



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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

March 2016



Our YLS recently held their first 5K race. Over 120 runners ran along the bike trail in Palm Beach and braved the cold temperatures of the morning. Pictured above are the YLS volunteers who came out early on a Saturday morning, along with PBCBA President Grier Pressly. Proceeds from the race will benefit the Historical Society of Palm Beach County, represented by Jeremy Johnson, CEO, pictured on the far right. Special thanks to **Jack Rice, Steve Williams and Alex St. Pierre** for all of their hard work in organizing this event. Sincere thanks to our sponsors: Lytal, Reiter, Smith Ivey & Fronrath; Addison Development; Alley, Maass, Rogers & Lindsay; Legal Graphic Works; Searcy Denney, Scarola, Barnhart & Shipley; Bruce S. Rosenwater & Associates; Corbett, White, Davis and Ashton; and Pressly & Pressly. More photos can be found on page 4.

## Contributions sought for 2016 Law Week Judicial Reception

The Law Week Committee is requesting contributions from law firms for its annual Judicial Reception honoring the local judiciary and judicial assistants. The event will be held on Tuesday, May 3 at The Harriett in West Palm Beach. Sponsors will be recognized on 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

\$400 for law firms with 3-10 attorneys

\$250 for law firms with 1-2 attorneys

Thank you for your consideration!

## Mark your calendar for upcoming Membership Events

### March 8:

Membership Networking Event at new convention center Hilton Hotel

### May 3:

Annual Judicial Reception

### May 10:

Law Day Luncheon with guest speaker former Attorney General Alberto Gonzales

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THE  
**BULLETIN**

PALM BEACH COUNTY  
BAR ASSOCIATION

JAMES GRIER PRESSLY III  
President

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

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

**LETTERS TO THE EDITOR**

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



Send letters to:  
EDITOR Bar Bulletin  
Palm Beach County Bar Association  
1507 Belvedere Road  
West Palm Beach, FL 33406

**NCS to host annual Meet and Mingle Mixer**

Members of the North County Section are invited to network with members of the Palm Beach County Justice Association during their annual Meet and Mingle Mixer on Thursday, March 3 from 5:30 p.m. to 7:00 p.m. at the Yard House in Palm Beach Gardens. Stop by right after work for an adult beverage, something to eat and conversation with colleagues. The cost is just \$15.00 for NCS and PBCJA members; Judges are complimentary. Attorneys who are not members of either group are welcome for \$25.00. RSVP no later than 3.1.16 at [www.palmbeachbar.org](http://www.palmbeachbar.org).



**Freeman W. Barner, Jr.**  
1942 - 2016



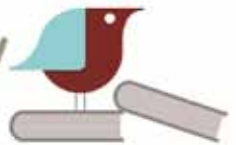
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### Access to Justice More Than Just a Slogan in Palm Beach County

by Grier Pressly

The practice of law has seen much progress in the 21st century, but despite tremendous commitment from the Florida bench and bar the civil justice gap remains as wide as it has ever been in 2016. Among the disturbing numbers are these: Less than 15% of Florida residents having civil legal problems are able to obtain legal help. Insufficient funding for legal aid organizations means that only 20% of indigent Floridians receive legal counsel in civil cases.

Recognizing that more can be done to bridge the civil justice gap, Florida Supreme Court Chief Justice Jorge Labarga is leading a statewide campaign to knock down the barriers that keep low-income and moderate-income Florida residents from accessing the courts for their civil justice matters. The Labarga-led Florida Commission on Access to Civil Justice has until June 30 to finalize its recommendations, but the Commission's preliminary proposals have begun to make headlines. Action items at the state level are likely to include the development of a statewide "triage gateway" internet portal to connect those needing legal help with existing resources, such as law school clinics, lawyer referral services, legal aid organizations, and court self-help centers; an amendment to Florida's ethical rules to permit law professors, retired judges, and retired lawyers who are living in Florida but who are not members of The Florida Bar to provide pro bono legal services as "emeritus attorneys"; and the creation of a *cy pres* rule in Florida that would require residual funds from class-action settlements to go to legal aid organizations.

At our local level, residents of Palm Beach County have long benefitted from the best pro bono services in the state. Bob Bertisch and his incredible staff of dedicated lawyers at the Legal Aid Society of Palm Beach County have absolutely set the bar for their peers in the state, and our Palm Beach County bar is home to many pro bono heroes who have selflessly served those in need of free civil legal representation. Still, the need persists for more pro bono representation in our county. The 15th Circuit Pro Bono Committee (created by administrative order in 2008) is ready to answer Justice Labarga's clarion call for action. Under Judge Samantha Schosberg Feuer's leadership, the 15th Circuit Pro Bono Committee is preparing to implement new strategies to plug the access gap. The Palm Beach County Bar Association together with eight fellow voluntary bar associations in our county are coming together under one flag to partner with the Legal Aid Society to combat the civil justice gap. The primary goals of the Pro Bono Committee are: 1) to educate the local bar about the particular pro bono legal needs that exist in Palm Beach County, 2) to create more opportunities for local lawyers to participate in the pro bono effort, with an emphasis on projects that will address the emerging legal needs of our community, 3) to encourage the voluntary bar associations in our county to coordinate pro bono efforts with each other and with Legal Aid to make the limited resources go farther, and 4) to promote those individuals, law firms, and voluntary bar associations that

are making a difference in the pro bono effort. The result will be both more pro bono service and better coordinated pro bono service in the 15th Circuit.

The Pro Bono Committee's specific initiatives will be unveiled in the coming months. In the meantime, I encourage you to visit the Legal Aid Society of Palm Beach County's website ([www.legalaidpbcc.org](http://www.legalaidpbcc.org), "2015-2016 Campaign for Equal Justice"), and see how you can make a difference through a monetary contribution or volunteering to handle a pro bono case.

Remember that the Florida Supreme Court has declared that "every lawyer... who is a member of The Florida Bar has an obligation to represent the poor when called upon by the courts and that each lawyer has agreed to that commitment when admitted to practice law in this state." Remember, too, that our Oath includes a pledge to "never reject... the cause of the defenseless or oppressed." Let us all recommit to pursue the ideals of our profession by joining in the renewed effort in the 15th Circuit to improve access to justice for all.

Phone: (561)659-4040

E-mail: [gpressly@presslyandpressly.com](mailto:gpressly@presslyandpressly.com)

### PBCBA Opposing Judicial Term Limit Legislation

Fellow Bar Members:

Our Bar Association is actively opposing the bills proposed by the Florida House and Senate which seek an amendment to Florida's Constitution that would impose a 2-term limit on Florida's appellate judges. In November, a special subcommittee of the Bar's Judicial Relations Committee was formed to study the proposed judicial term limit legislation and to make recommendations to the Bar board of directors as to how the Bar should respond to the proposed legislation. The Florida Bar Board of Governors has already voted unanimously to oppose the legislation. At its January board meeting, the PBCBA board of directors passed a resolution in opposition to the judicial term limit bills. You can find a copy of the board resolution on the Bar's website ([www.palmbeachbar.org](http://www.palmbeachbar.org)). The resolution was immediately distributed to the Florida Senate's Committee on the Judiciary, which is the next legislative committee to consider the legislation, as well as to all members of our local Palm Beach County legislative delegation. The board of directors is asking our members to please contact our state legislators to voice opposition to the legislation. Contact information for the Senate's Committee on the Judiciary and for our local legislative delegation can also be accessed on the Bar's website. Many thanks to the members of the judicial term limits subcommittee (Greg Huber – co-Chair, Dean Xenick – co-Chair, Jack Scarola, Freddy Rhoads, and Brian Denney), and to Kelly Hyman, Chair of the Judicial Relations Committee, for their efforts.

Grier Pressly, President

## Young Lawyers Section 5K Race



**Fastest Firm – Lytal Reiter**



**Krista Downey, Jason Lazarus and  
YLS President Lou Delgado**



**Race organizers Jack Rice, Steve Williams  
(Fastest Lawyer) and Alex St. Pierre**



**Leslie Metz and  
Santo DiGangi**



**Patricia Christiansen and her daughter Gabby, Jessica Mason, Patricia Leonard, Kristy, Grier and Parker Pressly and Judge Lisa Small**



**Adam Bregman and Jeremy Bloor**



**Kelsey Burke**



**Fastest Jurist Judge Frank Castor**



**Denise and Masimba Mutamba**



**Judge Peter Blanc  
won first place in  
his age division and  
past PBCBA president  
Jamie Pressly came  
in second**







**VOLUNTEERS NEEDED FOR LAW WEEK:  
MOCK TRIALS & SPEAKERS  
May 2 - 6**

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The Law Week Committee needs volunteers to present Mock Trials and serve as guest speakers during Law Week, May 2<sup>nd</sup> – 6th. Programs are held 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 send it back to Sherry Webber, Palm Beach County Attorney's Office, 300 North Dixie Highway, Suite 359, West Palm Beach, FL 33401. **Volunteer deadline is March 11th.**

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



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

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

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

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

PREFERRED DAY: ☐ Monday ☐ Tuesday ☐ Wednesday ☐ Thursday ☐ Friday

EVENT PREFERENCE: ☐ MOCK TRIAL ☐ SPEAKERS PROGRAM

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

SCHOOL LEVEL PREFERENCE: ☐ Elementary ☐ Middle ☐ High School

GEOGRAPHICAL PREFERENCE:

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|---|---|--|--|
| <input type="checkbox"/> Palm Beach         | <input type="checkbox"/> Lake Worth/Lantana | <input type="checkbox"/> Jupiter/Tequesta            | <input type="checkbox"/> Riviera Bch/Lake Park |
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**PLEASE RETURN BY MARCH 11 TO:**

Sherry C. Webber, 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: 561/355-7044.  
Email: [swebber@pbcgov.org](mailto:swebber@pbcgov.org)

## Playing Nice in the Sandbox: Professionalism Towards Non-Lawyer Personnel

by Jessica Bober Rosenthal and E. Raul Novoa



It is not only good manners but good advocacy for a lawyer to be kind to non-lawyer personnel, including judicial assistants, bailiffs, courtroom clerks and court reporters. Sadly, lawyers sometimes treat these people differently when the judge is not looking. As former law clerks, we saw firsthand how some lawyers treated courtroom personnel unprofessionally. We both recall instances where lawyers were impolite towards judicial assistants and other court staff, especially when the judge was not present.

What these lawyers fail to recognize, however, is that your reputation is everything and oftentimes the courtroom personnel would let the judge know of the lawyer's unprofessional behavior. Regardless of whether you are in front of a judge, the way you interact with courtroom personnel will affect your reputation, your client's reputation, and the reputation of your employer.

The Standards of Professional Courtesy and Civility (the "Standards") were developed and approved by the Palm Beach County Bar Board of Directors and the judges of the 15th Judicial Circuit to guide lawyers on what behavior is expected of them when practicing before state and federal courts and other tribunals in Palm Beach County and South Florida. As stated in the Preamble to the Standards, "[t]he overriding principles promoted by these standards are good faith, civil and respectful communications between counsel and similar cooperation with the judges, arbitrators, mediators, clerks, court staff, witnesses and non-parties." The Standards broaden the scope of persons entitled to receive professional behavior by lawyers.

So what professional behavior is expected towards non-lawyer personnel?

Section III of the Standards outlines some examples of behavior that lawyers and their staff should follow:

- 1) act and speak civilly and respectfully to courtroom deputies and bailiffs, clerks, court reporters, judicial assistants and law clerks;
- 2) be selective in inquiries posed to judicial assistants as their time and resources are limited; and
- 3) familiarize themselves with the court's administrative orders, local rules and each judge's published standing orders, practices and procedures.

Like the Standards, The Florida Bar Professionalism Expectations addresses how lawyers and their staff should act towards others and the tribunal. Here are a few "Expectations" that apply:

- 1) Expectation 2.3, states that "[a] lawyer must avoid disparaging personal remarks or acrimony toward opposing parties, opposing counsel, third parties, or the court."
- 2) Expectation 3.4, states that "[a] lawyer must not

permit non-lawyer personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters."

- 3) Expectation 5.1 also states that "[a] lawyer should abstain from rude, disruptive, and disrespectful behavior. The lawyer should encourage clients and support personnel to do the same."

While these principles have been codified in "codes" and "standards," they really boil down to being respectful of others and treating people the way that you want to be treated. These are things we were all taught as children. While most of us understand this, it is possible to lose sight of these basic principles during litigation, especially when it becomes highly contentious.

Remember that your reputation is everything, and never forget that it is a privilege to practice law. No matter the situation, always show courtroom and other non-lawyer personnel, including jurors, witnesses and the public the same dignity and respect that you would show to the judge. Being professional and courteous will get you farther and will promote a better, more efficient working relationship between you and the courtroom personnel.

The Standards and The Florida Bar Professionalism Expectations can both be found on the Palm Beach County Bar's website and we encourage everyone to read them.

*Both Ms. Rosenthal and Mr. Novoa are associates at Ackerman, Link & Sartory, P.A.*

## Board Meeting Attendance

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



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

**“Appellate Practice in the Electronic Age:  
Electronic Records, Clerk’s Office Procedures, and Privacy Rules”**  
A panel discussion and question and answer session



**Friday, March 4 - 11:30am - 1:00p.m.**  
PBCBA Offices - 1507 Belvedere Road, WPB



**Program Schedule**

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

11:55am - 12:00pm     **Welcome - Opening Remarks** - Nichole J. Segal, Esq.,  
Burlington & Rockenbach, P.A.

12:00pm - 1:00pm     **Panel Discussion**

- \* Lonn Weissblum, Clerk, 4th District Court of Appeal
- \* Judges from the 4th District Court of Appeal
- \* Clerks from County Court

***Lunch Sponsored By:***



.....

**This course has been granted 1.0 CLER and 1.0 certification credits in Appellate law from The Florida Bar.**  
**Early registration** cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;  
**\$75** for non-PBCBA member attorneys/paralegals if registered by 2/26/16; add \$20 late fee after that date.  
**All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.**

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

**PAYMENT OPTIONS:**



If paying by credit card, please go to our secure website to register: [www.palmbeachbar.org](http://www.palmbeachbar.org)



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



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



If paying by check, please send payment, along with this form, to the Bar office.

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

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

City/Zip \_\_\_\_\_

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

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (Appellate Practice CLE Seminar 3/4/16. Cost is the same as listed above, **in addition to \$10 for shipping and handling**. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**



## Is the Attorney-Client Privilege Inapplicable in a Bankruptcy?

by Jason S. Rigoli

Not every communication between a client and an attorney is protected by the attorney-client privilege. In a bankruptcy case, federal law is applicable and governs the attorney-client privilege<sup>1</sup> that is established where there is: “(i) [an] attorney; (ii) [a] client; (iii) a communication; (iv) the confidentiality that was anticipated and preserved; and (v) the legal advice or assistance (as opposed to business or personal advice) that was the primary purpose of the communication.”<sup>2</sup>

The confidentiality of the communication between attorney and client must have been anticipated and preserved. “Confidentiality has both a subjective and objective component; the communication must be given in confidence, and the client must reasonably understand it to be so given.”<sup>3</sup> “The claimant of the privilege must have a reasonable expectation of confidentiality, either that the information disclosed is intrinsically confidential, or by showing that he had a subjective intent of confidentiality.”<sup>4</sup> Where information is transmitted to an attorney with the intent that it will be transmitted to a third party, then that information is not confidential.<sup>5</sup>

A debtor is obligated to disclose all assets and liabilities.<sup>6</sup> There is a line of case law which essentially establishes a bright-line rule that a debtor cannot have a reasonable expectation that the information being provided to the attorney to complete the bankruptcy schedules is going to be kept confidential and therefore cannot be privileged.<sup>7</sup> However, some courts do not take the blanket approach to this analysis, instead holding that:

Contrary to the bright-line dicta rule articulated in *White*, this Court concludes that the attorney-client privilege may protect all conversations and communications between a debtor and his/her bankruptcy attorney regarding the completion of the Petition, the SOFA, and the Schedules. Attorneys provide expertise to their clients, and even in the bankruptcy context, a debtor should be able to enjoy the benefits of “full and frank communication” with his/her counsel.

However, this privilege is not automatic; a debtor cannot merely make a blanket assertion. A debtor must prove that the communications were made to counsel, for the primary purpose of securing legal services, and, most importantly, with the intent that they remain confidential.<sup>8</sup>

### Conclusion

At least one Bankruptcy Court in our jurisdiction has determined that the information communicated by a debtor to an attorney in preparing a bankruptcy petition, schedules, and statement of financial affairs, is not protected by the attorney-client privilege because the information is to be disseminated publicly in those filings. However, the analysis may be subject to attack in the right situation.

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

<sup>1</sup> See 11 U.S.C. § 521.

<sup>2</sup> See *Wessel*, supra FN. 2 (citing *In re Meyers*, 382 B.R. 304, 309 (Bankr. S.D.Miss. 2008); *United States v. White*, 950 F.2d 426, 430 (7<sup>th</sup> Cir. 1991) (“When information is disclosed for the purpose of assembly into a bankruptcy petition and supporting schedules, there is no intent for the information to be held in confidence because the information is to be disclosed on documents publicly filed with the bankruptcy court.”).

<sup>3</sup> *In re McDowell*, 483 B.R. 471, 495 (Bankr. S.D.Tex. 2012) (internal citations omitted).

<sup>4</sup> Rule 9017 of the Federal Rules of Bankruptcy Procedure, makes applicable the Federal Rules of Evidence in all bankruptcy cases. Rule 501 of the Federal Rules of Evidence states: “[t]he common law—as interpreted by United States courts in the light of reason and experience—governs a claim of privilege unless any of the following provides otherwise: • the United States Constitution; • a federal statute; or • rules prescribed by the Supreme Court. *But in a civil case, state law governs privilege regarding a claim or defense for which state law supplies the rule of decision.*” (emphasis added).

<sup>5</sup> See *In re Kevin William Wessel*, Case No. 14-23969-RBR (Bankr. S.D.Fla. Nov. 18, 2015)(quoting *U.S. ex rel. Baklid-Kunz v. Halifax Hosp. Med. Ctr.*, No. 6:09-CV-1002- ORL-31, 2012 WL 5415108, at \*2 (M.D. Fla. Nov. 6, 2012))

<sup>6</sup> See *In re Wessel*, Case No. 14-23969-RBR (quoting *United States v. Schwimmer*, 892 F.2d 237, 244 (2d Cir. 1989); see *Bogle v. McClure*, 332 F.3d 1347, 1358 (11th Cir. 2003)).

<sup>7</sup> *Id.* (citing *United States v. Robinson*, 121 F.3d 971, 976 (5th Cir. 1997)).

<sup>8</sup> See *United States v. Lawless*, 709 F.2d 485, 487 (7th Cir. 1983) (ruling that when a party provides information to be used in the preparation of an estate tax return and some of the information allegedly transmitted to the attorney never made it onto the return that such a transmission destroys any expectation of confidentiality which might have otherwise existed).

## North County Section teaches “Law in the Real World”

North County Section kicked off its fifth year of teaching “Law in the Real World,” which is a one credit course taught at FAU in Jupiter. The program is presented once a week for 18 weeks by different members of the North County Section on different areas of law. A special thank you to all of our members teaching this semester! If you would like to teach a class, or learn more about the program, contact Larry Buck, NCS President at [lpb@lpblaw.com](mailto:lpb@lpblaw.com)

**NCS Board member David Steinfeld recently taught students about contracts and business entities.**





# BUSINESS SCHOOL FOR LAWYERS



## BUSINESS SCHOOL FOR LAWYERS

**Wednesday, March 9, 2016**

Seminar and Networking Mixer

3:00 p.m. to 5:00 p.m.

**Abacoa Country Club**

105 Barbados Drive

Jupiter

PBCBA Members: \$20.00

Non-members: \$35.00

Program includes an open forum lead by attorneys from 3 different law firms who will share their experiences on technology, Marketing, networking, law office management, finances and more!

**RECEIVE 1.0 GENERAL CLE CREDIT FROM THE FLORIDA BAR, PLUS HAPPY HOUR!**

Speakers include:

Jeffrey Pepin, *Mesa & Pepin, LLC*

Shannon Sagan, *Law Offices of Shannon J. Sagan*

Dan Zuniga, *Personal Injury of Florida*

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



**YES! Please save me a seat! Mail with check to Palm Beach County Bar, 1507 Belvedere Road, WPB 33406 or RSVP online at [www.palmbeachbar.org](http://www.palmbeachbar.org)**

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Program sponsored by:



Bob Greenberg, CLTC  
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### Attorneys Participate in Thirteenth Annual Lawyers for Literacy Day at the Adult Education Center and Other Community Events

*by Lanelle Meidan on behalf of the Lawyers for Literacy Committee*

Members of the Lawyers for Literacy Committee recently attended the Thirteenth Annual Lawyers for Literacy Day at the Adult Education Center, which is the only full-time Palm Beach County school for adults. The purpose of this annual event is to share the importance of good reading skills and to give the adult learners the opportunity to get to know attorneys in the community.

Participating attorneys met with the school principal then visited individual classrooms to discuss with the students the different ways reading is important in life. "I appreciate the time I spent with the adult ESOL class on Lawyers for Literacy Day. I shared with the students the value that literacy and a love of reading have had on my life," said Jennifer Soberal, law clerk to U.S. Magistrate Judge Dave Lee Brannon. Students were also taught about the career path for lawyers and other careers in the legal field.

The Adult Education Center has the largest General Equivalency Diploma (GED) and English as A Second Language (ESOL) programs in Palm Beach County. Many of the students are balancing work, family, attending school, and learning a new language all at the same time. "These adult English language learners from around the world, many of whom were professionals in their native countries, have had to start over in the U.S. And they are very grateful for the opportunity. I hope they learned as much from me as I learned from them," said Ms. Soberal.

Committee members and other attorneys also participated in "Literacy in our Lives Day" in conjunction with the Palm Beach County School District's Celebrate Literacy Week. Attorneys spoke at elementary schools across the county,



**Thank you to our members who participated in the Adult Education Center program. Kristin Calder, Executive Director of the Literacy Coalition, along with members Iola Mosley, Brad Avakian, Melynda Melear, Jennifer Soberal, Joy Shearer, Andrew Kwan, Lawyers for Literacy Chair and Rick Swearingen, Principal of the Adult Education Center**

describing the impact literacy has had on their lives. Attorneys also chose a book that was important to them as a child and shared it with the students.

As part of an on-going program, Lawyers for Literacy Committee members continue to participate in the monthly Reading Buddies program at Roosevelt Elementary School in West Palm Beach. Once a month on the first Friday during lunchtime, volunteers meet at Roosevelt to read one-on-one with first grade students. The one-on-one attention is key to helping these students improve their reading skills and helps foster a love of reading.

Read with us! If you are interested in joining the Lawyers for Literacy Committee or participating in upcoming events, please contact Committee Chair Andrew Kwan at (561) 835-0900.

*Lanelle Meidan is Counsel with the West Palm Beach law firm of Ackerman, Link and Sartory, P.A. Lanelle practices in the areas of business and commercial litigation.*

### Elections for North County Section Board of Directors

Are you looking for a great opportunity to get involved with our Bar and network with colleagues? Then please consider a leadership position running for the Board of Directors of the North County Section.

The Section seeks six new members. Petitions for five Director seats, plus president-elect will be available starting on Tuesday, March 1.

The Board meets once a month to plan various networking events and programs for its members. To be considered, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Thursday, March 31. If there is a

contested election, voting will take place online in April.

The current Board includes President, Larry Buck; President-Elect, Rosemarie Guerini and Immediate Past President Greg Yaffa.

Directors serving terms ending June 2016 are Bettie Collister, Malinda Hayes, Wayne Richter, Larry Strauss and Kate Watson.

Directors serving a two year term expiring June 2017 include W Mason, David Steinfeld, Nick Johnson, Lindsay Warner and Greg Zele.

Contact Lynne for a petition form at [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org)





## Intervention

by David M. Garten

My son is on drugs and our family —  
Oops! Wrong article. This article pertains to  
an interested person's right to intervene in a  
lawsuit to protect his or her interests.

Florida Rule of Civil Procedure 1.230  
provides: "Anyone claiming an interest  
in pending litigation may at any time be permitted to assert  
his right by intervention, but the intervention shall be in  
subordination to, and in recognition of, the propriety of the  
main proceeding, unless otherwise ordered by the court in  
its discretion." Generally, the interest which entitles a person  
to intervene must be shown to be in the matter in litigation.  
The interest must be direct and immediate and the intervenor  
must show that he or she will gain or lose by the direct legal  
operation and effect of the judgment. A showing of indirect,  
inconsequential or contingent interest is wholly inadequate. *See, Stefanos v. Rivera-Berrios*, 673 So. 2d 12 (Fla. 1996).

The beneficiaries of a trust may be able to intervene in a  
lawsuit where the trustee is a party and he desired to secure its  
proper administration and distribution. *See, Buerki v. Lochner*,  
570 So. 2d 1061 (Fla. 2d DCA 1990). For example, in *Genauer*  
*v. Downey & Downey, P.A.*, 2016 Fla. App. LEXIS 232 (Fla.  
4<sup>th</sup> DCA 1/6/16), the beneficiaries were allowed to intervene in  
a lawsuit between Downey & Downey and the trustee because  
they could lose over \$150,000 of their inheritance from the  
Trust if Downey & Downey is successful in its lawsuit. The  
court reasoned that the beneficiaries' interest in the matter  
in litigation is "of such a direct and immediate character that  
[they] will... lose by the direct legal operation and effect of the  
judgment."

The Florida Supreme Court has established a two-step  
analysis to decide whether a court should grant a motion to  
intervene:

First, the trial court must determine that the interest  
asserted is appropriate to support intervention.  
[Citation omitted.] Once the trial court determines that  
the requisite interest exists, it must exercise its sound  
discretion to determine whether to permit intervention.  
In deciding this question the court should consider  
a number of factors, including the derivation of the  
interest, any pertinent contractual language, the size of  
the interest, the potential for conflicts or new issues,  
and any other relevant circumstance.

Second, the court must determine the parameters of  
the intervention... Thus, intervention should be limited  
to the extent necessary to protect the interests of all  
parties.

*Union Central Life Insurance Co. v. Carlisle*, 593 So. 2d  
505 (Fla. 1992); *Farese v. Palm Beach Partners, Ltd.*, 781 So.  
2d 419 (Fla. 4<sup>th</sup> DCA 2001).

An intervenor takes the case as he finds it and is bound by  
the record made at the time he intervenes. By this it is generally  
meant that he cannot avail himself of or urge mere irregularities  
in the proceeding which the original parties have expressly or

impliedly waived, or of defenses which are personal to them.  
Although the intervenor may not assert matters extraneous  
to his own interests, he may avail himself of any and all  
arguments which relate to derivation and extent of his own  
interests, whether or not these matters have been previously  
asserted by one of the original parties. *See, Bay Park Towers*  
*Condominium Ass'n v. H.J. Ross & Assocs.*, 503 So. 2d 1333  
(Fla. 3d DCA 1987); *Williams v. Nussbaum*, 419 So. 2d 715,  
footnote 1 (Fla. 1<sup>st</sup> DCA 1982).

**Affirmative Relief:** The court must specifically grant  
permission to the intervenor to assert claims for affirmative  
relief in the pending action. *See, Hoechst Celanese Corp. v.*  
*Fry*, 693 So. 2d 1003 (Fla. 3d DCA 1997). For example, in  
*Fidelity Philadelphia Trust Co. v. Ball*, 208 So. 2d 282 (Fla.  
3d DCA 1968), the court allowed the intervenor to file a  
counterclaim against the trustees. However, the counterclaim  
was limited to an action against the trustees in the capacity  
in which they brought the suit, and the trustees could not be  
sued in their individual capacities. Although the trial court  
has discretion to limit the extent to which intervenors may  
participate in a proceeding, when that limitation completely  
bars the intervenors from addressing their concerns, it is an  
abuse of the trial court's discretion. *See, Genauer v. Downey &*  
*Downey, P.A.*

**Post-Judgment:** Intervention is allowed after a final decree  
if it is required in the interests of justice and will not injuriously  
affect the original litigation. *See, Lewis v. Turlington*, 499  
So. 2d 905 (Fla. 1st DCA 1986). For example, in *Lewis v.*  
*Turlington*, 499 So. 2d 905 (Fla. 1st DCA 1986), a party was  
prohibited from intervening in the action where they attempted  
to do so 17 months after entry of the final order and eight  
months after it was affirmed on appeal, and where they raised  
new issues and sought different relief.



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



# 16th Annual View From The Bench

Dinner on Palm Beach with the  
Palm Beach County Probate Division Judiciary



Thursday, April 21, 2016

The Colony Hotel, 155 Hammon Avenue, Palm Beach

6:00 - 6:30 p.m. Registration and Cash Bar

6:30 - 8:30 p.m. Panel Presentation moderated by radio personality, Scott Greenberg

## JUDICIAL PANEL

Judges Martin Colin, Jessica Ticktin, Janis B. Keyser,  
John L. Phillips, and Howard K. Coates, Jr.



Have an issue or question you would like the judges to address?  
Email Eric Severson: [ers@burnsandseverson.com](mailto:ers@burnsandseverson.com)



Please select one of the following:

- \_\_\_\_\_ Chicken Marsala, Mascarpone Mashed Potatoes, Grilled Zucchini
- \_\_\_\_\_ Broiled Mahi-Mahi, Tropical Fruit Salsa, Rice Pilaf, Julienne Vegetables
- \_\_\_\_\_ Wild Mushroom Ravioli, with Golden Tomato Fondue, White Truffle Essence

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This course has been granted **2.5 CLER** and **certification credits of 2.5 hours in Elder law** from The Florida Bar. **Early registration cost** (including 1 complimentary drink) is **\$70.00** for PBCBA members/paralegals; **\$110.00** for non-PBCBA attorney members/paralegals if registered by 4/14/16; add \$20 to registration fee after that date.

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## Four Ways to Maximize Your Chances for a Successful Mediation (Before the Mediation Conference)

by Judge Lucy Chernow Brown (Ret.)  
Florida Supreme Court Certified Civil  
Circuit Mediator

After twenty-four years on the Circuit bench, followed by one busy year as a mediator, I have learned much more than how to transfer my skills to fit my new role. I have come to realize that the attorneys most likely to reach a satisfactory resolution to their case prepare early and effectively for success at mediation. We all know that roughly 95% of our civil cases resolve before trial. Why not make a commitment to successful settlement at mediation, by planning early for success?

(1) **Build your relationship** with opposing counsel from the beginning of the case in a manner that creates trust and respect, and enhances your credibility. Do not create hassles over the small stuff. Let your opponent know you are a formidable yet reasonable adversary. Establish a record of being forthcoming by sharing the essential discovery, resisting the urge to jump into an endless cycle of unnecessary motion practice. Share the information that will convince your opponent that there is a rational basis for damage calculations from your client's perspective. This will set the stage for a meaningful exchange of information as mediation actually approaches.

If appropriate for your particular case, consider information exchanges which, by agreement, are to be used only for mediation purposes. An Agreed Protective Order will help facilitate a meaningful settlement discussion.

(2) **Prepare your mediation brief** early enough to review it and give it some critical thought. Draft, edit, and redraft your analysis of the case. Frankly articulate each of the strengths as well as weaknesses of both your case and that of your opponent. Remember this is a confidential communication with your mediator, which forms the basis for you to confer,

consult and strategize before the mediation session to plan the most effective mediation presentation on each important point. Do not pass up this opportunity to clarify the crucial issues in your case, as well as any potential obstacles which must be overcome to reach resolution.

Consider bifurcating your brief, such that the analysis described above is strictly confidential, but the factual scenario from your client's perspective and your legal theories are shared with your opponent. Keep in mind that you are going to mediation to settle this case. This will also help create a positive atmosphere of collaboration to reach resolution. Of course, by the time you complete the brief, you should know your case so thoroughly that chances of surprises on the day of the mediation conference are minimized.

(3) **Make sure to schedule a confidential telephone conference** with your mediator after submitting your brief and any other important documents for the mediator to review. This presents an invaluable opportunity to collaborate with your mediator on how to use your most effective strategies. Your mediator can be an effective advocate for your position in caucus with the other side only if the mediator has a thorough understanding of your analysis of the case. It also gives you a chance to hear your mediator's view of how the judge and jury will respond to your client and your case. If your mediator is a retired judge, get the full benefit of her/his judicial analysis and experience in observing jurors' response to difficult cases like yours. Again, remember that your goal is to successfully resolve the case.

(4) **Prepare your client** early for the fact that the case is statistically unlikely to go to trial, that trial can truly be a "roll of the dice," that most attorneys have won cases they "should have" lost and lost cases that seemed like sure wins. Help your client see the benefit of early effective planning to achieve a successful settlement. Help your client to trust the process and to be prepared to consider your opponent's perspective of the case. While many clients often do not want to hear these things, your knowing when and how to start this discussion early will avoid the problem of unrealistic client expectations destroying chances for a successful resolution, avoiding the stress, risk and high costs of trial. Best of all for your client, maximizing chances for success at mediation creates certainty and closure in a confidential setting.

If you effectively plan for success at mediation, by spending the time to prepare **before** the mediation conference, chances are excellent that you will end the mediation, and the case, with success.

*Judge Lucy Chernow Brown (Ret.) served 24 years as Circuit Judge presiding over thousands of civil cases of all types. Since her December 2014 retirement Judge Brown has been active mediating and arbitrating cases, and working as a Court appointed Special Master/ Special Magistrate. A Florida Supreme Court certified Civil Circuit Mediator, Judge Brown is a Neutral associated with JAMS, the international ADR provider. She may be reached at lbrown@jamsadr.com or 561-329-1316.*

## LEGAL EXPO 2016

The Palm Beach County Chapter of the Association of Legal Administrators is holding its annual Legal Expo on **Thursday, March 3, 2016 from 3:30 p.m. until 6:00 p.m. at the Hilton Palm Beach Airport,** 150 Australian Avenue, in West Palm Beach.

Legal Expo 2016 is open to the public, including the entire business and legal community. This event allows vendors to showcase information about their services to law firms and other professional businesses within the community.

The theme for Legal Expo 2016 is "Hollywood Stars," so come dressed in your Oscar winning costumes! Food, fun, and prizes round out this informative event and admission and parking are FREE.

For more information, contact  
Gloria E. Hernandez, CLM  
geh@flappellatlaw.com  
www.pbcala.org

## Welcome New Members!

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

**Marni Lane Avidon:** Nova Southeastern University, 2009; Associate in Sirote & Permutt, Ft. Lauderdale.

**Sharon L. Azoulay:** University of Miami, 1989; Solo Practitioner, Miami.

**Michael Bacigalupi:** Florida International University, 2012; Legal Aid Society of Palm Beach County.

**Roger C. Brown:** University of Florida, 2007; Associate in Morgan & Morgan, P.A., West Palm Beach.

**Robert Rex Edwards:** University of Florida, 1988; Corporate Counsel in Robertson, Anschutz & Schneid, P.L., Boca Raton

**Carla Erskine:** Nova Southeastern University, 2013; Associate in Ciklin Lubitz & O'Connell, West Palm Beach.

**Audrey Louise Faw:** University of Florida, 2015; Associate in Lazer Aptheker Rosella & Yedid P.C., West Palm Beach.

**James P. Ferraro:** Stetson University, 2010; Solo Practitioner, Stuart.

**Nicole Amy Fisher:** University of Miami, 2006; Associate in The Law Office of Charles Jamieson, West Palm Beach.

**Elissa Fitzmartin:** University of Miami, 2012; Associate in Kogan & DiSalvo, Boynton Beach.

**Cheryl Yolanda Fletcher:** Barry University, 2015; Solo Practitioner, West Palm Beach.

**Steven Michael Forte:** Law Student Membership, East Lansing, MI.

**Brittani Sara Gross:** University of Miami, 2015; Associate in Rudolph & Associates, West Palm Beach.

**Stuart Lewis Hartstone:** Florida International University, 2010; Fifteenth Judicial Circuit, West Palm Beach.

**Hollie N. Hawn:** St. Thomas University, 1994; School Board of Palm Beach County.

**M. Katherine Heiserman:** Florida International University, 2012; Associate in WM Law Group, LLP, Miami Lakes.

**Robert Christian Johnson:** Florida State University, 2012; Office of the State Attorney, West Palm Beach.

**Adam M. Kay:** Michigan State University, 2011; Associate in Pike & Lustig, LLP, West Palm Beach.

**Virginia Randolph Kurtz:** University of Utah, 1998; Associate in Chapin Ballerano & Cheslack, Delray.

**Joshua A. Marcus:** Emory University, 2011; Associated with Crestar Group of Companies, Boca Raton.

**Sander L. Miller:** Nova Southeastern University, 2015; Solo Practitioner, Boca Raton.

**Monica D. Offredi:** Florida Coastal, 2012; Office of Criminal Conflict and Civil Regional Counsel, West Palm Beach.

**Hershley Oge:** Stetson University, 2013; Corporate Counsel in Law Office of Jeffrey Hickman, GEICO, West Palm Beach.

**Logan A. Pardell:** Cornell University, 2016; Associate in Wicker, Smith, O'Hara, McCoy, & Ford, P.A., West Palm Beach.

**Anita McNulty Parker:** University of Florida, 2012; Office of the Public Defender, West Palm Beach.

**Antoinette Simms Pollard:** Nova Southeastern University, 2015; Legal Aid of Palm Beach County.

**Carrie Rosato:** Florida State University, 2015; Fourth District Court of Appeal, West Palm Beach.

**Nina Christine Schmidt:** Florida State University, 2012; Associate in Cole Scott & Kissane, P.A., West Palm Beach.

**Michael H. Scott:** University of Connecticut, 2015; Associate in Walton Lantaff Schroeder & Carson, West Palm Beach.

**Kali M. Sinclair:** Florida State University, 2015; Associate in Cole Scott & Kissane, P.A., West Palm Beach.

**Michael D. Sloan:** Boston University, 2013; Associate in Carlton Fields Jorden Burt, P.A., West Palm Beach.

**Davina Suzanne Tala:** Nova Southeastern University, 2003; Associate in Rubinton Law, Jupiter.

**Bryan R. Weber:** Quinnipiac University, 2004; SBA Communications, Boca Raton.

**Michael S. Weiner:** University of Michigan, 1978; Partner in Weiner, Lynne & Thompson, P.A., Delray.

**Richard S. Weinstein:** New York University, 1963; Partner in Richard S. Weinstein, P.A., Jupiter.

**Ben J. Whitman:** Florida State University, 2013; Associate in Clark Fountain LaVista Prather Keen & Littky-Rubin, West Palm Beach.

**Ashley Williams:** University of Miami, 2015; Associate in Carlton Fields, West Palm Beach.

**Tania M. Williams:** Nova Southeastern University, 2002; Associated with Wilson Elser Moskowitz Edelman & Dicker, LLP, West Palm Beach.

**Lydia Worden:** St. Thomas University, 2013; Associate in Beaulieu Law Group, Delray Beach.

**Christy A. Yonta:** Florida State University, 2005; Amtrust Title Insurance Company, Boca Raton.

**Andy Zornosa:** University of Miami, 2015; Associate in the Edward D. Reagan, P.A., Stuart.

# WELCOME

### Save the Date

Young Lawyers Section  
Golf Tournament

Friday, May 13, 2016  
1 pm Shotgun Start

5:30 pm BBQ Dinner  
and Awards

Madison Green Country Club





# Real Property and Business Litigation Report



by **Manuel Farach**

**Buehrle v. City of Key West**, – F.3d –, 2015 WL 9487716 (11th Cir. 2015).

Tattoos are a form of speech protected by the First Amendment, and governmental zoning prohibiting tattoo parlors must meet comply with First Amendment requirements.

**Hiles v. Americare Home Therapy, Inc.**,

– So.3d –, 2015 WL 9491847 (Fla. 5th DCA 2015).

Referral sources are not a legitimate business interest, i.e., are not protected under Florida Statute section 542.335; conflict certified with *Infinity Home Care, L.L.C., v. Amedisys Holding, LLC*, 40 Fla. L. Weekly D2589b (Fla. 4th DCA Nov. 18, 2015).

**The Lake Hamilton Lakeshore Owners Association, Inc. v. Neidlinger**, – So.3d –, 2015 WL 9487589 (Fla. 2d DCA 2015).

The activities of a landowner may constitute a judicially recognized nuisance even if the activity is permitted by statute, regulation or ordinance.

**Ramos v. Cach, LLC**, – So.3d –, 2015 WL 9491850 (Fla. 5th DCA 2015).

Florida Statute section 559.715 (creditor assignees must give notice of the debt being assigned to them) does not establish a private cause of action.

**Messer v. Sander**, – So.3d –, 2016 WL 56338 (Fla. 1st DCA 2016).

Attorneys' fees are awardable under Florida Statute 704.01 for "unreasonable refusal to comply" to allow a statutory way of necessity under Florida Statute section 704.04.

**Overseas Investment Group v. Wall Street Electronica, Inc.**, – So.3d –, 2016 WL 64477 (Fla. 4th DCA 2016).

A contract that grants one party discretion in exercising a right is subject to the implied covenant of good faith, and whether the exercise is proper is a factual question.

**Purificato v. Nationstar Mortgage, LLC**, – So.3d –, 2016 WL 64331 (Fla. 4th DCA 2016).

Florida Statute 673.2041(1) merely requires that an allonge be affixed (not "firmly affixed" as in previous versions of the statute) to the promissory note, and an allonge that contains evidence of a clear intent that the note and the allonge were to be physically attached to each other is sufficient to establish a valid endorsement under the Uniform Commercial Code.

**Sill v. JP Morgan Chase Bank, N.A.**, – So.3d –, 2016 WL 67256 (Fla. 4th DCA 2016).

A new notice of default need not be sent in a foreclosure case when the previous dismissal was without prejudice.

**Miller v. Washington Mutual Bank**, – So.3d –, 2016 WL 72535 (Fla. 4th DCA 2016).

Both spouses must be foreclosed when property is owned by both husband and wife.

**One South Ocean Drive 2000, Ltd. v. One Ocean Boca, LLC**, – So.3d –, 2016 WL 72550 (Fla. 4th DCA 2016).

A receiver remains liable for breaches of fiduciary duty committed during their term of engagement, and may be sued even though discharged.

**Blake v. Ann-Marie Giustibelli, P.A.**, – So.3d –, 2016 WL 75000 (Fla. 4th DCA 2016).

Internet postings are not pure opinion, and may constitute defamation as libel per se still exists in Florida for non-media defendants.

**David v. Textor**, – So.3d –, 2016 WL 64743 (Fla. 4th DCA 2016).

On-line postings, especially regarding business matters, are not directed at specific persons and cannot constitute "cyberstalking" or "harassment" for purposes of Florida Statute sections 784.046 and 784.0485.

**Lucky Nation, LLC v. Al-Maghazchi**, – So.3d –, 2016 WL 67396 (Fla. 4th DCA 2016).

Collateral estoppel does not bar a quiet title action when the titleholder did not participate in the prior action, i.e., when there is no identity of parties.

**Orange County, Florida v. Buchman**, – So.3d –, 2016 WL 81661 (Fla. 5th DCA 2016).

A jury in an eminent domain proceeding is prohibited from making an independent determination of value, and must find a value within the ranges of expert testimony.

**In re Amendments to Florida Rules of Civil Procedure**, – So.3d –, 2016 WL 164134 (Fla. 2016).

The Florida Supreme Court approves modifications to the rules for filing residential mortgage foreclosure complaints so as to implement the changes required by the adoption of Florida Statute section 702.015, including requiring plaintiffs to state the basis for standing in the foreclosure complaint itself.

**Ridge Grove Condominium Association, Inc. v. Misserville**, – So.3d –, 2016 WL 166651 (Fla. 2d DCA 2016).

Florida Statutes section 718.111 (12)(c) allows a condominium association to adopt rules, including the requirement for an appointment, when providing members the right to copy association records.

**Moriber v. Dreiling**, – So.3d –, 2016 WL 145968 (Fla. 3d DCA 2016).

A party may not rely upon statements made during the litigation and made by litigation adversaries to establish new fraud claims against the adversaries.

**Save Calusa Trust v. St. Andrews Holdings, Ltd.**, – So.3d –, 2016 WL 145997 (Fla. 3d DCA 2016).

A restrictive covenant imposed by government as part of development order is not subject to and cannot be extinguished by the Marketable Record Title Act.

**Campbell-Ewald Co. v. Gomez**, – S.Ct. –, 2016 WL 228345 (2016).

An offer of settlement to a named class action plaintiff does not moot the case.

**Brandise v. U.S. Bank, N.A.**, Case No. 2D14-3316 (Fla. 2d DCA January 20, 2016).

The giving of notice of the assignment of a debt to a new creditor as required under Florida Statute section 559.715 is not a condition precedent to filing suit on the debt.

**Kotura v. Stern**, Case No. 4D15-1321 (Fla. 4th DCA January 20, 2016).

A defendant may commit a tortious act in Florida through telephonic, written or electronic communications sent into Florida, but the cause of action must arise from the communication.



## Be Careful What You Say In Argument

by Ted Babbitt

*Reynolds Tobacco Company v. Schoeff*, 40 Fla. L. Weekly D2477 (Fla. 4<sup>th</sup> Dist. Nov. 4, 2015) was an *Engle* progeny case tried in Broward County. The jury award \$10.5 million in compensatory damages

and \$30 million in punitive damages. Both sides appealed. The Fourth District considered only the defendant's argument that punitive damages were excessive and required a remittitur and the plaintiff's argument that because the jury found the defendant guilty of both negligence and an intentional tort that the comparative negligence finding of the jury that the plaintiff's decedent was 25% responsible should not result in a reduction of compensatory damages.

The trial court reduced the compensatory award based upon the plaintiff's comparative negligence but refused to grant a remittitur of the punitive damage award. The appellate court reversed the punitive damage award and required a remittitur and affirmed the trial court's reduction of the compensatory award based upon the percentage of comparative negligence found by the jury.

On the issue of whether the punitive damages were excessive, the court zeroed in on plaintiff's closing argument

During closing arguments in this phase, Plaintiff's counsel asked the jury to award Plaintiff \$25 million in punitive damages and no more. Specifically, counsel stated: "you may think that's too low, but we urge you not to go above that. Please do not go above 25 million. Do not. She doesn't want that. Do not go above that." Despite Plaintiff's urging, the jury returned a verdict assessing \$30 million in punitive damages against RJR.

The trial court, despite recognizing that there was no logical basis for the jury to award a larger amount than was requested by plaintiff's counsel, found that the verdict was "not affected by bias, prejudice, compassion, or any other sentiment against defendant" and thus denied the motion to remit.

The Fourth District cited the Supreme Court cases of *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996) and *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). Both cases have often been cited for setting an artificial ratio between punitive and comparative negligence. This writer argued to the contrary in his article in this Journal on July 18, 2013. In *Engle v. Liggett Group, Inc.*, 945 So.2d 1246 (Fla. 2006), the Florida Supreme Court held that there was no bright line standard as to the amount of punitive damage as compared with compensatory damages but observed that "single-digit ratios are more likely to comport with due process, while still achieving the State's goals of deterrence and retribution." *Engle* at 1264-265.

In *R. J. Reynolds Tobacco Company v. Schoeff*, the Fourth District reviewed other punitive *Engle* awards, the highest of which was \$25 million, the number urged on the jury by the plaintiff's counsel.

The award in Plaintiff's case (\$30 million punitive

award in light of \$10.5 million compensatory award, a 2.9 to 1 ratio) falls somewhere between the award affirmed in *Alexander* (\$25 million punitive award in light of \$10 million compensatory award) and the award reversed in *Townsend* (\$40.8 million punitive award in light of \$10.8 million compensatory award). In light of the \$10.5 million compensatory damages award, we hold that the \$30 million punitive damages award falls on the excessive side of the spectrum. At 2478.

The Court then reflects that regardless of whether the award was unconstitutionally excessive that a remittitur should be granted because plaintiff's counsel argument begged the jury not to award more than \$25 million in punitive damages and the trial court found there was "no logical or sound reason for the jury to have exceeded the award sought by counsel for Plaintiff." The court then reflected that that finding, in and of itself, compelled remittitur.

On the issue of compensatory damages, the court again zeroed in on plaintiff's arguments, including statements made in voir dire, opening statement and in closing argument where plaintiff counsel said no less than ten times that plaintiff's decedent had responsibility for his actions. The Court recognized that plaintiff's counsel argued that the acceptance of responsibility by the plaintiff's decedent applied only to the negligence claims and not the intentional torts, but the court concluded "Based on the overall theme of Plaintiff's representations to the jury, a reasonable jury would not possibly understand that its comparative fault determination was going to have no effect whatsoever on its compensatory damages award." At 2480.

Given that reasoning, the court then held at 2480 Under such circumstances, reversing would unfairly allow the Plaintiff to "have it both ways." It would be inequitable to allow Plaintiff to use "the admission that [Mr. Schoeff] was partly at fault as a tactic to secure an advantage with the jury throughout the trial" and then completely avoid comparative fault after the verdict. *Hiott*, 129 So. 3d at 481; see also *Green*, 40 Fla. L. Weekly D1809. Accordingly, we hold that the trial court did not abuse its discretion when it found that Plaintiff waived her intentional tort exception argument.

The court then discussed the case of *Merrill Crossings Associates v. McDonald*, 705 So.2d 560 (Fla. 1997) which held that the issue of whether Fla. Stat. 768.81 can be avoided in a case which includes a count for intentional tort depends upon whether the core of the case is a negligence case or an intentional tort case. The court holds at 2480

Merrill Crossings makes it clear that section 768.81 cannot be avoided simply because the action includes an intentional tort – rather the "entire action" must be

Continued on page 13



## Women's History Month and the Future of Women in Leadership Through the Eyes of Our Youth

by **Kalinthia Dillard**

As we celebrate Women's History Month in March, I reflect upon my seven-year-old daughter's inquiry as to why I did not tell her that two women were running for president of the United States. I do not make a habit of discussing politics with seven year olds, but I had to recognize that although only a child, she is keenly aware of the images projected on our television and the political commentary and debates between various family members. She followed her question with a declaration that "girls can be president" even though the poster of presidents in her room only shows "boys."

She is not old enough to understand the issues in a presidential race or to care about political parties, but she is watching and paying attention. I do not know when this country will elect its first female president, but I was encouraged and excited that someone as young as she is cares who we elect and that she believes there are no limits to what women can achieve. It is my responsibility to ensure that she does not succumb to the diminished confidence that often comes to 12 or 13 year old females after being convinced that fighting/throwing/acting 'like a girl' is negative.

So, I made a commitment to her and to myself that I will actively celebrate Women's History Month with her, not around her. I will dialogue with her and ask her opinion, not lecture her on dates and achievements of interest. Seven isn't too early to *Lean In*, right? March was first designated as 'Women's History Month' after the National Women's History Project, convinced Congress and the White House in 1987 of the need for our nation to celebrate and recognize women's role in history on an annual basis. The 2016 theme for Women's History Month is, "Working to Form a More Perfect Union: Honoring Women in Public Service and in Government."

Locally, women are doing tremendous things in public service and in government. Attorney Ava Parker recently became the first female president of Palm Beach State College, and Verdenia Baker was selected as Palm Beach County Administrator. Admittedly, the State of Florida has come a long way since Edna Fuller Giles was elected to the Florida House in 1929, Beth McCollough Johnson was elected to the Florida Senate in 1962, and Rosemary Barkett was appointed to the Florida Supreme Court in 1985. But, there is work to be done. On the state level, Florida, whose population is 51.1% women, has never had a female governor, and less than half of the justices that serve on the Florida Supreme Court (2 out of 7) and less than half of the elected officials in the Florida legislature are women (27 out of 120 members of the House of Representatives and 12 of the 40 members of the Senate).

We hope that through the efforts of local organizations such as the PBC Bar's CDI Committee's "Road to the Bench," FAWL's "Certification Boot Camp," and the Women's

Foundation's "Women on the Run," that more women will receive the support they need to reach their full leadership potential. Studies have shown that when more women are at the table, policies relating to women and children are more likely to be discussed and resolved. So, it is important that we become active in our communities; participate in the political process by voting and running for office; monitor the policies put forward by our elected officials that impact women, such as HB 7 (Employment Discrimination), HB 45 (Prohibited Discrimination), and CS/HB 101 (Violation of an Injunction for Protection); and recruit, equip, and support women interested in public service so that our state and nation can continue the journey to create a more perfect union. As John Howe always says, "diversity has no finish line." My daughter and her friends are paying attention to the adults to make sure that we are not just talking about equal opportunity, but that our actions show that we are educating girls and giving them the necessary tools they need to take advantage of the same opportunities available to boys- including one day being president of the United States of America.

*Kalinthia R. Dillard is the General Counsel for the Palm Beach County Office of the Inspector General*

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### Be Careful...

*Continued from page 12*

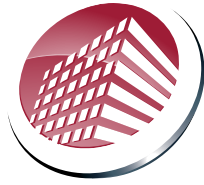
"founded on an intentional tort." Stated another way, the entire action must have an intentional tort "at its core."

The court then found that the core of this case was a products liability suit based upon negligence and, as such, required the application of the reduction of the compensatory award by the 25% comparative negligence found by the jury.

This case explains some of the core issues present in *Engle* progeny cases but also highlights the effect closing argument can have on an award.

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





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## Denying Performance of Conditions Precedent

by Matt Triggs and Jonathan Galler

Let's get specific. And let's do so with particularity. That's what rule 1.120(c) requires when denying the performance or occurrence of conditions precedent.

**(c) Conditions Precedent.** In pleading the performance or occurrence of conditions precedent, it is sufficient to aver generally that all conditions precedent have been performed or occurred. A denial of performance or occurrence shall be made specifically and with particularity.

In other words, as we previously wrote about in this column in May 2012, the rule imposes upon defendants a heightened standard for pleading the denial of an allegation that all conditions precedent have been satisfied.

But what does it mean to be plead a denial both "specifically and with particularity"? There may be no way of answering that question other than on a case by case basis, but a recent Second District opinion provides some guidance.

In *Deutsche Bank Nat. Trust Co. v. Quinion*, the Second District wrote that "to construct a proper denial under the rule, a defendant must, at a minimum, identify both the nature of the condition precedent and the nature of the alleged noncompliance or nonoccurrence."<sup>1</sup>

In *Quinion*, the plaintiff filed a residential foreclosure action and included a general allegation in its complaint that all conditions precedent had been completed or waived. The defendants denied that general allegation and further specified that "Plaintiff failed to give notice of the alleged default and an opportunity to cure," failed "to complete pre-foreclosure counseling with Defendants," and "failed to comply with the requirements of ... § 559.715, Fla. Stat."

The trial court entered summary judgment in favor of the defendants, concluding that the plaintiff had failed to comply with section 559.715. The Second District reversed, however, holding that the defendants' allegation with respect to that statute did not satisfy the heightened pleading standard of rule 1.120(c) because it merely alleged noncompliance with that statute.

The defendants contended that their pleading was made "specifically and with particularity" because in denying the plaintiff's general allegation, the defendants had identified a particular statute that, according to the defendants, contains only one condition precedent (the requirement that notice of an assignment be provided to the borrower). The Second District was not persuaded by that argument. "We do not believe the text of rule 1.120(c) supports an alternative pleading standard for claims where there is arguably only one discrete condition precedent at issue."<sup>2</sup>

Further, the Second District disagreed with the defendants' reading of the statute. The Court identified not one but three distinct conditions precedent embodied in section 559.715, any one of which the plaintiff could have potentially failed to satisfy: the requirement to provide notice of an assignment; the

requirement to provide such notice within 30 days of the assignment; and the requirement that the notice adequately inform the borrower of the assignment.

The Court held that the defendants' failure to allege specifically and with particularity which of those three conditions precedent the plaintiffs failed to perform "is the kind of pleading ambiguity rule 1.120(c) was meant to ameliorate."<sup>3</sup> Yes, the defendants had identified a condition precedent by identifying the applicable statute, but they had failed to identify the nature of the alleged noncompliance with that statute.

In our May 2012 column, we suggested that the corresponding federal rule, rule 9(c), appears to be applied less stringently than rule 1.120(c). The Eleventh Circuit, for example, has held that "the specific denial of performance of conditions precedent may be raised by motion as well as by answer."<sup>4</sup> Interestingly, however, the Second District rejected this very argument in *Quinion* (in a footnote). The Second District noted that the defendants may have attempted to clarify their position in a motion for summary judgment, but it held that "a statement in a motion for summary judgment could not cure the pleading deficiency" in their answer, which the defendants never sought to amend.<sup>5</sup>

Thus, Florida state courts continue to enforce rule 1.120(c)'s heightened pleading standards for defendants – demanding both specificity and particularity.

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

<sup>3</sup> *Id.* at \*3.

<sup>4</sup> *Associated Mechanical Contractors, Inc. v. Martin K. Eby Const. Co.*, 271 F.3d 1309, 1317 (11th Cir. 2001).

<sup>5</sup> *Quinion*, 2016 WL 166648 at \*3 n.2.



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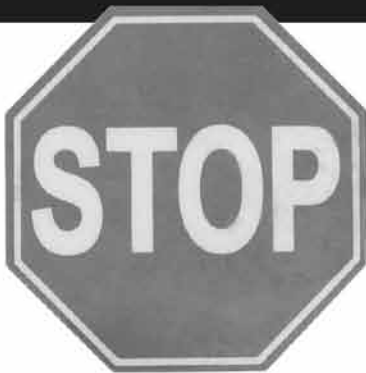
<sup>1</sup> 2016 WL 166648 (Fla. 2d DCA Jan. 15, 2016).

<sup>2</sup> *Id.* at \*2.

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## MISCELLANEOUS

Maureen B. Brooks was a resident of Boca Raton. She died on 12/1/2015. Her sister, Ann Egan, lives in Palm Coast, Florida. She has not been able to locate a will. Has any member of the Palm Beach County Bar drafted a will on behalf of Ms. Brooks? If so, please contact Diana at 386-445-9003. Law Office of Timothy M. Goan, P.A.

## OFFICE SPACE

**Sublease** – Law firm has available a lawyer's office with a secretary's cubicle located in Centurion Tower, 1601 Forum Place, West Palm Beach. Includes access to phone system, internet, copier/scanner, file space, conference rooms, and parking. \$1,500 per month. Contact Adam Rabin, 561-659-7878 or email [arabin@mccaberabin.com](mailto:arabin@mccaberabin.com)

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## Upcoming CLE Seminars

Your CLE Committee Chairs have been very busy at work planning live CLE seminars for our membership for this year. For more information about these seminars, please visit the Bar's website: [palmbeachbar.org](http://palmbeachbar.org) and click on the calendar icon at the bottom of the page. Also, don't forget, most of these seminars are also held live via webinar if you are not able to leave your office to attend in person.

March 3:	Business Litigation: Pre-Trial Issues
March 4:	Appellate Practice
March 9:	Solo and Small Firm: Business School for Lawyers CLE and Networking Reception
March 30:	Judicial Lunch: Evidence
April 7:	Securities
April 8:	Family: Agreements
April 11:	Business Litigation
April 15:	Workers' Compensation
April 21:	Elder Law: View from the Bench
April 22:	Local Rule 7.1, Local Rule 4 and Successful UMC Practice – Lunch and Learn
April 26:	Criminal Law
April 29:	Employment Law: ADA (Federal and Florida law)
May 9:	Estate & Probate Seminar
May 17:	Real Estate
May 18:	Privacy and Security for Law Firms
May 20:	27th Annual Community Association Law
May 23:	Bankruptcy Law

May 25:	Technology and ESI Discovery
May 26:	Judicial Lunch: Bias Discovery
June 2:	Appellate: Best Practices
June 23:	Judicial Lunch: Professional Decorum

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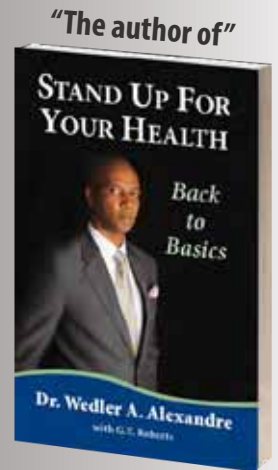


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### HEARSAY



The Elder Law and Special Needs Trust Attorney firm of Shalloway & Shalloway, P. A., of West Palm Beach, announces that **Allison Muney** has joined the firm. Allison earned her B. A. from Pennsylvania State University in 2002, her J. D. from Florida State University in 2005 and an LLM, a Masters Degree in Elder Law, from Stetson University College of Law in 2014. She is also an Accredited Veterans Administration Attorney.

The law firm of **Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin**, has been awarded the prestigious 2015 Litigator Award. This honor distinguishes the firm and its attorneys among the top 1 percent in the areas of medical malpractice, products liability, wrongful death litigation and spinal cord injury.

The 2016 edition of the *South Florida Legal Guide* names **Jones, Foster, Johnston & Stubbs, P.A.** as a "**Top Law Firm.**" Additionally, it names twelve Jones Foster lawyers as "**Top Lawyers.**" **Larry B. Alexander**, Real Estate, Finance, **David E. Bowers**, Labor and Employment, Trust and Estate Planning, **Margaret L. Cooper**, Labor and Employment, Corporate and Business Litigation **Mark Dahlmeier**, Real Estate, **Tasha K. Dickinson**, Trust and Estate Planning **Scott G. Hawkins**, Corporate and Business Litigation, Intellectual Property Litigation, **Thornton M. "Tim" Henry**, Trust and Estate Planning, Probate and Guardianship, **Joanne M. O'Connor**, Corporate and Business Litigation, **John C. "Skip" Randolph**, Government, **Sidney A. Stubbs, Jr.**, Corporate and Business Litigation, **Roberto M. Vargas**, Corporate and Business Litigation, Intellectual Property Litigation **H. Adams Weaver**, Eminent Domain Litigation, Real Estate

**Philippe Jeck**, the managing partner of the law firm of Jeck, Harris, Raynor & Jones, has been nominated for the 12<sup>th</sup> Annual Leadership Excellence Award presented by Leadership Palm Beach County. This award recognizes the recipient's living example of the vision and mission of Leadership Palm Beach County through his or her significant contributions made to improve the community.



Clark, Fountain, La Vista, Prather, Keen and Littky-Rubin announced attorney **Ben J. Whitman** has joined its growing practice. Whitman concentrates his

practice representing those who have been injured by the negligent actions of individuals, corporations and insurance companies with an emphasis on products liability and automobile negligence lawsuits.



Ciklin Lubitz & O'Connell, a West Palm Beach full service law firm, is pleased to announce that **Carla E. Erskine** has joined the firm as an associate in the Land Use, Zoning, and Governmental Law practice. She holds a J.D. from Northeastern University

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



**2015 Compressed Into One Hour:  
Everything You Wanted To Know About 2015  
Business Litigation Cases**



**Monday, April 11, 2016, 11:30a.m. – 1:00p.m.  
PBCBA, 1507 Belvedere Road, WPB**

**Program Schedule**

- 11:30 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 11:55 a.m. - 12:00 p.m. **Welcome & Opening Remarks** - *Kent Frazer, Esq., Akerman; Business Litigation CLE Committee, Chair*
- 12:00 p.m. - 1:00 p.m. **Speaker:** *Manuel Farach, Esq., McGlinchey Stafford; Board Certified in Business Litigation and Real Estate*

**Program**

A review of the most significant cases of 2015 as they affect business litigation practitioners, including topics such as the Business Records Exception to the Hearsay Rule, Consumer Protection Litigation, Foreclosures, Contracts and Damages, the evolving law of Defamation and Litigation Privilege in Florida, Landlord-Tenant, Johnson v. Davis claims and Guarantees.

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## Federal Criminal Defense



Tuesday, April 26, 11:30 - 1:00pm  
1507 Belvedere Road, WPB

### Program Schedule

11:30 a.m. - 12:00 p.m. **Lunch / Late Registration and Check In**

12:00 p.m. - 12:05 p.m. **Welcome - Opening Remarks** - Ron D. Herman, Esq., Herman Law, P.A.

12:05 p.m. - 1:00 p.m. **Guest Speaker:** Valentin Rodriguez, Esq., Valentin Rodriguez, P.A.  
Board Certified Criminal Trial Attorney

### Program

- Advancing theory and themes through opening to closing
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- What to expect in the proffer and what to avoid
- Pitfalls of "relevant conduct" in federal criminal cases
- Loss calculations in fraud and white collar cases

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



## Americans with Disabilities Act



Friday, April 29, 2016, 1:00 - 5:00 p.m.  
PBCBA, 1507 Belvedere Road, West Palm Beach

### Program Schedule

1:00 pm - 1:25 pm **Late Registration**

1:25 pm - 1:30 pm **Welcome and Introductions** - Dana Spader, Esq., Reid Burman Lebedeker  
Chair, Employment CLE Committee

1:30 pm - 2:30 pm **Overview of EEOC's evaluation of ADA cases** - Speakers TBA

2:30 pm - 3:30 pm **ADA in the Workplace; what is "a reasonable accommodation"** -  
Shayla Waldon, Esq., Akerman

3:30 pm - 3:40 pm **BREAK**

3:40 pm - 5:00 pm **ADA Title III, Public Access** - Laura L. Mall, Esq., Ford Harrison LLP

This course has been granted 4.0 CLER and 4.0 certification credits in Labor and Employment law from The Florida Bar. Enjoy an **"Early Bird"** discounted registration cost of \$ 100 for PBCBA members/paralegals; \$150 for non-PBCBA members/paralegals. After 4/22/16, add \$20 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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



The Palm Beach County Bar Association's Family Law CLE Committee in conjunction with  
The Susan Greenberg Family Law American Inn of Court of The Palm Beaches presents:



## Everything you need to know about Marital and Family Law Agreements in Florida



Friday, April 8, 2016 - 12:30pm - 5:30pm, Main Courthouse - Ceremonial Courtroom (11A)  
**LUNCH NOT INCLUDED**

### Program Schedule

12:30pm - 12:45pm **Late Registration and Check In**

12:45pm - 12:50pm **Welcome & Opening Remarks** - Abigail Beebe, Esq., The Law Office of Abigail Beebe, PA,  
Family Law CLE Committee Chair

12:50pm - 1:00pm **Importance of Drafting Agreements for Purposes of the QDRO** - Matthew Lundy, Esq.,  
Matthew Lundy Law

1:00pm - 1:40pm **Prenuptial & Postnuptial Agreements: Negotiating and Crafting Agreements to protect and  
provide for Distribution of Assets** - Jeffrey A. Weissman, Esq., Board Certified in Marital and  
Family law; Gladstone & Weissman, P.A.

1:40pm - 2:20 pm **Drafting Marital Settlement Agreements and Addendums: Fundamental Considerations every  
Marital and Family Law Attorney must know** - Benjamin T. Hodas, Esq., Board Certified in  
Marital and Family Law; Law Office of Benjamin T. Hodas, LLC

2:20pm - 2:30pm Break

2:30pm - 3:10pm **Tax Implications in Drafting All Agreements in Family Law** - Matthew Smith, CPA,  
Moore, Ellrich & Neal, P.A.

3:10pm - 3:50pm **Enforcement of Agreements in Florida- Marital Settlement Agreements v. Prenuptials:**  
Dori Foster Morales, Esq., Board Certified Marital and Family Law; Foster Morales Sockel Stone and  
Jane Kreusler-Walsh, Esq., Board Certified Appellate Attorney; Kreusler-Walsh, Compiani & Vargas, P.A.

*Strictly adhering to the Family law rules/statute; Best interests of children still need to be considered;  
Fair, Reasonable and Voluntary; Disclosures; Modifying terms*

3:50pm - 4:00pm Break

4:00pm - 4:40pm **Modifications of Agreements** - Judge John Philips; Standard in Florida

4:40pm - 5:30pm **Attacking Agreements in Florida - Panel Discussion:** Jeffrey A. Weissman Esq., Benjamin T.  
Hodas, Esq., & Dori Foster Morales, Esq. All Board Certified in Marital and Family Law and Jane  
Kreusler-Walsh, Esq., Board Certified Appellate Attorney

*Fraud, Failure to Disclose; Illegal and Void Provisions; Best Interests of Child*

5:30 - **Happy Hour** - Location TBA

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This course has been granted 5.0 CLER and 5.0 Marital and Family law certification credits from The Florida Bar. Early registration cost for the seminar is \$125 for PBCBA member attorneys/paralegals; \$175 for non-PBCBA member attorneys/paralegals if registered by 4/1/16; add \$20 late fee after that date. Checks should be mailed to PBCBA, 1507 Belvedere Rd., WPB., FL 33406. To pay by credit card, register online at [www.palmbeachbar.org](http://www.palmbeachbar.org). All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

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

## Local Rule 7.1 , Local Rule 4 and Lawyer Communication as a Critical Component for Successful Motion Practice

A CLE presented by the North County Section  
Moderated by Michael Gelfand, Esq.

Friday, April 22, 2016

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

Palm Beach Gardens Marriott, 4000 RCA Blvd., Palm Beach Gardens



Do you know what Local Rule 7.1 and Local Rule 4 requires of you in Federal and State Courts? Attend this one hour CLE Luncheon and find out what Judges are saying about these new rules. They'll also discuss: Civility and Professionalism; Standards of Conduct; Scheduling and discovery issues and disputes between parties. Plus, the Judges may reveal their pet peeves, so be sure to register and join us!

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KENNETH MARRA  
U.S. District Court



PETER BLANC  
Circuit Court



LAURA JOHNSON  
County Court



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**COST:** NCS members \$25.00 includes lunch & 1 General CLE Credit from The Florida Bar  
PBCBA members who are not NCS members are welcome for \$35.00

Price increases by \$10.00 after 5:00 p.m. on 4.19.16

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Send to: PBCBA, c/o NCS Luncheon, 1507 Belvedere Road, WPB 33406



Lunch sponsored by





The Securities Law CLE Committee Presents:



## HOLA!! The Revised Florida Arbitration Code, Hot Topics in Securities Arbitration & Litigation, Mock Arbitration-Liability & Damages in Closed-End Fund Cases

*April 7, 2016, 12:30p.m. - 6:00p.m.  
PBCBA Offices, 1507 Belvedere Road, WPB*

### Program Schedule

- 12:30 p.m. - 1:00 p.m. **Lunch, Check-in and Opening Remarks** - Robert Harvey, Esq., Jenks & Harvey LLP, Securities Law CLE Chairperson
- 1:00 p.m. - 1:30 p.m. **Case Law Update & Other Hot Topics** - Jonathan Butler, Esq., Akerman LLP
- 1:30 p.m. - 2:15 p.m. **Judicial Panel** - Moderated by Debra A. Jenks, Esq., Jenks & Harvey LLP  
U.S. District Court Judge Kenneth Marra, Southern District of Florida; Judge Meenu Sasser, 15th Judicial Circuit; and Judge Mark W. Klingensmith, 4th District Court of Appeal
- 2:15 p.m. - 2:30 p.m. **BREAK**
- 2:30 p.m. - 3:00 p.m. **FINRA Update** - Manly Ray, FINRA Southeast Regional Director, Boca Raton (FINRA Hot Topics, FINRA Dispute Resolution Portal, FINRA Role in Motions to Vacate Alleging Arbitrator Misconduct or Bias). Moderated by Kelly Shivery, McCabe Rabin, P.A., Florida Registered Paralegal
- 3:00 p.m. - 3:45 p.m. **Mock Arbitration** - University of Miami Law Students and The Investor Rights Clinic at the University of Miami will present legal arguments on liability and damages in Closed-End Fund Cases. Moderated by Teresa J. Verges, Director, University of Miami Law School of Law Investor Right Clinic
- 3:45 p.m. - 5:00 p.m. **FINRA Arbitrators' Rulings & Rationale and Open Q&A with FINRA Arbitrators**  
Moderated by Jeremy Colvin, Esq., McDonald Hopkins, LLC
- 5:00 p.m. - 6:00 p.m. **Happy Hour**

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This course has been granted **4.0 CLER and 4.0 Business Litigation credits from The Florida Bar**. Early Registration cost is \$100 for PBCBA members/paralegals; \$150 for non-PBCBA attorney members/paralegals if registered by 3/31/16; add \$20 late fee after that date. All refund requests must be made no later than 48 hours prior to the date of the seminar. ☐ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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



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☐ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (4/7/16 Securities 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**



The Palm Beach County Bar Association's Technology Practice Committee Presents:



## ESI Discovery for the Technologically Challenged PART 2 - E-Discovery Boogaloo



Wednesday, May 25, 2016, 11:30a.m. – 1:00p.m.  
PBCBA, 1507 Belvedere Road, WPB

### Program Schedule

- 11:30 a.m. - 12:00 p.m. **Late Registration / Check In / Lunch**
- 11:55 a.m. - 12:00 p.m. **Welcome & Opening Remarks** - *Amanda Kleinrock, Esq.,  
Legal Aid Society of Palm Beach County, Committee Chair*
- 12:00 p.m. - 1:00 p.m. **ESI Discovery** - *Andrew S. Kwan, Beasley Kramer & Galardi, P.A.*
- Understanding Servers, Databases, and the Cloud
  - The Care and Feeding of ESI Searches: Beyond the Keyword
  - Using Metadata for Fun and Profit
  - Forensic Examinations of Smartphones and Tablets

### SPONSORED BY:



This course is expected to receive **1.0 CLER** from The Florida Bar.

The **early registration** cost of the seminar is **\$25.00 (includes lunch)** for PBCBA members/paralegals; **\$75.00** for non-PBCBA members/paralegals if registered by **5/18/16**; add \$20 to registration fee after that date.

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

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

\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (5/25/16 Technology.) Cost is the same as listed above, in addition to \$10 for shipping and handling. **PAYMENT BY CHECK ONLY, WITH THIS FORM.**

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

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

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

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

City/Zip \_\_\_\_\_

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



The Workers' Compensation CLE Committee presents:

## Taxing Issues Concerning Case Management

Friday, April 15, 12:00pm - 6:00pm  
PBCBA, 1507 Belvedere Rd., West Palm Beach



### Program Schedule

- 12:00a.m. - 12:25 a.m. **Late Registration/Check In**
- 12:25a.m. - 12:30 p.m. **Welcome and Opening Remarks** - Jeffrey M. Friedman, Esq., Florida Bar Board Certified, Workers' Compensation, Workers' Compensation CLE Chairperson
- 12:30p.m. - 2:00p.m. **Heart and Lung Bill** - The Honorable Gerardo Castiello; Geoffrey Bichler, Esq., Bichler Kelley Oliver & Longo, PLLC; and Alan Kalinoski, Esq., Florida Bar Board Certified, Workers' Compensation, Dean, Ringers, Morgan & Lawton, P.A.
- 2:00p.m. - 2:50p.m. **Medical (TBD)** - Speaker TBA
- 2:50p.m. - 3:00p.m. **BREAK**
- 3:00p.m. - 3:50p.m. **PI/WC Interplay (Focus on Workers' Compensation Immunity and Liens)** - Speaker TBA
- 3:50p.m. - 4:40p.m. **Longshore/Jones Act** - Speaker TBA
- 4:40p.m. - 6:00pm. **Cocktail Reception and Presentation of the Kennie Edwards Award**

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**This course is expected to receive 4.0 CLER from The Florida Bar.** Early registration cost for the seminar is \$100 for PBCBA members/paralegals, \$150 for non-PBCBA members/paralegals if registered by 4/8/16; Add \$20 to registration fee after that date.

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## CALENDAR March 2016

Wednesday, March 2, 12 pm – 1 pm

**Transaction Law  
Committee Meeting**  
Bar Association Office

Thursday, March 3, 12 pm – 5 pm

**Business Litigation  
CLE Seminar**  
Bar Association Office

Thursday, March 3, 3 pm – 6 pm

**Palm Beach County Chapter  
of Associations Legal Expo**  
Hilton Palm Beach Airport

Thursday, March 3,  
5:30 pm – 7 pm

**NCS / PBCJA Happy Hour**  
Yard House

Friday, March 4, 8:30 am - 9:30 pm

**ADR Committee Meeting**  
Bar Association Office

Tuesday, March 8, 12 pm - 1 pm

**Circuit Civil Practice Committee**  
Judicial Conference Room

Tuesday, March 8, 12 pm - 1 pm

**YLS Board Meeting**  
Bar Association Office

Tuesday, March 8,

5:30 pm – 6:30 pm

**Hilton Hotel Event**  
Convention Center

Wednesday - Friday, March 9 – 11

**TFB Board of Governors**  
New Orleans

Wednesday, March 9, 12 pm – 1 pm

**FAWL Board Meeting**  
Bar Association Office

Wednesday, March 9, 3 pm – 5 pm

**Solo and Small Firm  
CLE / Mixer**  
ABACOA

Thursday, March 10, 8 am – 6 pm

**Estate and Probate  
CLE Seminar**  
Marriott – West Palm Beach

Thursday, March 10, 8 am – 6 pm

**New Attorney Seminar  
“Civility, Keeping Your Cool  
Under Pressure”**  
Bar Association Office

Thursday, March 10,

5:30 pm – 7:00 pm

**YLS Happy Hour**  
Copperpoint Brewery,  
Boynton Beach

Friday, March 11, 1 pm – 6 pm

**Family Law CLE Seminar**  
Bar Association Office

Monday, March 14, 12 pm – 1 pm

**Criminal Law  
Committee Meeting**  
Judicial Conference Room

Tuesday, March 15,

12 pm – 1:30 pm  
**NCS Board Meeting**  
Duffy's North Palm Beach

Tuesday, March 15, 12 pm – 1 pm

**CDI Committee Meeting**  
Bar Association Office

Wednesday, March 16,  
11:45 am – 1 pm

**FAWL Membership Lunch**  
Cohen Pavilion

Wednesday, March 16,  
12 pm – 1 pm

**Professionalism  
Committee Meeting**  
Bar Association Office

Friday, March 18, 8 am – 9 am

**CDI Breakfast Meeting**

Friday, March 18, 12 pm – 1 pm

**Federal Bar Ryskamp  
Award Luncheon**  
Kravis Center

Wednesday, March 23, 5 pm – 6 pm

**Board Meeting**  
Bar Association Office

Thursday, March 24, 5 pm – 6 pm

**YLS Passover / Easter Event**  
Quantum House

Friday, March 25

**Good Friday**  
Bar Association Office Closed

Wednesday, March 30,  
12 pm – 1 pm

**Judicial Lunch: Evidence**  
North County Courthouse

Thursday – Saturday,  
March 31 – April 2

**YLD Board of Governors**  
Key West