



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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



Nominating petitions available for
Board of Directors

Members seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect are due back in the Bar office by 5:00 p.m. on Tuesday, January 9. Petitions for Director-At-Large seats are due back in the Bar office by 5:00 p.m. on Wednesday, January 17. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting a petition to Carla Tharp Brown at ctbrown@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing. Otherwise, the petition will be deemed invalid. The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April.

Second You've Been Served "YBS" Award



Andrew Kwan reads to children through our Lawyers for Literacy Program

It is with great honor that the Palm Beach County Bar Association ("PBCBA") announces that our second recipient of the You've Been Served! Award is Andrew S. Kwan. Andrew, a business and financial litigation attorney with the firm Beasley Kramer & Galardi, P.A., simultaneously provides exemplary service to both our community and the PBCBA by working tirelessly to promote literacy and civic education.

Full Story on Page 3



Help the Palm Beach County Bar Association

Reduce | Reuse | Recycle

"You've Been Served" page 3

President's Message page 4

Wellness & Health Corner page 10

YLS No Shave November page 25

The Bulletin

Palm Beach County
Bar Association

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President

Carla Tharp Brown
Executive Director

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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

January 8:
Professionalism Nominations Due

January 10:
Diversity Nominations Due

January 14:
YLS 5K Run | Walk

February 11:
PCBCA Carnival

March 9:
Bench Bar Conference

Court House "mini rotation"

Per Chief Judge Marx, on January 16, 2018—see below. No rotation of the Magistrate assignments will take place in January.

In 2018, the Chief may announce additional assignment rotations which would occur over the July 4th weekend or at an earlier time in June (TBA)

South County
Hon. Charles Burton to IV/FX courtroom 5

Gun Club
Hon. Ted Booras to KK1 courtroom 2
Hon. Dina Keever-Agrama will remain in K/KK2/KD

Main Courthouse
Circuit Criminal
Hon. Cheryl Caracuzzo (Division Z) moves to courtroom 10B
Hon. Meenu Sasser to Division S, courtroom 10G
Hon. Samantha Schosberg Feuer (Division X), to courtroom 11B

Circuit Civil
Hon. Cymonie Rowe to AI, courtroom 10C
Hon. Donald Hafele (AG), courtroom 10D
Hon. Jaimie Goodman to AD, courtroom 10H

County Civil
Hon. August Bonavita to RB, courtroom 4C
Hon. Nancy Perez (RE), to courtroom 6M

County Criminal
Hon. Caroline Shepherd to P, courtroom 4D

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ADVERTISING & SPONSORSHIP OPPORTUNITIES AVAILABLE

Palm Beach Bar Association Bulletin
P.O. Box 17726, West Palm Beach, FL 33416
561.687.2800

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Carla Tharp Brown, Executive Director

Editor
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Second You've Been Served "YBS" Award Recipient



JESSICA CALLOW

As the current Law Related Education Committee chair, and previously as a member of the committee, Andrew actively participates in the community by providing information about American government and law through seminars, mock trials and other events. Andrew co-chairs the Youth Law Day event along with Judge Sherri Collins; his prior involvement included writing the case problem for the YLD mock trial and sponsoring underprivileged children's attendance at the event. Andrew also organizes the annual FLREA Circuit 15 High School Mock Trial competition, including coordinating schools and volunteer judges for the competition.

Additionally, as the prior Lawyers for Literacy Committee chair, Andrew raised money to purchase books for local schools and organized literacy events across Palm Beach County, including Celebrate Literacy week, where PBCBA members volunteered their time to read to local elementary school students, the "Stop the Summer Slide" program, designed to encourage students to read over the summer to maintain or improve their reading skills while away from a structured class environment, and the spring Books and Bingo game and donation drive for elderly residents at an assisted living facility. It is revealing that Andrew was nominated by two separate individuals for this award. The nominators said it best by noting "Andrew humbly commits his time and energy to causes he deeply believes in, and leads from his heart" and "he epitomizes the spirit of answering the call to serve the community."

The You've Been Served campaign endeavors to raise public awareness of attorney volunteerism, encourage additional volunteerism by our members, and reward our members who have had the greatest impact on our community. To nominate a PBCBA member for the You've Been Served! Award, please download the nomination form from the PBCBA website, or e-mail ybs@palmbeachbar.org for the nomination form.



Andrew Kwan, Annual Book & Bear drive for National Adoptions Day



Enjoy a Night Out!
Purchase Your Discounted Movie Tickets Today
Contact Eva Gray at 561.687.2800



Navigating Transitions



Rosalyn Sia Baker-Barnes
2017-18 PBCBA President

It's that time of year again. The holidays are over, the clean-up is finished and I am struggling again with my January slump, trying my hardest to get back to my normal routine. We all deal with it in some way, shape or form, but how? I was reading the Palm Beach Post recently, and the paper features a new series called, "Navigating Transitions." The series features local mental health experts, and their advice on handling the transitions we all ultimately face in life. They speak of losing a loved one, losing or changing jobs and physical ailments. Last year, at the end of the year, my legal assistant of 17 years retired. I of course was very happy for her, but sad and apprehensive about how I would handle her retirement because I was so accustomed to our friendly working relationship, our routine and mostly the confidence and trust I had in her. We as lawyers are constantly facing change with our clients, our cases, the law and our practices. I thought the suggestions on how to tackle those challenges may help us in our practices, so I thought I would share what I learned.

The professionals emphasized that how we navigate transition is an indicator of everything we do, and because most changes in our lives happen suddenly and unexpectedly, those factors may further complicate how we handle the transition. If you're a control freak like me, navigating transitions can be challenging. So, here's the advice:

1. Identify the Problem. Think about what happened and how you will cope with it. Much like many of the legal arguments we make, the first step is identifying the issue and accepting it. If we ignore issues we may be facing in our personal and professional lives, we never navigate and overcome them, often leading to more problems. The experts emphasized that progress happens slowly, so be sure to take this advice one step at a time.

2. Shift Your Focus. Instead of focusing on the negative, try to think about the possible positive outcomes that may come from your situation. Some experts suggest making a list of positive goals you would like to achieve and developing a plan for achieving them, so that you feel a sense of accomplishment when it happens.

3. Build Your Self Esteem and Define Your Identity. The experts explain that those who navigate challenges successfully usually have similar characteristics- they have self-confidence, good social skills and a strong support system. First, rely on your support system to help you. I find that my family and friends' support helps build my confidence and self-esteem, and mostly, reminds me of what is important in life. There is strength in knowing who you are, what is important to you and having the skills to navigate change in our lives, even when it is unexpected.

When you think about it, every year when we make a list of our New Year's Resolutions, we are planning for change in our lives by setting goals and taking the steps to achieve them. I hope that by sharing some tidbits from the Post column, you gain some valuable on facing the inevitable changes in our lives that we can't always plan for. You can find the column in the Accent Section of the paper. Happy New Year!

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



NEW MEMBERS

JANUARY 2018

Mark L. Balsom
University of Miami, 2016
Associate in The Presser Law Firm, P.A.,
Boca Raton.

Jessica Biedron
St. Thomas University, 2017
Fourth District Court of Appeal
West Palm Beach

Joseph Cafaro
University of Miami, 2011
Associate in Frankl & Kominsky, P.A.,
Boynton Beach

Joleen N. East
University of Florida, 2017
Fifteenth Judicial Circuit
West Palm Beach

Kathryn L. Ender
American University, 2008
Associate in Cole, Scott & Kissane, P.A.,
Miami

Dara B. Factor
Law Student Membership
Boston, MA
Tayson C. Gaines
University of Miami, 2017
Solo Practitioner
West Palm Beach

Domini Gibbs
Florida A&M University, 2016
City of Miami

Alexandra C. Gioseffi
Emory University, 2017
West Palm Beach

Bryan Hofeld
Loyola University, 1997
Boca

Jesse Woodson Isom
University of Florida, 201
Office of the Public Defender
West Palm Beach

Michelle S. Kohn
University of Florida, 1984
Solo Practitioner
Palm City

Amanda L. Mollica:
Florida State University, 2016
The Tickin Law Group, P.A.
Deerfield Beach

Samir Margetic
Law Student Membership
West Palm Beach

Jack N. Sarkisian
New England School of Law, 1976
Solo Practitioner
Boynton Beach

Andglina L. Stratton
Barry University, 2015
Associate in Baker, Donelson, Bearman,
Caldwel
Ft Lauderdale

Boris L. Zhadanovskiy
Wake Forest, Associate in Searcy Denney
Scarola Barnhart & Shipley
West Palm Beach

BOARD Meeting Attendance

2017-2018

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



BRUCE A. BLITMAN

TEN TIPS FOR GETTING THE MOST OUT OF YOUR MEDIATION PROCESS

During the past 30 years, mediation has become the most popular Alternative Dispute Resolution (ADR) process for resolving disputes. Lawyers, insurance companies, risk managers, and corporate legal departments use mediation frequently to resolve claims and lawsuits.

Mediation is an “assisted negotiation” in which the parties and their counsel involved in a dispute sit down with a neutral, impartial person called a mediator to reach a mutually acceptable agreement. The mediator works with the parties and counsel to help them fashion their own acceptable solution to their dispute. Negotiating is an important part of every attorney’s career. Whether you are dealing with opposing counsel, insurance adjusters, clients, partners, or staff, you are still constantly negotiating. The quality and success of your practice can be directly affected by your ability (or inability) to effectively conduct negotiations.

During the past 28 years, I have been privileged to mediate thousands of disputes. Many have settled due to the exceptional negotiating skills of the participants. Unfortunately, others have not been resolved because of the participants’ ineffective negotiating skills. I hope that the following ten tips will help you and your clients hone your negotiating skills and enable you to get the most out of your mediation experiences:

1. Know what you want. Your clients cannot get what they want from others if you do not know what they want for themselves. First, establish a specific goal for negotiation. Consider what it will take to satisfy your client’s interests, needs, and objectives. If you are representing a client on a contingent fee basis, wouldn’t it be

helpful to know as soon as possible that your client only wants an apology, rather than money damages?

2. Develop a game plan. Once you know what your clients want, establish a negotiating strategy to achieve their objectives. Before you present your first offer, consider where you and your clients want to start and where you want to finish. Give yourselves some room in which to move.

3. Know what the other party needs. It takes two to tango – and to negotiate. To reach an agreement, all parties must feel that some, if not all, of their interests have been satisfied. Your negotiating partner also has motivations and concerns. Ask open-ended questions to gather information and to understand the other side’s positions and perspectives.

4. Be an empathetic listener. There are hundreds of courses about public speaking, but very few of them teach us how to listen. Attentive listening enables us to better understand the motivations of others. Make eye contact when someone else is speaking. Pay attention to the words and language that they are using. At one of my mediation training courses, a student once told me that her child would admonish her by saying, “Mommy, listen to me with your face!” when she was distracted and not paying attention to her. What wonderful advice for us all.

5. Attack the problem, not the people. Focus on finding solutions to your shared problems. Screaming at the other party may let off steam, but it is not conducive to effective joint problem-solving. Be courteous and tactful.

6. Treat the other side as your ally, not your enemy. Your negotiating partners at the mediation may have to persuade others in their organization to agree to your offer. As your friends, they can sell your proposal; as your enemies, they can sink it.

7. Educate, don’t intimidate. Be prepared to explain, document, and justify to your negotiating partners why they would be well-advised to accept your client’s proposal. Help them understand your client’s position.

8. Be patient and persistent. Don’t be angry or insulted if the first offer you receive is not what you and your client hoped it would be. Treat this proposal as the first of several in the negotiating process. Slow but steady movement creates momentum, which can lead you down the road to resolution and agreement.

9. Consider the consequences of no agreement. Think about what could happen – both good and bad – if your clients are unable to agree. Can they afford to “walk away” from the table, or are they desperate to make a deal now?

10. Be flexible and creative. The Rolling Stone’s frontman, Mick Jagger, made the phrase “You can’t always get what you want” famous. In negotiations, this is often true. Always have a fall-back position – that is, an alternative that satisfies your clients and the other parties enough to make a deal. Be imaginative and “You just might get what you need.”

Bruce A. Blitman has been a member of The Florida Bar since 1982 and a longtime member of the Broward County Bar Association. He recently joined the Palm Beach County Bar Association. Blitman has been a full-time mediator and ADR professional for almost three decades. Since 1989, Bruce has mediated thousands of disputes throughout the state of Florida. He writes and lectures extensively about the benefits of mediation and ADR. He can be contacted by phone at (954) 646-1128 or by e-mail at BABMediate@aol.com.

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. Lucy Chernow Brown, Circuit Judge (Ret.), JAMS, Certified Circuit Civil Mediator; 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

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

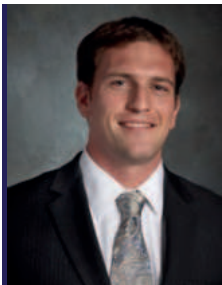
5:00 p.m. **Closing** - Rosine Plank-Brumback, Esq.

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](http://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



JASON S. RIGOLI

Voluntary Retirement Plan Contributions Not Included in Disposable Income

While acknowledging the debate and lack of binding precedent for this Circuit, Judge Beth Bloom recently held that voluntary retirement plan contributions are not included in the debtor's disposable income. *RESFL Five, LLC v. Ulysse*, Case No. 16-cv-62900, 2017 WL 43418897 (S.D.Fla. September 29, 2017). Following the majority, and rejecting a holding by the Sixth Circuit, Judge Bloom upheld the bankruptcy court and allowed a chapter 13 debtor to make \$114,000 in contributions to a retirement plan over the course of his five-year plan and not include the payments in calculating how much the debtor must pay creditors.

In the five years before bankruptcy, the debtor contributed a total of \$77,150 to a tax-deferred annuity. *RESFL Five, LLC*, an unsecured creditor with a \$60,000 judgment, objected to confirmation of the chapter 13 plan, arguing that the contributions to the retirement account should have been, included in the calculation of disposable income under Section 1325(b)(2). *Id.* at *1-2.

Judge Bloom set forth the three approaches derived from her survey of case law on this issue: (i) the majority view holding that a chapter 13 debtor may exclude voluntary contributions to a retirement plan from the disposable income calculation so long as the plan is proposed in good faith; (ii) the minority approach, adopted by the Sixth Circuit, requires inclusion of the contributions in the disposable income calculation; and (iii) the third approach allows the deductions only if they were consistent with retirement-plan contributions before bankruptcy. *Id.* at *4-7.

Judge Bloom's opinion is based on the language of section 541(b)(7), which excludes retirement-plan contributions from the estate and includes a hanging paragraph that says that such contributions "shall not constitute disposable income as defined in Section 1325(b)(2)." *Id.* at *4.

On the question of good faith required by Section 1325(a)(3) and (a)(7), Judge Bloom considered the debtor's age. Because he was near retirement, she said there was "nothing unusual about" making voluntary retirement plan contributions. *Id.* at *7-8. "Equity dictates that a debtor who is on the verge of retirement should be allowed to continue making voluntary contributions to a retirement account. Otherwise, the debtor would be deprived of the ability to obtain a fresh start." *Id.* at 8.

** 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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SAVE THE DATE FOR THE
BAR CARNIVAL!



DATE: **SUNDAY, FEBRUARY 11**
TIME: **NOON TO 3:30 PM**
PLACE: **WYCLIFFE COUNTRY CLUB**
WELLINGTON



TICKETS GO
ON SALE
JANUARY 1



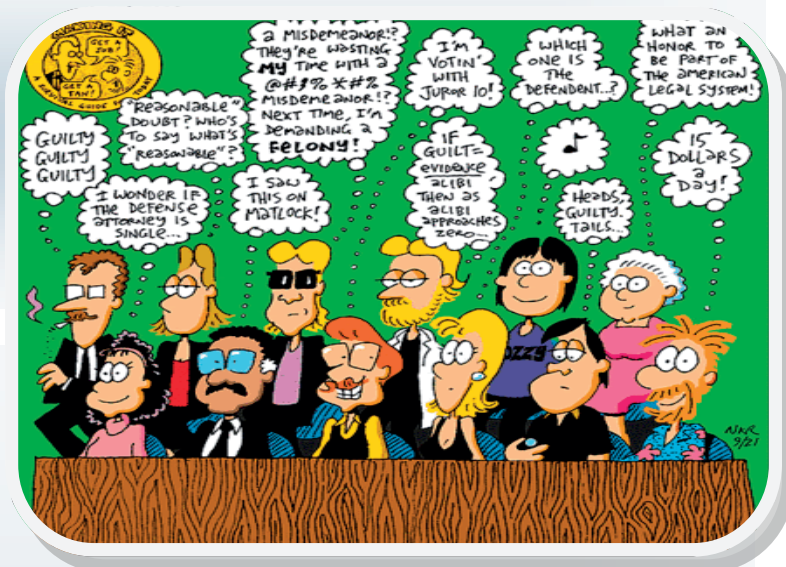
The Criminal Practice Committee of the Palm Beach County Bar Association presents

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



ART II: *Direct/Cross Examination of an Expert* by Matthew Menchel and Dr. Farhad Boeshaghi, 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

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.

Register online at www.palmbeachbar.org or by mail (return this form with your check)

CLER in process

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 \$10.00 for shipping and handling.

Allow one week for delivery. _____ Voir Dire _____ Cross/Direct of an Expert _____ Closing Arguments

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





BRIAN MOSKOWITZ

Attorney Well-Being

Welcome to the new monthly column on Attorney Well-Being. Why should you care about Attorney Well-Being? Good question. Before I answer the question let's look at the definition of Attorney Well-Being: "a continuous process toward thriving across all life dimensions." The focus is on thriving and being your best in every area of your life. This is a radical departure from the critical and necessary role played by Lawyer Assistance Programs that focus on helping lawyers with substance abuse and mental health issues. Well-Being focuses on adding a positive to your life while Assistance Programs focus on removing a negative. And while far too many lawyers suffer from mental health and substance abuse issues, the vast majority do not.

But just because the vast majority doesn't suffer from a mental health or substance abuse issue doesn't mean they are thriving at work or in their emotional health, physical health & fitness, relationships, or other areas of their lives. The good news is that there are proven strategies and tools that can help you increase your well-being and thrive in all areas of your life. That's why you should care about Attorney Well-Being.

Let's start with a simple practice developed by Dr. Martin Seligman, the founding father of Positive Psychology, called Three Good Things. Every night before you go to bed for the next week write down three things that went well that day and why they happened or what caused them to happen. Here's some examples, "I played tennis with my son because he asked me to", "Had lunch with my friend Greg today instead of eating at my desk. Called him last week and we made plans", "Left work at 5pm because I promised my family I would be home in time for dinner." Commit to this for one week (or more) and Dr. Seligman promises that you will be "less depressed, happier, and addicted to this exercise six months from now."

1 "The Path to Lawyer Well-Being: Practical Recommendations for Positive Change," the Report of the ABA National Task Force on Lawyer Well Being, August 2017.

2 "The Prevalence of Substance Abuse and Other Mental Health Concerns Among American Attorneys," a 2016 Study sponsored by the ABA Commission on Lawyer Assistance Programs and Hazelden Betty Ford Foundation.

3 "Flourish: A Visionary New Understanding of Happiness and Well-Being," Martin E.P. Seligman, PhD., Atria Books (2012).

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 January 18, 2018. Improve your well-being.

www.palmbeachbar.org



2017 PBCBA HOLIDAY Party

More than 300 members attended the Bar's annual holiday party and silent auction at the Kravis Center. The room was festive, the food was outstanding and the Young Lawyers and North County Sections raised more than \$16,000.00 for charity!



Greg Coleman, Judge Joe Marx, David Prather and Abby Bebe



Denise Mutamba, Carla Brown, E.D. and Lawonda Warren



Judge Scott Suskauer, Tama Kudman and Brett Richman



YLS President Andrea Lewis and Will Lewis



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TED BABBITT

STATUTE AUTHORIZING EX PARTE INTERVIEWS HELD UNCONSTITUTIONAL

In *Weaver v Myers*, 42 Fla. L. Weekly S906 (Fla. Nov. 9, 2017), the Florida Supreme Court was faced with a constitutional challenge to the 2013 Amendments to Fla. Stat. 766.106 and 766.1065. Those statutes authorize secret ex parte interviews as part of the informal discovery process of the presuit screening portion of the medical malpractice law. The questioned statutes provide that a prospective defendant in a malpractice case may interview the claimant's treating health care providers in secret without the presence of the plaintiff or the plaintiff's attorney and that such interviews can occur multiple times and include a broad variety of individuals including the defendants themselves, their attorneys, expert witnesses hired by those attorneys to defend the physician or hospital and the staff of those attorneys. The questioned statutes faced a constitutional challenge on the basis of right of access to courts and the right to privacy under the Florida Constitution.

The trial court granted the defendants' motions to dismiss on both the privacy and right to access questions. The trial court held that an estate cannot assert privacy rights on behalf of a decedent because those rights die with the decedent and further held that the secret ex parte interviews did not represent a material change in malpractice law to render the statutes impermissible burdens on access to court.

On appeal the First District Court of Appeals affirmed in *Weaver v Myers*, 170 So. 3d 873 (Fla. 1st DCA 2015). The First District held that these statutes merely imposed a condition precedent to suit without abolishing the substantive right to bring suit and thus upheld the statutes in the face of the constitutional challenges. The Supreme Court referred to the Florida Constitution Art. I, § 23 which explicitly states

Every natural person has the right to be let alone and free from governmental intrusion into the person's private life except as otherwise provided herein.

The Supreme Court cited *State v. Johnson*, 814 So. 2d 390, 393 (Fla. 2002) for the proposition that

A patient's medical records enjoy a confidential status by virtue of the right of privacy contained in the Florida Constitution.

The Supreme Court relied upon *Antico v. Sindt Trucking, Inc.*, 148 So. 3d 163, 164 (Fla. 1st DCA 2014) with reference to the question of whether death erases a right to privacy. At 909 the Court held
Thus, we now make explicit what the decision below and *Antico* necessarily implied – in all litigation contexts, a decedent does not retroactively lose and can maintain the constitutional right to privacy that may be invoked as a shield in all contexts, including but not limited to medical malpractice cases, against the unwanted disclosure of protected private matters, including medical information that is irrelevant to any underlying claim including but not limited to any medical malpractice claim. Death does not retroactively abolish the constitutional protections for privacy that existed at the moment of death.

The Supreme Court points out that absolutely nothing in the statute explains why the current adversarial procedure providing for full discovery in medical malpractice and wrongful death actions utilizing standard discovery procedures with notice and participation to all parties does not adequately secure access to relevant information “without trampling on the constitutional and private rights of a Florida citizen plaintiff” at 914.

It was obvious to the Supreme Court that the statutes in question require plaintiffs to forfeit their constitutional rights to privacy.

The facts demonstrate that the statutes challenged here would require *Weaver* to forfeit the constitutional right to privacy and expose her late husband's medical and other information (and potentially hers) up to two years prior to the alleged act of medical negligence, regardless of its relevance to her claim to prying lawyers, insurance companies, experts, and doctors to probe, as a condition to filing a wrongful death action.

Moreover, the mandatory authorization and secret, ex parte interview provisions empower these individuals and entities to actively engage nonparties in unsupervised interviews without the presence of the claimant, the claimant's representative, or the claimant's attorneys, potentially leaving exposure of irrelevant and constitutionally protected private information otherwise undiscoverable, and nearly impossible to address.

Based on what appears to be an obviously unnecessary intrusion and one sided elimination of the plaintiffs' rights, the Court concludes at 915:

In sum, we hold today that the right to privacy in the Florida Constitution attaches during the life of a citizen and is not retroactively destroyed by death. Here, the constitutional protection operates in the specific context of shielding irrelevant, protected medical history and other private information from the medical malpractice litigation process. Furthermore, in the wrongful death context, standing in the position of the decedent, the administrator of the decedent's estate has standing to assert the decedent's privacy rights. Finally, the Legislature unconstitutionally conditioned a plaintiff's right of access to court for redress of injuries caused by medical malpractice, whether in the wrongful death or personal injury context, on the claimant's waiver of the constitutional right to privacy. Therefore, we strike certain unconstitutional language from the 2013 amendments to section 766.106 and 766.1065 of the Florida Statutes which authorized secret, ex parte interviews.

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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- 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.,
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DAVID M. GARTEN

As a general rule, a revocable trust becomes irrevocable upon the settlor's death. In addition, a revocable trust may become irrevocable prior to the settlor's death. For example, the trust may provide that it becomes irrevocable upon the settlor's incapacity, or that the settlor can only revoke the trust with the consent of the non-settlor trustee. For obvious reasons, irrevocability is of critical importance to both the qualified beneficiaries of the trust and the successor trustee who needs to know where his or her duties lie.

Pursuant to the Florida Trust Code, Florida trusts are revocable by default. That is, unless the trust instrument states that the trust is irrevocable, the trust may be amended or revoked by the settlor. See §736.0602(1), F.S. A trust is revocable if it is revocable by the settlor without the consent of either the trustee or a person holding an adverse interest. See §736.0103(17), F.S. While a trust is revocable, the duties of the trustee are owed exclusively to the settlor. See §736.0603(1). An irrevocable trust is created when the right of revocation terminates. See §736.0802(5)(f)2.c., F.S.

In addition, §736.0207(2), F.S. reads: "An action to contest the validity of all or part of a revocable trust, or the revocation of part of a revocable trust, may not be commenced until the trust becomes irrevocable by its terms or by the settlor's death. If all of a revocable trust has been revoked, an action to contest the revocation may not be commenced until after the settlor's death. This section does not prohibit such action by the guardian of the property of an incapacitated settlor." [Emphasis added]

Settlor's Intent: A revocable trust may become irrevocable pursuant to the terms of the trust. For example, in *Jervis v. Tucker*, 82 So. 3d 126 (Fla. 4th DCA 2012), the settlor of a revocable trust was adjudicated incapacitated and her right to contract was removed. The following year, the settlor/ward, without the knowledge and consent of her guardian and without a court order, executed an amendment to her trust. The settlor/ward subsequently died and

Trustee's Duties Upon The Settlor's Incapacity

the trust beneficiaries sued to vacate the trust amendment. The appellate court, in affirming the lower court's order that the trust amendment was invalid, reasoned:

Here, the first amendment to Meikle's trust contains language which provides for the suspension of rights "[i]f, at any time during the continuance of [the] trust, Grantor is adjudicated incapacitated by a court of appropriate jurisdiction."

The Grantor's powers and those of Grantor/Trustee may be restored either by virtue of an order of an appropriate court having jurisdiction over Grantor, or upon the issuance and receipt by the Trustee of a written opinion from the physician or physicians on whose opinion the Trustee relied regarding the Grantor's capacity or if none are available, then two other licensed physicians who have examined the Grantor.

The plain meaning of the document shows that Meikle's capacity must have been restored by the court in order to amend her trust once she was adjudicated incapacitated and the right to control her property was removed and the responsibility of her property became Jems', as her trustee. Without a court order restoring her rights, she must have obtained two opinions by licensed physicians.

Revocation: Can an incapacitated settlor revoke his or her trust? This question was answered in the negative in *Genova v. Fla. Nat'l Bank*, 433 So. 2d 1211 (Fla. 4th DCA 1983), approved *Florida Nat'l Bank v. Genova*, 460 So. 2d 895 (Fla. 1984), wherein the court held that the settlor cannot terminate his trust if he is incapacitated. The court cited to the Restatement (Second) of Trusts § 339, comment a, page 171 (1957), which reads:

If the settlor is not under an incapacity at the time when he creates the trust, but he subsequently becomes under an incapacity, he cannot thereafter terminate the trust. Thus, if the settlor becomes insane or is judicially declared a spendthrift, he cannot terminate the trust. The mere fact, however, that he is a person who is unable wisely to manage or dispose of his property does not preclude him from terminating the trust and compelling the trustee to re-transfer the trust property to him if he is the sole beneficiary of the trust; and it is immaterial that his purpose in creating the trust was to

put the management of his property out of his own hands, because of his fear that he would mismanage it, and to protect himself against his own incompetence, wasteful habits or intemperance. He can terminate the trust, if he is not under an incapacity, because he is both the settlor and the sole beneficiary of the trust.

Accord *Scott*, *The Law of Trusts*, § 339, p. 2699 (3d); *Macintyre v. Wedell*, 12 So. 3d 273 (Fla. 4th DCA 2009); *Brundage v. Bank of Am.*, 996 So. 2d 877 (Fla. 4th DCA 2008) ("While a settlor can consent to any actions regarding the revocable trust, including termination, that ability ceases if the settlor becomes incapacitated", citing *Genova*).

§736.0603, F.S. v. UTC §603(a): Sec. 736.0603, F.S. is modeled, in part, after the Uniform Trust Code. UTC §603(a) reads: "While a trust is revocable [and the settlor has capacity to revoke the trust], rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the settlor." The Comments to UTC 603 read in relevant part:

This section recognizes that the settlor of a revocable trust is in control of the trust and should have the right to enforce the trust. Pursuant to this section, the duty under Section 813 to inform and report to beneficiaries is owed to the settlor of a revocable trust as long as the settlor has capacity.

If the settlor loses capacity, subsection (a) no longer applies, with the consequence that the rights of the beneficiaries are no longer subject to the settlor's control. The beneficiaries are then entitled to request information concerning the trust and the trustee must provide the beneficiaries with annual trustee reports and whatever other information may be required under Section 813. However, because this section may be freely overridden in the terms of the trust, a settlor is free to deny the beneficiaries these rights, even to the point of directing the trustee not to inform them of the existence of the trust. Also, should an incapacitated settlor later regain capacity, the beneficiaries' rights will again be subject to the settlor's control.

Concluding that uniformity among the states on this issue is not essential, the drafting committee has decided to place the reference to the settlor's incapacity

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Ethics. Professionalism. Civility. Law students take an ethics course in law school. They even have to pass an ethics exam in order to become a member of The Florida Bar. But what about professionalism and civility? Do attorneys – both new and experienced – really understand how professionalism differs from ethics?

Professionalism is not the same as ethics. In 1999, the Conference of Chief Justices adopted a "National Action Plan on Lawyer Conduct and Professionalism" which defined professionalism as follows:

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The Fifteenth Judicial Circuit, along with the Professionalism Committee of the Palm Beach County Bar Association, has created a professional path to guide our newest attorneys through the maze of the local legal community.

In a perfect world, a new attorney graduates from law school, passes the bar exam, and, fingers crossed, becomes gainfully employed with a firm or organization that has a training and mentoring program. Reality, however, is that many new attorneys join small firms, serve as "coverage counsel" or per diem attorneys, or even hang up their own shingle, without the benefit of a training program or a mentor.

Walking New Attorneys Down the Path of Professionalism and Civility

While these attorneys may understand unethical conduct, they may not be aware of conduct that is viewed as unprofessional or uncivil. Justice Sandra Day O'Connor summed up the difficulty of identifying civility when she said "[u]nfortunately civility is hard to codify or legislate, but you know it when you see it. It's possible to disagree without being disagreeable."

The New Attorney Breakfast, now in its sixth year, helps to fill the gap and explains to new attorneys how professionalism plays an important role in the legal practice and building one's reputation with the bench and bar. This year, the New Attorney Breakfast was held on November 2, 2017, in the cafeteria at the West Palm Beach Courthouse with more than 25 judges and magistrates, 35 local attorneys and 100 new attorneys participating. It showcased more than 15 local bar associations, the Legal Aid Society of Palm Beach County and the Guardian Ad Litem office.

The breakfast welcomed the new attorneys to Palm Beach County, introduced them to the local legal practice, set forth the expectations of the judiciary, and invited them to join a voluntary bar association where they can receive mentoring and guidance. Welcoming remarks were made by Judge Jeffrey Colbath, former Chief Judge; Sia Baker Barnes, President of the Palm Beach County Bar Association; and Andrea Lewis, President of the Young Lawyer Section of the Palm Beach County Bar Association. An hour-long panel discussion with Judges Oftedal, Blanc, Cunningham, Weiss, and Rowe and Attorneys Greg Coleman, David Prather, Olivia Liggio, John "Jack" Rice, Peter Hunt, and Denise Mutamba addressed questions about the changes in the legal practice, expectations of judges, building a reputation, and handling unprofessional attorneys. A booklet with detailed information about the various court divisions, administrative orders, and practice tips were provided to all participants.

Also in attendance were the Legal Aid Society of Palm Beach County and Guardian ad Litem office to inform of local pro bono opportunities.

Attendees were offered the opportunity to meet with the various bar associations, take a behind the scenes tour of the courthouse, and attend an e-filing demonstration by the Clerk's Office.

Over the years, local law firms and governmental agencies have come to understand the importance of the breakfast and encourage their new associates to attend. It is a great way for recently admitted attorneys to speak with both young and seasoned attorneys in the community. Most importantly, the New Attorney Breakfast shows the newest members of The Florida Bar that the local bench and local bar not only care about the state of the legal practice in Palm Beach County but that they care about the future careers of its newest attorneys.

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Dear Mr. Comiter,

On behalf of Lantana Road Branch Library I would like to express our thanks to you for your program "Small Claims Lawsuits and Mediation" here on Tuesday, December 5th, 2017.

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Florida Real Property and Business Litigation Report

Turbeville v. Financial Industry Regulatory Authority, Case No. 16-11083 (11th Cir. 2017). No private right of action exists under the Exchange Act of 1934 for F.I.N.R.A. members and associated persons to sue F.I.N.R.A. for violating its own internal rules.

Ricketts v. Village of Miami Shores, Case No. 3D16-2212 (Fla. 3d DCA 2017).

An “as-applied” constitutional challenge to a zoning ordinance must demonstrate that there are no set of circumstances under which the ordinance would be constitutional.

Lucky Star Horses, Inc. v. Diamond State Insurance Company, Case No. 3D17-725 (Fla. 3d DCA 2017).

Arbitration is not waived, despite the passage of time and the filing of numerous pleadings, until the party to the arbitration clause is brought into the case.

BK Marine Construction, Inc. v. Skyline Steel, LLC, And Great American Insurance Company, Case No. 4D16-1241 (Fla. 4th DCA 2017).

A party seeking judgment for invoiced construction materials delivered to and incorporated into a jobsite must correspond the invoices to the allegations of the complaint, and if there are multiple portions of a jobsite, must demonstrate as to which portion of the jobsite the materials were incorporated into.

The Waterview Towers Condominium Association, Inc. v. City of West Palm Beach, Case No. 4D16-2858 (Fla. 4th DCA 2017).

A party, including a lessee, who joins in or consents to a declaration of condominium subjects their property to the declaration and all of its provisions. Additionally, restrictive covenants may be enforced by grantees among or between themselves where the grantees obtained their property from a common grantor and the restrictive covenants were part of “a general plan of development or improvement” or a “general building scheme.”

In Re: Amendments to The Rules Regulating The Florida Bar (Biennial Petition), Case No. SC16-1961 (Fla. 2017).

The Florida Supreme Court amends the rules regulating The Florida Bar, including providing for inactive status for board certified attorneys, creating board certification status for International Litigation and Arbitration attorneys, and expanding existing eligibility requirements to allow more lawyers to serve as emeritus lawyers, providing pro bono legal services to through an approved legal aid organization.

Arlington Pebble Creek, LLC v. Campus Edge Condominium Association, Inc., Case No. 1D16-1347 (Fla. 1st DCA 2017).

An association seeking fraudulent inducement and negligent misrepresentation claims against a developer resulting from a condominium turnover must still prove intent, reliance and damages to prevail on its claims.

Surf Works, L.L.C. v. City of Jacksonville Beach, Case No. 1D16-3312 (Fla. 1st DCA 2017).

A miscarriage of justice authorizing reversal on second-tier certiorari occurs when a party complies with the zoning law seeking the highest and best use of their property, and the governing authority refuses to apply the correct law.

Deutsche Bank National Trust Company v. de Brito, Case No. 3D16-1466 (Fla. 3d DCA 2017).

A witness need only be generally familiar with another company's records or the boarding process by which the records were incorporated into a party's records to satisfy the Business Records Exception to the Hearsay Rule.

In Re: Standard Jury Instructions In Civil Cases—Report 17-01, Case No. SC17-451 (Fla. 2017).

Standard Civil Instruction 201.2 is amended to include language regarding communication with court personnel outside the courtroom, and Standard Civil Instruction

202.4 is amended to clarify that jurors must ask questions of a witness before the witness leaves the witness stand.

Philip Morris USA, Inc. v. Duignan, Case No. 2D15-5055 (Fla. 2d DCA 2017).

A jury instruction requiring “detrimental reliance on a statement” may not be proper in a fraudulent concealment or fraudulent omission case.

Tramontana v. Bank of New York Mellon, Case No. 2D16-2990 (Fla. 2d DCA 2017).

An appellate court will not reverse on an issue involving trial testimony absent a trial transcript or fundamental error.

Echeverry v. Deutsche Bank National Trust Company, Case No. 4D16-3611 (Fla. 4th DCA 2017).

A certificate of sale issued under Florida Statute sec. 45.0315 divests a borrower of her equity of redemption, and thus a bankruptcy filed after this certificate of sale does not bar the issuance of a certificate of title.

Nationstar Mortgage, LLC v. Martins, Case No. 4D16-3735 (Fla. 4th DCA 2017).

A lender's unilateral decision to leave a note and mortgage with the Clerk of the Court in the file of a previously filed foreclosure does not establish standing.

Williams v. Skylink Jets, Inc., Case No. 4D16-4170 (Fla. 4th DCA 2017).

“Technical admissions” to Requests for Admissions will turn unliquidated sums into liquidated sums for purposes of a final judgment.

Green Emerald Homes LLC v. Green Tree Servicing LLC, Case No. 4D17-983 (Fla. 4th DCA 2017).

A party seeking to effect substitute service on a limited liability company must comply with Florida Statute section 48.062(3) if the party has already exerted diligent but unsuccessful efforts to serve under subsections (1) and (2), and must also comply with section 48.161(1) by sending notice to the defendant, via certified or registered mail, that substitute service has been effected through the Secretary of State, (ii) filing the return receipt from the defendant, and (iii) filing an affidavit of compliance.

Trustee's Duties Upon The Settlor's Incapacity (con't.)

Continued from page 15

in Section 603(a) in brackets. Enacting jurisdictions are free to strike the incapacity limitation or to provide a more precise definition of when a settlor is incapacitated....

In a number of UTC states, the legislatures have stricken the reference to the settlor's capacity, meaning that in those state the trustee's duties are owed exclusively to the settlor even if the settlor is incapacitated. See *Manon v. Orr*, 856 N.W.2d 106, 289 Neb. 484 (Neb. 2014). In contrast, in those states that have not stricken the reference to the settlor's capacity, the trustee may owe a duty to the beneficiaries if the settlor is incapacitated. See *Drake v. Pinkham*, 217 Cal. App. 4th 400 (Cal. App. 2013), citing Rest. 3d of Trusts, §74, which is essentially the same as UTC §603(a).

Florida: Although §736.0603(1), F.S. does not reference the settlor's capacity, it is still not clear whether the trustee's duties are owed exclusively to the settlor. There is no case law or legislative history on point, and if an irrevocable trust is created when the right of revocation terminates [§736.0802(5)(f)2.c.], then logic dictates that the trustee owes the trust beneficiaries a duty upon the settlor's incapacity, conditioned upon the settlor regaining capacity. During the period of incapacity, the contingent remainder beneficiaries should have standing to challenge the trustee's duties and may be guilty of laches if they fail to do so. See *Drake*, supra.

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Florida Bar committees are a meaningful and rewarding opportunity for Florida lawyers to enhance our profession and improve the services we provide. The annual committee preference forms for Bar members seeking appointment are now available at floridabar.org and are due by January 15. President-elect Michelle Suskauer will make about 500 appointments to over 70 committees and she wants to make sure she has a diverse group of lawyers from which to choose. Every Florida Bar Committee and its description with current membership can be found on the Bar's website.

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FEBRUARY 11 | SUNDAY | NOON - 3:30PM WYCLIFFE COUNTRY CLUB | 4650 WYCLIFFE COUNTRY CLUB BLVD, WELLINGTON

NCS hosts UMC/Coffee at the North County Courthouse

North County Section members recently started their day with "Coffee at the Courthouse." The informal event was meant to foster relationships and dialogue between the judiciary and members of our Bar. A special thank you to Judges Scher, Kroll, Miller and Magistrates Williams and Kirigin for attending



Judge Jim Nutt and Judge Karen Miller



Judge Kathleen Kroll and Brett Barner



Preston Fields



Magistrate Jean Adel Williams, Larry Buck and Magistrate Diane Kirigin



Judge Rosemarie Scher and Mitch Kitroser



NCS President W Mason and NCS Secretary Misty Chaves

YLS Sidebar Series

No one knows legal evidence better than FSU Law Professor Charles W. Ehrhardt who was recently in town to be our keynote speaker during a recent YLS Sidebar Series. The program was also streamed live to members watching simultaneously at the South County Courthouse.



Megan McNamera, Jennifer Lipinski, Professor Charles W. Ehrhardt, Dane Leitner and YLS President Andrea Lewis



Scott Murray and Reid Bierer



Bryan Boysaw and Christopher Bellows



Skip Smith and Ryon McCabe



Judge Dina Keever and Brian LaBovick



(Ret) Judge Lucy Brown, Andrea McMillian and Judge Cymonie Rowe



Ann Breeden, Santos DiGangi, Rich Cartlidge and Paige Gillman



Larry Buck and Judge Laura Johnson

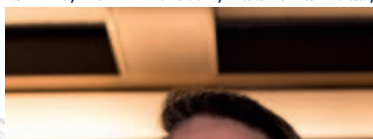


Jeanmarie Whalen and Julie Littky-Rubin

YLS NO SHAVE NOVEMBER



YLS held its Third Annual No Shave November fundraiser at PGA National on November 30th. This event was a huge success. Over \$18,500 in donations was raised by the headliners and to reach their goal of \$20,000, Jay Scarola with Millennium Settlements donated additional funds. The Legal Aid Society of PBC and Cancer Alliance are the deserving beneficiaries of this successful occasion. Special Thanks to Our Headliners: Bob Bertishch, Stanton Collemer, Santo DiGangi, David Fine, Kevin Rolston, Paul Shalhoub, David Silvers and Scott Smith



Congratulations to Paul Shalhoub, the winning headliner, raising the most money in donations.

PBCBA CLE AUDIO LIBRARY

Mail-In Order Form

PREFERRED METHOD IS TO ORDER ONLINE: www.palmbeachbar.org/app/cle

Audio available in the following practice areas: (Board certification and Technology credits available with some seminars)

ADR	Commerical Litigation	Estate and Probate	Real Estate
Appellate	Construction	Family Law	Securities
Bankruptcy	Criminal Law	Miscellaneous	Technology
Business	Diversity	PI/Wrongful Death	Workers' Compensation
Civil Trial	Employment Law	Professionalism	

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City _____ State _____ Zip Code _____

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Email Address: _____

Please attach a copy of the of the course(s) listed online with this form: www.palmbeachbar.org/app/cle

AREA OF LAW	NAME OF SEMINAR	EXP DATE	Member Price	Non-Member Price
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

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Palm Beach County Bar Association
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

E~DISCOVERY: PRACTICAL, PAPERLESS AND BEYOND

Friday, January 19

11:30 am - 1:00 pm

American Lung Association

2701 N. Australian Avenue West Palm
Beach

Presented by the Solo and Small Firm Committee

E-Discovery and the protection of privileged electronic documents are at the forefront of law firms' best practices. Join the Solo and Small Firm Practice Committee for this one hour seminar And luncheon that guides us through basic principles of gauging appropriate disclosure while protecting clients' interests.

REGISTRATION INFORMATION:

RSVP online @ www.palmbeachbar.org
(or) print this form and mail it along
with your payment to:

PBCBA, P.O. Box 17726, WPB 33416

Registration Fee: \$20.00 for PBCBA members,
includes lunch and 2.0 General CLE Credit

Price increases by \$5.00 after 1.17.18

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

How to (Ethically) Market an Appellate Practice: Valuable Tips for Growing Your Business



MONDAY, JANUARY 22, 2018

11:30 A.M. - 1:00 P.M. (includes lunch)

American Lung Association

2701 Australian Avenue

West Palm Beach, FL

Welcome & Introductions - Samuel Walker, Esq., *CPLS, P.A.*
Moderated by Nichole J. Segal, Esq., *Burlington & Rockenbach, P.A.*;
Board Certified in Appellate Law; and Tania Williams, Esq.,
The Williams Firm, P.A.

PANEL:

Dineen Wayslik, Esq., *DPW Legal; Board Certified in Appellate and Intellectual Property Law*

Craig Goldbenfarb, Esq., *Law Offices of Craig Goldenfarb, P.A.*

Sorraya Solages-Jones, Esq., *Lytal, Reiter, Smith, Ivey & Fronrath*

The How to (Ethically) Market an Appellate Practice seminar is designed to provide attorneys with practical content to increase their competence and proficiency in ethically growing a legal practice. This seminar provides more than simple marketing tips to lawyers. It provides information to assist in reducing the errors made by practitioners in the business of running a law firm. This seminar also discusses methods young associates can utilize to ensure ethical conduct while growing within their firm's practice and culture.

REGISTRATION:

Credit: 1.0 CLER; 1.0 Ethics. Cost: \$35.00 members; \$75.00 non-members

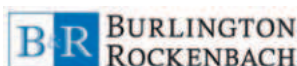
[Register online at www.palmbeachbar.org](http://www.palmbeachbar.org) (or) return this form with your check

Those registering after 1/15/18 add \$10.00 late fee. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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. Palm Beach County Bar Association, P.O. Box 17726, West Palm Beach, FL 33416. 561-687-2800. 1/22/18 Appellate



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

Sponsors



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**

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., Methe & 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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Silver level sponsors



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)

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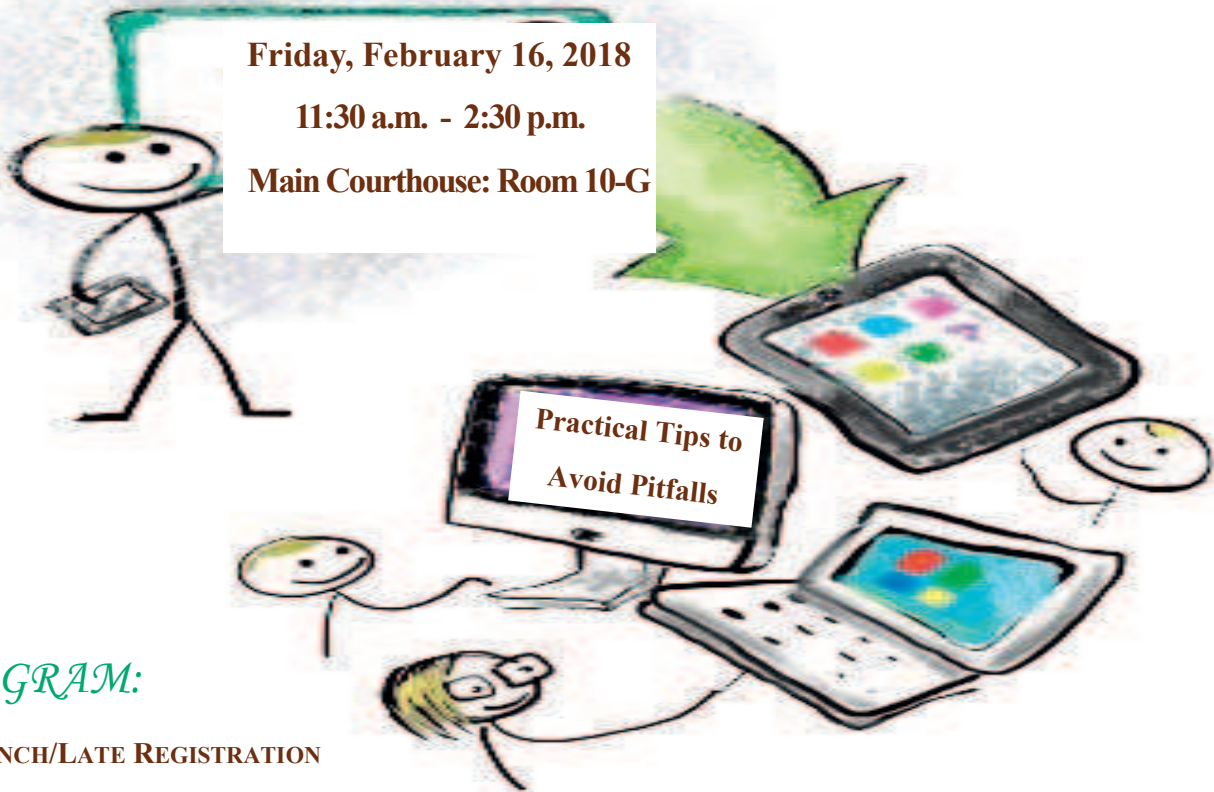
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2/9/18 Paralegal



ETHICAL USE OF TECHNOLOGY & DIGITAL EVIDENCE IN LITIGATION

Presented by the Technology and Business Litigation CLE Committees



Friday, February 16, 2018

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

Main Courthouse: Room 10-G

PROGRAM:

11:30: LUNCH/LATE REGISTRATION

12:00: ETHICS AND EDISCOVERY: What you don't know will hurt you. Practical tips to avoid pitfalls presented by 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 SPOILIATION OF ESI - DELETED TEXT MESSAGES AND HOW TO SECURE AN ADVERSE INFERENCE presented by 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.



RSVP

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)

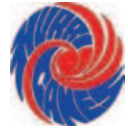
Name: _____ Email address: _____

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 1 week for delivery. PBC Bar Association, P.O. Box 17726, W. Palm Beach, FL 33416.

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**

*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)

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. 2/20/18 Construction law

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



Ward Damon, a multi-disciplined West Palm Beach-based law firm, continues to expand its practice with the addition of attorneys Caryn A. Stevens and Ana P. Moretto. Stevens is an associate who focuses her practice exclusively in the areas of marital and family law, and Moretto is a litigation associate who concentrates her practice in the areas of commercial and complex litigation.



Lindsey Wagner of Scott Wagner and Associates, P.A. in Jupiter, FL spoke as a panelist on Practical Strategies for Ending the Gender Wage Gap at the American Bar Association's Labor and Employment 11th Annual Conference in Washington, D.C.



R. Lee McElroy IV, a Shareholder of Downey | McElroy, P.A., has been elected as a Fellow of the American College of Trust and Estate Counsel ("ACTEC"). ACTEC is a national association of trust and estate attorneys peer-elected to membership based on substantial contributions to the field of trust and estate law and "by demonstrating the highest level of integrity, commitment to the profession, competence, and experience as trust and estate counselors."



Jones, Foster, Johnston & Stubbs, P.A. announces that attorneys Scott G. Hawkins and Michael T. Kranz have been listed in the 2018 edition of Best Lawyers in America as West Palm Beach "Lawyers of the Year."

Jones, Foster, Johnston & Stubbs, P.A. announces that they have been named a "Tier 1 Best Law Firm" by U.S. News & World Report and Best Lawyers in America.

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- Fla. Bar Bd. Cert. Civil Trial Lawyer, 1983-2003
- Fla. Cert. Circuit Civil, Appellate & Family Mediator
- Member, AAA Roster of Neutrals for Commercial and Construction Arbitration and Mediation
- Qualified Fla. Arbitrator
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* DECEASED
** FLORIDA BAR PRESIDENT
*** DECEASED, FLORIDA BAR PRESIDENT, SUPREME COURT JUSTICE
**** DECEASED, FLORIDA BAR PRESIDENT
***** DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE

CALENDAR OF EVENTS

JANUARY 2018

MONDAY, JANUARY 1
OFFICE CLOSED
HAPPY NEW YEAR

WEDNESDAY, JANUARY 3
5:30PM – 6:30PM
SOUTH COUNTY BAR ASSOCIATION
BOARD MEETING
SACHS SAX CAPLAN

FRIDAY, JANUARY 5
8:30AM – 9:30AM
ADR COMMITTEE MEETING
515 N FLAGLER DR, GL

TUESDAY, JANUARY 9
11:00AM – 12:30PM
NCS CHARITY AND BOARD MEETING
DUFFY'S

TUESDAY, JANUARY 9
12:00PM – 1:00PM
PARALEGAL COMMITTEE MEETING
515 N FLAGLER DRIVE

TUESDAY, JANUARY 9
12:00PM – 1:00PM
YLS BOARD MEETING
515 N FLAGLER DRIVE, LARGE
CONFERENCE ROOM

WEDNESDAY, JANUARY 10,
12:00PM – 1:00PM
PROFESSIONALISM COMMITTEE
MEETINGS
FOURTH DCA

WEDNESDAY – SUNDAY, JANUARY 10 - 14
FLORIDA BAR YLD BOARD OF GOVERNORS
ST. PETERSBURG

THURSDAY, JANUARY 11
12:00PM – 1:00PM
PI COMMITTEE MEETING
JOE LANDY'S OFFICE

THURSDAY, JANUARY 11
12:00PM – 1:00PM
UNIFIED FAMILY PRACTICE COMMITTEE
JUDICIAL COURT ROOM

THURSDAY, JANUARY 11,
2:00PM – 3:30PM
LANDLORD TENANT
JUPITER BRANCH LIBRARY

FRIDAY, JANUARY 12,
12:00PM – 1:00PM
CONSTRUCTION LAW COMMITTEE MEETING

BECKER & POLIAKOFF
FRIDAY, JANUARY 12,
5:30PM – 7:00PM
FEDERAL BAR ASSOCIATION LUNCHEON
COLONY HOTEL

SUNDAY, JANUARY 14, 7:30AM
YLS 5K RACE
MANATEE LAGOON

MONDAY, JANUARY 15
BAR OFFICE CLOSED
MLK OBSERVED

TUESDAY, JANUARY 16,
12:00PM – 1:00PM
CDI MEETING
JUDICIAL CONFERENCE ROOM

WEDNESDAY – SATURDAY,
JANUARY 17 – 20
FLORIDA BAR WINTER MEETING
DOUBLE TREE ORLANDO

THURSDAY, JANUARY 18,
11:45AM – 1:00PM
FAWL LUNCHEON
KRAVIS CENTER

THURSDAY, JANUARY 18,
5:30PM – 7:00PM
YLS HAPPY HOUR
DUE SOUTH

FRIDAY, JANUARY 19,
12:00PM – 1:00PM
SOLO / TECH SEMINAR
LUNG ASSOCIATION

MONDAY, JANUARY 22,
11:30AM – 1:00PM
APPELLATE SEMINAR
LUNG ASSOCIATION

MONDAY, JANUARY 22,
6:30PM – 7:30PM
SMALL CLAIMS PROGRAM
OKEECHOBEE BRANCH LIBRARY

TUESDAY, JANUARY 23,
12:00PM – 1:00PM
BENCH BAR MEETING
LUNG ASSOCIATION

TUESDAY, JANUARY 23,
12:15PM – 1:30PM
PRO BONO CIRCUIT MEETING
LYNORA'S CLEMATIS – UPSTAIRS ROOM

WEDNESDAY – SATURDAY,
JANUARY 24 – 27
FLORIDA BAR BOARD OF GOVERNORS
TALLAHASSEE

WEDNESDAY, JANUARY 24,
11:45AM – 1:15PM
CRIMINAL PRACTICE SEMINAR
JUDGE K'S COURTROOM

WEDNESDAY, JANUARY 24,
5:00PM – 6:00PM
BAR BOARD MEETING
SEARCY DENNEY

THURSDAY, JANUARY 25,
12:00PM -1:00PM
JUDICIAL RELATIONS COMMITTEE MEETINGS
JUDICIAL DINING ROOM

TUESDAY, JANUARY 30,
12:00PM – 1:00PM
JUDICIAL LUNCH
NORTH END CAFETERIA

WEDNESDAY, JANUARY 31,
12:00PM – 1:00PM
REAL ESTATE COMMITTEE MEETING
THE BOULEVARD GOURMET DELI



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PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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JOIN PALM BEACH COUNTY BAR ASSOCIATION'S JUDICIAL RELATIONS COMMITTEE & PALM BEACH COUNTY FAWL

TUESDAY JANUARY 30, 2018
12:00 - 1:00 P.M.
IN THE 15TH JUDICIAL CIRCUIT
COURTHOUSE CAFETERIA (NORTH END)
FOR A

TOWN HALL DISCUSSION

FEATURING PANELISTS:

Chief Judge Krista Marx, Judge Daliah Weiss, Judge
Jessica Ticktin, Fred Cunningham, Nicole Atkinson,
Sia Baker-Barnes, & Katherine Kiziah

1.0 CLER Approved

DISCUSSION TOPICS:

Firm Perspective: Practical tips and tools to help women
grow and succeed in the law firm setting.

Court Perspective: Encouraging women to seek
opportunities on the bench, discussion on differences in
gender communication and impact on the bench, and
ways Judges can assist younger attorneys to have
opportunities to present the case in the courtroom.

COST \$35 MEMBERS, \$75 NON-MEMBERS

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EARLY RSVP ENCOURAGED - **SPACE IS LIMITED!**

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