



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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SAVE THE DATE: MARCH 9, 2018 BENCH BAR "Working Together to Serve Better!"

"Working Together to Serve Better"



Bench Bar Conference 2018

#BenchBar2018

Friday, March 9, 2018

**Palm Beach County Convention Center
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Bench Bar 2018

"Working Together to Serve Better!"

The Palm Beach County Bar Association will be hosting its 20th Bench Bar Conference on March 9, 2018 at the Palm Beach County Convention Center. The theme for this year's conference is "Working Together to Serve Better" and the co-chairs are Santo DiGangi, Esq. and Lawonda R. Warren, Esq. The Bench Bar Conference remains the premier event in the Fifteenth Circuit that bridges the gap between the judiciary, attorneys, paralegals, courtroom personnel, and the clerk of court. This year, there are many new and exciting sessions, including the addition of the Immigration, Paralegal, and Judicial Assistant Sessions. In addition to these new sessions, some agenda highlights include the importance of maintaining a healthy work-life balance as an attorney and best practices for litigation in the technology age. We hope you can join us for networking with colleagues and members of the judiciary, and the opportunity to earn CLE credits through unique session offering.

JUDICIAL RECEPTION

The Law Week Committee is requesting contributions from law firms for its annual Judicial Reception honoring the local judiciary and judicial assistants. The event will be held on Tuesday, April 24, 2018 at the Harriett in West Palm Beach. Sponsors will be recognized on email notices, on a sign at the reception and in the Bar Bulletin.

Those interested in making a contribution should send a check no later than March 15, 2018 to the Palm Beach Bar Association, Attn: Nicole Nelson, PO BOX 17726, West Palm Beach, FL 33416. Sponsorship amount are as follows:

\$600.00 for firms of 10 or more attorneys
\$425.00 for firms of 4 - 9 attorneys
\$275.00 for firms with 1 - 3 attorneys

President's Message page 4

ABA Annual Meeting page 6

15th Judicial Circuit Professional Panel page 23

Teen Discourse & Decisions page 26

The Bulletin

Palm Beach County Bar Association

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Carla Tharp Brown
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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.

Mark Your Calendar

February 11:
PCBCA Carnival

March 9:
Bench Bar Conference

April 18:
Health & Wellness Luncheon

April 24:
Judicial Reception

May 4:
Law Day Luncheon

May 17:
NCS 16th Annual Jurist of the Year

June 9:
96th Annual Installation Banquet

SUMMARY

4	PRESIDENT'S MESSAGE
5	BOARD MEETING ATTENDANCE
5	NEW MEMBERS
7	ADR CORNER
10	BANKRUPTCY CORNER
12	COMMITTEE DIVERSITY INCLUSION
13	MASS TORTS CORNER
14	PERSONAL INJURY CORNER
16	PROBATE CORNER
18	PROFESSIONALISM CORNER
19	BANKRUPTCY SEMINAR RECEPTION
19	DECEMBER UMC COFFEE
20	REAL ESTATE CORNER
21	WELLNESS & HEALTH CORNER
21	YOGA WITH THE JUDGES
23	15TH JUDICIAL CIRCUIT PROFESSIONAL PANEL
24	NORTH COUNTY SECTION
26	TEEN DISCOURSE & DECISIONS
26-32	UPCOMING CLE SEMINARS
33-34	BULLETIN BOARD
35	CALENDAR OF EVENTS

Palm Beach Bar Association Bulletin
P.O. Box 17726, West Palm Beach, FL 33416
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Taking the High Road



Rosalyn Sia Baker-Barnes
2017-18 PBCBA President

About five years ago, I was taking a deposition in a medical negligence case. After a tense exchange with the witness, the opposing lawyer began a rampage. First, raising his voice because, presumably, because he didn't like how his witness was responding to questions. Then, he began with the non-verbal attempts to distract—snatching papers, slamming his notebook closed, and then continuing with deep sighs throughout the questioning. After more answers that were unfavorable to his case, he began to personally attack me, calling me names, standing up and pointing at me, and making every attempt he could to coach his witness. After multiple attempts to take the high road, I terminated the deposition.

In another deposition early in my career, it was the opposing lawyer questioning my young, African-American client. I had other depositions with this lawyer and was familiar with his style of questioning which seemed to be fine, but was quite surprised when he made it a point to refer to the decedent, my client's mother, as his "mama." When I questioned why he chose that term to refer to the decedent, he became irate, yelling and making every attempt to intimidate my client. These are just a few examples of conduct that may not rise to the level of a bar complaint, but, is clearly inappropriate. In the first scenario, I was experienced enough to know how to handle

the conduct, and ultimately, got relief from the Court. In the second scenario, however, I was a brand new lawyer, and was more shocked than anything that this kind of behavior was occurring.

As lawyers, we often refer to ourselves as professionals. We are trained in the letter of law, in counseling and advocacy, and specialists in the areas governed by our laws. But professionalism is much more than a piece of paper, a certification or designation. Professionalism does not mean wearing a suit or carrying a briefcase, and it applies to all professions and industries, not just lawyers. It is defined as carrying oneself with responsibility, accountability, integrity and excellence. We exhibit professionalism in how we carry ourselves, how we communicate with one another, and especially, how we handle ourselves when another lawyer is behaving unprofessionally. As a trial lawyer, I find that dealing with the unprofessional lawyers can be one of the more difficult challenges we face. I believe that female lawyers, particularly litigators, face these challenges more often than our counterparts. I am not referring to any study, but my own personal experience where I see clear differences in how lawyers, male and female, behave with men vs. women. Sometimes, the most difficult thing to do is ignore the conduct, and refuse to engage the lawyer. The line between protecting yourself, or your client, and maintaining professionalism sometimes becomes blurred, and many lawyers, especially young lawyers, have little guidance on the available remedies in these very tense situations.

But, there are ways that we can combat this behavior. First, take a deep breath and try to remind the lawyer about the importance of professionalism. I try to diffuse the situation and make a comment like, "things are getting heated and we all have a job to do here. Let's just slow down and get back to the questions and answers so we can complete this deposition today." If it continues, ask the lawyer again to stop the behavior on the record, and then take a break. Still going on? Warn the lawyer that if the behavior continues, you are going to terminate the deposition and seek Court intervention. If it continues, terminate the deposition and seek protection and sanctions from the Court, and be sure to provide the court with the transcript so that the recorded behavior

is obvious. Finally, consider videotaping the deposition, especially for instances of non-verbal harassment, as that conduct cannot be reflected in the transcript. If you are not videotaping, be sure to bring the behavior to the lawyer's attention on the record, state exactly what the conduct is, and ask the lawyer to stop.

Beyond the Court, we have an excellent local forum to address, in a remedial but not punitive fashion, lawyers' professional conduct. Our Local Professionalism Panel, established by the Florida Supreme Court's Commission on Professionalism, evaluates complaints from lawyers and judges. If the complaint comes from a Judge, it is automatically reviewed by the panel. If it comes from a lawyer, the panel reviews the complaint, to determine whether it meets the criteria for review. Ultimately, the goal is not to punish, but educate lawyers about the importance of professionalism, identify improper conduct and give them the opportunity to correct their conduct so that it does not occur again. The goal is to curb this behavior before it becomes a bar grievance, and address the conduct at the local level, before it gets out of hand. The 15th Circuit Professionalism Panel Referral form can be found on the bar's website. I also encourage you all to attend our bench/bar conference next month, which is an excellent resource for how to deal with this conduct, no matter what your area of practice is. Finally, if you find yourself in one of these tense situations, resist the temptation to fight and argue but rather, utilize the resources we have available to take the high road and maintain your professionalism.

A handwritten signature in blue ink that reads "Sia Barnes".



NEW MEMBERS

FEBRUARY 2018

Welcome!

Nora Rachelle Bailey
Florida State University, 2017;
Associate in Wicker Smith Ohara McCoy &
Ford
West Palm Beach

Emma Caroline Carson
Florida State University, 2017;
Associate in Wicker Smith Ohara McCoy &
Ford
West Palm Beach

Kendall DeMatteo Levan
Thomas Jefferson School of Law, 1994;
West Palm Beach

Emily Baxter
Florida State University, 2017;
Associate in Gunster
West Palm Beach

Jaclyn A. Goldstein
University of Florida, 2017;
Associate in Wicker Smith Ohara McCoy &
Ford
West Palm Beach

Ana L. Lopez Garcia
Florida International University, 2017;
Office of the State Attorney, 17th Circuit,
Ft. Lauderdale

Gerald B. Cope
Florida State University, 1977;
Associate in Ackerman, LLP
Miami

Chelsea E. Hunter
Nova Southeastern University, 2014;
Associate in Cole Schotz, P.C.

Paige E. Loring
Stetson University, 2015,
Associate in Crary Buchanan, P.A.,
Suart

Harry Lee Cutler
University of Florida, 2017;
Associate in Wicker Smith Ohara McCoy &
Ford
West Palm Beach

Deborah Koenig
Georgia Washington University. 2006,
Office of the Attorney General
West Palm Beach

Claire V. Madill
University of Michigan, 2015;
Office of the Public Defender, 15th Judicial
Circuit,
West Palm Beach

BOARD Meeting Attendance

2017-2018

	JULY	AUGUST	SEPTEMBER	OCTOBER	NOVEMBER	DECEMBER
BARNES	X	X	X	X	X	X
CALLOW	X	X	X	X	X	X
DEMMERY	X	X	PHONE	X	PHONE	X
HUBER	X	X	X	X	X	X
LEWIS	X	X	X	X	PHONE	X
MASON	X		X	X	PHONE	
McELROY		X	X	X	X	X
REAGAN		X	X	X	X	
SMITH, G.	X	X	X	X	PHONE	X
SMITH, S.	PHONE		X	PHONE	PHONE	X
WHITTLES	X	X	X	X	X	X
WYDA	X	X	X	X	X	
XENICK		X	X	X	X	

ABA ANNUAL Meeting



The ABA annual meeting in New York City in August served to highlight the great things the ABA is capable of, the silly things the ABA sometimes does, and the turmoil roiling just below the surface of the organization. Despite its brave public face, the ABA is still in crises mode.

As usual, the House of Delegates was responsible for some of the great things accomplished at the meeting. The House passed a variety of important resolutions which included calling for: the repeal of existing state and federal statutes imposing mandatory minimum sentences; the amendment of Section 287 of the Immigration and Nationality Act to codify DHS Guidelines regarding immigration enforcement actions (to prevent immigration arrests at courthouses);

review and improvement of the process by which military records are corrected, discharge status petitions are considered and the character of one's discharge is reviewed; laws prohibiting the use of solitary confinement of children under the age of eighteen; the appointment of counsel to indigent people in removal hearings before the Executive Office of Immigration Review.

The House of Delegates also did some silly things. As the beginning of the first morning session the Chair had to ask the delegates to shut down their wi-fi devices because the demand was exceeding the band-width provided by the hotel. Apparently, too many attendees were watching Netflix and Hulu on their computers. The House also took the time to pass a resolution urging government bodies to pass legislation "that allow the implementation of trap-neuter-vaccinate-return programs for community cats within their jurisdictions so as to promote their effective, efficient and humane management."

The ABA Treasurer's Report for the last few years has been, by and large, a mix of "whistling past the graveyard" and "singing

in the rain". This time, the Treasurer left out the whistling and the singing. With no musical accompaniment, we were informed that ABA membership has continued to decline, that revenue has remained down and that reserves are being tapped to make ends meet. But there is a plan. Changes are being made. Everything will be okay.

I heard no figures on how many lawyers registered for the meeting. But it was obvious attendance was down once again. The opening ceremony is a ticketed event that costs about \$150/head. There could not have been 350 people present. The ceremony was followed by a reception at Rockefeller Plaza. The ABA took control of the sunken area used for ice skating in the winter and ate, drank and danced to a live band while a crowd of homeless people peered down from street level.

Donnie Murrell
L.D. Murrell, P.A.

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LAWRENCE GORDON

Missed Opportunity

The Under Use Of Presuit Mediation To Resolve Bodily Injury Claims

Have you ever heard the following: a stitch in time saves nine; time is money; no time like the present; the early bird catches the worm and the sooner the better. These are all time worn phrases that are often used to address the issue of the relationship between time and money. Many if not most people feel that it is generally better to spend time, effort and money dealing with a challenge early on. In other words, the sooner an issue is dealt with, the less it usually costs. If left unaddressed, the challenge may get worse, take longer to deal with and cost much more money than originally budgeted or anticipated.

If you believe that in many situations, time is indeed money, one must ask the question. Why are plaintiff attorneys and insurance carriers missing a fantastic opportunity to resolve bodily injury claims through the use of presuit and early mediations? Earlier resolution of bodily injury claims could be a win-win for the injured party, plaintiff attorney and the insurance carrier handling the claim. In other words, a positive result for all concerned. The injured party receives much needed funds and reduces the stress that goes along with litigation and the claims process. Their attorney minimizes the cost that the plaintiff is ultimately responsible for under most injury claims contracts and earns their fee in a more timely manner. The insurance company resolves an injury claim that could cost substantially more if it is allowed to stay around for a significant time as an open claims file. Additionally, claims staff and resources are freed up to move on to other matters.

In the mid nineteen seventies, I began my career as a bodily injury claims adjuster in Jackson, Mississippi. Little did I know that I would move to Florida, secure a Florida Adjusters license and maintain the license for over thirty five years. I was employed as an adjuster negotiating and handling serious bodily injury claims for three different major insurance carriers. This meant that I had to go through the adjuster training for three different insurance

companies. I negotiated injury claims and represented insurance companies throughout Florida at many mediations along with defense attorneys.

The training program at each of these carriers varied. However, one thing that was emphasized by all three companies was the belief that the longer a claim remained open the more it cost the company to finally get it resolved. This type of thinking led to many insurance companies opening field claims offices and emphasizing claimant contact within twenty four to forty eight hours. The goal was to settle claims as quickly as possible prior to personal injury attorney involvement. One has to wonder why insurance carriers do not use the same urgency when handling claims in which the injured party is represented by an attorney.

The claim file usually stays around for a minimum of six months, followed by the submission of a demand package from the injured party's attorney. At this point, the adjuster often extends a relatively low offer which usually results in the injured party's attorney filing a lawsuit followed by discovery and possible trial. The claims file can stay open for years costing the carrier and plaintiff attorney thousands of dollars and loss of valuable time.

In my opinion, both the insurance carrier and the plaintiff attorney are missing a golden opportunity to settle the case for a fair amount. Why not mediate the case during the demand phase or before the expiration of the twenty days that the defendant has to respond to the suit. It could be beneficial to both parties to agree to a mediation at this point before time and thousands of dollars are lost to the litigation process.

Many if not a majority of cases settle at mediation. Additionally, many of those cases that do not settle at mediation often settle shortly thereafter due to

the foundation laid at the mediation. Thousands of dollars normally spent on items such as attorney fees, cost of discovery, cost of medical experts, cost of accident reconstruction, engineers, transporting witnesses, housing witnesses, claims people attending trial and other cost could be saved or greatly reduced.

Mediations usually last a few hours, half a day or whole day depending on the issues and complexities of the case that is being mediated. While there is no guarantee that a case will settle at mediation it will probably increase the odds that the case will settle in the near future. Remember, trial brings its own risk and one side always loses. Mediation often leads to a positive result for both sides. Think about it, a few thousand dollars spent on mediation or tens of thousands of dollars spent on litigation, trial and possible appeal. To paraphrase a famous quote, "A dollar saved is a dollar earned". Do not forget that cooperation through mediation can be the key to success.

Lawrence Gordon is President of Phoenix Mediation, LLC. He has been a Florida Supreme Court Certified Circuit Civil Mediator since 2010. He has been a Florida licensed adjuster for thirty six (36) years. He is a former multi-term member of the Florida Bar Unauthorized Practice of Law Committee. He currently serves on the Florida Bar Fifteenth Judicial Circuit Grievance Committee "D". He was the first non-lawyer to serve on the Board of Directors of the PBC Trial Lawyers Association (now known as the PBC Justice Association).

Palm Beach County Bar Association's Alternative Dispute Resolution Committee
Presents:

Evolving Trends in ADR: Cooperation, the Key to Agreement



Monday, February 12, 2018, 8:00 a.m. - 5:00 p.m.,
Fourth District Court of Appeal, 110 S. Tamarind Ave., W. Palm Beach, FL

8:00 a.m. - 8:30 a.m. **Late Registration / Check in / Light breakfast**

8:30 a.m. - 8:40 a.m. **Welcome and Opening Remarks** - Rosine M. Plank-Brumback, Esq., International Trade Consultant, Chair, PBCBA ADR Committee

8:40 a.m. - 9:55 a.m. **Collaborative Law: How and Why It Works** - Victoria Calebrese, Esq., Victoria Calebrese, P.A., Board Certified in Marital and Family Law, Certified Family Mediator; Sherry Campbell, CFP, CDFA, President, Hutchinson Family Offices; Sheila Furr, Ph.D., Board Certified in Neuropsychology, A.B.N., Certified Family Mediator; Yueh-Mei Kim Nutter, Esq., Brinkley Morgan, Board Certified in Marital and Family Law, Certified Family Mediator, Collaborative Attorney, Co-Chair, SCBA ADR Committee

9:55 a.m. - 10:05 a.m. **Break**

10:05 a.m. - 10:55 a.m. **Reducing the Impact of Implicit Biases in ADR Proceedings** - Jean Marie Middleton, Esq., Senior Attorney, PBC School District, Certified Circuit Civil Mediator, Co-Chair, PBCBA Committee for Diversity and Inclusion; Eunice I. Baros, Esq., ARC Mediation, Certified Circuit Civil Mediator

10:55 a.m. - 11:45 a.m. **ADR Case Law and Ethics Update** - W. Jay Hunston, Jr., Esq., W. Jay Hunston, Jr., P.A., Certified Circuit Civil, Appellate and Family Mediator, Florida Supreme Court Qualified Arbitrator, AAA National Roster of Arbitrators and Mediators (Construction and Commercial)

11:45 a.m. - 12:15 p.m. **Lunch** sponsored by Matrix Mediation



12:15 p.m. - 1:05 p.m. **Building a Successful Arbitration Practice** - Donna Greenspan Solomon, Esq., Solomon Appeals, Mediation & Arbitration, Board Certified in Appellate Practice and Business Litigation, Certified Circuit Civil, Appellate and Family Mediator, AAA National Roster of Arbitrators (Commercial); The Hon. David F. Crow, Circuit Judge (Ret.), JAMS, Board Certified in Civil Law Practice, Certified Circuit Civil Mediator, Circuit Arbitrator; Manuel Farach, Esq., McGinchley Stafford, PLLC, Board Certified in Real Estate Law and Business Litigation, AAA National Roster of Arbitrators; Rebecca Storrow, Ph.D., Regional Vice President, American Arbitration Association; D. Andrew Byrne, Esq., Andrew Byrne & Associates, Board Certified in Labor & Employment Law and Business Litigation, Certified Circuit Mediator, AAA National Roster of Arbitrators (Employment), National Arbitration & Mediation

1:05 p.m. - 1:55 p.m. **Professionalism** - Michael D. Mopsick, Esq. (Introduction), Shapiro, Blasi, Wasserman & Hermann, P.A., Certified Circuit Civil Mediator; The Hon. Cory J. Ciklin, Judge, Fourth District Court of Appeal, Co-Chair, PBCBA Professionalism Committee; Kara Berard Rockenbach, Esq., Link & Rockenbach, Chair, Florida Bar Standing Committee on Professionalism, Co-Chair, PBCBA Professionalism Committee

1:55 p.m. - 2:45 p.m. **Technology and the Future of ADR** - Chioma Deere, Esq., Williams, Leininger & Cosby, P.A., Chair, PBCBA Technology Committee

2:45 p.m. - 2:55 p.m. **Break**

2:55 p.m. - 4:10 p.m. **Managing the Stresses of ADR, Law, and Life** - Bruce A. Blitman, Esq., (Introduction), Certified Circuit Civil, Family and County Court Mediator; Scott L. Rogers, Lecturer in Law and Director, Mindfulness and Law Program, University of Miami School of Law; Scott Weinstein, Ph.D., Clinical Director, Florida Lawyers Assistance, Inc.

4:10 p.m. - 5:00 p.m. **Reading Body Language: Actions Can Speak Louder than Words** - Deputy Sheriff Patrick Ross, PBC Sheriff's Office

5:00 p.m. **Closing** - Rosine Plank-Brumback, Esq.

Credit: 9.0 CLER; 3.0 Ethics; 1.0 Technology. Certification credits: 9.0 Civil Trial; 9.0 Marital & Family Law. This course may be eligible for up to 9.0 CME hours. Cost: \$275 members; \$315 non-members. Those registering after 2/5/18 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

Name: _____ Email address: _____

Address: _____ Phone: _____

_____ I will not be able to attend the seminar, however I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow one week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 2.12.18 ADR seminar



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14th Annual Holiday Bookfest Benefits Legal Aid's 30th Annual Pro Bono Recognition Gala: A Retrospective

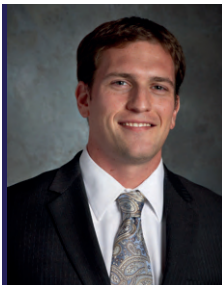
The Palm Beach County Chapter of the Florida Association of Women Lawyers (FAWL) together with the F. Malcolm Cunningham Bar Association, the Hispanic Bar Association, and the law firms of Lesser, Lesser, Landy & Smith, PLLC, and Suskauer Feuer LLC hosted the 14th Annual Holiday Bookfest at Barnes & Noble at Legacy Place in Palm Beach Gardens to benefit the Legal Aid Society of Palm Beach County's silent auction.

Over 80 members of these organizations and their guests donated over 100 children's books and gifts for Legal Aid's silent auction to be held on Saturday, May 12, 2018 at the Palm Beach County Convention Center as part of the 30th Annual Pro Bono Recognition Gala: A Retrospective. This event honors those attorneys and other professionals in our community who performed outstanding volunteer work for Legal Aid.

Photos by Tracey Benson Photography

The Legal Aid Society of Palm Beach County, Inc., founded in 1949, is a private nonprofit, 501 (c)(3) organization dedicated to providing free legal services to disadvantaged children, families, elders and individuals living in Palm Beach County. Projects include the Domestic Violence Project, Juvenile Advocacy Project, Foster Children's Project, Ryan White Project, Fair Housing Project and Elder Law Project.





JASON S. RIGOLI

Debtors are Entitled To Award of Appellate Attorney's Fees and Costs from Willful Stay Violation

The Eleventh Circuit recently issued a binding opinion awarding appellate attorney's fees and costs for defending appeals initiated by counsel who willfully violated the automatic stay. *Mantiplay v. Horne* (In re Horne), -- F.3d --, 2017 WL 6002509 (11th Cir. Dec. 5, 2017).

Facts of the Case

The debtors filed for bankruptcy on January 10, 2011 and received a discharge on May 10, 2011. Subsequent to the filing of the bankruptcy case, an attorney, Mary Beth Mantiply ("Mantiply"), filed suit on behalf of her clients in state court. Mantiply ignored multiple requests to voluntarily dismiss the state court proceeding and maintained the suit until it was involuntarily dismissed in November 2011. Debtors then instituted a proceeding in bankruptcy Court seeking damages under § 362(k) of the Bankruptcy Code for a willful violation of the automatic stay. The bankruptcy court ruled in favor of the debtors and awarded damages. Mantiply appealed, and the award was affirmed.

Mantiply then filed motions for recusal of the bankruptcy judge in the bankruptcy court and district court. The recusal motions were denied. Mantiply appealed multiple orders to the Eleventh Circuit, which affirmed the orders. Mantiply also submitted a petition of certiorari to the Supreme Court, which required the Debtors to file a response. The petition was denied. Debtors then fees for the appeal of these appeal, including the petition for certiorari of the recusal orders.

Basis for Awarding Fees

Section 362(k)(1) states: "Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages." (emphasis added).

The Eleventh Circuit interpreted the word "including" to be broadening

and enlarging the injuries beyond the immediate injury. Under this interpretation the attorney's fees and costs are not limited to those fees incurred in stopping the stay violation but all attorney's fees and costs arising from the stay violation. *Horne*, 2017 WL 6002509 at *3. The Eleventh Circuit then analyzed the only other opinion addressing this issue from the Ninth Circuit, which reached the same conclusion as the Eleventh Circuit. *Id.* at *4 (citing *In re Schwartz-Tallard*, 803 F.3d 1095 (9th Cir. 2015) (en banc)).

** This article submitted by Jason S. Rigoli, Esq., Furr Cohen, 2255 Glades Road, Suite 337W, Boca Raton, FL 33431, jrigoli@furrcohen.com.*



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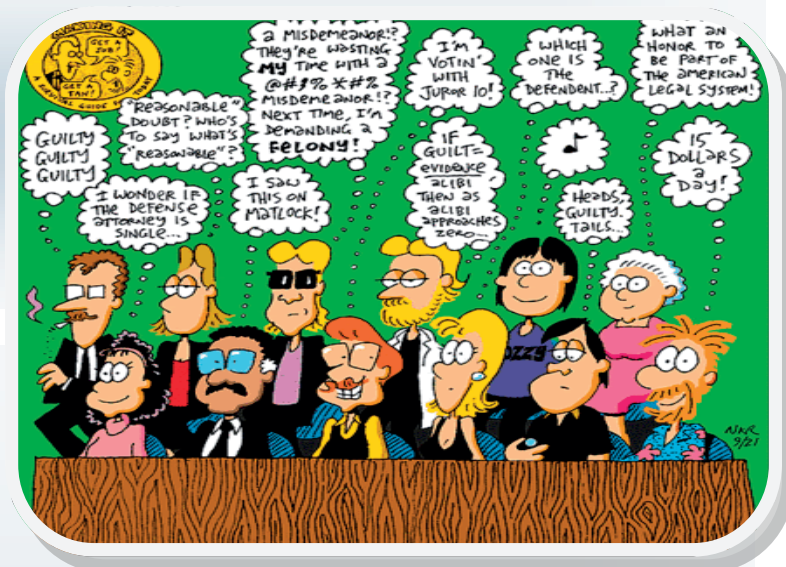
The Criminal Practice Committee of the Palm Beach County Bar Association presents

A Trial Practice Series with Judges

John Kastrenakes & Samantha Schosberg Feuer

Three Part Lunch & Learn:

Fact Pattern: Vehicular Homicide Prosecution Involving
Accident Reconstruction Issues of Fault/Liability



PART I: *Voir Dire* by Nancy LaVista, Esq.,
Clark Fountain LaVista Prather Keen & Littky; Board
Certified in Civil Trial and Medical Malpractice
January 24, 2018

11:45 a.m. to 1:15 p.m.

Palm Beach County Courthouse, Courtroom 11H

2.0 CLER; Certification credits: 2.0 Criminal Appellate Law and 2.0 Civil Trial Law



PART II: *Direct/Cross Examination of an Expert* by Matthew Menchel Esq., Kobre & Kim LLP
and Dr. Farhad Booeshaghi, Global Engineering Scientific Solutions

February 5, 2018

11:45 a.m. to 1:15 p.m.

Palm Beach County Courthouse, Courtroom 11H

2.0 CLER; Certification credits: 2.0 Criminal Appellate Law and 2.0 Civil Trial Law



PART III: *Closing Arguments* by Jack Scarola, Esq., Searcy Denney Scarola Barnhart and Shipley P.A., Board
Certified in Business Litigation and Civil Trial

February 21, 2018

11:45 a.m. to 1:15 p.m.

Palm Beach County Courthouse, Courtroom 11H

2.0 CLER; Certification credits: 2.0 Criminal Appellate Law and 2.0 Civil Trial Law

Box lunch included at each program



COST: First 20 government attorney registrants to each session pays \$0.

Government attorney cost per each session: \$15.00 members; \$20.00 non-members.

Private practice attorney cost per each session: \$35.00 members; \$75.00 non-members.

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, P.O. Box 17726, West Palm Beach, FL 33416. 561-687-2800.



LISA KOHRING

Craig v. Masterpiece Cakeshop, Inc.: Protecting the First Amendment or Jeopardizing Protections of Civil Rights Laws

This past December SCOTUS heard oral argument in the Masterpiece Cake Shop case, involving a cakeshop's refusal to create a custom made cake for a same-sex couples' wedding because of the baker's religious beliefs. The baker argues that creating the cake is a "medium" used to honor god through artistic expression protected by the First Amendment. The couple argues the refusal is unlawful identity-based discrimination because of their sexual orientation. Boiled down to its core components, the case pits First Amendment protections and religious freedom against protections guaranteed by our civil rights laws. The ultimate quandary for SCOTUS is crafting the correct decision without "upset[ting] every civil rights law since year 2."

The case arose in Colorado in 2012, when Cakeshop owner, Jack Phillips, refused to bake a wedding cake for Charlie Craig and David Mullins, a same-sex couple. Phillips, a devout Christian, said creating a cake for the couple is antithetical to his religious beliefs against same-sex marriage. Outraged, the couple filed charges of discrimination alleging Phillips violated the Colorado Anti-discrimination Act, which years earlier was revised to prohibit sexual orientation discrimination in employment, housing, and public spaces. Following an investigation, the division found probable cause, giving the couple the green light to file a complaint with the Colorado Office of Administrative Courts.

In 2013, ALJ Robert Spencer heard the case, and Phillips argued his refusal to create the cake was protected by the First Amendment because, he claimed, it is artistic expression protected under the First Amendment's free speech and free exercise of religion clauses. In the past, SCOTUS has recognized that some forms of conduct are symbolic speech and are entitled to First Amendment Protections if the conduct is "inherently expressive". See *United States v. O'Brien*, 391 U.S. 367, 376, 88 S.Ct. 1673, 20 L.Ed.2d 672 (1968) (determining that burning draft cards during anti-war protest is a form of protected expression) and *Rumsfeld v. FAIR*, 126 S.Ct. 1297, 1310 (2006) (reiterating that only inherently expressive

conduct is protected and rejecting the idea that any conduct can be labeled speech whenever someone intends to express an idea). Phillips' arguments were rejected on summary judgment, with the ALJ holding that Phillips violated CADA by refusing to custom make a cake. The Colorado Civil Rights Commission affirmed the decision and entered a cease and desist order instructing Phillips to provide sensitivity training to his staff and quarterly reports to the Commission confirming CADA compliance. Phillips appealed the decision attempting, among other things, to draw a distinction between discrimination based on an opposition to same-sex marriage (the couples' intended conduct) and discrimination based on sexual orientation (the couples' status). Phillips also argued the order violated the Compelled Speech Doctrine because it compels him to create wedding cakes for same-sex couples, an act he claims celebrates same-sex marriage, and conveys the message that he supports same-sex marriage. *Craig*, 370 P.3d at 285.

In 2015, the appellate court rejected Phillips' arguments and, relying on a legion of cases rejecting similar conduct versus status based distinctions, held that certain conduct closely correlated with status simply cannot be divorced from status. Phillips' attorney argued that same-sex marriage is not conduct exclusive to same-sex couples; an argument the Court rejected because those who engage in same-sex marriage are predominantly, if not exclusively, same-sex couples. Phillips' argument is a difference without a distinction, and Phillips' opposition to same-sex marriage is akin to an opposition to sexual orientation and, therefore, is a refusal because of their sexual orientation in violation of CADA. See *Craig v. Masterpiece Cakeshop, Inc.*, 2015 COA 115, ¶ 25, 370 P.3d 272, 279 (CO Ct. App., 2015).

During the December argument, Justice Sotomayor posited the most important question to be resolved by the Court is, "what is speech and what is not speech?" If creating a custom made cake is considered artistic expression through which Phillips honor's god, then where is the line drawn for other artisans, such as the hairdresser, make-up artist, or florist, each of whom could argue their services

also involve protected expressive conduct? Is all expressive conduct entitled to protection? Phillips' attorney was unable to articulate where the line should be drawn, but argued that Phillips' willingness to sell birthday cakes, cupcakes, and other non-wedding cake products to LGBTQ members establishes that there is no violation of CADA. The couple's attorney cautioned that a ruling favoring Phillips would eviscerate longstanding civil rights laws, setting a dangerous precedent that private business owners can discriminate against members of protected classes for religious reasons. The Supreme Court rejected this same argument more than forty years ago in the *Ollie's Barbecue* and *Piggie Park Enterprises* cases, each of which taught us that faith alone cannot override society's interest in equality for all.

SCOTUS could decide the issue or it could choose to punt and remand the case back to the lower court. No matter what side of the fence you're on, many believe there is no winning scenario.

1 Hereinafter referred to as "CADA";

2 Section 24-34-601(2)(a), C.R.S.2014, reads in pertinent part: "It is a discriminatory practice and unlawful for a person, directly or indirectly, to refuse, withhold from, or deny to an individual or a group, because of ... sexual orientation ... the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a place of public accommodation." *Craig v. Masterpiece Cakeshop, Inc.*, 2015 COA 115, ¶ 27, 370 P.3d 272, 280 (CO Ct. App., 2015); Supreme Court should uphold Colorado discrimination law in wedding cake case, Joel Judd and Jennifer Viega, *The Denver Post*, Dec. 1, 2017, found at: <http://www.denverpost.com/2017/12/01/supreme-court-should-uphold-colorado-discrimination-law-in-wedding-cake-case/>

3 "The freedom of speech protected by the First Amendment includes the right to refrain from speaking and prohibits the government from telling people what they must say." *Craig v. Masterpiece Cakeshop, Inc.*, 2015 COA 115, ¶ 48, 370 P.3d 272, 283 (CO Ct. App., 2015). (Internal quotation marks omitted.)

4 Judge Orders Colorado Bakery to Cater for Same-Sex Weddings, Liz Fields, ABC News, Dec. 7, 2013, at: <http://abcnews.go.com/US/judge-orders-colorado-bakery-cater-sex-weddings/story?id=21136505>

Lisa Kohring is a Senior Litigation Associate with the School District of Palm Beach County and can be reached at Lisa.kohring@palmbeachschools.org



JOSEPH OSBORNE

The District Court Did Not Abuse Its Discretion in Consolidating Four Actions for Trial Because Common Issues of Fact and Law Far Outweighed Any Factual Differences

On October 19, 2017, *Eghnayem v. Boston Scientific Corporation*, 2017 U.S. App. LEXIS 20432 (11th Cir. Oct. 19, 2017) post-remand consolidated transvaginal mesh trial was upheld on appeal after review and oral argument, there was no error in the district court's rulings.

Though cases can be consolidated at both the federal and state level, many large-scale lawsuits are brought at the federal level. Rule 42 directly addresses consolidation, providing the parameters for when consolidation may be appropriate. Just because cases can be consolidated does not always mean that they will be consolidated. This, like much of litigation, is left up to the court's discretion. Florida state court procedure also allows for consolidation of related cases for discovery and other purposes. Florida Rule of Civil Procedure 1.270 provides that: "When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay." Fla. R. Civ. P. 1.270(a).

Amal Eghnayem and three other plaintiffs filed separate lawsuits against Boston Scientific Corporation in MDL 2326 -- In re: Boston Scientific Corporation Pelvic Repair System Products Liability Litigation -- in the United States District Court for the Southern District of West Virginia. They each sought compensatory and punitive damages based on claims for negligent design defect, negligent failure to warn, strict-liability design defect, and strict-liability failure to warn. These four cases were among several thousand product liability actions against Boston Scientific Corporation arising out of injuries from the Pinnacle Pelvic Floor Repair Kit ("the Pinnacle device") The district court sua sponte consolidated the suits for all purposes, including trial. The court observed that, although "there will be separate evidence relating to failure to warn and individual damages,"

"the similarities in these cases, particularly as to the claim of design defect," outweighed the differences and warranted consolidation.

The consolidated case was transferred to the United States District Court for the Southern District of Florida. The consolidated plaintiffs all brought the same four claims under Florida law, arguing that Boston Scientific Corporation was both negligent and strictly liable for the Pinnacle's defective design, and both negligent and strictly liable for failing to warn them of the resultant danger from the Pinnacle. After eight days of trial, the jury found for each plaintiff on all four claims, awarding more than six million dollars to each plaintiff.

The Eleventh Circuit held, the district court did not abuse its discretion in concluding that the considerations surrounding consolidation supported joining these suits for trial. The plaintiffs all brought the same claims based largely on the same facts: Boston Scientific's Pinnacle device was unreasonably dangerous by design, and Boston Scientific failed to include sufficient warnings with the device to alert physicians to that danger. Although each plaintiff's proof of causation was necessarily different, generally differences in causation are not enough, standing alone, to bar consolidation of products liability claims. And any danger of prejudice arising from the consolidation was reduced, because the district court explained the consolidated nature of the trial to the jury and expressly instructed it to consider each plaintiff's claims separately. Notably, this is not the first time we have affirmed the consolidation of products liability claims that require individual evidence of causation.

Under Federal Rule of Civil Procedure 42(a), a district court may consolidate multiple actions that "involve a common question of law or fact." A district court's decision whether to consolidate is "purely discretionary." *Hendrix*, 776 F.2d at 1495. In exercising its considerable discretion, the trial court must consider:

Whether the specific risks of prejudice and possible confusion are overborne by the risk of inconsistent adjudications of common

factual and legal issues, the burden on parties, witnesses and available judicial resources posed by multiple lawsuits, the length of time required to conclude multiple suits as against a single one, and the relative expense to all concerned of the single-trial, multiple-trial alternatives.

Id. (quotation omitted and alterations adopted). Moreover, "[t]he court must also bear in mind the extent to which the risks of prejudice and confusion that might attend a consolidated trial can be alleviated by utilizing cautionary instructions to the jury during the trial and controlling the manner in which the plaintiffs' claims (including the defenses thereto) are submitted to the jury for deliberation." *Id.* "A joint trial is appropriate where there is clearly substantial overlap in the issues, facts, evidence, and witnesses required for claims against multiple defendants." *Allstate Ins. Co. v. Vizcay*, 826 F.3d 1326, 1333 (11th Cir. 2016) (quotation omitted and alteration adopted). But "[w]here prejudice to rights of the parties obviously results from the order of consolidation, the action of the trial judge has been held reversible error." *Dupont v. S. Pac. Co.*, 366 F.2d 193, 196 (5th Cir. 1966). "District court judges in this circuit have been urged to make good use of Rule 42(a) in order to expedite the trial and eliminate unnecessary repetition and confusion." *Young v. City of Augusta*, 59 F.3d 1160, 1169 (11th Cir. 1995) (quotation omitted and alterations adopted).

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



TED BABBITT

Jury Requests for Readback of Testimony

In *Philip Morris USA, Inc. v. Duignan*, 42 Fla. L. Weekly D2426 (Fla. 2nd DCA Nov. 15, 2017), the Court was faced with the question of what, in a civil case, a trial judge should say to a jury when they ask for a read-back of testimony. This case was yet another Engle progeny case involving the death of a smoker. During the trial, the jury asked for the read-back of deposition testimony which had been read in evidence. The trial court responded that although such a read-back was "not impossible" it "is not generally done" and that the jury should rely on its "collective recollection."

In reversing the trial court's response to the jury question, the Second District relied on the case of *Hazuri v. State*, 91 So. 3d 836 (Fla. 2012). *Hazuri* was a criminal case in which a jury sent a note to the Judge asking to see trial transcripts. The trial court told the jury only that the transcripts were not available and that it should rely on its "collective recollection" of the evidence to decide the case. The defendant was convicted and appealed the trial court's refusal to allow the jury to have parts of the transcript read back. The Third District affirmed in *Hazuri v. State*, 23 So. 3d 857 (Fla. 3rd DCA 2009). The Supreme Court quashed the Third District's decision and held that the trial court had abused its discretion in failing to inform the jury of its right to request a read-back of testimony. At 2429 the District Court held

It began by observing that the jury did not request a readback – it only requested transcripts – but decided that the trial court was required to inform the jury of the possibility of a readback nonetheless. *Id.* at 845. It tethered this holding to the core function of the jury, explaining that "the role of a jury as a factfinder is of utmost importance" and that "a jury cannot properly fulfill its constitutionally mandated role if it cannot recall or is confused about the testimony presented in a case."

Id. Because "[a] jury is composed of laypersons often unfamiliar with legal terms of art," the court explained, "there should be no magic words required for a read-back request." *Id.* Failing to require further instruction

concerning a read-back after a jury has requested transcripts leaves the jury without the means to refresh its memory of witness testimony – testimony that could be critical to the outcome of the verdict." *Id.*

The court thus adopted "the following two rules: (1) a trial court should not use any language that would mislead a jury into believing read-backs are prohibited, and (2) when a jury requests trial transcripts, the trial judge should deny the request, but inform the jury of the possibility of a read-back."

Prior to the *Duignan* case, the rule in *Hazuri* had never been applied in a civil case. In *Duignan* the Second District noted that since *Hazuri* was a criminal case Fla. R. Crim. P. 3.410 applied. That rule contained a one sentence statement that the trial court "may" read-back trial testimony to a jury. Nevertheless, the Second District in *Duignan* at 2429 holds

Although no rule of procedure governs readbacks in the civil context, a trial judge in a civil case must, to carry out his or her responsibility to order and facilitate the jury's deliberations, enjoy a similar discretion about readbacks to that given a trial judge in a criminal case under rule 3.410.

At the heart of the question presented to the jury in this case was the issue of whether a trial court abuses its discretion by misleading a jury into believing that testimony cannot be read back. At 2429, the *Duignan* court holds

A jury in a civil case is thus no more able to "properly fulfill its constitutionally mandated role if it cannot recall or is Confused about the testimony presented," see *Hazuri*, 91 So. 3d at 845, than a jury in a criminal case is. Because *Hazuri*'s rules concerning the possibility of a readback when transcripts are requested seek to ameliorate that confusion and permit

the jury to perform its core function as a trier of fact, we see no reason why those rules should not be applied in civil cases as well.

The holding in this case is that when a jury requests testimony be read-back, it is the trial court's responsibility to accede to that request within reason. While the trial court has discretion upon this subject, that discretion does not extend to falsely implying to the jury that no testimony can be read back in a trial or that it is highly unusual to allow that to be done.

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

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The Personal Injury and Wrongful Death Committee of the
Palm Beach County Bar Association Presents

MEDICAL SCHOOL FOR LAWYERS

PROGRAM SCHEDULE

Thursday, February 1, 2018
8:00 a.m. - 4:00 p.m.
The Marriott Hotel
1001 Okeechobee Boulevard
West Palm Beach

- 
- 8:00 a.m. **Check In / Late Registration / Breakfast**
- 8:20 a.m. **Welcome and Introductions** - Brian P. Sullivan, Esq.,
Sullivan Law, P.A., Chair, Personal Injury/Wrongful Death Committee
- 8:30 a.m. **Pain Management** - Jane Bistline, M.D., Interventional Pain Services
- 9:30 a.m. **Life Care Plans** - Ronald Snyder, M.D., Physiatrist, Palm Beach Sports Medicine
- 10:30 a.m. **Break**
- 10:45 a.m. **Traumatic Brain Injuries: Diagnosis and Imaging** - Andrew Walker, M.D., Neuroradiologist,
Beaches Open MRI, LLC
- 11:45 a.m. **Lunch**
- 1:00 p.m. **Spine Injuries** - Alexander Lenard, M.D., Orthopaedic Care Specialists
- 2:00 p.m. **Upper Extremities** - Matthew Steibel, M.D., Palm Beach Sports Medicine
- 3:00 p.m. **Break**
- 3:10 p.m. **Medicine for Lawyers** - Robert T. Bergin, Esq.,
Robert T. Bergin, Jr., P.A., Board Certified Civil Trial Lawyer

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DAVID M. GARTEN

In recent years, the boundaries of discovery have steadily expanded, and the practice of taking the deposition of opposing counsel has become an increasingly popular vehicle of discovery. However, in Florida, taking the deposition of opposing counsel in a pending case is an extraordinary step which is rarely justified. Courts regard opposing counsel's depositions unfavorably because they interfere with the attorney's case preparation and risk disqualification of counsel who may be called as a witness.

In light of these concerns, a party seeking to take the deposition of opposing counsel must prove its necessity by showing that: (1) no other means exist to obtain the information than to depose opposing counsel; (2) the information sought is relevant and non-privileged; and (3) the information is crucial to the preparation of the case." *Shelton v. American Motors Corp.*, 805 F.2d 1323 (8th Cir. 1986). The *Shelton* test shifts the burden of proof to the party seeking to depose opposing counsel. See *Guantanamo Cigar Co. v. Corporacion Habanos, S.A.*, 263 F.R.D. 1 (D.D.C. 2009). The *Shelton* test has been adopted in Florida by both the 3d and 5th DCA. See *State v. Donaldson*, 763 So.2d 1252 (Fla. 3d DCA 2000), *Zimmerman v. State*, 114 So. 3d 446 (Fla. 5th DCA 2013), and *Eller-I.T.O. Stevedoring Co., L.L.C. v. Pandolfo*, 167 So. 3d 495 (Fla. 3d DCA 2015).

Although it is clear that the *Shelton* test applies to trial counsel, it is not clear whether the *Shelton* test applies to non-trial counsel, i.e., outside counsel who assists in developing strategy, probate or trust administration counsel, or in-house counsel. For example, in *Zimmerman*, the court allowed the deposition of an attorney who conducted a telephone interview of a key witness in a criminal case. In this high profile case, *Zimmerman* was charged with second degree murder for fatally shooting Trayvon Martin. During interviews with police, *Zimmerman* asserted that he shot Martin in self-defense. Crump, an attorney retained by Martin's family, conducted a telephone interview of a potentially crucial witness who allegedly was on the phone

Deposing Opposing Counsel

with Martin moments before his death. Crump made a recording of the interview, but the recording was incomplete and of very poor quality. The trial court denied Zimmerman's request to depose Crump. In its order, the trial court found that Crump was "an opposing counsel" and that Zimmerman failed to meet the *Shelton* test. The appellate court reversed. The court reasoned, in part, that the fact that Crump represents Martin's family does not make him "an opposing counsel" and Crump acknowledged in his affidavit that he was not acting as litigation counsel for either the defendant or the state. The court, citing *Pamida, Inc. v. E.S. Originals, Inc.*, 281 F.3d 726 (8th Cir. 2002), held that the *Shelton* test applies to limit deposition questions of attorneys in only two instances: (1) when trial and/or litigation counsel are being deposed, and (2) when such questioning would expose litigation strategy in the pending case. See also *United States v. Philip Morris, Inc.*, 209 F.R.D. 13, 17 (D.D.C. 2002) (concluding that the *Shelton* test did not apply when the proposed deponent attorneys were not litigation or trial counsel, the deponent attorneys were assigned non-litigation responsibilities, and the proposed deposition would not cover litigation strategies related to the case).

In contrast with *Zimmerman*, the court in *Pandolfo* quashed the order compelling the deposition of an attorney who was not counsel of record, but was directly involved in the litigation having both directed and overseen various aspects of the investigation as well as having prepared and received documentation including attorney-client privileged communications and work product documents related to the investigation. The court cited to the following cases in support of its ruling: *Boughton v. Cotter Corp.*, 65 F.3d 823, 828-31 (10th Cir. 1995) (precluding the deposition of outside counsel because of the extent of that attorney's role in representing the party); *Nat'l W. Life Ins. Co. v. W. Nat'l Life Ins. Co.*, No. A-09-CA-711, 2010 U.S. Dist. LEXIS 132024, 2010 WL 5174366, at *3 (W.D. Tex. Dec. 13, 2010) ("[T]he critical factor in determining whether the *Shelton* test applies is not the status of the lawyer as 'trial counsel,' but the extent of the lawyer's involvement in the pending litigation." (quoting *Murphy v. Adelpia Recovery Trust*, No. 3-09-MC-105-B, 2009 U.S. Dist. LEXIS 122027, 2009 WL 4755368, at *3 (N.D. Tex. Nov. 3, 2009))); *Massillon Mgmt., LLC v. Americold Realty*

Trust, No. 5:08-CV-799, 2009 U.S. Dist. LEXIS 22415, 2009 WL 614831, at *3-6 (N.D. Ohio Jan. 21, 2009) (holding that in-house counsel who was working with outside counsel to assist in developing strategy, taking discovery, and assisting in defending an action was not subject to being deposed because the criteria set forth in *Shelton* had not been satisfied) (citing *Nationwide Mut. Ins. Co. v. Home Ins. Co.*, 278 F.3d 621, 628 (6th Cir. 2002) as having adopted *Shelton*)). See also *Boughton v. Cotter Corp.*, 65 F.3d 823 (10th Cir. 1995) (precluding the deposition of outside counsel because of the extent of that attorney's role in representing the party).

Irrespective of whether the *Shelton* test applies, the attorney-client privilege [§§90.502 and 90.5021, F.S.] and work product privilege [Fla.R.Civ.P. 1.280(b)(3)] still apply.

Law Related Education

Assistant State Attorney Ori Feistmann Silver recently presented a fascinating seminar about the Fourth Amendment to seniors at the Lantana Library. The seminar covered *Florida v. Jardines*, a police dog drug-sniffing case that was appealed up to the U.S. Supreme Court. Ori and the group had a spirited discussion about the case, Supreme Court search-and-seizure precedent, and the principles behind the Fourth Amendment. If you are interested in giving similar civics presentations to community groups, or if your group would like to host a speaker, please contact the Bar's Law Related Education Committee @ kwan@beasleylaw.net



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DAVID P. ACKERMAN



CHRISTINE B. GARDNER

A New Model For Professionalism Peer Review And Discipline In Federal Court

The United States District Court for the Southern District of Florida recently implemented a new local rule imposing a more robust peer review function for attorney conduct. This well-thought-out function is set forth in Rule 6 of the Southern District's Rules Governing the Admission, Practice, Peer Review, and Discipline of Attorneys, effective December 1, 2017. Rule 6 provides for an Ad Hoc Committee on Attorney Admissions, Peer Review and Attorney Grievance (the "Committee"). The Committee consists of lawyers who practice within the Southern District, appointed by the Chief Judge for renewable three-year terms. The Committee has two areas of jurisdiction: (1) a peer review function and (2) a disciplinary process.

The peer review function is intended "to determine whether individual attorneys are failing to perform to an adequate level of competence necessary to protect the interests of their clients." S.D. Fla. Local R. 6(b)(1). Under this function, the Committee reviews referrals about an attorney's competence. This can include what we think of as unprofessional conduct. (Often, a lawyer who is behaving unprofessionally may be displaying a lack of competence. In other words, bad lawyering is frequently at the root of unprofessional behavior). In this regard, the peer review function of the Committee works a lot like the Palm Beach County Bar Association Professionalism Panel (the "Panel"). A judge can make a referral, although, unlike our Panel, lawyers may not make referrals. The Committee then sets up a subcommittee to investigate the referral. That subcommittee, after its investigation is completed, reports back to the Committee. The Committee can then recommend to the judge a number of remedial steps, including the assignment of a mentor, counseling from the Florida Bar's Practice Resource Institute, mandatory attendance at a continuing legal education seminar or some other remedial program. Like our local Panel, the matter is kept confidential. No statement made by the attorney to the Committee shall be admissible in any action for malpractice against the attorney and the Committee's files are not admissible in such proceedings. Likewise, statements made by the attorney

in the investigation are not admissible as a collateral attack for incompetency of counsel in a criminal case. The information provided by the attorney is given the same level of privilege as the attorney/client privilege.

The Committee's second function is a Florida Bar-like disciplinary process. The procedures are similar to the peer review function, in that a judge refers a lawyer to the Committee. The Committee then assigns a subcommittee to conduct an investigation. After the investigation is concluded, the subcommittee reports back to the Committee. The Committee then makes a recommendation to the chief judge. At this point, the procedure diverges from the peer review function. If the Committee determines that probable cause exists to support a finding that the attorney has violated a rule of professional conduct, it gives the attorney notice and opportunity to be heard, both in writing, and if a hearing is

held, at any such hearing. If there is a hearing held before the Committee, the attorney may appear, be represented by counsel, present witnesses and other evidence, and cross examine witnesses brought to testify against the attorney. The Committee itself may call the accused attorney and ask questions unless the attorney asserts a privilege or right properly available to the attorney under applicable federal or state law. At the conclusion of the hearing, the Committee makes a complete report and recommendation. The Committee may recommend the same kinds of discipline the Florida Bar may impose, including disbarment, suspension, reprimand, monetary sanction and any other sanction the Court may deem appropriate. Notably, the Committee may also recommend removal of the attorney from the Southern District of Florida's roster of attorneys eligible to practice before the Court. Upon receipt of the Committee's report and recommendation, the Court issues to the

(continued on page 21)



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Bankruptcy Seminar Reception

The Bankruptcy CLE Committee held a reception following its December seminar. Retiring Judge Paul Hyman spoke at the seminar. Congratulations and best wishes in your retirement, Judge Hyman



Stuart Young and Nadine White-Boyd



Deborah Menotte, Joshua Lanphear and Dana Kaplan



David Carter and Heidi Feinman



The Honorable Paul G. Hyman and Christian Panagakos



Jeffrey Lampert and Paul Klemow

December UMC Coffee with the Judges at the Main Courthouse



Jessenia Concepcion and Kelsey Burke



Daniella Brooks and Nichole Segal



Edward Marod, Judge Bradley Harper and Bob Goodrich



Judge James Nutt and Amy Borman



Judge Sherri Collins and Rina Clemens



Nicole Segal, Judge Samantha Schosberg-Feuer, Rina Clemens, William Pruitt and Dan Jensen



Judge Edward Artau and Judge James Nutt



Kelsey Burke and Lauren Johnson



Chief Judge Krista Marx, Jeffrey Marcus and Tim Stevens



MANNY FARACH

Florida Real Property and Business Litigation Report

In Re: Standard Jury Instructions in Civil Cases—Report No. 17-04, Case No. SC17-1136 (Fla. 2017).

The Florida Supreme Court adopts civil jury instructions on various issues including the burden of proof.

Asset Recovery Group, LLC v. Cabrera, Case No. 3D17-1517 (Fla. 3d DCA 2017).

A party, in both state and federal courts, must seek leave of the court that appointed a receiver before it can sue the receiver. The “carrying on business” exception of 28 U.S.C. § 959(a) does not apply against receivers appointed by state courts.

Capstone Bank v. Perry-Clifton Enterprises, LLC, Case No. 1D16-1094 (Fla. 1st DCA 2017).

A charging order is the exclusive remedy by which a judgment creditor of a Florida limited liability company may execute upon a member’s interest in the limited liability company or rights to distributions from the limited liability company.

Lexon Insurance Company v. City of Cape Coral, Case No. 2D16-1533 (Fla. 2d DCA 2017).

The statute of limitations for breach of a construction surety contract begins to run upon breach of the underlying construction contract, not upon demand upon the surety.

Pinellas County v. The Richman Group of Florida, Inc., Case No. 2D16-3279 (Fla. 2d DCA 2017).

Citizen input may be a sufficient ground to support a governmental land use decision under the rational basis test, and it is neither arbitrary nor capricious for government to decide that the proposed development should not be permitted without first conducting a formal investigation to determine whether citizen concerns are valid.

McGrath v. Martin, Case No. 3D15-1821 (Fla. 3d DCA 2017).

Florida Rule of Civil Procedure 1.530 applies to trial court decisions dismissing cases for lack of prosecution.

Agritrade, LP v. Quercia, Case Nos. 3D15-2392, 3D16-1181 (Fla. 3d DCA 2017).

The principle that a plaintiff cannot claim unjust enrichment when an express contract exists does not apply when there are multiple defendants facing the same damages and there is no express contract against the party against whom unjust enrichment is sought.

Magdalena v. Toyota Motor Corporation, Case No. 3D16-2322 (Fla. 3d DCA 2017).

A dismissal based on forum non conveniens is not an adverse “judgment” under Florida Statute section 57.041 and thus the prevailing party is not entitled to an award of costs.

Hamer v. Neighborhood Housing Services of Chicago, Case No. 16-658 (2017).

If a time prescription governing the transfer of adjudicatory authority from one Article III court to another appears in a statute, the limitation is jurisdictional; otherwise, the time prescription fits within the Supreme Court’s “claim-processing category” and is not jurisdictional.

Bayview Loan Servicing, LLC v. Newell, Case No. 1D16-5173 (Fla. 1st DCA 2017).

A metes and bounds legal description that has correct angles but is missing degree symbols is a property description that can be located by a surveyor and is thus a sufficient legal description, including for purposes of foreclosure.

Flatirons Bank v. The Alan W. Steinberg Limited Partnership, Case No. 3D15-1396 (Fla. 3d DCA 2017).

The Bishop v. Florida Specialty Paint Co., 389 So. 2d 999 (Fla. 1980), “significant relationships test” does not apply to a civil theft cause of action when the civil theft occurred entirely out of state.

Waverly 1 and 2, LLC v. Waverly At Las Olas Condominium Association, Inc., Case No. 4D16-2866 (Fla. 4th DCA 2017).

Language in a condominium declaration that “[a]nything to the contrary notwithstanding, the foregoing restrictions of this section 9 shall not apply to Developer owned Units or Commercial Units” means that the landscaping requirements of section 9.1 of the condominium declaration does not apply to commercial unit owners.

Anfriany v. Deutsche Bank National Trust Company, Case No. 4D16-4182 (Fla. 4th DCA 2017).

Judicial estoppel under Florida law requires, in addition to other requirements, that one party be in possession of information not available to another party and that the party seeking judicial estoppel not “derive an unfair advantage or impose an unfair detriment” on the opposing party.

Title Max v. Northington, Case No. 16-17468 (11th Cir. 2017).

Applying Georgia law regarding pawnshops, the Eleventh Circuit holds that state law controls property rights and that the Bankruptcy Code does not trump state law unless the clear text of the bankruptcy code so states.

Ice v. The Cosmopolitan Residences on South Beach, A Condominium Association, Inc., Case No. 3D15-2787 (Fla. 3d DCA 2017).

A claimant states a cause of action for conversion if he alleges that a condominium association wrongfully detained and exercised dominion and control over his personality removed from a condominium unit after service of a writ of possession by the sheriff.

Tower Hill Signature Insurance Company v. Javellana, Case Nos. 3D16-2526 & 3D16-2492 (Fla. 3d DCA 2017).

A court must look at the “true relief” sought, not just the pleaded causes of action, in determining whether a party seeks both legal and equitable relief and is thus precluded from claiming attorney’s fees under Florida Statute section 768.79.

Werb v. Green Tree Servicing LLC, Case No. 4D15-4809 (Fla. 4th DCA 2017).

Possession of a note is the primary criteria to determine standing, even when servicing rights of the note have been transferred prior to the filing of the complaint. Moreover, introduction of an incomplete payment history merits remand to the trial court, not dismissal with prejudice, for further taking of evidence.



BRIAN MOSKOWITZ

Those random thoughts that constantly interrupt you? That's your Monkey Mind. We all have these voices (monkeys) in our head jumping around clamoring for attention and constantly talking incessant nonsense. Often at the most inopportune time. Have you ever had a conversation with someone when your mind all of a sudden starts rattling off a list of to-do items? That's your Monkey Mind. Or how about trying to fall asleep and those voices keep replaying every possible scenario of what happened that day? That's your Monkey Mind.

Having random thoughts is normal. We all have about fifty thousand separate thoughts each day and we often have the same thoughts again and again and day after day. And are most of these thoughts helpful? Are they designed to make you happy? No! That's because your two million year old brain is designed to protect you and help you survive.

It's designed to look for what's wrong because it's still trying to protect you from being eaten by a saber-toothed tiger.

Declare W.A.R. on Your Monkey Mind

After a day or night of your Monkey Mind running rampant you end up mentally exhausted. So the question is how do you tame your Monkey Mind? A great way to start is with a Mindfulness Practice. Practicing mindfulness is just being present in the moment. The most popular form of Mindfulness Practice is meditation. But it's not the only form. You can do physical exercise, you can do visual observation exercises, you can journal – you can do anything that brings your total focus to the present moment. Over time you will learn to tame your Monkey Mind.

But what do you do when the Monkey Mind wakes up? What do you do when you're meeting with a client and the Monkey Mind decides to have a conversation with you about what you need to do that night? You declare W.A.R.

W.A.R. is an acronym for Witness – Acknowledge – Redirect. Before you can tame your Monkey Mind you must WITNESS it. You must become aware of its existence and understand that you don't have to listen to it. When you witness the thought you detach yourself from the thought.

When you detach yourself from the thought you're able to take a step back and watch the thought from a distance.

Once you've witnessed the thought, the next step is to ACKNOWLEDGE the thought. All the Monkey Mind wants is attention. If you ignore, it will get louder. Once you acknowledge it, you reinforce that it's separate from you. I'll often acknowledge the random thought by saying to myself "thinking." Sometimes I'll say "Okay, I hear you." And if it gets really bad, I might even say "STOP" – just to jolt my mind back to the present. Find the words or phrase that work for you because how you acknowledge the Monkey Mind isn't as important as just doing it.

After you've acknowledged the thought, REDIRECT your mind right back to where you were before the thought. Return your focus to what you were doing in that present moment.

You may have to go through the W.A.R. process several times but eventually the number of Monkey Mind interruptions will become fewer and fewer.

Brian M. Moskowitz is the Founder of Attorney Revolution - a solo practitioner in Boca Raton, and a member of our Solo and Small Firm Committee. Brian can be reached at brian@attorneyrevolution.com



Work/Life Balance with Yoga at the Courthouse

The Palm Beach County Bar Association's Judicial Relations Committee hosted its first "Yoga at the Courthouse" class. Members took a relaxing break with Yoga and a healthy lunch. Everyone was well refreshed for the second half of their day! Thank you to our Co-Chairs Chief Judge Marx and Rina Clemens for organizing the program.

Space is limited: Sign up early for the next Yoga with the Judges event on February 15 & 28, 2018.

Improve your well-being.

www.palmbeachbar.org



A NEW MODEL FOR PROFESSIONALISM PEER REVIEW AND DISCIPLINE IN FEDERAL COURT (con't.)

(continued from page 17)

attorney an order to show cause as to why the report and recommendation should not be accepted. This is the attorney's final chance to be heard. The Court may, by majority vote of active district judges, adopt, modify or reject the report, and may impose those sanctions recommended or whatever penalties it deems appropriate.

The Committee has a discretion to utilize either of its functions at peer review or disciplinary action. Significantly, the Committee and Court may proceed despite the fact that the Florida Bar is proceeding as well. The Committee may, however, stand down in its proceedings to allow the Florida Bar to complete its disciplinary process.

Our Panel's procedures and processes, in contrast, do not include such an extensive disciplinary function. Since 1997, the Professionalism Panel has heard referrals from both attorneys and judges for attorneys whose conduct is alleged to have violated the Standards of Professional Courtesy and Civility promulgated by the Palm Beach County Bar Association, as well as the ideals and expectations set forth by The Florida Bar. What our Panel clearly does not do is impose any discipline of the kind that The Florida Bar can. This traditional form of peer review has been used throughout the State by a number of circuits. These panels are designed primarily to address unprofessional conduct, as opposed to Florida Bar violations. There is no local function akin to Local Rule 6's disciplinary procedure.

Interestingly, there is some legal support for an enhanced local function to address unprofessional acts. Indeed, in the traditional grievance committee-referee process, an attorney is prosecuted by The Florida Bar and sanctions are imposed by the Florida Supreme Court. Rule 3-7.8, Rules Regulating the Florida Bar, however, provides for a proceeding initiated through the judiciary and prosecuted by the State in a trial before a circuit court judge. Rule 3-7.8(a), R. Regulating the Fla. Bar. After an evidentiary hearing as to whether the attorney is guilty of any unprofessional act, "the judge shall enter such judgment of dismissal, reprimand, probation, suspension, or disbarment as shall be appropriate to the circumstances."

Rule 3-7.8(c), R. Regulating the Fla. Bar. Our local Panel does not currently propose any actions under this rule.

It will be interesting to see how the Southern District's Rule 6 will play out. We have all seen, for example, how our Local Rule 4 has positively affected our local practice. Ideally, the Southern District's Rule 6 will have a similar effect. The results in the Southern District will indicate whether this is a model worth considering.

¹ For this review of the new Rule 6 and how the Committee works, we are grateful to Clinton Payne of Hinshaw & Culbertson, who chairs the Committee and was recently awarded the prestigious Judge Joe Eaton Unsung Hero Award. The award was established by the Judges of the Southern District of Florida to recognize unselfish service to the Court by a member of the Federal Bar.

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BUSINESS, SECURITIES & WHISTLEBLOWER LITIGATION

15th Judicial Circuit Professional Panel



Kara Berard Rockenbach
Professionalism Committee Co-Chair



Judge Cory Ciklin
Professionalism Committee Co-Chair

On June 6, 2013, the Florida Supreme Court, in opinion SC13-688, adopted the "Code for Resolving Professionalism Complaints" and directed the Chief Judge of every circuit to create a Local Professionalism Panel to receive and resolve professionalism complaints informally if possible. The Local Professionalism Panel was identified as an entity independent of The Florida Bar which is established at the local level for the purpose of resolving complaints of alleged unprofessional conduct by attorneys practicing in that circuit. In compliance with this dictate, the Chief Judge of the Fifteenth Judicial Circuit issued Administrative Order No. 2.105 (amended 11/16) to reconstitute the existing Professionalism Council as the Professionalism Panel. The Local Professionalism Panel of the Fifteenth Judicial Circuit operates pursuant to AO No. 2.105 which can be found at

<https://www.15thcircuit.com/sites/default/files/administrative-orders/2.105.pdf>



FIFTEENTH JUDICIAL CIRCUIT PROFESSIONALISM PANEL

Kara Berard Rockenbach, Esq., Co-Chair
Honorable Cory J. Ciklin, Co-Chair
E-mail: kbrock@flacivillaw.com
(561)727-3600

September 1, 2017

RE: Referral to the Fifteenth Judicial Circuit Professionalism Panel Per SC13-688

Dear [REDACTED]

As co-chair of the Professionalism Committee of the Palm Beach County Bar Association, I am in receipt of a referral to the Fifteenth Judicial Circuit Professionalism Panel ("Panel") by the Honorable [REDACTED] by Order dated August 18, 2017.

For your review, I am enclosing the following documents:

Order dated August 18, 2017
Administrative Order 2.105-11/16 ("AO")
Professionalism Expectations ("Expectations")
2014 Standards ("Standards")

Pursuant to the AO, the Professionalism Panel proves is a non-disciplinary process. The purpose of our meeting is to discuss conduct inconsistent with the Expectations or Standards in order to avoid similar conduct in the future. The Panel has no authority to discipline you, nor can the Panel compel you to appear before the Panel. Rather, it is an opportunity to discuss what occurred and counsel on how to avoid it in the future.

Once a date has been cleared, I or someone on behalf of the Panel will contact you to invite your appearance.

If you have any questions, please do not hesitate to contact me. Email may be best at kbrock@flacivillaw.com

Sincerely,

Kara Berard Rockenbach, Co-Chair
15th Circuit Professionalism Panel

Signed in the Absence
to Expedite Delivery

1



FIFTEENTH JUDICIAL CIRCUIT PROFESSIONALISM PANEL

Kara Berard Rockenbach, Esq., Co-Chair
E-mail: kbrock@flacivillaw.com
(561)727-3600

January 2, 2018

[REDACTED]

RE: Closing of Referral to the Fifteenth Judicial Circuit Professionalism Panel Per SC13-688
Recommendation: "Let the Game Come to You"

Dear [REDACTED]:

On behalf of the Local Professionalism Panel for the Professionalism Committee of the Palm Beach County Bar Association ("Panel"), we sincerely appreciate your attendance at our meeting on December 20, 2017, in response to the referral by the Honorable [REDACTED] by Order dated November 1, 2017 and the Administrative Order 2.105-11/16.

The basis for the referral for "unprofessional conduct" and "frivolous pleadings" emanated from a Fourth District Court of Appeal Order dated [REDACTED] 2017, in which the appellate court dismissed your petition for writ of certiorari and warned that "[f]urther frivolous filing in this Court may result in sanctions, including referral to the Florida Bar." This warning was in response to the appellate court's noting that you had initiated "at least fifteen extraordinary writ proceedings in this Court...including eight this year alone."

During our meeting, the Panel was impressed with your genuine acceptance of taking "full responsibility" for your litigation and appellate decisions. The Panel also appreciated your recognition of mistakes regarding the appellate process relating to whether a stay would exist and the appellate court's requirement of filing a "Notice of Related Cases."

The Panel identified potential violations of three *Professionalism Expectations* (3.1, 4.6, and 4.1). We discussed and proposed solutions for your future litigation of reaching out to colleagues to discuss litigation challenges and "your next move." We appreciated your passion for your representation of your client, but remain cautiously hopeful that you obtain a "quality of life" balance, finding a hobby that can allow you to decompress. The Panel believes you have been and continue to have great promise in representing your clients.

[REDACTED] Professionalism Committee Letter page 2

In closing, it is the Panel's sincere hope that you harmonize your passion for our practice of law with our Code of Professionalism and recognize that you best *serve* your client with the sport ethics or mantra to "Let the Game Come to You." As with any endeavor, this is hard advice in a world where aggression and taking control may appear to be the preferred strategies. We assure you they are not. Letting the game come to you takes strong virtue, character, patience, and last but not least -- professionalism.

Sincerely,

Kara Berard Rockenbach
Co-Chair, Palm Beach County Professionalism Committee
On behalf of the 15th Judicial Circuit Professionalism Panel Members:
Jessica Callow, designee of the President of the Palm Beach County Bar Association
Ronald Ponzoli, current representative of the FL Bar Board of Governors for the Fifteenth Judicial Circuit, Seat 2
Cathy Kozol, member of the PBCBA Professionalism Committee
Peter Hunt, member of the PBCBA Professionalism Committee
William Pruitt, member of the PBCBA Professionalism Committee

KBR/ap

Get Involved! North County Section



Get Involved! North County Section Seeks 5 Directors and President-Elect

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

The Section seeks five new members to serve a two year director position, plus president-elect.

Petitions will be available starting on Wednesday, March 1.

The Board meets once a month to plan various networking events and programs for its members.

To be considered, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Thursday, March 29.

If there is a contested election, voting will take place online in April and the winners will be announced online.

The current Board includes President, W Mason; President-Elect, David Steinfeld; Immediate Past President Rosemarie Guerini. Directors ending their term this June 2018 include Misty Chaves, Malinda Hayes, Tanique Lee, R. Wayne Richter and Kate Watson. Directors with terms ending June 2019 are Rebecca Brock, Rina Clemens, Lawrence Strauss, Nicholas Johnson and Lindsay Warner.

For a petition, contact Lynne @ lpoirier@palmbeachbar.org

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North County Section



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TD Squared



TD Squared is a program that brings students into the federal courthouse, during which students engage with volunteer lawyers and the presiding judge. Students actively participate in discussions related to critical life skills, civil discourse and adult decisions with permanent legal consequences. The students then participate as lawyers or jurors in a courtroom simulation using a United States Supreme Court case. Led by Judge United States District Judges Robin Rosenberg and Beth Bloom, the program is presented in a 3-hour period and coordinated through the local Federal Bar Association's Civics Outreach Committee. A special thank you to our volunteers Michael McAuliffe (moderator), PBCBA Lawyers for Literacy Chair Brad Avakian, Penny Birch, Martin Reeder, Scott Atherton, Joe Bilotta and Kelly Schultz. If you would like to volunteer please contact Kelly Hyman kah@searcylaw.com.

This was the first time that students from Palm Beach State College were involved in the program. The group participated in an abbreviated mock trial type hearing before Judge Rosenberg while learning life skills such as how to engage in civil discussions with their peers and adversaries and how to make wise life decisions.



PBCBA President Sia Baker-Barnes and Federal Bar Association President Kelly Hyman

PBCBA CLE AUDIO LIBRARY

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Attention: Eva Gray

P. O. Box 17726

West Palm Beach, FL 33416

Any questions, please email Eva Gray: egray@palmbeachbar.org

NOTE: The purchase of each audio is valid for individual use only. Defective recordings will be replaced only if returned within 30 calendar days from invoice. If this is a brand new seminar, please allow 2 weeks for the audio to be recorded and for sale.

rev 10/31/2017

The Appellate Practice Committee of the Palm Beach County Bar Association Presents



Inaugural Outstanding Appellate Advocacy Seminar

Friday, February 2, 2018, 11:30 a.m. - 1:00 p.m. (lunch included)
Fourth District Court of Appeal, 110 S. Tamarind Ave., West Palm Beach, FL

Welcome and Announcements: Samuel A. Walker, Esq., CPLS, P.A., Chairperson, Appellate Practice Committee

Speakers:

Judge (Ret.) W. Matthew Stevenson
Judge (Ret.) Barry J. Stone
Judge (Ret.) Gary M. Farmer

Agenda:

- Tips to Successful Brief Writing
- Things not to do in your Reply
- Keys to Oral Argument
- How to Write an Outstanding Initial Brief
- How to Write an Outstanding Answer Brief
- How to Write an Outstanding Reply Brief
- How to Present an Outstanding Oral Argument as the Appellant
- How to Present an Outstanding Oral Argument as the Appellee

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Credit: 1.0 CLER, plus 1.0 Certification credit in appellate practice. Cost: \$35 members; \$75 non-members. Those registering after 1/26/18 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

Name: _____ Email address: _____

Address: _____ Phone: _____

_____ I will not be able to attend the seminar, however I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow one week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 2.2.18 Appellate

The Paralegal Committee of the Palm Beach County Bar Association
Presents

Ethics, Professionalism and Technology

Friday, February 9, 2018, 8:00 a.m. - 12:00 p.m.

Fourth District Court of Appeal, 110 Tamarind Ave., W. Palm Beach



8:00 a.m. - 8:30 a.m. **Late Registration / Check in / Light Breakfast /Welcome** -
Patricia DeRamus, ACP, FRP; Office of the Attorney General; Co-Chair,
PBCBA Paralegal Committee

8:30 a.m. - 9:20 a.m. **E-Discovery and Ethics: Discovery of Social Media and Ethical Limitations for Paralegals and Attorneys. Social Media Investigation of Jurors and Ethical Limitations** - Judge Meenu Sasser

9:20 a.m. - 10:10 a.m. **Discovery Project Management – How to handle ESI Like a Rockstar** - Chioma Deere, Esq., Williams, Leininger & Cosby, P.A.

10:10 a.m. - 10:20 a.m. **Break**

10:20 a.m. - 11:10 a.m. **Professionalism Expectations** -
Kara Berard Rockenbach, Esq., Link & Rockenbach, P.A.

11:10 a.m. - 12:00 p.m. **Ten Ingredients for an Effective Mediation (confidentiality, safety and security, negotiating tactics and strategies, mediation case law, preparing clients and counsel for the mediation process)** -
Lawrence Gordon, FRP, Phoenix Mediation, LLC; Bruce Blitman, Esq., Law Office of Bruce Blitman, Certified Circuit Civil, Family and County Court Mediator

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Credit: 4.0 CLER; 3.0 Ethics; 1.0 Technology. Cost: \$ 120 members; \$ 160 non-members. Those registering after 2/2/18 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

Name: _____ Email address: _____

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2 /9/18 Paralegal



Ethical Use of Technology and Digital Evidence in Litigation

Presented by the Technology and Business Litigation CLE Committees

Friday, February 16, 2018

11:30 a.m. to 2:30 p.m.

Main Courthouse in Room 10-G

11:30

Lunch/Late Registration/Check In/Welcome & Announcements:

Chioma Deere, Esq., Williams, Leininger, & Cosby, P.A.; Chairperson, Technology Committee

12:00

Ethics and eDiscovery: What you don't know will hurt you. Practical tips to Avoid

Pitfalls: Robert Wilkins, Esq., Board Certified in Business Litigation and Civil Trial; Jones, Foster, Johnston & Stubbs, P.A.

1:00

Courtroom Technology in the 15th Judicial Circuit: Speaker TBA

1:30

Mock Evidentiary Hearing on Motion for Sanctions for Spoliation of ESI - Deleted Text

Messages and How to Secure an Adverse Inference: David Steinfeld, Esq., Board Certified in Business Litigation; Law Office of David Steinfeld, P.L.

Circuit Judge Meenu Sasser and a Forensic Expert are also expected to participate.

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REGISTER NOW!

Credit: 3.0 CLER; 1.0 Ethics; 1.0 Technology. Certification credits: 1.0 Business Litigation; 1.0 Civil Trial. Cost: \$ 90 members; \$ 120 non-members. Those registering after 2/9/18 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register online at www.palmbeachbar.org or by mail (return this form with your check)

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____ I will not be able to attend the seminar, however I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow 1 week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 2/16/18 Tech/Bus. Lit seminar

The Construction Law CLE Committee of the Palm Beach County Bar Association
Presents

Bracing for the Storm: Preparing for a Hurricane and Aftermath



Tuesday, February 20, 2018, 8:30 a.m. - 12:00 p.m.

Fourth District Court of Appeal, 110 S. Tamarind Avenue, W. Palm Beach, FL

This seminar will focus on planning, risk allocation, and the practical/legal issues presented before, during and after hurricane events from both the owner and contractor perspectives.

8:30 a.m. - 9:00 a.m. **Late registration / Check In**

9:00 a.m. - 9:05 a.m. **Welcome and Opening Remarks** - William J Cea*, Esq., Florida Certified Circuit Civil Mediator; Becker & Poliakoff, P.A.; Chair, Construction Law Committee

9:05 a.m. - 9:55 a.m. **Before the Cone "May Day": What's Necessary Before Hurricane Season** (This topic will address the measures that should be taken by owners and contractors prior to hurricane season. For example, the types of insurance coverages that should be in place, and ensuring that sufficient labor and materials will be available in case of a state of emergency. Additionally, attention will also be given to the contractual provisions and business considerations that parties should address in anticipation of storm events.) - Mike Heitman* Esq., Owen, Gleaton Egan, Jones & Sweeney, LLP

9:55 a.m. - 10:45a.m. **You're in the Cone - Securing Business and Job Sites** (Once the weather forecasters conclude that an area is in the projected path of a hurricane, steps must be taken to secure job sites, and businesses. This segment will explore what those steps are, and how property owners can position themselves in case property damage occurs and insurance claims or lawsuits become necessary. This will include steps to take for owners and contractors involved in ongoing construction projects that may be affected by the hurricane.) Mark J. Stempler, Esq.*, Becker & Poliakoff, P.A.

10:45 a.m. - 10:50a.m. **Break**

10:50 a.m. - 11:40 a.m. **The Aftermath – Protecting Owners and Construction Industry**

Professionals (An overview of a lawyer's guide on tips and tricks for dealing with clients and contractors in the aftermath of a natural disaster. The presentation will be separated in two subparts - 1. Advice for lawyers providing legal counsel to property owner clients; and 2. Advice for lawyers providing legal counsel to construction industry professionals.) Daniel E. Levin*, Esq., Cole, Scott & Kissane, P.A and John A. Chiocca*, Esq., Cole, Scott & Kissane, P.A,

11:40 a.m. - 12:00 p.m. **Question/Answer Session & Closing Remarks**

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*All Board Certified in Construction Law

Credit: 3.0 CLER; 3.0 Certification credits in construction law. Cost: \$ 90 members; \$ 130 non-members. Those registering after 2/13/18 add \$10 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar. [Register online at www.palmbeachbar.org](http://www.palmbeachbar.org) or by [mail](#) (return this form with your check)

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_____ I will not be able to attend the seminar, however I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow one week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 2/20/18 Construction law

THE ART OF OBJECTING & PRESERVING ERROR FOR APPEAL

Presented jointly by the Criminal and Appellate Practice Committees

Friday, March 2, 2018 ~ 2:45 pm to 6:00 pm

Fourth District Court of Appeal, 110 South Tamarind Avenue, West Palm Beach



PROGRAM AGENDA:

2:45 pm: Late Registration/Check in/ Welcome & Announcements: Samuel Walker, Esq., CPLS, P.A.; Chairperson, Appellate Practice Committee

3:00 pm: This interactive seminar will address the appropriate methods by which trial lawyers can create a properly appealable record. This course will address a variety of issues including but not limited to ethics, jury selection, evidentiary issues that may arise during the presentation of testimony, and closing argument. Following a presentation by **Judge May**, **Judge Ciklin** and **Judge Gross**, a panel of appellate experts will join the Judges and the group will discuss the practicalities of making the record and answer your questions.

Criminal Appeals Practitioners/Experts including Melynda Melear, Senior Assistant Attorney General; Tatjana Ostapoff, Assistant Public Defender and Benjamin Eisenberg, Assistant Public Defender

5:00 pm: Reception

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CLER in process. COST: PBCBA Members \$ 60 Non-Members: \$100. Government attorneys \$ 15 members; \$20 non-members. Those registering after February 23, add \$10. All refund requests must be made no later than 48 hours prior to the date of the seminar. Register Online at PalmBeachBar.Org (or) print this form and mail it along with your check to: PBCBA, P.O. Box 17726, West Palm Beach 33416.

Name _____ Email _____

Address _____ Phone _____

_____ I will not be able to attend the seminar, however I would like to order the audio. The cost is the same as listed above, however please include \$10 for shipping and handling. Allow one week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416. 561-687-2800. 3/2/18

BULLETIN Board

Professional Announcements:

The following announce their availability for referral, assistance and consultation.

GREGORY TENDRICH, Esq.: "AV Preeminent" rated, FINRA Arbitrator and Mediator, Certified County Court Mediator and former Series 7 licensed VP & Asst. General Counsel to national and regional stock brokerage firms. All securities & investment related matters involving the recovery of losses due to stock broker fraud, misrepresentation, churning and unsuitable recommendations, in addition to representation of advisors in SEC, FINRA, regulatory enforcement, contract and employment matters. (561) 417-8777 or visit www.yourstocklawyer.com

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MARCHMAN ACT: Attorney well experienced in Marchman Act cases including litigating many cases under this law; understands treatment and addiction recovery; available for referral or consult. Frequent lecturer and author on the Marchman Act. Joe Considine; Telephone: 561-655-8081; Joe@Joeconsidinelaw.com

Hearsay



Jeffrey Pheterson, a partner at Ward Damon, has been elected Chair of the Board of Trustees of Bethesda Health, Inc. He also has been named to the Board of Trustees of Baptist Health South Florida, Inc., which now has completed successfully its merger with Bethesda Health, Inc.



Attorney Scott J. Dalton has joined Rosenthal, Levy, Simon & Ryles in West Palm Beach. He will specialize in vehicle negligent cases, property damage litigation, personal injury and wrongful death claims



Jones, Foster, Johnston & Stubbs, P.A. announces that shareholder attorney Theodore S. "Theo" Kypreos has been installed as President of the University of Florida Law Alumni Council



Jones, Foster, Johnston & Stubbs, P.A. announces that shareholder attorney Scott G. Hawkins has been installed as Chair of The University of Florida Law Center Association Board of Trustees.



2017 marks Ward Damon's 10th year participating in the Salvation Army's Angel Tree program which brightens the holidays for children in need in our community. This year the firm adopted 52 "angels" and purchased gifts for these children who would not otherwise receive anything from Santa on Christmas morning.

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CALENDAR OF EVENTS

FEBRUARY 2018

THURSDAY, FEBRUARY 1
8:00AM
PI SEMINAR
MARRIOTT, WEST PALM BEACH

FRIDAY, FEBRUARY 2
8:30AM – 9:30AM
ADR COMMITTEE MEETING
515 N FLAGLER DRIVE

FRIDAY, FEBRUARY 2
11:30AM – 1:00PM
APPELLATE SEMINAR
4TH DCA

FRIDAY, FEBRUARY 2
7:00PM
INNOCENCE PROJECT FUNDRAISER
KELSEY THEATER

SATURDAY, FEBRUARY 3
10:00AM - 3:00PM
KOZYAK PICNIC
MIAMI METRO ZOO

MONDAY, FEBRUARY 5
11:45AM – 1:15PM
CRIMINAL PRACTICE
MAIN COURTHOUSE, RM 11H

MONDAY, FEBRUARY 5
12:00PM – 1:00PM
LAW WEEK COMMITTEE
LYTAL REITER'S CONFERENCE ROOM,
10TH FL
515 N FLAGLER DRIVE

TUESDAY, FEBRUARY 6
11:30AM – 1:00PM
COMMITTEE CHAIR MEETING
515 N FLAGLER DR

WEDNESDAY, FEBRUARY 7
12:00PM – 1:00PM
PI COMMITTEE MEETING
JOE LANDY'S OFFICE

WEDNESDAY, FEBRUARY 7
5:30PM – 7:00PM
FAWL JUDICIAL RECEPTION
LAKE PAVILION
101 S FLAGLER DR

WEDNESDAY, FEBRUARY 7
5:30PM – 6:30PM
SPBCBA BOARD MEETING
SACHS SAX CAPLAN

THURSDAY, FEBRUARY 8
12:00PM – 1:00PM
CONSTRUCTION LAW COMMITTEE
MEETING
BECKER & POLIAKOFF

FRIDAY, FEBRUARY 9
8:00AM – 12:00PM
PARALEGAL SEMINAR
4TH DCA

SATURDAY, FEBRUARY 10
YOUTH LAW DAY
MAIN COURTHOUSE

SUNDAY, FEBRUARY 11
12:00PM – 3:00PM
PBCBA CARNIVAL
WYCLIFFE COUNTRY CLUB

MONDAY, FEBRUARY 12
8:00AM
ADR SEMINAR
4TH DCA

TUESDAY, FEBRUARY 13
7:45AM – 8:15AM
UMC COFFEE
NORTH END CAFETERIA

TUESDAY, FEBRUARY 13
11:30AM – 1:00PM
NCS BOARD MEETING

TUESDAY, FEBRUARY 13
12:00PM – 1:00PM
PARALEGAL COMMITTEE MEETING
515 N FLAGLER DR

TUESDAY, FEBRUARY 13
12:00PM – 1:00PM
YLS BOARD MEETING
515 N FLAGLER DR

TUESDAY, FEBRUARY 13
6:30PM – 7:30PM
LANDLORD TENANT PROGRAM
LANTANA ROAD BRANCH LIBRARY

WEDNESDAY, FEBRUARY 14
12:00PM – 1:00PM
PROFESSIONALISM COMMITTEE MEETING
4TH DCA

THURSDAY, FEBRUARY 15
5:30PM – 7:00PM
YLS HAPPY HOUR
TBA

FRIDAY, FEBRUARY 16
8:00AM
TECH SEMINAR
MAIN COURTHOUSE

TUESDAY, FEBRUARY 20
8:30AM – 12:00PM
CONSTRUCTION SEMINAR
4TH DCA

TUESDAY, FEBRUARY 20
11:30AM – 1:30PM
FAWL LUNCHEON
KRAVIS CENTER

WEDNESDAY, FEBRUARY 21
11:45AM – 1:15PM
CRIMINAL PRACTICE SEMINAR
COURTROOM 11H
MAIN COURTHOUSE

FRIDAY, FEBRUARY 23
11:30AM – 12:30PM
F. MALCOLM CUNNINGHAM HOLLAND
LUNCHEON
KRAVIS CENTER

MONDAY, FEBRUARY 26
11:45AM – 12:45PM
JUDICIAL LUNCH
COURTROOM 11H
MAIN COURTHOUSE

TUESDAY, FEBRUARY 27
12:00PM – 1:00PM
CDI COMMITTEE MEETING
AMERICAN LUNG ASSOCIATION

TUESDAY, FEBRUARY 27
5:30PM – 7:00PM
LEGAL AID BOARD MEETING
LEGAL AID OFFICE

WEDNESDAY 28
12:00PM - 1:00PM
REAL ESTATE COMMITTEE MEETING
BOULEVARD GOURMET DELI

WEDNESDAY FEBRUARY 28
5:00PM - 6:00PM
BAR BOARD MEETING



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YLS Holiday Party

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