



## PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

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

May 2016

### Update:

## New Executive Director Search

A committee has been formed to lead the Bar's search for its first new Executive Director in 26 years. Patience Burns announced her retirement (effective September 1) in late February. The search committee is comprised of former PBCBA presidents Greg Coleman (Committee Chair), Jerry Beer, John Howe, Judge Lisa Small, and Jill Weiss. John Whittles (President-Elect) and Sia Baker-Barnes (President-Elect Designate) will join me as ex-officio members of the search committee. Patience will be serving as a consultant to the search committee. The search committee held its first meeting on March 31 during which the committee developed the framework within which the search will be conducted.

Grier Pressly, President

## Mark your calendar for upcoming Membership Events

### May 3:

Annual Judicial Reception

### May 7:

Legal Aid's Annual Pro Bono Recognition Evening

### May 10:

Law Day Luncheon with guest speaker former U.S. Attorney General Alberto Gonzales

### May 12:

North County Section's Annual Jurist of the Year Dinner

### May 13:

Young Lawyers Section Inaugural Golf Tournament

### June 11:

Annual Installation Banquet

### June 25:

Young Lawyers Section Fishing Tournament



## Alberto R. Gonzales to be Law Day Speaker May 10

Please join us as we host Alberto R. Gonzales as this year's Law Day Speaker. In addition to his keynote address, we will be honoring retiring 4<sup>th</sup> DCA Judge Matthew Stevenson, Circuit Judge Amy Smith and County Court Judge Barry Cohen.

Alberto R. Gonzales served as the 80<sup>th</sup> Attorney General of the United States from 2005-2007, appointed by President George W. Bush. Before entering public service, Judge Gonzales practiced business law for 13 years at the Houston law firm of Vinson & Elkins.

In 1995, he resigned his law partnership to serve as

General Counsel to the Governor of Texas. After three years, the Governor appointed Judge Gonzales as Texas Secretary of State. He was appointed to the Texas Supreme Court in 1999 and elected by the citizens of Texas to serve a full six-year term in the November 2000 general election. He served in the White House as Counsel to the President from 2001-2005.

Judge Gonzales is an Air Force veteran, and attended the U.S. Air Force Academy. He is a graduate of Rice University and Harvard Law School. Presently he is the Dean and Doyle Rogers Distinguished Professor of Law at Belmont University College of Law.

The luncheon will be held on May 10 from 11:30 – 1:00 p.m. at the Marriott West Palm Beach. Advance registrations are required by going to the Bar's website [www.palmbeachbar.org](http://www.palmbeachbar.org). Thank you to our sponsors for this event: Jack C. Massey Foundation, Sabadell United Bank and Esquire Bank.

## Whittles to be sworn in as President June 11

Please save the date and join us for the Bar's annual Installation Banquet scheduled for Saturday, June 11 at the Breakers Hotel in Palm Beach. This special evening is one of our largest and most well attended events of the year! John Whittles will be sworn in as the Bar's 94<sup>th</sup> president along with Sia Baker-Barnes as president-elect and directors Greg Huber, Dean Xenick, Jessica Mason, Scott Smith, Lee McElroy, Ned Reagan, Grasford Smith, Julia Wyda, Grier Pressly, Rosemarie Guerini and Ashley Wilson. Your printed invitation should arrive in your mailbox soon!

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THE  
**BULLETIN**  
PALM BEACH COUNTY  
BAR ASSOCIATION

JAMES GRIER PRESSLY III  
President

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

PATIENCE A. BURNS, CAE  
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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

## Jurist of the Year

presented by the North County Section

Join the North County Section for its  
14th Annual Jurist of the Year Reception and Dinner

DATE: Thursday, May 12, 2016  
5:30 p.m. – 7:45 p.m.

LOCATION: Ruth's Chris Steak House  
661 U.S. Highway One  
North Palm Beach

COST: \$65.00 for NCS members includes a cocktail reception and dinner  
with your choice of steak or chicken

Judges are complimentary

PBCBA members who are not Section members & spouses are welcome for \$75.00

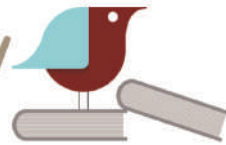
RSVP online today @ [www.palmbeachbar.org](http://www.palmbeachbar.org)

Previous recipients of this award include Judges Mary Lupo, Roger Colton, Peter Blanc, Thomas Barkdull, Barry Cohen, Jonathan Gerber, David Crow, Edward Fine, Jack Cook, Ron Alvarez, Richard Oftedal, Lucy Chernow-Brown and Kenneth Marra.

Cocktails and dinner sponsored to date by Esquire Bank,  
Sabadell United Bank and Visual Evidence



palm beach county  
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## Why Limit All the Fun to April One?

by Grier Pressly

While not an official national holiday, April Fools' Day is widely recognized and celebrated by Americans as a day to loosen up a bit while we play hoaxes on our fellow man. I suppose its primary purpose is to break the monotony of our lives while reminding us not to take ourselves so darn seriously. But if monotony and lack of humor are worth avoiding, isn't one day a year dedicated to tomfoolery and innocent mischief entirely insufficient? Particularly for the serious, and seriously stressed out lawyer? I believe so, and for that reason I am proposing that lawyers observe an expanded calendar of laugh-inducing holidays to get us through the entire year. Fortunately we have a ready selection to choose from. According to the unassailable "National Day Calendar" ([www.nationaldaycalendar.com](http://www.nationaldaycalendar.com)), the following holidays that I propose to spice up the lawyer's calendar are already being observed by segments of the American populace. Feel free to add your own.

**January 3: National Fruitcake Toss Day** – We need to make sport of our post-Christmas and New Year refrigerator cleansing.

**February 8: National Kite Flying Day** – Floridians are deprived of the opportunity to participate in Groundhog Day in February. Let's show our northern neighbors how much we are indeed enjoying the winter season by flying a kite at the beach during the heart of winter.

**March 18: National Awkward Moments Day** – To those with a healthy sense of humor, awkward moments are funny. See how many intentionally awkward moments you can create in a 24 hour period.

Note: You are encouraged to supplement your March calendar with National Get Over It Day on March 9, National Let's Laugh Day on March 19, and National Goof Off Day on March 22.

**April 23: National Talk Like Shakespeare Day** – Hopefully the judge before whom you are appearing on this day will have an appreciation for The Bard.

Note: If you are concerned that lima beans don't get enough respect, consider celebrating National Lima Bean Respect Day on April 20 with a dinner showcasing everyone's favorite frozen legume.

**May 14: National Dance Like a Chicken Day** – Because it never gets old.

**June 1: National Go Barefoot Day** – But watch your step.

**July 29: National Talk in an Elevator Day** – Why must everyone clam up in the elevator the rest of the year?

**August 4: National Chocolate Chip Cookie Day** – Try to incorporate a homemade chocolate chip cookie into every meal today. You'll be a happier person for it.

**September 19: Talk Like a Pirate Day** – Your clients will warm up to it after a few minutes.

**October 8: National Fluffernutter Day** – Mmmm..... peanut butter and marshmallow sandwich. An easy choice over National Bologna Day, celebrated by others on October 24.

**November, observed the day following Thanksgiving: You're Welcomegiving Day**

**December 16: National Ugly Christmas Sweater Day** – A crowd pleaser. Make sure that your whole office participates.

**December 18: Answer the Telephone Like Buddy the Elf Day** – Like Talk Like a Pirate Day, your clients will quickly warm up to it.

Caveat: This is a busy time of year so consider merging these two December holidays into one day. Bad Christmas sweaters and Will Ferrell definitely complement each other.

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## Be a Part of Law Week!

Speaking of marking your calendars with important dates, **Law Week is scheduled for May 2-6**, officially kicking off with the **annual lawyers vs. judges softball game on April 30**. Under the leadership of Law Week Committee Chair Heather Wallace-Bridwell, the Bar will be hosting a number of service activities benefitting the public throughout the week, including Dial-a-Lawyer, mock trials and speakers in schools, Shadow-a-Judge, and a suit clothing drive.

The Bar's **annual judicial reception will be held on May 3** at the Harriet Himmel Theater. Your involvement makes a big difference so please send an email to [lpoirier@palmbeachbar.org](mailto:lpoirier@palmbeachbar.org) to see if additional volunteers are needed for one or more Law Week activities. Also, mark your calendars for the Bar's annual **Law Day luncheon on May 10 featuring former U.S. Attorney General Alberto Gonzales**.

Phone: (561)659-4040

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

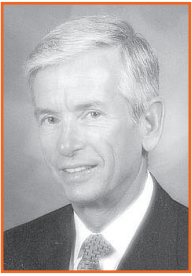
**NEW  
UPDATE**

## Update: Judicial Term Limit Legislation Fails

The Bar actively opposed the proposed legislation that sought to impose a two-term limit on Florida's appellate judges. The bill passed in the Florida House by a vote of 76-38. Fortunately, the Senate did not hear the bill this legislative session as it died in committee. However, members of the Bar are encouraged to keep a vigilant eye on this issue in the future because there is a good chance that the legislation will be reintroduced during next year's legislative session.

Grier Pressly, President





## Erisa Limitations on Subrogation

by Ted Babbitt

ERISA plans generally contain subrogation clauses that allow the plan to seek reimbursement for 100% of its expenditures when a plan participant obtains funds from a third party. In *Montanile v Bd. of Trs. of the Nat'l Elevator Indus. Health Ben. Plan*, 136 S. Ct. 651 (2016), the United States Supreme Court issued a surprising opinion holding that an ERISA plan has no right of subrogation if a plan participant spent the entire settlement fund on nontraceable items such as food and services.

In this case, *Montanile* was in a serious automobile accident with a drunk driver. The ERISA plan paid over \$120,000.00 for his medical expenses and demanded repayment when he obtained a \$500,000.00 settlement from the drunk driver and his own uninsured motorist carrier. The plan sought 100% reimbursement without regard to attorney's fees. *Montanile's* attorney refused to make the payment. The attorney sent a letter to the plan administrator informing him that after deducting attorney's fees and costs the remaining sum was held in the client trust account. The attorney informed the plan that unless he heard back within a short time, he was going to release the remaining funds to the client. Six months later the plan sued in Federal Court and was successful in the District Court in obtaining a judgment against the client for the entire amount of the medical expenses. Presumably the judgment could have been executed against *Montanile's* personal assets since there was no more money in the attorney's trust account. The Eleventh Circuit affirmed the District Court. The Eleventh Circuit held that even though *Montanile* had spent all of the money from the settlement, the fund was entitled to be reimbursed out of *Montanile's* general assets.

In an opinion authored by Justice Thomas joined by Chief Justice Roberts and Justice Scalia, Kennedy, Breyer, Sotomayor and Kagan, the Supreme Court reversed the Circuit Court. Justice Scalia joined in almost the entire opinion and only Justice Ginsberg dissented.

In this opinion the Supreme Court holds at Page 655

In this case, we consider what happens when a participant obtains a settlement fund from a third party, but spends the whole settlement on nontraceable items (for instance, on services or consumable items like food). We evaluate in particular whether a plan fiduciary can sue under §502(a)(3) to recover from the participant's remaining assets the medical expenses it paid on the participant's behalf. We hold that, when a participant dissipates the whole settlement on nontraceable items, the fiduciary cannot bring a suit to attach the participant's general assets under §502(a)(3) because the suit is not one for "appropriate equitable relief." In this case, it is unclear whether the participant dissipated all of his settlement in this manner, so we remand for further proceedings.

The Court, explained that the plan's cause of action was for equitable relief. If you trace the history of an equitable lien, it

is always applied against specific identifiable property. A right to enforce a contractual cause of action against general assets is not an equitable lien but is rather the enforcement of a legal remedy rather than an equitable one. By depleting the funds in an account segregating the amounts received from a third party, the Court found that the lien was eliminated. At Page 659, the Court cites the restatement section 2151 at 866 with the following emphasis

Where a person wrongfully dispose[d] of the property of another but the property cannot be traced into any product, the other . . . cannot enforce a constructive trust or lien *upon any part of the wrongdoer's property.*

At Page 659, the Court states

In sum, at equity, a plaintiff ordinarily could not enforce any type of equitable lien if the defendant once possessed a separate, identifiable fund to which the lien attached, but then dissipated it all. The plaintiff could not attach the defendant's general assets instead because those assets were not part of the specific thing to which the lien attached. This rule applied to equitable liens by agreement as well as other types of equitable liens.

ERISA § 502(a)(3) specifically authorizes plan fiduciaries to file suit "to obtain... appropriate equitable relief... to enforce... the terms of the plan." 29 U.S.C. § 1132(a)(3). The plan is limited to equitable relief only and because an equitable lien is eliminated once the assets subject to the lien are dissipated even the wrongful dissipation of the assets eliminates the lien and the right of subrogation disappears.

The plan made a reasonable argument that this opinion may be utilized to thwart the subrogation rights of ERISA plans by allowing a plan participant to dissipate assets obtained from a third party as quickly as possible before the plan can enforce its equitable lien. The Supreme Court rejected this argument because the plan failed to object within the fourteen days imposed by *Montanile's* attorney and waited six months to attempt to enforce its lien.

Implied in the opinion of the Court is the admonition that if the recovered settlement assets were intermingled with the general assets of the plaintiff, the opinion of the court might well have been different. Nevertheless, if the assets are kept in a separate settlement fund by the plaintiff and dissipated before the lien can be enforced, this case holds that the right of subrogation of the ERISA plan disappears even though the dissipation was intentional to eliminate the subrogation right.

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.

# How to Find the Right Financial Advisor for You.



**by Kelly Shivery,  
ACP, FRP**

Are you just starting to invest and ready to open your first brokerage account? Are you unhappy with your current broker? Here are some tips from the Financial Industry Regulatory Authority (FINRA) on how to find the right financial advisor and brokerage firm.

## Ask for Recommendations

Talk to your friends and family members about who they invest with and for how long. Ask them specific questions about their broker such as the kinds of services they were provided, whether the broker communicates with them regularly, and have they had any problems or “bad experiences” with either the broker or his/her brokerage firm? Don’t hire a broker just because he or she came highly recommended, and don’t stop when you get one name. Try to compile a list of at least 5 potential broker candidates.

## Research the Broker Candidates

Once you have compiled a list of broker candidates, do your homework. Make sure that the individuals and their firms are registered. Individuals and companies that are authorized to buy and sell stocks, bonds, and other securities, i.e. “stockbrokers” and “brokerage firms” are required to be registered with FINRA. Most investment advisers and their firms must be registered with either the Securities and Exchange Commission (SEC) or the state they operate in. It is possible for an individual to be both a stockbroker and a Registered Investment Adviser.

Start your research by reviewing the BrokerCheck Report for each individual on the list. BrokerCheck will tell you what licenses an individual holds, his or her work history, any prior customer complaints or criminal convictions, and the states in which the individual holds a securities license. Look for potential red flags such as frequently changing brokerage firms or many customer complaints, and make sure the broker is licensed in the state in which you live.

FINRA’s BrokerCheck database

(<http://brokercheck.finra.org/>) will allow you to search for both stockbrokers and investment advisers that are registered with the SEC. If an individual is not found in BrokerCheck, it is possible that he or she is only registered with a state securities regulator. The Florida Office of Financial Regulation’s database is available at <http://www.flofr.com/StaticPages/VerifyALicense.htm>. A complete list of state regulators is available on the North American Securities Administrators Association’s website that can be found at <http://www.nasaa.org/about-us/contact-us/contact-your-regulator/>.

If a candidate is not found on either BrokerCheck or a state securities regulator’s website, he or she may not be licensed.

## Interview the Finalists

Once you have narrowed down the list to a few lucky finalists, interview them – preferably in person. Having a good rapport with the person handling your hard earned money is essential. If you get a bad vibe from him or her, you should probably consider moving on to someone else. Just because the broker may get along with one of your friends or relatives does not mean he or she is a good fit for you.

Ask all of the candidates about their background, the licenses they hold, and if they have had any disciplinary actions or customer complaints. Make sure their answers match up with their BrokerCheck reports.

Inquire about the types of products and services they offer. Are there types they don’t offer?

How do they get paid? What fees and expenses does their firm charge? Is there a minimum account balance? What is their investment philosophy? How often do they meet with their clients?

Remember that the investment professional you hire works for you! Don’t hire someone who evades your questions, or who you don’t feel comfortable questioning. If you don’t understand something, ask for more information. It’s your money at stake.

## Conclusion

Be circumspect about any brokers who are referred to you, or who seek you out. Don’t hire a financial advisor just because

he or she was recommended. Don’t pick a stockbroker solely on the basis that he or she is a member of the same church/synagogue/mosque as you. Don’t blindly hire someone because they are nice and “seem” trustworthy. Be skeptical. Do your homework. Charismatic and friendly does not always equal financially competent or honest. After all, I heard Bernie Madoff was a really nice guy.

*Kelly Shivery, a Florida Registered Paralegal member of the PBCBA, is with the firm McCabe Rabin, P.A. She holds an Advanced Paralegal Certification in Alternative Dispute Resolution and is a former Senior Arbitration Administrator for the Financial Industry Regulatory Authority (FINRA) in its Boca Raton office. She has also been an Associate Editor of the PIABA Bar Journal since 2014.*

**YLS Golf Tournament**  
**May 13 at 1:00 p.m.**  
**Madison Green Golf Club**  
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## A Debtor's Membership Interest in a Multi-Member LLC, What Does A Trustee Receive?

by Jason S. Rigoli

A debtor's equity interest in a business becomes property of the bankruptcy estate upon the filing of the debtor's petition, pursuant to Section 541(a)(1) of the Bankruptcy Code.<sup>1</sup> Stock certificates or other security instruments, which are personal property of the debtor, generally represent the debtor's equity interest in a business. An interest in a Limited Liability Company ("LLC") is no different; as such, a debtor's interest becomes property of the bankruptcy estate. The question for the Trustee is, to what extent?

### Florida Revised LLC Act

In 2014 Florida enacted the *Florida Revised Limited Liability Company Act* (the "**Revised Act**"),<sup>2</sup> which made several significant changes to the structuring and operation of LLCs and the duties and obligations of the LLC's members. Pertinent to this discussion, however, are the functions of becoming a member and dissociation. LLCs are creatures of contract, under an operating agreement,<sup>3</sup> and governed by statute.<sup>4</sup> One big advantage of the LLC form is the restrictions on the voluntary or involuntary transfer of interests by members.<sup>5</sup> These restrictions are at the heart of the discussion when determining to what extent a debtor's membership interest becomes property of the estate.

Two ways that a member's interest may be transferred are: (i) an actual transfer or (ii) dissociation. The Revised Act requires unanimous consent for a person to become a member after formation.<sup>6</sup> A transfer by a member can only transfer that member's economic interest.<sup>7</sup> A transferee is not entitled to participate in management of the LLC.<sup>8</sup>

Dissociation is where a member has withdrawn, or is terminated, as a member of the LLC voluntarily or upon the occurrence of a pre-determined event.<sup>9</sup> Upon the dissociation of a member, that member becomes a transferee of its previous interest in the LLC.<sup>10</sup> One event that triggers the dissociation of a member is that member's filing for bankruptcy.<sup>11</sup>

After the Florida Supreme Court's decision in *Olmstead v. Federal Trade Commission*,<sup>12</sup> the Florida Legislature passed what is commonly referred to as the "*Olmstead Patch*."<sup>13</sup> The *Olmstead Patch* clarifies that a charging order is the sole and

exclusive remedy afforded a judgment creditor of a member of a multi-member LLC.<sup>14</sup>

### What Does A Trustee Receive?

It would appear that upon a member filing for bankruptcy the bankruptcy estate, trustee, is left with nothing of economic value to administer. The question becomes, whether all of the restrictive provisions in the Revised Act, and any restrictive provisions in an operating agreement are enforceable in bankruptcy.<sup>15</sup> Section 541(c)(1) of the Bankruptcy Code provides that a debtor's interest in property is determined without giving effect to any agreement or nonbankruptcy law that is conditioned on the bankruptcy filing or effects forfeiture, modification or termination of the debtor's interest in that property.<sup>16</sup>

Where there is an Operating Agreement in place, this is not the end of the analysis. A determination must be made as to whether the Operating Agreement constitutes an executory contract, making Section 365(c) and (e) applicable. This gives rise to a new conflict within Section 365, wherein subsection (c) permits the enforcement of state and contract law restrictions on the trustee's acquired rights and powers, where it affects the remaining members and requires their consent, and subsection (e) nullifying any *ipso facto* clause "modify[ing] or terminat[ing] any right or obligation of the debtor under the contract solely conditioned on the filing of a petition in bankruptcy."<sup>17</sup>

### Conclusion

There is sparse case law on the issue of a trustee's interest in a multi-member LLC and the case law is non-existent under the Revised Act. Several questions remain in determining what interest a trustee receives. Among them are: (i) How does a trustee receive a debtor's interest in property (as assignee or does a trustee "become" the debtor)? (ii) Whether the limiting provisions included in the Revised Act are preempted by the Bankruptcy Code? and (iii) whether an operating agreement constitutes an executory contract?

*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)*

1 11 U.S.C. §541(a)(1)

2 Fla. Stat. §§ 605.0101 *et seq.*

3 An operating agreement need not be in the form of a writing, the definition of operating agreement under the Revised Act is extremely broad. *See* Fla. Stat. § 605.0102(45).

4 *See, Revised Act*, generally. *See also*, Fla. Stat. §605.0105.

5 The focus in this article will be on the statutory language because operating agreements can drafted to include any language agreed upon by the parties, subject to Fla. Stat. § 605.0105.

6 Fla. Stat. § 605.0401(3)(c).

7 Fla. Stat. § 605.0502.

8 *Id.*

9 *See*, Fla. Stat. §§ 605.0601 and 605.0602.

10 Fla. Stat. § 605.0603(1)(c).

11 Fla. Stat. § 605.0602(8)(a)

12 44 So.3d 76 (Fla. 2010)

13 Subsections (4) – (9) of Fla. Stat. § 608.433(2011).

14 The Executive Committee of the Florida Bar Florida Revised LLC Act Drafting Committee, *White Paper for the Florida Revised Limited Liability Company Act*, p. 2.

15 *See*, U.S. Const. Art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

16 11 U.S.C. § 541(c)(1). *See, e.g. In re Ellis*, 2011 WL 5147551 (Bankr.

S.D.Ind. 2011); *In re Lahood*, 437 B.R. 330, 335-36 (Bankr C.D.Ill 2010)

17 11 U.S.C. § 365(e)(1)(B).

### Bankruptcy Law Seminar

"The New Bankruptcy Forms, Petition, Schedules and SOFAs"

June 28, 11:30 a.m. - 5:30 p.m.

Bar Association Office



## The Finer Points of Professionalism

by Kristi Bergemann Rothell

On Behalf of the Professionalism Committee

We, as lawyers, are no doubt familiar with some of the basic requirements of professionalism. They are not much different from some of the most basic societal expectations that we have been learning since preschool: be nice, tell the truth, and arrive on time.

However, some of the requirements of the various documents prescribing professionalism and civility in our practice are perhaps less obvious. These are the requirements that necessitate attention and vigilance in our daily routines. However, even many, if not all, of these resemble behavior that is expected or appreciated in our lives beyond work.

### *Standards of Professional Courtesy and Civility (Palm Beach County Bar Association)*

- **When scheduling depositions or hearings: “sufficient time should be reserved to permit a complete presentation by counsel for all parties.”** (I. Scheduling, ¶ 2; *see also* Professionalism Expectations, 3.12). It is not simply a matter of getting a motion set for hearing so that our client’s position may be considered. We must put ourselves in the shoes of opposing counsel and consider how long he or she will need to respond and convey the position of his or her client as well. Be considerate and share.
- **“Attorneys...should impress upon their clients and witnesses the need to be courteous and respectful and not rude or disruptive with the court/tribunal, opposing counsel, parties and witnesses.”** (III. Conduct, ¶ 2; *see also* Professionalism Expectations, 5.1). We are the company we keep. Not advising our clients about appropriate behavior, especially crucial because they are often highly emotionally invested in their cases, casts both them and us in a negative light. Plus, very seldom is crude behavior likely to get positive results. It is not enough to be nice – we must expect, inspire, and help others to be nice as well.
- **“Attorneys and their staff should...b) be selective in inquiries posed to judicial assistants as their time and resources are limited, and c) familiarize themselves with the court’s administrative orders, local rules and each judge’s published standing orders, practices and procedures.”** (III. Conduct, ¶ 5; *see also* Professionalism Expectations, 4.1). These two go hand in hand. Only if the answer is not available in the court’s published procedures, or we have an extremely unique circumstance, should we need to contact a judicial assistant. We must do our homework.
- **“Where revisions are made to an agreement or other document, attorneys should point out, redline or otherwise highlight any such additions, deletions or modifications for opposing counsel.”** (IV. Candor, ¶ 6; *see also* Professionalism Expectations, 2.8). We cannot simply feel accomplished when we have completed revising a document, such as a proposed order or settlement agreement, in which opposing counsel has a say. We may be busy and need to move on to the next task, but opposing counsel will likely

be busy when reading the revised document as well. Provide a roadmap to streamline review and ensure accuracy. We would want to be shown the same courtesy – “do unto others as you would have them do unto you.”

### *Professionalism Expectations (The Florida Bar)*

- **“A lawyer must devote professional time and resources and use civic influence to ensure equal access to our system of justice.”** (1. Commitment to Equal Justice, 1.12). We are not lawyers only when we are being lawyers. We are lawyers in all aspects of our lives and must always responsibly promote the profession and its laudable goals. It can be as simple as taking the time to explain the judicial system and the challenges it faces to a friend or neighbor. Be proud and have passion.
- **“A lawyer should use formal letters or e-mails for legal correspondence and should not use text messages to correspond with a client or opposing counsel unless mutually agreed.”** (2. Honest and Effective Communication, 2.6). Appearances matter and we should want to appear professional. Text messages may seem perfunctory and as if we cannot devote sufficient time to draft more formal correspondence. Plus they pose technical problems, such as auto-correct changing our intended text (perhaps to something quite undesirable) and difficulty saving to a client file. Take the time.
- **“A lawyer must not inappropriately communicate with a party represented by a lawyer, including not responding ‘reply all’ to e-mails.”** (2. Honest and Effective Communication, 2.11). The devil is in the details. We probably never thought of this as one of the many potential dangers of “reply all.” Nonetheless, it is best to not include others on e-mails to clients to avoid inadvertent disclosures of confidential or sensitive information and to minimize the risk of “reply all” errors by others. Pause, take care, and be detail-oriented.
- **“A lawyer should counsel a client or prospective client, even with respect to a meritorious claim or defense, about the public and private burdens of pursuing the claim as compared with the benefits to be achieved.”** (7. Independence of Judgment, 7.2). Winning is not everything. Seeing a case to a successful settlement or resolution by trial often literally entails blood, sweat, and tears for all involved. Clients will be required to give up their time (and often the associated income) to attend depositions and hearings, feel the stress of being called upon to testify, and place their resources at stake to pay their attorney’s fees (and perhaps those of the opposing party if they lose). Have the hard conversation up front. This will allow us and our happy clients to fully appreciate victory, whether small or great.

*Kristi Bergemann Rothell is an associate with Methe & Rockenbach, P.A. in West Palm Beach.*



## Indispensible Parties To An Action To Set Aside Inter Vivos Transfers

by David M. Garten

An estate is **not** an indispensable party to an action to set aside an inter vivos transfer. *See, Parker v. Parker*, 2016 Fla. App. LEXIS 1441 (Fla. 4th DCA 2/3/16).

In *Parker*, the decedent's children from a former marriage sued in the civil division to vacate certain inter vivos transfers by their father to their half-brother fifteen days before his death. Their allegations included tortious interference with inheritance, unjust enrichment, and replevin to recover the properties as well as certain personal possessions and documents belonging to the decedent. The trial court dismissed their complaint with prejudice for failure to join the decedent's estate as an indispensable party to the action pursuant to §733.607, F.S. The children subsequently notified the trial court that they had opened the estate and requested permission once again to amend the complaint. Specifically, they sought leave to add the PR and to transfer the case to the probate division for resolution. The trial court denied their motion without explanation.

The appellate court reversed the dismissal with prejudice and held that because the decedent transferred the subject properties prior to his death, the estate is not an indispensable party pursuant to §733.607, F.S. The court reasoned that this statute clearly states that a personal representative has rights to property that remains in the decedent's possession at death. However, the subject properties at issue were not part of the decedent's estate at the time he died because they had already been conveyed inter vivos. In addition, the court cited to numerous cases where the courts permitted a party to pursue claims to set aside inter vivos conveyances based upon allegations of undue influence without requiring that the decedent's estate be joined as a party to the suit.

**Comments:** Does *Parker* absolve the PR of a duty to investigate and possibly recover inter vivos transfers? How do you reconcile §733.607 with §733.309 which reads in part:

"...any person taking, converting, or intermeddling with the property of a decedent shall be liable to the PR or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by the wrongful action."?

In my article "Defenses To A Claim For Tortious Interference With An Expectancy In Probate & Trust Proceedings" (August 2013 issue), I discussed the following two defenses that could be raised in response to a claim for tortious interference with an expectancy:

1. Have you exhausted your probate remedies? If adequate relief is available in the probate proceeding, you must exhaust your probate remedies before a tortious interference claim can be pursued. *See, DeWitt v. Duce*, 408 So. 2d 216 (Fla. 1981).

2. Is your claim ripe? In *Children's Hospital, Inc. v. Owens*, 754 So.2d 802 (Fla. 2nd DCA 2000), appellants were eight of twenty-eight charities among the residual beneficiaries of decedent's will. Appellant/charities filed a civil suit against the decedent's caretaker for a constructive trust and tortious interference. The caretaker was granted summary judgment. The appellate court affirmed, finding that if the charities could ever pursue a claim for tortious interference, the claim had not yet accrued because the estate administration was still pending, so the charities had not yet been damaged. The court also concluded that any attempts to retrieve estate property from the caretaker should be left to the administrator ad litem through proceedings in probate because the administrator ad litem can pursue claims for the benefit of all recipients under the will and that the charities' action either duplicates those efforts or is an attempt to gain an advantage over the other beneficiaries.

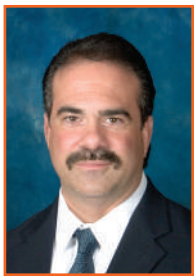
Does *Parker* eliminate these as potential defenses?

On February 27<sup>th</sup>, Steve & Zoe Greenberg opened their home for a cocktail reception in support of the Legal Aid's Pro Bono Recognition Gala. More than 120 people attended the evening which included poolside cocktails, hors d'oeuvres, music, and tours of the Greenberg's beautiful home. Pictured to the right are Anatole Conde, Judge Lisa Small, Robin Bresky and Jonathan Mann.

Photo by Tracey Benson  
Photography







## Preparing For Mediation Involving Insurance Adjusters

*By William Cea, on behalf of the ADR Committee*

Preparing for mediation with a participating insurance company presents opportunities as well as challenges.

Recognizing the adjuster's perspective well in advance of the mediation is critical. Unlike individual parties that may have the ability to make decisions on the spot, insurance companies make decisions in advance. Consequently, the amount of insurance coverage may be vastly different than the "amount of money" the adjuster is authorized to offer.

The claimant and the insured party have a shared interest in making sure sufficient analysis of coverage, and claim evaluation has occurred prior to the mediation. From the claimant's standpoint, has the insurer been provided the relevant documents, facts, and damages calculations needed to evaluate the claim? From the insured's standpoint, you cannot expect the insurer to settle the case on your behalf without a thorough analysis.

For example, in the context of a construction defects case, there are a number of issues that the insurer must evaluate. First, for most contractor's policies, the insurer needs to establish a date of loss to determine which policy is triggered. General liability policies are typically occurrence based, meaning that the damage or injury must have occurred during the policy period. For claims made policies, it would be the date that the claim is actually made that would trigger the policy.

Next, the insurer needs to make a coverage determination.

Coverage for the claim is different than the duty to defend. Just because there is an insurer paying for the defense of a claim, it does not mean that they have determined that there is coverage for the claim itself. It is critical to recognize the distinction. As anyone who has read a policy knows, they contain a laundry list of exclusions that the claimant needs to review, and the claimant needs to understand what claims are covered in order to prepare for the mediation. (i.e. there may be coverage for property damage caused by water intrusion, but not defective workmanship).

Additionally, the insurer needs to have sufficient information to assess the extent of the damages. If the claim alleges damages to an entire building, then providing damages limited to a particular portion of the building may not be good enough. Further, has there been an analysis or expert testimony as to the scope and cost of repairs that will be necessary to provide a quantification of the claim? If the insurer does not have this information, the adjuster attending the mediation may have little or no actual authority to settle the claim. This can obviously lead to frustration for all parties involved.

Accordingly, the parties have a shared interest in making sure that the assigned adjuster is armed with all relevant information, and comes prepared to meaningfully negotiate and resolve the claim. It simply will not be good enough to make general allegations and provide superficial documentation or evidence of the claim. Counsel for both parties should pay particular attention to coverage issues in preparing for mediation. Indeed, the parties will often expect that if an adjuster is present, the insurer has authorized payment. This is a risky assumption to make. Finally, clients may be highly disappointed with the process if the first time they learn about coverage issues or a lack of documentation is the day of mediation.

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### Dismissal of Actions and Enforcement of Settlement Agreements

By Matt Triggs and Jonathan A. Galler

*You're still here? It's over. Go home. Go.<sup>1</sup>*

When Ferris Bueller famously delivered that line after the credits finished rolling, he was, of course, speaking to the audience. The movie was over and the audience no longer had any business hanging around the theater.

When the Second District recently expressed a *somewhat* similar sentiment, the Court was speaking to litigants about stipulations of voluntary dismissal under rule 1.420(a). Upon the filing of such a stipulation, the case is over and the litigants no longer have any business hanging around the courthouse.

In *Dandar v. Church of Scientology Flag Service Organization, Inc.*, the parties executed a settlement agreement, in which the plaintiff pledged that he would not be involved in any adversarial proceedings against the defendant under any circumstances at any time. *Dandar*, 2016 WL 802016 \*1 (Fla. 2d DCA Mar. 2, 2016). In accordance with the terms of the settlement agreement, the parties executed a voluntary dismissal with prejudice. No order was entered by the trial court regarding the dismissal or the settlement agreement.

Five years later, the plaintiff did get involved in another adversarial proceeding against the defendant. This prompted the defendant to file a motion, in the court that presided over the prior lawsuit, to enforce the parties' settlement agreement and to seek damages against the plaintiff.

The plaintiff argued that the court lacked jurisdiction to enforce the settlement agreement. The trial court rejected this argument, finding that it had jurisdiction based on the language of the settlement agreement itself, which provided that "[t]he circuit court in the wrongful death action shall retain jurisdiction to enforce the executory terms of this Confidential Settlement Agreement which shall be filed under seal if enforcement becomes necessary." *Id.*

The Second District, however, reversed. "We conclude that the filing of the voluntary dismissal divested the trial court of jurisdiction, and the parties' settlement agreement could not confer jurisdiction on the trial court." *Id.* As the Court explained, a stipulation of voluntary dismissal under rule 1.420(a) allows for dismissal of the action without approval of the trial court. Thus, "[t]he voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the case on the merits, and to preclude revival of the original action." *Id.* \*2 (citing *Pino v. Bank of New York*, 121 So. 3d 23, 32 (Fla. 2013)).

So if a litigant is not welcome back in court, so to speak, upon the filing of a stipulation under rule 1.420(a), how can he or she provide for the court to retain jurisdiction to enforce a settlement agreement?

Fortunately, the Second District addressed that question. The Court noted the exception to the rule, which occurs "when the parties present their settlement to the trial court and the

<sup>1</sup> See Matthew Broderick, *Ferris Bueller's Day Off* (1986); see also Semisonic, *Closing Time* ("You don't have to go home, but you can't [pause] stay [pause] here.") (1998).



court incorporates or relies upon that settlement agreement and enters an order dismissing the case

based on the parties' agreement." *Id.* \*2. In such circumstances, the trial court has jurisdiction over a motion to enforce the settlement agreement because the court has "inherent and continuing power to enforce its own orders." *Id.* Where, however, the parties simply execute a stipulation voluntarily dismissing the case without court approval, under rule 1.420(a), there is no order over which the court has any inherent power to enforce. The party seeking to enforce the settlement agreement is left only with the remedy of commencing a breach of contract claim.

The Court also rejected any argument that jurisdiction can be conferred by language to that effect in the parties' settlement agreement. The Court cited its own decision in *84 Lumber Co. v. Cooper*, 656 So. 2d 1297 (Fla. 2d DCA 1994) for the proposition that subject matter jurisdiction arises solely by virtue of law and not by virtue of waiver or agreement of the parties. *Id.* \*3.

The *Cooper* decision is notable for another reason. There, the parties reached a settlement agreement and filed a voluntary joint stipulation but, for reasons not explained, the court then entered a final order dismissing the case with prejudice. Even the entry of that order, however, did not give the court jurisdiction to decide subsequent issues in the case. As soon as the voluntary dismissal was filed, the court had been divested of jurisdiction to act further in the case. As the Second District explained, any orders "entered subsequent to the dismissal [under rule 1.420(a)] are void." *Dandar*, 2016 WL 802016 \*4.

The takeaway? If you want the court to retain jurisdiction to enforce your settlement agreement, do not execute a stipulation voluntarily dismissing the case. Instead, seek a court order that incorporates or relies upon the settlement agreement and dismisses the case based on the agreement. Otherwise, if you show up at the courthouse later, hoping to enforce your settlement agreement by motion, the court would be justified in telling you that your case is over and that you need to go home.

*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 are fans of Ferris Bueller's Day Off, have heard of only one Semisonic song, and concentrate their practices in commercial and probate litigation.*

#### Probate Boot Camp CLE Seminar

May 9, 8:00 a.m. - 5:00 p.m.

West Palm Beach Marriott Hotel

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

The Palm Beach County Bar Association's Estate and Probate CLE Committee Presents:



# Probate Boot Camp



**Monday, May 9, 2016 - 8:00 a.m. to 5:00 p.m.**  
**Marriott Hotel, 1001 Okeechobee Blvd, West Palm Beach**

**Moderator: Jonathan A. Galler, Esq.**

## Program Schedule

- 8:00a.m. – 8:30a.m. **Late Registration / Check In / Continental breakfast**
- 8:30 a.m. – 8:40 a.m. **Welcome & Opening Remarks** - *Matthew Triggs, Esq., Proskauer Rose LLP*
- 8:40 a.m. – 9:15 a.m. **Estate Planning-Anticipating Litigation** - *Michael Simon, Esq., Gunster and Duane Pinnock, Esq., Boyes, Farina & Matwiczyn*
- 9:15 a.m. – 9:50 a.m. **Estate Planning-Vulnerable Client** - *John Moran, Esq., and Cristina Papanikos, Esq., Gunster*
- 9:50 a.m. –10:40 a.m. **Client Meeting with Child Contestant** - *Jeffrey Baskies, Esq., and Tattiana Stahl, Esq., Katz Baskies LLC*
- 10:40 a.m. – 10:50 a.m. **BREAK**
- 10:50 a.m. – 11:25 a.m. **Personal Representative's Perspective** - *Michael Singer, Esq., and Andrew Comiter, Esq., Comiter, Singer, Baseman & Braun, LLP*
- 11:25 a.m. –12:00 noon **Contestant's Perspective** - *John Murray, Jr., Esq., Squire Patton Boggs*
- 12:00 noon –1:00 p.m. **LUNCH Topic: Crimes against the Elderly** - *Jessica L. Kahn, Assistant State Attorney, Chief of Special Victim's Unit and Michael J. Rachel, Assistant State Attorney, Chief of White Collar Crime Unit, Palm Beach County State Attorney's Office*
- 1:00 p.m. – 1:50 p.m. **Depositions** - *Theodore Kypreos, Esq., Jones Foster Johnston & Stubbs, P.A.*
- 1:50 p.m. – 2:00 p.m. **BREAK**
- 2:00 pm. – 2:50 p.m. **Creative Settlements** - *Peter Forman, Esq., Gutter Chaves Josepher Rubin Forman Fleisher Miller, P.A.*
- 2:50 p.m. – 3:00 p.m. **BREAK**
- 3:00 p.m. – 4:00 p.m. **Judges' Panel** - *Honorable Howard Coates, Jr., Honorable Mark Speiser and Honorable David French*
- 4:00 p.m. – 5:00 p.m. **Reception**

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# PRIVACY & SECURITY: A MUST FOR ALL LAW FIRMS

Presented by the Solo & Small Firm Committee

**Wednesday, May 18, 2016**

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

Bar Office, 1507 Belvedere Road, West Palm Beach



## Speaker:

Adriana Linares, LawTech Partners

Adriana Linares is a law practice consultant and legal technology trainer. Having spent her initial career-years at two of Florida's largest law firms, Adriana went on to launch LawTech Partners in 2004. She is a frequent speaker at national technology conferences and a regular contributor to legal blogs and publications. She serves as a technology consultant to The Florida Bar and is the Chair of the 2017 ABA TECHSHOW. She hosts both the New Solo podcast and The Florida Bar Podcast on Legal Talk Network. She is an IAPP Certified Information Privacy Technologist.

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Solo May 18, 2016

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

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



## Best Practices in the Fourth District Court of Appeal



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

### Program Schedule

- 11:30am - 11:55am      **Lunch and Check-In**
- 11:55am - 12:00pm      **Welcome - Opening Remarks** - Nichole J. Segal, Esq.,  
Burlington & Rockenbach, P.A.
- 12:00pm - 1:00pm      **Panel Discussion with Judges from the 4th DCA**

**Best practices relating to brief writing, oral argument,  
motion practice, and other relevant appellate topics**

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

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

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



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



**Program Schedule**

- 11:30am - 12:00pm      **Late Registration / Check In / Lunch**
- 11:55am - 12:00pm      **Welcome & Opening Remarks - Kent Frazer, Esq., Akerman;**  
*Business Litigation CLE Committee, Chair*
- 12:00pm - 1:00pm      **Speaker: Steven H. Meyer, Esq., Steven H. Meyer, P.A.,**  
*Board Certified in Business Litigation*

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**This course is expected to receive 1.0 CLER from The Florida Bar.** The **early registration** cost of the seminar is **\$40.00 (includes lunch)** for PBCBA members/paralegals; **\$90.00** for non-PBCBA members/paralegals if registered by 5/27. Add \$20 to registration fee after that date. **All refund requests must be made no later than 48 hours prior to the date of the seminar.**

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

# Real Estate for the Real World



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

## Program Schedule

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

11:55am - 12:00pm **Welcome and Opening Remarks** - Sandra Wallace, Esq. Wallace Law, P.A.,  
Real Estate CLE Committee Chair

12:00pm - 12:50pm **2015 Case Law and 2016 Legislative Update** - Manuel Farach, Esq.,  
McGlinchey Stafford; Board Certified in Real Estate Law and Business Litigation

12:50pm - 1:20pm **SBA Loans** - Mitchell C. Fogel, Esq., The Fogel Law Group

1:20pm - 1:30pm **Break**

1:30pm - 2:20pm **Malpractice Issues for the Real Estate Practitioner** - Speaker TBA

2:20pm - 3:10pm **Commercial Real Estate Transaction Panel** - Gregory Cohen, Cohen, Norris,  
Wolmer, Ray, Telepman & Cohen; Board Certified in Real Estate Law;  
Mitchell C. Fogel, Fogel Law Group; Jared Quartell, Quartell Law Firm, P.A.

3:10pm - 3:20pm **Break**

3:20pm - 4:10pm **Using Mediation and ADR in Real Estate Disputes** - Theodore A. Deckert, Esq.,  
Matrix Mediation LLC; Certified Circuit Civil, Family and County Mediator; Florida  
Supreme Court Qualified Arbitrator

4:10pm - 5:00pm **Happy Hour sponsored by**



**This course has been granted 4.5 CLER and 4.5 certification credits in Real Estate from The Florida Bar.** Early registration cost for the seminar is \$115 for PBCBA members/paralegals, \$165 for non-PBCBA members/paralegals if registered by 6/2/16; Add \$20 to registration fee after that date. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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The Community Association Law CLE Committee presents:

## The 27th Annual Community Association Law Seminar

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



### Program Schedule

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

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<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>	 <b>CLE</b>	<b>Materials will now be emailed to all registrants prior to the seminar</b>
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The Bankruptcy CLE Committee of the Palm Beach County Bar Association  
presents:



## The New Bankruptcy Forms Petition, Schedules and SOFAs

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

### Program Schedule

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

11:55am - 12:00pm **Welcome - Opening Remarks** - Tina M. Talarchyk, Esq.,  
The Talarchyk Firm, Bankruptcy CLE Committee Chair

12:00pm - 1:00pm **A Virtual Journey through the new Bankruptcy Forms** -  
Deborah C. Menotte, Chapter 7 Trustee and Tina Talarchyk, Esq., The Talarchyk Firm

1:00pm - 2:00pm **Pre-filing Review Issues and a Successful Intake Process** - Chad T. Van Horn, Esq.,  
Van Horn Law Group, P.A.

2:00pm - 2:10pm **Break**

2:10pm - 3:00pm **The New Forms – Debtor and Debtor's Counsel's Burdens and Goals** -  
Eric A. Rosen, Esq., Fowler White Burnett

3:00pm - 3:50pm **The Chapter 7 Trustee's Perspective** - Deborah Menotte, Panel Trustee and  
Chad S. Paiva, Esq., Panel Trustee, Greenspoon Marder

3:50pm - 4:40pm **Questions and answer session on the New Bankruptcy Forms** -  
All seminar speakers as panelists

4:40pm - 5:30pm **Reception sponsored by**



.....  
**This course has been granted 5.0 CLER from The Florida Bar.** Early registration cost for the seminar, which includes lunch is **\$ 125** for PBCBA member attorneys/paralegals; **\$175** for non-PBCBA member attorneys/paralegals if registered by 6/21/16; add \$20 late fee after that date. **All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.** \_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

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# Real Property and Business Litigation Report



by *Manuel Farach*

## **Evanto v. Federal National Mortgage Ass'n**, Case No. 15-11450 (11th Cir. 2016).

Failure to provide a payoff statement is not a Truth in Lending Act violation that is “apparent on the face of the disclosure statement provided in connection with [a mortgage] transaction.” Assignees of the original lender are not liable for violations not apparent on the face of the disclosure

statement, and accordingly, a servicer is not liable for the failure to provide the payoff statement.

## **Siegle v. Lee County**, Case No. 2D15-3293 (Fla. 2d DCA 2016).

Laches can be raised as defense in code enforcement actions.

## **Onewest Bank, FSB v. Nunez**, Case No. 4D13-4817 (Fla. 4th DCA 2016).

Reference to, as opposed to incorporation of or taking subject to, a simultaneously issued mortgage does not make a promissory note non-negotiable.

## **Brock v. Garner Window and Door Sales, Inc.**, Case No. 5D14-1472 (Fla. 5th DCA 2016).

A suit for construction defects is governed by the four year statute of limitations for construction defects, even if the contractor was unlicensed.

## **Meritage Homes of Florida, Inc. v. Lake Roberts Homeowners Association**, Case No. 5D14-2019 (Fla. 5th DCA 2016).

The homeowners at a members’ meeting, not the developer at a board meeting, may waive association reserves pursuant to Florida Statute section 720.303 (6)(f).

## **Americold Realty Trust v. Conagra Foods, Inc.**, – S.Ct. –, 2016 WL 854159 (2016).

Unincorporated entities possess the citizenship, for diversity purposes, of all their members.

## **Williams v. Victim Justice, P.C.**, – So. 3d –, 2016 WL 886563 (Fla. 2d DCA 2016).

A prejudgment “motion to preserve assets” is a motion for a preliminary injunction, and must meet all the requirements of a motion for a preliminary injunction.

## **Houri v. Boaziz**, Case No. 3D14-1836 (Fla. 3d DCA 2016).

While the relationship between joint venturers is dictated by fiduciary responsibilities, the relationship between members of limited liability companies is dictated by the statutory duties of good faith and fair dealing and those other requirements set forth by any operating agreements.

## **Lopez v. JP Morgan Chase, N.A.**, – So. 3d –, 2016 WL 899873 (Fla. 4th DCA 2016).

The Fourth District adopts the “substantial compliance” test for conditions precedent.

## **Ortiz v. PNC Bank, N.A.**, – So. 3d –, 2016 WL 889347 (Fla. 4th DCA 2016).

The attachment of a copy of the note to a complaint does not conclusively and necessarily prove that the lender had actual possession of the note at the time the complaint was filed, but establishes a rebuttable presumption sufficient to defeat a motion for involuntary dismissal.

## **Lane v. Cunniffe**, – So. 3d –, 2016 WL 892358 (Fla. 4th DCA 2016).

In order to determine the homestead exemption to sale proceeds, a trial court must determine how much of the proceeds the seller intended, prior to and at the time of the sale, to reinvest in another homestead within a reasonable time and how much of the proceeds Seller had kept separate for that purpose.

## **Companion Property & Casualty Insurance Co. v. Category 5 Management Group, LLC**, – So. 3d –, 2016 WL 1051790 (Fla. 1st DCA 2016).

A stranger to a contract that is not an intended third-party beneficiary has no standing to advance arguments regarding interpretation of the contract.

## **Bugware, Inc. v. Williams**, – So. 3d –, 2016 WL 1051827 (Fla. 1st DCA 2016).

Even if the signature on a contract is preceded by the word “by” and accompanied by language identifying the signer as a corporate officer, the contract must be read as a whole as other parts of the contract may indicate agreement to bind both the person individually and the entity.

## **Binn v. Florida Power and Light Co.**, Case No. 2D14-1636 (Fla. 2d DCA 2016).

A perpetual easement may not be eliminated by amending restrictive covenants to not include the easement; the easement holder must consent to its easement being eliminated.

## **Marathon Sunsets, Inc. v. Coldiron**, – So. 3d –, 2016 WL 1047778 (Fla. 3d DCA 2016).

The Doctrine of Impossibility of Performance applies to deed restrictions, including restrictions requiring affirmative action such as rebuilding a torn-down fence.

## **Mirzataheri v. FM East Developers, LLC**, – So. 3d –, 2016 WL 1039124 (Fla. 3d DCA 2016).

So long as all owners of the property join in the sales contract, the sale of homestead property can be enforced through specific performance.

## **Cornerstone Investment Funding, LLC v. Painted Post Group, Inc.**, – So. 3d –, 2016 WL 1065973 (Fla. 4th DCA 2016).

The obligation to make payments on a debt in the State of Florida is, without more, insufficient to confer long-arm jurisdiction under Florida Statute 48.193.

## **Shaffer v. Wells Fargo Bank, N.A.**, – So. 3d –, 2016 WL 1062807 (Fla. 5th DCA 2016).

Florida Statute section 702.06 permits a trial court, in the foreclosure action itself, to limit a plaintiff’s right to a deficiency judgment, but the legal or equitable reasons for doing so must be set forth in the order or judgment limiting deficiency.

## **Bishop v. Ross, Earle & Bonan, P.A.**, Case No. 15-12585 (11th Cir. 2016).

A notice to a debtor under the Fair Debt Collection Practices Act (F.D.C.P.A.) must inform the debtor that any disputes must be in writing. Likewise, a communication to a debtor’s attorney qualifies as a communication to the debtor herself.

## **Endsley v. Broward County**, Case No. 4D14-3997 (Fla. 4th DCA 2016).

Receipt of multiple homestead exemptions is specifically prohibited by the language of Article VII, section 6(b) of the Florida Constitution and Florida Statute section 196.031(5).

## Outstanding Wine and Beer Highlight 4th Annual Pankauski Pour

On February 26, the Lake Pavilion on Flagler Drive was overflowing with 200 wine aficionados enjoying a fun-filled wine and beer tasting, hosted by noted attorney and wine connoisseur John Pankauski. Wines were provided by The Blind Monk, J. Lohr, One Hope Wines, Southern Wine & Spirits, Virginia Phillips, and the Pankauski Winery. A wide variety of beer was provided by Due South Brewery and World of Beer. Table 26, Trader Joe's, Hot Pies, and Publix contributed delicious delicacies. Sponsors of the event were Coral Gables Trust and Braman Motor Cars. The evening raised \$7000 which will be used to provide free legal services to the survivors of domestic violence, abused, neglected, and abandoned children, and exploited seniors served by the Legal Aid Society of Palm Beach County.



Dave & Lynn Aronberg & John Pankauski



Bob Bertsich,  
Jeff Liggio,  
Olivia Liggio,  
Mark Maynor



## Welcome New Members!

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

**Heather Lynn Apicella:** Nova Southeastern University, 2006; Associate in Gladstone & Weissman, P.A., Boca

**Lina F. Busby:** Florida International University, 2007; City of Riviera Beach.

**Cynthia Laine Comras:** Stetson University, 1998; Office of the Attorney General, West Palm Beach.

**Mary Megan Coughlin:** University of Florida, 2014; Fourth District Court of Appeal, West Palm Beach.

**Aaron J. Draizin:** Nova Southeastern University, 2011; Associate in Banker Lopez Gassler, P.A., Plantation.

**Brice Stephen Dumais:** Southern Methodist University, 2009; Associate in Akerman, LLP, West Palm Beach.

**Kent Griffin:** Florida Coastal School of Law, 2010; Associate in Kenny Leigh & Associates, Boca Raton.

**Jonathan R. Janeiro:** St. Thomas University, 2010; Solo Practitioner, Jupiter.

**Merrie J. McKenzie:** Florida Registered Paralegal Membership, Palm Beach County School District.

**Jared Margulis:** Drexel University, 2013; Riviera Beach.

**David Reams Miller, Jr:** Nova Southeastern University, 2010; Associate in Kubicki Draper, P.A., West Palm Beach.

**Kimberly A. Ryan:** University of North Carolina, 2010; Associate in Kitroser & Associates, North Palm Beach.

**Thomas R. Sawyer:** Samford University, 1986; South Florida Water Management District, West Palm Beach.

**Ori Silver:** University of Florida, 2001; Office of the State Attorney, Ft. Lauderdale.

**Joshua Widlansky:** St. Thomas University, 2007; Padula Hodkin, PLLC, Boca Raton.







## Top of Mind Awareness: Diversity

by Lisa M. Kohring, Esq.

This year, the star-studded, diamond-dripping, couture-wearing Hollywood Elite were buzzing about the lack of diversity in the nominee pool for the Oscars, Chris Rock called the Oscars the “white BET” and the “white People’s Choice Awards,” actor Jada Pinkett Smith considered boycotting the award’s ceremony and actor Spike Lee refused to participate, all because of the lack of diversity. Hollywood and the Arts and Entertainment industry are not alone, and there is similar, yet not so high profile, buzzing in sectors such as the tech field, the medical field, the media and telecommunications field and, of course, the legal field.

Although, we may not have the ability to impact the diversity in Hollywood or the Oscar nominee pool, we can do our part to raise awareness in a place that truly counts to us--our legal community. For an idea on the numbers impacting our community, a July, 2015 Florida Bar Article highlighted the stark disparity between racial diversity in the overall populations of Palm Beach, Miami-Dade, and Broward Counties compared to the diversity of those on the bench, reporting that:

“In Palm Beach County, of the 54 judges in circuit and county courts, 5 (9 percent) are black,” “[i]n Broward County, the most diverse county in the state, of the 90 judges in circuit and county courts, only 6 (7 percent) are black,” and, although “Miami-Dade is one of the most diverse counties in the state of Florida...[]... [there] are no black women who serve on the circuit court bench for the 11th Judicial Circuit in and for Miami-Dade County and only two black women who serve the Miami-Dade county bench.”<sup>1</sup>

These statistics make clear that now, more than ever, we need to keep thinking about diversity; we need to renew our commitment to continue making a real, direct and identifiable impact on diversity in the Palm Beach County legal community.

Diversity is important because, among other things, we are stronger when we are made up of a community of professionals with differences, different thoughts, ideas, opinions, perspectives and backgrounds. The stronger we are as a legal community, the bigger the impact we can make on the law. And for those of us who love the law, it’s all about making an impact on the law.

We can diversify our community by educating our members about diversity and why it’s important, stepping-up minority recruitment and retention efforts within our firms, renewing our hiring policies and procedures and supporting and participating in our local voluntary bar associations.

Skeptic’s of the legal field’s ability to diversify say that diversity is one of the hardest and most intractable problems affecting the legal profession, and consider law firms’ “systems” for recruitment, selection, development, feedback, evaluation, and promotion, broken, unresuscitatable and simply unsupportive of the advancement of minorities.<sup>2</sup> So, how can

<sup>1</sup> The Florida Bar Journal, *Minority Bars Band Together to Promote Judicial Diversity* (July 15, 2015), <http://www.floridabar.org/DIVCOM/JN/jnnews01.nsf/8c9f13012b96736985256aa900624829/ca7d67fe80c1938585257e7a0045f0bb!OpenDocument>

<sup>2</sup> Bill Henderson, *Solving the Legal Profession’s Diversity Problem* (Mar. 16, 2016), *The Legal Whiteboard*, <http://lawprofessors.typepad.com/legalwhiteboard/2016/03/solving-the-legal-professions-diversity-problem.html>

we combat this alleged “systems” dilemma, you ask? Consider convening a meeting with the managing partners in your firm to revisit the firm’s “systems” and make the internal changes necessary to refocus these systems to include new goals for increasing diversity and ensuring long-term retention of diverse attorneys. Create, foster and recruit for a new mentorship program within your law firm to ensure the program reaches all of the firm’s associates equally, both diverse and non-diverse or consider posting an advertisement for an associate on the PBCBA Diversity Database, donating time to represent our legal community at the annual Kozzyak Minority Mentoring Picnic next October, or hosting a summer intern in connection with the Diversity Internship Program.

The opportunities for each of us to make an impact are plentiful. We cannot simply throw in the towel and go home, we have to work harder and smarter to meet our goals for diversity at the firm level, in our legal community and on the bench. Let’s continue to send a powerful message that our community and our profession are dedicated to diversity.

Please join me as a member of the Committee for Diversity and Inclusion to help expand the Committee’s reach and make a larger impact, form meaningful partnerships with our voluntary bar associations and brainstorm about how we can work to diversify the racial, ethnic and cultural makeup of our legal community. Review the Bar Association’s website on the Committee for Diversity and Inclusion to learn more about this year’s monthly meeting schedule, the benefits the Committee can offer to you and your firm, and how you can get involved.

*Lisa Kohring is the Co-Chair of the PBCBA’s Committee for Diversity and Inclusion and is a litigation associate with Schwarzberg & Associates. Lisa focuses her practice on commercial litigation and employment law compliance and defense and can be reached at [lkohring@schwarzberglaw.com](mailto:lkohring@schwarzberglaw.com).*

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## Solo Committee hosts annual CLE & Networking Mixer

Another stellar event was presented for our solo and small firm members at Abacoa Golf Club in Jupiter. This popular CLE and Networking Mixer included an open and candid discussion from members and presenters about the latest technology, social media, marketing, billing, telephone and efax systems, banking and office supplies.



Leading the discussion were Shannon Sagan, Grey Tesh along with Solo and Small Firm Committee Chair Dan Zuniga



Andrea McMillian and Gael Beriro



Nearly 40 members gathered to discuss what has and hasn't worked well for their firms from the latest technology to office supplies.



Andrea D'Addario, Jane Hunston and Bettee Collister



Laura Kenney, Scott Berry and Daniel Marshall



Sandra Wallace and Amy Pettway



### Young Lawyers Section **Seventh Annual KDW Fishing Tournament**

June 25, 2016  
Benefitting Legal Aid's Education  
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## What's New in Mass Torts: There's No Place Like Home

by Joseph A. Osborne

Palm Beach and Broward County are hotspots for total hip replacements due to the overall population demographics and the renowned orthopedic surgical community. For a generation of baby boomers, total hip replacement is an increasingly common need. Over 1 million procedures are performed in the United States annually, and the number is projected to quadruple by 2030. Surgeons in this community are often approached by the medical device manufacturers to act as consultants or “key opinion leaders” for the manufactures. However, these surgeons are rarely provided with the true safety profile of the products as known by the manufacturers. Only following implantation of hundreds of these devices, have surgeons seen the ill effects of failing hip devices, including metal toxicity, pseudotumors, pain and the need for early and often complex revision surgeries.

Due to diversity of citizenship, these cases generally fall within federal court jurisdiction and typically result in Multidistrict Litigation (“MDL”). However, South Florida has provided an alternative for plaintiffs.

### Stryker Consolidated Litigation in Palm Beach and Broward County

In November 2014, Stryker reached a \$1.4 billion dollar settlement nationally on behalf of individuals harmed by the recalled Stryker Rejuvenate and ABG II hip replacement devices. Plaintiffs qualified for the settlement if they underwent revision surgery prior to November 3, 2014. Plaintiffs also had the opportunity to opt out of the settlement and continue litigating their cases. Additionally, individuals who did not qualify under the terms of the settlement are actively filing cases against Stryker.

Due to allegations of local distributor liability, many Palm Beach and Broward County plaintiffs have been able to keep their cases here locally, outside of the MDL. In fact, the Honorable Judge Donald W. Hafele of the 15<sup>th</sup> Judicial Circuit, in and for, Palm Beach County, Florida, oversees a consolidated Stryker docket with the first case set for trial nationally scheduled to begin in December 2016.

The Honorable Judge Patti Englander Henning of the 17<sup>th</sup> Judicial Circuit, in and for Broward County, Florida, also oversees a consolidated Stryker docket. In the Broward litigation, Stryker has been unsuccessful at attempts to remove the cases to federal court under a theory of fraudulent joinder of the product distributor. The local distributor had exclusive rights to sell Stryker products including the Rejuvenate and ABG II.

### Wright Medical CONSERVE® Hip Litigation Consolidated in Palm Beach County

Wright Medical marketed the Conserve® hip replacement system as being more durable than other artificial hip implants, and, one especially suited for persons with active lifestyles. In May 2011, the FDA ordered 21 manufacturers of metal-on-metal hip implants, including Wright Medical to conduct post-market studies due to premature failures.

Currently, nearly 1,500 cases are pending across the country involving Wright Medical Conserve®. Cases are consolidated in a federal Multidistrict Litigation pending in the United States District Court for the Northern District of Georgia, 12-md-2329 N.D. Ga. and others are consolidated in a California state court proceeding.

In Palm Beach County, distributor liability has allowed Wright Medical plaintiffs to file their cases locally. Currently, the Wright cases are consolidated before the Honorable Judge Catherine M. Brunson. Judge Brunson had the first case set for trial nationally, but it was settled in September, 2015 after a summary jury trial proceeding.

### Local Distributor Liability Provides a Viable State Court Nexus

A product liability plaintiff can foreclose removal of a case from a state to federal court through the inclusion of a viable claim against a non-diverse party defendant. Local distributors of medical devices are just as vulnerable to product liability allegations as the device manufacturer and should not be overlooked in evaluating potential claims prior to filing an action. In Florida, strict liability extends to those in the distributive chain including the manufacturer and other entities responsible for the sale of a prosthetic device. *Barnes v. Bayside Orthopaedics, Inc.*, 2012 U.S. Dist. LEXIS 5937 (M.D. Fla. Jan. 19, 2012), quoting, *Porter v. Rosenberg, M.D., FACS*, 650 So.2d 79, 81 (Fla. 1995). The rationale underlying strict liability for those in the chain of distribution is explained in *Porter*:

Retailers like manufacturers are engaged in the business of distributing goods to the public. They are an integral part of the overall producing and marketing enterprise that should bear the cost of injuries resulting from defective products.

*Id.* at 81-82.

The law imposes liability on distributors either by virtue of their active participation in the supply chain or because of their own negligence. Even though a distributor may have had no part in the design or production of the device that is at issue for the cause of the harm, the law may still impose liability through the doctrine of strict liability. The basis is that each member of the distribution chain benefits from the sale of the product, so each member should likewise share in the liability burden when something goes wrong with the product. The majority of the states, including Florida, hold distributors strictly liable for defects in the products. A second set of circumstances under which liability may be imposed on distributors is when the distributor itself is negligent. Under these theories, plaintiffs have successfully brought and maintained viable actions in both Palm Beach and Broward County, providing a strong front to litigate their claims against the various worldwide device manufacturers and local distributors.

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



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by PBCBA Delegate Donnie Murrell

OK, I'll be honest: I didn't go. My excuse is that I was on a trial docket and just did not feel safe leaving town. Even to a place as nice as San Diego. But I can still tell you what happened.

First, there was much harrumphing and marching through the well of the House as newly-elected, or soon to be elected, or otherwise unopposed, officers, Board members and other Grand Poobahs were recognized and applauded. There were teary-eyed speeches thanking partners (both domestic and legal) for years of un-wavering support that culminated in the high office now being accepted. There were moving pledges of loyalty and dedication to the ABA. There was much gratitude for all the little people. And in between all that, the House of Delegates actually had a debate.

I have said many times that on the (now rare) occasions when the House does debate an issue, the quality of the debate is well worth the price of admission. (Especially when compared to the quality of the presidential debates, but that is another story.) The debate at this meeting was triggered by Resolution 105. (The full report and resolution are available for review on the ABA website.)

Resolution 105 was sponsored by the Commission on the Future of the Legal Profession. The document was called "The ABA Model Regulatory Objectives for the Provision of Legal Services". One of the stated goals of the resolution was to have the ABA provide a leadership role in regulating the provision

of legal advice/services by non-lawyers. Proponents of the resolution argued that it "responds to the reality that non-lawyers are already delivering legal services throughout the U.S. outside the supervision of a lawyer. State supreme courts are monitoring these developments, and the Model Regulatory Objectives provide those courts with needed guidance as they do so. A state supreme court might very well apply the Model Regulatory Objectives and conclude that nonlawyer legal service providers are a bad idea. The Model Regulatory Objectives are agnostic on that issue..."

Opponents pointed out that under ABA policy, only lawyers can practice law and in the delivery of legal services all participation by non-lawyers must be supervised by lawyers. They argued vociferously that the very endorsement of the Regulatory Objectives clearly promotes the non-lawyer practice of law. And, of course, once non-lawyers are practicing law, where does it end? For instance, why prohibit non-lawyers from owning shares in law firms?

One of the interesting back stories on this resolution is that last August in Chicago the head of AVVO spoke to the House of Delegates. One of the first things he said was that the ABA should lead the fight to eliminate the concept of unauthorized practice of law. Six months later, Resolution 105 "offers suggestions" on the regulation of non-lawyer legal service providers. Avvo should be happy. Resolution 105 passed.

The law does not exist for the purpose of keeping lawyers employed. – Richard Susskind, *The End of Lawyers*. Folks, our world is changing very quickly. Beware.

Donnie Murrell

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## In Memoriam



Nick Lioce, Nason Yeager  
February 1951 – March 2016



## Board Meeting Attendance

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



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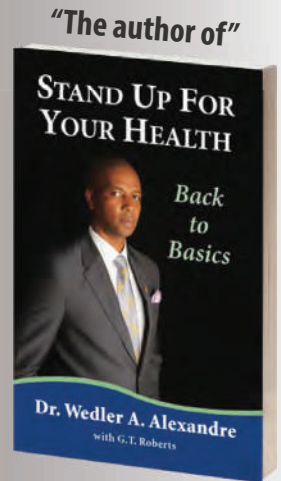


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Business and Community Agreements Manager, Facilities Development & Operations (FDO) Department Palm Beach County, Florida **Salary Range: \$80,961 – \$146,280 DOQ** Outstanding executive benefits package. Deadline 5:00 p.m., 3/16/2016. Apply online (or download an employment application) at [www.pbcgov.jobs](http://www.pbcgov.jobs). See [www.pbcgov.com/fdo](http://www.pbcgov.com/fdo) for details about Facilities Development and Operations and the Palm Beach County Board of County Commissioners.

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Sublease from law firm in The Atrium, North Palm Beach. One or two Attorney offices with cubicles for support staff. Use of conference room, internet, kitchen and copy/print room. Contact Laura at 561-707-7997

## HEARSAY

**Robert J. Harvey** of Jenks & Harvey LLP in West Palm Beach was a panelist at the 22nd Annual Alpha Hedge East Conference at the PGA National Resort & Spa, Palm Beach Gardens, Florida. The panel addressed the topic of "Investment Opportunities in Latin America." Robert presented on the legal and regulatory challenges facing broker-dealers and hedge funds in Puerto Rico and Central America, as well as the opportunities available to develop business in the region.

**SAVE THE DATE**  
**Installation Banquet**  
**June 11, 7:00 p.m.**  
**Breakers Hotel**

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## CALENDAR May 2016

Thursday - Sunday, April 28 - May 1  
**Young Lawyers Division Board of  
Governors Meeting**  
Casa Marina, Key West FL

Monday - Friday, May 2 - May 6  
**Law Week**

Tuesday - Thursday, May 3 - May 5,  
9:00am - 1:00pm  
**(Dial-a-Lawyer)**  
Bar Association Office

Tuesday, May 3, 5:30pm - 7:00pm  
**Judicial Reception**  
The Harriett

Wednesday, May 4, 12:00pm - 1:00pm  
**Transaction Law  
Committee Meeting**  
Bar Association Office

Friday, May 6, 8:00am - 4:30pm  
**Law Suit Clothing Drive Drop Off**  
Bar Association Office

Friday, May 6, 8:30am - 9:30pm  
**ADR Committee Meeting**  
Bar Association Office

Friday, May 6, 12:00pm - 2:00pm  
**South County Bar Law Day  
Lunch in Conjunction With  
7th Annual Project Nuremberg  
Lawyers Luncheon**  
Temple Beth El of Boca Raton

Monday, May 9, 8:00am - 5:00pm  
**Estate and Probate Seminar**  
Marriott West Palm Beach

Monday, May 9, 12:00pm - 1:00pm  
**Circuit Civil Committee Meeting**  
Main Courthouse - Judicial  
Conference Room

Tuesday, May 10, 11:45am - 1:00pm  
**Law Day Luncheon Honoring  
Judges Matthew Stevenson, Amy  
Smith and Barry Cohen**  
**Guest Speaker: Former U.S.  
Attorney General Alberto Gonzales**  
Marriott West Palm Beach

Tuesday, May 10, 5:00pm - 6:00pm  
**YLS Board Meeting**  
Bar Association Office

Wednesday, May 11, 12:00pm - 1:00pm  
**FAWL Board Meeting**  
Bar Association Office

Wednesday, May 11, 12:00pm - 1:00pm  
**Professionalism  
Committee Meeting**  
Bar Association Office

Thursday, May 12, 5:30pm - 8:00pm  
**NCS Jurist of the Year**  
Ruth's Chris Steak House

Friday, May 13, 12:00pm - 6:00pm  
**YLS Golf Tournament**

Friday, May 13, 12:00pm - 1:00pm  
**Federal Bar Luncheon**  
Kravis Center

Saturday, May 14, 6:00pm - 10:00pm  
**PBC Justice Association  
Casino Event**  
Old Marsh Golf Club

Tuesday, May 17, 12:00pm - 1:00pm  
**CDI Committee Meeting**  
Bar Association Office

Wednesday - Saturday, May 18 - 21  
**Board of Governors Meeting**  
Eau Palm Beach FL

Wednesday, May 18, 12:00pm - 1:00pm  
**Law Related  
Education Committee**  
Bar Association Office

Wednesday, May 18,  
12:00pm - 1:00pm  
**Solo and Small Firm Luncheon**  
Bar Association Office

Thursday, May 19, 5:30pm - 7:00pm  
**YLS Happy Hour**

Tuesday, May 24, 12:00pm - 1:00pm  
**NCS Board Meeting**

Tuesday, May 24, 5:30pm - 7:00pm  
**Legal Aid Society Board Meeting**  
Bar Association Office

Wednesday, May 25,  
11:30am - 12:30pm  
**Technology Seminar: ESI  
Discovery**  
Bar Association Office

Wednesday, May 25,  
5:00pm - 6:00pm  
**Board Meeting**  
Bar Association Office

Thursday, May 26, 12:00pm - 1:00pm  
**Judicial Lunch: Bias Discovery**  
Main Courthouse Cafeteria

Tuesday, May 31, 5:30pm - 6:00pm  
**4th DCA Reception**