



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

July/August 2011

New Members of the Board Let Loose!



Seated (L-R): Immediate Past President Michael Napoleone; Retired Judge Edward Rodgers; President John Howe and President-elect Adam Rabin.

Standing (L-R) John Whittles, director; Ron Ponzoli, North County Section President; Grier Pressly, Director; Robin Bresky, Director; Wade Bowden, Director; Jill Weiss, Director; Jason Guari, Director; Theo Kypreos, Director; Jason Lazarus, Young Lawyers Section President and Sia Baker-Barnes, Director.

More pictures from the banquet can be found on page 9.

**Celebrate the end of a long hot summer
Join us for a cold beverage & plenty of networking!**

Cocktail Reception and Spelling Bee

presented by the Lawyers for Literacy Committee

Thursday, September 1

5:30 p.m. to 7:30 p.m.

Bear Lakes Country Club

1901 Village Blvd., West Palm Beach

Cost: \$25.00 for members; complimentary for judges; spouses are welcome for \$40.00

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**Proceeds benefit local literacy programs
RSVP online @ www.palmbeachbar.org**

Mark your calendar for upcoming Membership Events

Annual Spelling Bee/Membership Reception

September 1, 5:30 - 7 p.m.
Bear Lakes Country Club

Lawyers Have Heart Run

October 1

Diversity Luncheon

October 14, 12 noon
Marriott West Palm Beach

Family Picnic

October 22
Dreher Park, West Palm Beach

Annual Holiday Party & Silent Auction

December 1, 5:30 p.m.
Frenchman's Reserve, Palm Beach Gardens

Third Annual Lawyer Variety Show

January 21, 2012
Eissey Theatre, Palm Beach State College

Bench Bar Conference

March 9
Palm Beach County Convention Center

Annual Judicial Reception

May 1, 5:30 - 7:00 p.m.
The Harriet at City Place

Annual Installation Banquet

June 2
The Breakers Hotel, Palm Beach

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THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

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President

www.palmbeachbar.org

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

LETTERS TO THE EDITOR

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

Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1601 Belvedere Road, #302E
West Palm Beach, FL 33406



HAVEN'T PAID YOUR PBCBA DUES YET?

This will be your last issue of the Bulletin
PBCBA dues statements were mailed in April.
If you have not already paid, we hope you will renew today.

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**RENEW TODAY! Contact Shoshanah Spence at 687-2800
or renew online at www.palmbeachbar.org**

Lawyer Variety Show — Back By Popular Demand!



Iola Mosley sings Deed I Do

Plans for our **Third Annual Lawyer Variety Show** are well underway with some new and exciting acts planned for your entertainment. Please mark your calendar and join us on Saturday, January 21, 2012 at the Eissey Theatre in Palm Beach Gardens for this night of cocktails, food and great fun!

If you're interested in auditioning to be in the show, or know someone with extraordinary talent who can make people laugh, or can dance, or sing, please contact Lynne Poirier at the Bar Office at 687-2800 or by email at lpoirier@palmbeachbar.org.

A portion of the proceeds will benefit the Legal Aid Society of Palm Beach County.

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"The Takover" Message

By John M. Howe

It was a great honor and a proud, yet humbling, evening for me last month to become the 89th president of the Palm Beach County Bar Association. For the past four years, I have had the opportunity to observe the great work and leadership delivered by several of the Bar's past presidents. I would like to thank and congratulate our Immediate Past President, Michael Napoleone, on a spectacular year. However, do not go far Mike, because we still intend to extract one more year of work from you. In fact, it is the year-round hard work on the part of the Bar's excellent staff, dedicated committee chairs and members, and the board as a whole, that makes possible all that we do.

A New Home for the Bar

The foremost goal for the upcoming year is to complete the transition into our new home which will be located at 1507 Belvedere Road in West Palm Beach. In May, we unveiled our new Building Capital Campaign to underwrite the costs of transforming the building from a decrepit former Denney's restaurant to state of the art office space and a venue for meetings and seminars. There are numerous naming opportunities for you to establish your or your firm's legacy in our new home by sponsoring a room in the new office. The campaign also includes a brick-naming component wherein members can purchase brick pavers which will form the walkway leading up to the entrance of the building. Please visit the Bar's website and click on the link to the Capital Campaign to learn more.

The New Profile for Diversity and Inclusion

Another priority this year is to build upon the advancements we have made in diversity and inclusion, both in our Bar and overall legal community. A year and a half ago, our board took the major step of amending our by-laws making the Committee for Diversity and Inclusion the only permanent standing committee

President's Message

and mandating that a sitting board member serve as its co-chair. While we have made significant strides in this area, the finish line is nowhere in sight. We are now planning the Bar's second Diversity Summit which will be on October 14, so mark your calendars.

Law Related Education

Over the last year and during the last legislative session in Tallahassee, we saw unprecedented attacks on the judiciary. We have seen the corrosive effect unchecked rhetoric against the legal profession can have upon uninformed members of the public. Many in the community are uninformed of the vital role that lawyers and judges play in protecting the right they hold so dear. There are some who have made it their aim to diminish the standing of the judicial branch as a co-equal branch of the government. If this were to happen, it would be, in part, because we as lawyers failed to inform the public of the essential role the judiciary plays in a democracy. In the past year, we formed a Law Related Education Committee. This very important committee will be charged with implementing effective programs to get lawyers in front of civic organizations, community associations, other professional associations and students. The Lawyers for Literacy Committee will be a part of that effort. Our LFLC will work in partnership with The Florida Bar to achieve these educational objectives.

Get to Know Your Board Members

I have had the privilege of serving with most of our board members over the last several years in various capacities, both on this board and others. These are some of the most dedicated and hardworking individuals one could hope to have working on their behalf. In addition, they are all very interesting personalities! I will write about one or two each month.

Featured Director:

Rosalyn Sia Baker Barnes

Known to most as "Sia", there is much more to her than the talented attorney we see during business hours. In addition to being a ten-year litigator at Searcy, Denney, Scarola Barnhart and Shipley, Sia is also a mother and a wife. She is married to another great local litigator, Edrick Barnes, who practices with Liggio Benrubi in West Palm Beach. Sia and Edrick are the parents of a beautiful 3-year old who goes by the name Selia Elizabeth. Sia is also a member of the Links, Inc., a community service organization comprised mostly of African-American women of various professions. She is also a member of the local graduate chapter of Alpha Kappa Alpha Sorority, which also engages in extensive service to the local community.

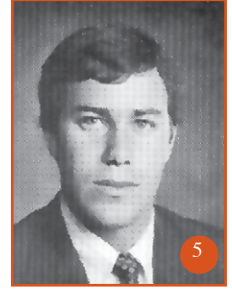
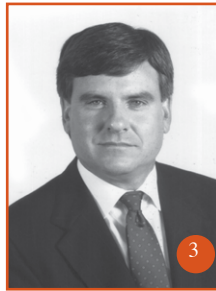
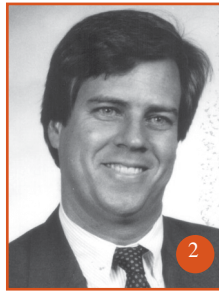
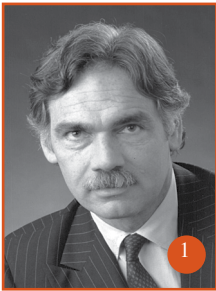


Board of Directors Meeting Attendance

	Retreat	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May
Bowden	x	x	x	x	x	x	x	x	x	x	x
Bresky	x	x	x	x	phone	x	x	x	x	x	x
Guari	x	x	x	x	x	x	x	x	x	x	x
Howe	x	x	x	x	x	x	x	x	x	x	x
Kapner	x	x	x	x	x	x	x	x	x	x	x
Kypreos	x	x	x	x	x	x	x	x	x	x	x
Napoleone	x	x	x	x	x	x	x	x	x	x	x
Pressly	x	x	x	x	x	x	x	x	x	x	x
Rabin	x	phone	x	x	x	x	x	x	x	x	x
Reagan	x	Ponzoli	x	x	x	x	x	phone	x	x	x
Suskauer	x	x	phone	x	x	x	x	x	x	x	x
Weiss	x	x	x	x	x	x	x	x	x	x	x
Whittles	x	x	x	x	x	x	x	x	phone	x	x

Who are they?

Can you guess who these members are? Answers can be found on page 11. If you have old pictures of yourself or other members that you'd like featured, please send them to Patience Burns at the Bar Office.



Attorneys and Friends Celebrate 23 Years of Pro Bono Service

On May 7, the Legal Aid Society of Palm Beach County honored 8 attorneys, 2 law firms and an accountant for their outstanding pro bono contributions in 2010. Over 700 friends and supporters of Legal Aid gathered at the Palm Beach County Convention Center to attend the 23rd Annual Pro Bono Recognition Evening. The theme of the evening was "Big City," and highlighted food and songs from New York, Chicago, San Francisco and New Orleans. All the proceeds raised from the annual event are used to ensure equal access to justice to all citizens of Palm Beach County.

The attorneys honored at this year's celebration included:

Anne Blanford – Child Advocacy Award
 Flynn Bertisch – Education Law Award
 Richard Kleid – Emeritus Award
 Sasser Cestero and Sasser – Family Law Award
 Brian M. O'Connell – Guardianship Law Award
 Bridget Ann Berry – Juvenile Justice Award
 Steven M. Greenberg – Non-Profit Award
 David A. Gart – Probate
 Ryland Mahathey – Tax Law Award

The Firm Award was presented to Greenberg Traurig, LLP. The Special Service Award recipient was Alex Alijewicz, CPA. The Annual Suzanne Foley "Serving Justice" Award, given in memory of Legal Aid's Associate Director of Development, was presented to Juliana Blanc.

Entertainment was provided by Dreyfoos School of the Arts, under the direction of Garry A. Lewis. Emcees for the evening were Bill Bone and Michelle Suskauer and hosts were Grier & Kristy Pressly and Robin & Ken Bresky.



Seated (left to right) – Kristy Pressly, Bob Bertisch, Robin Bresky
 Standing (left to right) – Brian O'Connell, Juliana Blanc, Alex Alijewicz, Grier Pressly, Steven Greenberg, David Gart, Richard Kleid, Ryland Mahathey, Jorge Cestero, Elisha Roy, Susan Kornspan, Ken Bresky, Flynn Bertisch, Ann Blanford

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www.palmbeachbar.org



Capital Campaign — Thank You to Those Who Have Contributed!

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

We sincerely thank the following firms and members who have contributed to date:

Meeting & Seminar Room:

**SEARCY DENNEY SCAROLA
BARNHART & SHIPLEY, P.A.**

Executive Director's Office:

RICHMAN GREER, P.A.

Small Conference Room:

**SCHULER HALVORSON WEISSER
& ZOELLER, P.A.**

Communications Office:

**NORTH COUNTY SECTION &
YOUNG LAWYERS SECTION**

Member Services Office:

HOLLAND & KNIGHT

Additional rooms are still available!

PERSONALIZED BRICKS:

Arthur Wroble
Bruce Alexander
Clark, Fountain, LaVista, Prather, Keen
& Littky-Rubin
Fox Rothschild
Greg & Monica Coleman
Jason Lazarus
Jay & Jane Hunston
John Farrell
John Howe
Law Offices of Robin Bresky
Manny Farach
McCabe Rabin
McHale & Slavin
Michael & Cynthia Napoleone
Murray & Guari Trial Attorneys
Palm Beach County Chapter of the
Paralegal Association
Palm Beach Spine & Diagnostic Center
Rock Legal Services and Investigations
Stan & Alicia Klett
Ted Prior
The Law Offices of Todd S. Stewart, P.A.
Tom and Patience Burns
Wallace McCall



Would you like have a permanent place in the Bar's new building? For further information regarding naming rights or to purchase a brick, please contact Lynne Poirier at the Bar Office or scan the QR Code here with your Smartphone.





Welcomes

Jack H. Cook
*Retired Circuit Judge

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The Palm Beach County Bar Association's Intellectual Property CLE Committee presents:



**Intellectual Property Issues
that Affect Your Client**
*"Ethical Considerations to Avoid
Common Pitfalls"*



Wednesday, September 28, 2011 - 11:45a.m. - 1:35p.m.
Bar Association Offices, 1601 Belvedere Road #302E, WPB

Program Schedule

11:45am - 12:00pm	Late Registration/Check In
12:00pm - 12:45pm	LUNCH Sponsored by: Akerman Senterfitt
12:15pm - 12:20pm	Welcome - Opening Remarks – Ashleigh Bholé, Esq., Akerman Senterfitt, Intellectual Property CLE Committee Co-Chair
12:20pm - 1:35pm	Intellectual Property Issues that Affect Your Client - "Ethical Considerations to Avoid Common Pitfalls" Roy P. Zachariah, Esq., Akerman Senterfitt Jennifer P. Rabin, Esq., Akerman Senterfitt



This course is expected to receive 1.5 CLER including 1.5 Ethics credits from The Florida Bar.

The cost of the seminar is \$45 for PBCBA members/paralegals, \$85 for non-PBCBA members/
paralegals if registered by 9/21/11; Add \$15 to registration fee after that date.

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

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

HOW TO REGISTER	 BY CHECK Return this form	 BY CREDIT CARD For security purposes, your must register online at www.palmbeachbar.org	 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) (9/28/11 Intellectual Property) . Cost is the same as listed above, in addition to \$10 for shipping and handling.

PAYMENT BY CHECK ONLY WITH THIS FORM.

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

Annual Judges vs. Lawyers Softball Game Renamed The Dennis P. Koehler Classic — Annual Lawyers Vs. Judges Softball Game

Lawyers take first Koehler Classic 22-12

By Leon St. John
With Dennis

Saturday, April 30, 2011,
John Prince Park

After more than two decades of annual lawyers - judges softball games, the annual fun game has been renamed The Dennis P. Koehler Classic – Annual Lawyers vs. Judges Softball game after Dennis P. Koehler, attorney and softball player, who passed away Sunday, April 24, 2011. Dennis was instrumental in organizing this annual game, which always results in a fun event and Saturday was no different, with the exception of Dennis not being physically present. Players and fans met on the pitcher's mound immediately prior to the first pitch to reminisce about Dennis and his great personality and enthusiasm.



Attorney Team Captain Leon St. John, Josh Koehler and Judicial Team Captain Judge James Martz

The judges' team, consisting of Judges Martz, Oftedal, Eissey, Hafele, Castor, French and Wennett, Magistrate Alijewicz and Judge Eissey's Seminole son, Matt, matched up against a lawyers team of Phil Mugavero, David Prather, Leon St. John, Joe Walsh, Bill Pruitt, Kirk Volker, Lou Delgado and Scott Wortman. Long time regular participants Judge Ken Marra and lawyer Tom Baird were missed, as they were attending their children's college graduations. Additionally Judge Jonathan Gerber, another regular participant, was not able to make the game. Judge Blanc was present, however, he was on the DL and could not play. Dennis' son, Josh Koehler, was present and it was good for all of us to see him the day after his dad's funeral.



The visiting Judges team jumped off to a 2-0 lead in the top of the first, only to have the lawyers respond with 9 runs in the bottom of the inning. Going into the 3rd inning the lawyers enjoyed an 11-8 lead and held onto it as the lawyers' starter, Lou Delgado, limited the judges to only 4 more runs for the rest of the 7 inning slugfest. Wortman, Mugavero and Pruitt led the lawyers with 5 base hits apiece, with Wortman, Prather and Volker each smacking inside the park round trippers. Wortman scored 5 times and played a stellar shortstop.



Kirk Volker

Don Hafele, Mark Eissey, Rich Wennet and Rich Oftedal led the judges with 4 hits apiece, with Jim Martz adding 2, including a double to the gap. Hafele was a vacuum cleaner at 3rd base on defense for the judges and Rich Oftedal went the distance for the judges. The judges threatened in the 7th inning, scoring 2 and had the bases loaded with no outs, but the lawyers managed to put out the fire when left fielder Prather made a running catch in foul territory for the 3rd and final out to clinch the victory 22-12 for the lawyers.



Lou Delgado, Richard Wennet, Judge James Martz, Judge Richard Oftedal and David Prather

It was another fun game between the judges and lawyers, on a beautiful Saturday morning, which was followed by a great picnic graciously donated by Duffy's with ribs, burgers, salad and refreshments. Many thanks to the Bar Association, Patience Burns, Sara Alijewicz, Kirsten Herndon, Maureen Martinez and Abigail Beebe for their work and support of this annual event. For those judges and lawyers who have not participated in this wonderful experience in the past, please consider next years' game and plan to join us for fun and friendship.

PLAY BALL!!!





Certiorari has its Limitations

by Ted Babbitt

Williams v. Oken, 36 Fla. L. Weekly S202 (Fla. May 5, 2011) was a review of Oken v. Williams, 23 So. 3d 140 (Fla. 1st DCA 2009) and St. Mary's Hospital v. Bell, 785 So. 2d 1261 (Fla. 4th DCA 2001). The Williams case arose out of a medical malpractice case where the plaintiff claimed that a cardiologist failed to properly treat him in the emergency room and he, therefore, suffered a heart attack. Plaintiff served a notice of intent to initiate litigation together with an affidavit by a board certified emergency room physician and the defendant cardiologist moved to dismiss on the grounds that the plaintiff's expert was not an expert in the field of cardiology and, therefore, that the plaintiff had failed to comply with Fla. Stat. 766.102 because he had not attached a corroborating affidavit from a qualified medical expert. The trial court denied the motion to dismiss and the defendant filed a petition for writ of certiorari with the First District Court of Appeals. The First District granted the petition for writ of certiorari and quashed the trial court's denial of the motion to dismiss. The plaintiff sought review before the Supreme Court alleging conflict with the St. Mary's case and the Supreme Court granted review.

While declining to review issues as to whether the affidavit in question was sufficient, the Supreme Court quashed the First District's decision in Oken and approved the Fourth District's decision in St. Mary's on the grounds that the First District's grant of certiorari was inappropriate.

The Supreme Court cited Reeves v. Fleetwood Homes of Fla., Inc., 889 So. 2d 812, 822 (Fla. 2004) which quoted from Bd. of Regents v. Snyder, 826 So. 2d 382, 387 (Fla. 2nd DCA 2002). Those cases held:

Before a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the following three elements: '(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.'

The denial of a motion to dismiss cannot ordinarily be the basis for certiorari review but an exception has been carved out that permits certiorari review on the issue of whether presuit requirements of a medical malpractice statute have been complied with. Martin Mem'l Med. Ctr., Inc. v. Herber, 984 So. 2d 661, 662 (Fla. 4th DCA 2008); Lakeland Reg'l Med. Ctr. v. Allen, 944 So. 2d 541, 543 (Fla. 2nd DCA 2006). In Globe Newspaper Co. v. King, 685 So. 2d 518, 520 (Fla. 1995), the Supreme Court held:

Certiorari review is appropriate to determine whether a court has conducted the evidentiary inquiry required by section 768.72, Florida Statutes, but not so broad as to encompass review of the sufficiency of the evidence considered in that inquiry.

Globe was a punitive damage case and the issue was whether there was sufficient evidence to have permitted amendment of the complaint to claim punitive damages. The Supreme Court held that appellate courts have certiorari jurisdiction to determine if a trial court has followed the procedural requirements of Florida Statute 768.72 but not to determine if sufficient evidence existed to justify the amendment of a complaint to claim punitive damages.

In Oken, the Court concluded that certiorari lies to determine whether a trial court has followed the appropriate presuit process under the medical malpractice statutes but not to conduct an evidentiary review of the trial court's determination. At 204, the Court holds:

A review of Globe supports Williams' arguments and demonstrates three things: (1) that a defendant cannot demonstrate material harm required for certiorari review concerning whether a punitive damages claim is viable, or by analogy, an expert is qualified, because those things do not deprive the defendant of the statutorily guaranteed process, (2) utilizing certiorari to review the trial court's findings regarding whether a claim for punitive damages exists, or, by analogy, whether an expert is qualified amounts to reviewing the sufficiency of the evidence, and (3) that granting a petition for writ of certiorari to review the sufficiency of the evidence is inappropriate.

In St. Mary's, *supra*, the Fourth District dismissed a petition for certiorari to determine whether there was sufficient evidence to prove that plaintiff's decedent had actually been a patient at St. Mary's Hospital prior to his death. The Court concluded:

Certiorari does not lie for appellate courts to reweigh the evidence presented concerning compliance with the presuit statutory requirements. St. Mary's at 1262.

The Supreme Court adopted the reasoning of the Fourth District in St. Mary's, *supra*, and quashed the opinion of the First District in Oken, *supra*. The Court concluded that whether the trial court erred in finding that plaintiff's expert was qualified under the malpractice statutes was a legal error that was insufficient to justify review by certiorari. The Court held:

While ensuring that an expert meets the statutory presuit requirements is clearly an important consideration in medical malpractice cases, in the instant case, the First District exceeded its authority by granting certiorari to review whether Williams' expert met those qualifications. Florida courts have permitted certiorari review solely to ensure that the procedural aspects of the presuit requirements are met.

This case establishes the parameters of certiorari review in all cases not just medical malpractice. Appellate courts will accept certiorari to ensure that procedures are followed so that due process is met but will not determine on certiorari the evidentiary quality of the decision within that process.

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

Law Week Highlights

We had two wonderful speakers join us for this year's Law Day Luncheon. Ronald Cotton and Jennifer Thompson are New York Times best-selling authors of the book *Picking Cotton* and were in town to meet our members and tell their story of injustice, redemption and the power of forgiveness. Cotton was an innocent man who spent 11 years in prison after Thompson said he was the man in the lineup who broke into her home, attacked and raped her. It was DNA that proved Cotton's innocence. Two years after his release from prison, the two met and soon became best friends who tour the country discussing eyewitness misidentification.

During the luncheon, we had some fun and put our own members to an eyewitness test. While Michael was making his remarks, our suspect (pictured far right) walked through the crowded room of 200 and took a gift off the podium where announcements were being made. A few minutes later Michael asked if anyone had seen what happened to the bag and asked a deputy to bring out the suspects. By a show of hands all three suspects were found guilty - and the real thief wasn't even in the lineup, which is exactly what happened in the case of Ronald Cotton. So, I guess you could say our members accused the wrong guy of stealing the gift.



Suspect #1 Paul Erwin, Director for WPTV News Channel 5; #2 Paul Waide, APEX Productions; #3 Brian Murphy, Brightway Insurance and the real thief Scott Burns (no relationship to Patience) Chief Scientist for the South Florida Water Management District



Through an interpreter, Judge Bonavita spoke to a group of hearing impaired students at John I Leonard High School in Greenacres about the American Disabilities Act.



Ted Leopold spoke to a group at Devonshire Retirement Community in Palm Beach Gardens



Jean Marie Middleton and Iola Mosley answered calls during Dial A Lawyer



Michael Napoleone (center) pictured with Tanique Lee (Law Week Co-Chair) and some of our Law Week Committee Members Ashley Ortagus, Abby Bebe, Kim Rommel-Enright, Magistrate Sara Alijewicz and Kirsten Herndon



Phil Hutchinson, Tasha Dickinson and Adam Rabin



Judge Charles Burton, Michelle Suskauer and Bonnie Cohen

Additional Law Week pictures can be seen on the Bar's Facebook page

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John Howe sworn in as the Bar's first African American President

History was made during the Bar Association's annual Installation Banquet which was recently held at The Breakers Hotel in Palm Beach for more than 400 lawyers, judges and special guests. This historic event was in honor of John Howe who serves as the Bar's 89th leader and its first African American president.

Howe is an attorney with Lesser, Lesser, Landy & Smith, PLLC in West Palm Beach. Presenting sponsors for the evening included Lesser, Lesser, Landy & Smith and Sabadell United Bank.

John Howe was sworn in by Retired Judge Edward Rodgers. Judge Rodgers was the first African American prosecutor, the first African American county and circuit judge and the first African American Chief Judge of the 15th Circuit.



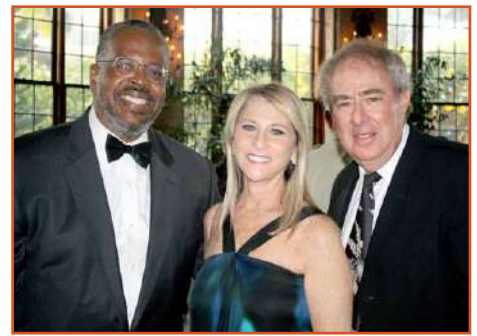
John Howe with his parents Martin and Rose Howe



Jennifer & Gary Lesser



Meryl and Lloyd Comiter



Judge Moses Baker, Penny Beers and Mitch Beers



Judge Robin Rosenberg and her husband State Attorney Michael McAuliffe, Judge Lisa Small and her husband Anatole Conde

Lynn Whitfield, John Howe, Sia Baker-Barnes and Andrew DeGraffenreidt

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



Probate Corner



"Substantial Beneficiary" Defined

By David M. Garten, Esq.

There is a presumption of undue influence when the undue influencer: (1) occupies a confidential relationship with the decedent; (2) is a substantial beneficiary under the will; and (3) was active in procuring the will.

To determine who is a substantial beneficiary under a will, you need to do more than just compare the size of the bequest to the total value of the estate; you should also consider the discretionary powers given to the personal representative, prior bequests, and the amount given to each of the beneficiaries.

As a general rule, an attorney who is not a beneficiary, but is named as a personal representative in a will drafted by him for his client is not a substantial beneficiary under the will.

See *Zinnser v. Gregory*, 77 So. 2d 611 (Fla. 1955); *Rand v. Giller*, 489 So. 2d 796 (Fla. 3rd DCA 1986). However, if the attorney/PR has absolute discretion to distribute the bulk of decedent's estate, he is endowed with sufficient collateral benefits to make him a "substantial beneficiary" under the will. See *Allen v. Estate of Dutton*, 394 So. 2d 132 (Fla. 5th DCA 1980); *In re Estate of LeVin*, 419 Pa. Super. 89; 615 A.2d 38 (Pa. Super. 1992).

A beneficiary is not considered a "substantial" beneficiary: (a) if he is receiving the same or less than he would have received under the prior non-contested will(s) [See *Carter v. Carter*, 526 So. 2d 141 (Fla. 3rd DCA 1988)]; or (b) if he is receiving the same amount as the other beneficiaries named in the contested will [See *In re Estate of Yelvington*, 280 So. 2d 497 (Fla. 1st DCA 1973)]. The rationale being that the influence must have resulted in an added benefit to the beneficiary. See *Murrey v. Barnett National Bank of Jacksonville*, 74 So. 2d 647 (Fla. 1954).



The YLS has been very active these past few months. A group of YLS members volunteered at the West Palm Beach Boys & Girls Club to help spruce up their facility. They cleaned, painted, did some landscaping and other odd jobs to get it ready for summer campers.



On June 8, the YLS hosted a luncheon with the members of the 4th DCA. Approximately 20 members attended and met informally with eight members of the Court. Pictured here are David Kagerstrom, Judge Carole Taylor and Malik Leigh.



Judge Jonathan Gerber and Nichole Segal



Devin Radkay and Judge Dorian Damoorgian

The Young Lawyers Section Reels in a Win for AMIkids and the Palm Beach Marine Institute

Written by Julia Wyda

On Saturday, May 14, 2011, the PBCBA Young Lawyers Section held its second annual KDW Fishing Tournament to benefit the Palm Beach Marine Institute, a non-profit organization affiliated

with AMIkids. The Palm Beach Marine Institute provides an alternative school and day treatment program for adjudicated youth with a focus on academics,



treatment and behavior modification. Students are committed to the Palm Beach Marine Institute by the Department of Juvenile Justice and the Palm Beach County Juvenile Court until they successfully meet the requirements set out by the Department and the Court. For those students who have completed the program, 75% or more have no further negative contact with the juvenile justice system.

The Young Lawyers Section proudly raised over \$8,000 for the Palm Beach Marine Institute. Melissa Devlin, Chair of the YLS KDW Fishing Tournament Committee, worked tirelessly to ensure the tournament was a success. The Young Lawyers Section thanks Melissa for her exceptional efforts and her ardent commitment to the tournament and the Palm Beach Marine Institute.

Some of the notable winners from this year's tournament include the Grumpy Grouper (Akerman), winning best overall boat; Akerman's Adam Schwartz, winning first place in the dolphin category with a 16.4-pound dolphin and second place in the king fish category with a 25.3-pound king fish; and Gunster's Dani Lassiter, placing second in the dolphin category with a 14-pound dolphin.



The tournament was hosted by the Palm Beach Yacht Club. The Young Lawyers Section would like to thank the Palm Beach Yacht Club for hosting a great event for a worthy cause and for its continued support. The Palm Beach Yacht Club offers a discounted membership rate of \$500.00 for all Young Lawyers Section members under the age of 40. For more information about the Palm Beach Yacht Club, please visit www.pyachtclub.com.

North County Section

North County Section honors Judge Jack Cook as Jurist of the Year



Judge Jack Cook receives this year's Jurist of the Year Award presented by the North County Section. The event was recently held at Ruth's Chris Steak House in North Palm Beach and was well attended by more than 125 members. Judge Cook is pictured with his daughter and son-in-law



Judge Don Hafele, Patricia & Ned Reagan



Even special birthdays are celebrated at Bar events! Rick Chaves celebrates his 40th birthday along with his wife Misty.



Barry Byrd and Jane Hunston



Magistrate Sarah Alijewicz, Magistrate Thomas Baker, Judge Sandra McSorley and Judge Glenn Kelley



David Prather, Judge Jonathan Gerber and Judge David French



Who Are They?
From Page 4

1. Leigh Dunston
2. Judge Greg Keyser
3. Randall Doane
4. Cathy Kamber
5. Steve Cohen



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PBCBA's Revamped Program Takes Diversity to the Next Level

Submitted by Adam Rabin and Jessica Callow

In 2009, with the goal of taking on a more active role in increasing diversity in the Palm Beach County legal community, the Palm Beach County Bar Association ("PBCBA") created a joint task force with the F. Malcolm Cunningham, Sr. Bar Association, the Hispanic Bar Association, and Florida Association for Women Lawyers. The joint task force pledged to utilize the resources of the collective bar associations to improve the image of Palm Beach County as a legal community that embraces diversity and to actively assist local law firms and agencies (collectively, "firms") in their recruitment and retention of diverse attorneys.

In 2010, PBCBA adopted an amendment to its by-laws that renamed the joint task force the Committee for Diversity and Inclusion (the "CDI") and made it PBCBA's only standing committee. The amended by-law requires that a member of the Board of Directors serve as the CDI's chair or co-chair and give monthly reports to the Board.

The CDI now has evolved into the following six-tier program focused on promoting PBCBA's standing commitment to diversity and inclusion:

1. Diversity Event

PBCBA has committed to hosting at least one annual diversity event to assist firms in recruiting and retaining diverse attorneys. In September 2009, PBCBA hosted its inaugural "Diversity Summit" with keynote speaker, Justice Peggy Quince, the first African-American Chief Justice of the Florida Supreme Court. In October 2010, CDI sponsored a diversity-themed lunch with keynote speaker, Steve Zack, the first Hispanic ABA president. In March 2011, the CDI presented a special panel-discussion session at PBCBA's Bench Bar Conference for diverse law students. The goal of the session was to introduce law students to Palm Beach County, raise their awareness of our legal community as one that embraces diversity, and advise them on the importance of selecting the right job, becoming good legal writers, and choosing a good mentor. Each year, PBCBA also sponsors and participates in the Kozyak Minority Mentoring Foundation Picnic (www.kmmfoundation.org) in Miami that pairs minority law students with attorney mentors.

2. Law Firm Liaisons

The CDI has created a program where several CDI members meet for lunch with the managing or hiring partner of local firms. The purpose of the lunches is to introduce the firms to the CDI and offer any assistance the firms may need in recruiting diverse attorneys. The goals of these meetings are as follows: (a) remind the firm of the importance of considering diversity in hiring decisions; (2) offer tools to the firms that may assist them in their recruiting efforts, including PBCBA's diversity website, referrals of possible candidates, and an invitation for candidates to get involved with PBCBA and the CDI. Since January 2011, the CDI has met for lunch with the managing or hiring partners of approximately twenty-five (25) law firms.



3. Diversity Internship Program

For several years, PBCBA has run a paid minority internship program dedicated to placing diverse law students with local firms during the fall and spring school semesters. The CDI recently decided to change the program to a six-week summer program. This has increased the number of participating firms and interns. It also has allowed the CDI to host a bi-weekly seminar or reception for the interns to meet each other and become more connected to our legal community. We have over twenty (20) law firms and government agencies participating in the program this summer.

4. Public Relations

PBCBA is particularly proud of its new "diversity website," which can be found at www.palmbeachbar.org/diversity.php. The goal of creating the diversity website is to assist local firms in their recruitment and retention of diverse attorneys by: a) demonstrating that our legal community values diversity, and b) giving firms a tool that may help their recruiting efforts. The CDI also issues press releases for its diversity events to help promote diversity awareness and the events.

5. Gender Equity

The CDI has formed a subcommittee that focuses on gender issues, including studying and addressing why more women are not advancing to partnership and equity-partnership positions within firms. CDI plans to put on seminars or workshops to gain insight from attorneys and their firms that will help improve opportunities for women to advance within firms. The subcommittee also will explore and educate attorneys and their firms on offering flexible working arrangements and other models that have proven successful for both attorneys and firms.

6. Judicial Nominating Commissions and the Bench

The CDI recently created a subcommittee with the task of identifying and encouraging qualified lawyers of diverse backgrounds to apply for appointments to local judicial nominating commissions and the bench. While neither PBCBA nor the CDI will endorse any candidates, the objective is to identify and encourage qualified persons to apply, and to educate potential applicants through "Road to the Bench" seminars about the application and interview processes.

In sum, the CDI is taking diversity to the next level within our legal community through innovative programs, well-publicized diversity events, and a standing commitment to keep the diversity issue on the forefront. The CDI will be co-chaired by Sia Baker-Barnes and Laurie Cohen in 2011-12.

Adam Rabin and Jessica Callow have served as the Co-Chairs of the CDI for 2010-11. Adam practices in business and securities litigation with McCabe Rabin, P.A. Jessica practices commercial litigation with Casey Ciklin Lubitz Martens & O'Connell.



Lawyers Should Turn Off “Sent From My [Smartphone]”

**By Christopher Hopkins, Chair,
Law Practice Technology Committee**

How many emails a day do you receive with a signature line, “Sent from my iPhone” or “sent by [mobile device]”? Why do we permit those advertisements on business and personal emails?

Unknowningly, those signatures lines give away hints about our work product and habits. Lawyers, as well as anyone in business or politics, should disable the “Sent from my...” signature line on smartphone emails.

Yes, there was a *moment* of tech-chique in 2007 when iPhone users sent their first email which automatically appended “Sent from my iPhone” at the bottom. It was a rare opportunity for early tech adopters to look sophisticated and bask in the glow of the Apple aura. “Sent from my iPhone” was a digital bumper sticker which suggested you took your tech as seriously as you respected the need for people to reach you. A “virtual” Marlboro man.

But, like bumper stickers and the Marlboro Man, trends fade. In the tech world, they fade even faster. Android-based phones flooded the market in 2009 and, within months, Apple debuted the iPad in early 2010. But even Apple’s auto-signature had lost some luster by the time “Sent from my iPad” arrived. In copycat fashion, signature lines sprouted up in emails from non-Apple devices, e.g., “Sent via Good” or, at a wordy extreme, “Sent from my HTP on the Now Network from Sprint!” Throughout this article, we will use the iPhone as our example since they pioneered the signature line phenomenon (before then, RIM’s Blackberry had silently dominated business email without a signature line).

There are many reasons to turn off “Sent from my...” but three reasons, for lawyers, are unassailable. At least one of them involves a serious basis.

Reason #1: As a lawyer, you need to be everywhere yet never appear to be running around. The fact that your email is sent from a mobile device gives away too much information. To your supervisor, an early morning reply with “Sent from my...” betrays that you have not made it to the office yet. To a client, it says that you are on the road... working on someone else’s case at the moment your client wants something from you today. To an adversary, it suggests you may be out of the office and may be helpless to respond to that 4:59 p.m. responsive pleading coyly sent via fax. If you are late for a meeting, it confirms you are typing while driving. At the very least, no one is paying the slightest attention to “Sent by my...” There is no reason to hand over your location (“not in the office”) just because you are sending an email.

Reason #2: as illustrated above, your smartphone’s coolness is gone. No one cares that you have chosen sides in the iPhone or Android debate. Your sly announcement that you were among the rare few to possess an iPad 2 the day after its release is now... stale. The politics of “which smartphone do you own?” is not part of your professional image. You disagree? Consider receiving an email which says, “Sent from my Blackberry” at the bottom. Do you have a positive emotional response to the fact that, in 2011, someone is emailing you via Blackberry? Worse, recognize that you are running a digital billboard for the phone manufacturer. Would you put a “South of the Border” bumper sticker on a new

Mercedes? Instead, enjoy the subtle sophistication of your gadget in silence. Fear not, fellow tech owners – and the envious – will bathe you with the attention you desire when you pull out the latest device at a calculated moment during lunch.

Reason #3: our third reason to delete the “Sent from my...” message is closely tied to the second reason and comes in two parts. You run the risk of subtly *alienating* people. First, the client you are emailing may recoil at “Sent from my iPhone” (or whatever device you are using). Perhaps that person holds an ardent anti-Apple mindset – as much as there are Apple fans, there exist detractors who view their non-Apple smartphones with strong emotion. Or maybe that person had a dispute with AT&T over cell reception or dropped iPhone calls. Perhaps the envious recipient had to resort to a non-smartphone since his employer took away the perk and he cannot afford one. Maybe they chose a competitor since they thought that device was better than Apple (a decision which, in our hypothetical, conflicts with your viewpoint). Or, worse, maybe you are emailing someone who works for or is closely tied to a tech competitor. In short, for no reason – *and no benefit* – you may actually rub someone the wrong way merely by the “Sent from my...” line.

Second, since the iPhone cool-ness factor has deflated since its lauch *four years ago*, leaving that signature line in place suggests that you do not know how to remove it. There goes your tech-savvy image. Indeed, since so many lawyers clog their email footers with IRS and confidentiality disclaimers, the fact that you left “Sent from my...” at the bottom of your email hints at a lack of detail.

Turning off (or replacing) those signature lines is easy: iPhone/iPad: go to Settings-Mail, Contacts, Calendars-Signature. Android/Good: go to Options-Email Option-Append Signature. Sprint HTC: go to Email-Menu-Tools-Options-Signature. Blackberry: Setup-Email Setup-[account]-Signature. Others: Google search “[device] + signature line”

Christopher B. Hopkins is a shareholder at Akerman Senterfitt and the chair of the Technology Committee. You can email him (on his iPhone, no less) at Christopher.Hopkins@Akerman.com.

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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.

Cheryl Aloï - State University of New York at Buffalo, 2003, Associate in Hogan Willig, New York.

Scott Altschul - New York; Hofstra University School of Law, 1990; Affiliate Membership, Weston.

Bradley S. Avakian - Florida; Penn State Dickinson School of Law, Law Student Membership, Bellefonte, PA.

Michele T. Bachoon - New York; St. Thomas University, 2008; Associate in Walton, Lantaff, Schroeder and Carson, LLP., West Palm Beach.

Michael Bogen - Illinois; St. Thomas University School of Law, 2010; Associate with The Bogen Law Group, Boca Raton.

Alexander Brandler - New York; University of Miami, 2010; Office of the State Attorney, Palm Beach County.

Lindsay Brown - Georgia; Stetson University, 2008; Office of the State Attorney, Palm Beach County.

Victoria E. Butler - Florida Registered Paralegal Membership, Law Offices of Salesia V. Smith-Gordon, P.A., West Palm Beach.

Marie Calla - Quartell-Ohio; University of Miami; Partner in The Quartell Law Firm, P.A., Palm Beach Gardens

Donald A. Chinquina - Florida; Nova Southeastern University, 2002; Associate in Wiederhold & Moses, P.A., West Palm Beach.

Kelly Daoud - University of Florida, 2003; Palm Beach.

Penny C. David - Florida Registered Paralegal Membership, Law Offices of Edward A. Marod, P.A., West Palm Beach.

Marjorie Desporte - Nova Southeastern University, 1996; Department of Children & Families, Palm Beach County.

Luke Duntelman - Illinois; St. Thomas University, 2007; Jupiter.

Mary Essue - Ontario, Canada; Stetson University, 2001; 15th Judicial Circuit, Palm Beach County.

Josef Fiala - Illinois; Nova Southeastern University, 2003; Associate in St. John, Rossin, Burr, Lemme, PLLC., West Palm Beach.

Michael E. Glazer - St. Thomas University School of Law, 1988; Associate in Steinger, Iscoe & Greene, West Palm Beach.

Brett L. Goldblatt - New Jersey; University of Miami, 2010; Associate in Cole Scott & Kissane, West Palm Beach.

Jason R. Kaplan - Florida; Oklahoma City University, 2003; Law Student Membership, West Palm Beach.

Gary A. Kasper - Florida; Nova Southeastern University, 2005; Sole Practitioner; Gary Kasper, P.A., West Palm Beach.

Brennan Keeler - Florida State University College of Law; Office of the State Attorney, Palm Beach County.

Bernadette Kogut - New Jersey; Nova Southeastern University, 2010; Law Student Membership.

Nicole P. Kuncel - New Jersey; University of Florida; Law Student Membership, Gainesville.

Jenica Lopez - New Jersey; Florida State University, 2006; Office of the State Attorney, Palm Beach County.

David R. Maass - Florida; University of Florida, Law Student Membership, Gainesville.

Heather MacDougall - Illinois; Marquette University Law School, 1994; Ford & Harrison, LLP, Melbourne.

Andrew Marciniszyn - New York; University of Miami, 2004; Law Office of Joel T. Strawn, P.A., Delray Beach.

Duane Pinnock - New York; University of Florida, Associate in Pankauski Law Firm, West Palm Beach.

Marwan E. Porter - Howard University, School of Law, 2003, Associate in Gary, Williams, Finney, Stuart.

Daniel Reiter - Office of the State Attorney, Palm Beach County.

Christina M. Scholtes - Florida Registered Paralegal Membership, Law Offices of Bettye J. King, North Palm Beach.

Brian Silber - Florida; University of Miami, 2002, Sole Practitioner, Silber Criminal Law Firm, West Palm Beach.

Merryl Silverman - Haber-New York; Whittier Law School, 1992; Associate in Lesser, Lesser, Landy & Smith, Boca Raton, FL.

Julia Smith - Virginia; Stetson University, 2009; Office of the State Attorney, Palm Beach County.

Amy Spagnole - Rhode Island; Suffolk University Law School, 1999; Associated with Berman DeValerio, Palm Beach Gardens.

Peter M. Spett - New York; Columbia University, 1993; Sole Practitioner; Spett Law, Boca Raton.

Kristen Stone - Colorado; Michigan State University, 2007; Associate in the Law Office of Georgia T. Newman, West Palm Beach.

Heather Stover - Florida; George Washington University Law School, 2010; Associate in Wicker Smith O'Hara, McCoy & Ford, West Palm Beach.

Karen A. Thompson - St Thomas University, 2003, Sole Practitioner; Jupiter, Florida.

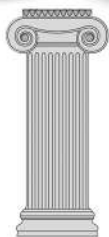
Paul Walsh - St. Thomas University, 2009; Office of the State Attorney, Palm Beach County.

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Discharging Income Tax Debt in a Chapter 7 Bankruptcy, What is Considered Willful Evasion?

By Marc P. Barmat

When determining the dischargeability of income tax debt in a chapter 7 bankruptcy, there are five basic rules which need to be considered. In summary, income taxes in a chapter 7 bankruptcy are dischargeable if all of the below described rules/conditions are met.

The Three-Year Rule: The taxes are for a taxable year for which the due date was more than three years ago. The three year period is computed from the most recent date the tax return is due for the tax year (typically April 15 of the year following the taxable year or the extension date). 11 U.S.C. § 507(a)(8)(A)(i).

The Two-Year Rule: A tax return for the taxable year in question was filed more than two years preceding the filing date of the bankruptcy. 11 U.S.C. § 523(a)(1)(B).

The 240-Day Rule: The tax claim was assessed more than 240 days preceding the filing date of the bankruptcy. 11 U.S.C. § 507(a)(8)(A)(ii). A tax is deemed "assessed" when it can no longer be appealed administratively, i.e., when it is final.

The above three rules are easy to determine by interviewing your client. However, it is recommended to confirm this information by requesting and reviewing IRS tax transcripts. The next two rules can be more subjective and may require a more detailed analysis.

Non-Fraudulent Return: The tax return in question was not fraudulent. 11 U.S.C. § 523(a)(1)(C). An example of a fraudulent tax return would be one in which income is inaccurately or under reported.

No Willful Tax Evasion: This is the most common issue raised by the Government when opposing the dischargeability of IRS debt. Specifically, when opposing dischargeability of IRS debt, the Government often argues that the debtor "willfully attempted in any manner to evade or defeat such tax." 11 U.S.C. § 523(a)(1)(C).

When the Government objects to the dischargeability of IRS taxes, it is the Government's burden to prove the nondischargeability by a preponderance of the evidence. *In re Mitchell*, 633 F. 3d 1319 (11th Cir. 2011) citing *Grogan v. Garner*, 498 U.S. 279. The Eleventh Circuit has set forth a two-prong test for determining whether a debtor willfully evaded his taxes pursuant to 11 U.S.C. § 523(a)(1)(C). The test requires proof by the Government that the debtor engaged in (1) evasive conduct with (2) a mental state consistent with willfulness. *Id.* at 1327.

With regard to the conduct requirement, the Government must prove the debtor engaged in affirmative acts to avoid payment or collection of taxes, either through commission or culpable omission. *Id.* citing *In re Jacobs*, 490 F.3d 913 (11th Cir. 2007). The Eleventh Circuit has previously held that mere non-payment of taxes is insufficient to satisfy the conduct requirement; however, nonpayment in conjunction with a failure to file tax returns has been deemed to constitute evasive conduct. *Id.* citing *In re Fretz*, 244 F.3d 1323 (11th Cir. 2001). Examples of affirmative acts to evade paying taxes include concealment

of assets and dealing in cash. *In re Lewis*, 151 B.R. 140 (Bankr. W.D. Tenn. 1992)

After the conduct requirement is satisfied, the Government must then prove the willfulness requirement. A debtor acts willfully when the debtor's attempt to avoid tax liability is "done voluntarily, consciously or knowingly, and intentionally." *Id.* citing *In re Jacobs*, 490 F.3d at 921. The required mental state is shown when the Government proves that the debtor: (1) had a duty under the law, (2) knew he had that duty, and (3) voluntarily and intentionally violated the duty. *Id.* citing *In re Jacobs*, 490 F.3d at 921. Typically, the Government will have no difficulty in proving the first two elements of the willfulness test. The third element, or the mental state requirement, "prevents the application of the exception to debtors who make inadvertent mistakes reserving nondischargeability for those whose efforts to evade tax liability are knowing and deliberate." *Id.* at 1327 citing *Fretz* at 1330. The determination of the mental state element is very fact specific and will, in large part, be based upon the debtor's testimony.

Recently, the Government has taken a greater interest in defending against debtors who seek to discharge IRS debt. Accordingly, debtor's counsel must identify and discuss all potential issues with their clients prior to filing bankruptcy, especially when the primary objective of the bankruptcy filing is to discharge IRS debt. While these rules may seem simple, they can be quite complex and require a thorough examination of the tax history and law in each case.

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

Circuit Court Report CIVIL DIVISIONS • June 2011

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	10-11	10-11	08-11	1602
AB HAFELE	01-12	01-12	09-11	1648
AD FRENCH	10-11	10-11	08-11	1781
AE MCCARTHY	04-12	04-12	08-11	1852
AF KEYSER	09-11	09-11	08-11	1503
AG CROW	01-12	10-11	08-11	1828
AH BROWN	01-12	01-12	08-11	1598
AI SASSER	11-11	08-11	08-11	1058
AJ ROSENBERG	12-11	12-11	09-11	1261
AN COX	12-11	12-11	10-11	1624
AO BARKDULL	12-11	11-11	08-11	1610



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Wednesday, October 5, 2011 - 9:00am - 1:00p.m.
Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

- 8:45am - 9:00am **Check In / Late Registration**
- 9:00am - 9:05am **Welcome - Opening Remarks** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A., Bankruptcy CLE Committee Chair*
- 9:05am - 9:35am **Ethics and Professionalism: A Cut above the Ordinary** - *Representative from the Professionalism Committee of the Palm Beach County Bar Association*
- 9:35am - 12:30pm **Panel Discussion** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A., James E. Copeland, Esq., James Earl Copeland, P.A., and Norman L. Schroeder II, Esq. represent almost 100 years of Bankruptcy experience. In a panel discussion setting, you will learn ways to improve your practice, how to avoid pitfalls, and while you're at it, enjoy a little comedic relief!*
- 12:30pm - 1:00pm **Buffet Lunch**

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A Fresh Look at Alternative Dispute Resolution

By Jeff Grubman

We are fortunate to have a hard working, caring, intelligent, efficient judiciary in Palm Beach County.

Nevertheless, the foreclosure crisis that has gripped our state and burdened our courts for the past few years shows no signs of subsiding. Our court system is also under attack by Tallahassee with judges being forced to take pay cuts and pressure being exerted to reduce the number of judicial assistants and related court staff.

Consequently, it becomes more difficult with each passing day for attorneys to represent their clients effectively and efficiently in court. Clients are increasingly and seemingly exponentially more frustrated and unhappy with the litigation process. Although it is not the attorneys' fault, clients do not necessarily realize this, nor do they care. Accordingly, clients direct their anger towards their attorneys. Over the past year, countless experienced attorneys have told me that keeping their clients happy and getting their bills paid is a daunting task. One of the most brilliant litigators I know recently told me that he cannot take it anymore and plans to leave the practice of law by the end of the year.

There is no simple solution to this serious problem. Therefore, it is imperative for attorneys to explore ways to reduce reliance on our courts, which will result in easing the burden on our courts. In other words, it is time to take a fresh look at alternative dispute resolution ("ADR"). Florida has a large pool of experienced mediators and arbitrators, including more and more retired judges. Given the current state of the courts, it is incumbent upon attorneys to utilize the experience and resources provided by these professionals. Unfortunately, some attorneys believe that ADR equates to showing up for mediation shortly before trial because the court has ordered the parties to do so. These attorneys view mediation as nothing more than a means to an end, i.e., a hoop that has to be jumped through before getting to trial. If you are reading this article, you undoubtedly understand that ADR is much more than that.

Over 95% of cases are resolved before trial. While judges dismiss some of those cases pursuant to motions to dismiss and motions for summary judgment and plaintiffs dismiss other cases voluntarily, the vast majority of those cases settle. The fundamental difference between mediation and any adversary proceeding is that the parties control their own destiny in mediation. Unlike a decision by a judge or jury over which most parties believe they had little control, parties play an active role in the mediation process and make the decision for themselves. With the assistance of a skilled mediator, clients are usually satisfied with the process and conclude the overall litigation process on a positive note.

Despite the number of mediations conducted in Florida, the mediation process is underutilized. Bright, conscientious attorneys understand that it is often in their clients interest to mediate early and, if necessary, on multiple occasions. This is particularly true today given the stress currently placed on our courts. Discovery is designed to be an open and honest process. Therefore, attorneys should be able to exchange documents voluntarily and cooperate in providing interrogatory responses and key depositions (if necessary) in an efficient manner. Once that information has been exchanged, the parties should mediate.

Mediating early saves clients thousands and sometimes even hundreds of thousands of dollars in attorney fees. I have served as a mediator in many cases before suit was filed or shortly thereafter. Many of those cases settled at that early stage. Other times, factual issues were identified during the course of the mediation, which required some additional discovery. The attorneys kept the mediation process open, engaged in the additional limited discovery required and returned to participate in a subsequent and successful mediation session.

Mediation is not the only form of alternative dispute resolution. Regardless of whether the parties have a contract providing for binding arbitration, they can always agree to binding arbitration. They can submit a case to a large organization that regularly administers arbitrations, such as the American Arbitration Association ("AAA") or Judicial Arbitration Mediation Services ("JAMS"). Alternatively, they can retain a retired judge or an experienced litigator/arbitrator to serve, and either design their own procedures for the arbitration or adopt the rules of the AAA or JAMS. While the parties will obviously have to pay the arbitrator for his or her time, the case will be resolved far more quickly and efficiently with substantially lower attorneys' fees. There is no appellate review of binding arbitration decisions and grounds for vacating an arbitration award are extremely limited. This may be a positive or a negative depending on the case and the amount of money at issue.

For those clients who would like the speed and efficiency of arbitration as well as a decision maker who can give their matter his or her undivided attention but would prefer to preserve their appellate rights, Florida law also allows for private judging.

There are also various hybrid forms of ADR. For example, the parties may participate in med/arb. In this process, the parties participate in a traditional mediation. However, the parties agree that if the dispute does not settle during the mediation conference, the mediator then switches his role from mediator to arbitrator and makes a decision.

The time has arrived for all litigators in Florida to consider and evaluate the various forms of ADR on a case by case basis. Failing to do so is a disservice to one's clients and will result in a heightened level of dissatisfaction with the practice of law.

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	PBCBA	21 st Annual Community Assn. Law Seminar(CD)+++3.5 R/E	3.5	3.5	\$125	\$165	12/4/11
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The Palm Beach County Bar Association's Family Law CLE Committee Presents:

Collaborative Practice: The What, Why and How

Friday, October 21, 2011 9:00 a.m. – 1:00 p.m.

Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL

Program Schedule



- 8:30am - 8:55am **Late Registration and Check in**
- 8:55am - 9:00am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq.,
Matthew Lane & Associates, P.A., Committee Chair*
- 9:00am - 9:15am **What is Collaborative Practice? Who uses it and why?** - *Charles D. Jamieson, Esq.,
The Law Firm of Charles D. Jamieson, PA, Board Certified Marital & Family Law*
- 9:15am - 9:30am **Collaborative Practice Statute & Rule Update** - *Ronald L. Bornstein, Esq.*
- 9:30am - 10:00am **Collaboration & Ethical Duties** - *Pamela S. Wynn, Esq., Pamela S. Wynn, PLLC*
- 10:00am - 10:15am **BREAK**
- 10:15am - 12:30pm **Role of Professional Panels**
- 10:15am - 11:00am **Financial Professionals:**
Cary B. Stamp, CDFA, CFP
Myles German, CDFA, CFP
George Koester, CDFA, CFP
Rod Moe, CPA, CDFA
Luisa K. Bosso, CPA
- 11:00am - 11:45Am **Mental Health & Mediation Professionals:**
Hugh Leavell, PhD
Stephen Peritz, CPA
Lisheyne Hurvitz, MA Ed.
- 11:45am - 12:30pm **Attorneys:**
Charles D. Jamieson, Esq.
Pamela S. Wynn, Esq.
Vicki Vilchez, Esq.
Doreen Halickman, Esq.
- 12:30pm - 1:00pm **NETWORKING LUNCH - SPONSORED BY:**
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The cost of the seminar is \$75 (includes lunch) for PBCBA members/paralegals;

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If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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Florida Bar Board of Governors Summary

At its May 27 meeting in Key West, The Florida Bar Board of Governors:

- Heard a review of Bar activities in the just-ended legislative session and plans for an earlier start on next year's session, including a new communications plan with Board members and Bar members.
- Approved a rewrite of the Bar's advertising rules, as proposed by the Board Review Committee on Professional Ethics. The amended rules will be submitted to the Supreme Court by July 5. Major changes, according to BRCPE Chair Carl Schwait, are that non-misleading testimonials and past results that can be objectively verified will be allowed and websites will be subject to all advertising rules, except the requirement that they be submitted for Bar review. Another amendment specifies that all rules which must be submitted for Bar review must be submitted prior to publication or broadcast, not just electronic ads as in the current rules. Schwait said the committee had four goals in redrafting the rules: simplicity, clarity, consistency, and defensibility.
- Heard a report on e-filing for the Florida courts from board members Murray Silverstein and Laird Lile and from Supreme Court Clerk Tom Hall. Hall reported that the e-filing system is gearing up with more counties joining. He said the largest problem is lawyers using the system not following the rule on protecting confidential client information in electronic filing. He said a subcommittee of the Rules of Judicial administration is looking at that problem and considering a redraft of the confidentiality rule.
- Elected Jay Cohen, David Prather and Ed Scales, as the board's representatives on the Executive Committee.
- Approved President-elect Scott Hawkins' request for a commission to review the Bar's disciplinary operations.
- Rejected, on the recommendation of the Program Evaluation Committee, the proposal from the Special Committee to Study Mandatory Regulation of Paralegals. The Special Committee had proposed that lawyers be prohibited from calling their non-lawyer employees "paralegals" unless those employees had become Florida Registered Paralegals with

the Bar. Instead the board approved the minority report from the special committee which called for maintaining the FRP program. The board also approved recommendations from the PEC, which was completing its three-year review of the FRP program, on ways to enhance the program. That includes improving education opportunities and increasing education about the program.

- Approved recommendations from the Program Evaluation defining the relationship between the Supreme Court Commission on Professionalism, the Bar's Committee on Professionalism, and the Bar's Henry Latimer Center for Professionalism.
- Approved the recommendation of the Program Evaluation Committee to extend the Special Committee on Diversity and Inclusion for another year.
- Gave final approval to the Bar's 2011-12 budget after making a couple minor changes to allow renovation of four bathrooms at the Bar headquarters.

- Transferred extra \$1 million from the 2010-11 operating budget into the Bar's building maintenance reserve and added an extra \$350,500 for the Clients' Security Fund for claims paid from an unexpected court-ordered payment. Another \$500,000, less administrative costs, was added to the CSF claims paid from the CSF reserve.
- Heard from Investment Committee Chair Ian Comisky that the Bar had an outstanding year for its investments, including a positive return in every quarter.
- Gave final approval to deleting Standing Board Policy 11.21, which allows introduction of resolutions at the Bar Annual Convention.

Should you have any questions, please contact one of the Circuit's four representatives: Greg Coleman, Michelle Suskauer, Gary Lesser or David Prather, or Florida Bar President Scott Hawkins.



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HEARSAY



Judge Lucy Chernow Brown, Palm Beach County Circuit Court Judge since 1991, was recently presented with the Justice Barbara Pariente Award by the Palm Beach County Florida

Association for Women Lawyers.

The Dade County Bar Association is pleased to announce that the recipient of the 2011 Dyer Professionalism Award is **Irwin J. Block**, in recognition of his many years of service to the South Florida community.

Williams, Leininger & Cosby, P.A. is pleased to announce that **Maureen Martinez** has rejoined the firm. She will continue to serve clients in the defense of personal injury, property damage and insurance matters. She works primarily in the firm's North Palm Beach office and can be reached at (561) 615-5666 or mmartinez@wlcclaw.com.

The LaBovick Law Group announces **Joseph R. Fields, Jr.** has joined the firm. He will bring his ADA Litigation and Family Law practice to the firm.



Sachs Sax Caplan, P.L. is proud to announce that attorney **Jay A. Schwartz**, a partner with the firm, was sworn in as the South Palm Beach County Bar Association's 50th President.

Mr. Schwartz has previously served as an officer and director of the SPBCBA for the past eleven (11) years.

Merry E. Lindberg, an associate of Christine D. Hanley & Associates, P.A., was elected to the Board of Directors of The ARC of Palm Beach County.



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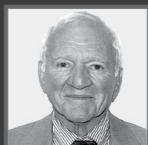
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* Retired Circuit Judge



Michael J. Napoleone, a shareholder at Richman Greer, P.A., has been appointed Vice-Chair of The Florida Bar's Committee on Judicial Independence.



Rutherford Mulhall, P.A. is pleased to announce that **V. Julia Luyster** has been appointed to the Board of Directors for UN Women East Florida Chapter.



Nancy La Vista, a partner at the law firm of Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin, has been named treasurer of the Florida chapter of the American Board of Trial Advocates.



L.A. Perkins, a partner in the Litigation Department in Fox Rothschild's West Palm Beach office, was installed as a member of the Board of Directors of the South Palm Beach County Bar Association.

The law firm of Domnick & Shevin, P.L. proudly welcomes trial attorney **Michael J. Brevda** as their newest associate. He will represent the firm's clients in personal injury, wrongful death and general civil litigation matters.



The Pankauski Law Firm, P.L.L.C. has announced that **Duane L. Pinnock, J.D., LL.M.** has joined the firm. Mr. Pinnock is Florida Bar board certified in wills, trusts and estates and will handle

probate litigation.

Williams, Leininger & Cosby, P.A. is pleased to announce that **Richard Gaunt** has joined the firm as Of Counsel. He brings to the firm more than thirty years of expertise in trying over 100 jury trials. He is a Board Certified Trial Lawyer since 1985. Mr. Gaunt can be reached at (561) 615-5666 or rgaunt@wlcclaw.com.

Rutherford Mulhall, P.A. is pleased to announce that **Kenneth N. Johnson** was re-elected Treasurer of the Palm Beach Association of Criminal Defense Lawyers for 2011-12.

Michael J. Pike, a partner in the law firm of Burman, Critton, Luttier & Coleman was appointed by the Palm Beach County Justice Association to serve on the Board of Directors of the Florida Justice Association.

MISCELLANEOUS

TWO NICE APARTMENTS DOWNTOWN WPB AVAILABLE:

Starting at \$650/mo. One 1 BR/1 BA, one 2BR/1BA w/ wood floors & fireplace in a historic Florida house. 1/2 block to Intracoastal, 1/2 mile to courthouse, Clematis, Good Sam. Walk to beach. Also zoned for office. (561) 315-3024 or email palmbeachsax@hotmail.com

Rules of Civil Procedure Corner

By Matt Triggs and Jonathan Galler

Rule 1.285: Inadvertent Disclosure of Privileged Materials

Ever wake up in a cold sweat over the sudden fear that you may have inadvertently produced a privileged document?

Ever object during deposition to the use of a document that you believe to be privileged, only to realize -- in horror -- that the document bears your own client's Bates-stamp?

Fortunately for the mere mortals among us, "Florida courts do not apply a strict rule that counsel's inadvertent production alone waives the attorney-client privilege." Instead, most courts, including the Fourth District Court of Appeal, have adopted a "relevant circumstances test." The test employs a five-factor analysis to determine whether or not the privilege has been waived by an inadvertent disclosure. And Florida's new Rule 1.285, which became effective on January 1, 2011, now provides the procedure for presenting that analysis to the court.

The Relevant Circumstances Test

Courts consider the following five factors to determine claims of privilege where there has been an inadvertent disclosure: (1) the reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of the document production; (2) the number of inadvertent disclosures; (3) the extent of the disclosure; (4) any delay and measures taken to rectify the disclosures; and (5) whether the overriding interests of justice would be served by relieving a party of its error. This test has been applied to disclosures made in a variety of contexts, including formal discovery, informal exchanges of documents, and even an unintentional interception of privileged material by an opposing party.

Fla. R. Civ. P. 1.285

Florida Rule of Civil Procedure 1.285 seems to have been adopted with relatively little fanfare. Its journey began shortly after the 2006 adoption of its counterpart in the Federal Rules of Civil Procedure, Rule 26(b)(5)(B). In 2007, the Florida Bar Attorney-Client Privilege Task Force, prompted by a recommendation from the ABA and the National Conference of Chief Justices, asked the Civil Procedure Rules Committee of The Florida Bar to consider drafting a rule of procedure to address inadvertent disclosures. Practitioners who have already become familiar with the 2006 federal rule should note that Florida's Rule 1.285 is far more lengthy and detailed than its federal counterpart. Thus, it provides more guidance than the federal rule, but it also creates pitfalls for the unwary.

The rule provides that any recognized privilege may be asserted after an inadvertent disclosure. Significantly, "to assert the privilege, the party, person, or entity shall, within 10 days of actually discovering the inadvertent disclosure, serve written notice of the assertion of the privilege on the party to whom the materials were disclosed." By contrast, the federal rule provides no specific deadline for serving notice of an inadvertent disclosure and does not require that the notice be in writing. (The Comments to the federal rule, however, state that notice should be in writing unless the circumstances, such as the assertion of the claim during a deposition, preclude it.) Also, unlike the federal rule, Rule 1.285 provides that the notice "shall specify with particularity the materials as to which the privilege is asserted, the nature of the privilege asserted, and the date on which the inadvertent disclosure was actually discovered."

Both the federal rule and Rule 1.285 also provide that the receiving party may challenge the assertion of privilege and present the materials to the court for a determination of privilege (which, in Florida courts, is when the "relevant circumstance" test will be applied). However, in contrast to the federal rule, Florida's Rule 1.285 again provides a specific deadline and procedure for challenging the assertion of privilege. Notice of the challenge must be made within 20 days of service of the notice of inadvertent disclosure and must specify the grounds for the challenge. Critically, the "[f]ailure to serve timely notice of challenge is a waiver of the right to challenge."

Unlike the federal rule, Rule 1.285 also specifically identifies several nonexclusive grounds for asserting such a challenge. Interestingly, though, one such ground for a challenge is the untimely service of the original notice of inadvertent disclosure. This strongly suggests that the prudent lawyer who receives even an untimely notice (i.e., a notice served more than 10 days after discovery of the inadvertent disclosure) should, nevertheless, serve a "notice of challenge" within 20 days or else risk having waived the right to make that challenge.

One notable similarity between the federal rule and Rule 1.285 is that both rules impose obligations upon the party who receives notice of an inadvertent disclosure. In particular, both rules require that such party "return, sequester, or destroy" the subject materials and, further, take "reasonable steps" to retrieve the materials from those to whom the materials may have been provided prior to service of the notice of inadvertent disclosure.



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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

CALENDAR July/August 2011

Thursday, July 21, 2011,
6:30 p.m. to 8:30 p.m.

**Christian Legal Society
Women's Gathering**

Panera Bread Café,
Village Boulevard

Wednesday, July 27 – 29

TFB BoG Meeting
The Breakers, Palm Beach

Monday, August 1, Noon – 1pm

**Hispanic Bar
Association Meeting**
Location TBD

Wednesday, August 3,

Noon – 1:00pm
**North County Section
Board Meeting**
Bar Assn. Office

Friday, August 5, 11am – 1pm

**PBCBA Committee
Chair Meeting**
Bar Assn. Office

Tuesday, August 9,
Noon – 1:00pm

YLS Board Meeting
Bar Assn. Office

Thursday, August 11,
6:30pm – 7:30pm

**Christian Legal Society
Women's Gathering**
Panera Bread, Villages of
West Palm Beach

Thursday, August 18,
5:30pm – 7:00pm

**YLS/Federal Bar
Happy Hour**
Ruth's Chris at City Place

Tuesday, August 23,
5:30pm – 6:30pm

Legal Aid Board Meeting
Bar Assn. Office

Wednesday, August 24,
Noon – 1:00pm

**Lawyers for Literacy
Committee Meeting**
Bar Assn. Office

Wednesday, August 24,
5:00pm – 6:30pm

**PBCBA
Board of Directors Meeting**
Bar Assn. Office

Thursday, August 25,
5:30pm – 7:30pm

**Palm Beach
Justice Association
Annual Barrister's Bash**