



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

October 2010

Lunch and Learn Meetings

Presented by the Solo Practitioners & Small Firm Committee

For attorneys in firms with five or fewer lawyers; no more than 3 of whom work in the same practice area.

Thursday, October 21, 2010
Internet Marketing

Wednesday, December 1, 2010
Law Office Technology

Wednesday, January 19, 2011
Law Office Compliance for Employees

Thursday, February 24, 2011
Marketing for Solos

Wednesday, March 30, 2011
Vendors A to Z

Wednesday, May 11, 2011
Taxes and Accounting for Law Firms:
Trying to Stay Out of Trouble
RSVP online @ palmbeachbar.org

Join us for the Bar's Family Picnic!

The PBCBA is excited to host its first family picnic on Saturday, October 23. The picnic will be from 10 am to 1 pm at Dreher Park in West Palm Beach next to the Palm Beach Zoo. There will be a BBQ, ice cream and beer and lots of activities such as a bounce house, face painting, live music, arts & crafts and much more. Firms are encouraged to enroll in a bake-off contest too! The cost to attend will only be \$15 for adults; \$5 for children 13 and younger; and children under 2 will be free. Thanks to our sponsors to date:

Bob Greenberg, CLTC ; Leifert & Leifert; Lytal Reiter Clark Fountain & Williams; McCabe Rabin P.A.; Murray & Guari Trial Lawyers; P.B. Co. Chapter of the Paralegal Association of Fla.; Rock Legal Services and Investigations; Sabadell United Bank; Smith Ivey & Fronrath P.L.; and Squire, Sanders & Dempsey L.L.P. Pre-registrations are required and can be done on the Bar's website palmbeachbar.org. For more information, contact co-chairs Sarah Shullman (650-7200) or Lily Chang (803-7524).

Mark your calendar for upcoming Membership Events

Lawyers Have Heart 5K Run
October 2

Membership Luncheon
October 19
Speaker: ABA President Stephen Zack

Family Picnic
October 23
Dreher Park in West Palm Beach

Leadership Seminar
December 3

Annual Holiday Party & Silent Auction
December 9

Second Annual Lawyer Variety Show
January 22, 2011

Wine Tasting Event
February 3

Bench Bar Conference
March 4

Joint Luncheon with South County Bar
March 22
Speaker: FL Bar President Mayanne Downs

Annual Judicial Reception
May 3

Law Day Luncheon
May 6



ABA President Steve Zack to speak October 19

The Palm Beach County Bar, along with FAWL, the Cunningham Bar Association and the Hispanic Bar Association, is pleased to welcome Miami lawyer Stephen N. Zack, a partner in the law firm Boies, Schiller & Flexner, as its guest speaker for a diversity luncheon to be held on October 19. Zack was sworn in as president of the American Bar Association at its recent meeting in San Francisco – the first Hispanic American to achieve that distinction. The son of a Cuban mother and American father, Zack is focused on promoting civics education, the importance of inspiring a new generation of lawyers and ABA programs that advance access to justice for everyone in the United States. In addition, he will work to create a commission on Hispanic rights. Reservations are required and can be made on the Bar's website palmbeachbar.org

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THE BULLETIN

PALM BEACH COUNTY BAR ASSOCIATION

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

LETTERS TO THE EDITOR

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



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

Committee Chairs for 2010-2011

With 35 committees ranging from CLE to Community Service, the Palm Beach County Bar Association is well known for being one of the most active Bar's in the state. A special thank you to our members who have leadership roles this year. Your time and support is very much appreciated.



Front Row: Board of Directors Adam Rabin, Jill Weiss, Theo Kypreos, John Howe, Michael Napoleone, Wade Bowden and Grier Pressly.

Middle row: Ted Deckert, Judicial Campaign Practices Commission; Jeffrey Collier, Environmental/Land Use; Phillip Hutchinson, Commercial Litigation CLE; Maureen Martinez, Law Week co-chair; Scott Smith, Circuit Civil Practice; Lily Chang, Membership co-chair.

Standing: Michael Gelfand, Community Association Law CLE; Craig Stein, Securities Law CLE; Carolyn Bell on behalf of the Professionalism Committee; Robyn Hankins, Employment Law CLE co-chair; Jessica Callow, Diversity & Inclusion co-chair; Deborah Boyd, Real Estate CLE; Daliah Weiss, Criminal Law Practice; Pauline Markey, Business Law; Lloyd Comiter, Small Claims Court Clinics; Larry Rochefort, Judicial Relations; Tanique Lee, Law Week co-chair; Nicole Hessen, Workers' Comp co-chair; Peggy Wood, Lawyers for Literacy; Seth Marmor, Elder Law; Debbie Block, Solo & Small Firm; David Garten, Probate/Guardianship; Tina Talarchyk, Client Relations; Sarah Shullman, Membership co-chair and Matthew Lane, Family Law CLE.



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President's Message



The Privileges and Obligations of Living in a Free Society

By Michael J. Napoleone, President

During this time between the primaries of August 24 and the general election on

November 2, I've had an opportunity to reflect on how privileged we are to be able to elect our leaders and be governed by the rule of law. As a free society, we rely on the knowledge, skills, and virtue of our citizens and those elected to public office. It is vitally important that all people possess a basic understanding of the principles upon which our great country was founded, including an understanding of the separation of powers among the three branches of government and the limits on those powers. A strong civics education is essential to the preservation and improvement of our American constitutional democracy.

Proponents for strengthened civics education often cite to the fact that when people are asked to identify the three branches of government, more than two-thirds respond "Republicans, Democrats, and Independents." A Florida Bar poll found that more than half of adults could not define "separation of powers" and more than a third did not understand the concept of "checks and balances." At the ABA's annual meeting in 2009, now retired Supreme Court Justice David Souter lamented that those who couldn't name the branches of the government "could scarcely have any notion of the significance of separated powers or any sense of why it might be crucial for judicial power to be independent of the legislative and the executive... Without some idea of separation of powers, limitations of power, and the need to enforce those limits, the idea of judicial independence must be practically meaningless."

Civics education plays a crucial role in determining how our children will develop, how they view themselves as citizens, and ultimately, how they give back to their communities. I'm certain that I will be the first Bar president to quote Richard Dreyfuss in his president's message, but in a speech given by Mr. Dreyfuss some years following the release of his film *Mr. Holland's Opus*, he captured the importance of ensuring that civics, music and the arts remain a fundamental part

of our educational system. He said: "We need to remind our kids - and ourselves - of the importance of where we come from... We have to paint a picture of republican democracy that is as romantic and irresistible as it really is. We have to teach our children our history, our mythology, our culture, with passion, with wit, with rigor; and by doing that, we will create the possibility of that civic virtue that ties thinking individuals to their communities."

Educating the public about how their government and courts work is a core mission of the PBCBA. An informed public is the best defense of a vigorous democracy, the rule of law and an independent, impartial and fair judiciary. In furtherance of that goal, the PBCBA joins in the vision of the ABA and The Florida Bar in stressing the importance of teaching civics, not only in schools, but to adults who may have forgotten or never been taught the fundamental tenets of our democratic system. On October 19, the Bar is hosting a joint membership luncheon of the PBCBA, Florida

Association for Women Lawyers, the F. Malcolm Cunningham Bar Association, and the Palm Beach County Hispanic Bar Association. Steve Zack, the current ABA President and its first Hispanic president, will discuss the importance of civics education as well as how embracing and encouraging diversity strengthens our legal community. For those interested in helping educate our citizens about civics, The Florida Bar has developed a program called "Benchmarks: Raising the Bar on Civics Education" which aims to inform adults through activities about judicial review; the Bill of Rights and reviewing laws to see if they are constitutional; facts and knowledge about U.S. government and the courts; and court funding. I encourage you to visit The Florida Bar's website for more information as to how you can get involved with the program.

As lawyers, we are uniquely positioned to lead the way in promoting civics education in our schools and communities. I hope you will take on the challenge of helping to create better citizens through civics education.

Accountability Fairness Justice Safety Truth

Marci F. Ball, Esq.
Todd Fronrath, Esq.
Lance Ivey, Esq.
Board Certified Civil Trial Attorney
Scott B. Smith, Esq.
Board Certified Civil Trial Attorney

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**The Professionalism Committee of the
Palm Beach County Bar Association
Presents:**



LEADERSHIP ACADEMY - THE ART OF LEADERSHIP

Friday, December 3, 2010

8:30 a. m. - 1:00 p.m.

**Palm Beach County Bar Association Office,
1601 Belvedere Road, Suite 302E**

The goal of this program is to train diverse lawyers in bar and community leadership, educating them in ethical, professional and community service. This seminar is designed to train diverse leaders, raising the overall professional standards of lawyers in the community.

Program Schedule

- 8:30am - 8:45am** **Late Registration**
- 8:45am - 9:00am** **Welcome and Opening Remarks** - *Michael J. Napoleone, Richman Greer, President Palm Beach County Bar Association and Past Chair*
- 9:00am - 10:30am** **Five Themes of Leadership: The Hard Science and Soft Skills You Need to be a Great Leader**
Great leaders know that leadership encompasses far more than mere technical or administrative expertise. And just like other skills, leadership skills must be constantly refined and improved to meet the challenges of a rapidly changing world. Great leadership involves communication and listening, coaching, giving feedback, team building, delegating, resolving conflict and self-management. You'll leave this presentation understanding what it takes to be a truly great leader. - *Nora Riva Bergman, Practice Advisor, Atticus, Inc.*
- 10:30am - 10:45am** **Break**
- 10:45am - 12:00pm** **Lead, don't follow:** Panel Discussion about the importance of taking on a leadership role, the benefits of leadership and involvement, addressing diversity issues, and building your reputation. - *Raoul G. Cantero, Former Supreme Court Justice of Florida; The Honorable Jonathan D. Gerber, 4th DCA; John M. Howe, President-Elect Palm Beach County Bar Association; Lisa S. Small, Board of Governors, Past President Palm Beach County Bar Association; John (Jay) G. White, III, Richman Greer, Past President The Florida Bar, Past Member of the Florida Bar Board of Governors, Past President Palm Beach County Bar Association*
- 12:00pm - 1:00pm** **Lunch and Dessert Reception**

This course is expected to receive 3.5 CLER from The Florida Bar.

Early Registration Fee: \$85 per person; \$50 for Government Attorneys if registered by 11/19/10;

Add \$25 to registration fee after that date.

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

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

**HOW TO
REGISTER**



BY CHECK

Return this form
with your check



BY CREDIT CARD

For security purposes, you must register
online at www.palmbeachbar.org

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

Name: _____ **Telephone:** _____

Address: _____ **City/Zip** _____

Email Address: _____

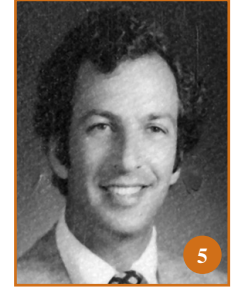
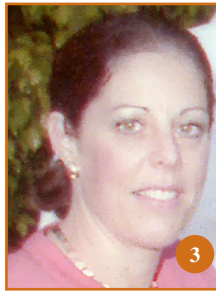
___ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) Cost same as listed above/in addition to \$10 for shipping and handling. (Leadership Seminar 12/3/10) **PAYMENT BY CHECK ONLY WITH THIS FORM.**

Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406.

Historical Committee

Who are they?

Can you guess who these members are? Answers can be found on page 13. If you have old pictures of yourself or other members that you'd like featured, please send them to Patience Burns at the Bar Office.



What you probably don't know about Attorney Cathleen Scott



Most of her work is with complex legal transactions in employment and health care law, but attorney Cathleen Scott recently did a different sort of sparring – battling in a Tae Kwon Do tournament. She brought home one silver and two bronze medals from the competition at the Senior Nationals in Orlando.

For more than a year, Cathleen, along with her nine year old son Dylan and seven year old son Jacob have been training with local Master Kristina Hwang in Jupiter.

Cathleen and her sons spend about four hours each week honing their skills. While they constantly increase their strength, balance, power and self-defense skills with this ancient martial arts discipline, Cathleen says that doing martial arts with her family is also a great release from stress.

Congratulations Cathleen on your success at the Senior Nationals!

Legal Aid Establishes Advocates for Minor Mothers Project



The Legal Aid Society of Palm Beach County, Inc., is proud to announce that Ashley Ortugas has joined its Juvenile Advocacy Project as a 2010 Equal Justice Works Fellow. She will spend the next two years working on the Legal Advocates for Minor Mothers Project (L.A.M.M.P). Her sponsors for this project include Greenberg Traurig and The Florida Bar Foundation.

Through L.A.M.M.P., Ashley provides representation to delinquent and dependent pregnant and teenage mothers in Palm Beach County. Ashley provides holistic representation to her clients, with a focus on mental health, education and placement services. Ashley will also systemically advocate for more effective placements and programs for teen moms. In conjunction with her legal advocacy, Ashley will outreach to dependency and delinquency service providers and the community to advocate for programs to address the needs of this special population.

In May of 2010, Ashley graduated cum laude and received her Juris Doctor from Florida State University College of Law.

Ashley's fellowship begins in September 2010 and extends for a period of two years. For more information, please contact Ashley at (561) 655-8944.

Holiday Party scheduled for December 9

Mark your calendar and attend the Annual Holiday Party and Silent Auction on Thursday, December 9 from 5:30 pm to 8:00 pm at Frenchman's Reserve in Palm Beach Gardens. The cost is \$35.00 and includes drinks, heavy hors d'oeuvres plus a chance to shop for holiday gifts at great prices!

If you can donate an item for the auction, that would be great. We're looking for gifts such as vacation destinations, tickets to professional ballgames, electronics, artwork, jewelry, hotel accommodations and presents for kids and pets. If you have a gift to donate, please call Lynne at the Bar Office at 687-2800. One hundred percent of the proceeds benefit charities sponsored by the Young Lawyers and North County Sections.



Tickets for the Second Annual Lawyer Variety Show go on sale November 1

Young Lawyers Section

YLS Back to School

The Young Lawyers recently donated school supplies to Pleasant City Elementary School in West Palm Beach. Each class from kindergarten thru 5th grade received an entire school year of supplies consisting of crayons, markers, pens, pencils, folders, glue, binders, and paper. The Young Lawyers will continue their involvement with the school by organizing a career day in the spring and hosting a special end of the year field trip for the entire 5th grade class. Pleasant City was chosen to receive the items based on their financial need.



Volunteers above included Jason Lazarus, Melissa Devlin, Rebecca Frieden, Lee McElroy, Bill Lazarchick, Alana Zorilla Gaston and Evan Frederick. A special thank you to Office Depot Store Manager Raymond Gabbard for his assistance in coordinating the purchase of these supplies.

Dear Young Lawyers Association,

We would like to take this opportunity to thank you for all of the wonderful school supplies that you have provided as with. It is very generous of you to purchase supplies for us that will enhance our learning experience here at Pleasant City Community Elementary School. Thank you for helping us get another school year started off on the right foot! We truly appreciate the effort that you have put into our school! We hope that you will have as great of a year as we will!

Sincerely,

Mrs. Harvey's 5th Grade Class

Pleasant City Community Elementary School



Kids from one of the first grade classes presented the YLS volunteers with a thank you sign.

YLS to host Past President's Happy Hour October 28



The YLS will be honoring immediate past president Theo Kypreos at a happy hour reception on **Thursday, October 28** from 5:30 – 7:00 p.m. This event will be held at Pistache Restaurant at 101 North Clematis Street in downtown West Palm Beach. Registration

is required and can be done on the Bar's website at palmbeachbar.org

PBCBA Online Courses & Services



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

www.palmbeachbar.org/online_courses.php



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

"Breaking News You Can Use: Real Estate"

Friday, October 15, 2010 - 8:00 a.m. - 12:15 p.m.
Bar Association Offices, 1601 Belvedere Road #302E, WPB

Program Schedule



8:00am - 8:20am	Late Registration/Check In
8:20am - 8:30am	Welcome and Opening Remarks - <i>Deborah Boyd, Esq., First American Title Insurance Company, Board Certified Real Estate Attorney, Real Estate Committee Chairperson</i>
8:30am - 9:30am	"We Have the Scoop! The Very Latest Laws and Cases, including Ethical Implications." - <i>Michael J. Gelfand, Esq., Board Certified Real Estate Attorney, Gelfand & Arpe, P.A.</i>
9:30am - 10:20am	"Hot Off the Presses: The Brand New FR/Bar Contract and Ethical Issues" - <i>John R. Banister, Esq., Board Certified Real Estate Attorney, Rutherford Mulhall, P.A.</i>
10:20am - 10:30am	Break & Sponsor Raffles
10:30am - 11:30am	"News You Need: Tax Implications of Foreclosures, Loan Modifications, Short Sales and Foreclosures and Ethical Concerns" - <i>Mary Gelinas, C.P.A., Senior Tax Manager, Daszkal Bolton LLP and Jeffrey A. Bolton, C.P.A., P.A., Partner, Daszkal Bolton LLP</i>
11:30am - 11:45am	"Ripped from the Headlines: The New Court Mandated Residential Foreclosure Mediation Program and Ethical Considerations" - <i>Meredith Trim, Esq., Director of Managed Mediation, Palm Beach County Bar Association</i>
11:45am - 12:30pm	"Breaking News from the Front: Recent, Real Life Tales of the Foreclosure Crisis: Residential Foreclosure, Short Sales, Commercial Workouts and Ethical Issues" - <i>Gregory R. Cohen Esq., Board Certified Real Estate Attorney, Cohen, Norris Scherer, Scherer, Weinberger & Wolmer; Ronald Scott Kaniuk, Esq., and LL.M. in Bankruptcy, Ricardo, Wasylik & Kaniuk, PL</i>

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**This course is expected to receive 4.5CLER including 4.5 Ethics credits /
Certification credits are pending from The Florida Bar.**

The cost of the seminar is \$165 for PBCBA members/paralegals, \$205 for non-PBCBA members/paralegals if registered by 10/8/10; Add \$25 to registration fee after that date.

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

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

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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) (Real Estate Seminar 10/15/10) Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK** ONLY, WITH THIS FORM.

Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406.



What Do Internet Lawyer Rating Sites Say About You?

By Christopher Hopkins, Chair, Law Office Technology Committee

Before any major purchase, chances are that you research your options on the Internet. This is not necessarily true for hiring lawyers. To date, potential clients and your competitors have had to rely on your website bio, news headlines or direct experience to learn about you – there is no Amazon-for-lawyers.com. Meanwhile, you are probably not doing yourself a favor with your own website – many law firm sites are bland and rarely updated. There are, however, independent sites which currently exist where anonymous self-described “clients” report their experiences with you. These sites can be difficult to find, much less verify, and often can be the source of harsh negative reviews which are difficult to cure.

U.S. News & World Reports seeks to solve that “problem” this October with “America’s Best Law Firms” which, like their law school rankings, will rank more than 5,000 law firms nationwide in 125 legal practice areas. Shortly thereafter, the “Best Law Firms to Work For” rankings are slated to be released in January 2011. See <http://bit.ly/ch7DT3> As of August 2010, a limited version of their internet search engine is available at the Best Lawyers’ website, <http://bit.ly/d9QKIz>, and reportedly will be fully functional by the time you read this article.

If the forthcoming *U.S. News* rankings of law firms become as widely read as their law school reviews, this could marginalize sites with “client” reviews and set the standards by which lawyers and firms may seek to improve their image. On the other hand, *U.S. News* rankings might only benefit larger firms and overlook the distinguishing characteristics of smaller firms which may be invisible in the rankings.

Very few bar associations and legal institutions seem thrilled with the prospect of legal rankings – while lawyers and firms are likely afraid *not* to

participate. As of mid-2010, nearly 25% of Florida lawyers had expanded profiles on the Bar website which listed, among other things, their Martindale Hubbell rating. In July 2010, the Florida Bar determined that it could not implicitly approve some, but not all, attorney rankings and therefore removed Martindale Hubbell ratings from attorney profiles on the Bar website. See <http://bit.ly/9TLImb> At that time, Florida Bar president Mayanne Downs acknowledged that there are at least 122 lawyer rating services.

Services which allow for “client” reviews have received an even harsher reception. The back-and-forth battle over Avvo.com lawyer ratings has been a dizzying process. Even if your practice does not engender itself to potential Avvo readers, be aware that Bar rules and Supreme Court opinions in this area could also affect comments posted on LinkedIn.com and LegalOnRamp.com. Moreover, as lawyers and firms turn to social networking sites, even comments posted on firm fan pages or the use of a “like” icon on Facebook could potentially trigger a Rule violation.

Shortly after Avvo.com arose in 2007, the Bar prohibited members from using Avvo ratings. In April 2008, the Bar committee reversed course, saying that Florida lawyers could reference Avvo ratings in advertisements. By September 2008, Avvo was once again determined to be outside the confines of Bar Rule 4-7.2 (testimonials in lawyer ads) and lawyers were not permitted to request clients publish evaluations online. See <http://bit.ly/aTAs1Y> After a legal challenge, new guidelines, and then a moratorium on the new guidelines, the traditional application of Bar Rule 4-7.2 does not appear to have embraced published social networking referrals or online attorney reviews.

This past July, the American Bar Association issued a 65-page report analyzing the *U.S. News* law school ranking list, noting that it “dominates the public discourse on how law schools compare to one another.” Not surprisingly,

the ABA concluded that the *U.S. News*’ ranking was helpful but “the most thorough and accurate information about law schools comes from the American Bar Association itself.” The ABA was further concerned that the *U.S. News* methodology emphasizes a limited number of factors and that, in the end, students might be selecting schools based upon the ranking number rather than “a nuanced understanding of differences among particular schools.”

These same criticisms will likely arise with the advent of *U.S. News* law firm rankings (other published ranking systems exist but *U.S. News* could be a significant inroad into broad consumer press). According to a *U.S. News* commentator, the magazine collected data directly from firms in addition to obtaining peer-review and over 50,000 client references. See <http://bit.ly/ch7DT3>. It may be interesting to inquire of colleagues and clients whether they have been approached for contribution (if this article is the first news of the forthcoming *U.S. News* rankings, that is probably not a good sign). Recall that *U.S. News* has modified its methodology for law schools rankings over the years so the first generation of results in this survey may fluctuate in future years.

Regardless of how lawyers may be able to use rankings or whether lawyers are permitted to encourage clients to publish comments, the problem remains that online reviews may exist about you. Negative comments will undoubtedly be shrouded behind anonymous posts or online pseudonyms. Lawyers are traditionally quite territorial about their reputations and the online sphere requires heightened attention to ensure your name is clear.

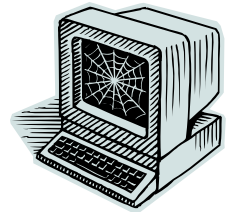
Scan the comment section underneath any item for sale on Amazon.com and you will generally see reviews bouncing from an aggressive one-star (my favorite, a March 2009 review of the Kindle e-reader entitled, “Product flawed – will probably die after 1 year”) to a glowing five-star (“Great in so many ways!!!”). Unlike reviews of the Kindle, which are positive by a ratio of 100:1, many Internet denizens allow their dark side to be emboldened behind

Continued on page 19



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

***Is Your Firm's Website Out of Compliance
With the Ethics Rules?***



**Friday, November 19, 2010 - 11:30a.m. – 2:10p.m.
Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL**

Program Schedule

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

12:00 p.m. - 12:10 p.m. **Welcome & Opening Remarks** - *Christopher B. Hopkins, Esq.,
Committee Chair, Akerman Senterfitt*

12:10 p.m. - 2:10 p.m. **"Your Website Probably Violates the Rules Regulating The Florida Bar -
Florida Supreme Court Mandates Compliance by July 1, 2010"**

Speaker

***Jan L. Jacobowitz, Esq., Director
Ethics & Professional Responsibility Program
Center For Ethics & Public Service
University of Miami School of Law***

This course is expected to receive **2.5 CLER credits from The Florida Bar**. Ethics credits are pending.

The cost of the seminar is **\$60.00 (includes lunch)** for PBCBA members/paralegals;

\$100 for non-PBCBA members/paralegals if registered by **11/12/10**; add \$25 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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Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800



Supreme Court Adopts the Forward-Looking Approach to Projected Disposable Income in Chapter 13

Submitted by: Marc P. Barmat

When a debtor files a Chapter 13 bankruptcy, the Debtor agrees to repay creditors a certain amount through a court-approved plan. If there is an objection to the plan, the Bankruptcy Court may not approve the plan unless it provides for the full repayment of the unsecured claims or “provides that all of the debtor’s projected disposable income to be received” over the plan’s duration “will be applied to make payments in accordance with plan terms.” 11 U.S.C. 1325(b)(1). Because the bankruptcy code does not define the term “projected disposable income,” bankruptcy courts have struggled with the term’s meaning. Some courts have utilized a “mechanical approach” which strictly interpreted a debtor’s projected disposable income according to his or her income during the six months prior to filing for bankruptcy.¹ Other courts have used a “forward-looking approach” which considered the debtor’s financial situation more broadly and allowed for greater flexibility in determining the debtor’s projected disposable income.

The Supreme Court agreed to resolve the differences between the courts when it granted certiorari to decide how a bankruptcy court should calculate a debtor’s “projected disposable income.” Hamilton v. Lanning, 2010 WL 2243704 (U.S. Jun 07, 2010). In deciding the case, the Supreme Court adopted the “forward looking approach” and held that when a

bankruptcy court calculates a Chapter 13 debtor’s projected disposable income, the court may account for changes in the debtor’s income or expenses that are known or virtually certain at the time of confirmation. Id. at 12.

In Hamilton v. Lanning, the Chapter 13 trustee objected to confirmation of the Debtor’s proposed plan on the grounds that the Debtor was not committing all of her “projected disposable income” to the repayment of creditors. Just prior to filing for bankruptcy, the Debtor received a buyout from her previous employer which therefore inflated her “current monthly income.” As a result of an inflated “current monthly income,” the debtor’s “projected disposable income” was also inflated. When the mechanical approach was strictly applied to her case, the Debtor’s

inflated projected monthly income caused her plan payments to far exceed her actual projected disposable income. Accordingly, the Supreme Court recognized that the strict mechanical approach was unreasonable when applied to the Debtor’s case.

As a result of the Supreme Court’s adoption of a “forward looking approach,” bankruptcy judges now have more discretion in determining a Debtor’s “projected disposable income” thereby ensuring that Chapter 13 plans more accurately reflect a Debtor’s ability to repay their creditors.

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

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¹ “Disposable income” is defined as “current monthly income received by the debtor” less “amounts reasonably necessary to be expended.” § 1325(b)(2)(A)(i). “Current monthly income,” in turn, is calculated by averaging the debtor’s monthly income during a 6-month look-back period preceding the petition’s filing. § 101(10A)(A)(i).

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Homestead Statutes (effective October 1, 2010)

By David M. Garten, Esq.

§732.401, F.S.: In recent years, Florida's homestead laws have actually created a burden on surviving spouses and descendants because of increasing taxes, insurance costs, assessments, and property upkeep to the point that some people feel trapped in their homestead property (i.e., surviving spouse holding a life estate and being subject to obligations of current expenses, with decedents vested with remainder). As a result, some surviving spouses have attempted to disclaim their interest in the homestead property to relieve themselves of the burden of expenses. Section 732.401, F.S., is amended to authorize a surviving spouse to elect to take an undivided one-half interest in homestead property as a tenant in common, rather than a life estate. If an election is not made, the statute provides that expenses relating to the ownership of the homestead are to be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with ch. 738, F.S. However, if an election is made, the expenses are to be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares.

§732.4017, F.S.: Section 732.4017, F.S. authorizes an inter vivos conveyance of an interest in homestead property, including a transfer in trust, without it being considered a devise if certain conditions are met. If the conditions are met, an interest in homestead property that is conveyed inter vivos will not be subject to the restrictions on homestead property upon death, even without a waiver of homestead rights by the surviving spouse. By way of example, this statute will allow a surviving spouse to place her homestead interest in trust for her minor child which would extend beyond the minor reaching the age of majority, or to exclude her minor child as a beneficiary without losing her Constitutional Homestead exemptions.

The statutes read as follows:

§ 732.401. Descent of homestead

(1) If not devised as authorized by law and the constitution, the homestead shall descend in the same manner as other intestate property; but if the decedent is survived by a spouse and one or more descendants, the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes.

(2) In lieu of a life estate under subsection (1), the surviving spouse may elect to take an undivided one-half interest in the homestead as a tenant in common, with the remaining undivided one-half interest vesting in the decedent's descendants in being at the time of the decedent's death, per stirpes.

(a) The right of election may be exercised:

1. By the surviving spouse; or
2. With the approval of a court having jurisdiction of the real property, by an attorney in fact or guardian of the property

of the surviving spouse. Before approving the election, the court shall determine that the election is in the best interests of the surviving spouse during the spouse's probable lifetime.

(b) The election must be made within 6 months after the decedent's death and during the surviving spouse's lifetime. The time for making the election may not be extended except as provided in paragraph (c).

(c) A petition by an attorney in fact or guardian of the property for approval to make the election tolls the time for making the election until 6 months after the decedent's death or 30 days after the rendition of an order authorizing the election, whichever occurs last.

(d) Once made, the election is irrevocable.

(e) The election shall be made by filing a notice of election containing the legal description of the homestead property for recording in the official record books of the county or counties where the homestead property is located. The notice must be in substantially the following form:

ELECTION OF SURVIVING SPOUSE TO TAKE A ONE-HALF INTEREST OF DECEDENT'S INTEREST IN HOMESTEAD PROPERTY STATE OF _____ COUNTY OF _____

STATE OF

COUNTY OF

1. The decedent, _____, died on _____. On the date of the decedent's death, The decedent was married to _____, who survived the decedent.

2. At the time of the decedent's death, the decedent owned an interest in real property that the affiant believes to be homestead property described in s. 4, Article X of the State Constitution, that real property being in _____ County, Florida, and described as: _____ (description of homestead property)

3. Affiant elects to take one-half of decedent's interest in the homestead as a tenant in common in lieu of a life estate.

4. If affiant is not the surviving spouse, affiant is the surviving spouse's attorney in fact or guardian of the property and an order has been rendered by a court having jurisdiction of the real property authorizing the undersigned to make this election.

(Affiant)

Sworn to (or affirmed) and subscribed before me this _____ day of _____ (month), _____ (year), by _____ (affiant)

(Signature of Notary Public-State of Florida)

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

(Type of Identification Produced)

(3) Unless and until an election is made under subsection (2), expenses relating to the ownership of the homestead shall be allocated between the surviving spouse, as life tenant, and the decedent's descendants, as remaindermen, in accordance with chapter 738. If an election is made, expenses relating to the

Continued on page 17



The Elder Law Affairs Committee of the Palm Beach County Bar Association presents:

"13th Annual Elder Law Update"

Thursday, December 16, 2010 - 8:20a.m. - 2:00p.m.

Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

- 8:00am - 8:20am Late Registration - Check In
- 8:20am - 8:30am Welcome - Opening Remarks - Seth A. Marmor, Esq., Shapiro Blasi Wasserman & Gora PA, Chair PBCBA Elder Law Affairs Committee, Florida Bar Board Certified Elder Law, and Wills, Trusts & Estates Attorney
- 8:30am - 9:20am The Role of Court-Appointed Counsel In Guardianship - Doing it Right & Doing it Ethically - Lawrence Levy, Esq., Law Office of Lawrence Levy, P A
- 9:20am - 9:50am Class Act Coverage - Bob Greenberg, CLCT, MetLife
- 9:50am - 10:00am Break
- 10:00am - 10:50am Annual Tax & Ethics Update - Michael A. Lampert, Esq., Michael A. Lampert, P.A., West Palm Beach, FL, Florida Bar Board Certified Tax Attorney
- 10:50am - 11:40am Medicaid Update - Leonard E. Mondschein, Esq., Chairman Elder Law Section of the Florida Bar, Florida Bar Board Certified Elder Law, and Wills, Trusts & Estates Attorney, Miami
- 11:40am - 12:00pm LUNCH (included in registration)
- 12:00pm - 12:30pm VA Aide & Attendance Benefits - Craig Carr, Palm Beach County Veterans Services Office,
- 12:30pm - 1:00pm Professionalism in Palm Beach County - Carolyn R. Bell, Esq., United States Attorney's Office, West Palm Beach
- 1:00pm - 1:10pm Break
- 1:10pm - 2:00pm Legislative Update - Ellen S. Morris, Esq., Elder Law Associates, Legislative Chair Elder Law Section of the Florida Bar



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This course is expected to receive 6.0 CLER including 2.5 Ethics credit / Certification credits are pending from The Florida Bar.

The cost of the seminar, **including lunch**, is **\$165** for PBCBA members/legal assistants, **\$205** for non-PBCBA members/legal assistants, if registered by 12/9/10. **Add \$25 to registration fee after that date.**

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

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Please register me for the December 16, 2010 Elder Law Seminar:

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Cost is the same as listed above, in addition to \$10 for shipping and handling. PAYMENT BY CHECK ONLY, WITH THIS FORM..

Congratulations to the Bar's Best Spellers



The Lawyers for Literacy Committee recently hosted its 8th Annual Spelling Bee at Bear Lakes Country Club in West Palm Beach. Money raised from the evening will benefit local literacy programs. Chair Peggy Wood congratulates runner-up Eddie Shipe, and winners Claire Dumas, Michelle Suskauer and David Prather. Claire, Michelle and David will represent the Bar in the Great Grown Up Spelling Bee.



Front row: Cara Barrick, Claire Dumas, Michelle Suskauer, David Prather and Scott Zappolo. Back row: Ryon McCabe, Evan Frederick, Mariano Garcia, Eddie Shipe and Grier Pressly.



Judge Nancy Perez, Vicky Vilchez and Colleen Farnsworth



Jill Weiss, Michael Napoleone and Robin Bresky



Darlene Kostrub, Executive Director of the Literacy Coalition and Scott Zappolo who placed 5th in the Bee.



Judges Edward Garrison, Glenn Kelly, Janis Keyser and Ken Stern



The Lawyers for Literacy Committee gave away two gift baskets and a massage from The Royal Treatment. Pictured are several committee members Kaleb Bell, Courtney Stafford and Melynda Melear.



Joan Williams and Earl Denney



Welcome to the Palm Beach County Bar Association's 8th Annual Spelling Bee & Cocktail Reception

Presented by the Lawyers for Literacy Committee



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Speeding Ticket? First Time Driver in the Family? Bar offers on-line traffic and parenting courses

The Palm Beach County Bar Association continues to look for non-dues sources of revenue. Accordingly, we have begun offering online courses that include: Basic Driver Improvement Course, First Time Driver Course, Mature Driver Course, Florida Notary Service and Florida Internet Parenting Course (approved course by the State of Florida). These are all approved courses through the American Safety Council. The Palm Beach County Bar Association will receive a small stipend for each course that is taken through a link on our website. Please help us by remembering to refer your clients to this link if they are in need of taking any of these courses: www.palmbeachbar.org/online_courses.php

“Mediation Strategies for Cases That Cannot Be Settled”

By Steven A. Mayans

“The nice part about being a pessimist is that you are constantly being either proven right or pleasantly surprised.”
— George Will

The premise of this article is anathema to most mediators. We believe (we have to believe) that every case has the promise of resolution. In truth, some of the most intractable disputes defy expectation and surprisingly settle in mediation. Yet, there are those few cases – whether due to the nature of the dispute, amount in controversy, novelty of the legal question, personality of the lawyers, or intransigence of the parties – that you just know are impossible to settle (and will be proven right). This article is directed to those situations, and the strategies for which mediation can still be useful in confirming settlement assessments; increasing client understanding, and managing client expectations.

1. Confirm Settlement Assessment

As the lawsuit approaches trial, you should take a final appraisal of settlement possibilities. This may have as much to do with your own judgment as it will on any unexpected changed circumstances or case reassessment by the other side. You may also want to demonstrate to your client that settlement was seriously pursued, if for no other reason than to avoid second guessing about missed opportunities should the trial results prove disappointing. A well-mediated case can achieve both objectives.

2. Increase Client Understanding

It is not always enough for us to advise clients what they need to know; we need to make certain that they really understand it. Outcomes oftentimes will turn on witness credibility, legal interpretations, or the application of a principle of law to the facts of the case. It is important for the parties to know which issues will be decided by the Court; how evidence

will be presented; and what range of outcomes to expect. Do the clients have a clear understanding of their worst day in Court? They better have, however unlikely you believe that such an outcome would occur. Do they appreciate the difference between liability and collectibility? Are they conversant, for example, with concepts such as corporate veils, joint assets, homestead protection, and the like? They need to be, and before the full expense of a trial has been incurred.

3. Managing Client Expectations

Nothing is more jarring (or instructive) than when a client admits in a mediation caucus to a 90% expectation of success at trial even after the lawyer has privately assessed such chances at no better than 50/50. This happens more often than you may think, and reveals a dangerous disconnect between the client's subjective belief and the lawyer's professional advice. It also prevents a fair assessment of settlement benefits and fails to correct an unrealistic expectation at trial. This essential discussion best occurs in a serious, candid and supportive setting, one for which mediation is uniquely suited.

The bottom line is that even when settlement prospects are discouraging, mediation can still play a vital role in updating assessments; demonstrating settlement efforts; reviewing critical legal and evidentiary issues; and confirming client understanding of outcome risks. Win, lose, or draw thereafter, you will better serve your client and more fully protect your professional relationship with a candid, probing, and thoughtful discussion before trial. It will also either prove your pessimistic assessment of settlement possibilities correct or, just maybe, provide you with a pleasant surprise.

Steven A. Mayans, a partner of FitzGerald Mayans & Cook, P.A., is a federal and state certified court mediator and a member of the commercial mediation panel of the American Arbitration Association's National Roster of Neutrals.

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

"Mediating the Construction Dispute" Keys to Success (or Failure)

Wednesday, November 3, 2010 8:20 a.m. – 12:00p.m.

Bar Association Offices 1601 Belvedere Road, #302E, West Palm Beach

Intended for those that practice construction litigation, *Mediating the Construction Dispute* is designed to explore the benefits and limitations of mediation in a technically intensive industry. Roles of the counsel, parties, experts and mediator will be discussed in an interactive format between the speaker and participants. Familiarity with construction law is assumed as various construction case studies will be discussed to illustrate how to prepare for and participate in mediation to provide the best opportunity for success - a negotiated resolution.

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Program Schedule

8:20 a.m. - 8:40 a.m.	Late Registration/Check In
8:40 a.m. - 8:50 a.m.	Introduction & Opening Remarks – <i>Adrian J. Alvarez, Esq., Committee Chair, Bruce E. Loren & Associates</i>
SPEAKER: Gregory S. Martin, Esq. Board Certified in Construction Law by The Florida Bar Gregory S. Martin & Associates, P.A., Maitland, FL	
8:50 a.m. - 9:00 a.m.	Opening Comments and Discussion – Why Mediation?
9:00 a.m. - 9:45 a.m.	What's the Dispute?
9:45 a.m. - 10:30 a.m.	Pre-mediation (Help me help you)
10:30 a.m. - 10:45 a.m.	BREAK
10:45 a.m. - 11:30 a.m.	The Joint Session
11:30 a.m. - 11:50 a.m.	Closing the Deal
11:50 a.m. - 12:00 p.m.	Closing Comments

This course is expected to receive **3.5 CLER Credits / 3.5 Construction Law; 3.5 Bus. Litigation Cert. Credits from The Florida Bar**. The cost of the seminar is **\$85 for PBCBA members/paralegals; \$125 for non-PBCBA members/paralegals** if registered by **10/27/10**; add \$25 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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Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406

Welcome New Members!

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

CHRISTINA DIFONTE -

Massachusetts; Barry University School of Law, 2008; Jupiter

MICHELLE FINE – Admitted to the Florida Bar 1999; Delray Beach

ERICA J. FOERCH – Paralegal Member; Fox Rothschild, L.L.P., West Palm Beach

BRIAN GABRIEL – Florida; Nova University, 1990; Gabriel & Gabriel, Jupiter

CHANGJAE LEE – South Korea; F.S.U., 2010; Associated with NextEra Energy, Inc., Juno Beach

CHRISTOPHER MEIER – New York; Nova Southeastern University, 2005; The Meier Firm, P.L., Boca Raton

ROBERT MINNICH – Dickinson School of Law, Pennsylvania State University, 2003; Associate in Redgrave & Rosenthal LLP, Boca Raton

SHERI E. NOTT – Florida; University of Florida, 1993; Partner in Nott Law Group, Boca Raton

MATTHEW OCKSRIDER – New Jersey; University of Florida, 2009; Matthew Ocksrider Law Firm, Jupiter



PATRICIA M. PERSANTE – Mississippi; Affiliate Member; St. Mary's University School of Law, 1977; Jupiter

STEVEN P. SANCHEZ – Paralegal Member; Lytal, Reiter, Clark, Fountain & Williams, West Palm Beach

HELEN A. SELIGMAN – Paralegal Member; Gunster, West Palm Beach

STEPHANIE VELLIOS – New York; University of Miami School of Law, 2010; Law Clerk –Appellate Court, Hollywood

SANDRA WALLACE – Florida; Florida State University, 2009; Jupiter



SKI & CLE

The North County Section is headed back to Vail, March 26 – April 2, 2011. Stay at the beautiful Vail Marriott Mountain Resort & Spa for \$199.00 per night. You'll receive a complimentary breakfast each morning, plus discounted lift tickets, discounted transportation and free CLE! If you would like to go on the trip, or need further details call Mitch Beers at (561) 622-8100 or by email at mbeers1@bellsouth.net.



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Thomas Sasser and Julia Wyda Named Pro Bono Attorneys of the Month



The Fifteenth Circuit Pro Bono Committee is pleased to announce this month's Pro Bono Attorneys of the Month, **THOMAS SASSER AND JULIA WYDA**. Tom, a partner and Julia, an associate in the West Palm Beach firm Sasser, Cestero and Sasser, practice exclusively in the area of marital and family law. Tom and Julia recently concluded a pro bono case, donating over 100 hours of their time in representing a Legal Aid client in a highly contested dissolution of marriage case. The client was unemployed at the time and very involved in the caretaking of the couple's young child. The issues in the case revolved around time sharing, access to a vehicle and the wife's disputed income. There were also allegations that the mother was alienating the child against the father who had been so heavily involved in his daily upbringing. The case was quite lengthy involving an extended and complicated discovery period. It took almost three years to conclude the case and ultimately reach a satisfactory settlement. For their tireless efforts on behalf of the client, Tom Sasser and Julia Wyda are recognized as this month's Pro Bono Attorneys of the Month.



Who Are They?

From Page 4

1. Patrick Casey
2. Preston Fields
3. Patricia Lebow
4. John Beranek
5. Larry Klein

Attorneys that closed pro bono cases in June and July 2010

Lynne Baldwin
Edrick E. Barnes
Ross Baylor
Kelly Moore Bertisch
Michelle Bertolini
Patricia L. Boychuk
Kevan Boyles
Gary Brandenburg
W. Chester Brewer, Jr.
Gary Brookmyer
William R.H. Broome
John L. Bryan, Jr.
S. Brian Bull
John Buso
Kristina M. Candido
Barry Carothers
Peggy Carry
Jorge Cestero
Thomas V. Close
James E. Copeland
Steven Cripps
Georgiana Dambra
Scott Devore
Michael Dyer
Brett Elam
Guillermo Farinas
Darryl P. Figueroa
Chandler R. Finley
Lenora J. Fowler

Donald S. Fradley
Julianne R. Frank
Lance C. Fuchs
David Gart
Karen Brown Gattozzi
Amy Genet
Steven J. Goldberg
Christopher Haddad
Melva Harris-Rozier
Susan Hendricks
Lynne Hennessey
John Harrison Hough
Stanley Hyman
Raymond G. Ingalsbe
Cynthia J. Jackson
JaynesDavid
Christopher R. Jette
Isabel Julia-Miles
Keith J. Kanouse
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Craig I. Kelley
Mamie W. Kendall
Lawrence King
Richard Kleid
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Joseph Kuharcik
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John McDivitt

Deena R. McNamara
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Locksley Rhoden
Mireya Rivera
Donia Adams Roberts
Bruce S. Rosenwater
Peter Rose
Harry J. Ross
Allen E. Rossin

Judd Rowe
Michael Ryan
Cary Sabol
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Shane Weaver
Richard S. Weinstein
Seth Weinstein
Douglas Willis
Bert Winkler
Nancy Wright
Pamela Wynn
Stuart A. Young
Ronald J. Zeller

Total Number of Pro Bono Hours: 2298.65



W. JAY HUNSTON, JR. Mediator/Arbitrator

- J.D. Stetson Univ. College of Law (1976)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2003)
- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)
- Florida Certified:
Circuit Civil Mediator (1991-Present)
Family Mediator (1998-Present)
- NASD/FINRA Approved Mediator
- Qualified Florida Arbitrator
- Admitted to Practice in Florida and Montana
- Hourly and Per Diem Rates Available upon Request

Since 1/1/01, limiting his practice to all forms of effective dispute resolution, including pre-suit and Court-ordered mediation, arbitration, conciliation, special master proceedings, and private judging.

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Practical Aspects of Conducting Family Law Trials

Friday, December 10, 2010 9:50 a.m. – 4:45 p.m.

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Program Schedule



- 9:30am - 9:50am **Late Registration and Check in**
- 9:50am - 10:00am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq.,
Matthew Lane & Associates, P.A., Committee Chair*
- 10:00am - 10:45am **Drafting Proposed Judgments and Orders** - *Benjamin T. Hodas, Esq.,
Law Office of Benjamin T. Hodas, LLC*
- 10:45am - 11:00am **BREAK**
- 11:00am - 11:45am **Preparation of Financial Affidavits** - *Matthew Stohlman, CPA, Moore, Ellrich & Neal, P.A.*
- 11:45am - 12:15pm **Professionalism in Palm Beach County** - *Presented by the Palm Beach County Bar
Association Professionalism Committee*
- 12:15pm - 1:30pm **Lunch**
- 1:30pm - 2:15pm **Presentation of Parenting Plans** – *Elisha D. Roy, Esq., Sasser, Cestero & Sasser, P.A.,
Board Certified Marital & Family Law*
- 2:15pm - 3:00pm **Evidentiary Issues Pertinent to Relocation Cases** - *Erskine C. Rogers, III, Esq.,
Rutherford Mulhall, P.A., Board Certified Marital & Family Law*
- 3:00pm - 3:15pm **BREAK**
- 3:15pm - 4:00pm **Effective Cross Examination of Psychological Experts** - *Charles D. Jamieson, Esq.,
The Law Firm of Charles D. Jamieson, PA, Board Certified Marital & Family Law*
- 4:00pm - 4:45pm **Annual View from the Bench** - *The Honorables Martin H. Colin, Elizabeth M. Maass,
Sandra K. McSorley, Richard L. Oftedal, and Magistrates Thomas R. Baker, III, and
Joy B. Shearer, Fifteenth Judicial Circuit, Moderated by Matthew Jay Lane, Esq.,
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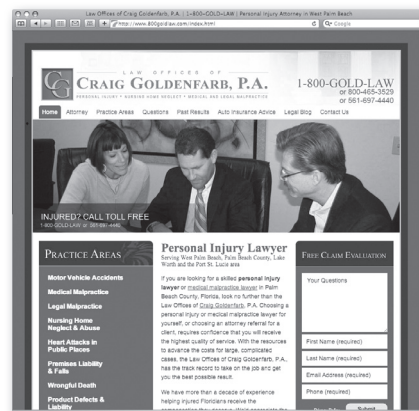
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Punitive Damages in Economic Loss Cases

by Ted Babbitt

This writer recently reported on the case of Lawnwood Medical Center, Inc. v. Sadow, 35 Fla. L. Weekly D655 (Fla. 4th DCA, Mar. 24, 2010) which distinguished a libel per se case from the U.S. Supreme Court cases of State Farm Mutual Automobile Insurance Co. v. Campbell, 538 U.S. 408 (2003) and BMW of North America, Inc. v. Gore, 517 U.S. 559 (1996) which were adopted by the Florida Supreme Court in Engle v. Liggett Group, Inc., 945 So. 2d 1246 (Fla. 2006). The latter cases provided a three part analysis in order to determine whether a punitive damage award was consistent with the due process clause of the United States Constitution. That analysis required review of the degree of reprehensibility of the defendant's misconduct, the disparity between the actual or potential harm suffered by the plaintiff and the punitive damages award and the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases. The Lawnwood Medical Center case, *supra*, adopted the principal that the State Farm and BMW analysis was not appropriate in a case involving a personal injury case such as the harm suffered from an intentional slander. The recent case of James Crystal Licenses, LLC v. Infinity Radio Inc., 35 Fla. L. Weekly D1111 (Fla. 4th DCA, May 19, 2010) makes it clear that the federal strictures set forth in the State Farm and BMW cases still apply in an economic loss case.

The James Crystal case has been up and down the appellate ladder numerous times. It arose in Palm Beach County as a result of a local radio celebrity changing employment from one radio station to another with a non-compete agreement in place. The initial suit involved a request for an injunction precluding the disc jockey from continuing to work for a competitive station in violation of her agreement. The trial court refused to enter such an injunction and the Fourth District reversed. The next phase of litigation involved a jury trial which resulted in a \$2.3 million compensatory damage award against the defendant radio station and the disc jockey for violation of the non-compete agreement and a \$13.2 million punitive damage award against the corporate owner of the hiring station. That was reversed for lack of sufficient evidence.

The next permutation of this case involved a second jury trial which resulted in a \$126,511.48 compensatory award and a \$6.9 million punitive award. In reviewing that judgment the appellate court again reversed the compensatory award in its entirety concluding that there was insufficient competent substantial evidence to show that the losses alleged by the plaintiff were directly linked to the defendant's wrongdoing. The appellate court next turned to the issue of the punitive damage award. The Court relied to a great extent on the cases of Morgan Stanley & Co., Inc. v. Coleman Holdings, Inc., 955

So. 2d 1124 (Fla. 4th DCA 2007), and Engle v. Liggett Group, Inc., 945 So. 2d 1246, 1263 (Fla. 2006). Those held that punitive damages for fraud could not stand absent proof of at least nominal damages because fraud required actual loss or injury as a result of action and reliance. The Court also cited Ault v. Lohr, 538 So. 2d 454 (Fla. 1989), which allowed a punitive damage claim without a compensatory damage award. Ault related to an assault and battery. The Lawnwood Medical Center case involved slander per se and also involved a zero compensatory damage award but a rather large punitive damage award which was allowed to stand by the Fourth District. The Court indicates that the present case was based upon tortious interference with a business relationship. That cause of action requires damage to the plaintiff as a result of the malicious interference as one of its primary elements. The Court holds at 1113:

"Like the fraud claim in Morgan Stanley, the tortious interference claim here 'cannot stand where...no legally cognizable damage was shown as a result of the alleged [wrongdoing]'. 955 So. 2d at 1132. Because we reverse the compensatory damage claim, the punitive damages must also fall. See *id.* at 1132-33."

Nevertheless the Court goes through the three part analysis set forth above in the State Farm and BMW cases and concludes that the conduct of the defendant was not sufficiently reprehensible, there was no cognizable relationship between the amount of the compensatory award even as initially ordered by the jury and the \$6.9 million punitive award and the analysis of a comparable civil penalty does not apply. The Court, in essence, concludes that based upon the three part analysis the punitive damage award would be unsustainable even if it were not disallowed based upon the absence of any compensatory award. In distinguishing the Lawnwood case from the current case, the Court concludes:

"This case provides the perfect juxtaposition of the punitive damage analysis in the negligence and economic loss cases against the shortened analysis applied in Lawnwood for the unique claim of slander per se. Judge Farmer carefully distinguished the conduct in BMW and State Farm resulting in economic loss from the 'despicable' conduct resulting in the 'malevolent destruction' of a doctor's personal reputation in Lawnwood. Lawnwood, 2010 WL 1066833 at *18. He also conceded the fraud claim in Morgan Stanley was entirely different from the slander per se claim in Lawnwood due to the latter's 'conclusive legal presumption of loss or damage' that is intrinsic in a slander per se claim. *Id.* at *16. It is because of the uniqueness of the claim in Lawnwood that we easily distinguish it from today's analysis in an economic loss case. Just as Judge Farmer diminished the nature of the harm in BMW and State Farm, we diminish the nature of the harm in this case.

We thus acknowledge the limited reach of Lawnwood and embrace its clear line of demarcation for evaluating negligence and economic loss cases differently than slander per se cases. We adhere to the full three-part analysis for punitive damage awards in

Continued on page 17

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Homestead Statutes

Continued from page 9

ownership of the homestead shall be allocated between the surviving spouse and the descendants as tenants in common in proportion to their respective shares, effective as of the date the election is filed for recording.

(4) If the surviving spouse's life estate created in subsection (1) is disclaimed pursuant to chapter 739, the interests of the decedent's descendants may not be divested.

(5) This section does not apply to property that the decedent owned in tenancy by the entireties or joint tenancy with rights of survivorship.

§ 732.4017. Inter vivos transfer of homestead property

(1) If the owner of homestead property transfers an interest in that property, including a transfer in trust, with or without consideration, to one or more persons during the owner's lifetime, the transfer is not a devise for purposes of s. 731.201(10) or s. 732.4015, and the interest transferred does not descend as provided in s. 732.401 if the transferor fails to retain a power, held in any capacity, acting alone or in conjunction with any other person, to revoke or revest that interest in the transferor.

(2) As used in this section, the term "transfer in trust" refers to a trust under which the transferor of the homestead property, alone or in conjunction with another person, does not possess a right of revocation as that term is defined in s. 733.707(3)(e). A power possessed by the transferor which is exercisable during the transferor's lifetime to alter the beneficial use and enjoyment of the interest within a class of beneficiaries identified only in the trust

instrument is not a right of revocation if the power may not be exercised in favor of the transferor, the transferor's creditors, the transferor's estate, or the creditors of the transferor's estate or exercised to discharge the transferor's legal obligations. This subsection does not create an inference that a power not described in this subsection is a power to revoke or revest an interest in the transferor.

(3) The transfer of an interest in homestead property described in subsection (1) may not be treated as a devise of that interest even if:

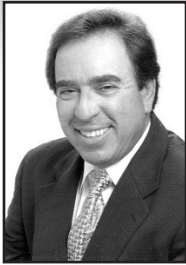
(a) The transferor retains a separate legal or equitable interest in the homestead property, directly or indirectly through a trust or other arrangement such as a term of years, life estate, reversion, possibility of reverter, or fractional fee interest;

(b) The interest transferred does not become a possessory interest until a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, the death of the transferor; or

(c) The interest transferred is subject to divestment, expiration, or lapse upon a date certain or upon a specified event, the occurrence or nonoccurrence of which does not constitute a power held by the transferor to revoke or revest the interest in the transferor, including, without limitation, survival of the transferor.

(4) It is the intent of the Legislature that this section clarify existing law.

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Punitive Damages

Continued from page 15

economic loss and negligence cases developed in BMW and State Farm, and adopted by our supreme court in Engle. The judgment is reversed and the case remanded for entry of a judgment in favor of the defendants.

The foregoing analysis of the Court seeks to limit the opinion in the Lawnwood case to a much stricter extent than that expressed in the Lawnwood opinion or for that matter consistent with the Supreme Court's holding in Ault, supra. Nevertheless it is clear that the Court makes a substantial distinction between economic loss cases and personal injury cases when it comes to assessing punitive damages. In the former, the three part analysis mandated by the State Farm and BMW cases clearly applies while in the latter it well may not.

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WEST PALM BEACH LAW OFFICE has office available for solo practitioner or as satellite office. Located in the Judge of Compensation Claims Building on

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BOYNTON BEACH: Existing Immigration law firm directly on Boynton Beach Blvd and very near to I-95 exit. Busy/high traffic road, high visibility and access to conference room. Perfect for practicing attorney and possible referrals. Please e-mail Dina at dinahas@aol.com or dhujber@hujberlaw.com.

DOWNTOWN WPB- FOR SALE: Free standing 9,600 sq.ft. building. Your name on this building! Walk to courthouse. Close to Palm Beach. Includes parking lot plus rental income. REBEL COOK real estate (561) 622-9920. rebelcook@rebelcook.com ; www.rebelcook.com

NORTH COUNTY OFFICES FOR SALE OR RENT: Palm Beach Gardens for RENT- First Class offices. North Palm Beach office condos for sale. Atrium office building. U.S. One- Parking Garage. Jupiter for rent- Intracoastal views. Various sizes from 1100 sq.ft. to 4,000 sq.ft. REBEL COOK real estate (561) 622-9920. rebelcook@rebelcook.com ; www.rebelcook.com

OFFICE SPACE TO SHARE IN PALM BEACH GARDENS: Beautiful law office. Separate secretarial station available. Conference room/library, kitchen, private bath. Close to PGA Blvd and North County Courthouse. Ample parking. Call (561) 478-2102 for further details.

PROFESSIONAL OFFICE SPACE IN PALM BEACH GARDENS: Beautiful layout. Close to PGA Blvd. Two suites at approx 1100 SF (4 inner offices and private bath) and 1300 SF (large inner offices; private kitchen and bath). Ample parking. Call (561) 478-2102 for further details.

SUBLEASE: Attorney's office with secretarial station. Internet, phone and file space included. Centurion Tower, 1601 Forum Place, West Palm Beach. \$1,500/month. Call Beth (561) 659-7878.

Bulletin Board

BOCA RATON: Do you need a new FULL-TIME OFFICE or a PART-TIME/SATELLITE LOCATION WITH A CONFERENCE ROOM? 1-4 offices and secretarial/paralegal space available in law office/business suite in East Boca Raton. Use of internet, copier, fax, kitchen and conference room included. Referral opportunities available. Email ron@ricardolaw.com with "Boca Office" in subject line.

HEARSAY

Dennis P. Koehler, a Vietnam Veteran, recently received the VVA Commendation Medal, the highest individual honor awarded by the 62,000 member Vietnam Veterans of America, Inc. He was recognized for his 29-year membership in the VVA and tireless advocacy for America's veterans at the local, state and national levels.

The Law Firm of Kreusler-Walsh, Compiani & Vargas, P.A. is pleased to announce that **Stephanie L. Serafin** formerly a Staff Attorney to Judge Dorian Damoorgian at the 4th DCA has become associated with the firm.

Richman Greer is pleased to announce that **Grasford W. Smith** was installed as President of the F. Malcolm Cunningham Sr. Bar Association for 2010-11.



Cyrus K. Toufanian is pleased to announce the opening of The Law Office of Cyrus K. Toufanian, P.A. at 1500 North Dixie Highway, Suite 204, West Palm Beach 33401. (561) 628-6465. Mr. Toufanian practices in the areas of criminal defense and family law. www.cktlaw.com.

Joseph S. Karp has been elected President of the American Association of Trust, Estate Planning and Elder Law Attorneys (AATEELA). AATEELA is an invitation-only professional association of lawyers nationwide selected for their outstanding contributions to the fields of estate planning and elder law.

Jones, Foster, Johnston & Stubbs, P.A. announces that **C. Wade Bowden** has earned the distinction of Florida Bar Board Certified Business Litigation Attorney and **Mark H. Dahlmeier** has earned the distinction of Florida Bar Board Certified Real Estate Attorney.

Samantha Schosberg Feuer was installed as President of the Palm Beach County Chapter of the Florida Association for Women Lawyers.



Andrea L. Johnson, Attorney at Law, P.A. will now be known as Andrea J. White, Attorney at Law, P.A. and will continue to offer legal services throughout the Palm Beaches and the Treasure Coast. Andrea White was recently selected as the State Public Policy Chair for Business and Professional Women/Florida.

MISCELLANEOUS

LAW OFFICE FURNITURE AND EQUIPMENT FOR SALE:

3 dark wood secretary desks with returns, 1 secretary desk, no return. Lanier dictation equip., computer equipment. Misc. office furniture. Email wbmccall@aol.com.



Lawyer Rating Sites

Continued from page 6

the keyboard, often due to anonymity and the absence of any authority, leading product and service reviews to be aflame with howling criticism. If that is true, has an unsatisfied client commented about you on the Internet?

To ensure the accuracy of your online reputation, it is advisable to first confirm that the Bar's website has accurate information (often, that is where the ratings sites "scoop" their primary data). Check your profile at <http://bit.ly/bafQDZ>. Next, run your name through the Best Lawyers site (above) and Avvo.com. Oddly enough, according to Avvo, 33% of my practice involves advertising which, in reality, arises far less frequently in my cases.

Google is, of course, a solid resource however you need to be aware that a "straight" Google search is not

enough. On the Google home page, go to the tab entitled, "more," in the upper left corner and run searches for [your first and last name + lawyer] through news, scholar, blogs, YouTube, and groups. Add words like "attorney," "bad," "avoid," and "reputation" to refine your search.

Other websites with lawyer rankings abound: rateapartner.com, lawyerratingz.com, lawyersreputation.com, lawyerasearchguide.com, and ripoffreport.com. Finally, employment sites which offer forums also may also be laden with personal attacks (everything from craigslist.org to findlaw.com).

Christopher B. Hopkins is a shareholder with Akerman Senterfitt (Christopher.Hopkins@akerman.com).

Movie Tickets make great gifts for teachers, clients and staff!

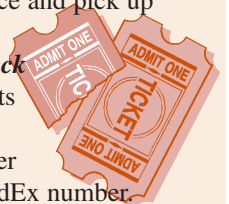
The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff, clients and end of the year gifts for teachers. Savings are available for the following theaters:

- *Muvico Theater - \$7.50 each (\$10.00 at box office)
- *Regal Theaters \$7.50 each (\$10.00 at box office)
- *Cobb Theatres \$7.50 each (\$10.00 at the box office)

Come by the office and pick up your tickets today

(**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number.

PRICES ARE SUBJECT TO CHANGE





PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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

CALENDAR

October 2010

Wednesday, September 29 –
October 2
Board of Governors Meeting
Windsor Court, New Orleans, LA

Friday, October 1, 8:00am
PBJA Golf Tournament

Saturday, October 2, 8:00am
Lawyers Have Heart Run

Monday, October 4, 11:00am
Induction for New Attorneys

Thursday, October 7, 5:30pm
YLS/FAWL Happy Hour
Off the Hookah, 314 Clematis
Street

Friday, October 8,
8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Friday, October 8, Noon – 1:00pm
Law Week Committee Meeting
Bar Association Office

Monday, October 11
Court Holiday – Columbus Day
Bar Office Closed

Monday, October 11
Legal Aid Golf Tournament
Bear Lakes Country Club

Tuesday, October 12,
Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Wednesday, October 13,
11:45am -1:00pm
**Unified Family Law Practice
Committee Meeting**
Judicial Dining Room –
Main Courthouse

Wednesday, October 13,
Noon – 1:00pm
**Business Law Practice
Committee Meeting**
Bar Association Office

Wednesday, October 13,
Noon – 1:00pm
NCS Board Meeting
Offices of McHale & Slavin, P.A.

Thursday, October 14,
11:45am – 1:00pm
Judicial Luncheon
North end of cafeteria –
Main Courthouse

Thursday, October 14,
5:30pm – 7:30pm
Lawyer Variety Show Auditions
Eissey Theatre, Palm Beach
Gardens

Friday, October 15,
8:00am – 1:00pm
**Real Estate CLE Committee
Seminar**
Bar Association Office

Friday, October 15,
Noon – 1:00pm
**Cunningham Bar
Association Meeting**
Library @ Main Courthouse,
WPB

Tuesday, October 19,
11:30am – 1:00pm
Membership Luncheon
Speaker: ABA President
Steve Zack

Wednesday, October 20,
Noon – 1:00pm
**Membership
Committee Meeting**
Bar Association Office

Thursday, October 21,
11:30am – 1:00pm
Solo Luncheon
Bar Association Office

Thursday, October 21,
5:30pm – 8:00pm
North County Section Dinner
Capitol Grille

Saturday, October 23
PBCBA Family Picnic
Dreher Park

Tuesday, October 26, 5:30pm –
6:30pm
Legal Aid Board Meeting
Bar Association Office

Wednesday, October 27, 3:30pm –
4:30pm
**Corporate Counsel
Committee Meeting**
Bar Association Office

Wednesday, October 27, 5:00pm –
6:00pm
**PBCBA Board of Directors
Meeting**
Bar Association Office

Thursday, October 28, 6:00pm –
9:00pm
PBJA Meeting

Saturday, October 30
**South County Bar Association
Tennis Tournament**