



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

September 2011



Past PBCBA President Scott G. Hawkins was recently sworn in as president of The Florida Bar as his wife Lisa holds the Bible and his daughter Allison looks on. Mark your calendar for November 14 for a membership luncheon where Scott will address the membership about important Florida Bar issues.

Mark your calendar for upcoming Membership Events

Membership Kickoff: Inaugural Speed Networking & Cocktail Reception

September 21
BB King's at City Place

Lawyers Have Heart Run

October 1

Diversity Luncheon

October 14
Marriott West Palm Beach

Family Picnic

October 22
Dreher Park

Membership Luncheon

November 14
Marriott West Palm Beach
Speaker: FL Bar President Scott G. Hawkins

Annual Holiday Party & Silent Auction

December 1
Frenchman's Reserve, Palm Beach Gardens

Third Annual Lawyer Variety Show

January 21, 2012
Eissey Theatre, Palm Beach State College

Bench Bar Conference

March 9
Palm Beach County Convention Center

Annual Judicial Reception

May 1
The Harriet at City Place

Annual Installation Banquet

June 2
The Breakers Hotel, Palm Beach

Bar to Host Second Biennial Diversity Summit October 14

The Palm Beach County Bar Association's Committee for Diversity and Inclusion will hold its Second Biennial Diversity Summit on Friday, October 14, 2011. The purpose of the summit is to promote dialogue between managing and hiring partners, government and agency heads, associates and Judges on ways to improve the diversity in our legal community. The event will be a ½ day program, featuring a luncheon with a prominent speaker, followed immediately by roundtable discussions over dessert and coffee. During the luncheon, Palm Beach County Bar President John Howe will present the "diversity statistics," highlighting both areas of success and areas needing improvement. The statistics, together with the relative experiences of those attending the luncheon, will serve as the starting point for the roundtable discussions. The discussions are intended to generate ideas, goals and unique means of tackling this complex issue. Finally, the event will feature a panel discussion, and include prominent local and national leaders, including Daryl Parks, President-Elect of the National Bar Association, Michael McAuliffe, 15th Judicial Circuit State Attorney, and many more. The event will conclude with a happy hour. Please save the date on your calendars for this exciting and important event.

Third Annual Lawyer Variety Show – Talent Search

Can you do impersonations? How about sing, dance, play a musical instrument or make people laugh? Auditions for our Third Annual Lawyer Variety will be held on Wednesday, October 12 from 5:30 pm to 7:30 pm at the Eissey Theatre in Palm Beach Gardens. If you're interested in auditioning, please contact Lynne Poirier at the Bar Office at 687-2800 or email lpoirier@palmbeachbar.org

The show will be held on Saturday, January 21, 2012 beginning with a cocktail reception. Tickets go on sale November 1.

Mark your calendar and join us for this fun night out.

Membership Kickoff: Inaugural Speed Networking & Cocktail Reception

The Membership Committee will be hosting its first Membership Kickoff event on Wednesday, September 21 from 5:30 pm to 7:00 pm at BB Kings in West Palm Beach.

Join us and see how many new members you can meet within 45 minutes!

Cocktails begin at 5:30 pm followed by Speed Networking from 6:15 pm – 7:00 pm.

Sponsors to date include Esquire Deposition Services, Intelligent Office, Visual Evidence and PNC Bank.

The cost will be FREE for new members (as of July 2011) \$20.00 for renewing members and judges are complimentary.

Register on-line at www.palmbeachbar.org

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THE
BULLETIN
PALM BEACH COUNTY
BAR ASSOCIATION

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www.palmbeachbar.org

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

LETTERS TO THE EDITOR

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

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



Dear North County Section:

As a North County Section scholarship recipient I wanted to take a moment to thank you for awarding me the "North County Section of the Palm Beach County Bar Association's Endowed Scholarship."
I am very happily overwhelmed with your generosity. This scholarship has made it possible for me to afford going to college. I am married with three children and I am the only one right now supporting my family. This award has relieved some of the financial hardships that I have to encounter while trying to do everything on my own while trying to pursue my school dreams. I am pleased that there are other people out in the world that are capable of awarding much needed college students with their future career goals.

One day I hope to be able to give back to future students just as you have graciously given to me.

/s/ Alicia

Palm Beach State College student

FREE Happy Hour for North County Section Members
Thursday, September 15 • 5:30 pm – 7:00 pm

Brio Tuscan Grille
3101 PGA Blvd.

Free for all NCS members; spouses are welcome for \$25.00
and judges are complimentary.

Kindly RSVP online @ WWW.PALMBEACHBAR.ORG

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President's Message



9/11 Ten Years Later

By John M. Howe

I will never forget that Tuesday morning in September 2001.

I was getting ready for court. I had a hearing in Judge Baker's Juvenile Division courtroom. As I stood in front of the television tying my tie while watching The Today Show on NBC, the show's host, Matt Lauer, reported that an airplane had just crashed into one of the World Trade Center's towers. I figured it must have been a small private airplane, but the video that was being shown was of a large gaping hole in the structure. Moments later, the camera frame shuddered, and a huge fireball filled the screen. At that very instant, I, and millions of others, realized exactly what was happening. It did not take long for us to realize that this day was going to have a profound effect on, not only our country and its way of life, but also upon the entire world order.

There is no other single event in modern history to have ever been burned so deeply into our collective memory such that we all remember exactly what we were doing when learned of it. What made 9/11 so much more vivid was that the horrors played out live (and repeatedly) on every national and international news outlet. Never before had there been a situation where in a U.S. President's plane could not land and had to be escorted by fighter planes - inside U.S. airspace. Never before in the history of flight had all U.S. airspace been completely closed to civilian aviation. The moon-landing, the Space Shuttle Disasters, and the Oklahoma City Bombing all paled in comparison. While we knew our laws and justice system would be forever changed; how much so, we could not have imagined. The events of September 11, 2001 did more to test the limits of our Constitution than any other single event since the attack on Pearl Harbor, and some would argue even longer. Almost every amendment in the Bill of Rights has been tested in 9/11's aftermath.

The First Amendment has been tested by challenges to the rights of Muslim Americans to dress, fly, and ironically, to build a mosque (or cultural center) in the vicinity of the World Trade

Center Memorial. We have also seen the curtailment of access and dealings to information about the activities of government agencies and officials under the guise of national security. The scope of the Second Amendment right to keep and bear arms was tested by pilots wanting to carry guns into the cockpit. The Fourth Amendment right against unreasonable search and seizure was tested by the issue of warrantless wiretaps. The Fifth Amendment rights to due process of law and against self-incrimination have been tested by the issues of what constitutes torture and whether U.S.-born civilians can be tried in military courts instead of civilian courts. The Sixth Amendment right to speedy and public trials has been tested by the issue of whether foreign detainees can be held indefinitely without trial on U.S. military bases and whether they are entitled to trials by jury. Whether states are barred, under the Tenth Amendment, from enforcing immigration laws or from enacting their own immigration laws are issues presently being debated.

In the dark days and months following the 9/11 attacks, which were orchestrated by cowards attempting to hijack a peaceful religion, many questioned whether America had the resolve to safeguard and honor the boundaries of its own Constitution. Through mostly civilized debate, we continue to seek resolution to many of the issues created by the infamous attacks of 9/11. Ten years later, we still honor the memory of the 2,819 people who perished that day. Ten years later, Osama bin Laden is dead, but our Constitution is alive and well. God Bless the United States of America.

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Audio content of seminars available to download to your computer or MP3 player.
www.palmbeachbar.org/continuing.php
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Featured Directors:

The Presidents of the Young Lawyers Section and North County Section serve as members of our Board of Directors. This month, I will introduce them to you. They are a pleasure to work with.

Jason Lazarus, Young Lawyers Section President



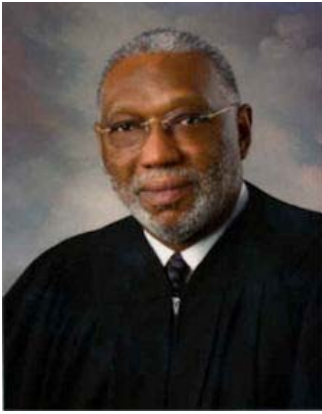
I have had the pleasure of knowing Jason for several years. Jason attended law school at the University of Florida (Go Gators) and has been practicing law for 13 years. He currently practices Business Litigation at

Holland and Knight in West Palm Beach. He and his lovely wife, Heather, have two adorable children, Haley (8) and Ryan (4). They also have a Cocker Spaniel/Alaskan Husky mix named Dutchess. When he's not working, Jason's favorite activity is "any activities with my kids!" Incidentally, Jason's birthday is this month (September 19). Happy Birthday Jason!

Ron Ponzoli, North County Section President



Not only is Ron an all-around great guy, he is a husband, a dad, a University of Miami law graduate, 14-year lawyer and a legendary fisherman (ask any fish)! Ron currently practices Business Litigation at Richman Greer in West Palm Beach, where he is a shareholder. He and his wife, Rachel, have two sons. An interesting factoid about Ron is that he loves the ocean so much that he first contemplated a career in marine biology. Ron's birthday is on August 20, so mark it for next year. Happy Belated Birthday Ron! Hope you got to go fishing.



Florida Supreme Court Justice James E.C. Perry To be Keynote Speaker at the Second Biennial Diversity Summit

Friday, October 14, 2011

The Marriott West Palm Beach

11:45 - 4:00 Lunch & Round table and Panel Discussions

4:00 - 5:00 p.m. Cocktail Reception

The purpose of the summit is to promote dialogue between managing and hiring partners, government and agency heads, associates and Judges on ways to improve the diversity in our legal community. The luncheon will be followed immediately by round table discussions over dessert and coffee. During the luncheon, Palm Beach County Bar President John Howe will present the "diversity statistics," highlighting both areas of success and areas needing improvement. The statistics, together with the relative experiences of those attending the luncheon, will serve as the starting point for the round table discussion. The discussions are intended to generate ideas, goals and unique means of tackling this complex issue. Finally, the event will feature a panel discussion which will include prominent local and national leaders, including:

- ◆ Daryl Parks, President of the National Bar Association
- ◆ Michael McAuliffe, 15th Judicial Circuit State Attorney
- ◆ Ethel Isaacs Williams, Director of External Relations for FPL
- ◆ and many more. . .

We would like to thank the following sponsors (as of 8/10/11) for supporting this event:

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RSVP Today! Register online at www.palmbeachbar.org or fill out this form and return it with your payment of \$35 per person to: Palm Beach County Bar Assoc., 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. To avoid a \$10 late fee, please be sure to register by 10/10/11. No refunds will be given after that date.

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Diversity Summit 10/14/11

Historical Committee

Who are they?

Can you guess who these members are? Answers can be found on page 11. 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.



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Lakes Course, Bear Lakes Country Club
Monday, October 10, 2011 Columbus Day

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Capital Campaign — Thank You to Those Who Have Contributed!



**Palm Beach County
Bar Association**

The Bar Association will soon be moving to its first permanent home located on Belvedere Road in West Palm Beach. The building will be a state-of-the art facility for our legal community to enjoy for many years to come. You can be a part of history by naming a room or buying a brick.

We sincerely thank the following firms and members who have contributed as of 8/4/11:

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LESSER LESSER LANDY & SMITH PLLC Outside Bench
NORTH COUNTY SECTION & YOUNG LAWYERS SECTION . Communications Office
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Additional rooms are still available!

Would you like have a permanent place in the Bar's new building?

For further information regarding naming rights or to purchase a brick, please contact Lynne Poirier at the Bar Office or scan the QR Code here with your Smartphone.



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Keen & Littky-Rubin
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The Solo & Small Firm Practitioners Committee Presents:

T E C H N O L O G Y

FOR SOLOS & SMALL FIRMS

Friday, September 16, 2011

11:45 am to 1:00 pm

Bar Offices

This seminar covers inexpensive software,
cloud & mobile computing, voice
communications,
plus lunch, CLE credit and networking
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Presenters:

Marc S. Dobin, Dobin Law Group, P.A.
Christopher Hopkins, Akerman Senterfitt
Ed Walker, Walker Law Offices

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Uncontradicted Evidence Of Experts

by Ted Babbitt

The case of Wald v. Grainger, 35 Fla. L. Weekly S211 (Fla. 2011), was a fairly standard personal injury automobile accident in which the defendant admitted liability. Therefore, the sole questions

for the jury to determine were causation, the permanency of the plaintiff's injuries and damages. There were three injuries at issue. The plaintiff sought damages for his neck and back injuries but not for his thigh injury because he claimed that he had no ongoing chronic pain in that area. The defendant's expert provided contrary testimony with respect to plaintiff's alleged neck and back injury but agreed that the plaintiff's thigh numbness was permanent and was related to the accident.

At the conclusion of all of the evidence, the plaintiff moved for a directed verdict on the issue of permanency and the trial court granted it as to the plaintiff's thigh injury only. After a \$1 million damage award, the defendant appealed and the First District reversed in Grainger v. Wald, 982 So. 2d 42 (Fla. 1st DCA 2008) finding that the trial court had erred in granting a directed verdict as to permanency as that was a jury question. The First District bottomed its opinion on the precept that the jury was free to weigh the credibility of the expert witnesses and reject any testimony regarding permanency including uncontradicted testimony.

The Supreme court reversed holding that a jury is not free to reject uncontradicted evidence on permanency and that under those circumstances, a directed verdict on permanency is appropriate. At S212 the Court concluded:

Nonetheless, where the evidence of injury and causation is such that no reasonable inference could support a jury verdict for the defendant, it is not improper to direct a verdict on the permanency issue for the plaintiff. *Id.* at 1063. A plaintiff can establish a prima facie case of permanency by presenting expert testimony of permanency. Once this is done, the burden shifts to the defendant to present countervailing expert testimony, severely impeach the plaintiff's expert, or present other evidence which creates a direct conflict with the plaintiff's evidence. See Evans v. Montenegro, 728 So. 2d 270, 271 (Fla. 3d DCA 1999) (holding that a directed verdict for the plaintiff on permanency was proper where the defendant did not impeach the plaintiff's expert and did not present conflicting evidence on permanency.) If the defendant succeeds in this endeavor, a jury question is presented; if not, a directed verdict on permanency is appropriate.

The First District's statement that the jury was free to weigh the testimony of the expert witnesses and accept or reject it in whole or in part even if it was uncontradicted is something that all of us have always assumed. The Florida Standard Jury Instruction (Civ) 2.2(b) states that a jury is free to "accept (the expert witness') testimony, reject it, or give it the weight you

think it deserves, considering the knowledge, skill, experience, training, or education of the witness, the reasons given by the witness for the opinion expressed and all other evidence in the case." Nevertheless at Page S213, the Court held:

...the jury's ability to reject the testimony must be based on some reasonable basis in the evidence. This can include conflicting medical evidence, evidence that impeaches the expert's testimony or calls it into question, such as the failure of the plaintiff to give the medical expert an accurate or complete medical history, conflicting lay testimony or evidence that disputes the injury claim, or the plaintiff's conflicting testimony or self-contradictory statements regarding the injury.

What makes this opinion unexpected is the fact that the plaintiff was not claiming any severe pain from the thigh injury that the trial court determined required a directed verdict on permanency. In fact, the plaintiff was not making any claim at all for his thigh injury. The First District concluded that without any claim of pain from the thigh injury, there could be no sustainable damages awarded under Fla. Stat. 627.737(2) (2007) which requires a permanent noneconomic loss before damages can be awarded. The Supreme Court points out, however, that a permanent injury may or may not include pain in order to be compensable as a noneconomic loss. At Page S213, the Court holds:

Section 627.737(2)(b) provides that a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience (noneconomic damages) because of a bodily injury arising out of the use of a motor vehicle only in the event that the injury "consists in whole or *in part* of... [p]ermanent injury within a reasonable degree of medical probability." (Emphasis added). Thus, as long as part of the bodily injury arising out of the motor vehicle accident involves a permanent injury "within a reasonable degree of medical probability," the plaintiff can recover noneconomic damages related to his pain, suffering, mental anguish, and inconvenience for all of the injuries related to the accident.

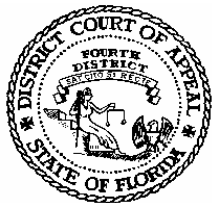
Thus the Court concludes that since there was no dispute but that plaintiff suffered a permanent thigh injury, and he was entitled to a noneconomic award for all of his injuries which the jury found to be compensable, a directed verdict in permanency was appropriate.

This case holds, contrary to popular belief, where there is uncontradicted evidence of a plaintiff's permanent injury, a directed verdict on that subject is appropriate and that a jury is not free to reject uncontroverted evidence of experts.

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.

The Palm Beach County, South Palm Beach County and Broward County Bar Associations present:

Inside the Appellate Court: A Day with the Judges of the Fourth DCA



Thursday, November 3, 2011

9:30 a.m. - 3:30 p.m.

West Palm Beach Marriott, 1001 Okeechobee Boulevard, WPB 33401

Program Schedule

- 9:30 am - 9:50 am **Registration / Check-In**
- 9:50 am - 10:00 am **Welcome and Introductions** - *Siobhan H. Shea, Esq., Siobhan Helene Shea Appellate Practice*
- 10:00 am - 10:50 am **Conversation with the Clerk**- *Honorable Judges Burton C. Conner and Cory J. Ciklin, Fourth District Court of Appeal, and Marilyn Beutenmuller, Clerk of Court, Fourth District Court of Appeal*
- 10:50 am - 11:50 am **The Wonderland of Writs - How Extraordinary** - *Chief Judge Melanie G. May and Judge Robert M. Gross, Fourth District Court of Appeal*
- 11:50 am - 12:30 pm **LUNCHEON**
- 12:30 pm - 1:00 pm **Moving into the Electronic Age at the 4th DCA** - *Chief Judge Melanie G. May and Judge Martha Warner, Fourth District Court of Appeal*
- 1:00 pm - 1:10 pm **BREAK**
- 1:10 pm - 1:40 pm **Motion Practice** - *Honorable Judges Carole Y. Taylor, Dorian K. Damoorgian and Burton C. Conner, Fourth District Court of Appeal*
- 1:40 pm - 2:40 pm **Practical Ways to Win an Appeal** - *Honorable Judges Dorian K. Damoorgian, Spencer D. Levine and Jonathan D. Gerber, Fourth District Court of Appeal*
- 2:40 pm - 2:50 pm **BREAK**
- 2:50 pm - 3:30 pm **Legal Jeopardy** - *Honorable Jonathan D. Gerber, Fourth District Court of Appeal*
- 4:00 pm - 6:00 pm **Cocktail Reception** Celebrating the Upcoming **50th Anniversary** of the Fourth DCA in 2015

RECEPTION LOCATION : **Fourth District Court of Appeal**
1525 Palm Beach Lakes Boulevard, West Palm Beach, Florida

This course has been granted **5.5 CLER/3.0 Appellate Practice Cert. credits from the Florida Bar**. The cost of the seminar, lunch and reception is **\$125** if registered by **10/27/11**; **\$165** after that date; **Govt. attorneys & law clerks \$100.00 if registered by 10/27/11; \$125.00** 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.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25.

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



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

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

Name: _____

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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) (Appellate Seminar 11/3/11) Cost is the same as listed above, **in addition to \$10 for shipping and handling**. PAYMENT BY **CHECK** ONLY, WITH THIS FORM.



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**Retired Circuit Judge*



“Active Procurement” Defined

By David M. Garten, Esq.

This is the fourth and final article in a four part series pertaining to undue influence. There is a presumption of undue influence when the undue influencer: (1) occupies a confidential relationship with the decedent; (2) is a substantial beneficiary under the will; and (3) was *active in procuring the will*.

In *In re Estate of Carpenter*, 253 So. 2d 697 (Fla. 1971), the Florida Supreme Court listed several criteria to be considered in determining active procurement. The seven “Carpenter factors” are:

- 1) Presence of the beneficiary at the execution of the will;
- 2) Presence of the beneficiary on those occasions when the testator expressed a desire to make a will;
- 3) Recommendation by the beneficiary of an attorney to draw the will;
- 4) Knowledge of the contents of the will by the beneficiary prior to execution;
- 5) Giving of instructions on preparation of the will by the beneficiary to the attorney drawing the will;
- 6) Securing of witnesses to the will by the beneficiary; and
- 7) Safekeeping of the will by the beneficiary subsequent to execution.

The Carpenter court made clear that these factors are neither mandatory nor exclusive:

“We recognize that each case involving active procurement must be decided with reference to its particular facts. Therefore, the criteria we have set out cannot be considered exclusive; and we may expect supplementation by other relevant considerations appearing in subsequent cases. Moreover, we do not determine that contestants should be required to prove all the listed criteria to show active procurement. We assume that in the future, as in the past, it will be the rare case in which all the criteria will be present. We have troubled to set them out primarily in the hope that they will aid trial judges in looking for those warning signals pointing to active procurement of a will by beneficiary.”

Case law recognizes at least four additional indicators of active procurement: (a) isolating the decedent from family and friends; (b) reduced mental capacity; (c) a dramatic change in the decedent’s testamentary bequests, and (d) execution of the will was kept secret from the anticipated beneficiaries.

(a) Was the decedent intentionally isolated from family and friends with hope of breaking down whatever ties of affection existed between them? See *Newman v. Smith*, 82 So. 2d 236 (Fla. 1919); *In re Auerbacher’s Estate*, 41 So. 2d 659 (Fla. 1949); *In re Ates’ Estate*, 60 So. 2d 275 (Fla. 1952); *In re Baldrige’s Estate*, 74 So. 2d 658 (Fla. 1954); *In re Estate of Winslow*, 147 So. 2d 613 (Fla. 2d DCA 1962); and *In re Estate of Lamberson*, 407 So. 2d 358 (Fla. 5th DCA 1981).

(b) Did the decedent have reduced mental capacity, even if arguably insufficient to show lack of testamentary capacity? See *In re Palmer’s Estate*, 48 So. 2d 732 (Fla. 1950); *In re Estate of Duke*, 219 So. 2d 124 (Fla. 2d DCA 1969); *In re Estate of Dalton*, 246 So. 2d 612 (Fla. 3d DCA 1971); and *Elson v. Vargas*, 520 So. 2d 76 (Fla. 3d DCA 1988). A higher degree of proof may be

required to overcome an inference of undue influence where the decedent is shown to have impaired mental powers or clouded intellect. See *Estate of Reid*, 138 So.2d 342 (Fla. 3d DCA 1988). Additionally, where there is inequality of mental capacity and strength between the decedent and the undue influencer, active procurement may be shown by evidence of a request or suggestion by the undue influencer. See *Hack v. Estate of Helling*, 811 So.2d 822 (Fla. 5th DCA 2002) and *Estate of Brock*, 692 So. 2d 907 (Fla. 1st DCA 1996).

(c) Is there a dramatic change in the decedent’s testamentary bequests? See *Newman v. Smith*, 82 So. 2d 236 (Fla. 1919); *Peacock v. Du Bois*, 105 So. 2d 321 (Fla. 1925); *In re Donnelly’s Estate*, 188 So. 108 (Fla. 1939); *In re Ates’ Estate*, 60 So. 2d 275 (Fla. 1952); *In re Estate of Witt*, 139 So. 2d 904 (Fla. 2d DCA 1952); *In re Estate of Tobias*, 192 So. 2d 83 (Fla. 2d DCA 1966); and *Estate of Burton*, 45 So.2d 873 (Fla. 1950).

(d) Was the execution of the will kept secret from the anticipated beneficiaries? See *Estate of Burton*, 45 So.2d 873(Fla. 1950).

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The Palm Beach County Bar Association's Intellectual Property CLE Committee presents:



**Intellectual Property Issues
that Affect Your Client**
*"Ethical Considerations to Avoid
Common Pitfalls"*



Wednesday, September 28, 2011 - 11:45a.m. - 1:35p.m.
Bar Association Offices, 1601 Belvedere Road #302E, WPB

Program Schedule

11:45am - 12:00pm	Late Registration/Check In
12:00pm - 12:45pm	LUNCH Sponsored by: Akerman Senterfitt
12:15pm - 12:20pm	Welcome - Opening Remarks – Ashleigh Bholé, Esq., Akerman Senterfitt, Intellectual Property CLE Committee Co-Chair
12:20pm - 1:35pm	Intellectual Property Issues that Affect Your Client - "Ethical Considerations to Avoid Common Pitfalls" Roy P. Zachariah, Esq., Akerman Senterfitt Jennifer P. Rabin, Esq., Akerman Senterfitt



This course has been granted 1.5 CLER including 1.5 Ethics credits / 1.5 Intellectual Property Certification credits from The Florida Bar.

The cost of the seminar is \$45 for PBCBA members/paralegals, \$85 for non-PBCBA members/paralegals if registered by 9/21/11; Add \$15 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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YLS/CDI Happy Hour Highlights

The Young Lawyers Section, along with the Bar's Committee for Diversity and Inclusion, recently hosted a happy hour at BB Kings.



Judge Nelson Bailey and Cunningham Bar President Lynn Solomon



Billy Smith and Jamie Gavigan



Michelle Diffenderfer, Joshua Coldiron and Sia Baker-Barnes



Jean Marie Middleton and Jack Rice



Jack Scarola and John Howe



Rand Hoch and Tequisha Myles

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Mark your calendar for the Bar's
Second Annual Family Picnic!

Saturday, October 22

10:00 am to 1:00 pm

Dreher Park, West Palm Beach

Bungee jump, face painting, bounce house,
 rock wall, bake-off challenge, BBQ and more!

Cost: \$20 for adults and \$5 for children 13 and younger
 RSVP online @www.palmbeachbar.org

Sponsors to date include Lytal Reiter Smith Ivey & Fronrath; Debra Duran & Associates; Dermatology Associates, P.A. of the Palm Beaches; Law Offices of Robin Bresky; Legal Graphicworks; Lesser Lesser Landy & Smith; Matrix Mediation; Murray Guari Trial Attorneys; Rock Legal Services and Investigations; and Sabadell United Bank



Do You Need a Mentor?

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

So You Think You Can Bake?

Second Annual Dessert Bake-Off Challenge



The highlight of the 2011 Bar Picnic will include our Second Annual Law Firm Bake-Off Challenge in which participating law firms are competing to be crowned the winner of the "Best Baked Dessert." Each firm can have two entries. The bake-off will be judged by three local judges and all are welcome to sample the entries after the competition!! If your firm wants to submit a baked good contact Patricia DeRamus at 366-9099.

Enter your firm's best dessert in our Law Firm Dessert Bake-Off Challenge. Again,

this year's entries will be based on "taste and presentation." The Rules are simple – "baked dessert" and you must be registered.

Prizes!

1st Place - \$100 Williams-Sonoma Gift Card, a Law Firm plaque with photo of winning entry

2nd Place - \$50 Williams-Sonoma Gift Card

3rd Place - \$25 Williams-Sonoma Gift Card

* winners' names will be displayed in the Palm Beach County Bar Office



Who Are They?

From Page 4

1. Eric Hewko
2. Steve Halvorson
3. Chris Larmoyeux
4. Roy Watson and
5. Daniel James

Let's go to the Movies!

Discounted Movie Tickets Available

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

- * **Muvico Theater - \$8.00 each** (\$10.00 at box office)
- * **Regal Theaters \$8.00 each** (\$10.00 at box office)
- * **Cobb Theatres \$8.00 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**





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

Collaborative Practice: The What, Why and How

Friday, October 21, 2011 9:00 a.m. – 1:00 p.m.

Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL

Program Schedule



- 8:30am - 8:55am **Late Registration and Check in**
- 8:55am - 9:00am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq.,
Matthew Lane & Associates, P.A., Committee Chair*
- 9:00am - 9:15am **What is Collaborative Practice? Who uses it and why?** - *Charles D. Jamieson, Esq.,
The Law Firm of Charles D. Jamieson, PA, Board Certified Marital & Family Law*
- 9:15am - 9:30am **Collaborative Practice Statute & Rule Update** - *Ronald L. Bornstein, Esq.*
- 9:30am - 10:00am **Collaboration & Ethical Duties** - *Pamela S. Wynn, Esq., Pamela S. Wynn, PLLC*
- 10:00am - 10:15am **BREAK**
- 10:15am - 12:30pm **Role of Professional Panels**
- 10:15am - 11:00am **Financial Professionals:**
Cary B. Stamp, CDFA, CFP
Myles German, CDFA, CFP
George Koester, CDFA, CFP
Rod Moe, CPA, CDFA
Luisa K. Bosso, CPA
- 11:00am - 11:45Am **Mental Health & Mediation Professionals:**
Hugh Leavell, PhD
Stephen Peritz, CPA
Lisheyne Hurvitz, MA Ed.
- 11:45am - 12:30pm **Attorneys:**
Charles D. Jamieson, Esq.
Pamela S. Wynn, Esq.
Vicki Vilchez, Esq.
Doreen Halickman, Esq.
- 12:30pm - 1:00pm **NETWORKING LUNCH - SPONSORED BY:**

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Cary B. Stamp, CFP, CDFA**

This course has been granted 4.0 CLER including .50 Ethics credits/3.0 Marital & Family Law Cert. credits from The Florida Bar.

The cost of the seminar is \$75 (includes lunch) for PBCBA members/paralegals;

\$115 for non-PBCBA members/paralegals if registered by 10/14/11; 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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Rules of Civil Procedure Corner

Amended Rule 1.420: Partial Voluntary Dismissal

By Matt Triggs and Jonathan Galler

It is often said that a plaintiff is the master of his or her own complaint. That may be true in many respects, but until the most recent amendments to Florida Rule of Civil Procedure 1.420, a plaintiff's control over his or her own complaint was limited in at least one significant respect: a plaintiff could not voluntarily dismiss a portion of the complaint without dismissing the entire action. Indeed, any notice of voluntary dismissal purporting to dismiss less than the complete action was said to be a nullity.¹ Amended Rule 1.420(a) now permits a plaintiff to voluntarily dismiss an action, a claim, or any part of an action or claim, without court order.

Pre-Amendment Florida Rule 1.420(a)

Prior to last year's amendments to the Florida Rules of Civil Procedure (effective January 1, 2011), Rule 1.420(a)(1) provided that "an action may be dismissed by plaintiff without order of court" at any point before the hearing on a motion for summary judgment or, if no such motion is served or if the motion is denied, at any point before retirement of the jury or submission of the case to the court for decision.

Notably, the pre-amendment rule provided only for the voluntary dismissal of an action, not an individual claim. As the Fourth District Court of Appeal said in 1976 in what is still one of the most cited cases on this point, *Deseret Ranches*, "Only an entire action may be voluntarily dismissed under Fla. R. Civ. P. 1.420(a)(1); there can be no partial dismissal, no dismissal of less than all causes of action."²

Because a properly filed notice of voluntary dismissal automatically terminates the lawsuit and divests the court of jurisdiction, it was especially important to understand the impact of an attempted notice of "partial" voluntary dismissal under the pre-amendment rule. In *Deseret Ranches*, the Fourth District made clear that the attempted notice was to be deemed a nullity that dismisses nothing at all.³

That is not to say that a plaintiff could not revamp his lawsuit as desired. However, the only proper method for doing so prior to the rule's amendment was to seek leave to amend the complaint under Rule 1.190.

The pre-amendment rule also did not provide a mechanism for voluntarily dismissing or dropping fewer than all parties from a lawsuit. Here, too, however, a plaintiff was not without recourse; he or she could drop a particular defendant or defendants pursuant to Rule 1.250(b).

Federal Rule 41(a)

Florida's Rule 1.420(a) was derived from Federal Rule of Civil Procedure 41(a).⁴ Federal Rule 41(a) provides that a plaintiff "may dismiss an action without a court order" by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.

One notable difference between the Federal Rule and Rule 1.420(a) (pre- and post-amendment) is that the Federal Rule provides far less time within which a plaintiff may file a notice of voluntary dismissal. Under Federal Rule 41(a), no such notice may be filed once the defendant has served an answer.

However, just like the pre-amendment Rule 1.420(a), the Federal Rule provides for the voluntary dismissal of an action, rather than an individual claim. And the Eleventh Circuit's interpretation of that language mirrors that of the Fourth District:

"Rule 41 allows a plaintiff to dismiss all of his claims against a particular defendant; its text does not permit plaintiffs to pick and choose, dismissing only particular claims within an action. A plaintiff wishing to eliminate particular claims or issues from the

action should amend the complaint under Rule 15(a) rather than dismiss under Rule 41(a)."⁵

It should be noted, though, that many federal district courts in other circuits have interpreted Rule 41(a) less strictly. *See, e.g., Vail v. District of Columbia*, 1988 WL 63069, *5 n.5 (D.D.C. June 2, 1988) ("The clear trend, and the majority rule, is that a plaintiff may use Rule 41(a) to dismiss particular claims.")⁶

Amended Rule 1.420(a)

Amended Rule 1.420(a) no longer precludes a plaintiff from making a partial voluntary dismissal. The amended rule provides that "an action, a claim or any part of an action or a claim may be dismissed by plaintiff without order of court" within the same time frames provided under the pre-amendment version of the rule. Fla. R. Civ. P. 1.420(a)(1).

While some trial courts may have permitted partial dismissals or "withdrawals" of claims even prior to the enactment of the amendment, the amended rule now expressly authorizes that practice, thereby restoring to the plaintiff an additional measure of mastery over his or her own claims. As previously noted above, even before Rule 1.420 was amended, a plaintiff could effectively dismiss particular claims or individual parties by seeking leave to amend the complaint. But leave to amend is sometimes denied, particularly as the trial approaches,⁷ which is exactly when a plaintiff may very well be most inclined to examine and pare down his or her claims by way of voluntary dismissal.

Moreover, in contrast to the relatively simple voluntary dismissal of a particular claim, amending the complaint means that the action is no longer at issue, under Rule 1.440, and would likely result in the lawsuit's removal from the court's trial docket. Under the pre-amendment rule, therefore, a plaintiff may be forced to choose between losing his or her spot on a trial calendar, on the one hand, and prosecuting a claim that he or she no longer wishes to prosecute, on the other hand. For these reasons, the amended rule arguably promotes an efficiency and flexibility that otherwise appears to have been lacking.

In addition, because the amended rule effectively gives a plaintiff the ability in some cases to dismiss particular parties from the lawsuit by dismissing all claims naming them, an amendment to Rule 1.420(d) now also provides that a party may seek entry of a judgment for costs once the action is concluded as to that particular party.

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



¹ *Deseret Ranches of Florida, Inc. v. Bowman*, 340 So. 2d 1232, 1233 (Fla. 4th DCA 1976).

² *Id. See also Browd v. Everclear Photocopy, Inc.*, 536 So. 2d 1083, 1084 (Fla. 4th DCA 1988) ("Clearly a plaintiff may not voluntarily dismiss only a portion of a claim.")

³ *Deseret Ranches*, 340 So. 2d at 1233.

⁴ 4 Fla. Prac., Civil Procedure R. 1.420 (2010-2011 ed.).

⁵ *Campbell v. Altec Indus., Inc.*, 605 F.3d 839, 841 (11th Cir. 2010) (citing *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1106 (11th Cir. 2004)).

⁶ *See also Nationwide Mut. Ins. Co. v. Bridgestreet Corporate Housing LLC*, 2010 WL 2541634, *3 (S.D. Ohio June 18, 2010); *Collier v. Batiste*, 2005 WL 3543824, *3 (E.D. La. Oct. 21, 2005).

⁷ *See, e.g., Liberty Transp., LLC v. Banyan Air Services, Inc.*, 982 So. 2d 1231, 1232 (Fla. 4th DCA 2008) (denying leave to amend counter claim when too close to trial).



Will Your Law Firm Accept Bitcoin?

*By Christopher Hopkins, Chair,
Law Practice Technology Committee*

In this economy, it has become commonplace for clients to seek alternative fee structures for their legal bills. Most law firms have resorted to accepting credit cards, payment plans, reduced rates, flat fee arrangements or even Paypal. Coupled with the fact that potential clients can be anywhere around the globe and seek your assistance via the Internet, a client may seek to pay your hourly rate in "bitcoin."

How would you value your legal work in something other than dollars? Bitcoin is an alternative, electronic currency which began as a fringe concept two years ago but has drawn recent attention from *The Atlantic*, *The Economist*, *New York Times*, and *USA Today*. If you recall the struggle to define "Twitter" five years ago, explaining bitcoin is another mind-expanding riddle from the Internet which, in time, might become a household name.

Unlike Twitter, however, a discussion of bitcoin involves some understanding of currency, Internet security, and finance law. Like dollars, bitcoin is its own currency. But unlike dollars, bitcoins are not paper money but, instead, long strings of code exchanged between computers. According to its inventor, bitcoin is a "purely peer-to-peer version of electronic cash [which] would allow online payments to be sent directly from one party to another without going through a financial institution." The exchange system has no hub but is simply a connection of nodes on the Internet which verify transactions via a two-step public and private key signature system (in cryptological terms, it involves an irreversible hashing algorithm). The inventor boasts that security is baked into transactions thus creating a "system for electronic transactions without relying on trust."

Bitcoin is not a bank account, Paypal, frequent flyer miles, Facebook Credits or even Xbox Points. It is a free-standing, virtual, de-centralized money system which lives on the Internet without reliance upon any nation's economy or government. It is not currency based upon gold (neither is the US dollar) but a collective fiat based currency with a fixed supply: in other words, bitcoin has value based upon what people claim it is worth and there can only be a maximum of 21 million bitcoins. Critics contend that bitcoin offers no advantages over the dollar or yuan but may hold some promise in emerging, unstable countries. For the non-economic minded, it is hard not to bring this back to dollars. You can buy bitcoins on a trading market website, Mt Gox, which, like the stock market, reflects the current value of bitcoin based upon US dollars (in July 2011, bitcoins were trading around \$14 each).

At this early stage, it appears that the bitcoin algorithm is an admirable security tool. In June 2011, however, bitcoin transactions were temporarily halted when it was reported that an account was stolen and a massive sell-off led to a system

wide "bank run." Nonetheless, this can happen with real life money (e.g., identity theft to Madoff schemes) and, at least with online transactions, there are stopgap measures. In bitcoin's case, the error was caught and, within days, the market was reset.

Two problems exist with bitcoin: perception and the law. Bitcoin's murky origin is an unpublished "white paper" written under a pseudonym which was anonymously distributed. The bitcoin trading post, Mt Gox, exists offshore (purportedly in Japan) and is reasonably outside the grasp of the U.S. government if something goes awry. From an investment standpoint, that is not a reliable foundation for steadfast currency. Then again, Internet gambling seems largely unreliable yet people spend unchecked millions of dollars every year. Bitcoin advocates arise from the tech and libertarian crowds and they enjoyed a quick hit of attention when Wikileaks turned to bitcoin for donations after its Paypal account was frozen. However, extensive boasting about tax-free and government-free transactions from the bitcoin populous may hinder its mainstream adoption.

It was also a problem that, as bitcoin was only beginning to become recognized, the Mt Gox system crashed in June 2011. Around that same time, attention was drawn to a website, Silk Road, which sells illegal drugs and happens to accept bitcoin. Two U.S. Senators seized the opportunity to gain some tech-credibility by writing a public letter to the Department of Justice expressing concerns about illegal Internet drug sales purchased with virtual money. If bitcoin is ultimately seen as a tool of illegal Internet trade, it may never gain traction. That said, the former head of eBusiness for Citigroup opened a bitcoin network, Ruxum, in July 2011 which may improve bitcoin's reputation as a reliable investment.

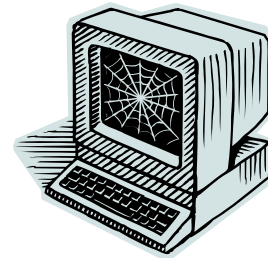
The second problem with bitcoin is whether it is legal. Once again, Internet innovation can be a confounding application of written law and the question of whether bitcoin is an illegal private currency may lie ahead of us. The Electronic Frontier Foundation had accepted bitcoin donations for several months but removed the option under concerns that, "Bitcoin raises untested legal concerns related to securities law, the Stamp Payments Act, tax evasion, consumer protection and money laundering, among others." Advocates claim it is simply permissible bartering as long as the transactions are reported.

So will your law firm accept bitcoin? Perhaps it is a marketing angle: two law firms have already announced that they accept bitcoins (<http://bit.ly/kb5RBU>).

Christopher B. Hopkins is a shareholder at Akerman Senterfitt and is the chairperson of the Palm Beach County Bar's Technology Committee. He prefers Paypal transfers sent to christopher.hopkins@akerman.com.



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



***Is Your Website in Compliance with
Florida's New Advertising Regulations?***

**Friday, November 18, 2011 - 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. **Is Your Website in Compliance with Florida's New Advertising
Regulations?**

Speaker

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

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\$100 for non-PBCBA members/paralegals if registered by **11/11/11**; 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

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.

Leslie R. Arsenault - Florida; University of Florida, Law Student Membership, North Palm Beach.

Anthony Bennett - New Jersey; Nova Southeastern University, 2007; Associate in Kirwan, Spellacy, and Danner, Jupiter.

William Jack Cea - New York; University of Miami, 1992; Partner in Becker & Poliakoff, P.A., West Palm Beach.

James Davidson - New York; University of Florida, 2003; Associate in Robbins Geller Rudman & Dowd, Boca Raton.

Claudia DeBonte - New Jersey; University of Pittsburgh, 1998; Tequesta.

Stephanie A. Griffin - Ohio; Florida State University, Associate in Squire, Sanders & Dempsey, LLP, West Palm Beach.

Robert Hartsell - Illinois; Nova Southeastern University, Sole Practitioner, Robert N. Hartsell, P.A. Pompano Beach.

Mary Michele Hudson - Texas; Nova Southeastern University, 2000; Sole Practitioner, Maverick Law, LLC, Hobe Sound.

Denita L. Jones - Florida; Florida International University, Law Student Membership, Boynton Beach.

Gurjot Kaur - India; State University of New York at Buffalo, 2010; Legal Aid Society of Palm Beach County, West Palm Beach.



Adam Charles Linkhorst - Washington, D.C.; Nova Southeastern University, 1995; Partner in Linkhorst & Hockin, P.A., Jupiter.

Cathy Linton - Ohio; University of Florida, 1986; South Florida Water Management District, West Palm Beach.

Edward William Malavenda - Bogota, Colombia; Indiana University, 1981; Associate in Julie Taylor and Associates, Ft. Lauderdale.

Ana Cristina Maldonado - Caracas, Venezuela; St. Thomas University, 2010; Royal Palm Beach.

Mark Miller - New Jersey; University of Florida, 1996; Sole Practitioner, Appellate Law Office of Mark Miller, P.A., Stuart.

Tania Ochoa - Rio Piedras, P.R.; St. Thomas University, 1997; Sole Practitioner, Law Office of Tania Ochoa, P.A. Wellington.

Cheo Reid - New York; Florida A&M University, 2007; Office of State Attorney, Palm Beach County.

Takisha D. Richardson - Florida; University of Florida, 2006; Office of State Attorney, Palm Beach County.

William G. Smith - Florida; University of Florida, 2010; Associate in Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach.

Jaime Catherine Such - Ohio; Nova Southeastern University, 2009; Associate in Boyd, Richards, Parker, Colonnelli, Ft. Lauderdale.

Saini Sudnagunta - Guntur, India; Case Western Reserve School of Law, 2010; Royal Palm Beach.

Pamela K. Syx - Florida Registered Paralegal Membership, Greenberg Traurig, West Palm Beach.

Alexandra Taboada - Florida; University of Florida, 2010; Office of State Attorney, Palm Beach County.

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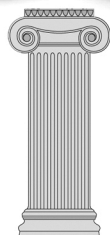
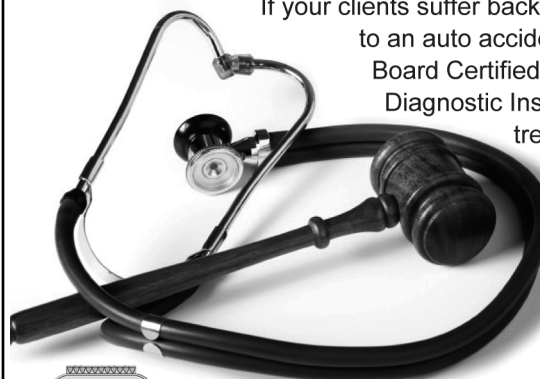
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Conceal an Equitable Interest... Lose Your Discharge

By Marc P. Barmat

One of the central purposes of bankruptcy is to provide a “fresh start” to the “honest but unfortunate debtor.”

Marrama v. Citizens Bank of Massachusetts, 549 U.S. 365 (2007). Although there is a general policy in favor of providing debtors with a discharge of debts, this only applies to the honest debtor. *In re Jennings*, 533 F.3d 1333 (11th Cir. 2008) (citing *In re St. Laurent*, 991 F.2d 672 (11th Cir. 1993)). In order to receive a discharge, a debtor is required to, among other things, disclose their assets. 11 U.S.C. §521. The assets required to be disclosed broadly include all legal or equitable interests of the debtor in property as of the commencement of the case. 11 U.S.C. §541(a)(1). One way for a debtor to lose their discharge is if with the intent to hinder, delay or defraud creditors, the debtor, within one year of the bankruptcy filing, conceals property. 11 U.S.C. § 727(a)(2)(A).

Recently, Bankruptcy Judge John K. Olson issued an opinion denying the discharge of a debtor who, with the intent to hinder, delay and defraud a creditor, concealed his equitable interest in an automobile business which he operated, but which was in the name of his live-in girlfriend. *Rotella & Associates v. Bellassai* (In re Bellassai), 2011 WL 1902694 (Bankr. S.D. Fla. 2011). In *Bellassai*, years before his bankruptcy filing, the debtor sold the assets of his going concern automotive service business to his girlfriend. *Id.* at 1. Before buying the business from the debtor, the girlfriend did not perform any due diligence and unlike the debtor who had vast experience running an automotive business, the girlfriend had little experience. *Id.* The Court found that through the years, the girlfriend had little to do with the operation and success of the business. *Id.* Nonetheless, the girlfriend was able to support herself and the debtor as a result of the successful business. *Id.* The Court stated “This arrangement enabled the debtor to shield his assets from creditors by diverting the fruits of his labors to the girlfriend’s new corporate shell, and having the uninterrupted going concern directly support his lifestyle.” *Id.* at 4. Accordingly, Judge Olson found that the debtor has an equitable interest in the automotive business.” *Id.*

After finding the debtor, in fact, had an equitable interest in the automotive business, Judge Olson next addressed the issue of whether the debtor continuously concealed his interest in the automotive business into the one year period before his bankruptcy. *Id.* at 5. “Concealment may be accomplished in two ways: the debtor may conceal the transfer by actively misleading an interested party into thinking it did not occur, or by a sham transfer where title to the property is transferred [but] the benefits of ownership are retained.” *Id.* citing *In re Gonzalez*,

302 B.R. 745 (Bankr. S.D. Fla. 2003). Under the doctrine of continuing concealment “discharge may be denied under § 727(a)(2)(A) where a debtor conceals the fact that he transferred an asset more than one year prior to filing bankruptcy and the concealment continues into the one year period.” *Id.* Based upon the facts of the case, Judge Olson concluded that the debtor continuously concealed his equitable interest in the automotive business into the one year period before the bankruptcy filing. *Id.*

The final step in Judge Olson’s analysis of whether the Plaintiff should prevail on its § 727 discharge action was to determine whether the continuous concealment of the equitable ownership of the automotive business was done with the requisite intent to hinder, delay or defraud creditors. In applying the standard badges of fraud to the facts of this case, Judge Olson concluded the debtor continuously concealed his equitable interest in the automotive business from 1995 through the one-year period preceding his bankruptcy filing with intent to hinder, delay and defraud his creditors and therefore denied the debtor’s discharge under § 727(a)(2)(A).

Judge Olson’s ruling in *Bellassai* was consistent with Eleventh Circuit precedent arising out of a 2008 case before Chief Bankruptcy Judge Paul G. Hyman. In *Coady v. D.A.N. Joint Venture III, L.P.* (In re Coady), 588 F.3d 1312. In *In re Coady*, the debtor, a formerly successful real estate developer, worked as an uncompensated independent contractor for all of his wife’s business entities for over ten years. *Id.* at 1314. Though he drew no salary, he moved into his wife’s house, leased a car under her name, wrote checks in her name on the businesses’ accounts to pay personal expenses, and executed a promissory note to fund a real estate development for one of the businesses. *Id.* Based upon these facts, Judge Hyman found that the debtor diverted assets and income to his wife and her businesses, thereby concealing them from creditors, with the intent to hinder creditors. The Eleventh Circuit Court affirmed Judge Hyman’s denial of the debtor’s discharge. *Id.* at 1317.

In both *Bellassai* and *Coady* the courts concluded that the debtors concealed their interests in property, but received the benefits of their efforts through an equitable interest. In both cases, the debtors acted as the sole assurances of their significant others’ business’ success, without receiving compensation for their efforts. The courts interpreted their status as “kept men” as a thin veil hiding their equitable interest in the companies for which they did the entirety of the work.

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



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



***"Tips from the Pros:
The Finer Points of Bankruptcy Practice"
(aka the Blue Collar Bankruptcy Tour)***
Wednesday, October 5, 2011 - 9:00am - 1:00p.m.
Bar Offices - 1601 Belvedere Rd., Suite 302E, WPB

Program Schedule

- 8:45am - 9:00am **Check In / Late Registration**
- 9:00am - 9:05am **Welcome - Opening Remarks** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A., Bankruptcy CLE Committee Chair*
- 9:05am - 9:35am **Ethics and Professionalism: A Cut above the Ordinary** - *Representative from the Professionalism Committee of the Palm Beach County Bar Association*
- 9:35am - 12:30pm **Panel Discussion** - *Julianne R. Frank, Esq., Frank, White-Boyd, P.A., James E. Copeland, Esq., James Earl Copeland, P.A., and Norman L. Schroeder II, Esq. represent almost 100 years of Bankruptcy experience. In a panel discussion setting, you will learn ways to improve your practice, how to avoid pitfalls, and while you're at it, enjoy a little comedic relief!*
- 12:30pm - 1:00pm **Buffet Lunch**

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We are pleased to announce the third annual Lawyers Have Heart 5K Run/Walk, presented in partnership between the Palm Beach County Bar and the American Heart Association. Al LaSorte and Matt Chait of Shutts & Bowen LLP are this year's co-chairmen and Natalie Morales of NBC's Today Show will be on hand as the Master of Ceremonies. Last year's Run had over 50 law

firms and 600 runners/walkers, immediately followed by the 12,000 person Start! Heart Walk. This year will be even bigger. Go to the website today to sign up your firm's team and start fundraising!

Date: October 1, 2011
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AB HAFELE	01-12	01-12	10-11	1696
AD FRENCH	11-11	11-11	10-11	1767
AE MCCARTHY	04-12	04-12	09-11	1880
AF KEYSER	01-12	01-12	08-11	1530
AG CROW	03-12	01-12	10-11	1846
AH BROWN	02-12	02-12	09-11	1595
AI SASSER	10-11	08-11	08-11	1096
AJ ROSENBERG	01-12	01-12	10-11	1262
AN COX	12-11	12-11	11-11	1664
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Jones, Foster, Johnston & Stubbs, P.A. is pleased to announce the following: **Tasha K. Dickinson** has been elected by the Board of Directors as an Officer of the firm. **Joanne M. O'Connor** has been elected by the Board of Directors of the Forum Club of the Palm Beaches for a three year term on that Board. **William G. Smith** has joined the firm as an Associate.

David A. Greene, a partner in the WPB office of Fox Rothschild, LLP, has been elected Second Vice President of Leadership Palm Beach County, Inc for 2011-12.



Elisha D. Roy was recently elected Treasurer of the Family Law Section of the Florida Bar for the 2011-12 year. Ms. Roy was also appointed to the Marital & Family Law Certification Committee for a three year term.



Gary S. Lesser, Managing Partner at Lesser, Lesser, Landy & Smith, PLLC (LLL&S), was sworn in as a new member of the 2011-12 Florida Bar Board

of Governors for the Fifteenth Judicial Circuit.

Robin Bresky was awarded the Florida Association for Women Lawyers (FAWL) Leaders in Law Award. To be recognized as a Leader in Law, an attorney must have earned professional respect, exemplified the qualities of a positive role model and advanced the cause of women in the community.



Nellie L. King was sworn in as president of the Florida Association of Criminal Defense Lawyers (FACDL) at the Association's 24th Annual

meeting at the Four Seasons Resort in Palm Beach.

The National Bar Association and IMPACT recently announced selection of "The Nation's Best Advocates: 40 Lawyers under 40," recognizing individuals within the African-American legal community who have achieved prominence and distinction.

Sia Baker-Barnes with Searcy Denney Scarola Barnhart & Shipley was included in this selection.

The following PBCBA members were elected officers and board members of The Palm Beach Association of Criminal Defense Lawyers for the 2011-12 year: Cyrus K. Toufanian (secretary), **Kenneth N. Johnson** (treasurer), **Brian Balaguera**, **Ron Herman**, and **Ira Karmelin** are on the Board of Directors.

The law firm of Roberts, Reynolds, Bedard & Tuzzio, P.A. announces that **Shelli Gaetano Healy** has joined the firm. Ms. Healy received her Juris Doctor from Albany Law School.

Samantha Schosberg Feuer was named South Florida Bureau Chief of the Economic Crime Unit of the Florida Attorney General's office.

Charles H. "Chubby" Damsel has been honored by the FL Chapter of the American Board of Trial Advocates with its Founders Award as the first ABOTA member in the State of FL for 30 years of dedicated service.

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

CALENDAR September 2011

Thursday, Sept. 1, Noon – 1pm

Circuit Civil Committee Meeting

Judicial Conf. Room,
Main Courthouse

Thursday, Sept. 1,
5:30pm – 7:30pm

Spelling Bee and Membership Reception

Bear Lakes Country Club

Friday, Sept. 2, Noon – 1pm

Technology Committee Meeting

Bar Association Office

Monday, Sept. 5

Court Holiday – Labor Day

Bar Office Closed

Wednesday, Sept. 7,
11:45am – 1:00pm

Judicial Relations Committee Meeting

Judicial Conf. Room,
Main Courthouse

Wednesday, Sept. 7,
Noon – 1pm

NCS Board Meeting

Office of McHale & Slavin

Thursday, Sept. 8, 5:30pm -7pm
YLS Happy Hour

Friday, Sept. 9,
8:30am – 9:30am

ADR Committee Meeting

Bar Association Office

Monday, Sept. 12,
11:45am – 1:00pm

Judicial Luncheon

Main Courthouse,
North end of Cafeteria

Tuesday, Sept. 13, 10am – Noon
F.L.A.G. Meeting

Main Courthouse,
North end of Cafeteria

Tuesday, Sept. 13,
11:45am – 1pm

South Palm Beach County Bar Membership Lunch

Boca Raton Marriott
Contact southcounty@
southpalmbeachbar.org
for more info

Tuesday, Sept. 13, Noon – 1pm

YLS Board of Directors Meeting

Bar Association Office

Thursday, Sept. 15,
5:30pm – 7:00pm

NCS Happy Hour

Brio's in Palm Beach Gardens

Wednesday, Sept. 21 – 24

The Florida Bar Midyear Meeting

Hilton Walt Disney World
Resort, Orlando

Wednesday, Sept. 21,
5:30pm – 7:30pm

Membership Committee Networking Event Inaugural Cocktail Reception and Speed Networking

BB Kings

Thursday, Sept. 22,
5:30pm – 7:30pm

Palm Beach Justice Association Meeting

The Colony Hotel

Friday, Sept. 23, Noon

Federal Bar Luncheon

Colony Hotel in Palm Beach
RSVP to Peggy Stumhofer at:
PStumhofer@pm-law.com

Tuesday, Sept. 27, Noon – 1pm

Committee for Diversity & Inclusion Meeting

Bar Association Office

Tuesday, Sept. 27,
5:30pm – 6:30pm

Legal Aid Board Meeting

Bar Association Office

Wednesday, Sept. 28,
11:45am – 1:35pm

Intellectual Property CLE Seminar

“Ethical Considerations to
Avoid Common Pitfalls”

Bar Association Office

Wednesday, Sept. 28,
5:00pm – 6:00pm

PBCBA Board of Directors Meeting

Bar Association Office

Thursday, Sept. 29

Court Holiday – Rosh Hashanah

Bar Office Closed

Friday, Sept. 30

PBCJA Golf Tournament

Contact kathyb@PBCTLA.org
for more info