



## PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

March 2013



### CLE Seminars Now Available 24/7

We are pleased to unveil our new online CLE order page for attorneys to purchase seminars either on CD's or in an MP3 format to download to your computer or iPod. We have a large library of courses recorded from seminars presented by the Palm Beach County, Orange County, Hillsborough County and Clearwater Bar Associations. If your CLE deadline is coming up, be sure to check out this new site and order your CLE [www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php) today.

### Mark your calendar for upcoming Membership Events

**March 1:** Bench Bar Conference

**April 5:** Membership Luncheon with Guest Speaker Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers

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

**April 26:** Inaugural Golf/CLE Program

**April 30:** Annual Judicial Reception

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

**June 1:** Annual Installation Banquet

**September 27:** Diversity Luncheon with Guest Speaker Florida Bar President-elect Eugene Pettis

### Public Speaking and Persuasion Expert Marsha Hunter to speak April 5



Marsha Hunter teaches public speaking and persuasion for trial lawyers and corporate attorneys. Her specialty is human factors—the science of human performance in high-stakes environments. Hunter's expertise in cognition and communication focuses on how people think, speak, feel, and act in dynamic situations. Her teaching is both technical and practical, drawing on techniques from sports psychology, linguistics, and cognitive science. Her topic, "Speaking Well, Thinking on Your Feet: The Science of Persuasive Style" will be presented at a membership

luncheon co-sponsored by the Palm Beach County Justice Association on **April 5 from 11:45 – 1:00 at the West Palm Beach Marriott.**

Ms. Hunter is the communication specialist for NITA's collaborative programs with the U.S. Department of Justice's Office of Violence Against Women, and at three regional trial skills programs annually for NITA. She teaches for the Department of Justice at the National Advocacy Center in Columbia, South Carolina. Last year she served on preparation teams for lawyers appearing in multiple cases before the Ninth Circuit and the U.S. Supreme Court. She has taught advocacy programs for the Law Society of Upper Canada, the Law Society of Northern Ireland, and in 2012 teaches for the Tasmanian Law Society.

Marsha Hunter has a Master's of Aeronautical Science degree with a specialty in Human Factors from Embry-Riddle Aeronautical University in Daytona Beach, Florida, and holds a commercial pilot's license. Her undergraduate degree in Music Performance is from Arizona State University. She attended The Curtis Institute of Music, an all-scholarship international school of music in Philadelphia. She lives in Phoenix.

### Judge Gillen Investiture Ceremony March 22

All members of the Bar are invited to attend the investiture ceremony of newly appointed Circuit Judge Jeffrey Gillen. The ceremony will take place in Courtroom 11A at 4:00 p.m. on March 22.

### Inside...

President's Message .....	3
Professional Council .....	4
Probate Corner .....	5
Diversity Corner .....	6
Pro Bono Corner .....	7
Civility Counts .....	8
Technology Corner .....	9
Judicial Lunch .....	10
Real Property Report .....	11

New Members .....	12
YLS Luncheon .....	13
Judicial Profile .....	14
Personal Injury Corner .....	15
Arbitration Clauses .....	17
Rules of Civil Procedure .....	18
Real Life Practice .....	19
Law in the Real World .....	20
Bankruptcy Corner .....	23
Bulletin Board .....	27

THE  
**BULLETIN**

PALM BEACH COUNTY  
BAR ASSOCIATION

ADAM T. RABIN  
President

[www.palmbeachbar.org](http://www.palmbeachbar.org)

PATIENCE A. BURNS, CAE  
Executive Director

**Officers**

Adam T. Rabin, President  
Jill G. Weiss, President-elect

**Directors**

Rosalyn Sia Baker-Barnes  
C. Wade Bowden  
Gregory P. Huber  
Theodore S. Kypreos  
Jessica Callow Mason  
Edward "Ned" Reagan  
James "Grier" Pressly III  
John R. Whittles

John M. Howe, Immediate Past President  
Robert Lee McElroy, IV, Young Lawyers Section  
President  
Kenneth N. Johnson, North County Section President  
Larry Corman, Ex Officio, South Palm Beach County  
Bar President

**FL Bar Board of Governors Members**

Gregory W. Coleman  
Gary S. Lesser  
David C. Prather  
Michelle R. Suskauer

**FL Bar Young Lawyers Division**

Board of Governors Members  
Miles A. McGrane IV  
Adam Myron  
Matthew T. Ramenda

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

**Advertising Information:**

Shoshannah Spence • [sspence@palmbeachbar.org](mailto:sspence@palmbeachbar.org)

Views and conclusions expressed in articles and advertisements herein are those of the authors or advertisers and not necessarily those of the officers, directors, or staff of the Palm Beach County Bar Association. Further, the Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. Copy deadline is the first of the month preceding publication.

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



**Correction**

In last month's issue of the Bulletin, the Diversity Corner focused on African American History in Palm Beach County History. There was a portion of the article that spoke about T. J. Cunningham, Sr. and the photo that ran with the article was actually T. J.'s son, T. J. Cunningham, Jr. Here is corrected photo. The Bulletin apologizes for the error.



**Contributions sought for 2013 Law Week Judicial Reception**

The Law Week Committee is beginning its efforts to request contributions from law firms to assist in underwriting the cost of the annual judicial reception honoring the local judiciary and judicial assistants to be held on April 30, 2013. Sponsors will be recognized on the email notices, on a sign at the reception and in the Bar Bulletin.

Those interested in making contributions should send a check no later than April 1 to the Palm Beach County Bar Association, ATT: Patience Burns, 1507 Belvedere Road, WPB, FL 33406. Sponsorship amount are as follows:

\$575 for law firms of 11 or more attorneys

\$375 for law firms with 3-10 attorneys

\$225 for law firms with 1-2 attorneys

Thank you for your consideration!

probate | litigation

referral fees

pankauski

LAW FIRM  
P.L.L.C.

(561)

514 - 0900

[support@pankauskilawfirm.com](mailto:support@pankauskilawfirm.com)



## Who Are Our Pioneers of Professionalism?

By Adam Rabin

In September 2012, I wrote an article for the *Bulletin* entitled "Who Are Our Paragons of Professionalism?" The purpose of that article was to identify a non-exhaustive list of actively practicing attorneys who serve as professionalism role models for our legal community. In preparing that article, I asked several of the "paragons" who was their professionalism role model.<sup>1</sup> Likewise, I asked members of several minority bar associations if any one attorney stood out over the years as a "go to" professionalism mentor. From my survey, two names repeatedly emerged as our community's long-standing icons of professionalism – Sidney Stubbs and T.J. Cunningham, Sr. This article is dedicated to recognizing them both for their service to our legal community and their instrumental roles as "pioneers" in setting the bar for lawyer professionalism in our community.

### Sidney Stubbs



Sidney ("Sid") Stubbs was admitted to practice in Florida in 1966. He is a name partner with Jones Foster Johnston & Stubbs. Sid is widely considered a "bet-the-company" litigator, a member of the prestigious American College of Trial Lawyers, a past winner of PBCBA's Professionalism Award, and often referred to by lawyers in our community as the "Dean of the Bar."

The driving force behind Sid's professionalism is that it is the most effective form of representation for his clients. Sid's philosophy is that judges, jurors, counsel, clients, and witnesses do not respond well to rudeness. Instead, they expect lawyers to conduct themselves in a civil and respectful manner and when that does not occur, it is counterproductive for the client's interests.

According to Sid, a lawyer who conducts himself professionally often will get more useful information from the opposition in depositions or on the stand because the witness does not feel threatened. Likewise, lawyers are more likely to resolve less material discovery issues in a manner that saves money for clients and heightens the focus on important merits issues.

When I asked Sid if he had any tips for younger lawyers on how to conduct themselves, he said the following: (1) never skirt the truth to the court or anyone else; (2) be a straight shooter in discovery and related disputes; (3) do not lose your temper or raise your voice; and (4) treat others like you want to be treated.

Sid further mentioned that he has had to withdraw from representing certain clients when the client disagreed with his

professional manner in litigating the client's case. Sid's point is that no client or case was worth tarnishing his reputation and if he and the client have a philosophical difference on how to achieve the best result for the client, the client was better off with another lawyer.

Sid also reiterated the common theme that judges talk to other judges, lawyers, and staff about lawyers. If a lawyer does not conduct him or herself professionally, that lawyer should expect a judge to hear about it. Our legal community remains a small town in many ways and the best philosophy for a lawyer is to behave professionally and civilly at all times.

### T.J. Cunningham, Sr.

T.J. Cunningham, Sr. (retired) is a legend in the Palm Beach County legal community. He graduated from Howard University Law School in 1960, when Florida's law schools did not admit African Americans. That year, T.J. joined the law practice of his older brother, F. Malcolm Cunningham, Sr.



(deceased) and formed the famed law firm of Cunningham & Cunningham. Together, the Cunningham brothers were instrumental in integrating Florida's Turnpike facilities, Palm Beach County's school system, and West Palm Beach's golf courses. The brothers also helped found the first minority-owned commercial bank in West Palm Beach.

T.J.'s philosophy on lawyer professionalism derives from his love of the practice. His main tenet for professionalism is for a lawyer to be adequately prepared in all proceedings. T.J. comments that when lawyers are prepared, it makes the court, opposing counsel, and one's own job easier because everyone is more focused on the issues that matter. This improves the level of advocacy, reduces the number of discovery disputes, and improves the cost-effectiveness and efficiency of court proceedings.

Keeping one's client informed on material developments and issues in the client's case is critical for the "professional" lawyer. Client communication is key. T.J. emphasizes that the lawyer must understand what his or her client needs and wants to accomplish and tailor his or her representation to those goals.

T.J.'s view on lawyer civility is that it has generally declined over the years. He attributes this decline, in part, to the increase in the number of lawyers and that in certain practice areas, lawyers often will not see each other again "tomorrow." His philosophy is that the law is complicated enough without lawyers treating each other poorly; the practice is much more pleasant and lawyers are more productive when they can speak to each other respectfully and without making it personal.

T.J. recommends that lawyers still pick up the phone to talk through disputes. He recognizes that while e-mail has become the primary form of communication between lawyers, e-mail has its limitations. It often does not allow for the back and

*Continued on page 17*

<sup>1</sup>The paragons identified in the September 2012 article were David Ackerman, Manual "Manny" Farach, Jane Kreusler-Walsh, Edward "Ned" Reagan, Culver "Skip" Smith and John Mariani.



## Do Not Forget the Judicial Assistants When it Comes to Professional Courtesy

By Cathy L. Purvis Lively on behalf of the Professionalism Committee

Recognizing the Judicial Assistant as deserving of the respect of a professional is not a marketing gimmick on the part of greeting card companies or florists. It is an integral part of the Palm Beach County Bar Association Standards of Professional Courtesy. The Preamble of Standards provides in part that “the overriding principles promoted by these standards are communication between counsel and cooperation with the courts.” The standards expressly include our dealings with Judicial Assistants.<sup>1</sup> In preparing this article, I spoke with several Judicial Assistants about what lawyers can do to improve the professional relationship between the bar and the Judicial Assistants. However, we did not discuss or refer to the Standards. I first asked questions about the actions on the part of members of the bar that are most frustrating to the Judicial Assistants.

The most commonly noted examples of actions leading to the Judicial Assistants’ frustration are when the attorney or staff:

- Does not follow the divisional instructions, particularly when the Judicial Assistant has provided specific information.
- Calls the Judicial Assistants with questions that are readily available by reading the on-line divisional instructions. A repeated example is calling to ask what time the Judge or General Magistrate holds 8:45 UMC Hearings.
- Refuses to accept that each Judge or General Magistrate has their own instructions and procedures.
- Refuses to accept that the procedures of a division will not change from one case to another and repeatedly calls the Judicial Assistant in hopes of getting a different answer.
- Calls the Judicial Assistant to schedule hearings but does not have the necessary information available, e.g., does not know the case number, what motion is to be heard, or the amount of time needed.
- Does not make an effort to coordinate and to schedule with opposing counsel and causes both sides to repeatedly call the Judicial Assistant.
- Makes repeated phone calls to the Judicial Assistants inquiring as to the status of trial docket and the likelihood that they will be called to trial, yet when the Judicial Assistant attempts to contact the same attorney, makes it difficult to get through to anyone who can provide information.
- Avoids calls from the Judicial Assistant by repeatedly making themselves unavailable, making various excuses, or directing the calls to voice-mail.
- Does not return calls or messages from the Judicial Assistants, particularly when the Judicial Assistants is trying to schedule a matter.
- Fails to timely notify the Judicial Assistant when the matter has been settled or resolved.
- Is condescending, demanding, and otherwise inconsiderate when talking with the Judicial Assistant.

- Sends unnecessary copies of correspondence or other filings.
- Does not provide the appropriate number of copies and self-addressed, stamped envelopes or just provides plain, unaddressed, and un-stamped envelopes.

I then asked questions about what we can do to improve the professional relationship. The responses can be summarized as follows:

- ✓ Read and follow the divisional instructions. The individual divisional instructions can be accessed through the website: <http://15thcircuit.co.palmbeach.fl.us:8080/web/guest/judges>. Before calling, take the time to read the divisional instructions. If there are still questions, the Judicial Assistants are willing to address questions or to clarify the instructions.
- ✓ Read and follow the Administrative Orders. Administrative Orders are online: <http://15thcircuit.co.palmbeach.fl.us:8080/web/guest/adminorders>

We do not have to look very far to find a solution as there is clear guidance found in our own Standards of Professional Courtesy. In contrast to the examples of actions noted in this article, if we follow the principles set forth in the Standards of Professional Courtesy we can go a long way to eliminate the sources of unnecessary frustration for the Judicial Assistant. As a result, this will make our working relationship more productive and promote the positive and professional image of the lawyer. The Judicial Assistants with whom I spoke did not have the Palm Beach Rules of Professional Conduct in front of them, however, the majority of their responses are actually addressed by the following Standards:

Standard III(5) “Attorneys should act and speak civilly to the courtroom deputies/bailiff’s, clerks, court reporters, judicial assistants and law clerks with an awareness that they, too, are an integral part of the judicial system. Attorneys should be selective in inquiries posted to judicial assistants to avoid wasting their time. Attorneys should endeavor to be knowledgeable about the court administrative orders, local rules and each judge’s published or posted practices and procedures.”

Standard I(4) “Attorneys should promptly notify the court or other tribunal of any resolution between parties that renders a scheduled court appearance unnecessary or otherwise moot.”

The Standards are on-line at: <http://www.palmbeachbar.org/spc.php>.

If we adhere to these standards when we deal with the Judicial Assistant in our daily practice, we will not only promote the principals articulated in the Palm Beach County Bar Association Standards of Professional Courtesy but we will improve the professional relationship between members of the bar and the Judicial Assistants.

Cathy L. Purvis Lively, Esq., Lively Law Firm, 8401 Lake Worth Road, #120, Lake Worth, FL 33467, 561-713-1197.  
[clively@livelylaw.com](mailto:clively@livelylaw.com)

<sup>1</sup>. Standard III(5)





## Exculpating A Trustee From Liability

By: David M. Garten

Section 736.1011 of the Florida Trust Code places restrictions on the enforceability of a term in a trust that attempts to relieve a trustee of liability for a breach of trust. The restrictions are mandatory and may not be relaxed in the trust instrument. Refer to §736.0105(2)(u), F.S. Pursuant to §736.1011(1)(a), F.S., an exculpatory term may not relieve a trustee of liability for breaches committed in bad faith or with reckless indifference to the purposes of the trust or the interests of the beneficiaries.

For example, in *Barnett v. Barnett*, 424 So. 2d 896 (Fla. 1st DCA 1982), the beneficiary contended that the trustee had under-distributed his share of the trust and breached its fiduciary duty by holding trust assets of stock in a falling market and by holding money in a non-interest checking account. The trial court dismissed the beneficiary's complaint and held that the trustee acted as a prudent trustee. The appellate court affirmed, holding that under the exculpatory provision of the trust, the trustee could only have been liable for willful negligence, default, malfeasance or misfeasance, and not

for honest errors of judgment made in good faith. The court reasoned that the trustee holding Barnett Bank stock in a declining market would not be in bad faith considering the tradition of holding Barnett Bank stock in the trust since its inception. Additionally, holding cash in a non-interest bearing checking account would not be in bad faith considering the probability of litigation expenses. Under the circumstances, the trial judge could conclude that the trustee acted as a reasonable, prudent trustee.

An exculpatory term may relieve a trustee of liability for his own *negligence*. For example, in *Campbell v. Chitty*, 2012 Fla. App. LEXIS 20868 (Fla. 1st DCA 12/5/12), the beneficiaries challenged the trial court's final order directing the liquidation of trust assets and imposing monetary sanctions against trustee for breaching her fiduciary duty. However, the trust contained an indemnification clause<sup>1</sup> that held the trustee harmless

<sup>1</sup>Indemnification shifts the entire loss from one who, although without active negligence or fault, has been obligated to pay. Stated differently, an indemnity right exists when one is left open to liability due to the wrongful acts of another. See, *Wendt v. La Costa Beach Resort Condo. Assn., Inc.* 14 So. 3d 1179 (Fla. 4th DCA 2009).

from any damages or liabilities for the trustee's actions or omissions as long as the trustee's actions or omissions were not negligent. In this case, the trial court never made a finding that the trustee's actions were negligent. Thus, all of the damages, including attorney's fees, imposed for breach of the trust were reversed. On remand, the trial court was directed to make factual findings as to whether or not the trustee's actions rose to the level of negligence. The court may only award damages for the breach of the trust if it finds that the trustee's actions were negligent. See also, *Jones v. First Nat'l Bank* 226 So. 2d 834 (Fla. 4th DCA 1969)( a trust instrument may contain exculpatory provisions whereby a trustee may, at least in circumstances involving ordinary negligence and honest errors of judgment, be relieved of liability for breach of trust) and *Goyings v. The Jack and Ruth Eckerd Foundation*, 403 So. 2d 1144 (Fla. 2nd DCA 1981) (to absolve an indemnitee from liability for his own negligence, an exculpatory clause must be clear and unequivocal).

## Board Meeting Attendance

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



**SARAH CORTVRIEND**  
for  
**Board of Directors**  
**Palm Beach County Bar**  
**Association**

### Continuing Commitment to Leadership and Involvement

- President, 2011-2012, Palm Beach County Chapter FAWL
- Board of Directors, Palm Beach County FAWL 2009-2013
- President, Palm Beach County FAWL Past Presidents Advisory Council
- Leadership Palm Beach County, Class of 2010
- Past Member, Bench Bar and Diversity Committees, Palm Beach County Bar Association
- Awards Committee, State FAWL
- Florida Bar Voluntary Bar Liaison Committee
- Florida Bar Foundation Fellow
- University of Florida Law Alumni Council
- *Super Lawyers* Rising Star 2010-2012
- Shareholder, Carlton Fields, P.A.

## Diversity Corner

### "Keeping Diversity at the Forefront"

*Submitted by Public Relations Subcommittee Co-Chairs  
Jean Marie Middleton and Laurie Stilwell Cohen*



"A diverse bench is essential to the delivery of impartial justice and to the preservation of confidence in our courts."

*Brennan Center for Justice, www.*

*brennancenter.org.* While we continue to see increasing diversity in our communities, that diversity is not reflected in the judiciary. In a study conducted by The Brennan Center for Justice in 2010, the Center reviewed the judicial nominating procedures in ten states, including Florida, and concluded that "even after years of women and minorities making strides in the legal profession, white men continue to hold a disproportionate share of judicial seats compared with their share of the general population" *Id.* So, how do we fare in Palm Beach County?

Palm Beach County currently has 35 Circuit and 19 County judges. Of those, 10% are African American, 5% are Hispanic, and less than 1% are of Asian descent. Women fare better, representing 39% of our judiciary. When compared to Palm Beach County's general population of more than 1.3 million, which includes 17.8% African American, 19.6% Hispanic, 2.5% Asian and .06% Native American, it is clear that we have some work to do.

As part of our efforts to improve diversity, the Committee for Diversity and Inclusion has developed a mentoring program for diverse attorneys seeking appointment or election to the bench, or appointment to a Judicial Nominating Commission. By pairing diverse attorneys with mentors who are knowledgeable about the appointment or election process, we hope to provide insight,



guidance and encouragement throughout the process. Those interested in serving on the Bench may visit the "Road to the Bench" webpage at [www.palmbeachbar.org/roadtobench/php](http://www.palmbeachbar.org/roadtobench/php) where they will find an application to the program, together with helpful tips for judicial applicants gathered from members of the Board of Governors and the Bench, and list of judicial and commission vacancies. By signing up now, participants can be assured of receiving notification of future vacancies.

Those with knowledge of the process are invited to become mentors and may sign up at [www.palmbeachbar.org/diversitymentor/php](http://www.palmbeachbar.org/diversitymentor/php). If you would like to recommend someone for participation in the program, please contact the Bar office. With your help, we hope to make our judiciary and our nominating commissions more closely reflective of Palm Beach County's increasingly diverse population.

Laurie Stilwell Cohen and Jean Marie Middleton are co-chairs of the Diversity Relations Subcommittee of the Committee for Diversity and Inclusion. Laurie is a solo practitioner with the law firm of Laurie Cohen, P.A. and practices in the areas of business and commercial litigation. She is a Florida Supreme Court Certified Circuit Civil Mediator and is affiliated with ARC Mediation. Jean Marie serves as a Staff Attorney for the Legal Aid Society of Palm Beach County, Inc, practicing in the areas of housing discrimination, landlord tenant and foreclosure defense. Jean Marie is also a Florida Supreme Court Certified Mediator.

## BEASLEY HAUSER KRAMER & GALARDI, P.A.

### *Business & Financial Litigation*

Federal & State Courts | Appeals | Arbitration

COMMERCIAL LITIGATION  
BANKING AND FINANCIAL LITIGATION  
SECURITIES LITIGATION  
CORPORATE AND PARTNERSHIP LITIGATION  
REAL ESTATE LITIGATION  
HEALTHCARE BUSINESS LITIGATION  
BANKRUPTCY LITIGATION  
INTELLECTUAL PROPERTY LITIGATION  
TRUST & ESTATE LITIGATION  
PROFESSIONAL MALPRACTICE LITIGATION  
CLASS ACTIONS

**561.835.0900 | BEASLEYLAW.NET**

505 S. FLAGLER DRIVE, SUITE 1500 | WEST PALM BEACH, FLORIDA 33401

## Florida Supreme Court Recognizes Local Attorneys for Pro Bono Work

Florida Supreme Court Chief Justice Ricky Polston and the Florida Pro Bono Coordinators Association in collaboration with the Legal Aid Society of Palm Beach County and with the support of the Young Lawyer's Division of the Florida Bar are proud to recognize the efforts of local attorneys who provide pro bono service through a legal services organization. Attorneys to be recognized will receive a lapel pin designating their level of pro bono activity. Three levels will be recognized:

Bronze level - 20 to 49 hours

Silver level - 50 to 99 hours

Gold Level - 100 or more hours

All hours are based on cases closed in the year 2012.

The pins, along with a letter of recognition from the Chief Justice of the Florida Supreme Court, will be distributed this spring through the Legal Aid Society. The attorneys will be recognized at the 25th Annual Pro Bono Recognition Evening, additional local recognition for these attorneys is anticipated. A list of the award recipients follows:

## Lapel Pin Winners 2012

### BRONZE (20-49)

Howard Alterman  
Tracey Baker  
Ramsay Bulkeley  
Jessica Callow  
Kyle Caparosa  
Philip Chopin  
Robert Crane  
Anthony DiMatteo  
Margherita Downey  
Bonnie Eyler  
Duncan J. Farmer  
Grant Gisondo  
Steven J. Goldberg  
Jennifer Labbe  
Daniel Liss  
Brian A. Mangines  
Natalie Moldovan-Mosqueda  
Georgia T. Newman  
Jordan Rappaport  
Marc Reiner  
Bruce Rosenwater  
Peggy Rowe-Linn  
Stephen Seftenberg  
Russell M. Smiley  
Robert Winess  
Laura Zborowski

### SILVER (50-99)

Thomas Allison  
Jo Ann Barone  
Jennifer S. Carroll  
Jorge Cestero  
Alan J. Ciklin  
Amy Cosentino  
Celia E. Henry  
Walter Jay Hunston  
Georgina Jimenez-Orosa  
Richard Kleid  
Elaine Martens  
Robert Morris  
Kimberly Rommel-Enright

### GOLD (100+)

Richard Abedon  
Abigail Beebe  
Kaleb Bell  
Elliot Brooks  
Jeff Garber  
Allan Hoffman  
Evan Kass  
Jill Mahler  
Lawrence Moncrief  
Leslie Rose  
Michael Stern  
Barry Weiss  
Matthew Zimmerman

## Bridget Berry Receives The Florida Bar President's Pro Bono Service Award



The Fifteenth Judicial Circuit Pro Bono Committee Chair Gary Lesser, Esq. is pleased to announce that Bridget Berry was awarded the 2013 Florida Bar President's Pro Bono Service Award for the Fifteenth Judicial Circuit. The Florida Bar President's Pro Bono Service Award was established in 1981. Its purpose is twofold: "to further encourage lawyers to volunteer free legal services to the poor and to communicate to the public a sense of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees." The award is given at a ceremony before the Florida Supreme Court in January.

This year's recipient, Bridget Ann Berry is a shareholder at Greenberg Taurig, P.A., in West Palm Beach. Her principal areas of practice are civil litigation, labor and employment and real estate law. Berry is the founder and chair of the Greenberg Taurig Independent Living Review Program which represents children who are aging out of foster care. Through her leadership years, the program partnered with 20 attorneys and business staff members in the firm's Palm Beach offices to provide pro bono legal services to more than 20 youths, as well as provide clothing and living resources to encourage and enable the youths to further their education or to pursue career success. Additionally, Berry has served the United Way of Palm Beach County in various leadership roles since 1996. Berry donates about 200 hours a year to assisting organizations whose primary purpose is to provide services to the poor and in organizing and providing direct legal services to juveniles and youths.

For her dedication to Pro Bono work and the children of Palm Beach County, Bridget is the deserving recipient of The Fifteenth Judicial Circuit Florida Bar President's Pro Bono Service Award.

## Of all the banks in South Florida, only one has the distinction of being called "The Lawyers' Bank."

For over 30 years, we have concentrated on providing law firms, their partners, associates, staff and clients with an uncommon level of attention and service. Which is why so many law firms in South Florida count on **Sabadell United Bank**. Whether it's business or personal banking, or private banking, our goal is to make a **measurable difference** in all relationships through exceptional service, and constant focus on delivering **measurable results** to our clients.

For more information, please call  
Bud Osborne, Executive Vice President,  
or Donn Londeree, Vice President at (561) 750-0075  
or Vincent Cuomo, Vice President at (561) 688-9400



MEMBER  
FDIC

[www.sabadellunited.com](http://www.sabadellunited.com)

**Sabadell**  
United Bank



©2010 Sabadell United Bank



**By Judge Meenu Sasser**

*"And do as adversaries do in law, strive mightily, but eat and drink as friends."<sup>1</sup>*

While long ago, Shakespeare recognized the ideal of civility in the learned profession of law, much has changed in recent years. Until recent times, members of the bar were generally known for maintaining a high level of courtesy and respect for each other, our courts, and our system of justice. However, Rambo Litigation, hide the ball tactics and a win at all costs mentality has become commonplace, and unfortunately, accepted. Numerous causes are likely, client expectations based upon frequent media portrayals of excessively aggressive litigators, technological innovations which have increased the pace and stress of practice, increased competition from the growing number of attorneys, the difficult economy, lack of mentoring and role-modeling, and an increase in the number of bar members with resulting relative anonymity.

As judges, we have a first-hand view of the decrease in civility among attorneys. Much too often, we see discovery abuses, filing of baseless objections to discovery requests with the knowledge of the lack of existence of responsive documents, meritless motions for sanctions filed to gain an edge, improper instructions not to answer during depositions, invalid objections to deposition questions to coach a witness on how to answer, and vitriolic chains of string emails between counsel.

Lawyers who engage in such tactics find themselves and their clients harmed as their cases go off track, often ending up in a discovery morass, or with competing cross motions for sanctions that take up valuable court time, cost significant sums of money and do not serve their clients' best interests of efficiently progressing their cases towards a trial on the merits. Lawyers who engage in incivility may also find that their actions destroy their reputation with opposing counsel and the bench. No one wants to refer cases to someone who is unprofessional and who wastes a client's time and money. The most reputable and respected lawyers are most in demand and get the most business. Such behavior makes life intolerable, often unnecessarily increasing the stress of practice and adversely affecting health and relationships. Finally, incivility results in a denigration of the court system and the image of lawyers among the public.

In response to this widely-recognized decline in civility, a number of states have

adopted specific civility language in their new attorney oaths.

The following states have incorporated civility language in their attorney oaths:

- South Carolina: To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications  
Oath modified October 22, 2003  
Cite: [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2003-10-22-03](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2003-10-22-03)
- Utah: I will discharge the duties of attorney and counselor at law as an officer of the courts of this State with honesty, fidelity, professionalism, and civility; and that I will faithfully observe the Rules of Professional Conduct and the Standards of Professionalism and Civility Oath Modified August 14, 2007  
Cite: [www.utcourts.gov/resources/rules/ucja/ch13/intro.htm](http://www.utcourts.gov/resources/rules/ucja/ch13/intro.htm)
- New Mexico: I will maintain civility at all times  
Oath modified March 30, 2010  
Cite: [www.nmcompcomm.us/nmrules/NMRules/15-304\\_3-30-2010.pdf](http://www.nmcompcomm.us/nmrules/NMRules/15-304_3-30-2010.pdf)
- Florida: To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.  
Oath modified September 12, 2011  
Cite: [www.floridasupremecourt.org/decisions/2011/sc11-1702.pdf](http://www.floridasupremecourt.org/decisions/2011/sc11-1702.pdf)

The decrease in civility calls for greater judicial leadership. In fact, numerous commentators have turned a critical eye towards the judiciary, urging judges to assume leadership and serve as the principal example of courtesy, restraint and tolerance. We as judges must play a critical role in fostering and promoting civility. The American Board of Trial Advocates has adopted principles which include conduct expected of judges. These principles provide as follows:

## **A lawyer is entitled to expect judges to observe the following Principles:**

- Be courteous and respectful to lawyers, parties, witnesses, and court personnel.
- Control courtroom decorum and proceedings so as to ensure that all litigation is conducted in a civil and efficient manner.
- Abstain from hostile, demeaning, or humiliating language in written opinions or oral communications with lawyers, parties, or witnesses.
- Be punctual in convening all hearings and conferences, and, if unavoidably delayed, notify counsel, if possible.
- Be considerate of time schedules of lawyers, parties, and witnesses in setting dates for hearings, meetings,

and conferences.

When possible, avoid scheduling matters for a time that conflicts with counsel's required appearance before another judge.

- Make all reasonable efforts to promptly decide matters under submission.
- Give issues in controversy deliberate, impartial, and studied analysis before rendering a decision.
- Be considerate of the time constraints and pressures imposed on lawyers by the demands of litigation practice, while endeavoring to resolve disputes efficiently.
- Be mindful that a lawyer has a right and duty to present a case fully, make a complete record, and argue the facts and law vigorously.
- Never impugn the integrity or professionalism of a lawyer based solely on the clients or causes he represents.
- Require court personnel to be respectful and courteous toward lawyers, parties, and witnesses.
- Abstain from adopting procedures that needlessly increase litigation time and expense.
- Promptly bring to counsel's attention uncivil conduct on the part of clients, witnesses, or counsel.

Many in the organized bar are also taking a stand against lawyer incivility. In an effort to combat the decline in civility and promote a more uniform standard of professional courtesy across South Florida, 42 South Florida voluntary bar associations have adopted a joint resolution to promote the Florida Supreme Court's Amended Oath of Attorney Admission. As judges we can strongly support this effort, which was spearheaded by Adam Rabin as President of the Palm Beach County Bar Association.

Accordingly, in an effort to support the voluntary bar associations' joint efforts to promote civility, upon the initial on-line scheduling of a special set hearing in any cases in Circuit Civil Division AI, the Court will serve a notice, via the Court's e-service system, of the Palm Beach County Bar Association Standards of Professional Courtesy as a gentle reminder to all counsel (whether they primarily practice in Palm Beach County, are admitted pro hac vice from out-of-state, or have their offices located elsewhere in Florida) of the expectations of professionalism and civility in the practice of law in Palm Beach County.



<sup>1</sup> William Shakespeare, *The Taming of the Shrew*, Act 1, Sc. 2  
Page 8



## Don't Bring a Video Game to a Gun Fight

By Christopher B. Hopkins

It has been more than a month since the Sandy Hook School shooting and, across the nation, over 900 additional deaths are blamed on guns in America. Renewed calls for gun legislation have arisen and, as in the wake of past shootings, the dialogue begins again about violence, gun ownership, and the Second Amendment. The National Rifle Association boldly decried "violent video games" as the societal ill producing gun violence. Two weeks later, however, the NRA joined what it had labeled the "callous, corrupt, and corrupting shadow industry" of video game developers by publishing its own first person shooter video game "NRA: Practice Range" – rated for children 4 years and older.

Regardless of your position in the gun control debate, there is little reason to distract ourselves from a solution to gun violence by discussing a ban video games. This country has a long (failed) history of a "moral panic" which blames contemporary pastimes for societal problems: dime story novels, radio dramas, Elvis' dance moves, salacious and indoctrinating books, music lyrics, and motion pictures. One expert testified before Congress that modern entertainment was causing a "preoccupation with violence and horror." Sounds familiar – except he was talking about comic books.

This particular debate – presumably leading to a restriction on video games – has already been fought and lost. Decisively. In 2011, the U.S. Supreme Court held, in a 7-2 decision, that California's ban on the sale of violent video games was unconstitutional (*Brown v. Entertainment Merchants Association et al.*). Justice Scalia wrote that video games enjoy bullet-proof First Amendment protection and that "esthetic and moral judgments ... are for the individual to make, not for the Government to decree." But what about new technologies having a stronger effect? In another 2011 case, the Court separately determined that efforts to create new categories of unprotected speech was "too harmful to be tolerated" – to that end, balancing societal costs (say, an unconfirmed connection to violence) to particular forms of speech (video games) was something the Court "emphatically rejected" as a "startling and dangerous proposition."

Renewing this legislative fight against video games will only cost critical time and money. To wit, Californian tax payers were stuck with a \$1.8 million dollar legal bill and lost time in their legislature.

But such political attacks have traction in public debate since video games are the bête noire of entertainment; many gamers are below the voting age while of-age gamers are shamed to admit their gameplay. Thus, there is no grassroots pushback against the modern-day book burning of violent games. Finding no easy answer, we repeat the historical process blaming "easy" targets like text, images, music, and motion pictures (as one psychiatrist warned a Senate Committee, "as long as the crime comic book exists in its present form, there are no secure homes").

What about studies connecting video games and real-life violence? The Supreme Court was confronted with a host of party and amicus briefs and the majority found, "Psychological studies purporting to show a connection between exposure to violent video games and harmful effects on children do not prove that such exposure causes minors to act aggressively." The Supreme Court concluded, "These studies have been rejected by every court to consider them, and with good reason: they do not prove that violent video games cause minors to act aggressively (which would at least be a beginning). Instead, nearly all of the research is based on correlation, not evidence of causation, and most of the studies suffer from significant, admitted flaws in methodology." Indeed, the champion anti-game researcher, psychologist Dr. Craig Anderson, admitted that the effect of video games on children is "about the same" as television; meanwhile, he acknowledged the same effect is produced when children "view a picture of a gun." Like when kids play the iPhone game, NRA: Practice Range.

Discovering a shelf of video games in a killer's home is not an "a-ha" forensic moment to determine the reason for a tragedy. Yes, the initial news from the Sandy Hook story is that the 20-year old killer played Call of Duty. But he is one of several million players. He also had other likely stronger influences, such as a mental health condition and an unfortunate home life. Whatever was on a TV screen (and we still do not know what), there is no evidence that gaming was the tilting influence.

Meanwhile, while the NRA labels video game makers as a "shadow industry," annual video game sales are \$70 billion and over half American households have a game console. That's a lot of healthy, non-violent people in the "shadow." As game sales increases, our national crime average declines (*US Violent Crime Down for 5th Straight Year*, [bit.ly/WzD6w1](http://bit.ly/WzD6w1)).

Video game development is a uniquely American industry – particularly strong in South Florida – which prevails in the global economy (while our video games are enjoyed worldwide, we are one of few countries with such gun violence problems). Since the Centers for Disease Control may be tasked with researching any connection between virtual and real violence, perhaps it will have the final word – but it is unlikely to satisfy either side of the debate or a court (the NRA previously criticized CDC studies on gun violence). As the Supreme Court noted in *Brown*, "California's effort to regulate violent video games is the latest episode in a long series of failed attempts to censor violent video entertainment for minors."

Christopher B. Hopkins is a shareholder at Akerman Senterfitt. Send your missives and missiles (pixelated-kind only) to [Christopher.Hopkins@Akerman.com](mailto:Christopher.Hopkins@Akerman.com).

### CLE Content Now Available 24/7

Click on the Bar's CLE webpage

<http://www.palmbeachbar.org/continuing.php>

to view list of seminars available either on CD's or for immediate download to your MP3 device.

# Judicial Luncheon: Civil Motion Practice and Discovery Violations

*Submitted by MaryEllen Farrell  
on behalf of the Judicial Relations  
Committee*

The Palm Beach County Bar Association held its monthly judicial luncheon on January 23, 2013, where there was an active discussion of issues relating to civil motion practice and discovery violations. Honorable David Crow, Honorable Janis Keyser, and Honorable Meenu Sasser guided the room in a tour of courtroom procedures and policies, giving tips and warnings along the way. Leading the direction of the discussion, Grasford W. Smith, Esq. of Richman Greer moderated with pointed questions covering a variety of topics. The lunch culminated in a question and answer period, giving the participants an opportunity to make specific inquiries into civil motion practice. The topics covered at this CLE included:

## UMC and Special Set Hearings

- UMC hearings should be for routine motions that take 5 minutes from start to finish.
- Judge Crow explained that if it would take more than 5 minutes for him to read the entire motion, counsel to argue, and him to be able to make a determination, then it is not appropriate for UMC.
- All the judges agreed that if a motion is to determine a dispositive issue or requires evidence, then it is not appropriate for a UMC. Judge Crow explained "if [you need to] bring [a] notebook it's not an 8:45."
- Judge Crow also expressed that a motion should have a beginning, a middle, and an end. The beginning should indicate the title of the motion and the relief

requested. The middle should discuss the nature and specifics of the motion, and the end should summarize and state the relief requested.

- Specially set hearings cannot be canceled without permission from the judge or court order.

## Sending Materials in Advance

- When possible, materials should be provided in advance and that each judge's divisional instructions should be consulted for precise requirements.
  - Judge Crow explained that it is extremely unprofessional to wait until the hearing has begun to deliver new materials to the opposing side. He also pointedly remarked, "it affects my opinion of you." However, he stated that he would never ignore controlling law. If necessary, the hearing will be continued.
  - When providing deposition testimony, it is better to provide the entire transcript (with appropriate highlights), rather than excerpts.
- ## Emergencies
- Judge Crow jested: "Unless somebody is bleeding to death, it is not an emergency."
  - To rise to the level of an emergency, the motion must be necessary to protect against a threat to life or property: "something is going to happen that can't be reversed."
  - A judge is required to rule on an emergency motion within 24 hours so counsel must be judicious in labeling a motion an emergency.

## Oral Presentation

- Judge Sasser indicated that she reads each motion prior to a hearing and a mere recitation or regurgitation of information contained therein is not advisable; rather, she is going to ask questions and expects attorneys to listen carefully and answer the questions asked.

## Discovery Disputes

- The judges strongly encouraged all litigants to spend the appropriate time to work out discovery disputes.
- Most discovery rules should be self-executing.
- Attorneys should appropriately limit discovery requests; overbroad requests create more discovery disputes.

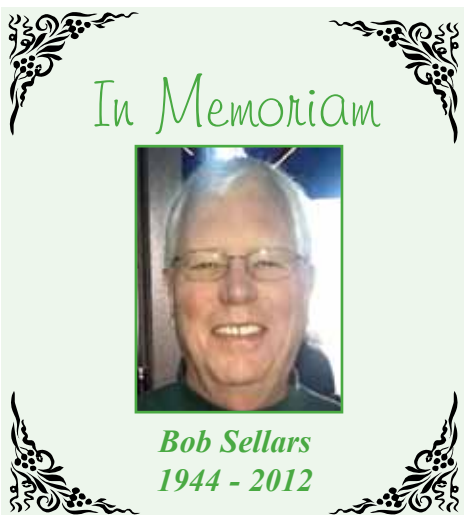
- Don't object to discovery for the sake of objecting- make a specific objection. For each objection, an attorney should have a basis in law that supports the position. Don't use a "scorched earth method of discovery."
- Attorneys should make a good faith effort to agree. In fact, Local Rule 4 requires a good faith effort. Sending a single email or voicemail does not qualify as a good faith effort to resolve a discovery dispute.
- Asking for sanctions sometimes devolves into a sanction-war, but where validly requested due to the presence of gamesmanship or continued abuse, they are awarded.

## Professionalism

- Judge Crow explained that although attorneys are not bound by the PBCBA's Standards of Professional Courtesy ("Standards"), he may order compliance with these Standards. In such cases, Judge Crow may sanction an attorney who fails to comply with the Standards.
- Judge Sasser indicated that she emails the Standards to all attorneys who specially set a hearing in her division.

## Final Take Away

- Judge Crow: People who take the time to learn the Standards are going to be okay, but they need to spread the word to those who don't take the time to do the same. Professionalism in the practice of law is slipping away, and we need to protect it.
- Judge Keyser: Seek a mentor and act as a mentor; this is a way that we can each contribute to improving professionalism in the practice of law.
- Judge Sasser: If you have any questions about civil motion practice, each judge has a website that provides the rules of his or her courtroom. This is the first place to check and can answer many of your questions.





# Real Property and Business Litigation Report



By Manuel Farach

**Jackson v. The Palms of Perdido, LLC**, – So.3d –, 2013 WL 45866 (Fla. 1st DCA 2013).

Statutory violations prior to repudiation of a contract are actionable. Accordingly, a party can bring a claim for violation of Fla. Stat. § 718.202 (use of funds deposited for condominium construction) notwithstanding repudiation.

**AG Group Investments, LLC v. All Realty Alliance Corp.**, – So.3d –, 2013 WL 11712 (Fla. 3d DCA 2013).

Fla. Stat. § 45.0315 changed the common law, and now a junior lienholder's interest in real property is not extinguished until filing of the certificate of sale (or as otherwise set forth in the final judgment) while at common law the junior lien was extinguished at time of judgment.

**Diamond Aircraft Industries, Inc. v. Horowitch**, – So.3d –, 2013 WL 105328 (Fla. 2013).

A party that prevails in an action claiming a violation of the Florida Unfair and Deceptive Trade Practices Act is entitled to attorneys' fees, even if the substantive law of another jurisdiction applies. Moreover, the Offer of Judgment statute (Fla. Stat. § 768.79) does not apply in a case where both damages and equitable relief are sought.

**Congress Park Office Condos II, LLC v. First-Citizens Bank & Trust Company**, – So.3d –, 2013 WL 163435 (Fla. 4th DCA 2013).

A trial court may grant summary judgment, even when discovery responses are outstanding, when the party opposing summary judgment has been dilatory in pursuing discovery. The Doctrine of Unclean Hands is similar to fraud, and holds that a party displaying inequity or bad faith cannot request equitable relief from the court. However, failure to comply with contract terms, even if intentional, does not constitute sufficient inequity to employ the Doctrine of Unclean Hands if the conduct is not egregious.

**Vrsic v. Leibel**, – So.3d –, 2013 WL 85412 (Fla. 4th DCA 2013).

An injunction to prohibit future defamatory speech is improper as doing so has a chilling effect on a party's First Amendment rights and there is an adequate remedy at law (damages) for the future defamatory speech. The exception to the rule is narrowly limited to those situations where the future speech interferes with business relationships for which tort damages are not calculable.

**Minkoff v. Caterpillar Financial Services Corp.**, – So.3d –, 2013 WL 85438 (Fla. 4th DCA 2013).

A court must consider evidence in order to enter judgment on an unliquidated amount (including attorneys' fees) even if a party has been defaulted.

**Vidal v. Liquidation Props., Inc.**, – So.3d –, 2013 WL 85448 (Fla. 4th DCA 2013).

Unless raised in recoupment, Truth in Lending affirmative

defenses are barred by the TILA one year statute of limitations. "Fraud" affirmative defenses of the lender orally misrepresenting the terms of a loan or that the lender inflated the borrower's income are not persuasive because the falsity of the statement is obvious to the borrower.

**Pineiro v. American Exp. Card Services Co.**, – So.3d –, 2013 WL 163465 (Fla. 4th DCA 2013).

A post judgment garnishment can only lie for the amount contained in the final judgment upon which the writ is issued, and no more.

**Lozman v. City of Riviera Beach, Fla.**, – S.Ct. –, 2013 WL 149633 (2013).

A floating home that does not have the usual characteristics of a "vessel," i.e., lacking a rudder, propulsion or a raked hull, is not a vessel for maritime navigation under the Rules of Construction Act, 1 U.S.C.A. § 3.

**Orlando Lake Forest Joint Venture v. Lake Forest Master Community**, – So.3d –, 2013 WL 275117 (Fla. 5th DCA 2013).

A contract's prefatory language, e.g., "whereas, the parties desire to . . .," does not vary or alter the unambiguous terms of the contract.

**Gaynor Hill Enterprises, Inc. v. Allan Enterprises, LLC**, – So.3d –, 2013 WL 275264 (Fla. 5th DCA 2013).

The sale of a business constitutes sufficient activity under Fla. Stat. § 48.181 "arising out of any transaction or operation connected with or incidental to the business or business venture" to allow appointment of the Secretary of State to accept service of process on a non-resident.

**Earth Trades, Inc. v. T&G Corp.**, – So.3d –, 2013 WL 264440 (Fla. 2013).

In pari delicto is not a defense to claims a contract entered into by an unlicensed contractor is unenforceable.

**Aventura Management, LLC v. Spiaggia Ocean Condominium Ass'n, Inc.**, – So.3d –, 2013 WL 238222 (Fla. 3d DCA 2013).

Under Fla. Stat. § 718.116 (1) (a), a purchaser of a condominium unit is liable only for the unpaid assessments owed by the previous owner. Accordingly, a purchaser from an association that took unit back through foreclosure is only liable for assessments owed by the association, and not by the previous unit owner upon whom the association foreclosed.

*Manuel Farach is Of Counsel to Richman Greer, P.A. in West Palm Beach and practices in the areas of Real Estate, Business Litigation and Appellate Law. The Update is available on a weekly email basis by writing Mr. Farach at mfarach@richmangreer.com and inserting the words "Request Weekly Update" in the Subject line. Past issues of the Update can be found at <http://richmangreerblog.com/author/mfarach/>.*

## 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.

**Lindsay L. Adkin:** Stamford, CT; University of Miami; Law Student Membership, Palm Beach Gardens.

**Michael Barnett:** Queens; University of Miami, 2007; Sole Practitioner, Boca Raton

**Stephen Biggie:** Barry University, 2010; Associate in Arcadier & Associates, P.A., Boca Raton .

**Susan M. Cast:** NY; Tulane University, 1996; Associated with Liberty Settlement Funding, Ft. Lauderdale.

**Avery Chapman:** NY; Benjamin N. Cordozo School of Law, 1991; Partner in Chapman Law Group, Wellington.

**Larry Cortez:** Miami; Barry University, 2009; Partner in Hilley & Wyant-Cortez, P.A., North Palm Beach.

**Dustin Herman:** Romano Law Group, Lake Worth.

**Elizabeth L. Hertz:** West Palm Beach; Nova Southeastern University, 2011; Associate in Rosenbaum Mollengarden, PLLC, West Palm Beach.

**John R. Hixenbaugh:** Cannonsburg, PA; Stetson University, 2008, City of Boca, Boca Raton.

**Courtney Johnson:** DePaul University, 2010; Associate in Florida P.I.P. Law Firm, P.A., Boca Raton.

**Sarah Jonovich:** Macon, GA; Stetson University, 2005; Sole Practitioner, Royal Palm Beach.

**Joshua Levine:** West Palm Beach; Brooklyn Law School, 2011; Sole Practitioner, Wellington

**Matthew Martin:** Nova Southeastern University, 2009; Associate in Rudolph & Associates, LLP, West Palm Beach.

**Olen McLean:** St Croix; Appalachian School of Law, 2011; Associate in Robertson Anshutz and Schneid, P.L., Boca Raton.

**Jan Morris:** Hollywood, FL; University of Miami, 1986; Associate in Kopelowitz Ostrow, P.A., Boca Raton.

**Anthony Nardotti:** Mercer University, 1980; Sole Practitioner, Boynton Beach.

**Edward C. Nazzaro:** Punto Gorda; St. Thomas University, Law Student Membership, West Palm Beach.

**Abraham Ovadia:** Florida International University, 2009; Associate in Florida P.I.P. Law Firm, P.A., Boca Raton.

**Ana Romes:** Scaramento; University of Miami, 2012; Fourth District Court of Appeal, West Palm Beach.

**Christina Rubio:** San Juan, PR; St. Thomas University, 1997; Partner in the Office of Tania Ochoa, Palm City.

**Michael F. Ryan:** Florida International University, 2010; Associate in Florida P.I.P. Law Firm, P.A., Boca Raton.

**Steven Sarrell:** Queens; University of Miami, 2009; Partner in Sarrell, Sarrell & Bender, P.L., Boca Raton.

**Rosanna M. Schachtele:** Florida Registered Paralegal Membership, Rosenthal, Levy, Simon & Ryles, P.A., West Palm Beach.

**Jessica Shapiro:** Great Neck, NY; University of Florida, 2009; U.S. Department of Housing and Urban Development, Ponte Vedra, FL.

**Bradford Rothwell Sohn:** Boston; University of Miami, 2012; Associate in Leopold Law, P.A., Palm Beach Gardens.

**Bradley Thomasma:** Pepperdine University, 2012; Affiliate Membership, West Palm Beach.

**Khon Tuy:** Florida State University, 2009; Associate in Florida P.I.P. Law Firm, P.A., Boca Raton.

**Michele West:** FL; Florida Coastal School of Law, 2005; Palm Beach Gardens.

**Christa Wilbanks:** Atlanta; Nova Southeastern University, 2012; Associate in Mitchell Kitroser, P.A., West Palm Beach.



### Burns Nearing Wealth Management Group

**Robert Burns, CFP®, ChFC®**

Senior Vice President — Wealth Management  
Wealth Management Advisor

(561) 775-8113

*Helping clients makes smarter, more informed  
investment decisions for over 25 years.*

3507 Kyoto Gardens Drive, Suite 400 ▪ Palm Beach Gardens, FL 33410

THE POWER OF THE RIGHT ADVISOR.™



The Bull Symbol, Merrill Lynch Wealth Management and The Power of the Right Advisor are trademarks or registered trademarks of Bank of America Corporation. CFP® is a certification mark owned by the Certified Financial Planner Board of Standards, Inc., and is awarded to individuals who successfully complete CFP Board's initial and ongoing certification requirements. ChFC® is the property of The American College and may be used by individuals who have successfully completed the initial and ongoing certification requirements for this designation.

Merrill Lynch Wealth Management makes available products and services offered by Merrill Lynch, Pierce, Fenner & Smith Incorporated, a registered broker-dealer and member SIPC, and other subsidiaries of Bank of America Corporation.

© 2012 Bank of America Corporation. All rights reserved.

AD-01-13-8057

AR9C12C7-01-13

Code 470492PM-0113



## YLS Lunch with the Appellate Judges

The Young Lawyers Section recently sponsored a luncheon at the 4th DCA for about 50 of its members. Special thanks to the judges of the 4th DCA for hosting the luncheon at the Court and for their participation in this luncheon.



**Rob Glass and Lisa Glass**



**Alison Kelly and Brett Barner**



**Matthew Martin and Jaclyn Soroka**



**Judges Dorian Damoorgian and Chief Judge Melanie May, Event Chair Thomas Allison, Judges Carole Taylor and Matthew Stevenson**



**Judge Cory Ciklin, Jessica Callow Mason, Judge George Shahood, YLS President-elect Julia Wyda and Judge Mark Polen**

## Elect LEE McELROY to the Board of Directors of the Palm Beach County Bar Association

### Palm Beach County Bar Association

- Voting Member as President of the Young Lawyers Section
- Bench Bar Conference Committee Member
- Probate/Guardianship Practice Speaker — 2010 and 2011

### PBCBA Young Lawyers Section

- President — 2012-2013
- Former President-Elect, Secretary, and Treasurer
- Executive Committee Member — 2005-2013

### The Florida Bar

- RPPTL Executive Council Member — 2011-present
- Committee Member: Probate and Trust Litigation, Trust Law, and Probate and Procedure Committees

### Department of the Navy

- Lieutenant, J.A.G.C., United States Naval Reserve — 2002-2005
- Served as branch head NLSO SE Guantanamo Bay, Cuba — 2003
- Awarded Navy and Marine Corps Achievement Medal
- Awarded Navy and Marine Corps Commendation Medal
- Provided legal aid services to veterans and active duty personnel

**Downey & Downey, P.A.**





## Judicial Profile Of The Honorable Robert Panse

*Submitted by Gerardo J. Rodriguez-Albizu  
on behalf of the Judicial Relations Committee*

The appointment of Judge Robert Panse to the Palm Beach County Court Bench marks a new chapter in his dedicated career to public service. A product of public school education, Judge Panse believes strongly in serving his community, exudes enthusiasm for serving on the County Court Bench, and promotes civility among the Bar, the community, and judicial personnel.

Judge Panse and his two brothers were raised by his Mom and Dad in Westhampton, Long Island, New York. Since the Sixth Grade, Judge Panse knew that he wanted to become a lawyer, recognizing at an early age the importance of knowing one's legal rights and obligations, and having been raised with a strong sense of fairness and standing up for what is "right."

He graduated from Westhampton Beach High School as Salutatorian (second in class). In 1979 Judge Panse earned a Bachelor of Arts degree in Political Science and a Minor in Business Administration from the State University of New York at Albany. Judge Panse paid his way through school, holding an array of jobs from cutting lawns and landscaping to building maintenance, parking cars, bartending and other restaurant work, and serving as an ocean life guard (his strong work ethic was exhibited as a youth, as one summer job he had for years required him to ride his bicycle 15 miles each day). Of the many jobs he held early in life, his proudest accomplishment was training for and passing the New York State Civil Service lifeguard exam in 55 degree water (one of the most rigorous life guard exams in the country, second only to California).

In the late 1960's the Judge and his family moved to Merritt Island, Florida, where his father took a job with NASA (Grumman Aerospace) building the lunar module used to land Apollo astronauts on the moon. Judge Panse vividly recalls as an elementary school boy seeing the night sky light up bright orange and the ground shaking as the Saturn V rockets took flight. Upon returning to Long Island, New York in 1968, he set his goal to become a lawyer

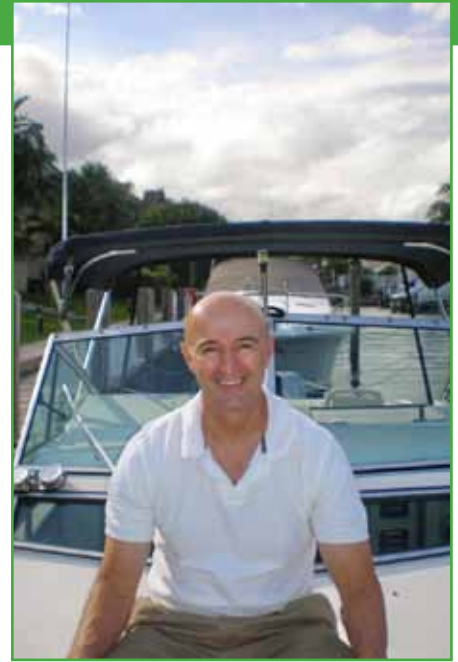
and return to Florida where he envisioned enjoying the warm Florida sunshine.

Judge Panse returned to Florida in 1979 enrolling at the Florida State University, College of Law. He became the first lawyer in his family after graduating with his law degree in 1982. Judge Panse moved to Palm Beach County as a new lawyer where he worked as an Assistant State Attorney in the Economic Crimes Division prosecuting numerous high profile cases and then in the Felony Division, trying 35 cases in three years while at the State Attorney's Office.

In 1985 Judge Panse left the State Attorney's Office and joined Paxton, Crow, Bragg, Smith, and Keyser where he handled personal injury and wrongful death cases. Paxton Crow proved to be an incubator for Judges having spawned five active judges, including Judge Gregory Keyser, Judge David Crow, Judge Sandra Bosso-Pardo, Judge Robert Hawley (Circuit Judge, St. Lucie County), and Judge Robert Panse.

After working in private practice for seven years, Judge Panse became in-house counsel for the South Florida Water Management District. There, Judge Panse litigated cases throughout the sixteen counties in South Florida comprising the South Florida Water Management District's jurisdiction. His experience covered a wide variety of issues, including personal injury, wrongful death, eminent domain, inverse condemnation, environmental enforcement, public records litigation, breach of contracts, discrimination and employment law. Judge Panse worked at the South Florida Water Management District for nineteen years before being appointed to the County Court Bench by Governor Rick Scott.

Judge Panse's diverse education and employment background prepared him well for serving on the County Court Bench, which is affectionately called the "People's Court." He strongly believes in the importance of all parties, lawyers, and court personnel being treated fairly and with respect and dignity. Judge Panse possesses a keen ability to identify important factual and legal issues without undue delay, while at the same time allowing the parties to appreciate that



they have been heard and had their day in court. He works tirelessly with his excellent judicial assistant and is proud of the case management system they have implemented. Judge Panse understands the importance of the role he serves in the judicial system and every day strives to fulfill his responsibilities with honor, dignity, and integrity.

Judge Panse has three children (college, high school and middle school) of whom he speaks very fondly. He is also proud of their accomplishments to date. He believes it is important to stay physically fit and tries to work out five days a week, alternating weight and cardio training. In his spare time Judge Panse enjoys golfing, fishing, boating, and traveling.

### Do You Need a Mentor?



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



## Physician Patient Confidentiality

By Ted Babbitt

In 1988 the Legislature expanded protection of confidential medical information in Fla. Stat. 456.057 which now states:

(7)(a) Except as otherwise provided in this section and in s. 440.13(4)(c), such [medical] records may not be furnished to, and the medical condition of a patient may not be discussed with, any person other than the patient or the patient's legal representative or other health care practitioners and providers involved in the care or treatment of the patient, except upon written authorization of the patient.

\* \* \*

(8) Except in a medical negligence action or administrative proceeding when a health care practitioner or provider is or reasonably expects to be named as a defendant, information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is confidential and may be disclosed only to other health care practitioners and providers involved in the care or treatment of the patient, or if permitted by written authorization from the patient or compelled by subpoena at a deposition, evidentiary hearing, or trial for which proper notice has been given.

This amendment stopped the long standing practice of defense lawyers having ex parte conferences with treating physicians of the plaintiff in a medical negligence case.

Physicians are understandably nervous about testifying against a fellow physician in a medical malpractice case even if the testimony is only on the subject of damages. In addition, it is not unusual for treating physicians to have the same malpractice insurance carrier as the defendant physician.

It is not hard to imagine that pressure could easily be brought against a treating physician to be uncooperative with plaintiff's counsel or to color their testimony if they only hear one side of the story through an ex parte meeting with counsel for the defendant.

The case law has consistently supported a statutory interpretation of §456.057 which precludes that kind of ex parte communication.

Hasan v. Garvar, 37 Fla. L. Weekly S769 (Dec. 20, 2012) presented a unique question to the Supreme Court on this subject. That was a dental malpractice case in which the insurance carrier for the defendant hired a separate lawyer to represent a treating doctor who was not named in the lawsuit and instructed their lawyer to attempt to meet with the treater. The treater had the same malpractice carrier as the defendant.

The trial court denied plaintiff's motion for protective order and the Fourth District Court of Appeal affirmed holding that the trial court's order, which precluded the attorney from discussing privileged medical information with the treating doctor, was adequate protection under this statute. Hasan v. Garvar 34 So. 3d 785 (Fla. 4th DCA 2010).

The Supreme Court reversed.

We hold that the physician-patient confidentiality statute, section 456.057, prohibits such meetings and we quash the decision of the Fourth District. Given the broad protections afforded to patient information by the relevant confidentiality statute, and the equally protective judicial precedent with regard to this statute and information, we again hold that an ex parte meeting such as the one attempted here is prohibited irrespective of whether the attorney and physician claim they will discuss only non-privileged matters.

The Supreme Court essentially found that hiring a lawyer for a treating physician was nothing more than a subterfuge to circumvent the prohibition contained in the statute and made it clear that similar ruses simply will not work.

The statute's "simple, direct language" coupled with the legal history of section 456.057, informed our conclusion that "the primary purpose of the 1988 amendment was to create a physician-patient privilege where none existed before, and to provide an *explicit but limited* scheme for the disclosure of personal medical information." Id. (emphasis supplied); *see also West v. Branham*, 576 So. 2d 381, 383 (Fla. 4th DCA 1991) ("[T]he purpose of the statute is to preserve a patient's right to confidentiality... This includes closing the door to the previous practice of many defense attorneys of meeting privately or otherwise communicating ex parte with the plaintiff's treating physician." (emphasis supplied)).

The danger posed by ex parte contact by defense counsel with a treating physician is clear and present. The Supreme Court makes it clear that such contact will not be tolerated.

If an ex parte meeting between the nonparty treating physician and counsel provided by defendant's insurer is permitted, then insurance companies could simply hire counsel to circumvent the statutory protection. Consequently we hold that section 456.057 prohibits ex parte meetings between a patient's nonparty treating physician and counsel provided by the defendant's insurance company, as is the situation in the case at hand.

## Member Benefit Program

### Affiniscap Merchant Solutions

Credit/Debit Card Processing  
(866) 376-0950

### Association Members Only

Discounted Office Supplies (6% rebate  
on all purchases)  
(260) 467-2222

### Brooks Brothers Clothing

15% discount  
[www.palmbeachbar.org/benefits.php](http://www.palmbeachbar.org/benefits.php)

### Daily Business Review

Discounted Subscriptions  
(877) 347-6682

### East Coast Dry Cleaners

10% Discount  
719 N. Dixie Highway, WPB

### Metlife Insurance

Discounted Policies  
Bob Greenberg (772) 340-7741

### Movie Theatre Tickets

Discounted tickets for Muvico & Regal  
(561) 687-2800 Eva Gray

### Online Courses

Classes for speeding tickets, first time  
drivers, notaries and many more  
[www.palmbeachbar.org/online\\_courses.php](http://www.palmbeachbar.org/online_courses.php)

### Paychex

Discounted (15%) Payroll  
and HR Services  
New Enrollees Only  
(561) 655-5542

### PBCBA CLE CD's

Discounted audio recordings of seminars  
(561) 687-2800, Eva Gray  
[www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php)

### PBCBA Lawyer Referral Service

Client Referrals (561) 687-2800  
Eva or Dee

### Tickets at Work

Theme Park, Broadway/Las Vegas  
Shows & Other Entertainment Discounts  
(800) 331-6483  
[www.ticketsatwork.com](http://www.ticketsatwork.com)

### USI Affinity

Professional Liability Insurance  
Contact (877) LPL-4671

## Join the North County Section & the Palm Beach County Justice Association for their Annual Happy Hour



Thursday, March 14, 2013  
5:30 p.m. to 7:00 p.m.  
Yard House, Palm Beach Gardens  
Early Registration Taking Place Now!  
Cost: \$20.00 for NCS/PBCJA members;  
Judges are complimentary  
RSVP online @ [www.palmbeachbar.org](http://www.palmbeachbar.org)



## North County Section seeks New Board Members

Elections for the North County Section's Board of Directors will take place this month. Petitions will be available March 1 for five (5) director positions (for a two year term), plus president-elect. The Board meets once a month to plan various networking events for its 650 members.

To apply for a position, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Friday, March 29. If there is a contested election, voting will take place online in April and winners will be announced online in May.

The current Board for 2012-2013 are President, Ken Johnson; President-Elect, Todd Stewart; Secretary, Keith Campbell and Immediate Past President Ron Ponzoli. Directors serving terms expiring June 2013 are Jerald Beer, Larry Buck, Rosemarie Guerini, Marina Petillo and Greg Yaffa.

Directors serving a two (2) year term expiring June 2014 are Mitch Beers, Reid Bierer, Keith Campbell, Eric Rosen and Daniel Zuniga.

## Cocktail Reception Benefits Legal Aid's Annual Fundraiser

On January 12th, over 100 friends and supporters of the Legal Aid Society of Palm Beach County enjoyed a special evening of fine wine, good food and partying at the beautiful home of Abigail and Hampton Beebe in West Palm Beach. Guests donated over 75 gifts which will be auctioned at Legal Aid's 25th Annual Pro Bono Recognition Evening to be held on Saturday night, May 18th, 2013, at the Palm Beach County Convention Center. The theme of this year's event will be "SuperHeroes: Fighting for Justice, Saving Lives," which brings special recognition to the vital time and resources many attorneys and other professionals in our community devote to ensuring that the principle of "justice for all" holds true in Palm Beach County. In the eyes and hearts of our clients, these attorneys and professionals are "true superheroes" who have an immeasurable impact on improving their lives.

Photos by Tracey Benson



Hampton & Abigail Beebe



Carol & Jorge Cestero, Pam & Retired Judge Ken Stern



## Arbitration Clauses — Specific Provision Does Not Obliterate General Provision

By **Hank Jackson**

There has been a rash of reported cases concerning arbitration provisions. A trend seems to be developing: the incorporation of more arbitration clauses in contracts, including supplementing old forms. Consequently, there is an increased risk of potentially conflicting arbitration provisions in the same document. The Fourth District Court of Appeal recently dealt with such a situation in *IBIS Lakes Homeowners Assoc. v. IBIS Isle Homeowners Assoc.*, 37 Fla. L. Weekly D2832 (Fla. 4th DCA December 12, 2012).

However, before discussing *IBIS Lakes*, a brief look back will provide some context. Florida's Fourth District previously followed the Florida Supreme Court's decision of *Seifert v. U.S. Home Corp.*, 750 So. 2d 633 (Fla. 1999), which employed the rules of contract construction in construing arbitration clauses – regardless of whether the underlying action sounds in contract or tort. In *BKD Twenty-One Management Co. v. Delsordo*, 37 Fla. L. Weekly D2541 (Fla. 4th DCA October 31, 2012), which was a negligence case against an independent retirement living facility, the Court reaffirmed that whether an arbitration clause requires arbitration of a particular dispute rests on the intent of the parties. And such intent is to be construed following general principles of contract construction. As pointed out in *BKD Twenty-One Management*, those general rules include: 1) the plain language of the contract is the best evidence of the parties' intent; 2) a clause must be read together with the other clauses of the contract, and 3) an interpretation consistent with reason and probability is preferred to one that would lead to an absurdity.

Refocusing on *IBIS Lakes*, the Fourth District addressed more narrowly apparent conflicting arbitration provisions in the same agreement – one provision specific and the other general. The case involved a contract dispute between two homeowners associations (*Lakes* and *Isle*) regarding accounting for and sharing of expenses for maintenance of a road and entryway used by both associations. *Isle* claimed that *Lakes* breached the contract by improperly charging *Isle* maintenance expenses not permitted in the contract – in particular insurance expenses. As a result, a demand for arbitration was made by *Isle*.

*Lakes* responded by filing a complaint in Circuit Court to enjoin the arbitration as being outside the scope of the applicable arbitration provision.

*Lakes* argued that a specific and narrowly worded arbitration provision provided that if *Lakes* failed to perform the required maintenance, then arbitration was the proper forum. *Lakes* also noted that this specific arbitration provision – although addressing failure to perform maintenance – did not cover overcharging for maintenance, which was the alleged breach. Nevertheless, the trial court relied on the general arbitration provision in the same contract that provided that any dispute from the contract shall be resolved by arbitration. The trial court ordered arbitration.

*Lakes* appealed arguing the doctrine of *ejusdem generis* required the specific provision to prevail over the more general provision. This Latin phrase meaning “of the same kind” is a rule of construction that “when a general phrase follows a list of specifics, the general phrase will be interpreted to include only items of the same type as those listed.” *IBIS Lakes* at D2843-35 (citing *State v. Hearn*, 961 So. 2d 211, 219 (Fla. 2007)). Additionally, according to *Lakes*, giving effect to the general provision, which captures any disputes, would render the more specific provision meaningless.

The Fourth District also disagreed with *Lakes*. It concluded that *Lakes* had

misconstrued the doctrine of *ejusdem generis*. Specific provisions govern over general ones, but only to the extent that general provisions (or portions thereof) are in direct conflict with specific provisions. Those portions of general provisions not contradicted by specific provisions are not eviscerated – just the ones in contradiction. In other words, specific provisions can be read to modify general provisions, but need not be read to obliterate them. As applied in *IBIS Lakes*, the Fourth District concluded the specific arbitration provision indicating that arbitration was required where there was an alleged failure to perform maintenance was not directly contrary to the general provision that arbitration was to be used regarding any dispute.

The take away is two-fold. Contract construction rules continue to be used to determine the scope of arbitration clauses. Also, in adding arbitration provisions to existing contract forms, the drafter would be well advised to review the entirety of the document for potential internally inconsistencies.

*Author: Hank Jackson is a Board Certified Business Litigation Attorney with Shutts & Bowen LLP*



## Pioneers of Professionalism

*Continued from page 3*

forth to resolve issues and for counsel to develop rapport and trust with each other.

The seminal professionalism advice that T.J. has for lawyers is to be a “man or woman of your word.” He recommends that lawyers be careful about what they commit to in their discussions with opposing counsel because not following through can tarnish a lawyer's credibility. He cautions to preface any settlement discussions with opposing counsel with the caveat that such discussions are “pending client approval” so there are no misunderstandings. Most importantly, he urges, “As a lawyer, always do what you agreed to do.”

## Conclusion

Sid Stubbs and T.J. Cunningham

have served as professionalism role models for many lawyers throughout our legal community. Their conduct, contributions and advice are timeless and their mentoring lessons apply equally today as they did in years past. They both deserve recognition as “pioneers of professionalism” in our legal community.

*Adam Rabin is a partner with McCabe Rabin, P.A. in West Palm Beach. He practices in business, securities & whistleblower litigation. You may e-mail him any comments or suggestions to [arabin@mccaberabin.com](mailto:arabin@mccaberabin.com).*



## VOLUNTEERS NEEDED FOR LAW WEEK: MOCK TRIALS & SPEAKERS PROGRAM

April 29 – May 3, 2013

We need volunteers to present Mock Trials and serve as guest speakers in elementary, middle and high schools throughout the county. In return for your support, you'll receive pro bono credits. If you can help, please fill out the form below and mail it back to Sherry Ingram, Palm Beach County Attorney's Office, 300 North Dixie Highway, Suite 359, West Palm Beach, FL 33401. Volunteer deadline is March 19.

----- Clip and Mail -----



JUDGE/ATTORNEY NAME: \_\_\_\_\_

FIRM ADDRESS & PHONE: \_\_\_\_\_

E-MAIL ADDRESS (**REQUIRED**): \_\_\_\_\_

AREA(S) OF SPECIALTY: \_\_\_\_\_

PREFERRED DAY (please circle) Monday Tuesday Wednesday Thursday Friday

EVENT PREFERENCE: ☐ MOCK TRIAL ☐ SPEAKERS PROGRAM

SCHOOL PREFERENCE (if any): \_\_\_\_\_

SCHOOL LEVEL PREFERENCE: ☐ Elementary ☐ Middle ☐ High School

GEOGRAPHICAL PREFERENCE:

- |   |   |  |  |
|---|---|--|--|
| <input type="checkbox"/> Palm Beach         | <input type="checkbox"/> Lake Worth/Lantana | <input type="checkbox"/> Jupiter/Tequesta            | <input type="checkbox"/> Riviera Bch/Lake Park |
| <input type="checkbox"/> West Palm Beach    | <input type="checkbox"/> Delray Beach       | <input type="checkbox"/> Boca Raton                  |  |
| <input type="checkbox"/> Boynton Beach      | <input type="checkbox"/> North Palm Beach   | <input type="checkbox"/> Wellington/Royal Palm Beach |  |
| <input type="checkbox"/> Palm Beach Gardens | <input type="checkbox"/> Belle Glade        | <input type="checkbox"/> Other, please specify _____ |  |

### PLEASE RETURN BY MARCH 19 TO:

Sherry C. Ingram, CP, FCP, FRP  
Palm Beach County Attorney's Office  
300 N. Dixie Highway, Suite 359  
West Palm Beach, FL 33401  
Direct: 561/355-4389. Fax: 561/355-4234.  
Email: [singram@pbcgov.org](mailto:singram@pbcgov.org)

### Moving For Summary Judgment Before The Defendant Answers

By Matt Triggs and Jonathan Galler

Do you like a challenge? Can you read minds? Are you impatient? If so, then moving for summary judgment before a defendant even answers your complaint is right up your alley.

It is widely recognized that, when moving for summary judgment, a plaintiff must demonstrate not only the absence of any genuine issues of material fact, but the plaintiff must also refute all affirmative defenses alleged in the defendant's answer. See *Corya v. Sanders*, 76 So. 3d 31, 34 (Fla. 4th DCA 2011).

However, rule 1.510(a) authorizes a plaintiff to move for summary judgment "at any time after the expiration of 20 days from the commencement of the action." So, what happens to the plaintiff's burden if the motion for summary judgment is filed before the defendant serves an answer and affirmative defenses? The Fourth District addressed precisely that question in *Dominko v. Wells Fargo Bank, N.A.*, 2012 WL 6027789 (Fla. 4th DCA Dec. 5, 2012).

*Dominko* was a foreclosure action in which Wells Fargo moved for summary judgment before the defendant served an answer. *Id.* at \*1. Prior to a hearing on Wells Fargo's summary judgment motion, the defendant filed his own summary judgment motion, arguing that Wells Fargo did not comply with a pre-suit notice requirement described in the mortgage at issue. *Id.* But the defendant did not submit any affidavits in opposition to Wells Fargo's motion, and he never answered the complaint. *Id.*

Presented with no opposing evidence – and no answer or affirmative defenses – the trial court granted Wells Fargo's motion. *Id.* The Fourth District reversed, noting that a plaintiff who seeks summary judgment before a defendant answers has a "difficult burden." *Id.* (quoting *Goncharuk v. HSBC Mortg. Servs., Inc.*, 62 So. 3d 680, 681-82 (Fla. 2d DCA 2011)). In such circumstances, the plaintiff must demonstrate not only the absence of any genuine issues of material fact in the record, but must also establish that the defendant would not be able to raise any such issues of fact if permitted to answer. *Id.* Stated differently, the *Goncharuk* court held that "[t]he plaintiff must essentially anticipate the content of the defendant's

answer and establish that the record would have no genuine issue of material fact even if the answer were already on file." *Goncharuk*, 62 So. 3d at 682.

Because the mortgage in *Dominko* required that Wells Fargo provide the defendant with pre-suit notice and an opportunity to cure the default, and because Wells Fargo did not prove, by way of affidavit or other evidence, that it had satisfied that condition, the Fourth District reversed the award of summary judgment. *Id.* at \*2. It did not matter that Wells Fargo alleged in its complaint that it had complied with all conditions precedent. *Id.* Without evidence refuting a claim to the contrary – even one not yet pled – it was error for the trial court to have granted summary judgment.



Thus, difficult as it may be for a plaintiff to obtain summary judgment when the defendant has answered the complaint and presented evidence in opposition to the motion, it may be even more challenging, oddly enough, for a plaintiff to satisfy its burden when the defendant has not yet answered and has not presented any evidence in opposition to the motion.

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



### W. Jay Hunston, Jr. Mediator/Arbitrator

#### Offering New Mediation Billing Options!

Never a travel charge in the 6 Counties of the 19th, 15th and 17th Circuits.

Over 20 years mediation experience.

11 years full-time mediator/arbitrator.

#### NEW BILLING OPTIONS:

\$125/hr./party, up to \$400/hr. cap - 2.5 hr. min.  
3 hr. block in a.m. or p.m. for \$1,000; 8 hr. block for \$3,000.  
\$3,500 uniform per diem available state-wide.

- Fla. Bar Bd. Cert. Civil Trial Lawyer (1983 - 2003)
- Fla. Certified Circuit Civil Mediator (1991 - Present)
- Fla. Certified Family Mediator (1998 - Present)
- Fla. Certified Appellate Mediator (2012–Present)

P.O. Box 508, Stuart, FL 34995  
(772) 223-5503; (800) 771-7780 - Office  
(772) 223-4092; (866) 748-6786 - Fax

Email: [wjh@hunstonadr.com](mailto:wjh@hunstonadr.com)

Website/Online Calendar: [www.hunstonadr.com](http://www.hunstonadr.com)



## 3 Keys to More Great Referrals

By Nora Riva Bergman

Do you know where your best clients come from? Or should I say, “who” your best clients come from? If you’re like most attorneys, your best clients come from personal referrals. But have you ever thought about why your best clients come from referrals?

Let’s take a look at why your best clients almost always come from personal referrals. (I know; you may get some less than great clients from referrals, more on that in another column. First, let’s consider the great clients.) When someone refers a potential client to you, they are making a powerful statement about you. Your best referral sources refer people to you for three reasons: 1) they know you; 2) they like you; and 3) they trust you. And when they refer someone to you, they’re effectively telling that person that they “know, like and trust” you.

Think about your own experience in giving referrals to other attorneys. Do you ever make referrals to attorneys that you don’t know, or don’t like, or don’t trust? The question is almost silly. No, it is silly.

If you want more great clients, you’ve got to focus on building “know, like and trust” with your referral sources. Great referral sources are like magnets for your practice; they attract the right clients for you and send them your way. So, now you’re thinking, “OK, but how do I go about building “know, like and trust?” It’s simple, and you can do it.

**Step one – Get Known.** Make sure your best referral sources know who you are. “Getting Known,” is really a two-tiered process. First, you need to be known in your legal community. You need to establish yourself as a great lawyer in your practice area. There are lots of ways to do this. You can speak at seminars; you can write substantive articles (Hint: most bar association newsletters are always looking for articles.); you can blog; or you can create an eNews for your firm – just to name a few. Then you need to “get to know” your best referral sources. Block time on your calendar each week to have lunch or coffee or a glass of wine with one of your best referral sources or someone who could be a referral source for you. This investment of time is one of

the best investments you can make in the profitability of your practice.

**Step two – Be likeable.** Being liked should be a natural outgrowth of getting known. As you get to know your referral sources, you’ll build real relationships with them. Real relationships. You’ll get to like them, and they’ll get to like you. This won’t happen with everyone you may want to cultivate as a referral source, but it will happen with people who’ll become your best referral sources.

In his book *The Likeability Factor*, Tim Sanders outlines four ways to build your “L-Factor” by enhancing four areas of your personality.

- **Friendliness:** Your ability to communicate openly with others.
- **Relevance:** Your capacity to connect with others’ interests, wants and needs.
- **Empathy:** Your ability to recognize and acknowledge other people’s feelings.
- **Realness:** Your integrity which guarantees your likeability and authenticity.

*The Likeability Factor* provides some great insights and practical actions that can help you boost your “likeability,” and by extension your “referability.”

**Step three – Earn their trust.** The key to earning their trust is acting with integrity all the time. Do what you say you are going to do. Be true to your word. Be... trustworthy. When you earn the trust of your referral sources, they transfer that trust to every person they refer to you. Clients who come to you from your best referral sources already trust you because your referral source trusts you. That is powerful.

One more thing. Once you build “know, like and trust” with your referral sources, and the referrals start coming your way, there’s one more thing you need to do every time you receive a referral. Send a thank you note to your referral source – a handwritten thank you note. It will take you only a few minutes, but the impact will be long-lasting.

*Nora is a business coach and practice advisor with Atticus. She has practiced as an employment law attorney and certified mediator and has served as an adjunct professor at both Stetson University College of Law and the University of South Florida. She has also served as the Executive Director of the St. Petersburg*

*Bar Association. Nora is a graduate of the Leadership Development Institute at Eckerd College, and is certified in the Conflict Dynamics Profile® developed by Eckerd to help individuals and organizations learn how to deal with conflict constructively. She is also certified in the DISC Behavioral Style Assessment. Visit Nora online at [www.reallifeppractice.com](http://www.reallifeppractice.com) and [www.atticisonline.com](http://www.atticisonline.com). ©*



## PBCBA Online Courses & Services

- **Florida Notary Public**
- **Florida Online Traffic School**
- **First Time Driver (D.A.T.A.) Course**
- **Mature Driver Course**
- **Parent Education and Family Stabilization Course**

[www.palmbeachbar.org/online\\_courses.php](http://www.palmbeachbar.org/online_courses.php)



Dear Fellow Attorney:

Are you of the opinion that civility and professional courtesy between lawyers and to the Court are eroding? If you answered yes, please know that we are doing something about it.

As you may know, the Amended Oath of Admission to The Florida Bar adds a pledge of civility in all written and oral communications to opponents and the Court. Forty-two voluntary bar associations (“VBAs”) across South Florida recently united to promote lawyer civility and a more uniform standard of professional courtesy. The VBAs adopted a joint resolution (<http://www.palmbeachbar.org/downloads/civility.pdf>) to promote the Florida Supreme Court’s Amended Oath of Attorney Admission.

The VBAs recognize that it is important to remind attorneys, new and experienced alike, that they are professionals first and are obligated to treat opponents, the Court, and Court staff with respect at all times.

Likewise, the Courts recognize the importance of encouraging civility among attorneys. This is evidenced by six of South Florida’s chief judges signing on to the joint resolution, including U.S. District Court for the Southern District of Florida Chief Judge Federico Moreno, U.S. Bankruptcy Court for the Southern District of Florida Chief Judge Paul Hyman, Eleventh Judicial Circuit Chief Judge Joel Brown, Fifteenth Judicial Circuit Chief Judge Peter Blanc, Seventeenth Judicial Circuit Chief Judge Peter Weinstein, and Nineteenth Judicial Circuit Chief Judge Steven Levin.

We now are calling on you to help with this effort. We ask that you politely remind attorneys you practice with or oppose that they have an obligation to act civilly in all written and oral communications with opposing counsel, the Court, and the Court’s staff. We also ask that you remind your own staff of this obligation.

Please take a moment to review the Amended Oath of Attorney Admission (<http://www.floridasupremecourt.org/decisions/2011/sc11-1702.pdf>) and the local Standards of Professional Courtesy (<http://www.palmbeachbar.org/spc.php>). Leading by example in your practice is the most effective way to teach our fellow attorneys and staff of all experience levels what it means to practice with professionalism and civility.

We encourage you to forward these attachments to others that might benefit from a reminder that lawyer civility is an expected part of practice in South Florida. We prefer, however, that you do it proactively instead of reactively. For example, consider agreeing with opposing counsel at the beginning of a case to follow the Standards of Professional Courtesy rather than after an incident has occurred.

We also encourage you to join or retain your membership in a local VBA where the culture of lawyer civility and professionalism continues to be encouraged, among other benefits. All of us working together can help improve the respect and manner in which we communicate with each other and the Court. Thank you for your support.

Respectfully,

Adam Rabin, President,  
Palm Beach County Bar Association

Jessica Callow Mason, President  
Craig S. Barnard American Inn of Court

Leora Freire, President  
Florida Assn. for Women Lawyers  
Palm Beach County Chapter

Salesia Smith-Gordon, President  
F. Malcolm Cunningham, Sr. Bar Assn.

John Wilke, President  
American Board of Trial Advocates  
Palm Beach Chapter

Larry Corman, President  
South Palm Beach County Bar Assn.

Scott Smith, President  
Palm Beach County Justice Association

Angelina Namia, President  
Florida Assn. for Women Lawyers  
South Palm Beach County Chapter

Lou Delgado, President  
PBC Hispanic Bar Association

Jason Lazarus, President  
Federal Bar Association  
Palm Beach County Chapter



## Law In The Real World

Members of our North County Section are teaching a class this semester at FAU in Jupiter. "Law In The Real World" is a one-hour credit course that's so popular it closes as quickly as it opens! Topics this semester include: Family, Immigration, Bankruptcy, Intellectual Property, Juvenile, Corporate, Congressional, Personal Injury, Employment, Entertainment, Securities and Real Property.

"The course is designed to introduce the students to the various legal specialties using real world stories to illustrate how the law affects both their personal and professional lives. This is also a great opportunity for pre-law students to gain a better understanding of the various specialties before entering law school," said Michael Slavin, previous NCS President and current Chair of the NCS Education Committee.

"As soon as we ask for presenters we fill the schedule with volunteers," said Ken Johnson, NCS President. Johnson adds "We also assisted FAU in their Moot Court course by providing attorneys to help judge the students before a national competition. I don't know who enjoys this more the students or our attorneys."

In addition, it turns out to be a great source to find legal interns - McHale & Slavin recently hired two FAU interns who are currently working in the office gaining valuable hands on experience.

Dr. Mark Tunick, Professor and Associate Dean at FAU's Wilkes Honors College says "the association between FAU and the Honors College and the Bar Association has been invaluable to our students; in addition to financial support enabling them to participate in national moot court competitions, the attorneys have provided insight into how law works in the real world to supplement what students learn from textbooks."

Attorneys lecturing or judging the Moot Court Session include: Reid Bierer, Robert A. Bertisch, Larry Buck, Paul Burkhart, Keith Campbell, Miriam Acosta-Castriz, Jeffrey D' Amore, Robert Harvey, Debra Jenks, Ken Johnson, Stan Klett, Andrew Lourie, Ronald P. Ponzoli, Heather Samuels, Michael Slavin, Carl Spagnuolo, Todd Stewart and Daniel Zuniga.

*If you would like to teach a class, please contact Ken Johnson at (561) 624-8202.*



Paralegal Jenna Ruggirio with McHale & Slavin, P.A. works with FAU intern Jackie Goldstein. Jackie is majoring in "Law and Society."



Patent attorney Michael Slavin teaches students about Intellectual Property Law.

## Missing Bar Events? Be Sure to Read your eNewsletters



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



## Need CLE Credit? We've Got 'Em!

Please take a moment to review the schedule below of upcoming CLE seminars. Thank you to the many attorneys who have volunteered their time to organize and speak at these seminars. All seminars will be held in the offices of the Bar Association unless otherwise noted.

**March 7, 2013**

PI/Wrongful Death CLE Seminar

**March 15, 2013**

Employment Law CLE Seminar  
Bar Association Office

**March 28, 2013**

Technology Seminar  
Bar Association Office

**April 11, 2013**

Elder Law Dinner seminar  
The Colony Hotel

**April 12, 2013**

PI/Wrongful Death CLE Seminar

**April 19, 2013**

Family Law CLE Seminar  
Bar Association Office

**May 8, 2013**

Securities Law CLE Seminar  
Bar Association Office

**May 10, 2013**

Circuit Civil CLE Seminar  
Bar Association Office

**May 15, 2013**

Estate & Probate Law CLE Seminar  
The Embassy Suites, WPB

**June 7, 2013**

Community Association Law  
CLE Seminar  
Bar Association Office

**June 14, 2013**

Real Estate CLE Seminar  
Bar Association Office



**Join Us for the Third Annual  
"Raise the Bar" Event  
to Benefit the Girl's Leadership  
Institute (GLI)**

PBCBA is a co-sponsor of the event.

GLI teaches leadership, communication,  
and team building skills to at-risk girls.

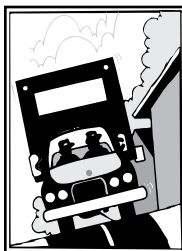
When: Thursday, March 21, 2013  
5:30 - 7:30pm.

Cocktails and hors d'oeuvres included.

Location: Kravis Center

Cost: \$25 per person  
(Judges are complimentary)

RSVP: [jen@womensfoundationpbc.org](mailto:jen@womensfoundationpbc.org)



**Have you recently  
moved?**

Be sure to send your  
updated address,  
phone and email info  
to [sspence@  
palmbeachbar.org](mailto:sspence@palmbeachbar.org)



# VOTE

## Grier Pressly

for the  
**BOARD OF DIRECTORS**

### A Record of Service

- **PBCBA Board of Directors (2009 – present)**
- **PBCBA Young Lawyers Section**  
Past-President (2006 – 2007)  
Past-President Elect, Past Secretary, Past Treasurer
- **PBCBA Committees**  
Co-Chair PBCBA's Foreclosure Managed Mediation Committee  
Long Range Planning Committee  
Historical Committee  
Judicial Relations Committee  
Law Week Committee  
Bench-Bar Committee
- **Legal Aid Society of Palm Beach County**  
Board of Directors and 2011-2012 Pro Bono Night Co-Chair
- **Florida Bar 15th Judicial Circuit Grievance Committee Member**
- **Historical Society of Palm Beach County, Board of Directors**

### Re-Elect Greg Huber

#### Palm Beach County Bar Association Board of Directors



#### Palm Beach County Bar Association

- Board of Directors (2012-2013)
- Co-Chair of Bench Bar Conference (2012)
- Law Week Committee
- Independence of Judiciary Committee
- Client Relations Committee
- Professionalism Committee
- Judicial Relations Committee

#### Florida Justice Association, Young Lawyers Section

- Board of Directors (2005-2008)

#### Other Legal Affiliations

- FJA Eagle Member
- HBA Member
- FAWL Member
- PBCJA Member

Greg is an Alumni of Stetson College of Law. He began his career as an Assistant State Attorney for the 19<sup>th</sup> Judicial Circuit. He has been practicing for 15 years and is currently a Shareholder at Zele Huber Trial Attorneys, P.A. focusing on personal injury and wrongful death matters.

Greg is committed to the PBCBA and asks for your vote to allow him to continue to serve the Bar and its members.

# Re-Elect Rosalyn Sia Baker-Barnes



We have made substantial strides in our organization over the last two years, and I am confident that we can continue our great success.

Our award-winning Committee for Diversity & Inclusion has:

- Developed a sustained mentorship program for lawyers at every level through the Diversity Internship Program, Road to the Bench Mentorship Program, and our service as mentors to minority law students.
- Established and presented the Honorable Edward Rodgers Diversity Award, which recognizes individuals and law firms with an ongoing commitment to diversity and inclusion.
- Created a proven method to Keep Diversity on the Forefront through our Diversity Summit, Diversity Luncheon and Diversity Corner section of the PBC Bar Bulletin.
- Earned consecutive monetary grants from The Florida Bar to support the committee's efforts.

I would be honored to continue to serve as a Director, and would be grateful for your support of my re-election.

- Director, Palm Beach County Bar Association, 2011-present
- Co-Chair, Palm Beach Bar Committee for Diversity & Inclusion, 2011-present
- Co-Chair, Palm Beach Bar Personal Injury/Wrongful Death CLE Committee, 2009-2011
- Member, Palm Beach Bar Judicial Relations/Bench Bar Committee, 2012-present
- Shareholder, Searcy Denney Scarola Barnhart & Shipley
- Board member, PB Chapter, Florida Association for Women Lawyers, 2012 - present
- Board member, Florida Justice Association, 2009-2011
- Listed in *The Best Lawyers in America*
- "Rising Star" in *Florida Super Lawyers* since 2009
- National Bar Association 2011 "Nation's Best Advocates: 40 Under 40"
- Business Leader Media 2011 "South Florida Woman Extraordinaire"
- National, state, and local leadership roles, The Links
- Former board member, Cunningham Bar Association
- Emeritus Board member, Florida State University College of Law Alumni Association



## A Debtor's Ability to Pay Creditors May be Considered in a 707(b)(3)(B) Abuse Analysis

By Marc P. Barmat

Section 707 of the Bankruptcy Code sets forth the circumstances under which a court may dismiss a chapter 7 case or, with the debtor's consent, convert it into a chapter 11 or 13 case. Under §707(b)(1), a court may dismiss a chapter 7 case if the debtor is an individual whose debts are primarily consumer debts, and if granting the debtor relief would be an abuse of the provisions of chapter 7. Under § 707(b)(2), a presumption of abuse will exist if the debtor's income and expenses are such that the "means test" is not passed. If a debtor fails the "means test" and does not rebut the presumption of abuse which arises, then the chapter 7 case may be dismissed or converted.

If a debtor passes the § 707(b)(2) "means test," or successfully rebuts the presumption of abuse that arises from failing the § 707(b)(2) "means test," § 707(b)(3) provides another basis by which a chapter 7 can be dismissed or converted. Under § 707(b)(3), the court shall consider "whether the debtor filed the petition in bad faith" § 707(b)(3)(A) or whether "the totality of the circumstances... of the debtors financial situation demonstrates abuse," § 707(b)(3)(B).

In *In re Witcher*, 2012 WL 6200619 (11th Cir. 2012), the Eleventh Circuit Court of Appeals recently decided the issue of whether a debtor's ability to pay their debts may be taken into account when determining whether the totality of circumstances of a debtor's financial situation demonstrates abuse of chapter 7 under a § 707(b)(3)(B) analysis. In addressing this issue of apparent first impression, the Eleventh Circuit held that a debtor's ability to pay his or her debts may be taken into account under the totality of the circumstances test set forth in § 707(b)(3)(B). In its ruling, the Court disagreed with the Debtor's argument that ability to pay should not be considered under the totality of the circumstances test because such a consideration would render the "means

test" meaningless. The Debtor argued that there would be no point to the complex formula crafted by Congress in the "means test" if a court could take the same factors that are incorporated in that formula and plug them into the totality of the circumstances test. Counter to the Debtor's argument, the Court found that if Congress intended such preclusion, Congress could have drafted § 707(b)(3)(B) to read that "the court shall consider ... the totality of the circumstances... of the debtor's financial situation – except for the circumstances that the court has already considered under § 707(b)(2)."

Notwithstanding the Court's ruling that a debtor's ability to pay can be considered in determining whether the totality of circumstances of a debtor's financial situation demonstrates abuse of chapter 7 under a § 707(b)(3)(B) analysis, the Court emphasized that its holding did not decide whether a

debtor's ability to pay their debts can alone be dispositive of the totality of the circumstances test. The Court also noted that it was not deciding the issue of the proper weight a bankruptcy court should give to a debtor's ability to pay as compared with other factors making up the totality of the circumstances.

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



### Richard Schwartz, Esq., (County Court Judge, Retired)

\*Florida Supreme Court Circuit Civil Mediator also qualified in Residential Mortgage Foreclosure Mediation.

\*Former Miami-Dade County Court Judge.

\*Areas of Practice: Contract, Foreclosure, General Civil Practice, Personal Injury, Real Estate.



*"In addition to serving on the bench for five years he also owned and operated five Burger King Restaurants. Judge Schwartz now focuses on bringing his legal and business experience to help mediate liability, contract and real estate disputes."*

ARC Mediation accommodates clients throughout Florida, from Miami-Dade through the Treasure Coast and beyond.  
**561-712-4717 • [www.arcmediation.com](http://www.arcmediation.com)**



*"I will represent your interests in The Florida Bar through hard work, attention to detail, and professionalism."*

# Ron Ponzoli

Candidate for The Florida Bar Board of Governors



## PROVEN COMMITMENT TO BAR SERVICE

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

## PLEASE JOIN US IN SUPPORTING RON!

William Abel  
Jack J. Aiello  
David A. Aronberg  
Scott W. Atherton  
Bruce G. Alexander  
Rosalyn Sia Baker-Barnes  
Edrick E. Barnes  
Gregory F. Barnhart  
Michael Baxter  
Abigail Beebe  
Jerald S. Beer  
Charles J. Bennardini  
James A. Burnham  
James W. Beasley, Jr.  
Amy B. Beller  
Robert A. Bertisch  
Gary S. Betensky  
Mark F. Bideau  
G. Steven Brannock  
Matthew S. Brenner  
Robin Bresky  
Barbara B. Briggs  
John M. Brumbaugh  
Lawrence P. Buck  
Georgia A. Buckhalter  
Brian D. Buckstein  
George W. Bush, Jr.  
Jessica M. Callow  
Bruce A. Christensen  
Rina K. Clemens  
Jeffrey A. Collier  
Larry Corman  
Robert D. Critton, Jr.  
Theodore A. Deckert  
Lindsay K. Demmery  
Richard R. Chaves  
Misty T. Chaves  
Scott M. Coffee  
Lance Cornick  
Sarah Cortvriend

Cindy Crawford  
Brian R. Denney  
Scott D. Devore  
Michael K. Dixon  
Adam S. Doner  
Howard DuBosar  
James L. Eisenberg  
Manuel Farach  
Colleen Farnsworth  
Ettie Feistmann  
Samantha S. Feuer  
Preston J. Fields, Sr.  
Scott M. Fischer  
Stephen G. Fischer  
Kai Li Aloe Fouts  
Leora B. Freire  
Jeffrey M. Garber  
Mariano Garcia  
Manuel A. Garcia-Linares  
Ron M. Gaché  
Ian J. Goldstein  
Robert E. Gordon  
Chad J. Gottlieb  
Gina M. Grandinette  
Heather Greenhill  
Steven I. Greenwald  
Alan G. Greer  
Robert C. Groelle  
Jason J. Guari  
Rosemarie W. Guerini  
Robert J. Harvey  
Robert J. Hauser  
Daniel A. Hanley, Jr.  
Scott G. Hawkins  
Thomas A. Hedler  
Yelizaveta B. Herman  
Nicole Hessen  
Gregory P. Huber  
Phillip H. Hutchinson  
Rick Hutchinson

Joseph Ianno, Jr.  
Christopher R. Jette  
Debra A. Jenks  
Jason D. Joffe  
Brian B. Joslyn  
Charles H. Johnson  
Allison L. Kapner  
Diane W. Katzen  
David A. Kirsch  
Stanley A. Kim  
Michael T. Kranz  
Jane Kreusler-Walsh  
Spencer T. Kuvlin  
Allison B. Lane  
Alfred A. LaSorte, Jr.  
Wesley A. Lauer  
W. Craig Lawson  
Nancy LaVista  
Jason D. Lazarus  
Tanique G. Lee  
Patricia A. Leonard  
Randy M. Levitt  
Julie Littky-Rubin  
Patricia E. Lowry  
Richard G. Lubin  
Shannon M. Mahoney  
Adam D. Marshall  
Maureen Martinez  
Steven S. Mathison  
Ryon M. McCabe  
James M. McCann, Jr.  
Robert L. McElroy, IV  
Miles A. McGrane, IV  
Jean M. Middleton  
Michael J. McClusky  
Michael D. Mopsick  
Lous Mrachek  
Grace M. Murillo  
Larry D. Murrell, Jr.  
John (JB) Murray, Jr.

Scott C. Murray  
Tequisha Y. Myles  
Adam M. Myron  
Steven Naclerio  
Michael J. Napoleone  
Nathan E. Nason  
Joanne O'Connor  
Mark L. Pateman  
Beth A. Patterson  
Jeffrey C. Pepin  
Marina D. Petillo  
Michael J. Pike  
Andrew A. Pineiro  
Barry A. Postman  
James Grier Pressly, III  
Terrill C. Pyburn  
Guy E. Quattlebaum  
Adam T. Rabin  
Alan L. Raines  
Adi Rappoport  
Edward D. Reagan  
Kelly L. Reagan  
Bruce E. Reinhart  
Gerald F. Richman  
Lawrence P. Rochefort  
Kara B. Rockenbach  
Mark A. Romance  
Kimberly Rommel-Enright  
Daniel S. Rosenbaum  
Elisha D. Roy  
Peter A. Sachs  
John Scarola  
John F. Schutz  
Gregor J. Schwinghammer  
Nicole Scimone  
Gregory L. Scott  
Christian D. Searcy  
Lyle E. Shapiro  
Siobhan H. Shea  
William N. Shepherd

Kara A. Skorupa  
Michael A. Slavin  
Jeremy E. Slusher  
D. Culver (Skip) Smith, III  
Grasford W. Smith  
Scott B. Smith  
Salesia V. Smith-Gordon  
Marta Stypulkowski  
Eric M. Sodhi  
Ferris G. Solomon, Jr.  
Joshua L. Spoot  
Todd S. Stewart  
Sidney A. Stubbs, Jr.  
Stacey K. Sutton  
Robert A. Sweetapple  
Steven C. Teebagy  
Karen E. Terry  
Grey Tesh  
Cyrus K. Toufanian  
J. Harley Toufanian  
Rebecca M. Vargas  
Roberto M. Vargas  
Ethan J. Wall  
Cassandra J. Ward  
Charles T. Weiss  
Howard I. Weiss  
Jill G. Weiss  
Jane-Robin Wender  
Sheryl G. Wood  
William C. Wright  
John G. White, III  
Ralph T. White, Jr.  
John R. Whittles  
Robert W. Wilkins  
James (Spike) Wicker, II  
Dean Xenick  
Gregory M. Yaffa  
Cory S. Zadanosky  
Gregory T. Zele  
Daniel A. Zuniga

# Elect *Dean Xenick*

## Palm Beach County Bar Association Board of Directors

**BC  
LC** BURMAN, CRITTON  
LUTTIER & COLEMAN, LLP  
YOUR TRUSTED ADVOCATES



### VOTING BEGINS

### April 10

#### **PALM BEACH COUNTY BAR ASSOCIATION**

- Co-chair, Bench Bar Conference (2013)
- Judicial Relations Committee
- Professionalism Committee
- Bench Bar Conference Committee
- Wrongful Death/PI CLE Committee
- North County Section
- Young Lawyers Section

#### **FLORIDA BAR INVOLVEMENT**

- Code and Rules of Evidence Committee Member
- Young Lawyers Division Member

#### **ACCOMPLISHMENTS**

- Craig S. Barnard American Inns of Court
- Selected for inclusion in Super Lawyers Rising Stars Edition, 2009, 2013
- Included in Florida Legal Trend Legal Elite, Up and Comers, 2012
- Included in South Florida Legal Guide, Up and Comers, 2012
- Jupiter Medical Center Foundation, Highballs & Hibiscus Committee Member, 2012

#### **MEMBERSHIPS**

- Florida Association for Women Lawyers
- Palm Beach County Justice Association
- Florida Justice Association
- Admitted to Southern and Middle Districts of the U.S. District Court of Florida
- Admitted to United States 11th Circuit Court of Appeals

#### **EDUCATION**

- University of Florida Levin College of Law, J.D.
- University of Florida, B.A., cum laude

# What happened to that personal injury case I referred?

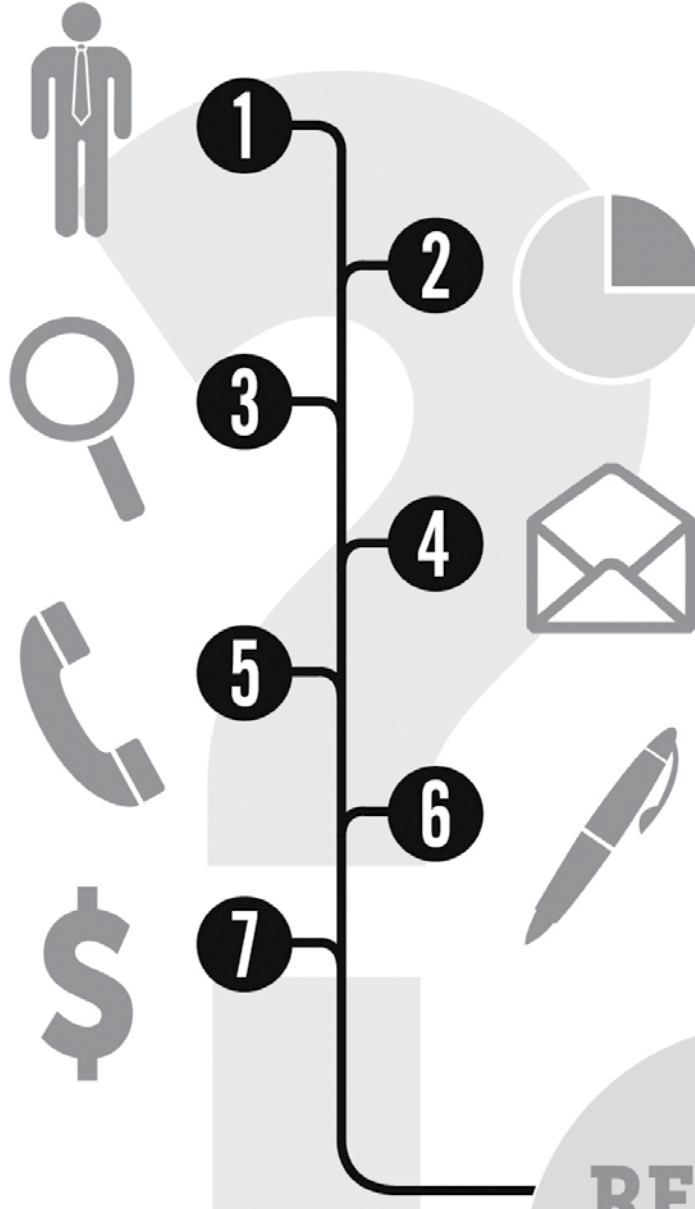
## 7 REASONS TO REFER US YOUR PERSONAL INJURY CASES

We will send our New Case Specialist to the client's home or to your office to sign up the case - during business hours, at night, or even on weekends.

You will be impressed by the detail, efficiency, and professionalism with which the case is handled.

You will be regularly informed of the status of your referral throughout the entire case.

You will receive a check immediately after the settlement statement is signed (we will even hand-deliver it to your office if you wish).



You will sign our contract with the client, which shows your 25% referral fee.

You will receive a copy of our demand letter to the insurance company when it is sent.

You will sign the settlement statement, which shows you exactly what the case settled for, or the result of the trial.

## RESULTS

You've impressed the client!  
You will be thrilled with the way we handled the case and the results obtained.

(561) 697-4440 • WWW.800GOLDLAW.COM

2090 PALM BEACH LAKES BLVD, SUITE 402, WEST PALM BEACH, FL 33409

LAW OFFICES OF

**CRAIG GOLDENFARB, P.A.**

PERSONAL INJURY • NURSING HOME NEGLECT • MEDICAL AND LEGAL MALPRACTICE

If you would like to establish a referral relationship, call or email our Marketing Assistant, Shane Andreasen, at (561) 727-3140 or sandreasen@800goldlaw.com to set up a lunch with Mr. Goldenfarb.



## \*\*\* Ad Rates \*\*\*

**CLASSIFIED ADVERTISING RATES:**  
TO PLACE AN AD: 1) Please fax all ads to 561/687-9007. 2) Upon receipt you will be notified of cost. 3) Send payment by the 25th of the month. 4) Cost: 50 words or less \$50, 50-75 words \$65, up to 75 words with a box \$75. 5) Members receive 1 free classified ad per year (excluding professional announcements). Ads will only be re-run by re-faxing ad to 561/687-9007. Web-site advertising is also available for a cost of \$75 for a three week run. Payment must be received prior to publication and renewable only upon receipt of next payment.

**The Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. The PBCBA is committed to equal employment opportunity and does not accept employment ads which imply a preference based on race, color, sex, religion, national origin, disability, familial status, sexual orientation, age, marital status and gender identity or expression.**

## POSITIONS AVAILABLE

**BOUTIQUE LAW FIRM** specializing in wills, trusts and estate litigation seeks a full-time paralegal with a minimum of five (5) years litigation experience. Probate experience helpful, but not mandatory. Individual must be organized and a self-starter. Salary commensurate with experience. The firm is located in downtown West Palm Beach. Please forward resumes for consideration to [dana@pankaskilawfirm.com](mailto:dana@pankaskilawfirm.com).

## PROFESSIONAL ANNOUNCEMENTS:

The following announce their availability for referral, assistance and consultation.

**SCOTT SUSKAUER:** "AV" rated, Board Certified Criminal Trial Lawyer. Over 20 years of experience. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI, juvenile and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; (561) 687-7866. [www.suskauerlaw.com](http://www.suskauerlaw.com).

**MARINA D. PETILLO:** Experienced Marital/Family Law Attorney is now available as a Parenting Coordinator. For more information, please visit [www.petilloparentingcoordinationandmediation.com](http://www.petilloparentingcoordinationandmediation.com). Also available as a Family Law Mediator and Guardian/Attorney Ad Litem. Reasonable rates for all services. 800 Village Square Crossing, Suite 105, Palm Beach Gardens, FL 33410; (561) 656-2015; [mpetilloesq@gmail.com](mailto:mpetilloesq@gmail.com).

**GREGORY TENDRICH, Esq.:** "AV" rated, FINRA Arbitrator, Certified County Court Mediator & Former Series 7 licensed VP & Asst. General Counsel to national and regional NYSE & FINRA stock brokerage firms, is accepting referrals and is available to co-counsel, provide trial/arbitration consultation or assistance in matters involving the recovery of losses due to stock broker fraud, unsuitability, churning and misrepresentation, in addition to SEC, FINRA, NYSE and other regulatory enforcement matters. Please call (561) 417-8777 or visit [www.yourstocklawyer.com](http://www.yourstocklawyer.com).

**GREY TESH:** "Law is not black and white, it's Grey." Passionate, caring, truthful, prepared. Soul (sic) practitioner. Criminal Defense (Board Certified in Criminal Trial) and Personal Injury. Over 100 jury & non-jury trials to verdict. (561) 686-6886. [greytesh.com](http://greytesh.com)

## OFFICE SPACE

**NPB PROFESSIONAL OFFICE SPACE FOR LEASE:** 1,080 sf suite; 3 offices, conference room, reception area, kitchen, covered parking. U.S. Hwy #1. Call Jeff (561) 714-0660.

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

**SINGLE SUITE OFFICE SPACE FOR RENT** with various Legal Support available. High speed internet provided. Meeting rooms. Room for expansion. Very close to courthouse. \$1,350.00 per month. Contact Jim (561) 838-9595.

**LAW OFFICE TO RENT** includes space for 2 secretaries, furnished, w/ phone, internet access, receptionist, possible referral of cases, \$950 per month. 1860 Forest Hill Blvd. Call Stu Young or Elliot Brooks (561) 433-4200.

**PROFESSIONAL OFFICE SPACE WEST PALM BEACH:** For rent. 1,000 to 3,000 sq. ft. Private bathrooms/shower. Kitchen. Elevator. Connecting suites can be re-configured. Private covered balcony overlooking Intracoastal/Palm Beach. One-half block off Flagler Dr. on Butler St. Plenty of free parking. Decorating allowance and free rent. (561) 603-0082.

**CITYPLACE EXECUTIVE AND VIRTUAL OFFICES:** Impress clients and colleagues with your office at The Business Center. CityPlace is the perfect place for attorneys to meet clients and conduct

business. Whether you need a place to receive your mail and meets clients or you need a full time office with reception and administrative assistance, TBC is the perfect place for you. Take a tour online [www.beatcp.com](http://www.beatcp.com) or call (561) 714-7861 for more information.

**1st FLOOR PROFESSIONAL OFFICE SPACE** in newly restored building available March 1st. 1550 square foot space includes: 3 private offices; large secretarial/reception area; conference room including video conferencing; kitchenette; handicap accessible bathroom and impact windows. Parking onsite. Dixie frontage and signage. Located one block north of courthouse. (561) 655-2855.

## HEARSAY

Jones, Foster, Johnston & Stubbs, P.A. announces that Palm Beach Atlantic University's Board of Trustees has selected **Scott G. Hawkins** as its new Chairman. Mr. Hawkins served on Palm Beach Atlantic's Board of Trustees since 1994.

FordHarrison LLP, the national labor and employment law firm, has merged with Christine D. Hanley & Associates, as of January 1, 2013.



Corbett and White, P.A. is pleased to announce that **Keith W. Davis** is now a Partner and Shareholder of the firm and that the firm has been re-named Corbett, White

and Davis, P.A. The firm will continue to provide exceptional legal service in its representation of municipalities and other local government entities.

**Alicia Marie Phidd**, with specialization in Commercial Litigation and Business Law has recently joined the Palm Beach County and Treasure Coast legal community. She looks forward to being active on the Corporate Law & Counsel Committee and the North County Section. She is also a co-host on Perspectives aired on WAVS 1170AM.



**Grasford W. Smith**, with the Commercial Litigation and Business Law firm of Richman Greer, P.A., has been named General Counsel of the Urban League of Palm Beach County.

Smith assumes the role of General Counsel on a pro bono basis. Smith concentrates his practice on Commercial and Complex Litigation.

# **Website Marketing For Solo & Small Firms**

## **Five Ways to Make Your Website More Effective**

Presented by the Solo & Small Firm Practitioners Committee



**Wednesday, March 6, 2013**

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

**Bar Office**

### Program Schedule

11:45 a.m. Registration & Lunch

Noon - 1:00 p.m. Presented by WebManna

Join us for this one hour CLE lunch program and learn how to create a marketing strategy that makes sense. Does your website have credibility? Is it visible and are viewers engaged? Learn the truth about social media, search engine optimization, pay per click and traditional strategies. Plus, we'll tell you the five ways to make your website more effective and answer the thousand dollar question!

*Sponsored by:*



This course is expected to receive CLER from The Florida Bar. The cost to attend, including lunch, is just \$10.00 for PBCBA members; attorneys who are not PBCBA members are welcome for \$20.00. Add \$5.00 if registered after 5:00 p.m. on 3/1/13.

**HOW TO  
REGISTER**



**BY CHECK**  
Return this  
form



**BY CREDIT CARD**  
For security purposes, your must register  
online at [www.palmbeachbar.org](http://www.palmbeachbar.org)

Name: \_\_\_\_\_

Telephone: \_\_\_\_\_ Email: \_\_\_\_\_

Address: \_\_\_\_\_



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

## What's New at the Alphabet Agencies: EEOC, FCHR and OEO

### Lunch and Learn

March 15, 2013 - 11:30 a.m. – 1:00 p.m.

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

### Featuring

*Robert E. Weisberg, Esq.*, Board Certified Labor & Employment Law Attorney,  
US Equal Employment Opportunity Commission

*Jim Mallue, Esq.*, Florida Commission on Human Relations

*Pamela Guerrier, Esq.*, Director of Palm Beach County Office of Equal Opportunity

SPONSORED BY:



### Program Schedule

11:30 am – 11:55 am

**Late Registration / Lunch**

11:55 am – 12:00 pm

**Welcome and Opening Remarks** – *Christine D. Hanley, Esq.*,  
*FordHarrison LLP, Employment and Labor Law CLE Committee Chair*

12:00 pm – 1:00pm

**What's New at the Alphabet Agencies: EEOC, FCHR and OEO**

On December 17, 2012, the Equal Employment Opportunity Commission (EEOC) approved its much-awaited Strategic Enforcement Plan (SEP). The new Plan establishes new priorities and offers a window on how the EEOC intends to pursue and implement its enforcement goals under all of the federal employment statutes it enforces. Come and hear how the Plan is being implemented in Florida. Also, hear how two (2) local Fair Employment Practices Agencies (FEPAs—FCHR and OEO) process employment discrimination cases under the Florida Civil Rights Act and the Palm Beach County Equal Employment Ordinance

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

Enjoy an **“Early Bird”** discounted registration cost of **\$25** for PBCBA members/paralegals registered by **3/8/13** (\$65 for non-PBCBA members/paralegals). After **3/8/13**, cost of \$40 applies for PBCBA members/paralegals (\$80 for non-PBCBA members/paralegals).

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

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

**HOW TO  
REGISTER**



**BY CHECK**  
Return this  
form



**BY CREDIT CARD**  
For security purposes, you must register  
online at [www.palmbeachbar.org](http://www.palmbeachbar.org)



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

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

Name: \_\_\_\_\_ Telephone #: \_\_\_\_\_

Address: \_\_\_\_\_ Email Address: \_\_\_\_\_

**\*\*\*NEW WEBINAR FORMAT\*\*\***



\_\_\_\_ I would like to attend this seminar via webinar. Please be sure to provide your email address above

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (3/15/13 Em-  
ploy. Law.) 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**





## IN NEED OF CLE CREDIT? WE CAN HELP! CLE CONTENT NOW AVAILABLE 24/7

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audio CDs recorded at previously held live seminars of the Association. We also have copies of audio CDs of live seminars from the Orange County Bar Assoc. (OCBA), Clearwater Bar Assoc.(CBA), Hillsborough County Bar Assoc.(HCBA), and the Dade County Bar Assoc.(DCBA). Members and non-members alike can benefit from this simple way of acquiring CLE and Ethics hours. **To order seminars either on CD or in MP3 format, go online at <http://www.palmbeachbar.org/continuing.php>**



**CLE content is available to purchase 24/7 to download either to your computer or your iPod**

### Sample Course Titles

- Diversity Summit Providing a Roadmap to Implementation
- Marketing Ethically in 21<sup>st</sup> Century
- Legislative Updates Probate, Asset Protection
- Potential Pitfalls and Litigation Under the New Power of Attorney Statute
- Trial Lawyers Guide Recognizing Claims Against Stockbrokers
- Notice Pleading Post Mortem: Impact of Iqbal/Twombly
- Intellectual Property Issues that Affect Client
- Real Property 2010 Revisions
- Tips from the Pros (Bankruptcy)
- Bankruptcy and Consumer Materials & Audio
- New FL Power of Attorney
- Employment Lawyers Speech
- Collaborative Practice
- Legal Malpractice
- Inside the Appellate Cour
- Inaugural Aspects of ADR
- Basics of Worker's Comp
- Is Your Firms' Website in Compliance w/Florida's New Advertising. Regulations? (Technology Seminar)
- Judicial Lunch Judge Holder "How to be an Effective Expert Witness
- 14<sup>th</sup> Annual Elder Law Update
- Protecting Your Client's Public Benefits
- Psychological Dimensions Family Law Case
- Use of ADR in Bus Litigation
- 29<sup>th</sup> Annual Estate Probate Seminar Part 1
- Real Estate in Tough Times
- Med School 101 for Lawyers
- ADR in 2012
- Practical Issues in Construction Litigation
- Mediation Litigation Strategy or Endgame
- View from Local Bench (Bankruptcy)
- Proving and Defending Against Damage Claims
- Ethics at Sea: Ethics & Professionalism
- Divorce Process as it Relates to R/E Trends
- Securities Litigation Update 2011
- Top Ten Intellectual Prop Issues You Didn't know Client Had

# THE FLORIDA BAR TRUST ACCOUNTING RULES: WHAT YOU DON'T KNOW CAN HARM YOU!

Presented by the North County Section



## WEDNESDAY, APRIL 3, 2013

11:30 a.m. to 1:15 p.m.

Hilton Garden Inn



11:30 a.m. Registration & Lunch

11:45 - 1:15 p.m. Presented by Michael S. Leone, CPA JC, LLM (Tax)

Can you delegate or transfer funds? Are you responsible for the acts of employees? What about record keeping? This CLE luncheon will provide information on properly maintaining your trust accounts including protection of clients' funds, property and avoiding disciplinary problems. You'll learn the rules regulating trust accounts such as personal and fiduciary responsibility of partner, shareholder, member, or solo practitioner.

Attend this luncheon and find out about trust bank accounts such as IOTA, Escrow Accounts and more.

This course has been granted 2.0 General CLER and 2.0 Ethics from The Florida Bar.

Cost: Just \$30.00 for NCS members; attorneys who are not NCS members are welcome for \$40.00.

<b>HOW TO REGISTER</b>	 <b>BY CHECK</b> Return this form	 <b>BY CREDIT CARD</b> For security purposes, you must register online at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
------------------------	---	--

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Email: \_\_\_\_\_

Address: \_\_\_\_\_



The Palm Beach County Bar Association's Elder Law Affairs Committee presents:

## ***“The 13th Annual View From The Bench”***

*Thursday, April 11, 2013 - 6:00pm - 8:30pm  
The Colony Hotel, Palm Beach, 155 Hammon Avenue*

### **Program Schedule**

6:00pm - 6:30pm      Registration and Cash Bar  
6:30pm - 8:30pm      Dinner and Presentation:



*Honorable Martin H. Colin  
Honorable Diana Lewis  
Honorable John L. Phillips*

*Honorable David E. French  
Honorable Krista M. Marx  
Honorable Rosemarie Scher*

This course is expected to receive **2.0 CLER** from The Florida Bar.  
Early registration cost for the seminar (**including 1 free drink ticket**) is **\$60** for PBCBA members/paralegals; **\$100** for non-PBCBA members/paralegals if registered by 3/21/13; add \$25 to registration fee after that date.

***Sponsored by:      Jo Ann Abrams, Attorney at Law***



THE PRIVATE BANK



*Estate & Trust Litigation*



LAW OFFICES OF  
**CRAIG GOLDENFARB, P.A.**  
PERSONAL INJURY • NURSING HOME NEGLECT • MEDICAL AND LEGAL MALPRACTICE

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

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

**HOW TO  
REGISTER**



**BY CHECK**  
Return this  
form



**BY CREDIT CARD**  
For security purposes, you must register  
online at [www.palmbeachbar.org](http://www.palmbeachbar.org)



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

***If you have an issue or question you would like the judges to address state here:***

***Please select one of the following:***

- \_\_\_ ***Talapia Francaise, Vegetable Bundle, Yukon Gold Mashed Potatoes***  
\_\_\_ ***Thyme Roasted Free Range Chicken Breast, Madeira Pan Jus, Whipped Gold Potatoes, Asparagus***  
\_\_\_ ***Napoleon of Grilled Vegetables, Mozzarella Cheese and Tomato Coulis***

**"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) (4/11/13) Cost is the same as listed above, In addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

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



# North County Section to host the Second Annual **CARIBBEAN BEACH BASH!**

Bring The Family For The Fun...

**Sunday, April 14, 2013**

**11:30 a.m. to 2:30 p.m.**

**Hilton, Singer Island**

**Lunch! Live music! Sandcastle Contest!**

**Face Painting! Hair Braids!**

**Make Your Own Shell Jewelry  
and more...**

**RSVP online @ [www.palmbeachbar.org](http://www.palmbeachbar.org)**

**Register by April 5 to receive your membership discount!**

**\$20.00 for adults; \$5.00 for children 13 and under**

**Free for children 3 and under; Judges are complimentary**

*Sponsored by:*



**Northwestern Mutual**  
Karen Holloway & Grant Coldwell



Slawson Cunningham  
Whalen & Gaspari, P.L.



Law Offices of Todd S. Stewart, P.A.



**D'Amore**  
Law Firm, P.A.





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

## DISCOVERY THAT WINS CASES AND KEEPS YOUR CLIENT OUT OF JAIL - TOOLS TO MASTER, PITFALLS TO AVOID

Friday, April 19, 2013 - 8:45 a.m. – 5:00 p.m.

Embassy Suites Hotel, 1601 Belvedere Road, WPB, FL 33406

### Program Schedule

- 8:45am - 9:05am **Late Registration and Check in**
- 9:05am - 9:15am **Welcome and Opening Remarks** - *Georgia T. Newman, Esq. Law Office of Georgia T. Newman, P.L., Committee Chair*
- 9:15am - 10:15am **Skills for Efficiently and Effectively Deposing an Opposing Expert and Defending Your Own Expert from Attack** - *Michael P. Walsh, Esq., Michael P. Walsh, P.A., and David W. Ellrich, Jr., CPA, Moore, Ellrich & Neal, P.A.*
- 10:15am - 10:30am **BREAK**
- 10:30am - 11:30am **Privileges - Keep them. Waive them. Litigate them.** - *\*Joel M. Weissman, Esq., Joel M. Weissman, P.A.*
- 11:30am - 12:15pm **Ethics in Discovery - Getting What You Need and Doing it Professionally** - *Chief Judge Peter D. Blanc, Fifteenth Judicial Circuit*
- 12:15pm - 1:00pm **LUNCH**
- 1:00pm - 2:00pm **Electronic Discovery: Getting it, Getting it in, and Hazards to Avoid** - *\*Stuart R. Manoff, Esq., Stuart R. Manoff & Associates, P.A.*
- 2:00pm - 2:50pm **You Got Him to Say What?!** - **Mastering Deposition Skills** - *\*Peter L. Gladstone, Esq., Gladstone & Weissman, P.A..*
- 2:50pm - 3:05pm **BREAK**
- 3:05pm - 4:00pm **Out of the Mouths of Babes—Discovery Issues in Child Related Actions** - *\*Elisha D. Roy, Esq., Sasser, Cestero & Sasser, P.A., Chair-Elect Family Law Section of the Florida Bar*
- 4:00pm - 5:00pm **Judicial Panel: Discovery Do's and Don'ts—A View From the Bench** - *TBA*
- 5:00pm - 6:00pm **Happy Hour**

\*Board Certified Marital and Family Law Attorney

**SPONSORED BY**  **Private Bank**  **Family Law Software**



**The Matthew Lundy Law Group**  
**QDRO Law**

This course is expected to receive **8.0 CLER incl. 1.0 Ethics / Marital & Family Law Certification credits** are pending from the Florida Bar.

**Early Registration** cost is **\$180** for Attorneys **0-5 years** experience; **\$215** for PBCBA members/paralegals **w/5+ yrs** experience; **\$255** for non-PBCBA members/paralegals **w/5+ yrs** experience. **After 4/12/13** add **\$25** to registration fee.

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

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

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

**HOW TO REGISTER**



**BY CHECK**  
Return this form



**BY CREDIT CARD**  
For security purposes, you must register online at [www.palmbeachbar.org](http://www.palmbeachbar.org)



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

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) (4/19/13 Family Law) 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 Rd., West Palm Beach, FL 33406**

# Get Ready For The Bar's First **TRIVIA LUNCHEON!**



**Wednesday, April 24, 2013**

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

Marriott, 1001 Okeechobee Blvd.  
West Palm Beach

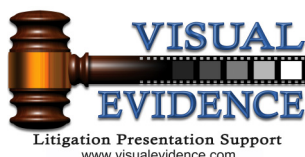
Register as a team of ten or as an individual.  
Contest will be based on group answers.

Bring your staff for  
**ADMINISTRATIVE  
ASSISTANT DAY!**

Cost: \$35.00 per person; judges are complimentary.

Early Registration Going On Now!  
Register online @ [www.palmbeachbar.org](http://www.palmbeachbar.org)

Sponsored by:





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



CLE, GOLF &  
COCKTAILS

## Skills Clinic or Play

9 Holes

Your Choice!

For all level of  
players

Friday, April 26, 2013

Bear Lakes Country Club, West Palm Beach

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

### PROGRAM:

1:00 p.m.-2:00 p.m.: Ethical Issues In Negotiation & Mediation  
presented by Upchurch, Watson White & Max

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

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

Cost: \$75.00: Registration fee includes CLE Credit from The  
Florida Bar of 1.00 Ethics, 1.00 General and 1.00  
Civil Trial

**REGISTRATION FORM** (use this form if paying by check)  
**Or Register By Credit Card Online @ [www.palmbeachbar.org](http://www.palmbeachbar.org)**

Registration fee discounted for all PBCBA members.  
Attorneys who are not PBCBA members are welcome for \$100.00

### Choose One (only):

☐ SKILLS CLINIC (for all level of players)  
include payment of \$75.00

☐ 9 HOLES  
include payment of \$75.00

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Email: \_\_\_\_\_

Email: \_\_\_\_\_

Handicap: \_\_\_\_\_

☐ **Check:** pay by check please fill out this form and mail along your payment to the Palm Beach  
County Bar Association, 1507 Belvedere Road, West Palm Beach, FL 33406

Sponsored by:

**Dorra & Dugan**  
Certified Public Accountants



**First Citizens  
Bank**



**Northwestern Mutual  
FINANCIAL NETWORK®**



**VISUAL  
EVIDENCE**

Litigation Presentation Support  
[www.visual-evidence.com](http://www.visual-evidence.com) 800-366-2861

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



***“Legal Legends vs. Younger Guns”  
Business Litigation Mock Trial CLE***

**Friday, May 10, 2013 - 8:00am - 4:30p.m.**

**LOCATION: The Embassy Suites  
1601 Belvedere Rd., West Palm Beach, FL 33406**

*Come watch this Mock Trial as our “Legal Legends” face off with the “Younger Guns.” The two teams of six will present their case to a live jury. From opening to closing statements, you’ll witness all aspects of a real trial, watch the jury deliberate, and learn from leaders in our community.*

*Team Legal Legends will be Gerald F. Richman, John (Jack) Scarola, Louis Mrachek, Patricia E. Lowry, F. Malcolm Cunningham, Jr. and Jim Beasley.*

*Team Younger Guns will be Phillip H. Hutchinson, Ryon M. McCabe, Joanne O’Connor, Michael J. Pike, Gregor J. Schwinghammer, and David I. Spector.*

**Trial graphics and program presentation taped by:**



**Program Schedule**

- 8:00am - 8:30am **Continental Breakfast/ Check In / Late Registration**
- 8:30am - 8:35am **Introduction on PBCBA’s Improved CLE Offerings** - Adam T. Rabin, Esq.,  
McCabe Rabin, P.A., Board Certified Business Litigation Attorney
- 8:35am - 8:40am **Welcome - Opening Remarks** - Joseph G. Galardi, Esq., Beasley Hauser  
Kramer & Galardi, P.A., Business Litigation CLE Committee Chairperson
- 8:40am - 11:45am **Trial Presentations**
- 11:45am - 12:30pm **LUNCH**
- 12:30pm - 4:30pm **Continuation of Trial, Jury Deliberations, and Verdict**

.....  
**This course is expected to receive 8.5 CLER from The Florida Bar.**

**Early registration** cost for the seminar, which includes lunch, is **\$175** for PBCBA member attorneys/paralegals;  
**\$225** for non-PBCBA member attorneys/paralegals if registered by 5/3/13; add \$25 late fee after that date.

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

\_\_\_ 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.

<b>HOW TO REGISTER</b>	<b>BY CHECK</b> Return this form	<b>BY CREDIT CARD</b> For security purposes, your must register online at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>	<b>CLE</b>	<b>Materials will now be emailed to all registrants prior to the seminar</b>
------------------------	-------------------------------------	---	------------	--

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

**Name:** \_\_\_\_\_ **Telephone:** \_\_\_\_\_

**Address:** \_\_\_\_\_ **City/Zip** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Business Litigation CLE Seminar 5/10/13) Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK ONLY, WITH THIS FORM.**

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



## PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

1507 Belvedere Road, West Palm Beach, FL 33406

PRESORT STD  
US POSTAGE  
PAID  
WEST PALM BCH FL  
PERMIT NO. 66

### PAST PRESIDENTS...

M.D. CARMICHAEL*	PAUL W. POTTER*	GAVIN LETTS*	ROBERT V. ROMANI*
RICHARD P. ROBBINS*	WAREING T. MILLER*	JAMES S. ROBINSON	MICHAEL P. WALSH
L.R. BAKER*	CHARLES B. FULTON*****	CHARLES H. DAMSEL, JR.	JULIEANN RICO
HARRY A. JOHNSTON*	J. LEO CHAPMAN*	EDWARD LEWIS	MICHAEL A. VISCOMI
GEORGE W. COLEMAN*	ELWYN L. MIDDLETON*	RAYMOND ROYCE	CAROL McLEAN BREWER
H.C. FISHER****	H. ELMO ROBINSON*	PETER VAN ANDEL	JERALD S. BEER
MARSHALL B. WOOD*	J. STOCKTON BRYAN, JR.	LARRY KLEIN	JOHN G. WHITE III**
E. HARRIS DREW***	HAROLD G. MAASS*	THEODORE BABBITT	MICHAEL T. KRANZ
B.F. PATY*	ROBERT F. CROMWELL*	JOHN FLANIGAN	EDWARD DOWNEY
JOSEPH S. WHITE*	CHARLES H. WARWICK III	SIDNEY A. STUBBS, JR.	SCOTT G. HAWKINS**
HENRY P. LILIENTHAL*	PHILLIP D. ANDERSON*	JOSEPH J. REITER**	AMY L. SMITH
MANLEY P. CALDWELL*	FREDERICK C. PRIOR	JOHN B. McCracken*	GREGORY W. COLEMAN
WILBUR E. COOK*	JAMES C. DOWNEY*	DAVID L. ROTH	LISA S. SMALL
W. MURRAY HAMNER*	WILLIAM A. FOSTER	D. CULVER SMITH III	STANLEY D. KLETT, JR.
RICHARD PRESCOTT*	ALAN F. BRACKETT*	TIMOTHY W. GASKILL	THEODORE J. LEOPOLD
RUSSELL MORROW*	ROBERT D. TYLANDER*	ARTHUR G. WROBLE	MANUEL FARACH
CULVER SMITH*	ROBERT McK FOSTER*	GUY C. HILL	MEENU T. SASSER
RAYMOND ALLEY*	JOHN M. FARRELL*	PATRICK J. CASEY	RICHARD D. SCHULER
C.Y. BYRD*	H. LAURENCE COOPER, JR.*	JAMES G. PRESSLY, JR.	MICHELLE SUSKAUER
WILLARD UTLEY*	JOHN R. DAY*	PATRICK C. MASSA	MICHAEL J. NAPOLEONE
C.H. ERNEST*	JOHN L. BURNS*	STEVEN A. STINSON	JOHN M. HOWE
	HARRY JOHNSTON II	CARL M. MATHISON, JR.	

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

# CALENDAR

## March 2013

Friday, March 1, 8:30am - 5:15pm  
**Bench Bar Conference**  
Palm Beach County  
Convention Center

Tuesday, March 5, Noon - 1pm  
**Corporate Counsel  
Committee Meeting**  
Bar Association Office

Wednesday, March 6, 11:30am - 1pm  
**Solo & Small Firm Luncheon**  
Bar Association Office

Thursday, March 7,  
4:30pm - 5:30pm  
**University of Miami  
CLE/Reception**  
Bar Association Office

Thursday, March 7,  
5:30pm - 6:30pm  
**Personal Injury/Wrongful Death  
CLE Happy Hour**  
Location TBA

Friday, March 8, 8:30am - 9:30am  
**ADR Committee Meeting**  
Bar Association Office

Friday, March 8, Noon - 1pm  
**YLS Board Meeting**  
Bar Association Office

Friday, March 8, Noon - 1pm  
**Federal Bar Assoc. Ryskamp  
Award Luncheon**  
The Colony Hotel, Palm Beach

Friday, March 8, Noon - 1pm  
**Law Week Committee Meeting**  
Bar Association Office

Tuesday, March 12, 11:45am - 1pm  
**SPBC Bar Assn. Monthly  
Membership Luncheon**  
Boca Country Club

Tuesday, March 12, 5:30pm - 7pm  
**FSU Alumni Reception**  
Bar Association Office

Wednesday, March 13, Noon - 1pm  
**NCS Board Meeting**

Wednesday, March 13, Noon - 1pm  
**Professionalism Committee  
Meeting**  
Bar Association Office

Thursday, March 14, 11:45am - 1pm  
**SPBC FAWL Luncheon**

Thursday, March 14,  
5:30pm - 7pm  
**NCS Joint Happy Hour with  
PBCJA**

Friday, March 15, 11:45am - 1pm  
**Employment Law Lunch CLE  
Seminar**  
Bar Association Office

Monday, March 18,  
6:30pm - 7:30pm  
**Small Claims Lawsuits &  
Mediation Clinic**  
Greenacres Library

Tuesday, March 19, Noon - 1pm  
**CDI Committee Meeting**  
Bar Association Office

Tuesday, March 19,  
5:30pm - 6:30pm  
**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, March 20,  
11:45am - 1:00pm  
**Judicial Luncheon**  
North end of cafeteria,  
Main Courthouse

Wednesday, March 20, 5:00pm  
**PBCBA Board of Directors  
Meeting**  
Bar Association Office

Thursday, March 21,  
11:45am - 1pm  
**FAWL Luncheon**  
WPB Marriott

Thursday, March 21,  
11:45am - 1pm  
**Judicial Relations  
Committee Meeting**  
Judicial Conference Room,  
Main Courthouse

Thursday, March 21,  
5:30pm - 6:30pm  
**YLS Happy Hour**  
TBD

Friday, March 22, 4pm - 6pm  
**Robing Ceremony for  
Judge Jeffrey Gillen**  
Courtroom 11A

Thursday, March 28, 11:30am - 1pm  
**Technology Committee  
CLE Seminar**  
Bar Association Office

Thursday, March 28,  
5:30pm - 7:00pm  
**Cunningham Bar Happy Hour**