



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

October 2014



Save the date for our Holiday Party, December 4!

Mark your calendar and join us for our Annual Holiday Party and Silent Auction on Thursday, December 4 from 5:30 pm to 8:00 pm at Frenchman's Reserve in Palm Beach Gardens. The cost is \$40.00 and includes drinks, heavy hors d'oeuvres, plus a chance to shop for holiday gifts at great prices! Be sure to register early as many of our members were turned away last year. See our event policy on page 5.

If you can donate an item for the auction that would be great! We're looking for gifts such as tickets to professional ballgames, electronics, artwork, jewelry, hotel accommodations, items for children and pets too! 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 our Young Lawyers and North County Sections.

Mark your calendar for upcoming Membership Events

December 4:

Annual Holiday Party at Frenchman's Reserve

January 9:

"Screen on the Green" Family Event Downtown West Palm Beach

February 2:

Joint Luncheon with Forum Club with guest speaker U.S. Supreme Court Justice Sonia Sotomayor

March 27:

Bench Bar Conference

May 1:

Law Day Luncheon with guest speaker Mark Curriden, attorney and award-winning legal journalist. Senior writer for the ABA Journal

Young Lawyers Back To School Drive a Big Success!



Reporter Gary Widom from CBS News 12 (center) interviewed members of the YLS Board, which was seen LIVE from the Bar office during the morning newscast. Kudos to YLS Board members (and Bar staff member Lynne Poirier) for getting to the Bar office at 4:30 a.m. for the interview: Matt Weissberg, Lindsay Demmery, Scott Perry and Santo DiGangi. This year, our Young Lawyers teamed up with Channel 12 to collect school supplies for teachers and students in Palm Beach County. Supplies donated by our members included binders, pencils, crayons and paper. Special thank you to the Office Depot Foundation who supplied 400 sack packs in addition to funding that allowed the YLS to purchase snacks for the children attending Washington Elementary School in West Palm Beach.



North County Section to host Second Annual Mixer with FAWL

Wear pink and join us for a networking reception to benefit Smiley Wiley Breast Cancer Foundation

Thursday, October 9

5:30 p.m. - 7:30 p.m.

Cabo Flats, Palm Beach Gardens

Cost: \$20.00 for members and complimentary for our Judges
Register online @ www.palmbeachbar.org

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THE
BULLETIN

PALM BEACH COUNTY
BAR ASSOCIATION

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President

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:
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President's Message



Take Advantage of your Palm Beach County Bar Membership Benefits

by Theo Kypreos

With a number of new attorneys joining our bar association every month, it's always good to remind everyone (old and new) about the great membership benefits available to all members of the Palm Beach County Bar Association. Aside from the variety of informative and affordable CLE programs, membership luncheons, and social events offered to members throughout the year, you can also receive discounts from a variety of vendors and service providers that offer special pricing to PBCBA members. Whether you are a judge, private practitioner, government lawyer, in-house counsel or other legal professional, there is surely a membership benefit that you could be taking advantage of, like the following:

Shopping, Entertainment and Theme Park Discounts.

Looking to spruce up your wardrobe? Or maybe you need to plan a family vacation? When you do, make sure you take advantage of the Bar's membership discounts at Brooks Brothers, Busch Gardens, SeaWorld, Muvico, Regal Cinemas, and other vendors. Additional information about how you can save money through PBCBA vendor discount pricing is available online at the Bar's website.

Office Supplies through Association Members Only.

PBCBA members purchasing their office supplies through Association Members Only receive a 6% discount on all purchases. Next day delivery is also available. Call (800) 420-6421 or log on to www.goamo.com to take advantage of this discount.

Law Pay. Giving some thought to accepting credit card payments from clients? Because the ability to accept credit cards attracts clients, improves cash flow and reduces collections, the PBCBA has partnered with LawPay to offer Law Firm Merchant Accounts for our members to allow you or your firm to handle credit card transactions. LawPay is recommended by over 60 bar associations, and it offers the ability to safeguard and separate client funds into trust and operating accounts without commingling funds. PBCBA members can save up to 25% off their credit card processing fees through LawPay.

Paychex. Members of the PBCBA and new enrollees to Paychex are entitled to receive a 15% discount off Paychex services which include payroll preparation and automatic

payment of payroll taxes, plus electronic filing of quarterly and annual returns and HR benefits. Contact Romy Lidor at (561) 687-1770 for more information.

Palm Beach Yacht Club Membership for Young

Lawyers. Need a place to entertain a client or network with colleagues after work? The Palm Beach Yacht Club offers a discounted dues category for members of the PBCBA Young Lawyers Section through their 39th birthday. Regular annual dues for an individual club membership are \$1375, but the discounted annual dues for Young Lawyers members are \$500. Applications for annual memberships can be downloaded at <http://www.palmbeachbar.org/young-lawyers-section/>

Planet Green. Looking for a way to recycle? The PBCBA raises funds by recycling inkjet cartridges, cell phones and other small electronics such as GPS devices, iPods, cameras, video game consoles and much more, through Planet Green. Most of us have these recyclable items sitting around our homes collecting dust. Now you can recycle them and help us raise money at the same time. You can also purchase recycled ink as well. For more information, click here <http://planetgreenrecycle.com/palmbeachbar>

American Safety Council: Do you have a friend or client that needs to take an online course? The American Safety Council offers state approved online courses including Florida Notary Service; Parent Education & Family Stabilization Course; Florida Online Traffic School; First Time Driver (D.A.T.A.) Course; Mature Driver Course; Judge Ordered Program; and Advanced Driver Improvement Program. Refer your clients to <http://www.pbcbamerse.com/> and a small portion of the class fee is remitted to the PBCBA.

In addition to the above benefits, PBCBA members also have access to the Bar's online pictorial membership directory. If your photo is not included in the directory, please email it to sspence@palmbeachbar.org so it can be added. The PBCBA also offers several free happy hours to its North County and Young Lawyer Section members. Lastly, the PBCBA provides opportunities for our members to network with each other and members of the judiciary through our 29 various committees.

You can obtain more information about these and other PBCBA membership benefits from the Bar's website (www.palmbeachbar.org).

CLE @ Sea 2015



Once again, the Palm Beach County Bar Association will be joining with members of the Clearwater Bar Association for a CLE @ Sea cruise. Mark your calendar for September 26 – October 3, 2015 for a Mediterranean cruise on the Emerald Princess. The cruise leaves from Rome and you will visit Sicily, Tunis, Florence, Genoa, Toulon and Barcelona. Rates are as follows (rates are per person, based on double occupancy and subject to availability. Additional taxes are \$95 pp): Inside staterooms \$1249; Ocean view (obstructed) \$1399; Ocean view (unobstructed) \$1649; Balcony staterooms \$1799; and Mini-suites start at \$2099. A total of 6 CLE credits will be presented at an additional cost of \$150. For more information about booking the cruise, contact David Moorcroft, Ships-N-Trips, Inc. at (727)736-1318, dmoorcroft@tampabay.rr.com. To register for CLE or inquire about speaking opportunities, contact Karen France at the Clearwater Bar Association kfrance@clearwaterbar.org



Settlement Authority in Mediation

by Steven Mayans

“Let every eye negotiate for itself and trust no agent.”

– William Shakespeare

Our standing trial orders and local court rules require each suit to be mediated. Unless excused by the Court or adversary, it also means that the party itself must personally attend the mediation. Telephonic attendance will not suffice. *See* FLA.R.Civ.P. 1.720(b) (“...a party is deemed to appear at the mediation conference if... physically present”).

In the case of a corporation, partnership, incapacitated person, or minor, this “physical presence” directive is met through the attendance of an authorized representative, who:

- i. is “the final decision maker with respect to all issues presented in the case”; and
- ii. has “the legal capacity to execute a binding agreement.”

FLA.R.Civ.P. 1.720(c). As the Committee Notes make clear, “[t]hese are objective standards.” If multiple individuals are needed collectively to serve as the party representative, then they must all attend the conference. If the party is a Chapter 286 public entity, the representative must have full authority to negotiate and recommend (but not decide and bind). FLA.R.Civ.P. 1.720(d). If the corporation is an insurance carrier, the representative must have settlement authority up to the plaintiff’s last settlement demand or the insured’s policy limits, whichever is lower, and to do so without the need of consulting others. FLA.R.Civ.P. 1.720(b)(3).

Beginning in 2012, a certification requirement was added to the rule. At least 10 days prior to mediation, each non-individual party must identify in writing who will be attending mediation and confirm the representative’s full settlement authority. FLA.R.Civ.P. 1.720(e). While the filing can be waived by the parties, failure to

otherwise comply with this provision will create a rebuttable presumption of nonappearance. FLA.R.Civ.P. 1.720(f). (It is the trial judge from whom enforcement must be sought, however, as the rule imposes no duty on the part of the mediator to ensure compliance with the certification requirement. *See* Committee Notes, 2011 Amendment.)

Absent good cause, failure of a party to appear at mediation may result in the award of sanctions under FLA.R.Civ.P. 1.720(f), including mediator charges, attorneys’ fees, and other costs. A “good faith argument” is

not the same as “good cause” shown. *Carbino v. Ward*, 801 So.2d 1028, 1031 (Fla. 5th DCA 2001). The bottom line is, if your party representative “needs to call someone” before committing to a settlement, the rule has not been met. Please be careful before certifying that it has.

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

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Who's Who?

Here's a fun way to get to know colleagues. These members were asked to tell us something about themselves that no one else would probably know. Match the person with the statement and see how you do. To be included in next month's issue of **Who's Who**, tell us something about yourself that others would not likely know. Send your information to Lynne at lpoirier@palmbeachbar.org



Greg Huber



Jessica Mason



David Prather

- A. I'm a great skier
- B. I lived in France for an entire summer, but could not and cannot speak a word of French.
- C. Worked my way through college as a dive master

Answers: Greg Huber, 3; Jessica Mason, 2; David Prather, 1.



Letter to the Editor

Dear Patience:

I read with interest the article in the September 2014 edition of the PBCBA Bulletin regarding the CDI's Diversity Internship Program ("DIP"), which states that the program was "formed in 2010." While the article is well written and highlights an important program, the article fails to mention that the origins of the internship program predate the creation of the CDI.

In 2003, the PBCBA created a Committee on Diversity and Gender Sensitivity under the leadership of Greg Coleman. In 2005, the Committee on Diversity created a minority internship program that provided fall and spring internship opportunities to South Florida law students. The program was very successful and during its five year run it placed approximately 75 students in internships with firms such as Greenberg Traurig; Gunster; Ciklin, Lubitz; Ruden McClosky; Walton Lantaff, and Lytal Reiter, as well as with the 4th DCA, the 15th Circuit and the Palm Beach County Clerk's office. In 2007, the program was the recipient of The Florida Bar's Young Lawyers' Division Diversity & Gender Sensitivity Award. In 2010, the CDI changed the internship program from a fall/spring program to a summer program to expand its reach beyond the law schools located in South Florida.

As we continue our focus on keeping diversity in the forefront, it is important not to forget our bar's own history and achievements in this area over an extended period of time.

Sincerely,

Michael J. Napoleone

Board Meeting Attendance

	JULY	AUG
Barnes	x	x
Demmery	x	x
Huber	x	x
Kypreos	x	x
Mason	x	x
McElroy	x	x
Pressly	x	x
Reagan	x	x
Weiss	x	x
Whittles	x	x
Wyda	x	x
Xenick	x	x
Yaffa	x	

PBCBA Event Policy

As some of you have been turned away from some of our events, we ask that you please keep the following in mind:

- We are always willing to accommodate our members; however, local venues and caterers REQUIRE confirmed guest registrations two days prior to an event. In order to have sufficient food, wait staff and valet parkers (when appropriate) we must have those registrations in two days prior to an event. Don't be turned away, be sure to register early for events
- In order to receive a refund for any events, cancellations must be received 2 days prior to the event. Unfortunately, if a member cancels the day before or the day of an event, a refund cannot be issued
- If the event is a CLE seminar for which you have paid but couldn't attend, please request a copy of the CD recording from that seminar
- Non-attorney business associates are not permitted to attend PBCBA events unless they are a paid sponsor. For information on how to sponsor any of our events, contact Lynne Poirier at lpoirier@palmbeachbar.org

We sincerely appreciate your consideration of this policy.



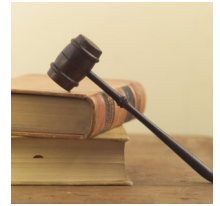
The Estate and Probate Law Continuing Legal Education Committee presents:

"The 32nd Annual Estate and Probate Seminar—Part 1"

Friday, November 7, 2014 - 7:45a.m.- 12:30p.m.

Palm Beach County Bar Association Office
1507 Belvedere Road, WPB 33406

Program Schedule



- 7:45a.m. - 8:25a.m. **"Hot" Breakfast Buffet / Late Registration and Check In**
- 8:25a.m. - 8:30a.m. **Welcome & Opening Remarks - Matt Triggs, Esq., Proskauer Rose LLP, Committee Chair**
- 8:30a.m. - 9:00a.m. **Arbitration in Probate Litigation - Robert W. Goldman, Esq., Goldman Felcoski & Stone**
- 9:00a.m. - 9:50a.m. **Ethics and Mobile Electronic Devices: Big Issues Come in Small Packages - Michael D. Simon, Esq., Gunster**
- 9:50a.m. - 10:00a.m. **BREAK**
- 10:00a.m. - 10:20a.m. **Pasquale - Litigators be Aware – Peter J. Forman, Esq., Gutter Chaves Josepher Rubin Forman Fleisher**
- 10:20a.m. - 10:45a.m. **This Party's Dead! (But the lawsuit goes on.) - Jonathan Galler, Esq., Proskauer Rose LLP**
- 10:45a.m. - 10:55a.m. **BREAK**
- 10:55a.m. - 11:45a.m. **Case Law Update - Thomas M. Karr, Esq., Gunster, Yoakley & Stewart, P.A.**
- 11:45a.m. - 12:30p.m. **Formula Clauses: A-Z - David Pratt, Esq., Proskauer Rose LLP, Board Certified Wills, Trusts & Estates, and Tax Law Attorney**

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estate & trust litigation

This course is expected to receive 4.5 CLE including 1.0 Ethics credits. Certification credits are pending from the Florida Bar.

Early registration cost for the seminar, which includes breakfast, is \$125 for PBCBA member attorneys/paralegals;

\$165 for non-PBCBA member attorneys/paralegals if registered by 10/31/14; add \$25 late fee after that date.

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

PAYMENT OPTIONS:



If paying by credit card, please go to our secure website to register: www.palmbeachbar.org



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



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



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

Name: _____

Telephone: _____

Address: _____

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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) (Estate/Probate Seminar 11/7/14)
Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK** ONLY, WITH THIS FORM.

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



Amendments to §§733.107 & 736.0207, F.S. (effective July 1, 2014)

by David M. Garten

§733.107, F.S.

A presumption of undue influence will arise with respect to a transaction if the contestant can show that a person in a confidential relationship was active in procuring a document under which the contestant is a substantial beneficiary. The presumption of undue influence in will contests is a policy-based presumption that shifts the burden of proof. Courts have recognized that the burden-shifting nature of the presumption of undue influence is applicable whenever that presumption is established. However, because the burden shifting presumption is located in the Florida Probate Code, it could be argued that it only applies in will contests and does not apply to other undue influence proceedings, including trust contests and challenges to the validity of inter vivos transactions. The amendment to §733.107 provides that a presumption of undue influence, once it arises, applies to all testamentary challenges including trust contests and challenges to inter vivos gifts. This amendment codifies what many practitioners express as the accepted current state of Florida case law. The changes made to §733.107 are intended to clarify existing law, are remedial in nature, and apply retroactively to all proceedings pending on or before the effective date of this act, i.e., July 1, 2014 and to all cases commenced on or after the effective date of this act. *See*, Laws of Florida Ch. 2014-127, Section 4. The amendment (**in bold**) to the statute reads:

733.107 Burden of proof in contests; presumption of undue influence.—

(1) In all proceedings contesting the validity of a will, the burden shall be upon the proponent of the will to establish prima facie its formal execution and attestation. A self-proving affidavit executed in accordance with s. 732.503 or an oath of an attesting witness executed as required in s. 733.201(2) is admissible and establishes prima facie the formal execution and attestation of the will. Thereafter, the contestant shall have the burden of establishing the grounds on which the probate of the will is opposed or revocation is sought.

(2) **In any transaction or event to which the presumption of undue influence applies**, the presumption implements public policy against abuse of fiduciary or confidential relationships and is therefore a presumption shifting the burden of proof under ss. 90.301-90.304.

§736.0207, F.S.

The Florida Probate Code and the Florida Trust Code provide that all or any part of a will or trust is void if it is

procured by fraud, duress, mistake, or undue influence. While both codes specify grounds for a will contest or trust contest, only the Probate Code contains a provision designating which party has the burden of proof. The new statute amends the Trust Code to be consistent with the Probate Code so that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. The amendment to §736.0207 provides that the contestant in a trust contest has the burden of proof on all issues, including proving that the trust was not properly executed. This amendment is remedial in nature and retroactive because it is intended to clarify existing law. The changes made to §736.0207 apply to all cases commenced on or after the effective date of this act, i.e., July 1, 2014. *See*, Laws of Florida Ch. 2014-127, Section 8. The amendment (**in bold**) to the statute reads:

736.0207 Trust contests.—

(1) **In an action to contest the validity or revocation of all or part of a trust, the contestant has the burden of establishing the grounds for invalidity.**

(2) An action to contest the validity of all or part of a revocable trust, or the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death. If all of a revocable trust has been revoked, an action to contest the revocation may not be commenced until after the settlor's death. This section does not prohibit such action by the guardian of the property of an incapacitated settlor.

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MAcc, Accounting
MA, Economics

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



**"2014 Update: A Panel Discussion on
E-discovery for Commercial Litigators"**

Monday, November 10, 2014 - 11:30am - 1:00p.m.
Bar Offices - 1507 Belvedere Road, WPB 33406

Program Schedule

- 11:30am - 11:55am **Buffet Lunch / Check In / Late Registration**
- 11:55am - 12:00pm **Welcome - Opening Remarks** - *David Steinfeld, Esq.,
Law Office of David Steinfeld, P.L., Board Certified Business
Litigation Attorney, Business Litigation CLE Committee Chairperson*
- 12:00pm - 1:00pm **Panel Discussion** - *Honorable Meenu T. Sasser, Fifteenth Judicial
Circuit; Mark R. Osherow, Esq., Buckingham Doolittle
& Burroughs, LLP, Board Certified Business Litigation Attorney;
Chioma R. Deere, Esq., Vernis & Bowling of Palm Beach, P.A.;
and Victoria E. Briant, Esq., Law Office of Victoria E. Briant*

Topics include:

- *The Impact of ESI on the Practice of Law*
- *E-Discovery in Practice*
- *Federal Law vs. State E-Discovery Laws*
- *Case Management Orders*
- *Costs & Cost Shifting*

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This course is expected to receive 1.0 CLER / 1.0 Bus. Litigation Certification credits from The Florida Bar.
Early registration cost for the seminar, which includes lunch, is **\$25** for PBCBA member attorneys/paralegals;
\$65 for non-PBCBA member attorneys/paralegals if registered by 11/3/14; add \$15 late fee after that date.
All refund requests must be made in writing and made no later than 48 hours prior to the date of the seminar.

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

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



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registrants prior to the seminar**

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) (Business Litigation CLE Seminar 11/10/14) Cost is the same as listed above, **in addition to \$10 for shipping and handling.** PAYMENT BY **CHECK ONLY, WITH THIS FORM.**

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



Is that Tax Return a “Return”?

by Jason S. Rigoli

Dischargeability of tax liability is a complex area of bankruptcy law. The Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, excepts from discharge those debts for a tax which requires a return, equivalent, that is not filed or given by the debtor. 11 U.S.C. § 523(a)(1)(B)(i).

Under the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), the term ‘return’ [is defined], solely for the purpose of section 523(a), as ‘a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements).’” *In re Wendt*, 512 B.R. 716, 720 (Bankr. S.D.Fla. 2013) (Kimball, J.). The *Wendt* Court stated that “[t]he Bankruptcy Code now explicitly requires that a ‘return,’ for purposes of subsection 523(a), is one that ‘satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements).’” *Id.* (emphasis added). *Cf. Briggs*, *infra*.

For federal tax returns this means looking to the Internal Revenue Code (“I.R.C.”). 26 U.S.C. §§ 1, *et seq.* Section 6012(a)(1)(A) of the I.R.C. requires any individual who has earned taxable income to file a federal income tax return. 26 U.S.C. § 6012(a)(1)(A). Section 6072(a) of the I.R.C. requires that those “returns under Section 6012... made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year...” 26 U.S.C. § 6072(a).

Reading the four statutory provisions together, an individual may only discharge those tax liabilities where a return was timely filed.¹ *Wendt*, at 720 (adopting the rationale of *McCoy v. Miss. State Tax Comm’n* (*In re McCoy*), 666 F.3d 924 (5th Cir. 2012)). Essentially, this interpretation creates a “one-day-late” rule. See, *In re Martin*, 508 B.R. 717, 726 (Bankr. E.D.Cal. 2014).

However, the Bankruptcy Court for the Northern District of Georgia, in *In re Briggs*, 511 B.R. 707 (Bankr. N.D.Ga. 2014) disagrees with the inclusion of a timeliness requirement in defining a “return”. *Id.* at 715. The rationale in *Briggs* is based upon statutory construction and looks at subsection (ii) of 523(a)(1)(b), which states:

was filed or given after the date on which such return, report, or notice was last due, under applicable law or under any extension, and after two years before the date of the filing of the petition;

The *Briggs* court, and others, state that if the timeliness requirement is incorporated in to the definition of “return” then subsection (ii) is superfluous, and that the statutory construction requires that courts interpret the words of statutes to give meaning and effect to all of them. *Id.* at 714. See also, *Gonzalez v. Mass. Dept. of Rev.* (*In re Gonzalez*), 506 B.R. 317 (1st Cir. BAP 2014) *aff’d*, 2014 WL

1815393 (1st Cir. BAP Apr. 3, 2014). Because the *Briggs* court concluded that the timeliness requirement does not apply, it applied the *Beard* test² to determine whether the debtor made an “honest and reasonable attempt to satisfy the tax laws” other than demonstrating that it was untimely filed.” *Id.* at 716-19.

For individual debtors the question remains on whether a return not timely filed constitutes a “return” as defined by the hanging paragraph of 523(a) which would be dischargeable under 727.

Correction: I need to correct an error contained in the Bankruptcy Corner Article *Ability to Strip Off Wholly Unsecured Association Liens: Not So Fast* in the September 2014 Bulletin. In that article it was misstated that “an Association can recover the lesser of 6 months of dues or 1% of the original mortgage” when it should have been the “lesser of 12 months.”

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

² The *Beard* test can be found in *Beard v. Commissioner of Internal Revenue*, 82 T.C. 766 (T.C. 1984).



The Palm Beach County Bar Association hosted a training session for the Informed Voter’s Project. President Theo Kypreos is pictured above with Liz Herman, Chair, PBCBA Law Related Education Committee; Training Speaker and Florida Supreme Court Justice Barbara Pariente and Michael Napoleone, Chair, The Florida Bar Constitutional Judiciary Committee

¹ This article is only analyzing the requirement of a “return” being filed for purposes of section 523(a) and is not analyzing any of the other requirements necessary for a tax debt to be discharged for an individual debtor.



Vicarious Liability and the Beneficial Ownership Exception

by Ted Babbitt

In *Christensen v. Bowen*, 39 Fla. L. Weekly S214 (Fla. April 10, 2014), the Supreme Court discussed both vicarious liability in the context of a motor vehicle accident and the beneficial ownership exception.

In that case a wrongful death action was brought regarding a vehicle co-owned by a couple who were divorced shortly after the purchase of the vehicle. When the vehicle was purchased, both defendants signed, under penalty of perjury, an application for a certificate of title asking that the title be issued to them as co-owners. After the couple divorced, the husband no longer had a key to the vehicle, did not reside with his ex-wife nor have access to the vehicle but the title remained in his name as the co-owner. Nearly two years later the wife struck and killed plaintiff's decedent.

At the trial of the motor vehicle accident case, plaintiff moved for directed verdict against the husband on the basis of vicarious liability which motion was denied. The jury found that the husband was not liable because he did not have beneficial ownership with the right of control over the use of the vehicle. The Fifth District reversed in *Bowen v. Taylor-Christensen*, 98 So. 3d 136 (Fla. 4th DCA 2012) and found that as a matter of law, the husband, whose name was still on the title, was vicariously liable for his wife's negligence since he still retained an ownership interest in the vehicle and had given her permission to drive.

The Supreme Court took jurisdiction based upon a certified question and discussed the beneficial ownership exception to vicarious liability first recognized in *Palmer v. R.S. Evans Jacksonville, Inc.*, 81 So. 2d 635 (Fla. 1955). That case was an action against a car dealership which had sold a vehicle to the driver defendant who had submitted a down payment and signed a conditional sales contract and taken possession of the vehicle. In *Palmer* the Court held that the car dealership had merely bare legal paper title but no longer had any authority over use of the vehicle. As a result, the Court held that the rationale for imposing vicarious liability under the dangerous instrumentality doctrine no longer existed because the dealership had no right of control over the use of the vehicle.

The doctrine was extended by the Supreme Court in *McAfee v. Killingsworth*, 98 So. 2d 738 (Fla. 1957). In that case, a vehicle was put up for sale by the title holder and a prospective buyer took the vehicle after paying a down payment and got in an accident before the title could actually be transferred. The Supreme Court held that that was an effective sale of the vehicle and the title had transferred notwithstanding that the paper title had not changed hands.

Subsequently in *Metzel v. Robinson*, 102 So. 2d 385 (Fla. 1958), the Supreme Court declined to extend the beneficial ownership exception, holding that absent a conditional sales

agreement, the conditions under which a defendant whose name was on the title would not be vicariously liable were extremely limited. The Court in *Metzel* held that if the title owner had any ability to exert dominion and control over the vehicle there was an ownership interest as a matter of law and thus vicarious liability. In *Aurbach v. Gallina*, 753 So. 2d 60 (Fla. 2000), the Supreme Court held that the ability to exercise dominion and control of the vehicle by itself is not sufficient for vicarious liability. Rather it is the combination of the title ownership and the ability to control which results in liability under the dangerous instrumentality doctrine. Where there is such an ownership interest combined with some ability to control the use of the vehicle, the beneficial ownership exception only applies where a conditional sales agreement exists or the vehicle has been sold and possession has been transferred.

Thus, in *Christian*, supra, the Supreme Court holds that a joint titleholder has statutorily conferred legal rights to the vehicle and is, thus, in a position to exercise authority or control over the vehicle. This is true whether or not the titleholder actually exercises any right of control and regardless of whether the titleholder intended to be an owner or titleholder of the vehicle. The fact that the titleholder intentionally placed his or her name on the title certificate under circumstances other than the limited beneficial ownership exception is sufficient to confer vicarious liability.

The analysis of the above-cited cases requires an inquiry into what evidence of objective steps exist wherein the titleholder attempted to transfer interest in the vehicle. It is not the subjective intent of the titleholder that is important but rather whether there was an objective attempt to rid the titleholder of an interest in the vehicle by removing his or her name from the title. To hold otherwise, would result in every case involving vehicle ownership being subject to litigation on the basis of the owner's intent. It is the legal right to exercise control over a vehicle which imposes vicarious liability, not the actual exercise of control. A titleholder has a legal right to sell or take possession of a vehicle and thus has legal ownership. Absent evidence that the titleholder made efforts to sell the vehicle or otherwise effectively remove the legal rights conferred through title ownership, the owner remains an owner and has legal liability for the use of the vehicle.

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. THEY ARE ALSO AVAILABLE ON THE BAR'S WEBSITE.

A Real Hornet's Nest: OVERTIME ISSUES FOR SOLO & SMALL FIRMS:

Is an After-Hour Email, Text or Phone Call with your employees (not independent contractors) considered 'Compensable' for an Overtime Calculation?

Wednesday, November 12, 2014

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

Bar Office



EMPLOYMENT vs. INDEPENDENT CONTRACTORS

- Is my staff properly designated "employees" or "independent contractors"
- What factors determine the difference and why should I care?

OVERTIME:

- What federal, state and local law governs?
- What constitutes my obligation to pay overtime to my employees?
- How do I properly calculate overtime?
- But I pay my assistant a salary, doesn't that alleviate the need to pay overtime?
- Am I personally liable?
- What's the statute of limitations?

THE OVERTIME LAWSUIT

- I've been sued, now what?
- Does your insurance policy cover overtime claims?
- What are my defenses?
- What records do you have, and what records are you legally obligated to have?
- Burden of proof
- Liquidated damages and attorneys' fees.

"BANKING" OF TIME FOR SPECIAL PROJECT OR EVENTS (i.e. trial, real estate closing?)

In lieu of paying overtime, may I allow my employee to "bank" time?

YOUR OVERTIME POLICY

- Do you have an employee handbook that contains a clearly written overtime policy?
- Do you follow the policy?
- When was your policy last updated?
- Do your policies properly address use of smartphones, tablets, laptops and remote access usage?

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by **Donnie Murrell**

What a great town. It had been many years since I last visited Boston. I'd forgotten what a nice place it is. It has beautiful summer weather, countless bars

and restaurants, it has history everywhere and it is easy to get around. The Freedom Trail is a walking tour of some of the most historic places in the city. If you go, do the Trail. It is a really interesting way to spend an afternoon.

As usual the House of Delegates met for two days. The first day we were honored by the appearance of Chief Justice John G. Roberts of the United States Supreme Court. He discussed the 800th anniversary of the Magna Carta and how it came to be. It was the only topic he would agree to speak on, apparently confident that it would never be part of any case or controversy likely to be heard by the Court. His speech was a bit dry, especially when compared to other Justices who have addressed the House. The lawyer sitting beside me opened his laptop and swears Roberts was reading the Wikipedia entry on the Magna Carta. At any rate, Chief Justice Roberts is clearly a bright, cautious man.

The biggest issues before the House of Delegates this year involved legal education. The House was presented a report on trends in legal education across the country. The presentation began with the sobering news that in 2010 it was estimated there were 52,000 unemployed/underemployed lawyers in the country. That figure is now down to approximately 35,000. Meanwhile there is a growing gap between those who can afford access to legal services and those who cannot.

There are 290,000 lawyers in New York and every year 15,000 take the Bar Exam with about 10,000 admitted to the Bar. New York now requires 50 hours of Pro Bono work *prior* to admission. It also allows qualified third year law students to take the Bar exam in February on the condition that they spend their final semester doing full time pro bono work. New York calls this the Pro Bono Scholars Program. The idea is reduce the cost of law school tuition, instill a sense of public service in new layers, give them practical

real world experience and address the unmet legal needs of the public.

Arizona has a very similar program. It also allows lawyers to claim up to 5 hours of CLE credit for every hour of pro bono work, up to twenty five hours. Arizona participates along with 14 other states in a Uniform Bar Exam. Scores are portable from one state to another, but each individual state sets its own passing score and character and fitness requirements.

Other issues in legal education looming on the horizon include further expansion of the Uniform Bar Exam to reflect the reality of multi-state practice; the globalization of law practice and whether students should be allowed to take their third year classes in a foreign law school; and whether the ABA should accredit law schools in China.

The most vigorous debate in the House involved a related issue. The Section of Legal Education and Admissions to the Bar proposed a resolution that would have prohibited

law students from obtaining law school credit for paid work in a field placement program. The law school deans and faculty members who supported this resolution argued that paid positions at private firms created an inherent conflict for the students and placed too much control in the hands of the employers. They also expressed fear that paid internships would eviscerate non-paid internships at public sector law firms like state attorney/public defenders offices or Legal Aid. The House members were more sympathetic to the arguments of law students that crushing student loans were onerous enough without having to forgo paid jobs. The House sent the resolution back to the Section.

Finally, our hometown boy and state bar president, Greg Coleman debuted as head of the Florida delegation at the August meeting. He handled himself well and did us all proud. Good work, Greg.

Donnie Murrell

Palm Beach County Delegate

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CPR Lunch and Learn



Lindsay Demmery

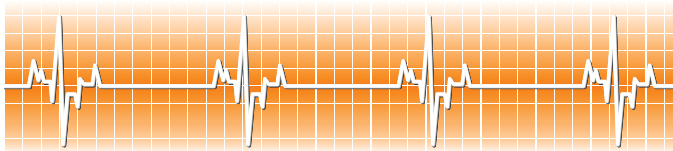


Mariano Garcia

A special thank you to the American Red Cross for teaching our members life saving tips during a lunch and learn program.



Standing left to right: Christina Scholtes, Lindsay Demmery, Ian Goldstein, David St. John, Randy our CPR Trainer; Mariano Garcia and Marc Weiner
Sitting left to right: Bette Collister, Scott Zappolo and Andrew Kwan



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YLS Sponsors Dolphins Game Road Trip



When: Sunday, November 2

Time: TBD - bus pick up from PBCBA office

What: Dolphins vs. Chargers

Cost: \$45 per person which includes the bus to and from the game, tailgating at the stadium and tickets in Section 450.
Tickets will be sold on a first come, first serve basis.

Registration and prepayment is required and can be done on the Bar's website.

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



"How to Ethically Perform e-Discovery"

Monday, December 8, 2014 - 11:30am - 1:00p.m.

Bar Offices - 1507 Belvedere Road, WPB 33406

Program Schedule

- | | |
|-------------------|---|
| 11:30am - 11:55am | Lunch / Check In / Late Registration |
| 11:55am - 12:00pm | Welcome - Opening Remarks - <i>David Steinfeld, Esq.,
Law Office of David Steinfeld, P.L., Board Certified Business
Litigation Attorney, Business Litigation CLE Committee Chairperson</i> |
| 12:00pm - 1:00pm | How to Ethically Perform e-Discovery -
<i>David Steinfeld, Esq., Law Office of David Steinfeld, P.L., Board
Certified Business Litigation Attorney,</i> |

This program will cover:

- e-Discovery terms and terminology
- Data preservation obligations
- A review of some salient sanctions case law

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

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



Florida Lawyer's Guide to Marijuana Laws

by Christopher B. Hopkins

Nearly 90% of Floridians support medical marijuana in advance of the November 2014 vote on Amendment 2, Use of Marijuana for Certain Medical Conditions. Even without the amendment, medical marijuana is already marginally permitted under the recently-enacted Compassionate Medical Cannabis Act of 2014. These state law changes lead to a number of regulatory, tax, insurance, tort, zoning, and other legal issues. This article provides a primer for lawyers on the relevant marijuana standards and laws.

Amendment 2: if passed by the voters, it will amend Article X, Section 29 of the state constitution to permit "the medical use of marijuana for individuals with debilitating diseases as determined by a licensed Florida physician." The Department of Health will regulate the process. The full text is here: <http://bit.ly/1lIKqN9>

Advisory Opinion: in January 2014, the Supreme Court of Florida reviewed and approved the proposed amendment, title, and summary. The Court rejected "the assertion that the amendment would allow far wider marijuana use than the ballot title and summary reveal[ed]." Instead, the majority confirmed that the intent of the amendment is "to allow marijuana use for a serious medical condition or disease rather than for any medical condition for which a physician personally believes that the benefits outweigh the health risks..."

Bongs & Chillums: any "drug paraphernalia" which is used or intended for growing, preparing, testing, and inhaling is "contraband subject to civil forfeiture" under F.S. 893.145. This includes smoking devices such as bongs and chillums (conical pipe). Subjectively, almost anything could be deemed "drug paraphernalia" depending upon thirteen grounds set forth in F.S. 893.146 as well as "other logically relevant factors." Manufacturing, advertising, selling, possessing, or using "drug paraphernalia" is a crime under F.S. 893.147.

Cannabis: Cannabis is infamous for its tetrahydrocannabinol (THC) content. Two species of the plant, sativa and indica, reportedly create different psychoactive sensations (cerebral/creative vs. lethargic/stoned). Another compound, cannabidiol (CBD), is believed to have medicinal qualities and is responsible for the medical marijuana movement. While we commonly use the word *marijuana*, Florida Statute 893.02(3) refers to "all parts of the genus *Cannabis*" including its seeds and resin (hash) but distinguishes non-euphoric "low-THC cannabis" (Amendment 2 uses *marijuana* but relies upon the statutory definition of *cannabis*). Cannabis is a controlled substance under the Florida Comprehensive Drug Abuse Prevention and Control Act, Chapter 893.

Compassionate Medical Cannabis Act: in June 2014, Governor Scott signed into law F.S. 381.986 *et seq.* which permits "dispensing organizations" to cultivate, process, and dispense low-THC cannabis for medical use by a "qualified patient" (e.g., suffering from cancer, epilepsy, or conditions for which no other treatment options exist). Under the Act, however,

smoking is not permitted. A Compassionate Use registry will be created and doctors may write prescriptions in 2015. The Act also encourages and funds cannabis and epilepsy research.

Public Records Exception: F.S. 381.987 is a companion law which exempts from public record any personal identifying information in the Compassionate Use registry (exceptions are made for law enforcement and research).

Florida DOH Draft Rules: the Florida Department of Health has issued a Notice of Proposed Rule which was published in the Florida Administrative Register relative to the Compassionate Use Act. Highlights of the August 2014 Notice: \$150,000 application fee and \$5 million dollar performance bond for dispensing organizations; level-2 background check requirement; only five dispensing organizations divided by region; and a lottery if more than one license application is received per region. The next hearing will be held September 5, 2014, in Tallahassee.

Controlled Substances Act (CSA): under the CSA, 21 U.S.C. 801 *et seq.*, marijuana and THC are Schedule I substances (the most restrictive). There have been a number of lawsuits dating back to the mid-1970's regarding the DEA's refusal to re-schedule the drug but none have prevailed. A 2005 U.S. Supreme Court case confirmed that the CSA preempts state law. In short, even if legalized at the state level, cannabis is still illegal under federal law.

Cole Memos: in light of "limited prosecutorial resources" and state ballot initiatives, Deputy Attorney General Cole issued several memos updating the DOJ's guidance to U.S. Attorneys regarding eight enforcement priorities. In very broad terms, the August 2013 memo suggested that marijuana businesses regulated under well-run state systems would not trigger the Cole Memo priorities. The February 2014 memo turned its attention to financial institutions and gave guidance about prosecuting anti-money laundering (AML) and Bank Secrecy Act (BSA) claims only when Cole Memo priorities were violated. The Cole Memos are policy guides but not law.

FinCEN Guidance: coinciding with the February 2014 Cole Memo, this Guidance sets out seven "due diligence" steps in order to clarify BSA requirements for financial institutions which provide banking services to marijuana-related businesses. While financial institutions are required to file Suspicious Activity Reports (SARs), they could file a "Marijuana Limited" SAR if the customer was regulated by state law and did not trigger Cole Memo priorities.

UF Research: in March 2014, outside counsel for the University of Florida wrote a 9-page report to the school's president outlining that marijuana research by the school, even if legal under state law, would violate federal law and jeopardize "the University's continued receipt of federal funds through research grants and contracts and student financial assistance programs."

Christopher B. Hopkins is a partner with Akerman LLP. From insurance to zoning, litigation to taxes, send Amendment 2 comments to christopher.hopkins@akerman.com.

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



“Ethics of Technology Assisted Review”

Wednesday, October 22, 2014 - 11:30am - 1:00p.m.
Bar Offices - 1507 Belvedere Road, WPB 33406

Program Schedule

- 11:30am - 11:55am **Lunch / Check In / Late Registration**
- 11:55am - 12:00pm **Welcome - Opening Remarks - David Steinfeld, Esq.,**
*Law Office of David Steinfeld, P.L., Board Certified Business
Litigation Attorney, Business Litigation CLE Committee Chairperson*
- 12:00pm - 1:00pm **Ethics of Technology Assisted Review -**
Mark A. Moore, Esq., National Program Manager (Ricoh USA, Inc.)

Attendees will learn:

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

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Welcome New Members!

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

Jeffrey P. Bernard White: Inter-American University, 2013; Associate in Lilli Marder, LLC, Boca Raton.

Christopher L. Bovee de Soto: Florida Registered Paralegal Membership; Lilli Marder, LLC, Boca Raton.

Stephanie Cagnet: Florida Coastal School of Law, 2011; Legal Aid Society of Palm Beach County.

Lindsay P. Corcoran: Nova Southeastern University, 2008; Associate in Schutz & White, LLP, West Palm Beach. .

Jeffrey Lewis Greyber: University of Miami, 2007; Associate in Merlin Law Group, West Palm Beach.

Hitesh Gupta: Florida International University, 2008; Solo Practitioner, Boca Raton.

Robert R. Julian: Nova Southeastern University, 1978; South Florida Guardianship Program, Inc., Sunrise.

Scott J. Kalish: Law Student Membership, Boynton Beach.

Timothy D. Kenison: Temple University, 2003; Associate in Sonneborn Rutter & Cooney, West Palm Beach.

Daniel Scott Kuczler: University of Pittsburg, 2004; Associate in Roig, Tutan, Rosenberg, Martin & Stroller, P.A., West Palm Beach.

Aileen Susanna Labi: University of Maryland, 2013; Coral Springs.

Nekishia L. Lester: University of Miami, 2003; Solo Practitioner, Boca Raton.

Lisa Susan Lullove: University of Miami, 2002; Associate in Roig, Tutan, Rosenberg, Martin & Stroller, P.A., West Palm Beach.

Gail A. McQuilkin: University of Miami, 1992; Associate in Kozyak Tropin & Throckmorton, Coral Gables.

Victoria Mesa-Estrada: St. Thomas University, 2010; Lake Worth.

Samantha K. Poznak: Florida State University, 2012; Sole Practitioner, Palm Beach.

Alexander Stuart Rotan: Tulane University, 2014; Associate in Mrachek, Fitzgerald, Rose, Konopka & Dow, West Palm Beach.

Suzanna Scarborough: University of Florida, 1992; Associate in Rosenthal, Levy, Simon and Ryles, West Palm Beach.

Melanie B. Stocks: Florida Registered Paralegal Membership, Gunster Yoakley & Stewart, P.A., West Palm Beach.

Andrew Charles Strecker: University of Miami, 2005; Partner in Fountain and Strecker, West Palm Beach.

Peter Trombadore: Florida International University, 2010; Associate in Sasser, CEstero & Sasser, P.A., West Palm Beach.

Nathan Max Whitford: Thomas Cooley Law School, 2014; Associate in Klein, Glasser, Park Lowe & Pelsring, West Palm Beach.

Cassandra Zayne: Florida Coastal School of Law, 2012; Associate in Roig, Tutan, Rosenberg, Martin & Stroller, P.A., West Palm Beach.



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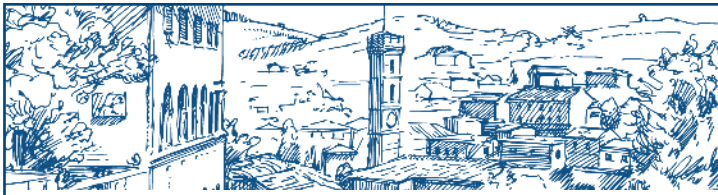
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In Memoriam



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Obama Signs Executive Order Extending Workplace Protections to Transsexual Federal Employees

by Lindsey Wagner

On July 21, 2014, President Obama took a step forward in the prohibition of discrimination against Lesbian, Bisexual, Gay, Transgender, and Questioning, Intersex, and Asexual (LGBTQIA) Americans with the execution of an Executive Order 11478 protecting federal workers and contractors from discrimination on the basis of sexual orientation and gender identity. The Executive Order Amends a 1969 Executive Order, 11246, by President Lyndon B. Johnson, by adding sexual orientation and gender identity to the list of protected categories covering federal contractors (which previously only included race, color, religion, sex, and national origin).

This Executive Order is significant as the first federal action taken to protect any transsexual employee in the workplace. In fact, while some states have elected to pass their own legislation prohibiting discrimination of LGBTQIA employees, there is no current Florida state law prohibiting discrimination based on sexual orientation. However, Palm Beach County has led the way as one of the first and few counties in the state to pass its own ordinance prohibiting discrimination on the basis of sexual orientation in employment.

The two-part Order provides for the following: 1.) prohibits discrimination against transgender employees of the federal government, and 2.) prohibits discrimination and adverse action against employees of federal contractors based on sexual orientation and gender identity. With nearly one-fifth of the United States' workforce comprised of federal contractors and workers, the Order makes a large impact. However, the Order does not affect every single company with a federal contract. Rather, it targets companies that have contracts with federal agencies exceeding \$10,000.00, federally assisted construction contracts exceeding \$10,000.00, and subcontracts exceeding \$10,000.00.

Contractors affected by this Order will be required to include nondiscrimination clauses covering sexual orientation and gender identity to their subcontracts with vendors, add sexual orientation and gender identity to their nondiscrimination policies, and take "affirmative action" to provide that all LGBTQIA employees are treated fairly.

The portion of the Order affecting federal contractors takes effect next year, while the provision regarding federal employees will take effect immediately. The Order also provides that it shall apply to contracts entered into on or after the effective date of the rules established by the Department of Labor. The Order instructs the Secretary of Labor to issue regulations implementing the requirements within the next ninety days. While employees and employers of private, non-federally assisted companies will still

have to wait for the same protections offered by this Executive Order to federal employees, we can look forward to the ideals of this Executive Order to pave the way for more employment protections in the future.

Lindsey Wagner is Managing Attorney at Cathleen Scott & Associates, P.A.'s West Palm Beach office, practicing Labor & Employment law and can be reached at Lwagner@csapalaw.com.



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Real Property and Business Litigation Report



by Manuel Farach

Winderting Investments, LLC v. Furnell, – So.3d –, 2014 WL 3765448 (Fla. 2d DCA 2014).

Financial discovery in aid of execution may not be conducted on a third party unless a creditor lays the proper predicate showing the proposed discovery “would encompass matters identifying or leading to the discovery of asset available for execution.”

Tunison v. Bank of America, N.A., – So.3d –, 2014 WL 3734311 (Fla. 2d DCA 2014).

A winning defendant who does not request fees in its motion to dismiss is still entitled to fees notwithstanding there is no demand for fees in the only document filed, i.e., the motion to dismiss. Stockman v. Downs only requires demand for fees in “pleadings,” and a motion to dismiss is not a “pleading” under the Rules of Civil Procedure.

J. Milton Dadeland, LLC v. Abala, Inc., – So.3d –, 2014 WL 3735142 (Fla. 3d DCA 2014).

The Florida Lien Act, which entitles a broker to a lien on the net proceeds of a commercial transaction for their commission, is not the only method by which a broker may lien. If permitted by contract or law, a broker may lien the real property itself.

Papa v. Purebred Breeders, LLC, – So.3d –, 2014 WL 3744289 (Fla. 3d DCA 2014).

A “final judgment without prejudice” is not a final judgment.

Sarras v. Mills-Sarras, – So.3d –, 2014 WL 3871235 (Fla. 5th DCA 2014).

A common-law claim for worthless check is subject to the five year statute of limitations; claims for treble damages under Fla. Stat. § 68.065 are subject to the Fla. Stat. 95.11 (3)(f) four year statute of limitations.

Spellman v. Independent Bankers’ Bank of Florida, – So.3d –, 2014 WL 3871264 (Fla. 5th DCA 2014).

A creditor’s taking shares of a company, either directly or through a subsidiary, is not an “other disposition” under Fla. Stat. § 697.609 (1), and a creditor who does so is entitled to a full judgment (not just a deficiency) for the full amount of the indebtedness.

St. Croix Lane Trust v. St. Croix at Pelican Marsh Condominium Ass’n, Inc., – So.3d –, 2014 WL 3882458 (Fla. 2d DCA 2014).

The restrictive language of Fla. Stat. § 718.116 does not overrule the accord and satisfaction provisions of Fla. Stat. § 673.3111, and accordingly, an association’s negotiation of a check with “paid in full” on the check creates an accord and satisfaction.

Laser Spine Institute, LLC v. Greer, – So.3d –, 2014 WL 3865840 (Fla. 1st DCA 2014).

An order directing the disclosure of trade secrets must set forth findings of fact detailing why disclosure is necessary to resolve the dispute.

Yampol v. Turnberry Isle South Condominium Ass’n, Inc., – So.3d –, 2014 WL 3844028 (Fla. 3d DCA 2014).

It is a violation of due process for a trial court to enter injunctive relief beyond the evidence presented or that prayed for in the pleadings.

Bellizzi v. Islamorada, Village of Islands, – So.3d –, 2014 WL 3844032 (Fla. 3d DCA 2014).

The “common law rule” regarding roadways (platted streets containing a reversionary interest pass the underlying land, upon the streets being abandoned surrendered, to the abutting owners up to the centerline of the roadway) does not apply when the roadways are transferred to public entities.

Local 703, I.B. of T. Grocery & Food Employees Welfare Fund v. Regions Financial Corp., – F.3d –, 2014 WL 3844070 (11th Cir. 2014).

The Eleventh Circuit adopts Halliburton II and permits evidence at class certification stage that the misrepresentation did not affect the stock price.

Davis v. Producers Agr. Ins. Co., – F.3d –, 2014 WL 3844815 (11th Cir. 2014).

A timeliness challenge to an arbitration award under the Federal Arbitration Act must be made during arbitration proceedings and not in court at the time of seeking vacatur.

Gann v. BAC Home Loans Servicing LP, – So.3d –, 2014 WL 3971546 (Fla. 2d DCA 2014).

The Florida Consumer Collection Practices Act applies to collection of both secured and unsecured claims and applies to anyone collecting a debt (not just a “debt collector”).

Pomeranz & Landsman Corp. v. Miami Marlins Baseball Club, L.P., – So.3d –, 2014 WL 3928401 (Fla. 4th DCA 2014).

A trial court has continuing jurisdiction over a Fla. Stat. § 57.105 motion filed before a voluntary dismissal, but cannot entertain a § 57.105 motion filed after dismissal.

Heims v. G.M.S. Marine Service Corp., – So.3d –, 2014 WL 3928404 (Fla. 4th DCA 2014).

A trial court cannot permit a review of attorneys’ files “while preserving the retaining lien” as doing so makes the retaining lien worthless.

McLagan v. Federal Home Loan Mortg. Corp., – So.3d –, 2014 WL 4113099 (Fla. 2d DCA 2014).

The defense of standing may be raised by motion without first raising it as an affirmative defense.

Desert Palace, Inc. v. Wiley, – So.3d –, 2014 WL 4114482 (Fla. 1st DCA 2014).

An action on a foreign judgment domesticated pursuant to the Florida Enforcement of Foreign Judgments Act, Fla. Stat. § 55.501, is subject to the twenty year statute of limitations of Fla. Stat. § 95.11(1) and not the five year statute of limitations set forth in Fla. Stat. § 95.11(2)(a).

Phoenix Motor Co. v. Desert Diamond Players Club, Inc., – So.3d –, 2014 WL 4082901 (Fla. 4th DCA 2014).

For two documents to be read as one under the Doctrine of Incorporation by Reference (and thereby invoke an arbitration provision), the incorporating (first) document must expressly refer to or sufficiently describe the second document sought to be incorporated into the first document.

Fowler v. Ritz-Carlton Hotel Co., LLC, – Fed.Appx. –, 2014 WL 4066211 (11th Cir. 2014).

The mere appearance of partiality or bias is not enough to set aside an arbitration award under the Federal Arbitration Act; “evident partiality” occurs only when an actual conflict (known by the arbitrator) exists or the arbitrator knows of but fails to disclose information which would lead a reasonable person to conclude a conflict exists.

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The Law Offices of Craig Goldenfarb, P.A. has moved to the Gold Commerce building, 1800 South Australian Ave, Suite 400, West Palm Beach, FL, 33409. All phone numbers, fax numbers and other contact information for the firm and the staff remains the same.



Broad and Cassel announces that **Patrick Painter** has joined its West Palm Beach office as an Associate in the firm's Land Use and Environmental, Real Estate and Governmental Relations Practice Groups.

Florida Defense Lawyers Association membership elected **Charles H. Damsel, Jr.** to the position of Honorary Lifetime Member. Mr. Damsel is a charter member who has been active in the organization since 1967 and served as President in 1976 and 1977.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Joanne M. O'Connor** has been elected as Vice President of the Duke University Alumni Association Board of Directors.

Gary Lesser will receive an award from Families First of Palm Beach County for his philanthropic contributions to the community at the 8th Annual Children's Day Luncheon.

Jones, Foster, Johnston & Stubbs, P.A. announces that it has opened an office in the Deutsche Bank Building at 350 Royal Palm Way, Suite 406 in Palm Beach. Shareholders Ben Alexander, Board Certified in Real Estate, and Tasha Dickinson, Board Certified in Wills, Trusts & Estates, will be residing in this new office. Jones Foster has been in West Palm Beach for over 90 years and is establishing a Palm Beach office to better serve its clients who live, work and have a connection to the island.



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CALENDAR October 2014

Friday, October 3, 8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Tuesday, October 7, Noon – 1pm
NCS Board Meeting

Wednesday, October 8,
11am – Noon
New Attorney Induction
Northwood University
2600 N Military Trail,
West Palm Beach
Turner Education Building
Auditorium

Thursday, October 9, Noon – 1pm
**Transaction Law
Committee Meeting**
Bar Association Office

Thursday, October 9, 5:30pm – 7pm
NCS Happy Hour w/FAWL
Cabo Flats

Friday, October 10,
5:30pm – 8:30pm
**FAWL Working Parents
Zoo Night**
RSVP pbcfawl@gmail.com

Friday, October 10, Noon – 1pm
PBACDL General Meeting
Judicial Conference Room,
Main Courthouse, WPB

Monday, October 13
Court Holiday – Columbus Day
Bar Office Closed

Tuesday, October 14, 11am – 1pm
**Unified Family Practice
Committee Meeting**
Judicial Conference Room,
Main Courthouse, WPB

Tuesday, October 14, Noon – 1pm
YLS Board Meeting
Bar Association Office

Wednesday, October 15,
5pm – 8:30pm
**PBCBA Board of
Directors Meeting**
Bar Association Office

Thursday, October 16,
Noon – 1:30pm
**South Palm Beach County FAWL
Thinks Pink Membership Lunch**
Boca Grove Country Club
For more info, contact
lgreenman@fwblaw.net

Thursday, October 16,
5:30 pm – 7pm
YLS Happy Hour
TBA

Thursday, October 16, 6pm – 8pm
ABOTA Stuart Event
For info contact Kathy Cleveland,
clevelandsoffice@aol.com

Friday, October 17, 11am – 1:30pm
**Cunningham Bar
Legislative Luncheon**
Bar Association Classroom

Saturday, October 18, 8am – 1pm
**South County Bar Assn. Tennis
Tournament**
For info, go to
www.southpalmbeachbar.org

Monday, October 20,
6:30pm – 7:30pm
Small Claims Court Clinic
West Boca Library

Tuesday, October 21,
11:45am – 1pm
**Judicial Relations
Committee Meeting**
Judicial Conference Room, Main
Courthouse, WPB

Wednesday, October 22 – 24
**The Florida Bar Board of
Governors Meeting**
Philadelphia

Wednesday, October 22,
11:30am – 1pm
Business Litigation CLE Lunch
Bar Association Office

Thursday, October 23
PBCJA Jurist of the Year Dinner
For info go to www.pbcja.org

Tuesday, October 28, Noon – 1pm
CDI Committee Meeting
Bar Association Office

Tuesday, October 28,
5:30pm – 6:30pm
Legal Aid Society Board Meeting
Bar Association Office

Wednesday, October 29,
Noon – 1pm
PBACDL Judicial Meet & Greet
Judicial Conference Room, Main
Courthouse, WPB



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	PBCBA	Technology in and out of Law Office	1.0		\$25	\$65	04/11/15
	PBCBA	Patient Protection and Affordable Care Act++1.0 Labor & Employment Law Cert.	1.5		\$35	\$75	05/05/15
	PBCBA	Law Office Management (S OLO event)	1.0		\$25	\$65	05/07/15
	OCBA	How Well Do You Know Your Malpractice Ins?	5.0	3.0	\$170	\$210	05/08/15
	PBCBA	Spying Spouses: Divorce in a World of Cyber Warfare +++4.0 Marital and Family Law Cert.	5.0	1.0	\$135	\$175	05/08/15
	PBCBA	The 31 st Ann'l Estate & Probate Seminar – Part 1 +++ 4.0 Elder Law; 4.0 Wills, Trusts Estates Cert.	5.5		\$135	\$175	05/15/15
	HCBA	Important Legislative, Agency and Judicial Developments Over the Past Year+++2.0 Labor and Employ Law Cert.	2.5		\$60	\$100	05/20/15
	PBCBA	Evidentiary & Ethical Issues in Bankruptcy	2.0	2.0	\$75	\$115	05/22/15
	PBCBA	Palm Beach Co. & The JFK Assassination+++1.5 Criminal Appellate; 1.5 Criminal Trial Law Cert.	2.0		\$50	\$90	06/03/15
	PBCBA	Deposition Skills (PI)	1.0	1.0	\$40	\$80	06/06/15
	OCBA	Adv. Deposition Practice & Procedure	1.0		\$25	\$65	06/12/15
	PBCBA	16 th Annual Elder Law Seminar +++4.5 Elder Law Cert.	6.0	1.0	\$165	\$205	06/13/15
	PBCBA	Trial Skills: Opening & Closing +++2.0 Civil Trial Cert.	2.5		\$60	\$100	07/14/15
	PBCBA	Visual Evidence/Trial on a Shoestring Using iPad	1.0		\$25	\$65	07/17/15
	PBCBA	Inside the Appellate Court+++2.5 Appellate Prac. Cert. credits	5.0		\$125	\$165	07/31/15
	PBCBA	DVD Inside the Appellate Court+2.5 Appellate Prac. Cert.credits	5.0		\$125	\$165	07/31/15
	PBCBA	A View From the Bench: Professionalism from Judges Perspective (NCS)	1.0	1.0	\$40	\$80	08/07/15
	OCBA	Gun Trusts+++1.0 Wills Trusts & Estates	1.0		\$25	\$65	08/07/15
	PBCBA	The Yin & Yang of Mediation+++7.0 Civil Trial; 7.0 Labor	9.0	1.0	\$240	\$280	08/10/15

		Employ; 7.0 Marital & Fam Law Cert. credits					
	PBCBA	YLS Side Bar Series – Part 2 “Technology”	3.0		\$25	\$65	08/19/15
	PBCBA	Representing Public Employers+++1.0 Labor & Employ Cert. credits	1.5		\$35	\$75	08/24/15
	PBCBA	Hot Topics in Consumer Bankruptcy Law	2.0		\$50	\$90	08/25/15
	PBCBA	Not Just Comp+++4.0 Wkrs Comp. Cert. credits	5.5		\$135	\$175	08/28/15
	PBCBA	Employment Arbitration+++1.5 Labor & Employ Cert. credits	1.5		\$35	\$75	09/14/15
	OCBA	Billing Made Easy	1.0	1.0	\$40	\$80	09/18/15
	OCBA	Guardian Ad-Litem, Social Investigation, Parenting	1.0		\$25	\$65	09/21/15
	PBCBA	IOTA Trust Accounts +++1.0 Wills, Trusts Estates Cert. credits	1.0		\$25	\$65	09/28/15
	HCBA	Five Stages of Grief – What Every Attorney Should Know+++2.0 Marital and Fam. Law Cert.	2.5	1.0	\$75	\$115	10/03/15
	PBCBA	“Post-judgment Issues: Modify This, Enforce That...” +++6.5 Marital & Family Law Cert. credits	8.5	1.0	\$225	\$265	10/04/15
	HCBA	Recent Developments in Patent, Copyright & Trademark Law+++1.5 Bus Lit.; 2.0 Intellectual Prop. Law Cert.	2.0		\$50	\$90	10/09/15
	PBCBA	Electronically Stored Information (ESI) Discovery for the Technically Challenged +++1.0 Civil Trial Cert.	1.0		\$25	\$65	10/11/15
	PBCBA	Uniform Motion Calendar Hearings	1.5		\$35	\$75	10/15/15
	HCBA	Current Issues Before the EEOC+++1.5 Labor & Employ Cert.	2.0		\$40	\$80	10/16/15
	OCBA	What You Need to Know Now in Employment Law+++2.0 Labor & Employment Law Cert.	3.0		\$75	\$115	10/23/15
	PBCBA	Anatomy of a Securities Arbitration Case+++4.0 Bus Lit. Cert.	5.0		\$125	\$165	10/24/15
	PBCBA	Whistleblower & Qui Tam Actions +++4.0 Bus.Lit. / 4.0 Civil Trial; 4.0 Labor & Employment/ 5.0 State & Fed'l Government & Admin. Practice Certification	5.0		\$125	\$165	11/02/15
	PBCBA	Ethics & New Rules In Advertising	1.0	1.0	\$40	\$80	11/06/15
	PBCBA	31 st Annual Estate & Probate – Part 2 +++4.0 Elder Law/4.0 Wills, Trusts Estates Cert. credits	5.0	.50	\$135	\$175	11/07/15
	PBCBA	E-Discovery in Action +++1.0 Bus Lit. Cert. credit	1.0		\$25	\$65	11/12/15
	PBCBA	Effective Settlement Negotiations+++1.0 Civil Trial Cert. credits	1.0		\$25	\$65	11/16/15
	PBCBA	Restrictive Covenants +++1.0 Labor & Employment Cert.	1.5		\$35	\$75	11/21/15
	PBCBA	25 TH Ann'l Community Assn. Law Seminar +++5.0 R/E Cert.	5.0	1.0	\$140	\$180	12/06/15
	PBCBA	Employment Litigation at its Best+++4.0 Labor & Employ Cert.	5.0	1.0	\$140	\$180	12/20/15
	PBCBA	The NEW World: New Closing Disclosures, NEW Best Practices and NEW Law +++4.0 R/E Cert. credits	4.0		\$100	\$140	12/17/15

+++Indicates Certification credits available; **CME credits.

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