognizes the court where the action is pending as the “issuing court” and permitting service throughout the U.S. In addition, Rule 45 was amended to address subpoenas to testify at a trial, hearing or deposition and compliance therewith. In addition, amended Rule 45 addresses issues relating to transfer of subpoena-related motions; doing away with the requirement that the party serving a subpoena requiring document production give notice *before* the service of the subpoena. In addition, new subpoena forms have been created.

Pursuant to Administrative Order 13-02, Interim Local Rules have been adopted to comply with the amendments to Rule 45 of the Federal Rules of Civil Procedure and the new procedural forms from the Administrative Office of the U.S. Courts. Accordingly, Local Rules 7026-1(B), 9004-2(A) and 9016-1 have been amended pursuant to Administrative Order 13-02.

Conclusion

This article is intended to be a brief overview of the recent amendments to the Federal Rules of Bankruptcy Procedure and Local Rules. It would be a great value for all bankruptcy practitioners to review the amended Rules and newly adopted Forms in order to provide the best possible counsel to their clients.

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



The Bar offers on-line traffic and parenting courses

The Palm Beach County Bar Association continues to look for non-dues sources of revenue to assist in keeping the cost of Bar dues down. Accordingly, we offer online courses in Business & Personal Services and Traffic Safety such as:

- Basic Driver Improvement Course
- First Time Driver Course
- Mature Driver Course
- Florida Notary Service
- Florida Internet Parenting Course (approved course by the State of Florida)

These are all approved courses through the American Safety Council. The Palm Beach County Bar Association will receive a small stipend for each course that is taken through a link on our website. Please help us by remembering to refer your clients to this link if they are in need of taking any of these courses. For more information, visit www.palmbeachbar.org/online_courses.php

Legal Aid's 9th Annual Brooks Event to Benefit Children's Advocacy

In November, 150 young professional friends of the Legal Aid Society of Palm Beach County enjoyed fine wine, hors d'oeuvres and shopping at the Brooks Brothers store in the Gardens Mall.

The event benefited Legal Aid's Children's Advocacy Projects, providing critically needed legal services to abused, neglected, abandoned and foster children through its Foster Children, Juvenile Advocacy, Educational Advocacy and Relative Caregivers Projects. These programs are funded by the Children's Services Council of Palm Beach County, the Florida Bar Foundation, Palm Beach County Board of County Commissioners, the law firm of Greenberg Traurig, the William and Helen Thomas Charitable Trust, the Southern Poverty Law Center and Wells Fargo.



Ron Ponzoli, Michael Napoleone, Greg Zele and Vinny Cuomo

Photos taken by Tracey Benson.

Patti Leonard, Adam Rabin, Lorie Gleim, Bradley Harper and Phil Hutchinson



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Government GPS Tracking Since *U.S. v. Jones*

By Christopher B. Hopkins

In *U.S. v. Jones*, the Supreme Court held that the government violated the Fourth Amendment by installing and using a GPS to warrantlessly monitor the movements of a person's car. But *Jones* is not the final word on GPS tracking since: (a) *Jones* did not address GPS tracking *with* a warrant; (b) *Jones* arguably left open whether warrantless GPS tracking is permissible when both reasonable suspicion and probable cause exists; (c) *Jones* may not exclude GPS evidence which was acquired pre-*Jones*; and (d) the government may be permitted to warrantlessly track public employees. Along these lines, since *Jones* was decided upon "physical intrusion," and not the "expectation of privacy" standard which has dominated the field since the late 1960's, much of our recent pre-*Jones* precedent provides only half of the analysis.

Three cases from 2013 highlight the tension between warrantless GPS surveillance and the Fourth Amendment.

In *U.S. v. Katzin*, three brothers were charged with a string of burglaries after data from a GPS transmitter attached to their van connected them to a heist. Among other arguments, the government claimed that (a) warrantless GPS searches were permissible (a) under reasonable suspicion alone and, if not, (b) when probable cause existed. The Third Circuit disagreed and held that the police must obtain a warrant prior to a GPS search; moreover, the "good faith" exception would not permit admissibility of the pre-*Jones* GPS evidence. Relying upon a quote from *Jones*, the court held that planting a GPS was akin to a "constable concealing himself in the target's coach in order to track its movements."

Let's examine the *Katzin* arguments for warrantless GPS surveillance. First, the government argued that warrantless searches based upon reasonable suspicion were permitted in various circumstances such as those articulated in *Terry v. Ohio* and its progeny which held that a search was reasonable when an officer reasonably believed there was danger to himself or others. The court held that a mere frisk was not comparable to a prolonged GPS tracking and that a GPS would hardly reveal weapons. Making a broader statement, court concluded that, "absent highly specific circumstances not present in this case, the police cannot justify a warrantless GPS search with reasonable suspicion alone."

Second, the government argued that warrantless GPS tracking was allowable when there was probable cause under the "automobile exception." This too failed since there were no exigent circumstances, on the one hand, and that the GPS search "extends the police intrusion well past the time it would normally take officers [to enter a vehicle to search for evidence]." Indeed, the GPS search actually extended *into the future* since it reveals a person's actions which had not occurred at the time the GPS was installed.

Katzin is important since it illustrates the fact that the government can impermissibly violate the Fourth Amendment but that fruit-of-the-poisonous-tree evidence may still be admissible under the "exclusionary rule." That discussion

devoured dozens of pages regarding the "good faith exception" which is complex and case-specific. Indeed, the "exclusionary rule" cuts a wide path in terms of allowing GPS evidence; practitioners should firmly recognize that other courts may not be so ardent in declining to admit GPS evidence. That said, *Katzin* clearly outlines the arguments for future cases.

In *Cunningham v. New York*, the government placed a GPS transmitter on a state employee's personal car in order to ascertain if he was submitting false time slips. The court held that the search did not require a warrant but that the search was unreasonable in scope. Thus, *Cunningham* is significant since it leaves open a wide opportunity for a public employer to use GPS surveillance on employees under "reasonable" conditions.

Under *Jones*, the installation of the GPS was a "search" however the *Cunningham* court acknowledged that *Jones* did not address whether a GPS search is *ever* permissible without a warrant. In this case, the "workplace exception" to the warrant requirement existed: searches by public employers for non-investigatory, work-related purposes are allowed. The "location of a personal car used by the employee during working hours" was held to be no more private than a personal item in the employee's workspace. That said, the search was unreasonable in its scope since it continued to track the employee on evenings, weekends, and vacations -- despite the fact that, when it wanted to, the government removed the GPS three times. The court held, "[w]here an employer conducts a GPS search without making a reasonable effort to avoid tracking an employee outside of business hours, the search as a whole must be considered unreasonable." Taken the other way, *Cunningham* suggests that (limited) warrantless GPS tracking of state employees is permissible.

Finally, in early 2013, the U.S. Supreme Court revisited the Fourth Amendment for the first time after the *Jones* case. In *Florida v. Jardines*, the question was whether a drug-sniffing dog investigating the contents of the house from a homeowner's porch was considered a Fourth Amendment search. This case presented the Court with an opportunity to explain that the (dormant) "physical intrusion" standard existed despite the fact that courts had been applying the "expectation of privacy" standard, nearly exclusively, for the last 50 years. While the *Jardines* opinion held that the government improperly physically intruded on the defendant's property, the remaining minority opinions discussed how the two tests might reach harmonious results.

Christopher B. Hopkins is a partner at Akerman LLP. Email him to explain some constitutional theory he failed to cover in a 900-word essay at Christopher.Hopkins@Akerman.com.



MARK YOUR CALENDAR
Technology Seminar April 11
"ESI Discovery for the
Technically Challenged"
11:45 a.m. – 1:05 p.m.
Bar Association Office



“Unprofessional” Versus “Unethical” (Caution: Slippery Road Ahead)

By D. Culver Smith III

On behalf of the Professionalism Committee

There was a time when we songbirds in the professionalism choir were forced to acknowledge the distinction between unethical conduct and “merely” unprofessional behavior. The Supreme Court of Florida in recent pronouncements has all but obliterated that distinction. The Court first amended the Oath of Admission to include a pledge of civility to others (including opposing counsel). Then the Court enacted a “Code for Resolving Professionalism Complaints,” in which it adopted by reference the Florida Bar “Creed of Professionalism” and “Ideals and Goals of Professionalism” – formerly just inspirational goals – as standards for lawyer conduct with possible disciplinary consequences. *See In re Code for Resolving Professionalism Complaints*, No. SC13-688 (Fla. June 6, 2013).

The Court was not merely proselytizing. Most recently (as of this writing), the Court in *Florida Bar v. Norkin*, 2013 WL 5878901 (Fla. Oct. 31, 2013), disapproved a referee’s recommended ninety-day suspension and imposed a two-year suspension (the Florida Bar sought a one-year suspension) on a lawyer for what once might have been viewed as unprofessional but not unethical conduct. The Bar accused Mr. Norkin of several acts of antagonistic behavior during the course of a lawsuit between the two owners of a corporation. The court appointed a retired circuit judge to serve as provisional director of the corporation to break the tie on any issue on which the two owners disagreed. When Mr. Norkin’s client failed to pay his share of the provisional director’s fee, the provisional director obtained a judgment against Mr. Norkin’s client for the amount owed and had a writ of garnishment served on Mr. Norkin. Mr. Norkin responded with a letter to the provisional director accusing him of a “cozy, conspiratorial” relationship with his client’s adversary and threatening to sue him if he did not rescind the writ. Mr. Norkin also moved to recuse the presiding judge, accusing him of acting “at the beck and call” of the opposing party.

The referee in the disciplinary proceeding that followed found that Mr. Norkin’s accusations about the provisional director and the presiding judge were false and made with reckless disregard of the truth. The referee also found that Mr. Norkin demonstrated unprofessional behavior and demeanor during many of the hearings in the case. At one of the hearings, the presiding judge said, “I am finding these hearings with you extremely difficult. You talk very loud... You are very angry, you make me angry. I don’t like angry lawyers.” That judge eventually recused himself. The successor judge had similar issues with Mr. Norkin: “You yell at me and scream at me.”

The Bar did not accuse Mr. Norkin of incompetence, lack of diligence, absconding with trust funds, disclosing client confidences, having a conflict of interest, exparte

communication with the judge or his client’s adversary, fabricating evidence, or obstructing the opposition’s access to evidence. It accused him of “unprofessional and antagonistic” conduct – conduct that we songbirds once lamented as “unprofessional” albeit not unethical per se. Mr. Norkin’s behavior may seem extreme. To the Supreme Court, however, it is part of a trend. The referee found and the Court agreed that Mr. Norkin’s conduct violated rules 4-3.5(c) (conduct intended to disrupt a tribunal) and 4-8.4(d) (conduct prejudicial to the administration of justice) of the Rules Regulating The Florida Bar. One hopes that the Court’s readiness to impose disciplinary sanctions in such cases will deter lawyers from obnoxious, disrespectful, antagonistic, or disruptive behavior.

This professionalism issue of ours has been a topic of debate for as long as there have been lawyers. When all has been said and done, more has been said than done. Until now. The Supreme Court has made it clear that such conduct puts one’s license at risk.

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Email: KPratt@pratttradford.com

Kelly Martyn, Assistant: KMartyn@pratttradford.com

Website: www.PrattRadford.com



Client Consultations: One Question Every Divorce Lawyer Should Ask

By Christopher R. Bruce

"Have you tried marriage counseling?"

Every divorce lawyer needs to make a habit of asking this question when conducting an initial client interview. Many reading this are probably thinking *"why on earth should a divorce lawyer care whether a prospective client has tried marriage counseling when the client is in the attorney's office asking questions about divorce?"* The answer: if the purpose of an initial client consultation is to give the best possible advice to someone considering divorce (which should always be the number one and only objective) than it makes sense to find out whether the client has tried marriage counseling before having the client dismantle their marriage. This is especially true when there are young children involved or in the early January consultations with potential clients who may have just had too much exposure to their in-laws over the holidays (yes, this actually does happen).

Why Marriage Counseling?

It works- plain and simple. Marriage counseling can yield a lifetime of benefits to couples who are willing to take the time to step back and examine their relationship and dedicate themselves to improving their relationship. Also, divorce is expensive, and in some situations, can take years to resolve. By comparison, the cost of marriage counseling is covered by many insurance plans and seeing a counselor can yield benefits immediately. Oftentimes, couples can experience dramatic improvements in their marriage through the simple action of learning how to better understand what is and is not important to their spouse in a relationship. See, e.g., Gary Chapman, *The Five Love Languages* (2009).

There will always be enough people getting divorced to keep divorce lawyers in business. Given the potential upside to marriage counseling, practitioners owe it to their clients to at least suggest counseling when appropriate.

When is Counseling Not Appropriate?

Make no mistake; there is a reason divorce exists. Not every marriage can or should be saved. Some people are in marriages that are toxic, abusive or just plain dangerous and divorce is the only way for a spouse to be happy and healthy. In other cases, couples have drifted too far apart and/or into new relationships and the marriage cannot be saved. Whether counseling is or is not appropriate is a case by case issue and depends on the dynamics of the situation and values/viewpoints of the client.

Signs that counseling is not appropriate are usually the same signs that a relationship is not safe or healthy for at least one spouse. Counseling is clearly not appropriate when a client is a serial victim of domestic violence, when a spouse has been emotionally abused, or when the other spouse has a personality disorder (engaging in marriage counseling with a full blown narcissist may not accomplish much). Furthermore, in cases involving a volatile spouse and a highly liquid marital estate, it might not always be a good strategic decision to engage in marriage counseling when a client thinks divorce is likely. If the volatile spouse controlling the money is tipped off to a potential

divorce through a request for counseling the odds off pre-petition secretion of assets go up substantially.

Other Reasons to see a Therapist

Practitioners should be mindful that therapists can be a big help to their clients even when a marriage cannot be saved. When a client is codependent (in a relationship where they are controlled or manipulated by their spouse) it is critical to have the client see a therapist for the purpose of developing the sense of self worth needed to internally prioritize a settlement covering their needs over the continuous protest and intimidation campaign of their manipulative spouse. Additionally, many clients stand to benefit from consulting with a therapist to assist in recovering from a divorce and avoiding the problems that doomed their marriage happening again in future relationships.

Counseling for Children

Clients need to be educated that divorce is almost always a traumatic event for their children. Children are resilient, but they are also prone to blaming themselves for the separation of their parents or being unjustifiably afraid of being forgotten, abandoned or replaced. A therapist experienced in working with children and adolescents can help soften the initial impact of divorce and assist children with adapting to their parents' separation. Furthermore, a therapist can help parents adapt to the many challenges of coparenting following a divorce.

Bottom Line

Divorce practitioners cannot become numb to the fact that divorce is an incredibly traumatic experience for nearly all of their clients. Effective representation of clients in crisis requires not only mastery of the law, but an understanding of how mental health professionals can help clients possibly stay married or, at the very least, better navigate and recover from divorce.

Christopher R. Bruce is the founder of www.StayMarriedFlorida.com, a resource helping South Florida couples have and keep wonderful relationships. When Chris is not designing websites about how to stay married he is a divorce and appellate attorney with Nugent Zborowski & Bruce. Chris can be reached at (561) 844-1200 or cbruce@nugentlawfirm.com.

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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.

“Strength in Diversity”



African- American Women and the Judiciary: Past, Present, and Future

By: Kalinthia R. Dillard

The Palm Beach County Bar Association’s Committee for Diversity and

Inclusion (“CDI”) strongly supports and encourages racial, gender, and ethnic diversity in the practice of law, the make-up of the judiciary, and the composition of the Judicial Nominating Commission (“JNC”). Thus, the CDI created a “Road to the Bench” subcommittee, with the goal of creating a successful pipeline of diverse judicial candidates by connecting those seeking a judicial or JNC appointment with a mentor who can provide the mentee with practical tips regarding the application process. A cursory review of the history of African-American women in the judiciary reveals that the subcommittee could make a positive impact in our community.

In 1987, the American Bar Association created the Commission on Women to study the status of women in the legal profession. Former Secretary of State Hillary Clinton served as the first chair (1987-1991). The Commission found that although women represent approximately 50% of law school students, women make up about a third of the federal judges and about 27% of state court judges. There is a dearth of African-American female judges included in those figures.

Although Burnita Shelton Matthews (1894 – 1988) was appointed by President Harry S. Truman as the first female judge to serve on a U.S. district court in 1949, Constance Baker Motley (1921-2005) did not become the first African-American woman federal judge until 1966, when she was appointed by President Lyndon B. Johnson. Judge Motley led a stellar career as the only woman on the legal team in the historic challenge to school segregation in *Brown v. Board of Education*; lead counsel for James Meredith in his fight for admission to the University of Mississippi; and member of the legal team representing Harvey Gantt, who became the first African-American student to attend my alma mater, Clemson

College (now University) in South Carolina.

These trailblazers opened doors for many women to follow them, both on the state level and the federal level. Nevertheless, a National Women’s Law Center report dated December 12, 2013, states that only 35 of the more than 750 active federal judges across the country are African-American women.

A little closer to home, we see that Edith Meserve Atkinson became the first female Judge in Florida in 1924, when she was elected to the Juvenile Court of Dade County.¹ It was not until 1981 that Leah Simms became the first black woman judge in the state of Florida.² In Florida, as of 2012, women held two of the seven seats on the Florida Supreme Court, approximately 20% of the judicial seats in Florida’s District Courts of Appeal, 30% of circuit court judgeships, and 34% of county judgeships.³

With respect to African-American women, Justice Peggy A. Quince became the first African-American woman to serve on the Florida Supreme Court, when she was jointly appointed in 1998 by the late Governor Lawton Chiles and Governor-elect Jeb Bush. She currently serves with Justice Barbara Pariente. Three women sit on the Fourth District Court of Appeal. Those women are Judges Melanie May, Martha Warner, and Carole Taylor, an African-American female who was appointed to the 4th DCA the same year that Justice Quince was appointed to the Supreme Court.

Judge Catherine M. Brunson is the only African-American woman on the circuit court for the Fifteen Judicial Circuit. She was appointed to the circuit court by Governor Chiles in 1994. Two African-American women serve on the

¹Wendy S. Loquasto, *Celebrating Florida’s first 150 women lawyers*, The Florida Bar News May 15, 2000.

²Judge June McKinney, *Florida’s First Black Lawyers*, The Florida Bar News February 1, 2009.

³Florida Commission on the Status of Women, *2012 Florida Judicial Fact Sheet*.

county court for Palm Beach County. Judge Sheree Davis Cunningham was appointed by Governor Lawton Chiles in 1993, and Debra Moses Stephens was appointed by Governor Jeb Bush in 2000. It has been thirteen years or more since an African-American female has been appointed to either the county or circuit courts in Palm Beach County, the 4th DCA, or Florida Supreme Court.

I encourage minority women to avail themselves of the mentoring services provided by the *Road to the Bench* subcommittee. Diversity on the bench increases the public’s perception of the quality of justice and enriches judicial decision-making by infusing varying perspectives into the judicial process.

To serve as a mentor or mentee, please contact the following individuals:

Colleen Farnsworth
Colleen_Farnsworth@dcf.state.fl.us
561-227-6820

William Abel
WAbel@McLaughlinstern.com
561-659-4020

Kalithia Dillard
kalithia.dillard@palmbeachschools.org/
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The following represents each new member's name, law school, and date of admission to The Florida Bar and law firm association.

Salwa Adly: Florida Coastal School of Law, 2013, Associate in Korte & Wortman, P.A., West Palm Beach.

Edward Philip Dabdoub: University of Miami, 2007; Partner in Wagar Dabdoub Law Firm, Miami.

Karly E. Dreker: Nova Southeastern University, 2013; Associate in The Law Office of Benjamin T. Hodas, LLC, West Palm Beach.

John Gavigan: University of Miami, 2013; Associate in James C. Gavigan, P.A., West Palm Beach.

Nathan William Hill: Florida State University, 2011; Associate in Gunster, West Palm Beach.

Justin B. Levine: University of Miami, 2013; Associate in Cole, Scott & Kissane, P.A., West Palm Beach.

Jessie Pulitzer: Nova Southeastern University, 2013, Associate in Wiederhold, Moses, Kummerlen et al, West Palm Beach.

Mariel Reyes: Florida Coastal School of Law, 2013, Associate in Korte & Wortman, P.A., West Palm Beach.

Matthew W Sikorski: Florida Registered Paralegal Membership, Boynton Beach.

John William Terwilleger: University of Florida, 2013; Associate in Gunster, West Palm Beach.

Jeffrey Jay Ward: University of Missouri, 1976; Solo Practitioner, Wellington.

Robert A. Wight: University of Florida, 2013; West Palm Beach.

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What's Your Morning Routine?

By Nora Riva Bergman

"First we make our habits, then our habits make us."
– Denis Waitley

William James, often referred to as the "Father of Modern Psychology," wrote extensively on the power that habits exert in our lives. In the late 1800s, James, who was trained as a physician and spent most of his career teaching at Harvard, was the first person to offer a course on psychology in the United States. We are but "mere walking bundles of habits," James once wrote. James was a proponent of creating good habits and routines. Since habitual behavior is responsible for so much of what we do – research says anywhere from 45 to 90 percent of our behavior is habitual – why not focus on consciously creating positive habits and routines? Why not create habits and routines that pull us toward our goals, rather than habits that holding us back?

Let's look at just one aspect of your day, and see whether a new habit or routine might be in order. Let's examine what you do when you first get into your office each morning. Whether you realize it or not, you have a morning routine at the office. The problem is that this routine – or habit – was likely created years ago by default. In other words, you never gave conscious thought to what you did when you first arrived at your office. You just got there and reacted to whatever was going on. If your assistant stopped you in the hallway before you even got to your office, you stopped to answer her question. If a phone call came in as soon as you walked in, you took it. If a colleague knocked on your door as soon as you sat down at your desk, you said, "C'mon in." And then there was email. You turned on your computer, launched your email, and away you went. You could disappear into that inbox for hours. Forget your plan for the day – if you had one. Forget your "To Do" list. The day had started and you were swept up in whatever was going on. You didn't mean for it to happen that way. But somewhere along the way you lost control of your morning, and as a result, all too often, you lost control of your day.

What if you could start your day the way YOU want to? Guess what? You can. It just takes some conscious effort and a little discipline. Does it really take 21 days to create a new habit or routine? Well, that depends. Sometimes it takes longer, and sometimes we can change a habit or create a new routine in much less time. There are a number of different factors at play – not the least of which is how much we really want to change the behavior. A strong desire to change can help keep us motivated through the change process. So, how do you know when you've created a new habit or routine? If you feel uncomfortable when you don't engage in the behavior, you've created a new habit. Think of the example of brushing your teeth. You would likely feel very uncomfortable if you didn't brush your teeth in the morning.

OK, so back to your morning office routine. Instead of beginning your day with a series of reactions to people and situations, create a new morning routine. – One that allows you to get focused and prepared to be at your best. Taking control of your first 15 minutes in the office each morning can have a big impact on your productivity, effectiveness and stress level. I can't tell you what your morning routine should be, but I can offer some suggestions:

- Keep your routine simple.
- Include something you enjoy – your favorite coffee, reading a few pages from an inspirational book. Try out an app like "Transform Your Day" for your smart phone, and start your morning with an inspirational quote.
- Allow time – even 5 minutes – to review your most important goals for the day.
- Don't start your day in your Inbox. Set Outlook or whatever case management program you use to open in your Calendar – not your Inbox – so that you can get focused on your day.

If you give yourself just 15 minutes to start your day the way YOU want to, it will make a tremendous difference to the hours that follow. Changing your morning routine won't be easy, but it will be worth it. And if you fall back into your old routine, don't beat yourself up. Just get back on the horse. Research tells us that it can take up to six attempts to break an old habit or start a new one.

If you'd like to learn more about habits and how to create them, check out *The Power of Habit: Why We Do What We Do In Life and Business*, by Charles Duhigg.

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.atticisonline.com.

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Judicial Profile: The Honorable Judge Jeffrey Gillen

By Terry Resk, Judicial Relations Committee Member

Those of us practicing domestic law in the south county can consider ourselves fortunate since Judge Jeffrey Gillen was transferred here in January. After spending only thirty minutes with the judge, it is easy to see why so many people that he has known have told him that he should be either a judge or a professor; his love of the law and of his chosen career is readily apparent.

Upon completing his undergraduate studies at Denison University in Ohio, and attending law school at Syracuse University, Judge Gillen embarked on a life filled with great professional variety, both inside and outside of the legal arena. After graduating from law school in 1975, his first position was as an associate in a boutique labor law firm in Albany, New York. When he left the firm, he became in-house counsel for General Foods Corporation in White Plains, New York. There, he handled employment, environmental and insurance risk matters. Subsequently, he was a partner with the Albany law firm of Harder, Silber and Gillen, where his practice involved considerable labor-and-employment relations and discrimination matters. The fact that, as a jurist, he will be able to see things from all litigants' perspective is evidenced by the fact that his clients included employers and labor organizations as well as individuals. By the time the judge's father asked him to move to Florida in 1987, he had appeared before state and federal courts, arbitration panels, and administrative agencies throughout the country.

Judge Gillen's father did not ask his son to move just so that they could live closer to each other. Rather, he wanted to enlist his son's managerial skills in the family's businesses. Therefore, despite his fulfilling legal career, the judge moved to Florida and became involved in the worlds of radio broadcasting and frozen yogurt.

Judge Gillen could not stay away from the law forever, though, so in 1997, he was sworn in as a member of the Florida Bar by Judge Evans, and began what he thought would be a one-to-two year stint with the Florida Department of Children and Families. Fifteen years later, when he finally left DCF, he had become the agency's first Statewide Appeals Director and had not only appeared before all of our district courts of appeal, but had also argued several cases before the Florida Supreme Court. Unfortunately, the United States Supreme Court cases in which he appeared did not require his oral argument.

With such an illustrious career, it is no wonder that he was appointed to the circuit court by Governor Scott in December of last year. Luckily for us, he brings the same work ethic to the Bench as he has displayed during his entire life. Considering the fact that he completed undergraduate school in three years and that it took two attorneys to replace him at General Foods, it is no surprise that he can be found in his office at least one day each week-end. He reads everything submitted to him in advance of his hearings, and takes understandable pride in his thoroughness and expeditious rulings.

Judge Gillen's professional and personal philosophy is best illustrated by the sentiment on his obelisk: "Professionalism and Civility – Nothing Else will be Tolerated." The importance of this precept to the judge is emphasized by the "Got Civility?" button which he wears on his robe. When asked if he has any pet peeves, he did not hesitate to share that he gets "very annoyed" when an attorney represents to the court that a case stands for a certain proposition and it doesn't.

Since assuming the Bench in the civil division, Judge Gillen has been pleasantly surprised at the camaraderie among the judges, and believes that those of us who practice in this circuit are very lucky to have such a well- qualified and compassionate judiciary.



While it is difficult to imagine how Judge Gillen has time for a personal life, he does enjoy pursuits away from the courthouse. He and his wife Nancy have two adult children. Their son, Michael, is a local veterinarian; their daughter, Jessie Metzger, is a teacher at the Pine Crest School in Boca

Raton. The judge and his wife enjoy the time they get to spend with Jessie's children, Beckett and Tessa. Every once in a while, he and his son make it to the judge's favorite place on earth – a cabin in northern Michigan. There, they hunt for deer and enjoy the solitude and beauty which nature offers. He doesn't get to hunt as much as he would like here, though does make it to the sheriff's gun range occasionally.

Although he has only been on the Bench since January 2013, it didn't take the judge long to realize that potential jurors are disgusted with lawyers. He admonishes that we must all set an example for our profession and strive to improve our collective image. His parting words, and those by which he obviously lives, were: "Everybody likes to do business with people they like."

Circuit Court Report CIVIL DIVISIONS • As of December 9, 2013

| DIVISION | JURY TRIALS | NON-JURY TRIALS | MOTIONS | CASES PENDING |
|--------------|-------------|-----------------|---------|---------------|
| AA BLANC | 04-14 | 04-14 | 01-14 | 1236 |
| AB GILLEN | 05-14 | 05-14 | 01-14 | 1285 |
| AD G. KEYSER | 06-14 | 06-14 | 02-14 | 1404 |
| AE FINE | 04-14 | 04-14 | 01-14 | 1463 |
| AF J. KEYSER | 07-14 | 07-14 | 01-14 | 1220 |
| AG CROW | 06-14 | 05-14 | 01-14 | 1324 |
| AH BROWN | 04-14 | 04-14 | 02-14 | 1250 |
| AI SASSER | 03-14 | 02-14 | 12-13 | 1087 |
| AJ J. MARX | 04-14 | 04-14 | 02-14 | 1066 |
| AN COX | 06-14 | 06-14 | 03-14 | 1454 |
| AO BRUNSON | 03-14 | 03-14 | 12-13 | 1409 |

Real Property and Business Litigation Report



By Manuel Farach

Ballard v. Campbell, – So.3d –, 2013 WL 6081741 (Fla. 4th DCA 2013).

A motion to disqualify a judge under Rule of Judicial Administration 2.330 is timely if made within 10 days of party learning of the basis for disqualification; motion does not need to be made within 10 days of issuance of disqualification information.

First Call Ventures, LLC v. Nationwide Relocation Services, Inc., – So.3d –, 2013 WL 6081758 (Fla. 4th DCA 2013).

An in-camera inspection is not necessary if the court directs a confidentiality order be instituted since the court has already decided the documents are confidential. Additionally, a non-party whose records have been subpoenaed is entitled to reimbursement of costs for production of the records.

Kathleen G. Kozinski, P.A. v. Phillips, – So.3d –, 2013 WL 6081766 (Fla. 4th DCA 2013).

A total lack of service makes a resulting judgment void but a defective service (which gives the defendant some notice of the proceedings against them) is only voidable. A party seeking to vacate a voidable judgment under Florida Rule of Civil Procedure 1.540 (b) must do so within one year of date of judgment.

H. Allen Holmes, Inc. v. Jim Molter, Inc., – So.3d –, 2013 WL 6081768 (Fla. 4th DCA 2013).

A lease contract which is ambiguous as to whether the landlord or tenant retains trade fixtures at lease termination entitles the tenant to retain the fixtures.

Florida Dept. of Agriculture and Consumer Services v. Bogorff, – So.3d –, 2013 WL 6082242 (Fla. 4th DCA 2013).

In order to constitute an “offer” under Fla. Stat. § 73.092 for inverse condemnation claims, i.e., when the property has already been taken by the state, there must be an offer to relinquish claims for inverse condemnation damages. Failure to provide a pre-suit “offer” allows a party to claim attorneys’ fees pursuant to the multi-part test of Fla. Stat. § 73.092 (2) and not the “benefits achieved” test of Fla. Stat. § 73.091 (1).

Heart Surgery Center v. Thomas J. Bixler, II, M.D., P.A., – So.3d –, 2013 WL 6097322 (Fla. 1st DCA 2013).

When based on one of the factors in Fla. Stat. § 682.13 (1) (b) for vacating awards, the First District permits certiorari review while the Fourth District does not. The fact that the arbitrator’s son was injured by a drunk driver is not a basis for vacating an award arising out of “evident partiality” when arbitration concerns removal of a partner for alcoholism.

Saga Bay Gardens Ass’n, Inc. v. For Appointment of Blanket Receiver, – So.3d –, 2013 WL 6212028 (Fla. 3d DCA 2013).

A receiver may be awarded fees only if receiver’s actions benefitted the estate. Only the receiver, not the attorney for the receiver, is entitled to an award of fees and costs.

Kingston Corp. Group Of Florida, Inc. v. Richard Kleiber Walter Kleiber Partnership, – So.3d –, 2013 WL 6212030 (Fla. 2d DCA 2013).

Attorneys’ fees and costs in proceedings supplementary

may be awarded only against the original judgment debtor and may not be awarded against the implied parties.

Katz Deli of Aventura, Inc. v. Waterways Plaza, LLC, – So.3d –, 2013 WL 6212040 (Fla. 3d DCA 2013).

A determination as to the method of calculating lost profits is reviewed de novo while the amount of lost profits awarded is reviewed for clear error. In breach of contract action, only damages that flow naturally from the breach and in reasonable contemplation of parties at time of contract is awardable. A court may award the value of a business instead of lost profits when the business has been completely destroyed and lost profits is an inadequate measure of damages.

Detournay v. City of Coral Gables, – So.3d –, 2013 WL 6246242 (Fla. 3d DCA 2013).

The Doctrine of the Separation of Powers requires that a court abstain from compelling the executive branch to take certain zoning actions.

RC Aluminum Industries, Inc. v. Regions Bank, – So.3d –, 2013 WL 6246246 (Fla. 3d DCA 2013).

Only a “contractor” as defined in the Construction Lien Act may allege a cause of action for damages under Fla. Stat. § 713.3471 (2) (lender must communicate its decision to stop lending to contractor on project). A contractor may have an equitable action against a lender if lender’s misrepresentation, fraud, or mistake results in contractor staying on job and unjustly enriching the lender.

Kelsey v. SunTrust Mortg., Inc., – So.3d –, 2013 WL 6246461 (Fla. 3d DCA 2013).

Only a records custodian or someone with personal knowledge may authenticate business records for introduction into evidence.

Grove At Harbor Hills Homeowners v. Harbor Hills Development, L.P., – So.3d –, 2013 WL 6508392 (Fla. 5th 2013).

Words in contracts, including easements, are to be given their plain meaning. Accordingly, “control” and “maintenance” of an easement gate are not synonymous.

CBT Flint Partners, LLC v. Return Path, Inc., – F.3d –, 2013 WL 6510953 (Fed. Cir. 2013).

In a case of first impression, the Federal Circuit rules that electronic discovery costs are reimbursable (under Federal Rule of Civil Procedure 54 (d) and 28 U.S.C. § 1920) depending on the stage of the process. Generally, costs are recoverable for the first (“mirroring” or collecting of digital information) stage, may or may not be recoverable for the specific task in the stage two analysis portion (e.g., load files and decryption is covered but “de-duping” may not be), and covered in stage three of copying responsive documents.

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.



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Ademption? Just Follow The Bread Crumbs

By: David M. Garten

When property that has been specifically devised is no longer part of the testator's estate at the time of his death, the devise fails or is "adeemed." However, extrinsic evidence can prevent the ademption of a specific bequest if the bequeathed property can be traced to existing assets and if the evidence reflects that the testator did not intend by his disposal of the property to alter the testamentary scheme contained in his will.

In *Estate of Jones*, 472 So. 2d 1299 (Fla. 2d DCA 1985), testator's will bequeathed his home to his niece. The testator subsequently sold his home and received a note and deed of trust to secure payment. The deed of trust note was prepaid in full to the testator. The testator subsequently died without having changed his will. An amended inventory revealed that his estate included a money market certificate in the amount of the deed to trust in the decedent's regular account. At trial, the niece attempted to introduce testimony that the testator knew that she needed money because of her debilitating health; however, the trial court refused to entertain evidence concerning the intent of the testator because he found that there was no ambiguity in the will which would require clarification by parol evidence. The trial court held that the specific bequest to the niece failed because it was no longer in existence. The appellate court reversed and remanded. The court reasoned that the issue was not whether the will was ambiguous, but whether Mr. Jones intended that the prepayment of his promissory note would have the effect of disinheriting his niece. The fact that he lived for five more months without changing his will may indicate that she was no longer the object of his bounty. That he segregated the proceeds of the prepayment in a form that was easily traceable may suggest a contrary intent. In any event, in order to properly determine whether ademption occurred, the court should entertain all relevant evidence pertaining to the decedent's intent.

In *Budny v. Mikell (in Re Estate of Budny)*, 815 So. 2d 781 (Fla. 2nd DCA 2002), Mr. Budny left a will that he had executed jointly with his wife whom he survived. The will devised specific properties to both Vincent, Jr. and Mikell. By the time Mr. Budny died, many of the devised properties had been sold. After the will was admitted to probate, Mikell filed a petition for determination of beneficiaries and shares and sought to share equally in the estate with Vincent, Jr. The probate court found that it was Mr. Budny's intent in his will and upon his death to provide for both Vincent, Jr. and Mikell equally. The appellate court, in reversing the lower court, reasoned:

When property that has been specifically devised is no longer part of the testator's estate at the time of his death, the devise fails or is "adeemed." [citation omitted] Florida recognizes an exception to this rule: Extrinsic evidence can prevent the ademption of a specific bequest if the bequeathed property can be traced to existing assets and if the evidence reflects that the testator did not intend by his disposal of the property to alter the testamentary scheme contained in his will. [citation omitted] But that exception is inapplicable here. One of the lots devised to Mikell was sold shortly after Mr. and Mrs. Budny executed the will in 1972. Mikell testified

that Mr. Budny sold the other lot that had been meant for her two years before his death. She posited that the proceeds remained in a bank account listed in the estate inventory, but neither the inventory nor any bank account records were introduced into evidence. In any event, Mikell's assertion that the proceeds remained in the account was contradicted by her own testimony that her stepfather had sold the lot to meet living expenses. This fact also disproved the notion that when selling the lot Mr. Budny nevertheless intended to maintain the testamentary scheme set forth in his will. [citation omitted] Finally, even if the evidence had supported excepting the bequests from ademption, this would have applied only to assets associated with those specific bequests; it would not have entitled Mikell to share equally in the assets of the estate.

Ademption Statutes:

- §732.605 Change in securities; accessions; nonademption
- §732.606 Nonademption of specific devises in certain cases; sale by guardian of the property; unpaid proceeds of sale, condemnation, or insurance
- §732.609 Ademption by satisfaction

Elections for North County Section Board of Directors

Elections for the North County Section's Board of Directors will take place in March. Petitions will be available March 3 for five (5) director positions (for a two year term), plus president-elect. The Board meets once a month to plan various networking events for its 650 members.

To apply for a position, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Friday, March 28. If there is a contested election, voting will take place online in April and winners will be announced online in May.

The current Board for 2013-2014 are President, Todd Stewart; President-Elect, Greg Yaffa; and Immediate Past President Ken Johnson.

Directors serving terms expiring June 2014 are Mitch Beers, Reid Bierer, Keith Campbell, Eric Rosen and Daniel Zuniga.

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Young Lawyers Section Real Life Series – February 19; 5 -7 pm

This seminar will address the technological issues an attorney will face now and into the near future. Speakers include Greg Coleman, Esq., President-elect of The Florida Bar, Christopher Hopkins, and Mark Dobin. Mr. Coleman will address the technological initiatives of The Florida Bar for the next few years. Mr. Hopkins will provide insight into obtaining discovery from social media, including but not limited to Facebook, Twitter, Myspace, etc. Mr. Dobin will help explain the varying online rating systems and explain how to increase a young lawyer's visibility while explaining how to get the most "bang for your buck." Included within this presentation will be an explanation of AVO ratings and why they are important, how to claim your page, how to add articles to AVO, and how to increase your AVO score. Also, Mr. Dobin will explain the use of the cloud and how best to protect confidential client information. Be sure to register on the Bar's website ahead of time, as walk-ins cannot be accommodated.

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Discovery Prior to Deposition

By Ted Babbitt

McClure v Publix Super Markets, Inc., 38 Fla. L. Weekly D2302 (Fla. 4th DCA, Nov. 6, 2013) involved a petition for certiorari to review an order of the trial court compelling the plaintiff's deposition prior to the production of a store security video of a

slip and fall. The trial court, in keeping with its policy regarding the production of the video, denied plaintiff's motion to compel the video until after defendant had taken plaintiff's deposition. In a two to one decision, the Fourth District found that the trial court had not abused its discretion in allowing the defendant to withhold production of the video until after the deposition was taken, concluding that the plaintiff had not shown irreparable harm. The majority relied upon the prior holding of the Court in Target Corporation v. Vogel, 41 So. 3d 962 (Fla. 4th DCA 2010).

In a well-reasoned dissent, Judge Warner also cited Target, supra, which held that a security video is not work product and is, therefore, discoverable under the Rules of Procedure.

The majority relied on the Florida Supreme Court's opinion in Dodson v. Persell, 390 So. 2d 704 (Fla. 1980) which held that a surveillance video discovery request was subject to the discretion of the Court as to the timing of its production. Judge Warner points out that Dodson, supra, involved a surveillance film made after an accident as opposed to a video of the accident as was the case in Target.

The dissent relied upon numerous cases in a variety of jurisdictions which have considered the same question. The dissent quotes with approval Herrick v. Wilson, 59 A. 3d 604 (N.J. Super. Law Div. 2011) which reasoned that to allow a party to withhold discovery that is neither privileged nor work product is to permit a party to gain an upper hand in litigation by the timing of discovery. At 2303, the dissent states:

It appears that in Florida the vast weight of authority rejects the withholding of security video until after the plaintiff's deposition is taken, unless *specific factual circumstances* in a particular case provide for a contrary result.

The video reflects the actual occurrence of the accident. Viewing the video prior to the plaintiff's deposition may not only promote truth-seeking but foster settlement in cases of disputed liability. On the other hand, to withhold the video, as with withholding of any other witness statement or photographs, would only result in the type of surprise and trickery that the rules of civil procedure were designed to eliminate. *See Surf Drugs*, 236 So. 2d at 111.

The concern this decision raises is that a variety of nonprivileged discovery could be withheld under the theory that

a party has a right to test the memory of the opposing party before permitting production of relevant and nonprivileged evidence. The logical extension of this reasoning would permit the deposition of a doctor in a medical malpractice case without allowing the doctor to have the benefit of plaintiff's theory of the case in pleadings or discovery. All manner of evidence normally produced could be withheld before a party's deposition was taken. There is little to distinguish a surveillance video from photographs, witness' statements or medical documents. This case could easily be cited to permit a party to control the timing of discovery of all manner of evidence until a party's deposition has been taken. The surveillance video is actual evidence of the event which is the subject of the lawsuit. What could be gained from precluding the plaintiff from reviewing it before giving testimony other than to paint a faulty recollection of the events as an intentional deception? If an accident scene had been captured on the video of a police cruiser, would it make sense to require the parties to testify as to their recollection of how the accident happened when the real time video could contradict them?

Nevertheless, until a contrary opinion of the Supreme Court changes the law, this case permits a trial court to allow a party to delay discovery of now privileged evidence pending completion of a party's deposition.

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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New Rule 1.451: Taking Testimony

By Matt Triggs and Jonathan Galler

The next time you hear the words “counselor, please call your next witness,” the judge might be inviting you to use the phone.

Effective January 1, 2014, the Florida Rules of Civil Procedure were amended to include a new addition – Rule 1.451 – which allows the taking of testimony at a hearing or trial by use of “communication equipment” if all parties consent or good cause can be shown. In those situations where not all parties consent, a showing of good cause must be made in writing and reasonable notice must be given to all other parties of the intention to use such equipment.

Interestingly, the good cause test set forth in the rule (as explained in the committee note) presents what would appear to be an easier hurdle than that set by the rule’s federal counterpart, Rule 43 of the Federal Rules of Civil Procedure, which allows the use of such testimony for good cause “in compelling circumstances and with appropriate safeguards.” The federal rule committee note makes clear that “the importance of presenting live testimony in court cannot be forgotten.” And it stresses that “[t]he very ceremony of trial and the presence of the fact finder may exert a powerful force for truth telling.”

The Florida rule, by contrast, does not require a showing of “compelling circumstances,” but it too appears to recognize the potential for prejudice that can result from the admission of “out of court” testimony. Indeed, although the bulk of the newly enacted rule is devoted to the procedural requirements that must be followed when taking testimony through use of communication equipment, even the rule itself notes the general rule that a witness must normally be physically present when testifying at a hearing or trial. In other words, the rule makes clear that use of communication equipment is the exception to the norm – “in court” testimony of witnesses. Just as important, the good cause test articulated in the rule recognizes the potential for prejudice that could result from testimony via communication equipment, as opposed to traditional “in court” testimony.

The rule is otherwise silent as to what factors the court should consider when deciding whether good cause has been shown. The committee note, however, provides significant guidance on this

issue. Specifically, the committee note advises that the trial court may consider, in addition to “any other factors”:

- The type and stage of the proceeding
- The presence or absence of constitutionally protected rights
- The relative cost or inconvenience of requiring the presence of the witness in court
- The ability of counsel to use necessary exhibits or demonstrative aids
- The limitations (if any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness’s demeanor
- The potential for unfair surprise
- The witness’s affiliation with one or more parties

Communication equipment, as defined by the rule, includes a conference telephone or other electronic device that allows those appearing or participating to hear and speak to each other simultaneously. Video communication is permissible under the rule and, if used, the equipment must make the witness visible to all participants during the



testimony. Under all circumstances, the equipment must allow for the court to stop the communication to accommodate objections or to otherwise prevent prejudice.

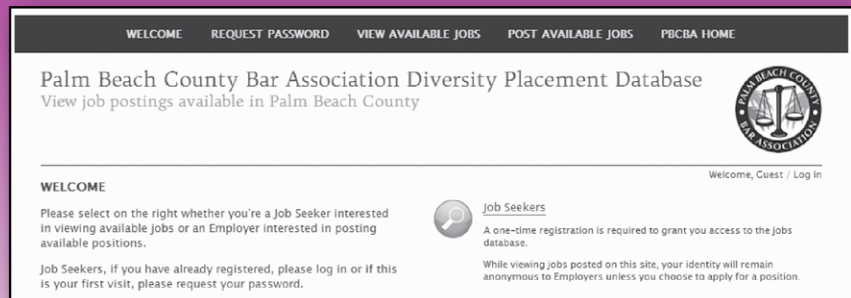
Under the rule, a notary or other person authorized to administer oaths must be present with the witness and administer the oath consistent with the laws of that jurisdiction.

We can hear the judge speaking into your iPhone now... “Siri, please swear in the witness.”

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.

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Nicole will focus her practice on personal injury, auto accidents, and premises liability.

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HEARSAY

Nancy La Vista, a Board Certified Civil Trial and Medical Malpractice Attorney and a Partner at the law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has been named the "2013 Trial Lawyer of the Year" by the Palm Beach County Chapter of the American Board of Trial Advocates (ABOTA). She was also the recipient of the award in 2011.



Jones, Foster, Johnston & Stubbs, P.A. announces that **Grasford W. Smith** has been chosen as a "Top Black Professional in Business and Industry for 2013" by *Legacy Palm Beach Magazine*.



Gunster is pleased to announce that **Joseph P. Chase** has been appointed to the Board of Directors of the Chamber of Commerce of the Palm Beaches for the 2013-16 term.

Board Certified Business Litigation Attorney **David Steinfeld**, has been appointed the Director of Learning for the e-Discovery Institute.



PALM BEACH COUNTY BAR ASSOCIATION

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CALENDAR

February 2014

Monday, February 3,
11:30am - 1:30pm
**Joint Membership Luncheon with
Forum Club with Guest Speaker
U.S. Supreme Court Justice
Samuel Alito**
Palm Beach County
Convention Center

Tuesday, February 4, Noon - 1:30pm
NCS Board Meeting
Duffy's North Palm Beach

Wednesday, February 5,
11:45am - 1pm
Judicial Luncheon
Main Courthouse,
north end of cafeteria

Thursday, February 6, Noon - 1pm
**YLS Luncheon
with the 4th DCA Judges**

Friday, February 7, 11:30am - 1pm
NCS CLE Luncheon
Marriott, Palm Beach Gardens

Saturday, February 8, 8:00am
YLS Habitat for Humanity

Monday, February 10, 8am - 5pm
ADR Seminar
Bar Association Office

Tuesday, February 11, Noon - 1pm
YLS Board Meeting
Bar Association Office

Wednesday, February 12, Noon - 1pm
Professionalism Committee Meeting
Bar Association Office Classroom

Wednesday, February 12,
5:30pm - 7:30pm
PBC FAWL Judicial Reception
Norton Museum of Art

Thursday, February 13, Noon - 1pm
South County FAWL Luncheon
Abe & Louie's, Boca Raton

Thursday, February 13, Noon - 1pm
**Transaction Law
Committee Meeting**
Bar Association Office

Thursday, February 13, 5:30pm - 7pm
**PBCBA/YLS Trivia Night
Brass Tap - City Place**

Monday, February 17
Court Holiday - President's Day
Bar Office Closed

Tuesday, February 18, Noon - 1pm
CDI Committee Meeting
Bar Association Office

Tuesday, February 18,
5:30pm - 6:30pm
American Inns of Court Meeting
Main Courthouse,
Judicial Conference Room

Wednesday, February 19,
11:30am - 1pm
**Criminal Law Practice
Committee Luncheon**
Main Courthouse,
north end of cafeteria

Wednesday, February 19, 5pm - 7pm
YLS Real Life Series
Bar Association Office

Thursday, February 20, Noon - 1pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room

Thursday, February 20,
6:30pm - 8:30pm
**South County FAWL
Judicial Reception**
Sundy House, Delray

Friday, February 21,
11:30am - 12:30pm
Cunningham Bar Luncheon

Friday, February 21, Noon - 1:00pm
LRE Meeting
Bar Association Office

Friday, February 21, 5:30pm - 7:30pm
Federal Bar Reception
TBA

Monday, February 24,
11:45am - 1:15pm
Employment Law Lunch Webinar

Tuesday, February 25,
11:30am - 2pm
Bankruptcy Law CLE Lunch
Bar Association Office

Wednesday, February 26,
10am - 11:30am
New Atty Breakfast
Bar Association Office

Wednesday, February 26,
5pm - 6:30pm
**PBCBA Board of
Directors Meeting**
Bar Association Office

Thursday, February 27, Noon - 1pm
**Bench Bar Conference
Committee Meeting**
Bar Association Office

Thursday, February 27, Noon - 1pm
Circuit Civil Committee Meeting
Judicial Conference Room

Thursday, February 27,
5:30pm - 7pm
**NCS PBCJA Happy Hour
Yard House**

Friday, February 28,
11:30am - 5:30pm
Workers' Comp. CLE Seminar
Bar Association Office



"NOT JUST COMP"

Friday, February 28, 2014

11:15am - 6:00pm

Bar Association Offices 1507 Belvedere Road, WPB, FL 33406

Program Schedule

- 11:15a.m. - 11:30a.m. **Late Registration / Check In / Welcome & Opening Remark** - Kurt A. Wyland, Esq., Wyland & Tadros, LLP, Chair of the Workers' Compensation Committee
- 11:30a.m. - 12:15p.m. **PRP Injections** - Lawrence Gorfine, M.D., Palm Beach Spine & Diagnostic Institute
- 12:15p.m. - 12:45p.m. **LUNCH SPONSORED BY: WENDER, HEDLER & HESSEN, P.A.**
- 12:45p.m. - 1:30p.m. **WC Immunity, Spoliation and Election of Remedies** - David C. Prather, Esq., Board Certified Civil Trial Attorney, Clark, Fountain, LaVista, Prather, Keen & Littky-Rubin, and David S. Tadros, Esq., Wyland & Tadros, LLP
- 1:30p.m. - 2:15p.m. **Social Security and Work Comp Interplay** - Jeffrey Friedman, Esq., Bilotta, Friedman and Davis, and Joy Greyer, Esq., Rosenthal, Levy, Simon and Ryles
- 2:15p.m. - 3:00p.m. **How to Interpret MRIs** - Bruce A. Rodan, M.D.
- 3:00p.m. - 3:15p.m. **BREAK**
- 3:15p.m. - 4:00p.m. **Employment Issues in Worker's Compensation Cases Dealing With the FMLA, ADA and FCRA** - Louis P. Pfeffer, Esq., Louis P. Pfeffer, P.A., and Christopher C. Copeland, Esq.
- 4:00p.m. - 4:45p.m. **Q & A Session and Comments from the Bench with Palm Beach County, Martin County, St. Lucie County and Indian River County Judges of Compensation Claims** - Judge Timothy Basquill, Judge Mary D'Ambrosio, Judge Shelley Punancy and Judge Robert McAliley
- 4:45p.m. - 6:00p.m. **Cocktail Reception and Presentation of the Kennie Edwards Award**

Sponsored By: The Law Office of Jason J. Goldstone, PLLC; Law Offices of Franks & Koenig; Miller Kagan Rodriguez & Silver, P.A.; Hurley Rogner Miller Cox Waranch & Westcott, P.A.; Silver, Bass & Brams P.A.; Wender, Hedler & Hessen, P.A.; and Wyland & Tadros, LLP

This course is expected to receive **5.5 CLE / Worker's Compensation Certification credits are pending from the Florida Bar.**

The cost of the seminar, lunch included, is **\$135.00 PBCBA Attorneys/Paralegals; \$175.00 Non-PBCBA Attorneys/Paralegals** if registered by **2/21/14**; add **\$15** late fee after that date.

All refund requests must be made in writing 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.

PAYMENT OPTIONS:



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



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



If you can't leave your office, you can attend this via live webinar by registering here <http://www.palmbeachbarcle.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.

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) (Worker's Comp. 2/28/14)) Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK** ONLY, WITH THIS FORM.

TRIVIA NIGHT!

Thursday, February 13, 2014

5:30 p.m. to 8:00 p.m.
Brass Tap - City Place
550 S. Rosemary Avenue
West Palm Beach



“Legal Aid Dream Team” - 2013 Trivia Champions

THINK YOU CAN BEAT THEM?

TEAMS INCLUDE 4 PEOPLE:

Committee Chairs - Enter A Team!

Belong to a Firm? - Enter a Firm Team!

Solo? - Participate as an individual and we'll assign you a team!

Cost: \$25.00 per person & Judges are complimentary

Register online @ www.palmbeachbar.org

Sponsored by:



The Power of Commitment™



The Palm Beach County Bar Association's Employment Law Committee Presents:

Whistleblower & Qui Tam Actions

May 2, 2014 - 8:15 a.m. - 1:45 p.m.

1507 Belvedere Road, West Palm Beach, FL 33406

Program Schedule

| | |
|---------------------|--|
| 8:15 am - 8:30 am | Late Registration |
| 8:30 am - 8:40 am | Welcome - Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and Employment Law Attorney, Employment and Labor Law CLE Committee Chair |
| 8:40 am - 9:15 am | Florida's Whistleblower Act, Plaintiff's Perspective - Lindsey B. Wagner, Esq., and Cathleen Scott, Esq., Cathleen Scott & Associates, P.A. |
| 9:15 am - 9:50 am | Florida Whistleblower Act, Defendant's Perspective - Eric A. Gordon, Esq., Akerman LLP |
| 9:50 am - 10:00 am | BREAK |
| 10:00 am - 10:35 am | Protections for the Qui Tam Relator Under the False Claims Act - Dina Kever, Esq., Senior Counsel, McCabe Rabin, P.A. |
| 10:35 am - 11:10 am | Working With the Government During Its Qui Tam Investigation, Plaintiff's Perspective - Bruce E. Reinhart, Esq., McDonald Hopkins, LLC |
| 11:10 am - 11:20 am | BREAK |
| 11:20 am - 11:55 am | Defending the Target of a State or Federal Qui Tam Investigation: Corporate Perspective - William N. Shepherd, Esq., Holland & Knight LLP |
| 11:55 am - 12:30 pm | Different Types of Fraud that Lead to Successful Qui Tam Actions (Federal and Florida) - Ryon M. McCabe, Esq., McCabe Rabin, P.A., Board Certified in Business Litigation |
| 12:30 pm - 1:45 pm | Lunch and Panel Discussion: How are Qui Tam Cases Viewed by the Court and the Government? Panelists: U.S. District Judge Kenneth Marra; Assistant U.S. Attorney, Health Care Fraud Coordinator, Mark Lavine, Esq., and Russell Kent, Esq., Special Counsel for Litigation, Office of the Florida Attorney General Moderator: Adam T. Rabin, Esq., McCabe Rabin, P.A., Board Certified in Business Litigation |

SPONSORED BY:



McCABE RABIN, P.A.
ATTORNEYS AT LAW



This course is expected to receive **5.0 CLER** credits from The Florida Bar. Enjoy an "Early Bird" discounted registration cost of **\$125** for PBCBA members/paralegals; **\$165** for non-PBCBA members/paralegals. After **4/24/14**, add \$25 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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

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

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.palmbeachbarcle.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) (5/2/14 Employ. Law) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**



The Palm Beach County Bar Association's Employment Law Committee Presents:

Employment Arbitration

WEBINAR ONLY

March 14, 2014 - 11:55 a.m. - 1:15 p.m.

Program Schedule

11:55 am - 12:00 pm

Welcome - *Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and Employment Law Attorney, Employment and Labor Law CLE Committee Chair*

12:00 pm - 1:15pm

Presenters: *Matthew N. Thibaut, Esq., Ciklin Lubitz Martens & O'Connell*

Matthew N. Thibaut, Esq. hosts a Webinar that examines employment arbitration, the forums including FINRA and AAA. Topics will include discovery limitations, nuances, and defamation.

Please e-mail your questions to: cscott@floridalaborlawyer.com

This course has been granted **1.5 CLER / 1.0 Labor & Employ Law Certification credits** from The Florida Bar.

HOW TO REGISTER:

Attend this live **WEBINAR**: register here <http://www.palmbeachbarcle.org/>

Enjoy an "Early Bird" discounted registration cost of **\$35 each** for PBCBA members/paralegals; **\$75 each** for non-PBCBA members/paralegals. After **3/7/14**, add \$15 late fee.

- **November 5, 2013** - "The Patient Protection and Affordable Care Act, What You and Your Clients Need to Know about "Obama Care" Presented by: *Joseph G. Santoro, Esq., Tanya M. Reed, Esq., and Steven D. Muscatello, Esq., Gunster, West Palm Beach, FL*
- **February 24, 2014** - "Representing Public Employers" Presented by: *Glenn J. Torcivia, Esq., Torcivia and Associates, P.A., West Palm Beach, FL*
- **March 14, 2014** - "Employment Arbitration" Presented by: *Matthew N. Thibaut, Esq., Ciklin Lubitz Martens & O'Connell, West Palm Beach, FL*
- **May 21, 2014** - "Restrictive Covenants. I'm Leaving My Job, Can I Compete? What Information Can I Use? Who's Coming With Me?" Presented by: *Daniel R. Levine, Esq., Bennardo Levine, LLP; and Joseph Curley, Esq., Gunster, West Palm Beach, FL*

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

_____ I will not be able to attend the webinar but would like to order the audio CD (allow 4 weeks for delivery) (3/14/14 Employ. Law.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

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



The Palm Beach County Bar Association's Employment Law Committee Presents:

Representing Public Employers

WEBINAR ONLY

February 24, 2014 - 11:55 a.m. - 1:15 p.m.

Program Schedule

- 11:55 am - 12:00 pm **Welcome** - *Cathleen Scott, Esq., Cathleen Scott & Associates, P.A., Board Certified Labor and Employment Law Attorney, Employment and Labor Law CLE Committee Chair*
- 12:00 pm - 1:15pm **Presenters:** *Glen J. Torcivia, Esq., and Lara D. Donlon, Esq., Law Office of Glen J. Torcivia and Associates, P.A.*

This webinar provides practical tips and information on common issues that arise in representing public employers including: presenting to governing board, public record requests, ethical issues, and related matters.

Please e-mail your questions to: cscott@floridalaborlawyer.com

This course has been granted **1.5 CLER / 1.0 Labor & Employment Law Certification credits** from The Florida Bar.

HOW TO REGISTER:

Attend this live **WEBINAR**: register here <http://www.palmbeachbarcle.org/>

Enjoy an "Early Bird" discounted registration cost of **\$35 each** for PBCBA members/paralegals; **\$75 each** for non-PBCBA members/paralegals. After **2/17/14**, add \$15 late fee.

- **November 5, 2013** - "The Patient Protection and Affordable Care Act, What You and Your Clients Need to Know about "Obama Care" Presented by: *Joseph G. Santoro, Esq., Tanya M. Reed, Esq., and Steven D. Muscatello, Esq., Gunster, West Palm Beach, FL*
- **February 24, 2014** - "Representing Public Employers" Presented by: *Glen J. Torcivia, Esq., and Lara D. Donlon, Esq., Torcivia and Associates, P.A., West Palm Beach, FL*
- **March 14, 2014** - "Employment Arbitration" Presented by: *Matthew N. Thibaut, Esq., Ciklin Lubitz Martens & O'Connell, West Palm Beach, FL*
- **May 21, 2014** - "Restrictive Covenants. I'm Leaving My Job, Can I Compete? What Information Can I Use? Who's Coming With Me?" Presented by: *Daniel R. Levine, Esq., Bennardo Levine, LLP; and Joseph Curley, Esq., Gunster, West Palm Beach, FL*

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

_____ I will not be able to attend the webinar but would like to order the audio CD (allow 4 weeks for delivery) (2/24/14 Employ. Law.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

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Address: _____ Email Address: _____

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



The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audio CD's recorded at previously held live seminars of the Association. We also have copies of audio CD's of live seminars from the Orange Co. Bar Assoc. (OCBA), Clearwater Bar Assoc.(CBA), Hillsborough Co. Bar Assoc.(HCBA), and the Dade Co. Bar Assoc.(DCBA). Members and non-members alike can benefit from this simple way of acquiring CLE and Ethics hours. To order, place an "x" next to the tapes you would like to order, complete this form and return to the Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. **To order with credit card, please place your order online at <http://www.palmbeachbar.org/continuing.php> PLEASE WATCH EXPIRATION DATES**, we attempt to remove expired CD's but due to the distribution of this list occasionally courses will appear even though they have expired.

CLE content is now available to purchase to download either to your computer or your iPod

| ✓ | Sponsor | Course Title | Credit Gen'l | Ethics Hours | PBCBA Member | Non Member | Expires |
|---|-------------|---|--------------|--------------|--------------|------------|----------|
| | PBCBA | Florida Bar Trust Accounting Rules | 2.0 | 2.0 | \$75 | \$115 | 10/03/14 |
| | PBCBA | PI – Before the Case is Filed+++3.0 Civil Trial Cert. | 4.0 | .50 | \$110 | \$150 | 10/12/14 |
| | PBCBA | Discovery That Wins Cases (Family Law)+++6.0 Marital & Family Law Cert. | 8.0 | 1.0 | \$215 | \$255 | 10/19/14 |
| | PBCBA (DVD) | Discovery That Wins Cases (Family Law)+++6.0 Marital & Family Law Cert. ----DVD---- | 8.0 | 1.0 | \$215 | \$255 | 10/19/14 |
| | PBCBA | Ethical Issues in Negotiation and Mediation+++1.0 Civil Trial Cert. | 1.0 | 1.0 | \$40 | \$80 | 10/26/14 |
| | PBCBA | Lawyers from all Disciplines-Be Aware! (Securities) +++3.5 Bus. Lit; 3.5 Criminal Appellate; 3.5 Criminal Trial Cert. credits | 4.5 | 1.0 | \$115 | \$155 | 11/08/14 |
| | HCBA | Advanced Appellate Jurisdiction & Ethics+++3.5 Appellate Cert. | 3.5 | 1.0 | \$100 | \$140 | 11/02/14 |
| | PBCBA | Legal Legends vs. Younger Guns+++6.5 Bus Lit Cert. | 8.5 | 1.0 | \$175 | \$225 | 11/10/14 |
| | PBCBA | ---DVD--- Legal Legends vs. Younger Guns+++6.5 Bus Lit Cert. | 8.5 | 1.0 | \$175 | \$225 | 11/10/14 |
| | PBCBA | The 30 th Ann'l Est/Probate Seminar – Part 2+++3.5 Elder Law; 3.5 Wills, Trusts Cert. credits | 4.5 | .05 | \$110 | \$150 | 11/15/14 |
| | PBCBA | The View from the Local Bench (Bankruptcy) | 2.5 | .50 | \$50 | \$90 | 11/24/14 |
| | PBCBA | The 24 th Annual Community Assn. Law Seminar+++4.5 R/E Cert. | 4.5 | 4.0 | \$165 | \$205 | 12/07/14 |
| | PBCBA | Important Factors for Every R/E Attorney+++4.0 R/E Cert. | 4.0 | .50 | \$110 | \$150 | 2/23/15 |
| | PBCBA | Social Media Tips (Solo) | 1.0 | 1.0 | \$35 | \$75 | 3/20/15 |
| | PBCBA | Panel Discussion on E-Discovery for Comm'l Litigators +++1.0 Business Lit. Cert. | 1.0 | | \$25 | \$65 | 3/24/15 |
| | PBCBA | Technology in and out of Law Office | 1.0 | | \$25 | \$65 | 4/11/15 |
| | PBCBA | Patient Protection and Affordable Care Act +++1.0 Labor & Employment Law Cert. | 1.5 | | \$35 | \$75 | 5/05/15 |
| | PBCBA | Law Office Management (SOLO event) | 1.0 | | \$25 | \$65 | 5/07/15 |
| | PBCBA | Spying Spouses: Divorce in a World of Cyber Warfare +++4.0 Marital and Family Law Cert. | 5.0 | 1.0 | \$135 | \$175 | 5/08/15 |
| | PBCBA | The 31 st Ann'l Estate & Probate Seminar – Part 1 +++ 4.0 Elder Law; 4.0 Wills, Trusts Estates Cert. | 5.5 | | \$135 | \$175 | 5/15/15 |

+++Indicates Certification credits available; **CME credits.

Please contact the Palm Beach County Bar Association for more detailed information.

Please call Kathy Clark at (561) 687-2800 with any questions or for additional information.

PLEASE ALLOW SEVEN (7) BUSINESS DAYS PREPARATION TIME WHEN ORDERING TAPES. THERE WILL BE A \$25 FEE FOR RUSH ORDERS. NEW MEMBERS MAY JOIN THE PBCBA FOR \$100. APPLICATIONS FOR MEMBERSHIP, OR RENEWAL, CAN BE OBTAINED ON OUR WEBSITE AT www.palmbeachbar.org.

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Telephone: _____ Email Address: _____

☐ Add \$25 for rush fee (order processed w/in 3 business days) ☐ Please call when order is ready to be picked up

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Shipping/Handling: + \$10.00

Rush Fee: + \$25.00

Total Due: \$ _____

NOTE: THE PURCHASE OF EACH CD IS VALID FOR INDIVIDUAL USE ONLY. DEFECTIVE RECORDINGS WILL BE REPLACED ONLY IF RETURNED WITHIN 30 CALENDAR DAYS FROM INVOICE DATE.

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



“Hot Topics in Consumer Bankruptcy Law”

Tuesday, February 25, 2014 - 11:45a.m. - 2:00p.m.

Bar Offices - 1507 Belvedere Rd., WPB

Program Schedule



- 11:45am - 12:00pm **Check In / Late Registration**
- 12:00pm - 12:25pm **Buffet Lunch**
- 12:25pm - 12:30pm **Welcome - Opening Remarks** - *Brian K. McMahon, Esq.,
Brian K. McMahon, P.A., Bankruptcy CLE Committee Chair*
- 12:30pm - 2:00pm **Hot Topics in Consumer Bankruptcy Law** -
*Robert C. Furr, Esq., Furr and Cohen, P.A., and
Robin R. Weiner, Esq.*

SPONSORED BY:

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

The cost of the seminar, **including lunch**, is **\$50** for PBCBA members/paralegals, **\$90** for non-PBCBA members/paralegals. **After 2/18/14, add \$10.00 late fee.**

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

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

PAYMENT OPTIONS:



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



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



If you can't leave your office, you can attend this via live webinar by registering here <http://www.palmbeachbarcle.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.

Name: _____

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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) (Bankruptcy Seminar 2/25/14) Cost is the same as listed above, **in addition to \$10 for shipping and handling.**

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

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 Rd., WPB 33406

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, P.L., 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
- ***LUNCH SPONSORED BY: MATRIX MEDIATION, LLC*****
- 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*

This course has been granted **9.0 CLER** including **1.0 Ethics credits/7.0 Civil Trial; 7.0 Labor and Employment; 7.0 Marital & Family Law** Certification credits by 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.

"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.

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) (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.