

PALM BEACH COUNTY BAR ASSOCIATION_

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lune 2016



Please save the date and join us for a **Judicial Candidate Luncheon** on Wednesday, July 13 from 11:30 a.m. to 1:00 p.m. at the West Palm Beach Marriott. Details to come.



YLS to Host Fishing Tournament June 25

The Young Lawyers Section will be hosting its seventh annual fishing tournament on Saturday, June 25 to benefit Legal Aid's Educational Advocacy Project. The discounted early registration fee is \$300 per boat on or before June 1. After June 1, the registration fee will be \$400 per boat. Registration fee includes tickets to the Captain/Angler Party and the dock party for the Captain and four anglers, and four tournament shirts. Boats may register additional anglers for \$50 each, which includes a tournament shirt and ticket to the dock party. For more information and to register, please visit https://www.palmbeachbar.org/yls-fishingtournament/.

Mark your calendar for upcoming Membership Events

June 11:
Annual Installation Banquet

June 25:

Young Lawyers Section Fishing Tournament

July 13:

Judicial Candidate Luncheon



NCS wins School District Business Partner Award

Congratulations to the North County Section for winning the gold level award in the category of Large Business from the School District of Palm Beach County. The award was given to the NCS for its ongoing relationship with Independence Middle School and their law magnet program. Pictured above are Chuck Shaw, Chairman of the Board; Teacher Heather Lukasik; Principal Kathyrn Koerner; NCS President Larry Buck, NCS Director Lindsay Warner and Superintendent Robert Avossa

Annual Installation Banquet June II

Please join us for the Bar's annual Installation Banquet scheduled for Saturday, June 11 at the Breakers Hotel in Palm Beach. This special evening is one of our largest and well attended events of the year! John Whittles will be sworn in as the Bar's 94th president along with Sia Baker-Barnes as president-elect and directors Greg Huber, Dean Xenick, Jessica Callow Mason, Scott Smith, Lee McElroy, Ned Reagan, Grasford Smith, Julia Wyda, Grier Pressly, Rosemarie Guerini and Ashley Wilson. Pre-registration is required and can be online by going to the Bar's website at www.palmbeachbar.org.

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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

Did You Remember?

...to renew your Palm Beach County Bar Association Membership Dues? Statements were mailed in early April. Only members can take advantage of these

Discounts and Special Events:

- Live CLE seminars, plus seminars on CD's or MP3 (savings of \$40 per seminar)
- Downloadable CLE Content
- Office supplies
- Movie Tickets (savings of about \$2 per ticket)
- Theme Park Tickets
- One free classified ad per year (valued at \$50)
- Brooks Brothers
- Credit Card Processing
- Disability Insurance
- Annual Judicial Reception
- Members only events (such as luncheons with US Supreme Court Justices)

and Programs:

- Mentor Program
- Professionalism Council
- Young Lawyers Section (Free Happy Hours valued at \$25 per event)
- North County Section
- Community Service Opportunities
- Participation in the PBCBA's Lawyer Referral Service and Find a Lawyer Referral Program

If you did not receive a statement, please contact the Bar Office at (561) 687-2800.



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President's Message



With Gratitude: 2015-16 Bar Year in Review

by Grier Pressly

What a cool experience to have a front row seat to all that our Bar Association does for our members, our legal community, and the public at large. Truly an experience that

I will treasure for the rest of my career, and beyond. It has indeed been a busy and successful Bar year. There are so many people to thank. Unfortunately, I don't have sufficient space to acknowledge everyone who deserves it, but this is a start...

The Bar is fortunate to have the benefit of great leadership at the Board level. I will always appreciate the friendship and counsel of my fellow Board members: Sia Baker-Barnes, Larry Buck (NCS), Lou Delgado (YLS), Greg Huber, Theo Kypreos (immediate past president), Jessica Mason, Lee McElroy, Mark Osherow (Ex Officio, So. Co. Bar), Ned Reagan, Scott Smith, John Whittles (president-elect), Julia Wyda, and Dean Xenick. The Bar is in excellent hands with John Whittles and the 2016-17 Board at the controls next year!

Our two sections were certainly as active as ever this year. The Young Lawyers Section, led by YLS president Lou Delgado, will be completing an ambitious year with its seventh annual fishing tournament in late June. The YLS also hosted its monthly networking happy hours, collaborating with several local voluntary bars; produced a session during the Bench Bar Conference; participated in a Habitat for Humanity build; organized a bus trip to a Miami Dolphins game; provided school supplies to elementary school students; produced several "Sidebar Series" seminars with judges; hosted a holiday party for 75 foster children; offered free consultation on legal matters to Café Joshua customers; volunteered and delivered gifts at the Quantum House during Easter/Passover; and organized its first ever 5K road race and golf tournament. The North County Section, led by NCS president Larry Buck, continued its proud tradition of hosting quality monthly events and happy hours in the northern region of our county; brought back its Casino Night in style; conducted a unique CLE seminar at Scripps; co-hosted another successful holiday party and silent auction with the YLS, benefitting underprivileged area school children; and held its sold-out, end of the year Jurist of the Year dinner. Thank you to Larry and Lou for your stellar leadership of our sections this year!

Our Committee for Diversity and Inclusion (CDI), under the excellent leadership of co-chairs Lisa Kohring and Julia Wyda and supported by its dedicated and hardworking committee members, continued its impressive efforts to improve the diversity of our legal community. CDI held another successful Road to the Bench seminar; hosted its annual diversity luncheon, inviting Judge Herbert E. Phipps from the State of Georgia Court of Appeals to share his inspiring story with our Bar members; oversaw the summer intern program that placed 11 interns in area law firms and government agencies; ran monthly articles on timely topics in the Bar bulletin; developed the diversity jobs database; hosted quarterly breakfast meetings with law firm administrators and managing partners; and produced a great program for law students during the Bench Bar Conference. Big kudos to the entire CDI committee for all that you do!

Once again, the Bar hosted its best-in-the-state Bench Bar Conference, attended by more than 800 lawyers and over 55 judges! I can't thank Bench Bar co-chairs, Kai Li Fouts and Poorad Razavi, and their entire planning committee, enough for all of the countless hours and hard work that they put into organizing such a successful event.

The Bar's Judicial Relations Committee brought a packed agenda to every meeting. Chaired by Kelly Hyman, this committee conducted the 2015 judicial evaluation; hosted a total of ten judicial luncheons in three different county courthouses; conducted confidential judicial interviews that provided feedback to the Bar on issues of concern to the judges; and drafted a resolution for adoption by the Bar Board of Directors in opposition to judicial term limit legislation. Thank you to Kelly and her productive committee!

The Bar recently completed another successful week of activities in celebration of Law Week in May. Many thanks to Law Week Committee chair, Heather Wallace-Bridwell, and her busy committee, for organizing the annual Dennis Koehler Judges vs. Attorneys softball game to kick off Law Week and for planning a full roster of week-long events benefitting our local community - including the Dial-a-Lawyer program, the Shadowa-Judge program, and the placement of speakers and mock trials in nearly 40 area schools (thanks to Sherry Webber and her team). Law Week concluded with a membership luncheon featuring keynote speaker and former U.S. Attorney General Alberto Gonzales, who spoke to our members about the current vacancy on the U.S. Supreme Court. As an aside, on the subject of the Supreme Court, the Bar was thrilled to keep its impressive streak alive by hosting another U.S. Supreme Court Justice again this year when Justice Stephen Breyer addressed our membership during a February luncheon co-hosted with the Forum Club. And, speaking of benefitting our community, the efforts of the Bar's Lawyers for Literacy Committee and Law Related Education Committee deserve special recognition. Under the outstanding leadership of Andrew Kwan, the Lawyers for Literacy Committee members volunteered monthly to read to school children at Roosevelt Elementary; graded adult essays for the Literacy Coalition; collected stuffed bears, books and money for National Adoption Day; sponsored a magazine drive for area seniors; and will start a new program this summer tutoring students in reading so they don't fall behind during summer break. Chaired by Amy Levenberg, the Law Related Education Committee hosted a wonderful Youth Law Day for Boy Scouts and Girls Scouts on a Saturday at the south county courthouse (shout out to Sherri Collins!) and sent its members out into the community to speak to groups about civics education and its importance.

Our Bar's practice committees and CLE committees actively

Continued on page 4

Board Meeting Attendance

	AUG	SEPT	OCT	NOV	DEC	JAN	FEB	MAR	APR
Barnes	X	X	X	X	X	X	phone	X	X
Buck	X	X		X	X	X	Richter	X	phone
Delgado	X		X	X	X	X	X	X	X
Huber	X	X	X	X	X		X	X	X
Kypreos	X	X	X	X	X	X			X
Mason	X	X	X	X	X	X	X	X	X
McElroy	X	X	X	X	X	X	X	X	X
Pressly	X	X	X	X	X	X	X	X	X
Reagan	X	X	X	X	X	X	phone	phone	X
Smith	X	X	X	X	X	phone	X	phone	
Whittles	X	phone	X	X	X	X	X	X	X
Wyda	X	X	X	X	X	X	X	X	X
Xenick	X	X	phone	X	X	X	X	X	X

With Gratitude...

Continued from page 3

organized meetings and events aimed at educating our members and improving the quality of distinct practice areas. In total, these committees produced over 60 live programs this year, and offered quality CLE opportunities year round to our members, with many available via webinar. Many thanks to our hardworking practice and CLE committee members and the committee chairs: Ted Deckert (ADR); Nichole Segal (Appellate); Tina Talarchyk (Bankruptcy Law); Kent Frazer (Business Litigation); Greg Weiss (Circuit Civil); Ron Kaniuk (Community Association Law); Ron Herman (Criminal Law); Eric Severson (Elder Law Affairs); Dana Spader (Employment Law); Peter Forman and Matt Triggs (Estate/Probate CLE); Abigail Beebe (Family Law); Matthew Lane and Tim Murphy (Person Injury/Wrongful Death); Bill Boyes (Probate/Guardianship Law); Sandra Wallace (Real Estate Law); Robert Harvey (Securities Law); Dan Zuniga (Solo & Small Firm); Amanda Kleinrock (Technology); Marilyn Perez- Martinez (Transaction Law); Staci Burton and Cynthia Pyfrom (Unified Family Practice); and Jeffrey Friedman (Workers Compensation).

The following standing committees of the Bar benefitted from the strong leadership of their committee members and chairs: Brian O'Connell (Guardianship Education); Robin Bresky (Judicial Campaign Practices Commission); Grey Tesh (Membership); and Lloyd Comiter (Small Claims Court Clinics). Special thanks to the Professionalism Committee, co-chaired by Chief Judge Jeffrey Colbath, Joanne O'Connor, and Larry Rochefort, for nurturing and promoting our Bar's reputation for professionalism and civility through conducting the professionalism panels for the 15th Circuit, authoring monthly articles in the Bar bulletin, overseeing the annual new attorney breakfast (shout out to Amy Borman!), and retooling the Bar's mentor program (shout out to Terry Resk and Hubert McGinley!).

Of course, an active Bar like ours wouldn't function without the support of a talented, dedicated, hardworking staff. Big props, and

even bigger thanks, to Patience Burns and our entire Bar staff, Lynne Poirier, Jennifer Iacobucci, Kathy Clark, Eva Gray, Mikki Johnson, and Dee Maeyens. It was a true pleasure to work with each of you.

Speaking of our Bar staff, this Bar year brought the bittersweet news that Patience, our beloved Executive Director of 25 years, is ready to call it a career. And what a career it has been! Large shoes need to be filled. Thank you to Greg Coleman (Chair), Jerry Beer, John Howe, Judge Lisa Small, and Jill Weiss for accepting the charge to lead the Bar's search for its next Executive Director.

Our local Florida Bar Board of Governors delegation provided great perspective to the Bar Board of Directors throughout the year. Thank you to Gary Lesser, Ron Ponzoli, David Prather, and Michelle Suskauer for attending our monthly board meetings and sharing your insights.

On a personal note, I would like to thank my wife, Kristy, my daughter, Parker, and my law partners at Pressly & Pressly for their patience and for their understanding of my significant Bar commitments this year. I promise I will make up the time!

Finally, a collective thank you to all of our members who give back to the Bar, whatever the nature of your contribution, and to those of you who have offered me kind words of encouragement throughout the year.

Parting Words: Fly the Flag!

"The Palm Beach County Bar Association has a reputation as one of the best local bar associations in the country." I've heard that proclamation repeated on countless occasions from a vast variety of sources during my eight years on the Board of Directors. I've never believed it more deeply than after serving as president. It has been a genuine privilege to lead a Bar that enjoys, and deserves, that kind of reputation. As members of this special Bar, let's embrace our shared reputation. Protect it. Build on it. Take pride in it. Fly the flag!

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TUITION

\$345 Per Registrant (early) \$395 Per Registrant (regular)

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Bulletin

Technology Corner



ISIS in Florida

by Christopher B. Hopkins

There are countless high school students in South Florida who are fans of the Miami Heat, Jay-Z, and South Park. It would seem implausible that any one of them, so distanced from the Middle East, might convert to radical Islam, appear in a *jihadist*

video, and detonate a suicide bomb in Syria. Yet that happened in 2014. How does such a seemingly normal young man, born in West Palm Beach, turn into a terrorist?

Floridians of all ages have turned to violence in the name of ISIS. Last summer, a man dressed in tactical gear appeared in a terrorist video warning viewers that they will "never destroy the Islamic State." The video did not originate in places like Mosul or Fallujah; it was filmed last summer in Homestead, Florida. The video continues, "we are now on U.S. soil, Florida... there are a lot of us too." Fortunately, a tip from the Palm Beach Sheriff's Office to the FBI led to this man's capture after he purchased galvanized nails from Home Depot for a remotedetonated bomb. In July 2015, another man near Gainesville shot at police and yelled, "I am ISIS... I'm going to kill you." Unquestionably, terrorism has returned to Florida.

This current terrorist assault is novel since it reaches us without anyone crossing our border or invading our airspace. Instead, the threat streams through the internet in 140 characters called a tweet. ISIS has a motto, *Baquya wa Tatamaddad* (Remaining and Expanding), and it uses social media to achieve that goal. According to the Department of Homeland Security, "ISIS aggressively exploits social media in order to recruit fighters, disseminate propaganda, and trigger attacks in the West." Each day, 200,000 pro-ISIS tweets are sent. ISIS has 50,000 - 70,000 supporters on Twitter of which 2,000 accounts "hyperactively" spread propaganda. ISIS may only have a digital presence inside our nation but it can still effectively tap into vulnerable and unstable people who create a real-world threat.

How does ISIS use social media to threaten and recruit? To answer this question, we first must understand the origin of ISIS and its internet-based strategy. ISIS first achieved global attention as a faction known as "Al Qaeda in Iraq" but, by relentlessly spewing videos of beheadings and other cruelties, the group became too violent and uncontrollable for Al Qaeda. In 2014, the group broke away and declared that it was caliphate (an area controlled by an Islamic steward) known as Daesh or the Islamic State of Iraq and Syria (ISIS). Sometimes it is identified as the Islamic State of Iraq and the Levant (ISIL), referring to several countries along the eastern Mediterranean. Regardless of the lands it occupies, ISIS has swarmed the planet via social media with calls-to-arms directed to Muslims and siren recruitment messages to converts who seek belonging, purpose, or an outlet for violence. In hip parlance, ISIS is "branding" terrorism as a product.

So what is ISIS' strategy on Twitter? According to George Washington University, ISIS employs a three-tiered social media campaign: first, there are "nodes" which create content. Second, "amplifiers" re-Tweet the nodes, "favorite" specific

posts, and circulate Twitter lists of jihadists. Third, "shout out" accounts pop up by the thousands to promote new accounts and spread content. These accounts are frequently suspended yet immediately reappear with waves of followers (@Abdul_Aliy_4 reappears as _5 and so on). This distributed method of attack effectively spreads the message while minimizing risk for the messenger. In a final step, ISIS "spotters" use hashtags and other searches to locate and coax exploitable Twitter users into encrypted chats for recruitment to fight as *mujahideen* or emigrate on a *hijrah*. According to the UN, "the internet and social media play significant roles in radicalizing youth, rather than as a source of positive change."

Back in the U.S., a Florida plaintiff in *Tamara Fields v. Twitter* claims that Twitter failed to restrict ISIS accounts and that, "without Twitter, the explosive growth of ISIS... into the most-feared terrorist group in the world would not have been possible." The complaint alleges that ISIS "has exploited social media, most notoriously Twitter, [...] to post instructional guidelines and promotional videos known as *mujatweets...* and to draw in people vulnerable to radicalization." The suit asserts that the deaths of two American contractors were caused by ISIS campaigns on Twitter. The social media company recently filed a motion to dismiss.

It is frighteningly easy to communicate with a (supposed) ISIS Twitter account which responds as swiftly as a customer service department. It takes a Twitter search and a few clicks to discover ISIS' full-color magazine, *Dabiq*, or locate an official 100-page guidebook on how to join and move to Syria. The UN reports that ISIS has 38 media offices worldwide which, in 2015, published 2,000 memes, reports, and magazines. Sadly, a recent *Wired* magazine article declared that "ISIS is winning the social media war." ISIS faces little opposition since our government's social media response rests primarily on one Twitter account, @*TheGEC*, with a paltry 23,000 followers. Individually, we need to become aware of the digital threat and, collectively, our country needs to develop an engaging social media response.

Christopher B. Hopkins is a member of McDonald Hopkins LLC at chopkins@mcdonaldhopkins.com.



Bankruptcy Corner



The Bankruptcy Rules Apply in Bankruptcy Cases

by Jason S. Rigoli

At times the structure of the bankruptcy court system causes confusion, i.e., jurisdiction. Applying the rules of procedure, according to the Eleventh Circuit, is not confusing at all; when you

are proceeding in a bankruptcy case, the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules")² apply.³

Structure of Bankruptcy Courts

Original and exclusive jurisdiction of all cases under title 11 is vested in the federal district courts.⁴ The district court may, by order, "refer" bankruptcy cases to the bankruptcy courts.⁵ Most jurisdictions, including the Southern District of Florida, have a standing order of reference of bankruptcy matters to the bankruptcy courts. However, the reference can be withdrawn and the matter for which the reference is withdrawn would be heard before the district court.⁷

Rules of Bankruptcy Procedure

Fed. R. Bankr.P. 1001 governs the scope of the bankruptcy rules and forms and provides that, "[t]he Bankruptcy Rules and Forms govern procedure in cases under title 11 of the United States Code... These rules shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding."8 The language of Fed. R. Bankr. P. 1001 mimics the statutory language of 28 U.S.C. § 1334 vesting jurisdiction of cases under title 11 of the United States Code in the district courts.9

This is not a coincidence, in 1987; Rule 1001 of the Federal Rules of Bankruptcy Procedure was amended "for

the specific purpose of expanding the reach of the rules beyond the bankruptcy courts to all courts hearing bankruptcy matters. Thus, the advisory committee notes to the rule read, 'This amended Bankruptcy Rule 1001 makes the Bankruptcy Rules applicable to cases and proceedings under title 11, whether before the district judges or the bankruptcy judges of the district." "Moreover, the Federal Rules of Civil Procedure provide for the primacy of the Federal Bankruptcy Rules in bankruptcy proceedings adjudicated in district court. Fed.R.Civ.P. 81(a)(2) ('These rules apply to bankruptcy proceedings to the extent provided by the Federal Rules of Bankruptcy Procedure.')."11

The Federal Rules of Civil Procedure are adopted, where applicable, by the Bankruptcy Rules. However, the Bankruptcy Rules do not adopt, unaltered, all of the Federal Rules of Civil Procedure. 12 This was the issue in DVI Receivables XIV; the reference had been withdrawn and one party argued the Federal Rules of Civil Procedure applied giving it 28-days to file its post-trial motion, while the opposing party argued that the Bankruptcy Rules applied allowing 14-days to file post-trial motions.¹³ The Eleventh Circuit, affirming the district court, held that the Bankruptcy Rules apply. 14

Conclusion

The crux to determine which rules of procedure apply to your case does not depend so much on the forum as it does the statutory basis giving rise to the case to begin with. Regardless of whether the reference has been withdrawn, when a case is one under title 11 of the United States Code, then the Federal Rules of Bankruptcy Procedure apply.

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

Law Week Volunteers — THANK YOU!!!

To all of our members who volunteered during law week – we thank you!! To our dial-a-lawyer volunteers: Sara Blumberg (chair); Robin Scher, Nicole Hessen, Grier Pressly, Tina Talarchyk, Eunice Baros, Michael Gelfand, Melynda Melear, Mark Greenberg, Alicia Trinley, Cathy Kamber, Jeremy Bloor, Susan Ramsey, Jessica Mason and Rena Taylor. To our mock trial participants and speakers (chaired by Sherry Webber): Scott Holtz, Kristi Bergemann Rothell, Cymonie Rolle-Hinkel, Nicole Quattrocchi, Brian Moskowitz, Sara Blumberg, Kelsey Burke, Suzanna Scarborough, Daniel Marshall, Elisha Roy, Magistrate Thomas Baker, Kevin Gleason, Steven Lury, Kalinthia Dillard, Eleni Pantaridis, Judge Richard Oftedal, Elissa Fitzmartin, Ben Whitman, Seth Kolton, Debbie Satyal, Phil Mugavero, Kelly Harris, Cary High, Jonathan Levy, Drew Stoller, Bonnie Canty, Christina Backus, Brian Labovick, Meredith Biggs, Whitney Baldwin, Michael Gelfand and Brett Steinberg



¹ See, Stern v. Marshall, 564 U.S. 462, 131 S.Ct. 2594, 180 L.Ed.2d 475 (2011); Executive Benefits Ins. Agency v. Arkison, 134 S.Ct. 2165, 189 L.Ed.2d 83, 82 USLW 4450 (2014); Wellness Intern. Network, Ltd. v. Sharif, 135 S.Ct. 1932, 191 L.Ed.2d 911, 83 USLW 4337 (2015).

² Federal Rules of Bankruptcy Procedure, 1001-1562.

³ See, Rosenberg v. DVI Receivables XIV, LLC, -- F.3d --, 2016 WL1392462 (11th Cir. April 8, 2016)

²⁸ U.S.C. § 1334(a).

⁵ 28 U.S.C. § 157(a).

⁶ Administrative Order 2012-25 (S.D.Fla. March 27, 2012).

²⁸ U.S.C. § 157(d).

⁸ Fed. R. Bankr. P. 1001 (emphasis added)

⁹ See, FN. 4, supra

¹⁰ DVI Receivable XIV, LLC, 2016 WL1392462, at * 3(quoting Fed. R. Bankr.P. 1001 advisory committee's note to 1987 amendments.).

¹² See, e.g., Fed. R. Bankr.P. 9015(c) (adopting Fed. R. Civ. P. 50(b) but shortening the time to file the post-trial motion to 14-days.).

¹³ See, 2016 WL1392462 at *1. 14 *Id.* at *9.

Professionalism Corner



Responding to the Threat of § 57.105 Sanctions

by Jeremy Bloor on Behalf of the Professionalism Committee

If you practice litigation in Florida, you are almost assuredly familiar with Florida Statutes section 57.105, one of the few mechanisms under Florida law that allows a party to shift responsibility

for attorney's fees to their opponent – and, depending on the circumstances, to opposing counsel as well.

Section 57.105 was originally passed in 1978. In 1999, the Legislature amended the statute to its current language, which provides that a court "shall award a reasonable attorney's fee" to the prevailing party on any claim or defense that a party or its attorney "knew or should have known" was not supported by the material facts or was not supported by the application of then-existing law. Fla. Stat. § 57.105(1)(a)-(b). The statute also permits sanctions when a party demonstrates that any action taken by the opposing party "was taken primarily for the purpose of unreasonable delay." *Id.* § 57.105(2).

Shortly before the 1999 version passed, the House Committee on Judiciary Analysis noted that the bill would "[a]uthorize new sanctions to deter frivolous claims, frivolous defenses, and unreasonable delays."

Today, 57.105 is frequently deployed as a tactic to inject liability for attorney's fees into a lawsuit. Form letters threatening 57.105 sanctions are readily available on Google, despite the statute's legal and fact-specific requirements.

Observing these trends, the Second DCA noted 57.105 can make litigation more, not less, costly:

If an order dismissing a claim or striking a defense routinely leads to a motion for attorney's fees, the point of the statute would be subverted and, in the end, it might even have the reverse effect of making civil litigation more expensive.

Connelly v. Old Bridge Vill. Co-Op, Inc., 915 So. 2d 652, 656 (Fla. 2d DCA 2005).

Today, 57.105 letters seem all too common. Use the following recommendations for your next 57.105 response:

The statute is only directed at frivolous claims. Section 57.105 does not guard against creative lawyering or even bad lawyering. The Fifth DCA has observed that, "we should not impose a penalty on a party who attempts to raise novel questions of law or who, in good faith, attempts to move the law in a slightly different direction." *Builders Shoring & Scaffolding v. King*, 453 So. 2d 534, 534-35 (Fla. 5th DCA 1984); *see also McCullough v. Kubiak*, 158 So. 3d 739, 741 (Fla. 4th DCA 2015).

The standard of proof is difficult to reach. The Florida Supreme Court set a "high bar" for recovery of fees under 57.105, stating "[fees] will not be awarded unless the court finds a total or absolute lack of a justiciable issue, which is tantamount to a finding that the action is frivolous." *Grove Key Marina, LLC v. Casamayor*, 166 So. 3d 879, 886 (Fla. 3d DCA 2015). Given this high bar, conflicting accounts are sufficient to overcome 57.105. The Second DCA ruled that it was an abuse of discretion to award attorney's fees under

57.105 where the plaintiff's claims were supported by "material facts," namely, the Plaintiff's testimony. *Siegel v. Rowe*, 71 So. 3d 205, 212 (Fla. 2d DCA 2011).

The Fourth DCA recently stated that a claim must be "so devoid of merit both on the facts and the law as to be completely untenable" to warrant a fee award under 57.105. *Sena v. Pereira*, 179 So. 3d 433, 437 (Fla. 4th DCA 2015). Moreover, the finding that a claim is completely untenable must be based upon "substantial competent evidence presented to the court at a hearing" or otherwise in the court record. *Wapnick v. Veterans Council of Indian River Cnty., Inc.*, 123 So.3d 622, 624 (Fla. 4th DCA 2013).

Fees cannot be awarded under 57.105 unless the trial court holds a full evidentiary hearing on the issue of good faith. The Fourth DCA has held that a trial court made "several due process errors" when it did not make express findings of bad faith and never held an evidentiary hearing on "the paramount issue of good faith." *Santini v. Cleveland Clinic Florida*, 65 So. 3d 22, 36 (Fla. 4th DCA 2011) (reversing sanctions award).

In *Santini*, the Fourth DCA reversed the fee award under 57.105 and then awarded appellate attorney's fees to the appellant *sua sponte*. The court even warned that, while it could not sanction the plaintiff/appellee for conduct that occurred at the trial level, it directed the trial court to consider sanctions against the plaintiff and his attorney. *Id.* at 41.

Finally, seeking sanctions carries a risk. In November of 2015, the Middle District of Florida entered a fee award *against* the party seeking fees, finding that the attorney's fee motion itself, which invoked Federal Rule 11 and 57.105, was wholly without merit. *Claudet v. First Fed. Credit Control, Inc.*, 25 Fla. L. Weekly Fed. D 259, 2015 WL 798441025, at *1 (M.D. Fla. Nov. 17, 2015). The court concluded that the motion for fees neither discussed nor applied the correct legal standard and therefore was filed only for the purpose of harassment. *Id.* at *3.

We cannot control when opposing counsel will send a 57.105 letter, but armed with the history, legislative purpose, and courts' interpretation of 57.105, an attorney can provide a cogent defense to neutralize an unnecessary threat of sanctions.

Jeremy Bloor is an associate with McDonald Hopkins in West Palm Beach. Jeremy has extensive business, construction, and real estate experience, representing clients both as plaintiffs and defendants in commercial litigation matters, as well as regulatory matters and government investigations.

15th Circuit Professionalism Panel

Have you experienced unprofessionalism behavior with a fellow attorney? Don't forget about the Bar's voluntary Professionalism Panel which acts upon complaints of unprofessional conduct not likely to involve violations of ethical rules requiring investigation by The Florida Bar.

For more information, visit the Bar's website at www.palmbeachbar.org/professionalism-committee/.

Probate Corner

Assessing Attorney's Fees and Costs against a Beneficiary's Interest

by David M. Garten

As a general rule, in trust and estate litigation, the court has the discretion to assess attorney's fees and costs against a beneficiary's interest. The relevant statutes read in part:

733.106: (4)(b) All or any part of the costs and attorney fees to be paid from the

estate may be assessed against one or more persons' part of the estate in such proportions as the court finds to be just and proper.

§736.1004: ¶(1)(b) In proceedings arising under ss. 736.0410-736.0417, the court shall award taxable costs as in chancery¹ actions, including attorney fees and guardian ad litem fees. ¶(2) When awarding taxable costs under this section, including attorney fees and guardian ad litem fees, the court, in its discretion, may direct payment from a party's interest, if any, in the trust or enter a judgment that may be satisfied from other property of the party, or both.

§736.1005: $\P(2)(a)$ All or any part of the attorney fees to be paid from the trust may be assessed against one or more persons' part of the trust in such proportions as the court finds to be just and proper.

§736.1006: $\P(1)$ In all trust proceedings, costs may be awarded as in chancery actions. $\P(2)$ If costs are to be paid from the trust under subsection (1) or s. 733.106(4)(a), the court, in its discretion, may direct from what part of the trust the costs shall be paid. All or any part of the costs to be paid from the trust may be assessed against one or more persons' part of the trust in such

proportions as the court finds to be just and proper...

To further complicate this issue, the Fourth District Court of Appeal has construed §733.106 to require that the trial court must find "wrongful conduct, bad faith or frivolousness" as a prerequisite to assessing attorney's fees and costs against a beneficiary's interest in an estate.² Pursuant to the Legislative White Paper³, this judicially created standard finds no textual support in the statute and imposes a standard for the assessment of fees that is inconsistent with comments made in Carman v. Gilbert, 641 So. 2d 1323 (Fla. 1994) and contrary to the finding in Williams v. King, 711 So. 2d 1285 (Fla. 5th DCA 1998). To correct this inconsistency, the legislature amended §§733.106, 736.1005, and 736.1006 (affective July 1, 2015) to read that the court may assess a person's part of the estate and trust without finding that the person engaged in bad faith, wrongdoing, or frivolousness. Unfortunately, this same verbiage is not included in §§736.1004, F.S. As a result, it is still uncertain as to the applicability of this judicially created standard.

When there are multiple claims involved, chancery gives the court more flexibility than under the prevailing party/significant issue standard used in non-trust/probate cases as defined in *Moritz v. Hoyt Enters.*, 604 So. 2d 807 (Fla. 1992). As a result, in awarding fees and costs to a party, the court should consider the benefits to the estate/trust and the proper allocation of fees and costs to each issue, as opposed to each count of the complaint/petition. *See, Nalls v. Millender*, 721 So. 2d 426 (Fla. 4th DCA 1998); *In re Estate of Simon*, 549 So. 2d 210 (Fla. 3rd DCA 1989).

Judicial Luncheon

Page 8

The Judicial Relations Committee hosted a judicial luncheon on April 28 in the chambers of Judge Jessica Ticktin at the South County Courthouse. In addition to Judge Ticktin, Judges Jaimie Goodman and David French presented on social media issues including evidentiary issues and electronic practices in family, probate, criminal and juvenile court.



Courtney Tito, Rebecca Brock, Denise Isaacs and Lee McElroy





Diego Asencio, Andy Comiter and Marjorie Gallagher

Judges Jessica Ticktin, Jaimie Goodwin and David French



Bulletin

¹ The well settled rule in chancery cases is that a court of equity may, as justice requires, order that costs follow the result of the suit, apportion the costs between the parties, or require all costs be paid by the prevailing party. *See, Nalls v. Millender,* 721 So. 2d 426 (Fla. 4th DCA 1998). The same rule applies to attorney's fees. *See, Id.; In re Estate of Simon,* 549 So. 2d 210 (Fla. 3rd DCA 1989)

² See, Levin v. Levin, 67 So. 3d 429 (Fla. 4th DCA 2011); Geary v. Butzel Long, P.C., 13 So. 3d 149 (Fla. 4th DCA 2009); In re Estate of Lane, 562 So. 2d 352 (Fla. 4th DCA 1990)

³ The Real Property, Probate, & Trust Law Section of The Florida Bar, Legislative White Paper: Proposed F.S. 733.106(4), 736.1005(2), and 736.1006(2) (2015) (on file with the Senate Committee on Judiciary, dated 8/26/14).





Opening Statements in Mediation

by Jeffrey Grubman

The mediation process has evolved significantly over the past few decades. Mediation was initially viewed skeptically by trial attorneys who envisioned themselves as warriors ordained to try cases rather than settle them. With courts

increasingly overburdened, mediation became a popular forum to resolve disputes. Because trial attorneys were not accustomed to the mediation process, the process initially looked somewhat like a court hearing or a trial. For example, in the early days of mediation, opening statements in mediation looked and sounded very much like an opening statement at trial. Trial lawyers in the early days of mediation, and many trial lawyers still today, had a difficult time finding the balance between advocating their clients' position while proceeding in a conciliatory manner consistent with the goal of settlement. In part due to attorneys' discomfort with finding that balance, it became commonplace in many parts of the country for attorneys not to make opening statements in mediation. This trend has gained popularity in Florida in recent years. The stated rationale for not making an opening statement is that the parties will become angry and more entrenched in their positions, thereby decreasingly the likelihood of settlement. While there is certainly a risk that a party will recoil when hearing their opposing counsel's opening, the decision by an attorney not to make an opening statement is often a wasted opportunity. Mediation is typically the only opportunity during the course of litigation for an attorney to speak directly to his or her opposing party. A well prepared and delivered opening statement goes a long way towards achieving a favorable settlement for one's client. The key to making an effective opening statement in mediation is recognizing who is your audience and constructing a presentation that will persuade your audience to settle the case on more favorable terms for your client. Having conducted a couple of thousand mediations, I have observed that many attorneys believe their audience is the mediator or their opposing counsel. While the mediator and opposing counsel may have input into the terms of a potential settlement, those players are not the audience. Any benefit to be derived from delivering the opening to the mediator or the opposing counsel will be minimal. The audience is the opposing party. The opposing party is the decision maker and that opposing party must be persuaded. Also, unlike the attorney and mediator who have participated in countless mediations and feel like they have heard it all, typically this is not the case for the opposing party. Therefore, the opening should be directed to the opposing party.

The tone and content of the opening should be based upon the facts of the case and the state of mind of the opposing party. For example, if an attorney is representing a defendant in a case with significant liability and a sympathetic plaintiff, the defense attorney should be as conciliatory as possible. I have seen defense attorneys apologize to plaintiffs in the mediation opening, with the apology being warmly received and setting the mediation off on exactly the right footing. On the other hand, if the opposing party has a weak case and needs a strong dose of reality, the attorney should make a strong but professional opening. If a party with a weak case hears a powerful opening from a skilled and talented opposing counsel, it will likely persuade that party to settle the case on less favorable terms than he or she expected when starting the mediation.

Far too often, I have seen attorneys deliver mediation openings that are perfunctory and lack both conviction and care. This is a disservice to one's client. Perhaps having not sat in both caucus rooms, these attorneys do not realize the importance of a mediation opening and the negative impact they are causing their client's settlement position. On many occasions, parties have told me that they will settle on less favorable terms for their opponent based upon the opposing counsel's weak opening. On the other hand, many other parties have candidly told me that they were impressed with their opposing party's opening and their opposing party came across as a decent and competent attorney. While those parties would not be so candid as to tell me that they would enter into a more favorable settlement for their opposing party based on the opening, I could tell that they would.

In conclusion, while there may be appropriate circumstances to skip opening statements in mediation, attorneys should think long and hard before doing so. And, when making an opening statement, the statement should be well prepared, strike the proper tone, and be directed at the opposing party.

Jeffrey Grubman is a mediator and arbitrator with JAMS. He is based out of the Boca Raton and Miami offices but mediates cases nationally. His practice focuses on commercial/business, employment, securities/financial services, and intellectual property. The following is a link to his bio: www.jamsadr.com/grubman. The information contained in this article does not constitute legal advice and are his opinions and not the opinions of JAMS.

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YLS Happy Hour

The young lawyers of the PBCBA and Cunningham Bar came together for a joint event in April. Over 90 attorneys attended the happy hour at Burger & Beer Joint at City Place. Pictured below left are Whitney Baldwin, YLS President Lou Delgado and CBA President-elect Lawonda Warren.





Lindsay Warner, Monique Wilson, Ryan McGlynn, Chelsea Koester and Jennifer Soberal



Carrie Rosato, Kristen Bond, Benjamin Eisenberg and Devin Johnson



Ryan McConnell, Matthew Frias and Joshua Plager



Jerry Leakey and Abigail McCall



Magistrate Sarah Willis and Judge Daliah Weiss





Lindsay Watkins and Kristen Farber



Jason McIntosh and Roslyne Atilus



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- · FINRA Approved Mediator
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Annual Law Week Judicial Reception



Judge Dina Keever and PBCBA **President Grier Pressly**



Liz Herman, Sarah Shullman, Andrea McMillan and Sally Still



Melinda Gamot, Tim Gaskill and Chief Judge Jeffrey Colbath



Nick Johnson, Sam Cohen and **Peter Hunt**



Judges Laura Johnson, Alan Forst and Jessica Ticktin



Judges Sheree Cunningham and Carole Taylor



(Ret) Judge Fred Hazouri and Judge Nancy Perez



Robin Bresky, Patricia Christiansen, Jessica Mason and Judge Samantha Schosberg Feuer

Annual Dennis Koehler Judges vs. Attorneys Softball Game

A great time was had by all in this annual softball game, even though no one knew what the final score was (or didn't want to admit to it). Special thanks to **Heather Wallace-Bridwell** for organizing this event and to Duffy's for once again donating lunch to the players. Thanks also to Judge Kirk Volker and Magis. Sara Alijewicz for coordinating the judge's team.



Bari Martz, Magistrate Sara Alijewicz, Judge Rosemarie Scher, Tanique Lee and Heather Wallace-Bridwell







Judges Scott Suskauer and Frank Castor



Judge Kirk Volker, Kate Watson and (Ret.) Judge Richard Wennet



Judge James Martz





Freddy Rhoads

Judge Rosemarie Scher

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



Best Practices in the Fourth District Court of Appeal



Thursday, June 2 - 11:30am - 1:00p.m. PBCBA Offices - 1507 Belvedere Road, WPB

Program Schedule

11:30am - 11:55am Lunch and Check-In

11:55am - 12:00pm Welcome - Opening Remarks - Nichole J. Segal, Esq.,

Burlington & Rockenbach, P.A.

12:00pm - 1:00pm Panel Discussion with Judge Ciklin, Judge Warner, Judge Taylor and Judge May

Best practices relating to oral argument, electronic briefing and appeals, writing, motion practice and ethical considerations.

Sponsored By:











This course has been granted 1.0 CLER and 1.0 certification credits in Appellate Practice from The Florida Bar. Early registration cost for the seminar, which includes lunch, is \$25 for PBCBA member attorneys/paralegals; \$75 for non-PBCBA member attorneys/paralegals if registered by 5/26/16; add \$20 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.

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



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Volunteer to "Stop the Summer Slide" with the Palm Beach County Bar Association's Lawyers for Literacy Committee!

This summer, the Lawyers for Literacy are looking for people to help stop the "summer slide" - a regression in reading skills when kids are out of school. To combat this, volunteers will visit school libraries and conduct fun readings, games, and activities for children. The Lawyers for Literacy will provide you with everything you need - all you need to bring is yourself (and enthusiasm!).

If you're interested, please fill out the form below and send it to Chair Andrew Kwan kwan@beasleylaw.net (or) fax the form to Andrew's attention at (561) 835-0939.

Name:
Phone:
Email:
Date(s)/Time(s) Available slots are available weekdays from June 3 to July 29 - volunteer as much
or as little as you want; even one hour is helpful. Times are flexible 9:00 am / Noon / 4:00 pm.

Please check the **elementary school(s)** where you would like to volunteer:

North Palm	Green Acres	Pioneer Park
Belvedere	Highlands	Belle Glade
Berkshire	North Grade	Canal Point
Forest Hill	South Grade	
Melaleuca	Lantana	
Northmore	Galaxy	
Westgate	Orchard	
Diamond View	Glade View	

The Palm Beach County Bar Association's Business Litigation CLE Committee Presents:

Taking Effective Depositions, Representing Corporate Deponents, and Ethical Considerations Including Dealing with Unprofessional Opposing Counsel



Friday, June 3, 11:30am – 1:00pm PBCBA, 1507 Belvedere Road, WPB



Program Schedule

11:30am - 12:00pm Late Registration / Check In / Lunch

11:55am - 12:00pm **Welcome & Opening Remarks** - *Kent Frazer, Esq., Akerman;*

Business Litigation CLE Committee, Chair

12:00pm - 1:00pm Speaker: Steven H. Meyer, Esq., Steven H. Meyer, P.A.,

Board Certified in Business Litigation

This seminar will cover preparation and strategies for taking depositions that will help you win your case. Topics will include understanding your goals, structuring your questions, locking down a deponent's testimony so that it can't later be changed, and deposing expert witnesses and corporate representatives. Ethical issues will also be covered, such as speaking objections, dealing with difficult counsel, and instructing your client not to answer questions.

Sponsor



This course is expected to receive 1.0 CLER from The Florida Bar. The early registration cost of the seminar is \$40.00 (includes lunch) for PBCBA members/paralegals; \$90.00 for non-PBCBA members/paralegals if registered by 5/27. Add \$20 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. Credit card registration payment not accepted by Fax to comply with PCI regulations.

PAYMENT OPTIONS:



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



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



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

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Name: _____

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I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (6.3 Business Litigation.) Cost is the same as listed above, in addition to \$10 for shipping and handling. PAYMENT BY CHECK ONLY, WITH THIS FORM. Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800

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Bulletin



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

Real Estate for the Real World



Thursday, June 9, 11:30am - 5:00pm PBCBA, 1507 Belvedere Road, West Palm Beach

Program Schedule

		<u>Program Schedule</u>
11:30am -	11:55am	Late Registration/Check In/Lunch
11:55am -	12:00pm	Welcome and Opening Remarks - Sandra Wallace, Esq. Wallace Law, P.A., Real Estate CLE Committee Chair
12:00pm -	12:50pm	2015 Case Law and 2016 Legislative Update - Manuel Farach, Esq., McGlinchey Stafford; Board Certified in Real Estate Law and Business Litigation
12:50pm -	1:20pm	SBA Loans - Mitchell C. Fogel, Esq., The Fogel Law Group
1:20pm -	1:30pm	Break
1:30pm -	2:20pm	Malpractice Issues for the Real Estate Practitioner - Speaker TBA
2:20pm -	3:10pm	Commercial Real Estate Transaction Panel - Gregory Cohen, Cohen, Norris, Wolmer, Ray, Telepman & Cohen; Board Certified in Real Estate Law; Mitchell C. Fogel, Fogel Law Group; Jared Quartell, Quartell Law Firm, P.A.
3:10pm -	3:20pm	Break
3:20pm -	4:10pm	Using Mediation and ADR in Real Estate Disputes - Theodore A. Deckert, Esq., Matrix Mediation LLC; Certified Circuit Civil, Family and County Mediator; Florida Supreme Court Qualified Arbitrator
4:10pm -	5:00pm	Happy Hour sponsored by Commonwealth Fidelity National Title
		granted 4.5 CLER and 4.5 certification credits in Real Estate from The Florida Bar. Early registration of PBCBA members/paralegals, \$165 for non-PBCBA members/paralegals if registered by 6/2/16;

This course has been granted 4.5 CLER and 4.5 certification credits in Real Estate from The Florida Bar. Early registration cost for the seminar is \$115 for PBCBA members/paralegals, \$165 for non-PBCBA members/paralegals if registered by 6/2/16; Add \$20 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.



_____ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (6/9/16) Cost is the same as listed above, in addition to \$10 for shipping and handling.

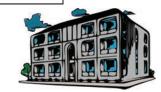
Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. Telephone: (561) 687-2800



The Community Association Law CLE Committee presents:

The 27th Annual Community Association Law Seminar

Friday, June 10, 8:30am – 12:15pm PBCBA Office - 1507 Belvedere Rd., WPB



Program Schedule

8:30am - 8:55am	Breakfast / Late Registration and Check In
8:55am - 9:00am	Welcome - Ronald Kaniuk, Esq., Kaniuk Law Office, P.A.
	Advising Associations on Property Managers - Ryan Poliakoff, Esq., Backer Aboud Poliakoff & Foelster
9:30am - 10:00am	Marketable Recordable Title Act - Leonard Wilder, Esq., Bakalar & Associates, P.A., Florida Bar Board Certified in Real Estate
0:00am - 10:30am	Service Animals and Fair Housing Issues - Eric Glazer, Esq., Glazer & Associates
0:30am - 10:45am	Break
0:45am - 11:15am	Problem Owners and Violations / Fines and Suspensions - <i>Michael E. Chapnick, Esq. Siegfried, Rovera, Hyman, Lerner, De La Torre, Marks & Sobel, P.A.</i>
1:15am - 11:45am	Elections, Electronic Voting Issues and BP Ballot Software - Donna Dimaggio Berger, Esq. and Ken Direcktor, Esq., Becker & Poliakoff
1:45am - 12:15pm	Case Law Update: Michael J. Gelfand, Esq., Gelfand & Arpe; Florida Bar Board

Sponsor:



This course has been granted 3.0 CLER from The Florida Bar. Early registration cost is \$ 75 for PBCBA members/paralegals; \$ 125 for non-PBCBA attorney members/paralegals if registered by 6/3/16; add \$20.00 late fee after that date. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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









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Certified in Real Estate

____ I will not be able to attend the seminar but would like to order the CD. (Cost same as listed above/allow four weeks for delivery) (27th Annual Community Association Seminar 6/10/16). Palm Beach County Bar Assn.,1507 Belvedere Road, West Palm Beach, FL 33406 (561)687-2800

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Bulletin



YOUNG LAWYERS SECTION SEVENTH ANNUAL KDW FISHING TOURNAMENT JUNE 25, 2016



PALM BEACH YACHT CLUB TO BENEFIT LEGAL AID'S EDUCATIONAL ADVOCACY PROJECT

The discounted early registration fee is \$300 per boat on or before June 1, 2016. After June 1, the registration fee will be \$400 per boat. Registration fee includes tickets to the Captain/Angler Party and the dock party for the Captain and four (4) Anglers and four (4) tournament shirts. Boats may register additional anglers for \$50 each, which includes a tournament shirt and tickets to all parties. Additional party tickets for non-anglers are available for \$25 for adults or \$15 for children under 10.

Please fill out the attached information and return it with a check to Palm Beach County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406. If paying by credit card, please go to www.palmbeachbar.org/yls-fishing-tournament. Deadline to return is June 1. Thank you!

Boat Name:	Make/Model/Le	ngth:
Owner's Name:	Captain's Name:	
Mailing address:		
Telephone:	Cell Phone:	
Email:		
Angler # 1 Name:		
T-Shirt Size: Small	Medium Large	Extra LargeXXL
Angler # 2 Name:		
T-Shirt Size: Small	Medium Large	Extra LargeXXL
Angler # 3 Name:		
T-Shirt Size: Small	Medium Large	Extra Large XXL
Angler # 4 Name:		
T-Shirt Size: Small	Medium Large	Extra LargeXXL
Additional Anglers:		
I will have additional angler(s	aboard @\$50 each:	Total: \$
Shirt sizes for additional angler(s) (v	write the quantity of each size):	
Small: Medium:	Large: XL: XXL:	
Additional Dock Party Tickets		
	the dock party @\$25 per adult ticket :he dock party @\$15 per child ticket (u	Total: \$ nder 10) Total: \$
Additional Tournament Shirts @		
Small MediumLarge	eXLarge XXL Large	Total: \$

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



The New Bankruptcy Forms Petition, Schedules and SOFAs



Tuesday, June 28, 2016, 11:30am - 5:30pm PBCBA - 1507 Belvedere Road, WPB

Program Schedule

11:30am - 11:55am	Lunch / Check In / Late Registration
11:55am - 12:00pm	Welcome - Opening Remarks - Tina M. Talarchyk, Esq., The Talarchyk Firm, Bankruptcy CLE Committee Chair
12:00pm - 1:00pm	A Virtual Journey through the new Bankruptcy Forms - Deborah C. Menotte, Chapter 7 Trustee and Tina Talarchyk, Esq., The Talarchyk Firm
1:00pm - 2:00pm	Pre- filing Review Issues and a Successful Intake Process - Chad T. Van Horn, Esq., Van Horn Law Group, P.A.
2:00pm - 2:10pm	Break
2:10pm - 3:00pm	The New Forms – Debtor and Debtor's Counsel's Burdens and Goals - Eric A. Rosen, Esq., Fowler White Burnett
3:00pm - 3:50pm	The Chapter 7 Trustee's Perspective - Deborah C. Menotte, Panel Trustee, Greenspoon Marder
3:50pm - 4:40pm	Questions and answer session on the New Bankruptcy Forms - All seminar speakers as panelists
4:40pm - 5:30pm	Reception sponsored by MORTGAGE
is \$ 125 for PBCBA me 6/21/16; add \$20 late to to the date of the semi ensure availability of further coordination.	granted 5.0 CLER from The Florida Bar. Early registration cost for the seminar, which includes lunch ember attorneys/paralegals; \$175 for non-PBCBA member attorneys/paralegals if registered by see after that date. All refund requests must be made in writing and made no later than 48 hours prior nar Please check here if you have a disability that may require special attention or services. To appropriate accommodations, attach a general description of your needs. We will contact you for
PAYMENT OPTIONS: If paying by credit card	please go to our secure website to register: www.palmbeachbar.org Materials will now be emailed to all registrants prior to the seminar
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Name:	Telephone:
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	to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Bankruptcy CLE st is the same as listed above, in addition to \$10 for shipping and handling, PAYMENT BY CHECK

Seminar 6/28/16). 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

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Real Property and Business Litigation Report



by Manuel Farach

F.E.B. Corp. v. United States of America, – F.3d , 2016 WL 1179951 (11th Cir. 2016).

The Quiet Title Act ("QTA"), 28 U.S.C. § 2409a, waives sovereign immunity and permits a private claimant to assert quiet title actions against the United States. However, the QTA is subject to a 12 year

statute of limitations and further subject to numerous exceptions that limit its applicability.

Newman v. Ocwen Loan Servicing, LLC, – So. 3d –, 2016 WL 1235548 (Fla. 2d DCA 2016).

Remittitur, instead of reversal, may be appropriate remedy for collateral damage amounts in a foreclosure judgment that are unsupported by evidence.

National Auto Service Centers, Inc. v. F/R 550, LLC, – So. 3d –, 2016 WL 1235622 (Fla. 2d DCA 2016).

A cause of action under the Florida Uniform Fraudulent Transfer Act (FUFTA), § 726.105 et seq., accrues upon discovery of the facts underlying the fraudulent transfer. Furthermore, FUFTA is statute of repose and thus its time limitations cannot be extended based on alleged acts constituting an equitable estoppel.

Catalina West Homeowners Ass'n, Inc. v. Federal Nat. Mortg. Ass'n, – So. 3d –, 2016 WL 1235728 (Fla. 3d DCA 2016).

The "safe harbor" provisions of Florida Statute section 720.3085 do not permit a community association to charge a foreclosing lender for interest and attorney's fees.

Ortiz v. PNC Bank, N.A., – So. 3d –, 2016 WL 1239760 (Fla. 4th DCA 2016).

The attachment of a copy of the note to a complaint does not conclusively and necessarily prove that the lender had actual possession of the note at the time the complaint was filed, but establishes a rebuttable presumption sufficient to defeat a motion for involuntary dismissal if the lender who filed suit and lender at trial are the same and there are no additional evidentiary issues surrounding the note.

Cassell v. Green Planet Servicing, LLC, – So. 3d –, 2016 WL 1261119 (Fla. 5th DCA 2016).

A witness cannot testify to another business's records unless the testifying witness can demonstrate familiarity with how the other business's records were created.

Florida Dept. of Transp. v. Schwefringhaus, – So. 3d –, 2016 WL 1375699 (Fla. 2016).

State cannot invoke sovereign immunity if it agrees, by contract, to indemnify a private party.

Hiller v. Phoenix Assoc. of South Florida, – So. 3d –, 2016 WL 1386642 (Fla. 2d DCA 2016).

The failure to commence an action against the surety of a transfer bond within sixty days after a notice of contest has been served pursuant to Florida Statute section 713.22 eliminates the claim against the bond.

Deutsche Bank Nat. Trust Co. v. Marciano, – So. 3d –, 2016 WL 1385903 (Fla. 5th DCA 2016).

A purchase agreement for a note and mortgage can demonstrate standing to sue.

Deutsche Bank Trust Company Americas v. Beauvais, – So. 3d –, 2016 WL 1445415 (Fla. 3d DCA 2016).

Dismissal of a mortgage foreclosure lawsuit, whether with or without prejudice, decelerates the prior acceleration and tolls the running of statute of limitations so that each missed mortgage payment is another act of breach entitling lender to foreclose.

Collazo v. HSBC Bank USA, N.A., – So. 3d –, 2016 WL 1445419 (Fla. 3d DCA 2016).

Lender cannot collect foreclose mortgage installment payments more than five years old.

Wells v. Halmac Development, Inc. and Hector Castro, – So. 3d –, 2016 WL 1445437 (Fla. 3d DCA 2016).

Seeking reconsideration of an arbitration award may subject a party to an award of Florida Statute section 57.105 fees

MYD Marine Distributor, Inc. v. International Paint Ltd., – So. 3d –, 2016 WL 1445590 (Fla. 4th DCA 2016).

If the "true intent" of a suit is recovery of money damages, an award of attorney's fees under the Offer of Judgment statute, Florida Statute 768.79, is available notwithstanding the entire suit has counts for relief in addition to money damages.

CitiMortgage, Inc. v. Flowers, – So. 3d –, 2016 WL 1446104 (Fla. 4th DCA 2016).

The requirement of U.S. Bank National Ass'n v. Quadomain Condominium Ass'n, 103 So. 3d 977 (Fla. 4th DCA 2012), that all interests with regard to real property have to be adjudicated in the case where the lis pendens was first filed applies only to unrecorded interests.

Rainbow River Conservation, Inc. v. Rainbow River Ranch, LLC, – So. 3d – 2016, WL 1465658 (Fla. 5th DCA 2016).

The Bert Harris Act requires a circuit court, pursuant to Florida Statute section 70.001(4)(d), to determine the public interest is not disserved when the court adjusts the land use of a particular parcel pursuant to the Act.

Rivera v. Wells Fargo Bank, N.A., – So. 3d –, 2016 WL 1579076 (Fla. 4th DCA 2016).

E-notes (electronic promissory notes without paper documentation) are enforceable.

Bowmar v. SunTrust Mortgage, Inc., – So. 3d –, 2016 WL 1600756 (Fla. 5th DCA 2016).

Judgment may not be entered in the name of a party who has assigned or sold the promissory note being foreclosed.

Deutsche Bank Nat. Trust Co. v. Alaqua Property, Case No. 5D14-4326 (Fla. 5th DCA 2016).

Promissory notes are instruments that have independent legal significance and thus are not business records that must meet the Business Records Exception to the Hearsay Rule in order to be admitted into evidence.

Welcome New Members!

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

Lisa J. Austein: University of Miami, 2014; Boca Raton.

Evan R. Bachove: University of Miami, 20105; Partner in Fields & Bachove, Palm Beach Gardens.

Kristen Elizabeth Bond: Florida State University, 2015; Fourth District Court of Appeal, West Palm Beach.

Lauren A. Capriotti Guerin: Nova Southeastern University, 2014; The iCan Group, LLC, Boca Raton.

Meghan A. Clancy: Law Student Membership, West Palm Beach.

Jessenia J Concepcion: Rutgers University, 2010; Office of the Attorney General, West Palm Beach.

Jessie Jeanne Ervolino: University of Florida, 2015; Associate in King & Chaves, LLC, West Palm Beach.

Jonathan L Fitzgerald: University of Florida, 2010; Corporate Counsel, Wilmington Trust, Palm Beach.

Paul Galsterer: Nova Southeastern University, 2009; Associate in Goldman & Daszkal, P.A., Ft. Lauderdale.

Christeen M. Gensbugel: Florida Registered Paralegal Membership, West Palm Beach.

Evan Gutman: Affiliate Membership, Boca Raton.

Melva D. Harris-Rozier: Nova Southeastern University, 2003; Legal Aid Society of Palm Beach County.

Ashley D. Houlihan: Law Student Membership, Tallahassee.

George Murray Hudson: Mercer University, 1988; Solo Practitioner, Boca Raton.

Christopher D. Johns: University of Florida, 2015; Associate in Lewis, Longman & Walker, P.A., West Palm Beach.

Danielle M. Kaye: Nova Southeastern University, 2014; Associate in Brodie & Friedman, P.A., West Palm Beach.

Janelle G. Koren: Suffolk University, 2005; Partner in Sponsler, Bishop, Koren, & Hammer, P.A., Palm Beach Gardens.

Brennan P. Leene: George Mason University, 2015; Associate in Ward Damon, West Palm Beach.

Steven R. Linn: Florida Registered Paralegal Membership, West Palm Beach

Andrew P. Marcus: University of Miami, 2006; Associate in Gray Robinson, P.A., Ft. Lauderdale.

T.N. Murphy, Jr: University of Virginia, 1971; Solo Practitioner, Boca Raton.

Molly M. O'Donnell: Law Student Membership, Gainesville.

Taylor Sloane Phipps: Tulane University, 2013; Associate Littky, Smith, Phipps, Casas, & Phillips PA, West Palm Beach.

Robert Rodriguez: Florida International University, 2015; Office of the State Attorney, West Palm Beach.

Anna Rot: Nova Southeastern University, 2015; Associate in Greenberg & Strelitz, P.A., Boca Raton.

David Silverman: Nova Southeastern University, 2015; Associate in Schlesinger Law Offices, P.A., Ft. Lauderdale.

Brian M. Spiro: University of Miami, 2013; Associate in Clark Skatoff PA, Palm Beach Gardens.

Chad L. Steskal: University of Miami, 2014; Associate in The Karp Law Firm, P alm Beach Gardens.

Gracy Mackey Streicher: Case Western University, 2011; Fourth District Court of Appeal, West Palm Beach.

Susan Walker: University of Miami, 1980; Partner in Kanouse & Walker, PA, Boca Raton.

Thomas Charles Walser: University of Minnesota, 1972; Solo Practitioner, Boca Raton.

Jorja Williams: University of Florida, 2008; Associate in Beller Smith, P.L., Boca Raton.



Our New Partner Sam!!

Brian D. Guralnick Injury Lawyers Congratulates **Samuel R. Guelli** on Becoming Litigation Partner



Join Us in Celebrating at Blue Martini, City Place Thursday, June 16th from 5:30pm - 7:30pm Complimentary Hors d'Oeuvres & Drink Ticket RSVP 561-202-MORE (6673) by June 13th

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Three Keys to Strengthening our Justice System



by Bradley Harper Introduction

In spite of the significant number of people dedicated to building and sustaining a fair justice system, American confidence in our

civil and criminal legal system is eroding. According to a 2012 nationwide Clarus poll:

- Only 26 percent of voters believed our civil justice system provides timely and reliable resolution of disputes.
- Only 29 percent of voters had confidence in our criminal justice system
- 92 percent of those surveyed desired a change in our justice system.

To address these concerns, lawyers must maximize our impact by owning the facts, promoting responsibility, and encouraging collaboration.

Own the Facts

We don't go far enough to acknowledge the ways our system bolsters a perception of unfairness. Recognizing the importance of diversity in the legal profession is a good thing, but we must also discuss the link between distrust of our legal system and the absence of judges and prosecutors who have personal and cultural proximity to poor and disenfranchised people. Most lawyers know there are more people incarcerated in the United States than in any other country in the world. In fact, there are more people in prison in the United States than in China and Russia combined. According to The Sentencing Project, approximately 60% of America's incarcerated are racial and ethnic minorities, yet many racial and ethnic minorities are noticeably absent from the very visible areas of our judiciary and our juries. Our country has a history of legal disenfranchisement of minorities that many feel we are still living, so it is critical that our discussions about diversity occur with reference to and in the context of our history. Simple ways we can own the facts include:

 Posting and publicizing reports online that include demographic data of people called for jury service vs. those who appeared for jury service.

- 2. Posting and publicizing reports online regarding the representativeness of juries seated in capital cases.
- Posting and publicizing reports online regarding the representativeness of our judiciary.
- 4. Posting and publicizing efforts underway to address existing disparities.

Promote Responsibility

Along with being honest about our challenges, we should promote accepting responsibility and eschewing blame. We must remind people that if they want a system that prioritizes their concerns, they must prioritize civic participation. Locally, voter turnout and appearances for jury service are dismal. According to Palm Beach County Supervisor of Elections Susan Bucher, only about 19% of Palm Beach County voters bother to participate in our August primaries when we elect constitutional officers, judges, legislators and people to serve in almost every branch of government. Similarly, only 49% percent of our residents bother to respond to their jury service summons. Our Bill of Rights is rooted in the bedrock of civic participation. We cannot have a strong and robust democracy when so few people prioritize civic participation. It's our job to be honest with the public about the key role they play in addressing our challenges, and to request that everyone accept responsibility for making our county great. Some ways we can promote responsibility include:

- 1. Launching a social media campaign created by volunteer professionals to encourage jury service.
- Establish a central location for information regarding every judicial candidate and links to relevant educational resources.
- 3. Post clear information about ways lay people in the community can get involved in positive change efforts.

Encourage Collaboration

There is a rhythm to democracy. We are in this together. We don't have to march to the same beat, but we cannot drown each other out with competing agendas. As such, concise, clear and measurable goals are imperative to any collaborative effort. As community members seek direction on how they can help improve our justice system, we – as

leaders and stakeholders in our justice system – must continue a coordinated effort to provide the community with timely and accurate information about our justice system and outline the ways we all can improve the fair administration of justice. Ways we can encourage collaboration include:

- 1. Setting specific community goals, such as reducing the number of unsolved murders and taking measurable steps to achieve those goals.
- 2. Provide a framework for civic organizations to evaluate whether they are allocating their resources in a manner that is consistent with our specific community goals.
- 3. Posting online presentations for judges, lawyers and community groups to use for presentations in schools and community events about our local justice system.
- 4. Continuing the efforts of the Informed Voters Project.

Conclusion

Building trust and confidence is a process. All relationships of trust are built on truth, transparency and, where appropriate, reconciliation. By being more mindful in our leadership efforts, we can more effectively shape the narrative in our community about the integrity of our justice system. In the process, we will create a culture of trust and a more diverse legal community that allows us to better serve the public and our clients.

Bradley Harper is a partner with Powers McNalis Teebagy & Luongo, a past chair of the Committee for Diversity & Inclusion and a volunteer with the Clemency Project who can be reached at info@bradleyharper.com.

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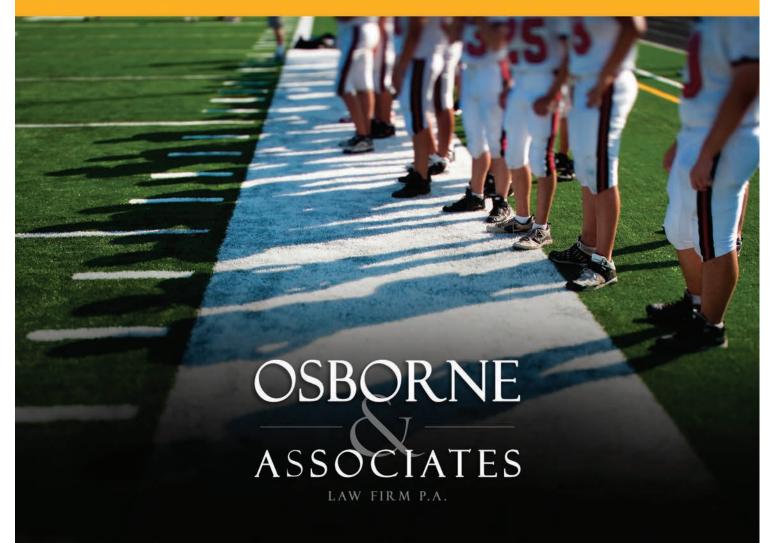
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Mass Torts



Mass Tort Update: Do Arnold Palmer and Chris Bosh Create An Exception to the Learned Intermediary Doctrine in Florida?

by Joseph A. Osborne

Manufacturers typically have a duty to warn consumers about the risks associated with their products. In medical device and

drug manufacturing, the learned intermediary doctrine provides an exception to that general rule. The learned intermediary doctrine eliminates medical device and drug manufacturers' duty to warn the consumers by requiring they only warn physicians about the risks associated with their products. The manufacturer has no duty to warn the patient directly. The learned intermediary doctrine is premised upon the recognition that physicians are in the best position to balance the risks posed by drugs and medical devices against the susceptibilities of their patients. Florida adheres to the learned intermediary doctrine.

Plaintiffs have sought to circumvent the learned intermediary doctrine by advancing alternative theories of recovery against manufacturers in addition to the traditional negligent failure to warn cause of action, including common law negligent misrepresentation and fraud claims. The learned intermediary doctrine is one of the most potent weapons in the arsenal for a pharmaceutical or medical device manufacturer faced with product liability litigation.

Plaintiffs in a variety of contexts have advocated for courts to recognize exceptions to the doctrine, including an "over promotion" exception and a "direct-to-consumer" advertising exception. Direct-to-consumer advertising, which encourages patients to seek specific prescription drugs or medical devices may cause unnecessary and potential risks for patients. Directto-consumer advertising also inflates demand for new and more expensive drugs. This form of advertising is provided by the manufacturers, aimed at a general audience, and not at health care professionals such as doctors, nurses, and pharmacists. Direct to consumer advertising may contain false or misleading information and rarely provides enough information about the risks and negative effects of the advertised products.

Aggressive advertising campaigns, such as the current Xarelto® campaign, often utilize celebrities in their commercials. Arnold Palmer and Chris Bosh are examples. These celebrities relate their positive experiences with Xarelto[®] to help sell and gain market share. Janssen's parent company Johnson & Johnson and its partner Bayer, manufacturers of Xarelto® pay these celebrities for their testimonials. The manufacturers intend that people who see the commercials ask their doctor about taking Xarelto[®].

Direct-to-consumer advertising is a relatively new area of prescription drug promotion. No federal law has ever banned direct-to-consumer advertising. Until the mid-1980s, drug companies gave information about prescription drugs only to doctors and pharmacists. Following the relaxation of FDA regulations concerning direct-to-consumer advertising, pharmaceutical manufacturers have poured billions of dollars into online, television, radio and print ads. According to the FDA, drug companies spend about \$25 billion in the United

States promoting their prescription medications annually with approximately one-fifth spent on direct-to-consumer advertising. The industry has employed an array of patientdirected promotion more commonly associated with consumer products. Coupons, jingles and celebrity endorsements now play a significant role in marketing prescription medicines and medical devices. The ads have become pervasive. It is rare to pick up a magazine or watch television in the evening without confronting direct-to-consumer advertising. These ads also appear online. The internet and social media have increased the volume and extent of the advertisements.

Beale v. Biomet, Inc., 492 F. Supp. 2d 1360 (S.D. Fla. 2007), was the first time a court sitting in Florida expressly considered several important issues relating to the application of the learned intermediary doctrine in the state, including whether an exception for direct-to-consumer advertising applied. The court embraced the traditional learned intermediary doctrine notions articulated by the Florida Supreme Court in in Felix v. Hoffman-LaRoche, Inc., 540 So. 2d 102 (Fla. 1989) and declined to adopt an exception to, or avoid application of, the learned intermediary doctrine. Today, nine years since Beale, Florida courts have not recognized a direct-toconsumer advertising exception to the learned intermediary doctrine. However, in this era of rapidly changing electronic communications, especially with the rise and increased use of social media platforms as a method of communication to consumers by manufacturers, the exception will most certainly be confronted again.

Mr. Osborne practices with the Boca Raton firm of Osborne & Associates in the area of complex civil litigation, including mass torts. JOsborne@oa-lawfirm.com

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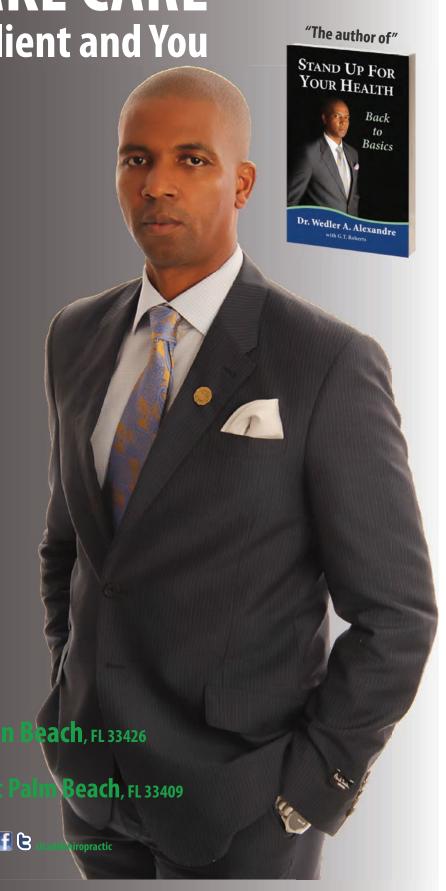
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NCS annual CLE attended by nearly 65 members

During a recent luncheon at the PGA Marriott, North County Section members received valuable tips for their motion calendar procedures in Federal, Circuit and County Courts. Lessons learned from the program: Speak to opposing counsel; write persuasively and if you're scheduled for UMC and no longer need the time be sure to cancel. You don't want judges reading your materials and you're a no-show!



These two lucky members won door prizes from our gracious sponsors!
Thanks to Center State Bank, Geoffrey Stahl went home with money in his pocket and Krista Downey won a basket of chocolate from Care Giver Services.



Moderator Michael Gelfand, Esq., U.S. District Court Judge Ken Marra, Circuit Judge Peter Blanc and County Court Judge Laura Johnson



Mitch Beers talks with representatives from Center State Bank



NCS President Larry Buck (center) along with NCS Directors and luncheon co-chairs Kate Watson and Larry Strauss



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Bulletin Board

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HEARSAY



Rudolph & Associates LLC, announces that attorney **Jaclyn Soroka** is now a partner with the firm. Ms. Soroka, focuses her practice on all aspects of marital and

family law.



Kalinthia R. Dillard.

General Counsel for the Office Inspector General, recently was awarded the 2016 "Giraffe Award" by the Women's Chamber of

Commerce of Palm Beach County. This award is given annually to honor women who have "Stuck Their Necks Out" by taking risks and applying initiative, dedication and perseverance, and thereby making a difference for other women in the workplace and in the community.





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Thursday, June 2, 11:30pm - 1:00pm**Appellate CLE Seminar** Bar Association Office

Friday, June 3, 8:00am - 9:00am **CDI First Connections Breakfast**

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Friday, June 3, 11:30am - 1:00pm **Business Litigation** Seminar

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Friday, June 3, 12:00pm - 1:00pm**Judicial Relations Committee** Judicial Conference Room Saturday, June 4, 7:00pm - 12:00am **South Palm Beach Bar Banquet**

St. Andrews Country Club, Boca Raton

Tuesday, June 7, 11:45am - 1:00pm **YLS Sidebar Series** Judge Meenu Sasser's Courtroom

Thursday, June 9, 8:00am - 12:00pm **Real Estate Law Seminar** Bar Association Office

Friday, June 10, 8:00am - 12:30pm **Community Law Seminar** Bar Association Office

Saturday, June 11, 7:00pm - 11:30pm**Installation Banquet** Breakers Hotel, Palm Beach Tuesday, June 14, 11:45am - 1:00pm **Unified Family Practice Committee Meeting** Judicial Conference Room

Tuesday, June 14, 12:00pm - 1:00pm **YLS Board Meeting** Bar Association Office

Wednesday-Saturday, June 15-18 **TFB Annual Meeting** Hilton Orlando Bonnet Creek

Monday, June 20, 12:00pm - 1:00pm**Judicial Lunch Technology** North County Courthouse -Judge Phillips' Courtroom

Wednesday, June 22, 12:00pm - 1:00pm**FAWL Luncheon** Cohen Pavilion

Thursday, June 23, 12:00pm - 1:00pm **Judicial Lunch: Professional Decorum** Main Courthouse

Saturday, June 25, 12:00am - 12:00am **YLS Fishing Tournament**

Tuesday, June 28, 8:00am - 5:00pm **Bankruptcy Seminar** Bar Association Office

Tuesday, June 28, 5:30pm - 7:00pm**Legal Aid Society Board Meeting** Bar Association Office

Wednesday, June 29, 12:00pm - 1:00pm**Judicial Relations Committee Meeting** Judicial Conference Room

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