



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^{IN}

www.palmbeachbar.org

January 2013

The Board of
Directors and
Bar Staff
Wish you and your
families a
Happy New Year!

Mark your calendar for upcoming Membership Events

February 1: Joint Luncheon with Federal Bar and Bankruptcy Bar Associations. Guest speaker is 11th Circuit Chief Judge Joel Dubina

March 1: Bench Bar Conference

April 5: Joint Membership Luncheon with PBC Justice Assn. Guest Speaker: Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers and Judges

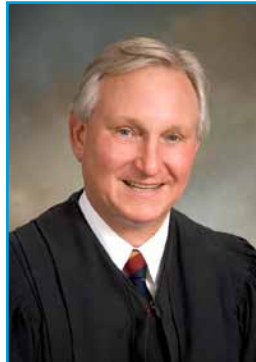
April 24: Celebrate Administrative Professional Day with a Firm Trivia Contest

April 26: Inaugural Golf/CLE Program

April 30: Annual Judicial Reception

May 3: Law Day Luncheon with guest speaker Michael Glazier, Nationally Prominent Attorney Representing Universities Under NCAA Investigation

June 1: Annual Installation Banquet



U.S. Court of Appeals 11th Circuit Chief Judge to Speak February 1

Judge Joel F. Dubina will be the guest speaker at a joint luncheon of the PBCBA, the Federal Bar Association and the Bankruptcy Bar for the Southern District of Florida. The luncheon will be held on February 1 from 11:45 – 1:00 p.m. at the Marriott West Palm Beach. Judge Dubina was nominated to the 11th Circuit by President George Bush in October 1990 and he was appointed as chief judge in June 2009. Prior to joining the 11th Circuit, Judge Dubina was in private practice from 1974-1983, served as a U.S. Magistrate Judge from 1983-1986 and was a U.S. District Judge for the Middle District of Alabama from 1986-1990. He received his B.S. from the University of Alabama and his J.D. from Cumberland School of Law. Judge Dubina is married, has three children and six grandchildren. Pre-registration for this luncheon is required and can be done on the Bar's website at palmbeachbar.org

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 14 and are due back in the office by 5 p.m. on January 14. Petitions for director-at-large seats will be available on December 21 and are due back in the Bar office by 5 p.m. on January 21. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it at pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

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THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

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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



Bench Bar Conference scheduled for March 1 at Convention Center

This year's Bench Bar Conference has been scheduled for Friday, March 1 at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms will be available online. Last year, due to space limitations, many attorneys were turned away. Be sure to register early and look for new sessions for attorneys this year.

Sponsorship opportunities are available to assist in the underwriting of this year's conference in the following amounts:

- \$575 for law firms of 11 or more attorneys;
- \$375 for law firms with 3-10 attorneys; and
- \$225 for law firms with 1-2 attorneys.

Checks should be made payable to the PBCBA and mailed to:
Patience Burns, 1507 Belvedere Road, WPB, FL 33406.



Register for Bar Events Online at...
www.palmbeachbar.org



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- Fla. Certified Appellate Mediator (2012—Present)

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New Year's Resolutions for the New or Young Lawyer to Act Professionally and Advance One's Reputation

By Adam Rabin

The New Year is the time when many of us resolve to improve ourselves, correct bad habits, and commit to become more successful. As our legal community continues to focus on improving professionalism and civility, we recognize that there are certain lawyer traits and trends of practice that help promote more professional behavior and advancing one's reputation. Here are ten proposed resolutions for a new or young lawyer to consider in the New Year:

10. Find a niche area in which to practice

Lawyers in niche practice areas tend to behave more professionally towards each other, the court, or the arbitrator. Examples of such niche practice areas are bankruptcy, probate, securities arbitration, and products liability. Often the opposite trend occurs in more general areas of practice such as personal injury or commercial litigation. Why is that? Lawyers who know they will see each other in the next case behave better. If a lawyer burns a bridge with someone today, the lawyer will not be trusted the next time. Practicing law in a niche area tends to promote more professional and civil conduct.

9. Be utterly reliable

Many lawyers think of professionalism only as to how we interact with opposing counsel and the court. But there is also a component of professionalism that involves how we conduct ourselves in our own offices. A lawyer's reputation quickly gets built within one's office. The mold often has been laid already at the 6 month mark. The lawyer must be utterly reliable with time management and substantive work. The lawyer should finish projects on time and make sure to cite cases accurately and not overstate them.

8. Serve the bar and the community

One of the best ways to be viewed as a "professional lawyer" is to serve the bar and the general community. The most effective thing about this type of service is that you get to know other lawyers and judges through your service. You become their allies in this context. So when you see them in a case, you behave differently. You still do your job as an advocate, but you're more courteous. And so is your opponent.

7. Only fight battles that you're going to win

A few years ago, I was waiting for my turn at motion calendar and observed a defense lawyer in a personal injury case arguing a motion in limine. The lawyer was asking the court for an order to prevent a plaintiff from using a cane during trial because the defense had a surveillance tape in which the plaintiff was not using a cane. In response, the judge tilted his reading glasses and asked with disbelief, "What are you asking me to do?" Think about that motion from judge's perspective. Does the judge have authority to prevent a plaintiff from using a cane? What if the plaintiff was injured and the

non-use of a cane caused him to fall down during trial? No judge would enter such an order and the lawyer looks like he's overreaching and not credible. Pick your battles wisely. Only go to court when: (1) it's an important issue, and (2) you're going to win.

6. Treat others like you want to be treated

If you are combative or not trustworthy, word gets around quickly. You know how lawyers talk about judges? Guess what judges do? Treat your opponents well. Treat your colleagues at the office well. Treat judicial staff well. Treat the guy behind the counter in the courthouse cafeteria well. They all talk (often to each other) and your reputation matters in all contexts, not just in the courtroom.

5. Try to find the right job with the right mentor

Be true to yourself and don't go to work for a lawyer that you do not respect or does not have a good reputation. Ask around about a potential employer's reputation before you take the job. Not only is this important because of the association it will bring upon you, but also because you will learn positive practice habits from a good mentor.

4. Prepare!

Judges want you to be prepared when you come to court. Know the issue cold that you're asking the judge to rule upon. Know your cited cases – the holdings and the facts. Know the specific relief that you're asking the judge to enter. Come in with a proposed order. If you're appearing at motion calendar, know that there are probably 5 to 10 other cases to be heard as well. When you're prepared, everybody – including the court and your audience – appreciates it.

3. The value of a cup of coffee

What does a cup of coffee cost at Starbucks? Two dollars for a tall? Five dollars for a venti, soy mocha? In litigation, the value of a cup of coffee with your opposing counsel can be worth tens of thousands of dollars to your client.

During your careers, you are bound to have cases where you don't get along with your opponent. I have and it's neither productive nor enjoyable. After several cases like that, I said to myself at the beginning of each new case, (1) I am going to offer to buy opposing counsel a cup of coffee after the first hearing; (2) during our coffee, I'm not going to talk about the case; and (3) I'm going to ask opposing counsel about his practice and what he does in his spare time. And while I cannot claim to have done this in every case, I have done it enough times to know that those cases have gone much smoother with opposing counsel.

2. Pick a paragon of professionalism

The law business is a business and we have difficult judgment calls to make often in our cases. For example, your

Continued on page 4

15th JUDICIAL CIRCUIT 2013 COURT HOLIDAY SCHEDULE

The following holidays will be observed by the
Fifteenth Judicial Circuit in 2013:

New Year's DayTuesday, January 1, 2013
 Martin Luther King Jr. BirthdayMonday, January 21
 Good FridayFriday, March 29
 Memorial Day.....Monday, May 27
 Independence DayThursday, July 4
 Labor Day.....Monday, September 2
 Rosh Hashanah.....Thursday, September 5
 Veteran's DayMonday, November 11
 Thanksgiving DayThursday, November 28
 Friday after ThanksgivingFriday, November 29
 Discretionary HolidayTuesday, December 24
 Christmas Day.....Wednesday, December 25

PLEASE NOTE:

Monday, February 18, 2013, and Monday, October 14, 2013, are County holidays and County buildings will be closed. **Therefore, court hearings cannot be scheduled on those days.** However, Monday, February 18, 2013, will be a regular work day for State Court employees. On Monday, October 14, 2013, the Court will hold an in-service training for all 15th Judicial Circuit employees.

January 1, 2014, falls on a Wednesday and will be the first holiday in 2014. This corresponds to the County's holiday schedule.

Board Meeting Attendance

	Retreat	Aug	Sep (no mtg)	Oct	Nov
Barnes	x	x		x	x
Bowden		x		x	x
Howe	x	x		x	x
Huber	x	x		x	x
Johnson	x	x		x	x
Kypreos	x	x		phone	x
Mason	x	x		x	x
McElroy	x	x		x	x
Pressly	x	x		x	x
Rabin	x	x		x	x
Reagan	x	x		x	x
Weiss	x	x		x	x
Whittles	x	x		x	x



CLE CLASSES Now BEING OFFERED ONLINE

We are very pleased to bring you another way to obtain your CLE credit. In addition to the CD's that we currently sell, these same programs are now being offered for purchase online to either download to your MP3 player or to listen to right on your computer. That means when your CLER reporting period is approaching, you can go right online and download seminars any time of the day or night. To view a full listing of the seminars available, be sure to log on to our website at www.palmbeachbar.org/continuing.php

President's Message

Continued from page 3

client wants you to be "aggressive" in objecting to a document request that will reveal the client's business profits, but you think you're going to lose on the objection. Do you follow your client's instructions or tell your client that you should not go to court because you think you're going to lose?

Ethical and professional dilemmas occur frequently in our practices and you often have to make a judgment call on the course of action. One idea on how to resolve these dilemmas is to pick a role model whom you know and respect, i.e., a paragon of professionalism. Then try to figure out how that role model would handle the same situation and attempt to emulate how that lawyer's expected course of conduct. When doing this, you will make the right call more often than not.

1. Practice within your own personality

You know yourself best. During your career, you will work with others whom you hope share your values, but many will have different personalities. To be happy, professional, and successful in our profession, you should try to find a practice area, firm and work environment that fits your personality.

If you find the right firm, practice area and work environment that plays to your strengths and personality, you likely will be happier, more successful, and, in turn, act more professionally.

Adam Rabin is a partner with McCabe Rabin, P.A. He practices in the areas of business, securities and whistleblower litigation.



Construction Proceedings: When Is Extrinsic Evidence Admissible?

By: David M. Garten

The polestar of a will interpretation is the decedent's intent, which is ascertained from the four corners of the document through consideration of all the provisions of the will taken together. *See, Glenn v. Roberts*, 95 So. 3d 271 (Fla. 3rd DCA 2012) and §732.6005(1), F.S. It is the intention which the testator expresses in the will that governs, not that which he might have had in mind when it was executed. *See, Adkins v. Woodfin*, 525 So. 2d 447 (Fla. 4th DCA 1988). Language used in a will is to be construed according to its primary and ordinary meaning and technical or legal words employed in a will are presumed to have been used in their settled legal meaning. *See, Rice v. Greenberg*, 406 So. 2d 469 (Fla. 3rd DCA 1981).

When the terms of a will are clear and unambiguous, there is no reason to engage in construction. The determination as to whether a will is ambiguous is a question of law and extrinsic evidence should be considered only if the language in the will is ambiguous. *See, Adkins v. Woodfin, supra and Miami Children's Hospital Foundation, Inc. v. Estate of Hillman*, 2012 Fla. App. LEXIS 17440 (Fla. 4th DCA 10/10/12). This same rule applies to trusts. For example, in *Miami Children's Hospital Foundation, Inc.*, the issue was whether Judge Speiser erred in concluding that there was ambiguity in a trust. The trust provision at issue provided that twenty five percent (25%) of the residuary trust assets were to go to "MIAMI CHILDREN'S HOSPITAL FOUNDATION, CRANIAL/FACIAL FOUNDATION, located at 3000 S.W. 62nd Avenue, Miami, FL 33155, ATT: Dr. Anthony Wolf [sic]". The basis for the perceived ambiguity was the fact that the decedent wanted Dr. Anthony Wolf to have the ability to direct and control the assets of the trust and that the doctor was now the head of Miami Care. Based on this ambiguity, Judge Speiser concluded that Miami Care and not Miami Children's Hospital Foundation, Inc. ("MCHF") was the beneficiary of the trust. The appellate

court found that this interpretation contradicted the plain language in the trust which unambiguously name MCHF as the beneficiary. In addition, Miami Care was not even in existence at the time the trust documents were executed.

Where there is either patent or latent ambiguity which obscures the intent of the decedent, construction of the will is necessary and parol evidence may be resorted to. In this respect, the court may hear evidence of the circumstances, situation, and surroundings of the decedent when the will was made. *Compare, Dade County School Board v. Radio Station WQBA*, 731 So. 2d 638 (Fla. 1999).

A patent ambiguity occurs when the provisions of the will itself are conflicting and unclear. In other words, it is an ambiguity that appears in the language of the will when that language is ambiguous on its face. For example, in *First Union Nat'l Bank, N.A. v. Frumkin*, 659 So. 2d 463 (Fla. 3rd DCA 1995), the court found the following provisions of the will to be patently ambiguous and allowed extrinsic evidence from various witnesses including the drafter of the will as to the decedent's intent:

Under Article IV paragraph (B) of the will, the trustee is authorized to "... pay to Alfred Frumkin such sum of principal of the trust as trustee deems necessary or advisable from time to time for Alfred Frumkin's health and medical needs..." and directs the trustee in determining the need for such distributions to consider Alfred Frumkin's income and readily marketable assets. On the other hand, Article IV, paragraph D of the will directs the trustee not to "... sell or otherwise dispose of any such stock unless such action is required to provide funds to meet a medical emergency of Alfred Frumkin." A "medical emergency" is specifically defined in the will as "...an incident of occasion requiring medical attention... that is life threatening."

Additionally, in *In re Estate of Walker*, 609 So. 2d 623 (Fla. 4th DCA

1992), the court found that the phrase "all my personal property which I may own at the time of my death" was ambiguous because the words "personal property" when used in a will have no fixed meaning and there is always a question of the intention of the testator so ascertained from the particular setting in which the phrase appears and the general tenor of the will.

In contrast, a latent ambiguity is one that arises when the application of the words of a will to the subject matter of a devise or to a devisee renders the will ambiguous. For example, in *Scheurer v. Tomberlin*, 240 So. 2d 172 (Fla. 1st DCA 1970), the decedent devised the residue of her estate to her daughter-in-law as trustee to pay the income to her grandchildren. Construction of the will was necessary because the decedent had no natural children and had not adopted any children, with the result that there were no known grandchildren. The absence of actual grandchildren in the face of a bequest for the benefit of presently living grandchildren pointed to the existence of a latent ambiguity in the will and under such circumstance evidence was admissible to show the persons to whom the decedent made reference.

Missing Bar Events? Be Sure to Read your eNewsletters



Is your current email address on file with our office? If not, please be sure to send your current information to us. As postage rates continue to rise, the Bar is sending notices of all of its functions – membership luncheons, free happy hours, judicial receptions, judicial evaluations, online voting, and important court information via email. Don't be left out of the loop! Send your email address to us today to sspence@palmbeachbar.org

ETHICS, ADVERTISING & MARKETING

Presented by the Solo & Small Firm Practitioners Committee

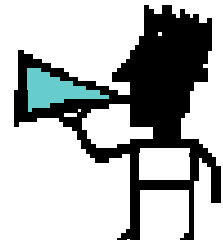
Lunch & Learn Series



Tuesday, January 15, 2013

11:45 a.m. to 1:00 p.m.

Bar Office



Program Schedule

11:45 a.m. Registration & Lunch

Noon - 1:00 p.m. Presented by Gary S. Lesser, Esq. - Florida Bar Board of Governors

Find out the best ethical ways you can advertise and increase your client base!

Plus, learn the history of attorney advertising regulation in Florida; attorney advertising filing/requirements; and pertinent advertising rules such as Rule 4 –7.

Learn which Ads comply and which ones don't. We'll discuss pending proposed changes to the advertising rules including website, internet issues, social networking and video sharing sites.

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This course is expected to receive CLER from The Florida Bar. The cost to attend, including lunch, is just \$10.00 for PBCBA members; attorneys who are not PBCBA members are welcome for \$20.00; add \$5.00 if registered after 5:00 p.m. on 1/11/13.

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“Keeping Diversity on the Forefront”

*Submitted by Sia Baker-Barnes and Sarah Shullman,
CDI Committee Co-Chairs*

The Importance of Mentoring

“To whom much is given, much is required.” Recently, the Palm Beach County Bar Association partnered with the F. Malcolm Cunningham, Sr. Bar Association, the Palm Beach County Chapter of the Florida Association for Women Lawyers, and the Hispanic Bar Association of Palm Beach County, to sponsor the Kozyak Foundation’s Minority Mentoring Picnic. We took the opportunity to meet and greet law students from around the state, and provide them with guidance, resources and information to help them transition from law students to practicing lawyers. Many of us volunteered to serve as mentors and to continue relationships that started at the picnic.

This is just one example of Palm Beach County lawyers taking time to give back not just to our legal community, but to our community as a whole. There are a wealth of opportunities for Palm Beach County’s lawyers to serve as mentors with the Committee for Diversity and Inclusion. The application process is underway for our Diversity Internship Program, a summer program designed to give law students exposure to the Palm Beach County legal community. Consider hiring an intern and spending some time this summer with a law student who may be interested in your area of practice. If your schedule will not allow you to place an intern at your office, consider making a donation so that interns may be placed at one of our government agencies. The JNC/Road to the Bench sub-committee is looking for mentors for those who may be interested in applying to serve on the Judicial Nominating Commission or interested in applying for or running for the Bench. These are just a few



examples of some of the mentorship programs we have in place within our bar association.

Here in Palm Beach County, we have a reputation of having the best Judges, and some of the best lawyers, in the State. If you speak to any of them, you will find a common theme behind each success story- a mentor. Someone who was willing to give their time, share their experiences, and help bridge the gap. Bottom line – if our formal programs don’t fit the bill, the next time you meet a young lawyer, offer to take them to lunch, send an email or give them a call. Just a little effort can make a big difference and in the long run, make Palm Beach County an even better place to practice.

Sia Baker-Barnes and Sarah L. Shullman are the co-chairs of the Committee for Diversity and Inclusion. Sia is an attorney at Searcy Denney Scarola Barnhart & Shipley, specializing in Plaintiff’s personal injury, medical negligence, wrongful death and product liability cases. Sarah is a business litigation and consumer law attorney with the Law Offices of Sarah Shullman, P.A. in Wellington, FL, representing businesses and consumers in commercial and real estate litigation, contract disputes, consumer law and consumer finance litigation.



Upcoming Events ~ January 2012

SAVE THE DATES



Saturday, January 12, 2013, 6-8 PM

Gift Gathering Gala at the Home of

Abigail & Hampton Beebe

Cocktails & Hors d'Oeuvres ~ Casual Evening Attire



Saturday, January 26, 2013, 7-9 PM

Gift Gathering Gala &

Photography Exhibit and Sale

at the Home of Linda & Donald Lyman

International Cuisine by Chef Sam ~ Casual Evening Attire



Be sure to put on your calendar today....

Saturday, May 18th, 2013

***25th Annual Pro Bono Recognition
Evening & Auction***

at the Palm Beach County Convention Center

For more information
or to RSVP for any of these events,
please contact Devin Krauss,
our Special Events Coordinator,
at dkrauss@legalaipbc.org or 561-822-9791.

Thank you for your support!

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



“Jury Selection in Civil Cases”

Wednesday, January 16, 2013 - 11:30am - 1:00p.m.

NEW ADDRESS - Bar Offices - 1507 Belvedere Road, WPB 33418

Program Schedule

11:30am - 11:55am **Buffet Lunch / Check In / Late Registration**

11:55am - 12:00pm **Welcome - Opening Remarks** - *Joseph G. Galardi, Esq.,
Beasley Hauser Kramer & Galardi, P.A., Business Litigation
CLE Committee Chairperson*

12:00pm - 1:00pm **“Jury Selection in Civil Cases”** - *James W. Beasley, Jr.,
Esq., Beasley Hauser Kramer & Galardi, P.A.*

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This course is expected to receive 1.0 CLER / Certification credits are pending from the Florida Bar.
Early registration cost for the seminar, which includes lunch, is \$25 for PBCBA member attorneys/paralegals;
\$65 for non-PBCBA member attorneys/paralegals if registered by 1/9/13; add \$15 late fee after that date.
All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

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

**HOW TO
REGISTER**



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For security purposes, you must register
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**Materials will now be emailed to all
registrants prior to the seminar**

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

Name: _____

Telephone: _____

Address: _____

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) (Business Litigation CLE Seminar 1/16/2012) 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

Capital Campaign — Thank You to Those Who Have Contributed!

Personalized Bricks Purchased (As of 9/30/12)

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LeClainche, P.A.
Beer, Jerald
Bertisch, Robert & Harreen
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Brewer, Carol McLean
Burns, John L.
Burns, Tom & Patience
Casey, Patrick
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Prather, Keen
& Littky-Rubin
Coleman, Greg & Monica
Colton, Roger B.
Cortvriend, Sarah
Deckert, Ted
Downey, Edward
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Bar Assn.
Farrell, John
Fine, Edward
Fox Rothschild
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Gamot, Melinda
Gerber, Jonathan & Tracy
Glickman, Garry
Glickman, Witters & Marell
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Hispanic Bar Association
Howe, John
Hunston, Jay and Jane
Jay R. Jacknin, P.A.

Jenks, Debra & Robert
Harvey
Jones Foster Johnston
(In memory of John
McCracken)
Kenwood, Joel
Klett, Stan
Koehler, Dennis, In Memory
of
Kreusler-Walsh Compiani &
Vargas, P.A.
Kogan & DiSalvo
Kypreos, Theo & Jennifer
LaBovick Law Group
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Lazarus, Jason
Legal Aid Society of Palm
Beach County
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Napoleone, Michael
Neal, Ginny R.
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Association
Pineiro Byrd PLLC

Pressly & Pressly
Prior, Ted
Proskauer Rose LLP
Rock Legal Services &
Investigations
Royce, Catherine S.
Royce, Raymond W.
Rudolph & Associates LLP
Rutherford Mulhall, P.A.
Sabadell United Bank
Sasser, Tom & Meenu
Schutz & White LLP
Shalloway & Shalloway
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J.D. Small
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Rule 1.500: Defaults and Final Judgments Thereon

By Matt Triggs and Jonathan Galler

Imagine being persuasive enough to have a judge look right at you and say, "Counselor, you've presented your case so well that I am going to give you everything you've asked for & *and more*."

Sounds pretty good, right? Not necessarily.

The dangers of overreaching were discussed by the Fourth District Court of Appeal in *Mullne v. Sea-Tech Construction, Inc.*¹ In that case, the plaintiff filed a lawsuit against a husband and wife. The plaintiff alleged that it had entered into a contract with the wife for a construction project on property owned by the wife with her husband. Count I of the complaint asserted a breach of contract claim against the wife only. Count II of the complaint asserted a claim against both defendants to foreclose a construction lien on the property.

The defendants did not respond to the complaint, and the plaintiff obtained a default final judgment as to the first count of the complaint. However, the judgment that was entered entitled the plaintiff to recover from *both* defendants the total amount due under the contract, plus interest, costs and attorneys' fees. In other words, even though the complaint alleged a breach of contract claim against the wife only, the court entered a default judgment

¹84 So. 3d 1247 (Fla. 4th DCA 2012).

on that count against both defendants.

The husband moved to vacate the default judgment entered against him. The trial court denied the motion, but the Fourth District reversed on grounds that the default judgment was void.²

When a defendant moves, pursuant to Rule 1.500(d), to set aside a default judgment entered due to the defendant's failure to file responsive pleadings, the court ordinarily must determine (1) whether the defendant has demonstrated excusable neglect; (2) whether the defendant has demonstrated a meritorious defense; and (3) whether the defendant has exercised due diligence in seeking relief from the default judgment.³ If the default judgment is void, however, the defendant need not establish these elements.⁴

In *Mullne*, the Court held that the default judgment was void "not because the complaint failed to state a cause of action... but because the trial court was without jurisdiction to award relief that was not requested by the complaint."⁵

²Id. at 1250.

³Id. at 1249 (citing *Halpern v. Houser*, 949 So. 2d 1155, 1157 (Fla. 4th DCA 2007)).

⁴Id. (citing *Green Solutions Int'l, Inc. v. Gilligan*, 807 So. 2d 693, 696 (Fla. 5th DCA 2002)).

⁵Id. (citing *Fine v. Fine*, 400 So. 2d 1254, 1255 (Fla. 5th DCA 1981) and *Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)).



As the Court explained, a default judgment "operates as an admission of the truth of the well pleaded allegations of the pleading, except those concerning damages "but" does not admit facts not pleaded, not properly pleaded or conclusions of law."⁶ Moreover, "[t]he party seeking affirmative relief may not be granted relief that is not supported by the pleadings or by substantive law applicable to the pleadings."⁷

So if your final default judgment grants more than you sought in your pleading, it is not just a case of getting more than you asked for – it's probably more than you want.

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

⁶Id. (citing *Bd. of Regents v. Stinson-Hear, Inc.*, 504 So. 2d 1374, 1375 (Fla. 4th DCA 1997)).

⁷Id.

Photos from the past



Brian O'Connell

Lois Frankel and Joseph Karp volunteering for law week ask-a-lawyer booth at the mall



Judge Jeffrey Colbath gets sworn in by his father, Judge Walter Colbath





What the Patreaus Scandal Tells Us About Email Privacy

By Christopher B. Hopkins

Within a week of the release of the James Bond spy thriller, *Skyfall*, we learned that real-life superspies are not always as clever as their fictional counterparts. The details of General Patreaus' affair and resignation will likely come out in full detail. As of this writing, we have learned

that the top spymaster of the CIA (Gen. Patreaus) used a public server email account (Gmail) to exchange emails with his mistress (Ms. Broadwell) who then misjudged the anonymity of using another email account to send "harassing" emails to a Tampa socialite (Ms. Kelley) who contacted the authorities. Investigating the Broadwell-Kelley emails, the FBI obtained IP address information from Google and tied Broadwell's once "anonymous" emails to the account shared with Patreaus.

Our clients, colleagues, and families use email on a daily basis and it is increasingly an obligation on every lawyer to understand the preservation of email evidence. The lesson: there is no delete. As we will discuss, remnants exist on your machine and there is an easily recoverable trail back across the internet – even if fake email accounts are made and emails are never actually sent.

From a historic standpoint, General Patreaus should have learned a lesson from his predecessor, former CIA director John Deutch, who indiscreetly kept classified information on an unclassified laptop (i.e., one that was connected to the internet). An investigation into Deutch's breach began in the CIA, was referred to the Department of Justice, and ultimately ended with a pardon by President Clinton during his final days in office. The lesson from the pre-Google era: do not put sensitive information on "unclass" computers which are *presumed* to be compromised.

Instead, General Patreaus opened a Gmail account which resides on the public servers at Google, the world's largest search engine. Would James Bond – or your teenager – store secrets there? We can likely assume that he did not read the Google privacy statement which confirms that Google "scans and processes all messages." Moreover, go into your own Gmail, Yahoo or Hotmail account – the margins are riddled with personalized ads, even in the draft folder – a sure sign that what you are typing is not For Your Eyes Only.

Google publishes a biannual Transparency Report which reveals that, since 2009, "government surveillance is on the rise." See Google.com/transparencyreport. Just in the last six months, Google handed over to the government information on 34,614 accounts – which is 5,769 accounts per day, every day.

Ironically, it was their weak clandestine efforts which lead to the discovery of the Patreaus-Broadwell affair. As we learned after September 2001, a common terrorist method of communication was to open a single account where party A would write an email, save it, and party B would log onto the same account, read the draft, and delete it. Thus, emails could be exchanged without the risk of being sent out over the internet. To further shroud this method of communication, the conspirators might open thirty phony email accounts and use one per day of the month, always moving, and sometimes accessing the accounts from library or internet café locations (those latter obfuscating steps were overlooked by Patreaus and Broadwell). Here, once the FBI began investigating Broadwell for her "anonymous" emails to Kelley, they quickly saw that

she was accessing the account which connected her to General Patreaus. Hence the irony: if Broadwell had simply sent emails, as opposed to accessing a joint account, her communications should not have raised security concerns.

Everyone's downfall was the humble IP address, a 128-bit code which is akin to a license plate for each device connected to the information highway. An Internet Protocol address is a series of numbers and periods (like 123.45.678.9) which identifies every machine on the internet – among other things, it reveals your network and its location. For example, an email from me to you will have, buried in the header, an IP address next to "Received from." If you paste that IP address into websites such as IPTrackerOnline.com, IP2Location.com or Networksolutions.com/whois/index.jsp, you will quickly see that my email came from the domain Akerman.com in Florida. And those steps take mere moments – from there, a civil subpoena or warrant to the network provider will lead to the sender's computer. Here, the FBI obtained Broadwell's IP address from the "anonymous" emails she sent Kelley and then, armed with a warrant, the FBI was then investigated what other accounts her IP address was accessing (as noted above, Google is liberally handing over information about nearly 6,000 accounts *every day*).

Once an email is written, it is clear that public servers like Google are "scanning and processing" it. Like any cloud provider, they are presumably making a backup. Your computer, likewise, leaves some residue of your communications. Every time your computer accesses a webpage, it logs that step to speed up the process for future visits (into "cached DNS entries" as well as in a index.dat file). If the site you visited uses Flash, the notoriously hard-to-remove Flash cookies on your machine will further betray details of your path. If you need this information in your cases, consider a well-worded subpoena to ISP providers seeking IP address information; likewise, retain a forensic computer expert who can inspect the subject computer/device for remnant information.

Christopher B. Hopkins is a shareholder at Akerman Senterfitt. Bravely send your easily-identifiable email communications to Christopher.Hopkins@Akerman.com.

Circuit Court Report CIVIL DIVISIONS • As of November, 2012

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	04-13	04-13	02-13	1356
AB KASTRENAKES	05-13	05-13	03-13	1374
AD FRENCH	03-13	03-13	02-13	1410
AE MCCARTHY	04-13	04-13	01-13	1572
AF KEYSER	06-13	06-13	01-13	1378
AG CROW	04-13	04-13	12-12	1499
AH BROWN	04-13	04-13	12-12	1304
AI SASSER	03-13	02-13	12-12	1064
AJ ROSENBERG	04-13	04-13	01-13	1177
AN McSORLEY	04-13	04-13	02-13	1508
AO BRUNSON	04-13	03-13	12-12	1510



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

Here Today. More Tomorrow?

Lunch and Learn

Featuring: John N. Raudabaugh, Esq.

January 18, 2013 - 11:30 a.m. – 1:00 p.m.

Bar Offices – *New Location:* 1507 Belvedere Road, West Palm Beach, FL 33406

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Program Schedule

11:30 am - 11:55 am	Late Registration / Lunch
11:55 am - 12:00 pm	Welcome and Opening Remarks - <i>Christine D. Hanley, Esq., Christine D. Hanley & Associates, P.A., Employment and Labor Law CLE Committee Chair</i>
12:00 pm - 1:00pm	Here Today. More Tomorrow? - <i>John N. Raudabaugh, Esq., Reed Larson Professor of Labor Law, Ave Maria School of Law</i>

The impact of *social media* on ODL (our daily lives) is morphing faster than the speed of light. No longer reserved to geeks and precocious children – mothers, fathers, grandparents and *employees* are e-mailing, texting and tweeting as fast as their thumbs can travel across the keyboard. *Employers* are scrambling to sort out the positive impacts from the rest and to institute policies and practices designed to safeguard both their *products* and their *workplaces* from the consequences of bad-media-gone-viral. And, in the middle of this electronic soup is an undulating “cosmic string” – the National Labor Relations Board – that seems to be decrying these policies and practices as violating the National Labor Relations Act as quick as a virtual wink. Who can keep up?

John N. Raudabaugh, Reed Larson Professor of Labor Law, Ave Maria School of Law, and former member of the National Labor Relations Board (“NLRB”), will bring us current on the NLRB’s take on *social media* and other of their current pursuits. More specifically, Professor Raudabaugh will develop the *Today* of the NLRB on employers and employees in the context of the NLRB’s membership, their review of employment policies and employee handbook language, their impact on social media policies (as well as a look at social media litigation), the extent of micro-unit based Regional Director Decisions in election cases and, the *Tomorrow* with a look at what the NLRB may attempt in 2013.

In addition to his current appointment at Ave Maria School of Law, Professor Raudabaugh also serves as Attorney to the National Right to Work Legal Defense Foundation. He has testified before the U.S. Senate and House Committees and Party Conferences regarding labor law reform, advised Congressional staff regarding labor law matters, and represented policymakers and trade associations in amici filings regarding significant labor law policy issues before the NLRB

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Judicial Profile – Judge Marni Bryson

When by the age of 35 you've been an assistant attorney general under three attorneys general, served as an assistant public defender in county and felony divisions, led prosecutions of Medicaid fraud in five counties, argued over 50 jury trials, litigated corporate civil actions and engaged in extensive appellate work all the way to the Florida Supreme Court, many attorneys would settle into a lucrative private practice and take some time to smell the roses.

Not Marni Bryson.

Believing she had the right approach and qualifications to translate her legal experience to the bench, she made the decision to seek a judgeship. Realizing an appointment to the bench at her age could be difficult, Bryson instead chose perhaps the more challenging path by running a judicial election campaign against three other contenders. While the political process proved to be painful at times, she appreciated the opportunity to share her qualifications and experience.

"I found that many people agreed that time in the courtroom as a litigator, trying jury trials day in and day out, is a critical component to being an effective judge from day one. It certainly was for me."

In the end, the year-long process culminated with a win in November, 2010. AAG Bryson-turned APD Bryson-turned civil litigator Bryson became Palm Beach County Court Judge Marni Bryson.

A Miami native, Judge Bryson graduated from the University of Florida with a BA in Criminal Justice and earned her Law Degree from Nova Southeastern University. The sister of a trial attorney, the daughter of a trial attorney, the granddaughter of a trial attorney and the great granddaughter of a circuit court judge, she was born into a family where a respect for the law was a way of life.

After graduating law school, Judge Bryson engaged in a wide range of legal pursuits. After doing appellate work under Attorneys General Bob Butterworth and Charlie Crist in the Third and Fourth District Courts of Appeal as well as the Supreme Court of Florida, she worked as an Assistant Public Defender in the County and Felony Divisions of the 15th Circuit. After a stint at Cole, Scott & Kissane focused on civil litigation, she returned to public service under Attorney General Bill McCollum to lead prosecutions throughout South Florida in health care

fraud-related cases, elder abuse, as well as patient abuse and neglect. During this time she became well known for managing and coordinating complex legal cases and developing successful strategies for jury and non-jury trials.

All that experience proved valuable as Judge Bryson presided over more than 140 jury trials in just her first year on the bench. She is known for her efficiency when dealing with a crowded Monday docket. The youngest judge in Florida's 15th Circuit, she has earned a reputation as being a tough yet fair jurist. Judge Bryson holds attorneys in her courtroom to the highest professional standards and her time as an appellate attorney made her sensitive to the intricacies and details of the litigation process. But through it all she always seems to have a smile for those with whom she interacts because she understands walking into a courtroom can be intimidating.

"This process isn't just about attorneys. When a defendant or juror walks into 9G it is often the first time they have ever set foot in a courtroom," said Judge Bryson. "I want them to respect



the process, but not be fearful to stand in what I always try to maintain as a place of justice."

So what is next for Judge Bryson?

"I once read a reporter describe the Palm Beach County Courthouse as a 'Monument to human misery', and I could not disagree more. I see our courthouse as a place where justice is served and people can expect to be treated equally under the law. I don't know what is 'next'. I just know that I love what I do. I feel like I have the best job in the world - and I try to do it better each day."

Did You Know...

- 1 almost all of an attorney's legal training focuses on improving technical know-how
- 2 a high IQ alone does not guarantee professional success
- 3 research shows that soft skills (strong communication, negotiation and leadership abilities) account for as much as 85% of financial success whereas only 15% can be attributed to technical knowledge
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Real Property and Business Litigation Report



By **Manuel Farach**

GMPF Framing, LLC v. Villages at Lake Lily Associates, LLC, – So.3d –, 2012 WL 5364649 (Fla. 5th DCA 2012).

Award of prevailing party attorney's fees under construction lien statute is premature when equitable lien and quantum meruit claims remain outstanding.

American K-9 Detection Services, Inc. v. Cicero, – So.3d –, 2012 WL 5364650 (Fla. 5th DCA 2012).

Clause stating that parties consent "to the personal jurisdiction of the federal and state courts within Central Florida" is a permissive forum selection clause (i.e., venue can be anywhere, including Central Florida) even without the words "forum" or "venue."

Braaksma v. Pratt, – So.3d –, 2012 WL 5373433 (Fla. 2d DCA 2012).

Attorneys' fees must be awarded under a proposal for settlement that meets the requirements of the statute and rule notwithstanding that rejection of the offer did not delay or prolong the litigation.

Vidal v. Liquidation Props., Inc., – So.3d –, 2012 WL 5347964 (Fla. 4th DCA 2012).

A mortgagor cannot raise as an affirmative defense the allegation of fraud that lender knew the mortgagor's income was not as stated; the mortgagors are in a position to know their own income, and recipients who know a statement is fraudulent are not entitled to rely on the fraudulent statement. Oral misrepresentations as to the rate of a loan are likewise not a basis for fraud because the documents themselves (which state the rate) likewise stop a party from properly relying on the statement.

Bedwell v. Rucks, – So.3d –, 2012 WL 5349381 (Fla. 4th DCA 2012).

Damages are not an element of a claim under the Uniform Fraudulent Transfers Act, so the place where damages accrue under the act does not establish venue. Venue under the Act is established where the transfer occurred.

BKD Twenty-One Management Company, Inc. v. Delsordo, – So.3d –, 2012 WL 5349400 (Fla. 4th DCA 2012).

Contractual language is ambiguous only if it is capable of more than one reasonable interpretation, and the word "Establishment" in a lease addendum is not ambiguous (and means "place of business.").

G Barrett LLC v. Ginn Co., Slip Copy, 2012 WL 5358883 (11th Cir. 2012).

The following statements in loan instruments insulated a lender from claims of fraud and violation of the Florida Unfair and Deceptive Trade Practices Act with regard to the value of Florida real estate:

"specifically disclaim any responsibility for any ... statements, promises or representations" made by its salespersons that were "in conflict with or in addition to the information contained in this Contract and the Community Documents"; "acknowledge that [they] have not relied upon any such statements, promises or representations, if any, and waive[d] any rights or claims arising from any such statements, promises or representations"; "neither [lender] nor its agents, brokers, insurers, servicers, successors or assigns ha[d] made any representation or warranty, express or implied,... regarding the property or the condition or value of the property"; "SunTrust makes no representations or warranties, express or implied, regarding the property, the condition of the property, or the value of the property."

A weekly version of the Update can be obtained by sending an email to mfarach@richmangreer.com and writing "Request Case Law Update" in the subject line.

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Welcome New Members!

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

Maria Albanese: Gloversville, NY; Nova Southeastern University, 2012; Palm Beach County Office of the State Attorney.

Stephanie L. Baudo: Florida Registered Paralegal Member, Bessemer Trust Company, Palm Beach.

Nicole Renee Blanton: Ft. Pierce; Florida State University, 2012; Associate in The Law Office of Glen J. Torcivia & Associates, P.A., West Palm Beach.

Courtney Boynton: MA; Nova Southeastern University, 2012; Palm Beach County Office of the State Attorney.

Richard Clausi, Jr.: Kingston, NY; College of William & Mary, 2012; Government Attorney with Palm Beach County Office of the State Attorney.

Ian Duncan: Mesa, AZ; St. Thomas University, 2006; Associate in Steinger, Iscoe & Greene, West Palm Beach.

Benjamin Eisenberg: West Palm Beach; Florida State University, 2012; West Palm Beach.

Brooke Estren: Oceanside, NY; 2006, Associated with Consumer Defense Attorneys, Boca Raton.

Kyle Felty: Gainesville, FL; Florida Coastal University, 2010; Associate in Cohen, Norris, Wolmer, Ray, Telepman, Cohen, North Palm Beach.

Francine Foote: Kingston, Jamaica; Howard University, 2012; Palm Beach County Office of the State Attorney.

Todd Friedman: Miami, FL; University of Miami, 2012; Government Attorney, West Palm Beach.

Ari Goldberg: Freehold, NJ; Florida International University; Palm Beach County Office of the State Attorney.

Jason Joffe: Ft. Lauderdale; Nova Southeastern University, 2005; Associate in Squire Sanders, LLP, West Palm Beach.

Matthew Kissner: Vero Beach; Florida State University; Associate in Broad and Cassel, West Palm Beach.

Brian Kramer: Hofstra University, 2010; Affiliate Member, Boca Raton.

Thomas J. Lavin: Bronx, NY; St. John's University, 1983; Sole Practitioner, Palm Beach Gardens.

Daniel Eric Levin: Bridgeport, CT; St. Thomas University, 2010; Associate in Cole, Scott and Kissane, P.A., West Palm Beach.

Jennifer Lipinski: West Palm Beach, FL; Michigan State University, 2012; Associate in Powers McNalis Torres Teebagg Luongo, West Palm Beach.

Alicia M. Phidd: St. Thomas University, 1999; Associate in Gary Williams, Parenti, Watson, Gary, P.L., Stuart.

Daria Pustilnik-Odesa: Ukraine; Florida International University, 2011; Government Attorney, Palm Beach County.

Kathryn Rossmell: Vero Beach; University of Florida, 2012, West Palm Beach.

Amy Snyder: Nova Southeastern University, 2012; Palm Beach County Office of the State Attorney.

Stephen Edward Thompson: Salt Lake City, UT; Brigham Young University, 1982; Associate in Roetzel & Andress, Ft. Lauderdale.

Bethany Turner: Winter Park, FL; University of Florida, 2012; Palm Beach County Office of the State Attorney.

Emily Walters: Lansing, MI; George Washington University, 2012; Palm Beach County Office of the State Attorney.

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Too Much Charity?

By Marc P. Barmat

As we look back at the holiday season and reflect on the spirit of giving, the question arises; can there ever be too much charity? The answer, according to the bankruptcy code, is, yes.

The bankruptcy code authorizes a bankruptcy trustee to avoid a debtor's prepetition transfer of property if the transfer is: (1) actually fraudulent, i.e., made with the intent to hinder, delay or defraud creditors or (2) constructively fraudulent, i.e., the debtor is insolvent and did not receive reasonable equivalent value in exchange for the transfer. What if, however, the actually or constructively fraudulent transfer is made to a qualified religious or charitable entity? The answer to this question depends on whether the transfer is actually fraudulent or constructively fraudulent. If the transfer is actually fraudulent, there is no protection for the religious or charitable entity and

the transfer is subject to avoidance by the bankruptcy trustee. Constructively fraudulent transfers, however, are insulated from a bankruptcy trustee's attack if the transfer does not exceed 15% of the gross annual income of the debtor for the year in which contribution is made, or if the transfer was consistent with the debtor's past practices. See, 11 U.S.C. § 548(a)(2).

In the recent case of *Wadsworth v. The Word of Life Christian Ctr. (In re McGough)*, 467 B.R. 220 (B.A.P. 10th Cir. 2012), the court was asked to interpret whether §548(a)(2) protects only the transfers which exceed 15% of the gross annual income or whether all of the contributions during the year in which the 15% threshold was exceeded are subject to avoidance. In *Wadsworth*, the bankruptcy court disagreed with the bankruptcy trustee and held that only the portion of the aggregated transfers exceeding the 15% threshold could be

avoided. The bankruptcy court declined to follow the only previously reported decision on this issue, *In re Zohdi*, 234 B.R. 371 (Bankr. M.D. La. 1999), which supported the trustee's position. The trustee appealed the bankruptcy court's decision, but the Tenth Circuit Bankruptcy Appellate Panel (BAP) affirmed.

The BAP noted that §548(a)(2) was susceptible to different interpretations. Therefore, the court found the provision ambiguous and turned to legislative history. The BAP focused on the House Report, which states: "The safe harbor protects annual aggregate contributions up to 15% of the debtor's annual income." Therefore, the BAP held that the trustee could only avoid transfers in excess of the 15% safe harbor.

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



The Professionalism Committee of the PBCBA hosted its second annual breakfast for newly-admitted attorneys. Over 100 people were in attendance with judges and local attorneys attending to provide guidance and suggestions on the local practice of law. Representatives from the various local bar associations were also there to educate new attorneys about the many opportunities for professional growth and development within the Palm Beach County legal community.



Judge Richard Offedal, Patti Leonard, Judge Thomas Barkdull and Robert Bertisch



Judge Jack Cox and Jason Lazarus



FL Supreme Court Justice Jorge Labarga and President Adam Rabin

Beach Clean Up

A stretch of beach along AIA in Jupiter is now a cleaner place to visit and enjoy thanks to members of our North County Section and Florida Association of Women Lawyers (FAWL).

The two groups recently participated in its first joint Beach Clean Up picking up trash from old shoes to wood. Students who got up early on this Saturday morning received community service hours.



Jon Mann



Donna Eng and her two children



Beach Clean Up Co-Chairs Amber McMichael, FAWL & Ron Ponzoli, NCS Immediate Past President



Georgia Jimenez-Orosa and her daughter Teresa



NCS President-Elect Todd Stewart

Volunteers Needed to Talk To Adult Students Tuesday, January 29

The Lawyers for Literacy Committee is excited to once again sponsor a morning at the Adult Education Center in West Palm Beach. Students enrolled at the school are earning their GED or learning English in pursuit of their American dream. Attorneys will speak with adult learners about civics and the importance of an education. This is truly a rewarding volunteer opportunity.

To volunteer on Tuesday, January 29 from 8:30 a.m. to 10:30 a.m. please contact Abigail Jorandby at abby@corbettandwhite.com, and please put "Adult Education Event" in the subject line.



Volunteer speakers from 2011 - Join us again!

Civil Division "AN" Rotation Effective January 22, 2013

Circuit Judge Jack Schramm Cox will be reassigned to Civil Division AN effective January 22, 2013.

Effective January 22, 2013, ALL Special Set Hearings will be set through the mandatory online e-scheduling. Any matters scheduled previously are required to be rescheduled utilizing the mandatory e-scheduling.

Hearings for More Than 30 Minutes will be set on a non-jury trial docket. You will be required to send to Judge Cox a copy of the Motion with a cover letter requesting the length of time needed for the hearing. Thereafter the Court will schedule the hearing on the next available docket call.

ALL Non-Jury and Jury Trials previously scheduled for January 22, 2013 are to be rescheduled. If your case is currently set for trial after January 22, 2013, it will be necessary for you to provide notice to the Court and a New Trial Order will be entered and will schedule the case for a docket call. Cases with the oldest case numbers will be set first. Division AN will be utilizing an 8-week trial docket. Cases that have complied fully with pretrial procedures will be scheduled for specific dates within the docket to be tried. All cases involving more than one week of trial time will be evaluated for purposes of Summary Jury Trial in advance of beginning trial. Trials are conducted Monday through Thursday. Fridays are special set hearings.

Additional division instructions will be posted on the Court's website effective with the day of rotation.

Thank you for your consideration and participation during this transition.



Admissibility Of Prior Testimony

By Ted Babbitt

Many thanks to Rebecca Mercier-Vargas of the firm of Kreusler-Walsh, Compiani & Vargas, P.A., for alerting me to the recent case of Rich v. Kaiser Gypsum Co., 37 Fla. L. Weekly D2503a (Fla. 4th DCA 2012). That was a case of first impression interpreting the term “predecessor in interest” in § 90.804 of the Evidence Code. That provision of the Evidence Code states as follows:

(2) Hearsay exceptions. – The following are not excluded under s. 90.802 provided that the declarant is unavailable as a witness:

(a) *Former testimony.* – Testimony given as a witness at another hearing of the same or a different proceeding, or in a deposition taken in compliance with law in the course of the same or another proceeding, if a party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or re-direct examination. (Emphasis supplied)

Rich was a product liability case against the alleged manufacturers of products which purportedly contained asbestos used by plaintiff’s decedent who eventually contracted mesothelioma. The allegations were that he inhaled dust caused by sanding from using two different kinds of joint compound to fix cracks and eventually replace sheetrock.

The defendants sought to introduce depositions taken of witnesses who had testified in two prior cases before plaintiff in the case at bar ever brought the action or was given any opportunity to cross examine the witnesses. The issue was whether the plaintiffs in the prior lawsuit could be considered predecessors in interest who had a similar motive to cross examine these witnesses.

While no Florida cases exist on this issue, the Court considered a number of Federal decisions as well as a comparison of former Florida Statute 92.22 which preceded the passage of 90.804. The major distinction between these two statutes is that in the former statute privity was required while in the later privity was replaced by a predecessor in interest.

The Court relied on Federal Rule 804(b)(1) which has almost identical language to the Florida Statute being interpreted. At Page 2506 the Court noted:

Federal courts have interpreted Rule 804(b)(1) as requiring three things: (1) the declarant is unavailable; (2) the testimony was taken at a hearing, deposition, or civil action or proceeding; and (3) the party against whom the testimony is now offered must have had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination. Kirk v. Raymark Indus., Inc., 61 F.3d 147, 164 (3d Cir. 1995) (citing Fed. R. Evid. 804(a)(5), (b)(1)). Courts have been reluctant to interpret “predecessor in interest” narrowly, instead choosing a broader interpretation

that focuses on the similarity of the motives for examination.

In Clay v. Johns-Manville Sales Corp., 722 F. 2d 1289 (6th Cir. 1983) the Court held a “previous party having a like motive to develop the testimony about the same material facts is, in the final analysis, a predecessor in interest to the present party.” Clay, 722 F. 2d at 1294-95. The Rich Court cited numerous Federal cases which declined to require privity in determining whether the prior party eliciting the testimony was a predecessor in interest.

At Page 2507, the Court holds:

We find the federal interpretation of “predecessor in interest” to be persuasive and hold that section 90.804(2)(a), Florida Statutes, does not require strict privity between a party and his “predecessor in interest.”

Interestingly, the Court quotes from the House Committee on the Judiciary which passed the predecessor in interest language that “the Committee considered that it is generally unfair to impose upon the party whom the hearsay evidence is being offered responsibility for the manner in which the witness was previously handled by another party.” The Court, nevertheless, adopted the reasoning of the Third Circuit in Lloyd v. American Export Lines, Inc., 580 F. 2d 1179, 1185 (3d Cir. 1978) to the effect:

We agree and adopt the Third Circuit’s reasoning: “if it appears that in the former suit a party having a like motive to cross-examine about the same matter as the present party would have, was accorded an adequate opportunity for such examination, the testimony may be received against the present party.” Lloyd, 580 F. 2d at 1187 (quoting McCormick on Evidence § 257 p. 261 (2d ed. 1972)).

What is particularly striking is the Fourth District’s liberality in applying the above law to the facts of this particular case. In reviewing the underlying facts in which the two depositions were taken, the Court noted that in the first the very same product was involved as was in question in the case at bar. Those cases shared the same defendant, the same ingredient, the same product and the same injuries and issues so there was no difficult jump to conclude that the parties in the prior case had a similar interest in cross examining the witness as did the plaintiffs in the instant case.

However, in the second case, the Court noted the allegations involved two completely different products and that “an entirely different product in a products liability case is the type of distinction that would ‘preclude similar motives of witness examination.’” The Court further noted in a footnote that the testimony in that deposition was, indeed, prejudicial. Nevertheless, the ultimate conclusion of the Court was that any error in admitting the deposition was harmless even though the testimony essentially established that the product was not

Continued on page 19

Key Cases a Lawyer Needs to Know to Select a Jury



by Rob Glass

When selecting a jury, there are certain key cases that a lawyer needs to know. The key cases govern strikes for cause, the right to backstrike jurors, preservation of error, and improper discriminatory challenges. The cases are summarized as follows:

***Busby v. State*, 894 So. 2d 88 (Fla. 2004):** In *Busby*, the court reiterated prior precedent that a trial court's refusal to excuse a potential juror for cause will be reversed only when the appellant shows both "error" and "prejudice." Error refers to a juror's competence to serve on a jury, and the "test for determining jury competency is whether the juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the instructions on the law given by the court." Prejudice requires a showing that the trial court's error led to an objectionable juror actually sitting on the jury. To preserve a claim of prejudice, an appellant must show that he or she expended a peremptory challenge "to cure the trial court's improper denial of a cause challenge," then exhausted all remaining peremptory challenges.

Further, the appellant must show that one of the jurors who actually sat on the jury was challenged for cause or that the appellant sought additional peremptory challenges and otherwise objected to that particular juror. Finally, the objection to that juror must be renewed before the jury panel is sworn. The juror, however, need not be legally objectionable: "[t]he harm suffered by the defendant under such a scenario is having been forced to accept a juror he or she would have peremptorily excused but for the need to remedy the trial court's error." *Busby* is applicable in civil cases. See *Somerville v. Ahuja*, 902 So. 2d 930 (Fla. 5th DCA 2005).

***Embleton v. Senatus*, 993 So. 2d 593 (Fla. 4th DCA 2008):** In *Embleton*, the Fourth DCA reviewed Florida jurisprudence regarding juror competency. The court explained that the "test for assessing a juror's competency

is 'whether the juror can lay aside any bias or prejudice and render a verdict solely on the evidence presented and the court's instructions.'" If any reasonable doubt exists as to the juror's ability to be impartial, the juror must be excused. The test does not require that a juror have no preconceived notions about the case, which would "establish an impossible standard." A prospective juror may serve "so long as the juror can lay aside preconceived notions or opinions and render a verdict based on the evidence." The court further explained that a "juror should be excluded for cause when her statements confirm that she cannot set aside 'the edge' that she would give to one party at the beginning of the case."

***Lottimer v. North Broward Hospital District*, 889 So. 2d 165 (Fla. 4th DCA 2004):** In *Lottimer*, the court addressed the timing and procedure for jury selection. The appeal involved a party's attempt to exercise a backstrike after the alternates were selected but before the jury was sworn. The trial court denied the attempted backstrike. On appeal, the Fourth DCA noted that the "time and manner of challenging and swearing jurors" rests "within the sound discretion of the trial court," but a trial court cannot infringe on a party's right to raise a challenge, either peremptorily or for cause, prior to the time the jury is sworn. The fact that alternates have been selected does not limit a party's right to strike one of the members of the panel.

***Melbourne v. State*, 679 So. 2d 759 (Fla. 1996):** *Melbourne* clarified the standards for challenges to discriminatory use of peremptory challenges under article 1, section 16, of the Florida constitution, which were first addressed in *State v. Neil*, 457 So. 2d 481 (Fla. 1984). Under *Melbourne*, the party objecting to another party's use of a peremptory challenge must: 1) make a timely objection to the challenge; 2) show that the venire person is a member of a distinct racial classification; and 3) request that the court inquire of the striking party the reason for the strike. The burden then shifts to the striking party to come forward with a race-neutral explanation. If the explanation is facially race-neutral, then

the court considers "all the circumstances surrounding the strike" to determine whether the explanation is genuine. If the explanation is not pretextual, the strike will be sustained. The principles of *Neil* have also been extended to strikes based on ethnic background and gender. *Welch v. State*, 992 So. 2d 206 (Fla. 2008) (gender discrimination); *State v. Alen*, 616 So. 2d 452 (Fla. 1993) (ethnic background). *Neil* and *Melbourne* apply in civil cases. *Sch. Bd. Of Broward Cnty. v. Trintec Constr., Inc.*, 936 So. 2d 655 (Fla. 4th DCA 2006).

Conclusion: To select a jury and properly exercise challenges to potential jurors, there are certain key cases and propositions of law that a lawyer needs to know. The key cases relate to strikes for cause, the right to backstrike jurors, preservation of error, and improper discriminatory challenges. With a working knowledge of these cases, the lawyer will be able to spend more time focusing on selecting a fair and impartial jury.

Rob Glass is an associate at McCabe Rabin, P.A. and practices business, securities and whistle blower litigation.



Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions or general information from attorney that is more experienced in a particular area of law. The mentors provide a 10-15 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 (561) 687-2800 for more information.



"Mediation and Arbitration 2013—The New Reality"

Monday, February 11, 2013 - 8:00a.m. – 5:00p.m.

Bar Association Offices

NEW ADDRESS: 1507 Belvedere Road, WPB



Program Schedule

8:00a.m. – 8:30a.m.	Late Registration/Check In
8:30a.m. – 8:40a.m.	Welcome & Opening Remarks - <i>Amber E. B. McMichael, Esq., Clarfield, Okon, Salomone & Pincus, PL, Certified Circuit Civil, Appellate and Family Mediator, Committee Chair</i>
8:40a.m. – 9:20a.m.	Preparing Your Client and Yourself for Mediation - <i>Kenneth D. Stern, Esq., Kenneth D. Stern, P.A., Certified Circuit Civil and Family Mediator</i>
9:20a.m. – 10:20a.m.	Practitioners: Three Things You Need to Know About Arbitration - <i>Donna Greenspan Soloman, Esq., Certified Circuit Civil, Appellate and Family Mediator; Florida Supreme Court Qualified Arbitrator</i>
10:20a.m. – 10:30a.m.	BREAK
10:30a.m. – 11:30a.m.	Interactive Discussions of Ethics, Diversity and Domestic Violence Issues in Mediation - <i>Kim Nutter, Esq., Brinkley Morgan, Certified Family and Appellate Mediator and Amy S. Wolsky, Esq., Certified Circuit Civil, Family, Appellate and County Mediator</i>
11:30a.m. – 12:00p.m.	Ethics and Professionalism: A Cut Above the Ordinary - <i>Representative from the Professionalism Committee of the Palm Beach County Bar Association</i>
12:00p.m. – 12:30p.m.	Civility in Mediation and Mediators Duty to Set and Keep Tone of Proceedings - <i>Michael D. Mopsick, Esq., Buckingham Doolittle & Burroughs LLP, Certified Circuit Civil Mediator</i>
12:30p.m. -- 1:30p.m.	LUNCH Sponsored by Matrix Mediation, LLC
1:30p.m. – 2:20p.m.	Marketing Mediation Effectively - <i>Rodney G. Romano, Esq., Matrix Mediation, LLC, Certified Circuit Civil Mediator</i>
2:20p.m. – 3:20p.m.	Legal Issues of the LGBT Community: An Overview for Mediators - <i>Elizabeth F. Schwartz, Esq., Certified Family Mediator</i>
3:20p.m. – 3:30p.m.	BREAK
3:30p.m. – 4:20p.m.	ADR Ethics: Recent Case Law and MEAC Update - <i>W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., P.A., Certified Circuit Civil and Family Mediator, Board Certified Civil Trial Lawyer Emeritus</i>
4:20p.m. – 5:00p.m.	Ethical Dilemmas in Dispute Resolution Practice - <i>Panel Discussion with Seminar Speakers</i>




SPONSORED BY: Matrix Mediation, LLC

Course is expected to receive **8.5 CLER** including **4.0 Ethics credits** / Certification credits are pending from the Florida Bar.

Early registration cost is **\$255 for PBCBA members/paralegals; \$295 for non-PBCBA members/paralegals** if registered by 2/4/13; 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 8.5 CME hours including 4.0 Ethics credit; 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.

HOW TO REGISTER	 BY CHECK Return this form	 BY CREDIT CARD For security purposes, you must register online at www.palmbeachbar.org	 CLE	Materials will now be emailed to all registrants prior to the seminar
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Credit card registration payment not accepted by Fax to comply with PCI regulations.

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (2/11/13 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.



Professionalism Quiz

Submitted by Matthew Zimmerman on behalf of the Professionalism Committee

To promote professional practice, in lieu of the regular column, the Professionalism Committee requested that I write a “funny and educational” professionalism quiz. I failed. Still, I hope that you will at least find the quiz educational. Because this quiz is being provided to members of the Palm Beach County Bar Association (“PBCBA”), we are largely preaching to the choir. And we hope that the answers will be obvious. If not, please immediately exit Palm Beach County, or you can check them on page 19. Good luck.

1. The PBCBA Standards of Professional Courtesy (“Standards”) are:

- a. Standards? What Standards?
- b. Aspirational.
- c. Mandated pursuant to Administrative Order.
- d. Apply only if dealing with a PBCBA member.

See Administrative Order No. 2.105-9/10. Standards can be seen at: palmbeachbar.org/spc.php.

2. The Standards apply to whom?

- a. Standards? What Standards?
- b. Only members of the PBCBA.
- c. Only lawyers with an office in Palm Beach County.
- d. To all counsel (and their staff) practicing law in the 15th Judicial Circuit.

See Administrative Order No. 2.105-9/10.

3. Absent agreement of counsel, the required notice for hearings, whether special set or UMC, is:

- a. Dependent on how much notice opposing counsel has previously provided me.
- b. Five business days.
- c. One if by Fax; Two if by Sea.
- d. Five days.

See Standards, I.1.

4. Before scheduling a deposition, I must coordinate with _____ to ensure a mutually convenient time:

- a. My spouse.
- b. My assistant.
- c. The rest of my foursome.
- d. Opposing counsel.

See Standards, I.2.

5. I resolved my case two days before a four-hour special-set hearing, I should:

- a. Pop a bottle of champagne.
- b. Take the rest of the week off.
- c. Immediately notify the Court so that the time can be opened up.

See Standards, I.4.

6. During an evidentiary hearing, I must cooperate with opposing counsel by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present my entire case, unless:

- a. I am not from Palm Beach County.
- b. My client’s material rights would be adversely affected.
- c. It hurts my chances at success.

See Standards, I.6.

7. Discovery responses should be:

- a. Timely, organized, complete and consistent with the obvious intent of the request.
- b. Mostly objections.
- c. Provided only after a Court Order.

See Standards, II.3.

8. My client is being rude to opposing counsel. I should:

- a. Give her a high-five.
- b. Do nothing, I can’t control my client.
- c. Impress upon her the need to be courteous and respectful, and not rude or disruptive.

See Standards, III.2.

9. Before appearing before the Court, an attorney should:

- a. Keep his cell-phone ringer on.
- b. Be knowledgeable about the Administrative Orders, Local Rules and the Judge’s practices and procedures.
- c. Ensure that his socks match.

See Standards, III.5.

10. A case conflicts with the authority I am arguing to the Court. What should I do?

- a. Raise the conflict only if asked by the Court.
- b. Inform the Court about the conflict and try to distinguish the opposing case.
- c. Nothing. It’s not my job to win the case for the other side.

See Standards, IV.1.

11. At a hearing, I mistakenly told the Court that a party had been served. After the hearing, I realized that the party had not been served. I should:

- a. Not worry about it. The hearing is over, the fact was not material, and the judge is busy with other matters.
- b. Immediately disclose or otherwise correct the misstatement by submitting something directly to the Court.
- c. File a notice of correction but no need to send to the Court.

See Standards, IV.1.

Continued on page 18

The Palm Beach County Bar Association's Real Estate CLE Committee presents:



"Closing Real Estate Transactions in the Year 2013 – From Start to Finish"

Friday, January 25, 2013 - 8:00a.m. - 12:15p.m.

Bar Association Offices

Program Schedule



- 8:00am - 8:20am **Late Registration/Check In**
- 8:20am - 8:30am **Welcome and Opening Remarks** - *Gregory R. Cohen, Esq., Cohen, Norris, Wolmer, Ray, Telepman & Cohen, Board Certified Real Estate Attorney, Real Estate Committee Chairperson*
- 8:30am - 9:30am **FR/BAR Contract Revisions Update** - *Gary J. Nagle, Esq.*
- 9:30am - 10:30am **Panel Discussion on Contract Problems, Including Short Sales, Ethical Issues and Foreclosure Problems** - *Jeffrey P. Zane, Esq., Jeffrey P. Zane, P.A.; Sandra Wallace, Esq.; and Gregory R. Cohen, Esq., Cohen, Norris, Wolmer, Ray, Telepman & Cohen, Board Certified Real Estate Attorney*
- 10:30am - 10:45am **BREAK**
- 10:45am - 11:45am **Ethical Coordination of the Real Estate Closing** – *Alberto C. Gomez-Vidal, Esq., Fidelity National Title Group, Miami*
- 11:45am - 12:15pm **Fraud and CyberCrime: Maintaining the "Trust" in your Trust account** – *Katherine G. Stevens, Esq., Fidelity National Title Group, Board Certified Real Estate Attorney*

SPONSORED BY:



**This course has been granted 4.0 CLER including 2.5 Ethics credits;
4.0 Real Estate Certification credits from the Florida Bar.**

Early registration cost for the seminar is \$135 for PBCBA members/paralegals, \$175 for non-PBCBA members/paralegals if registered by 1/18/13; Add \$25 to registration fee after that date.

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

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

HOW TO REGISTER



BY CHECK
Return this
form



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For security purposes, your must register
online at www.palmbeachbar.org



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

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

Name: _____ Telephone #: _____

Address: _____ Email Address: _____

____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (1/25/13R/E) 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. Telephone: (561) 687-2800

Professionalism Quiz

Continued from page 18

12. A few days before a hearing, I hand-delivered a memorandum, highlighted caselaw, and other materials to the court. I should send to opposing counsel by:
- Mail.
 - Substantially the same method of delivery by which it was provided to the Court.
 - Pony Express.

See Standards, IV.2.

13. I revised a proposed order and sent a copy to opposing counsel. I should:
- Point out, redline or high-light the revisions for review prior to submission.
 - Send the new draft but let opposing counsel figure out the changes for herself.
 - Submit the order without getting approval.

See Standards, IV.4.

14. I only need 10 minutes to argue my side of a motion. I may set the motion on UMC.

- True, there is usually extra time on UMC and opposing counsel can expedite her argument.
- False, sufficient time should be reserved to permit a complete presentation by counsel for all parties and UMC hearings are limited to 10 minutes per case.

See Local Rule No. 4(3); Standards, I.2.

15. I filed a motion seeking relief that I know opposing counsel will not agree to. I can set the matter for motion calendar upon prior notice and scheduling coordination.

- True, the notice and scheduling requirements have been met.
- False, before setting a matter on UMC, the attorney must attempt to resolve the matter in good faith.

See Local Rule No. 4(2); Administrative Order No. 3.202-9/08(1).

Upcoming PBCBA CLE Seminars

January 11, 2013

Technology Seminar
Bar Association Office

January 18, 2013

Employment Law Lunch CLE Seminar
Bar Association Office

January 25, 2013

Real Estate CLE Seminar
"Closing Real Estate Transactions
in the Year 2013"
Bar Association Office

February 8, 2013

Technology Seminar
Bar Association Office

February 1, 2013

Workers' Compensation Seminar
Bar Association Office

February 11, 2013

ADR Seminar
Bar Association Office

March 7, 2013

PI/Wrongful Death CLE Seminar

March 15, 2013

Employment Law CLE Seminar
Bar Association Office

March 28, 2013

Technology Seminar
Bar Association Office

April 11, 2013

Elder Law Dinner Seminar
"The View from the Bench"
The Colony Hotel

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Bar Welcomes U.S. Supreme Court Justice John Paul Stevens

Retired U.S. Supreme Court Justice John Paul Stevens was our keynote speaker during a joint luncheon with the Forum Club of the Palm Beaches. More than 750 people attended the program sponsored by Sabadell United Bank, Leopold Law and Gulfstream Business Bank.



President-Elect Jill Weiss and President Adam Rabin welcome Justice Stevens to our luncheon



Chief Judge Peter Blanc and Judge Robert Gross



Salesia Smith-Gordon and Lawrence Gordon

Young Professional Friends of Legal Aid Host Brooks Brothers to Benefit Children's Advocacy Projects

On November 14, over 150 young professional friends of the Legal Aid Society of Palm Beach County enjoyed fine wine, hors d'oeuvres and shopping at the newly renovated Brooks Brothers store in the Gardens Mall.

The event benefitted Legal Aid's Children's Advocacy Projects, providing critical legal services to abused, neglected, disabled and foster children through our Foster Children, Juvenile Advocacy, Educational Advocacy, Legal Advocacy for Minor Mothers 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 Bedford Foundation, the William and Helen Thomas Charitable Trust and the Southern Poverty Law Center.



Greg Huber, Elisha Roy, Michael Napoleone, Adam Rabin
Photo taken by Tracey Benson

Movie Tickets

The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff, clients or end of the year gifts for teachers. Savings are available for the following theaters:

- * **Muvico Theater - \$8.00 each**
- * **Regal Theaters \$8.00 each**

Come by the office and pick up your tickets today (**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number.
PRICES ARE SUBJECT TO CHANGE



Admissibility Of Prior Testimony

Continued from page 15

distributed in the area in which plaintiff's decedent could have purchased it thus completely obviating liability.

This case has startling ramifications for the trial of future lawsuits. If the reasoning of this Court stands the test of time and possible further review, parties will be bound by testimony taken in prior cases in which they had no opportunity to cross examine and no possibility of having knowledge of the existence of that testimony at the time litigation was commenced. One can envision great difficulty in preparing witnesses, developing strategy, obtaining experts and the filing of unnecessary lawsuits when this testimony is not revealed until late in the process. In addition, the House Committee's concern will be echoed by many that they will be bound by the ability of unknown lawyers to appropriately cross examine witnesses in cases in which those parties have no control. In addition, this opinion reposes with the trial court extraordinary discretion to shape the testimony in cases long after discovery is concluded and opportunities to alter the result lost.

Answers to Professionalism Quiz

- | | |
|------|-------|
| 1. C | 9. B |
| 2. D | 10. B |
| 3. B | 11. B |
| 4. D | 12. B |
| 5. C | 13. A |
| 6. B | 14. B |
| 7. A | 15. B |
| 8. C | |



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- Past Chair of the Palm Beach County Bar Association's Professionalism Committee
- Emeritus member of the Craig S. Barnard American Inns of Court
- Current appointed member of The Florida Bar Civil Rules Committee
- Current appointed member to the Southern District Advisory Committee on Rules and Procedures
- Served six years as an elected member of The Florida Bar Young Lawyers Division Board of Governors
- Past member of The Florida Bar Professional Ethics Committee

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Ron can be reached at: 561-803-3519 or rponzoli@richmangreer.com

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OFFICE SPACE

OFFICE SUBLEASE IN CENTURION TOWER: McCabe Rabin, P.A., 1601 Forum Place, West Palm Beach. Includes office, file space and a secretarial station, and access to a high speed copier/scanner, two conference rooms, a full kitchen and internet. \$1,500/month. Call Beth (561) 659-7878.

OFFICE SPACE AVAILABLE: BEAUTIFUL OFFICE overlooking Clearlake and located inside of a suite with two attorneys and a private investigator. Building has lots of amenities and GREAT VALUE. Furniture rental is also available for reasonable monthly fee. Call Brian Balaguera (561) 414-8016 or email mylawyer19@yahoo.com.

EXECUTIVE SUITES/OFFICE SPACE: WPB, Forum Area, east of I-95, single offices available with or without secretarial area. Office set up with conference rooms, library, parking, full kitchen and reception area. Great friendly environment with long-term tenants. Available immediately, no lease required. For more information call (561) 389-3468.

OFFICE SPACE FOR RENT: Laid back, pleasant law office, Downtown overlooks Intracoastal and park, close to Courthouse in Citizens Bldg. Furnished/unfurnished. \$675 includes use of comfortable lobby and copy work area. Call Stephanie (561) 659-8810. Perfect satellite or starter office. Great atmosphere.

HEARSAY

Michael J. Napoleone received the 2012 South Florida Business Journal Key Partners Award, recognizing him among a select group of lawyers based on reputation and demonstrated success in 2012.



Lewis, Longman & Walker, P.A. is pleased to announce that **Julia L. Jennison** has been elected as a Shareholder of the firm. Also the firm announces that **Michelle Diffenderfer**, a Shareholder, was selected to be featured in The 2013 Woman’s Advantage Shared Wisdom Calendar. The calendar provides advice for women business owners from influential women leaders.



Hicks, Motto & Ehrlich, P.A. is pleased to announce that **Ersine C. Rogers, III** has joined the firm as Associate attorney. Mr. Rogers was certified by The Florida Bar in marital and family law in 1995.



Premier Leadership Coaching is pleased to announce that its president **Alexa Sherr Hartley** has been selected by WestlawInsider to be a contributing author to its blog. At WestlawInsider, Ms. Sherr Hartley will continue to help high-achievers and high-potentials develop the skills needed to be outstandingly great in their careers. www.premierleadershipcoaching.com.

Scott N. Richardson has been appointed to membership on the Florida Board of Bar Examiners by the Supreme Court of Florida. His term of office will extend through October 31, 2017.

PALM BEACH COUNTY BAR ASSOCIATION PRESENTS ITS FIRST GOLF MIXER & CLE!



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Skills Clinic or Play

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Your Choice!

Friday, April 26, 2013

Bear Lakes Country Club, West Palm Beach

1:00 p.m. to 6:00 p.m.

PROGRAM:

1:00 p.m. - 2:00 p.m.: Art of Negotiating presented
by Upchurch, Watson White & Max

2:30 p.m. - 5:00 p.m.: Skills Clinic or 9 Holes

5:00 p.m. - 6:00 p.m.: Cocktail Reception, Plus Chipping & Putting
Contest for Cash Prizes!

REGISTRATION FORM (use this form if paying by check)
Or Register By Credit Card Online @ www.palmbeachbar.org

Early Registration before 5:00 p.m. on April 1

Registration fee discounted for all PBCBA members.

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David Steinfeld, a Florida Bar Board Certified Business Litigation attorney and owner of Law Office of David Steinfeld, P.L. has become an associate editor for business law with Attorney-At-Law Magazine.



Eunice Baros announces opening her law office in Palm Beach Gardens concentrating on mediation, criminal defense, juvenile and consumer/travel

fraud. A member of the Palm Beach Association of Criminal Defense Lawyers board, she has been a Florida Supreme Court Certified Circuit Civil Mediator since 1993 when she practiced with Holland & Knight.

MISCELLANEOUS

FOR SALE: Palm Beach County Vanity # (561) 640-9999. Great for attorney office. Bid accepted by contacting (561) 640-9999 or email docbones77@aol.com.

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



Judges Thomas Sholts and Rosemary Barkett



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PALM BEACH COUNTY BAR ASSOCIATION

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CALENDAR January 2013

Tuesday, January 8,
11:45am – 1:00pm
**SPBC Bar Association
Monthly Membership
Luncheon**
Boca Country Club

Tuesday, January 8,
Noon – 1:00pm
**Corporate Law & Counsel
Committee Meeting**
Bar Association Office

Tuesday, January 8,
Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Wednesday, January 9,
8:00am – 9:00am
NCS Board Meeting

Wednesday, January 9,
Noon – 1:00pm
Professionalism Committee
Meeting
Bar Association Office

Wednesday, January 9,
6:30pm -8:00pm
Small Claims Clinic
Palm Beach Gardens, Library

Thursday, January 10,
11:45am – 1:00pm
SPBC FAWL Luncheon

Friday, January 11,
8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Friday, January 11,
11:30am – 1:00pm
**Technology
Committee Seminar**
Bar Association Office

Tuesday, January 15,
11:30am – 1:00pm
Solo & Small Firm Lunch
Bar Association office

Wednesday, January 16,
11:45am – 1:00pm
**Business Litigation CLE
Lunch Seminar**
Bar Association Office

Thursday, January 17,
1:45am – 1:00pm
FAWL Luncheon
WPB Marriott

Friday, January 18,
11:45am – 2:00pm
**Employment Law CLE
Lunch Seminar**
Bar Association Office
Monday, January 21
Court Holiday – MLK, Jr. Day
Bar Office and Courts Closed

Tuesday, January 22,
Noon – 1:00pm
CDI Committee Meeting
Bar Association Office

Wednesday, January 23,
11:45am – 1:00pm
Judicial Luncheon
Judicial Conference Room,
Main Courthouse

Wednesday, January 23,
5:00pm – 6:30pm
**PBCBA Board of Directors
Meeting**
Bar Association Office

Thursday, January 24,
11:45am – 1:00pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room,
Main Courthouse

Friday, January 25,
Noon – 1:00pm
Federal Bar Luncheon
The Colony Hotel, Palm Beach

Friday, January 25,
8:00am – 12:30pm
Real Estate CLE Seminar
Bar Association Office

Tuesday, January 29,
8:30am – 10:30am
Lawyers for Literacy
Adult Education Center

Tuesday, January 29,
Noon – 1:00pm
BBC Committee meeting
Bar Association Office

Wednesday, January 30 –
February 1
**Florida Bar Board of
Governors Meeting**
Tallahassee

Thursday, January 31,
5:30pm – 7:00pm
**YLS Joint Event
w/South County YLS**
Salt, Delray Beach



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

Lunch and Learn

E-Discovery

Featuring: Christopher B. Hopkins, Esq.

February 19, 2013 - 11:45 a.m. - 1:00 p.m.

Bar Offices - *New Location:* 1507 Belvedere Road, West Palm Beach, FL 33406

Program Schedule

11:45 am - 11:55 am	Late Registration / Lunch
11:55 am - 12:00 pm	Welcome - <i>Christine D. Hanley, Esq., Christine D. Hanley & Associates, P.A., Employment and Labor Law CLE Committee Chair</i>
	Introduction - <i>Matthew N. Thibaut, Esq., Casey Ciklin Lubitz Martens & O'Connell</i>
12:00 pm - 1:00pm	E-Discovery - <i>Christopher B. Hopkins, Esq., Akerman Senterfitt</i>

Do you know the difference between e-discovery vs. e-retention? Has someone mentioned Zublake, Chin, or Da Silva Moore cases and you have no idea what they mean? Do you know the difference between predictive coding and intelligent review? In 2012, there was a record number of new opinions and jurisdiction-specific rules on e-discovery. Unfortunately, nearly one third of all e-discovery opinions involved sanctions against a party or lawyer. Employment lawyers need to understand e-retention vs. e-discovery, appropriate business practices and IT policies, as well as the rules governing e-discovery of electronically stored information (ESI). Social media continues to be a dominant issue in employment law. This Seminar will cover:

- * E-discovery, e-retention, and general overview
- * Florida e-discovery rules and ESI cases
- * Social Media in Employment Cases: NLRB guidance and discovery

Christopher B. Hopkins is a shareholder at Akerman Senterfitt and a litigator with a practice focused on e-discovery, e-retention, social media, and technology-related issues. He is the former chair of the Palm Beach County Bar Association Technology Committee and writes a monthly legal-technology column for the PBCBA's Bulletin. Mr. Hopkins has lectured on social media, e-discovery, technology and ethics, evidence and trial presentation and is the author of over 60 articles. Mr. Hopkins has created two law-related iPhone apps and is the host of InternetLawCommentary.com.

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

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

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



The Palm Beach County Bar Association's Workers' Compensation Committee Presents:

"The First Annual Workers' Compensation Seminar"

Friday, February 1, 2013 - 11:55a.m. - 5:30p.m.

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

Program Schedule

- 11:55a.m. - 12:25p.m. **Late Registration / Check In / LUNCH**
- 12:25p.m. - 12:30p.m. **Welcome & Opening Remarks** - *Nicole Hessen, Esq., Wender, Hedler & Hessen, P.A., Workers' Compensation Committee Chairperson*
- 12:30p.m. - 1:00p.m. **Ethics and Professionalism: A Cut above the Ordinary:** - *Ronald P. Ponzoli, Jr., Esq., Richman Greer, P.A., and Anthony E. Forte, Esq., Wyland & Tadros, LLP*
- 1:00p.m. - 1:30p.m. **Everything you ever wanted to know about X Stop and Kyphoplasty, the next wave of minimally invasive treatment for the spine.**
Presented by Louis J. Raso, M.D. Dr. Raso specializes in Interventional Pain Management and holds double-board certifications in Pain Management and Anesthesiology. Legal discussion directed by Kenneth B. Schwartz, Esq., Kenneth B. Schwartz, P.A.
- 1:30p.m. - 2:30p.m. **Practical Considerations and Discovery Practices when dealing with PEO's.**
A Panel discussion presented by: Jane-Robin Wender, Esq., Wender & Associates, P.A.; Daniel J. Simpson, Esq.; Brian S. Fischer, Esq., Brian S. Fischer P.L.; and Greg D'Ambrosio
- 2:30p.m. - 3:30p.m. **Compelling Attorney Fee Motions Under Rule 60Q-6.107(4)/6.124(4): Perspectives from the Claimant and Carrier bars.** *Presented by: Marc Golden, Esq., Rosenthal, Levy, Simon & Ryles, P.A., and Gerald K. McKim, Esq., Wyland & Tadros, LLP*
- 3:30p.m. - 4:00p.m. **Q & A Session with Palm Beach County JCC's and comments from the Bench:**
Honorable Timothy M. Basquill, Honorable Mary A. D'Ambrosio and Honorable Shelley M. Punancy. Please e-mail questions for the Judges in advance to Nicole Hessen at Nicole@InjuredWorkersOnly.Com
- 4:00p.m. - 4:30p.m. **An Overview of the Reverse Shoulder Replacement.** *Presented by Dr. Howard Routman, Orthopedic Surgeon at Atlantis Orthopedics. Legal discussion directed by Kurt A. Wyland, Esq., Wyland & Tadros, LLP*
- 4:30p.m. - 5:30p.m. **Cocktail Reception & Presentation of the Kennie Edwards Award**

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Course is expected to receive **5.0 CLER incl. .50 Ethics / 5.0 Worker's Comp. Cert. credits from the Florida Bar.**

The **early registration** cost of the seminar, lunch included, is **\$115 PBCBA Attorneys/Paralegals; \$155 Non-PBCBA Attorneys/Paralegals.** Add \$15 late fee after 1/25/13.

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

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