



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

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Palm Beach County Bars to Host A Mental Health and Wellness Seminar



Scott L. Rogers



Dori Foster-Morales

Scott L. Rogers, University of Miami School of Law speaks on the Power of Mindful to Achieve Balance and Success

Dori Foster-Morales, FL Bar's Special Committee on Mental Health & Wellness Awareness discusses mental health and substance abuse issues

Mental Health and Wellness Luncheon April 18, 2018

Join us for a live program including a positive and empowering conversation about attorney wellness. We'll talk about anxiety, depression, substance abuse and tell you how to find help.

(Read More on pg 6)



2018 BENCH BAR KEYNOTE SPEAKER

Palm Beach County Bar Association is pleased to announce that PBC Commissioner Dave Kerner, Esq. will be joining us at this year's event as our keynote speaker. Commissioner Kerner was elected to the Palm Beach County Board of County Commissioners in November 2016. Commissioner Kerner is also of Counsel with the firm Schuler, Halvorson, Weisser, Zoeller and Overbeck, P.A. and has a long history of public service.

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 Harriet 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 30, 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

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The Bulletin

Palm Beach County
Bar Association

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

Mark Your Calendar

March 9:
Bench Bar Conference

April 18:
Health & Wellness Luncheon

April 20:
~~Cannabis Law Summit~~
(THIS EVENT IS CANCELLED)

April 24:
Judicial Reception

May 4:
Law Day Luncheon

May 17:
NCS 16th Annual Jurist of the Year

June 9:
96th Annual Installation Banquet

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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, as they pertain to both criminal and civil trials.

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



2.5 CLER; 1.0 Ethics. Certification credits: 2.5 in each of the following: Appellate Practice, Criminal Appellate Law, Criminal Trial Law and Juvenile Law. 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

PRESIDENT'S Message

We are making progress!!

This proved to be much harder than expected, but we believe that process is nearly done.

After an extensive bidding process and due diligence, we have hired the Sabatello Company to reconstruct our offices, and construction is underway. The process is expected to take 5-6 months, and I am hopeful that we will finish the project in June.

A few other issues you should know about- (1) Our historical items were preserved and will be placed back in our offices when construction is completed. (2) we are working on technological improvements that will provide new technology to our members, more to come on this. And (3), a bit of bad news, we have termites! The treatment process for this is underway as well.

Please know that your board members have been working extremely hard to get us back into our building, and more importantly, to make sure this process is handled appropriately. Special thanks go out to Immediate Past President John Whittles, Dean Xenick and W Mason, who have been invaluable throughout this process, and our amazing Executive Director, Carla Tharp Brown.

Here's to progress!



Rosalyn Sia Baker-Barnes
2017-18 PBCBA President

So lately, the question I get most often is, "what's going on with the bar building?" The answer is- it's complicated! But we are making progress. So here's the story. The building's frame is intact, and so from the outside, you would probably never know there was a problem. The inside, however, is completed gutted. How did this happen?

On January 31, 2017, a car accident at approximately 3:00 a.m. on Belvedere Road sets off a chain of events. A car strikes a light pole, which results in the bar building losing power. Unbeknownst to us, the power surge causes an electrical fire located at one of the building's breakers. Sprinklers automatically activate, but they are not strong enough to stop the fire. Because of the time of day, no one was present at the building, and by the time our staff arrives to start their day, there is extensive fire and smoke damage.

We immediately hired a remediation company to remove the affected areas. Initially we were hopeful that part of the interior could be saved, but after extensive evaluation, it was clear that the building would need to be gutted. Following the completion of that process, preparations began for the rebuild, including multiple unsuccessful efforts to eliminate the smell of smoke in the building.



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



WE WILL REBUILD

NEW MEMBERS

MARCH 2018

Reginald C. Armor:
Tulsa University, 2012;
Lake Park

Carol Aronson:
Brooklyn Law School, 1985;
Solo Practitioner
Boynton Beach

Meghan Carney:
Florida Registered Paralegal
Membership
Lesser, Lesser, Landy and
Smith, P.A.
West Palm Beach

James F. Carroll:
Catholic University of America,
1981
Solo Practitioner
Riviera Beach

Edtien P. Dozois:
University of Florida, 2007
Associate in the Law Office of
Jeffrey Hickman
West Palm Beach

Kathryn D. Freiburger:
University of Richmond, 2013
Solo Practitioner
West Palm Beach

Marius Ged:
Nova Southeastern University,
2005;
Ged Lawyers, LLP
Boca Raton

William E. Goebel:
Florida Coastal School of Law,
2014
Kanner & Pinaluga, P.A.
West Palm Beach

Matthew A. Goldberger
Georgetown University, 2013
The Goldberger Firm
West Palm Beach

Michael K. Grife:
Nova Southeastern University,
2005
The Grife Law Firm
Boca Raton

Carol Lesnick:
Florida Registered Paralegal
Membership
Squire Patton Boggs, LLP
West Palm Beach

Bryan Mittler:
Barry University, 2013
Solo Practitioner
Delray Beach

Dina L. Rosenbaum:
Nova Southeastern University,
2017 Associate in Rosenbaum
PLLC
West Palm Beach

Jeffrey M. Schacknow:
Emory University, 2017
Associate in Holland and
Knight, LLP
West Palm Beach

Katie Varsegi:
DePaul University, 2005;
Partner in HVW Law Group, LLC
Boca Raton

Elizabeth A. Yohe:
Tulane University, 2003
Boca Raton.

Welcome!

BOARD Meeting Attendance

2017-2018

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

Mental Health and Wellness *(con't from Cover Story)*

The Palm Beach County Bar Associations Judicial Relations and Solo Small Firm Committees in conjunction with the following Bar Associations, The Federal Bar Association, F. Malcolm Cunningham, Sr. Bar Association, Hispanic Bar Association, Palm Beach Association of Criminal Defense Lawyers, Florida Association of Women Lawyers and the South Palm Beach County Bar Association request that you please join us for a special luncheon to discuss the important issue of mental health and wellness that effect our entire legal profession.

We're pleased to have two guest speakers including Board of Governors member and chair of The Florida Bar's Special Committee on Mental Health and Wellness of Florida Lawyers, Dori Foster-Morales who will talk about the Bar's efforts to destigmatize mental health and substance-abuse issues.

In addition, Scott Rogers from the University of Miami School of Law will be with us to discuss the Power of Mindful Awareness to Achieve Balance and Success.

Professor Rogers is a nationally recognized leader in the area of mindfulness and law.

This program concludes with a Town Hall Meeting: An interactive discussion with the Florida Bar including the luncheon speaker Scott Rogers.

We'll talk about services you would like from the Florida Bar to facilitate the mental health and wellness of our members. Admirals Cove, Jupiter Florida

This luncheon is planned for Wednesday, April 18, 2018 from 11:45 a.m. to 2:00p.m. at Admiral's Cove Country Club in Jupiter.

Pre-registration is required online @ www.palmbeachbar.org

Register TODAY



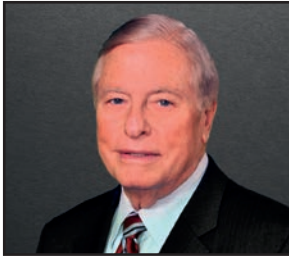
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KEN STERN, JUDGE (RET.)

How to Win Your Trial During Mediation

You've been there often - much time and money has been spent getting discovery and other pretrial motions set and heard, but you still have not obtained the discovery and evidence needed even to settle the case, much less try it. Your client is expressing frustration with the process and with you. What do you do? What you do is concentrate on expediting the process so that you can mediate the case to a settlement that will be a shortcut to success. Here's how:

A. Get pending motions resolved

(1) Compromise on discovery issues and file Agreed Orders

Seek agreement from opposing counsel to Agreed Orders resolving pending disputes (e.g., agreeing to limit the scope of a discovery motion, or agreeing to a format for protecting privileged information by limiting who may see it).

(2) Keep moving for sanctions if opposing counsel chronically fails to fulfill his/her discovery obligations; the opposing party will have little tolerance for his/her attorney's antics when the client suffers.

(3) Use a Special Magistrate (aka Special Master) to hear discovery motions.

Since opposing counsel probably shares your frustration at getting motions and objections resolved, file a Joint Motion for Appointment of a Special Magistrate together with an Agreed Order, and the Court will enter the Order. The Agreed Order should name the person being appointed as a Special Magistrate, and should specify the Motions to be heard. The Magistrate will confer with you and opposing counsel to select the date(s) and location for the hearing(s), and to specify the format in which the relevant documents (each Motion, Answer Memorandum and Reply Memorandum, with exhibits) should be presented ahead of the first hearing date.

At the conclusion of the hearings, the Magistrate will take all matters under advisement and will issue a Report and Recommendations to the Court. These are not binding; either side may file Exceptions,

asking the Court to rule adversely to specific Recommendations. However, if the Recommendations are supported by law and facts cited by the Magistrate, the Court will likely adopt them.

One cannot overstate the time and money saved by this procedure. In one case in which I am serving as a Special Magistrate, I was asked to address discovery Motions raising a host of legal issues. The motions necessitated evidentiary hearings and legal argument, and it was clear that it would have taken more than a year to have all the motions heard and ruled on by the Court, given its overwhelmingly massive docket. After two days of hearings, and after conducting legal research, I issued a detailed, comprehensive 51-page Report and Recommendations to the Court. Only one side filed Exceptions and these were on a few points. My fees, though substantial, aggregated far less than the attorneys' fees would have, had the attorneys conducted separate hearings on the Motions, months apart. The saving of time was between nine and 10 months, and the attorneys now had the information needed to take depositions and conduct other follow-up discovery.

(4) Seek Appointment of a Special Magistrate to assist the Court in document review.

Suppose you or opposing counsel, in response to a Request for Production, have submitted for in camera inspection 15 boxes of Bates-stamped documents, regarding which various grounds of privilege have been asserted, and the Court advises you that it will probably be many months before all those documents can be reviewed and ruled upon by the Court. You can unilaterally move the Court to appoint a Special Magistrate to perform the review and to file with the Court a Report with specific Recommendations. Your client must bear the initial cost of the Magistrate's fees, but the Order of Appointment can provide that the Court reserves jurisdiction as to taxing of those fees.

(5) If your mediation date is set, enlist the Mediator to convince the other side to furnish outstanding discovery prior to the mediation.

You should ask the Mediator to represent to opposing counsel that the absence of that material will make it impossible for you to advise your client to settle, because the material is crucial to your evaluation of the parties' strengths and weaknesses in the case. Such simple tactics often have the desired result.

C. Create a Motivation for Your Opponent to Resolve the Case at Mediation

If you have unearthed evidence damaging to your opponent, or can plausibly claim that you are close to doing so, you have created an incentive for your opponent to settle before things get worse. You should initiate a full-court press, filing credible motions (set to be heard after the mediation date) which, if granted, would strengthen your case and weaken your opponent's, or even create new dangers in going to trial. These might include moving to amend to request punitive damages, to add counts to your Complaint or Counterclaims, or to seek relief (e.g., an injunction) not previously pled for, and motions in limine or for partial summary judgment.

You've got many tools at your disposal. Don't hesitate to use them.

Since retiring from the Bench, Judge Stern has been enjoying an active practice as a Special Master, Mediator, Arbitrator, Hearing Officer and Umpire. He has served as Editor-in-Chief of Law Review, clerked for an appellate judge, served as a Trial Attorney with the Antitrust Division of the U.S. Dept. of Justice, and as an Asst. U.S. Atty. in the Southern District of Florida. In 1981, he came to Palm Beach County, and practiced litigation in federal and state courts. Judge Stern may be reached at kdstern@gmail.com or at 561-901-4968. His website is www.kennethstern.com.



Nailed it!

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JOSHUA LANPHEAR

Eleventh Circuit Discharges Debt Incurred By Fraud Under Section 523(a)(2)

The Supreme Court of the United States will decide this term whether a false oral statement about a single asset is a statement “respecting the debtor’s . . . financial condition” that may result in denial of discharge of a debt under section 523(a)(2) of the Bankruptcy Code. The Eleventh Circuit recently ruled in the affirmative and discharged a debt incurred by an undisputed false oral statement. Until SCOTUS clarifies, a creditor in this circuit concerned about protecting its rights in bankruptcy by enforcing a debt incurred by fraud should ensure that all statements—whether respecting a debtor’s financial condition or not—are in writing and should not rely on oral statements.

In *Appling v. Lamar, Archer & Cofrin, LLP* (In re *Appling*), 848 F.3d 953 (11th Cir. 2017), the debtor made false oral statements to his (non-bankruptcy) lawyers about an expected tax refund that he would use to pay overdue legal fees owed to the firm. The firm relied on the debtor’s false statements, continued representation, and did not take any action to collect on its debt. Eventually, the firm obtained a judgment against the debtor for the debt. The debtor then filed bankruptcy. The firm filed an adversary proceeding to have the debt ruled nondischargeable under section 523(a)(2). In bankruptcy, the honest but unfortunate debtor receives a discharge of his or her pre-existing debts, subject to many exceptions. Section 523(a)(2) creates two mutually exclusive exceptions to discharge. Section 523(a)(2)(A) excepts from discharge a debt “for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud, other than a statement respecting the debtor’s . . . financial condition.”

A creditor also need prove justifiable reliance. *Field v. Mans*, 516 U.S. 59, 61 (1995). Under subsection (A), a debtor cannot discharge a debt incurred by any type of fraudulent statement, oral or written, as long as such statement does not “respect[] the debtor’s . . . financial condition” and the creditor justifiably relied. Section 523(a)(2)(B) excepts the same type of debt from discharge “to the extent obtained by . . .

use of a statement in writing—(i) that is materially false; (ii) respecting the debtor’s . . . financial condition; (iii) on which the creditor . . . reasonably relied; and (iv) that the debtor caused to be made or published with intent to deceive[.]” Under subsection (B), even if a debtor concedes fraudulent intent, a debt incurred by an oral, fraudulent statement respecting the debtor’s financial condition can be discharged in bankruptcy. The bankruptcy court ruled, and the district court affirmed, that the debt was nondischargeable under subsection (A) because it was incurred by fraud and the firm justifiably relied. The district court rejected the debtor’s argument that subsection (B) applied because his oral statements respected his financial condition (and therefore should have been discharged because they were not in writing), ruling that “statements respecting the debtor’s financial condition involve the debtor’s net worth, overall financial health, or equation of assets and liabilities. A statement pertaining to a single asset is not a statement of financial condition.” *Appling v. Lamar, Archer & Cofrin, LLP*, 2016 U.S. Dist. LEXIS 39958, *8 (M.D. Ga. 2016).

The Eleventh Circuit was not convinced. According to the Eleventh Circuit, “financial condition” refers to the sum of all assets and liabilities. In re *Appling*, 848 F.3d at 958. However, in giving meaning to the word “respecting,” the Eleventh Circuit explained that a statement can “respect” a debtor’s “financial condition” without describing the overall financial situation of the debtor. *Id.* at 598-60. Because a statement about a single asset can be a statement “respecting the debtor’s . . . financial condition” and the debtor’s statements, though fraudulent, were not in writing, the debt was dischargeable. Because the Eleventh Circuit’s decision deepens an existing circuit split on whether a debtor’s statement about a single asset is a statement respecting his or her financial condition, SCOTUS deemed the issue ripe for review.

Compare *id.* at 955, and *Engler v. Van Steinburg*, 744 F.2d 1060, 1061 (4th Cir. 1984), with *Land Inv. Club, Inc. v. Lauer* (In re *Lauer*), 371 F.3d 406, 413-14 (8th Cir. 2004), *Cadwell v. Joelson* (In re *Joelson*), 427 F.3d 700, 706 (10th Cir. 2005), and *Bandi v. Becnel* (In re *Bandi*), 683 F.3d 671, 676 (5th Cir. 2012). The Eleventh Circuit interpreted the phrase “respecting the debtor’s . . . financial condition” in section 523(a)(2) broadly. Under this interpretation, essentially any statement made by a debtor about his or her finances respects his or her financial condition. This arguably renders subsection (A)’s incorporation of common law fraud elements superfluous.

Consequently, creditors will commonly find themselves under subsection (B) when seeking to enforce a debt incurred by fraud. Creditors, especially those who are typically not in the business of lending, seeking to protect their rights in bankruptcy need to ensure that any statements are memorialized in writing.

Indeed, the Eleventh Circuit noted that the law firm could have required the debtor to put his promise to spend his tax return on overdue legal fees in writing before continuing to represent him. In re *Appling*, 848 F.3d at 960. Such a writing could be dispositive in a creditor’s nondischargeability action.

This article was submitted by Joshua Lanphear, Esq., Law Clerk to the Honorable Erik P. Kimball, U.S. Bankruptcy Court for the Southern District of Florida, West Palm Beach Division, Joshua.Lanphear@flsb.uscourts.gov. None of the statements in this article are from or on behalf of Judge Kimball, or otherwise indicate his view on the matter.

Paralegal Committee News



The Paralegal Committee held its first Paralegal Seminar, *Ethics, Professionalism and Technology*, in February. The seminar, which was a great success, was attended by not only paralegals, but attorneys as well. The group was also pleased to receive a warm welcome from Fourth DCA Judge Jon Gerber.

The committee's next event is their "Meet and Greet" to be held April 5, 2018 at E.R. Bradley's in West Palm Beach. Additional information will be sent via e-mail blast.

Pictured (l) Lawrence Gordon speaking on Ten Ingredients for an effective mediation



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Appellate Seminar

The Appellate Practice Committee held its Inaugural Outstanding Appellate Advocacy seminar and award presented on February 2, 2018 at the 4th District Court of Appeal. Alan Rose, Esq., received top honors for his brief while Jessie Isom, Esq. received honorable mention. The Bar Association thanks retired Judges W. Matthew Stevenson, Gary Farmer and Barry Stone for judging the submissions.

Unfortunately due to technical difficulties photographs are not available in print but can be found on the Bar Associations Facebook page.

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LISA KOHRING

The term “Me too” was coined in 2006 by activist Tarana Burke as a means of empowering sexual assault victims to identify themselves to fellow victims without directly “out[ing] themselves.” A victim of sexual assault herself, Ms. Burke began a campaign to help women of color to cope with sexual abuse, assault, and exploitation. She’s been working for the past two decades faithfully dedicated to creating programs to help victims of abuse, most recently as the Senior Director at Girls for Gender Equity, a non-profit organization dedicated to the “physical, psychological, social, and economic development of girls and women.”

In October of 2017, Tarana Burke’s “Me Too” campaign literally caught fire and transmogrified into an international movement. This time actress Alyssa Milano sparked the movement when she tweeted “#MeToo” after news broke of Harvey Weinstein’s alleged pattern of sexual assault on young and impressionable Hollywood celebrities. Also a victim of sexual assault, Ms. Milano tweeted “Me Too” as a means of shifting the conversation away from the accused and onto the victim. The result of the tweet was the creation of this massive digital communication network for sexual assault victims to talk about their experiences and to build strength in those shared experiences. Since the Weinstein scandal was publicized, a slew of high profile men have been accused of inappropriate conduct and thousands of victims have come forward to speak about their experiences. #MeToo was tweeted more than 12 million times and it ignited an international conversation about victims of sexual assault in the workplace.

The #MeToo movement has also inspired a number of high profile women to invest in the fight to eradicate sexual harassment and abuse. A group of Hollywood celebrities and activists including Shonda Rimes, Meryl Streep, Reese Witherspoon and J.J. Abrams have banded together to create the ‘Time is Up’ Legal Defense Fund. The fund is managed by Tina Tchen, the former Chief of Staff to First Lady Michelle Obama, and it’s raised over \$13 million dollars to help

“Me Too”

offset the costs of litigating sexual abuse and harassment claims on behalf low-wage victims. At the 75th Annual Golden Globe Awards in January, Oprah Winfrey delivered a powerful and inspiring speech about the “Me Too” movement, where supporters of the movement dressed in all black and activists adorned the red carpet. During her speech, she exclaimed “time is up” for the unyielding power of men who seek to suppress the voices of sexual harassment victims and she concluded with a sense of hope for a future where “nobody ever has to say ‘Me Too’ again.” Two weeks later, at the 2018 Sundance Film Festival, United States Supreme Court Justice Ruth Bader Ginsburg discussed her own experiences as a young woman in the 1950’s and 1960’s working in a male field. When asked how she felt about the “Me Too” movement, Justice Ginsburg smiled and responded “it’s about time.”

Although the majority seems to support the “Me Too” movement as a means of empowering women and assuring them that they can speak out and speak up without fear of retribution, the movement has also acquired its share of opponents. Most recently, a major debate has erupted in France after more than one hundred prominent French women including French actress Catherine Deneuve spoken out against the movement claiming it’s a “threat to sexual freedom” and a “witch hunt” that is “taking women backwards.”

Whether you support the Me Too movement or believe it’s a Witch hunt, sexual harassment and abuse is conduct that is unacceptable and cannot be tolerated in any form, from any person, in any environment. Sexual harassment and abuse is widespread in the United States, just look at the staggering numbers—more than 33 million women in the United States identify as victims of sexual harassment and another 14 million women identify as victims of sexual abuse.

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

The bottom line: the more we talk about the epidemic, the more aware we all become, and the better able we are, as a society, to reverse course.

1 Me Too founder Tarana Burke: ‘You have to use your privilege to serve other people’, The Guardian, Jan. 15, 2018.

2 An activist, a little girl and the heartbreaking origin of ‘Me too’, CNN, Cassandra Santiago and Doug Chris, October 17, 2017.

3 Girls for Gender Equity mission statement and vision, found at: <http://www.ggenyc.org/about/mission-vision/>

4 Alyssa Milano Wants Her “MeToo Campaign to Elevate Harvey Weinstein Discussion”, Rolling Stones, Joyce Chen, October 17, 2017.

5 From Hashtag to Legal Defense Fund: Hollywood Women Given Teeth to #MeToo, Rewire, Bryce Covert, Jan. 8, 2018.

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JOSEPH OSBORNE

Plaintiffs' Xarelto Victory was Short Lived; Verdict Overturned on Appeal

Bayer and Johnson & Johnson recently secured reversal of a December 2017 \$28.7 million dollar verdict awarded to Pennsylvania Plaintiffs. The ruling came after the judge considered motions to reverse the verdict. The Pennsylvania Court overturned the jury award in the Xarelto product liability litigation alleging Bayer and Johnson & Johnson failed to warn of internal bleeding risks related to the product.

Judge Michael Erdos entered a judgment notwithstanding the verdict finding no reasonable jury could have reached the same conclusion. Specifically, the decision was reversed "based on a very narrow issue related to Plaintiff's prescribing physician."

Judge Erdos found the testimony of Dr. Josephine Randazzo, the plaintiff's prescribing physician, was insufficient to establish that Xarelto's manufacturers had failed to require a coagulation test prior to the drug's prescription.

The original verdict entered in December was the first case to prevail against Bayer and Johnson & Johnson. Approximately 21,000 cases are pending across the country.

In Florida, because jury verdicts unquestionably rest on factual determinations, appellate courts look to see whether the record contains competent substantial evidence to support the decision. See *Helman v. Seaboard Coast Line R.R. Co.*, 349 So. 2d 1187 (Fla. 1977) (jury); *Abreau v. Amaro*, 534 So. 2d 771 (Fla. 3d DCA 1988) (nonjury); *State v. Garcia*, 431 So. 2d 651 (Fla. 3d DCA 1983) (evidentiary hearing); *Gershanik v. Dept. of Prof'l Regulation, Bd. of Med. Examiners*, 438 So. 2d 302 (Fla. 3d DCA 1984) (administrative). But see *Gen. Tele. Co. of Florida v. Florida Pub. Serv. Comm.*, 446 So. 2d 1063 (Fla. 1984) (arbitrary and capricious standard used when reviewing administrative rule-making authority); see generally Florida Appellate Practice §9.6 at 156.

Florida's competent substantial evidence test is consistent with the clearly erroneous test under federal law. See, e.g., *Pullman-Standard v. Swint*, 456 U.S. 273 (1982); Rule 52(a), Fed. R. Civ. P.

Appellate decisions can determine the strength of each side's case and can help shape legal settlements. Moving forward, Plaintiffs will undoubtedly focus on the presentation of strong prescribing physician testimony in an effort to avoid a similar result in future trials.

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

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TED BABBITT

NEGLIGENT AND INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

The requirement for impact in Florida is alive but not very well. The impact rule is riddled with exceptions. One of those exceptions is intentional or negligent infliction of emotional distress. The distinction between those two causes of action was discussed in the recent case of *Kendron v. SCI Funeral Services of Florida, LLC*, 42 Fla. L. Weekly 2584 (Fla. 5th DCA Dec. 8, 2017).

The *Kendron* case involved the alleged mishandling of cremated remains by a funeral home. The trial court had dismissed the allegations of both intentional and negligent infliction of emotional distress based upon the statute of limitations. The Fifth District reversed holding that the claim for intentional and negligent infliction of emotional distress did not accrue until the emotional distress was manifested. Thus the four year period only began upon that manifestation which brought the case within the applicable four year statute of limitations.

In discussing the various causes of action, the Fifth District explained the difference between negligent and intentional infliction of emotional distress. At 2585, the Court holds

The elements of a cause of action for intentional infliction of emotional distress are: (1) the wrongdoer's conduct was intentional or reckless; (2) the conduct was outrageous; (3) the conduct caused emotional distress; and (4) the emotional distress was severe. *Food Lion, Inc. v. Clifford*, 629 So. 2d 201, 202 (Fla. 5th DCA 1993) (citing *Williams v. City of Minneola*, 619 So. 2d 983, 986 (Fla. 5th DCA 1993)). The elements of negligent infliction of emotional distress are: "(1) the plaintiff must suffer a discernable physical injury; (2) the physical injury must be caused by the psychological trauma; (3) the plaintiff must be involved in the event causing the negligent injury to another; and (4) the plaintiff must have a close personal relationship

to the directly injured person." *LeGrande v. Emmanuel*, 889 So. 2d 991, 995 (Fla. 3d DCA 2004) (citing *Zell v. Meek*, 665So. 2d 1048, 1052 (Fla. 1995).

In *Gonzalez v Metro. Dade Cty. Pub. Health Tr.*, 651 So. 2d 673, 675 (Fla. 1995) the Supreme Court held that the mishandling of a dead body was one of the carved out exceptions to the impact rule. Here the Fifth District holds that even under those circumstances the allegation of emotional distress is not enough to sustain a claim for negligent infliction of emotional distress for the mishandling of a dead body. The Court holds that the emotional distress has to be "manifested by physical injury." In addition the Court holds that the physical impairment which accompanies the mental distress must appear within a relative short time after the incident. *Eagle-Pitcher Indus. Inc. v Cox*, 481 So. 2d 517, 526 (Fla. 3d DCA 1985).

The opinion in *Kendron*, supra, is somewhat confusing. The underlying facts of the case involve the mishandling of a dead body which clearly is an exception to the impact rule. Another exception to the impact rule is observing a severe injury to a person with whom the injured party had a close personal relationship. Those two exceptions seem to be conflated in the opinion. Nevertheless the opinion does explain the difference between intentional infliction and negligent infliction of emotional distress and clearly holds that both are exceptions to the impact rule.

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.

**Professor Ehrhardt
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The renowned expert on Evidence, Professor Charles Ehrhardt spoke before the Palm Beach County Bar Association last November. In case you missed it, his talk on "Emerging Issues in Florida Evidence" is available by DVD or CD. To obtain a copy, please visit the Bar's website and click the "Membership / CLE" link at the top of the screen.

The Personal Injury/Wrongful Death Committee of the Palm Beach County Bar Association presents:

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

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8:00: **Check in / Late Registration / Breakfast**

8:20: **Welcome and Introductions:** Andrea McMillan, Esq., Law Offices of Andrea D. McMillan, P.A.

8:30: **Everything you want to know about Consumer Class Action Cases:** Tod Aronovitz, Esq., Aronovitz Law

9:30: **An Insurance Adjuster's Perspective:** Cindy Ruehl, GEICO and Vince Leonard (formerly of Allstate)

10:30: **Break**

10:45: **A Mediator's Perspective** – Rodney Romano, Esq., Matrix Mediation; Patti Velasquez, Esq., Matrix Mediation; Louis Williams, Esq., Matrix Mediation

11:45: **Lunch**

1:00: **Ethical Obligations Pertaining to Liens** – David Place, Esq., Vice President, Synergy Settlement Services

2:00: **The Nuts and Bolts of Negligent Security Cases** – Michael Haggard, Esq., The Haggard Law Firm; National Crime Victim Association President

3:00: **Break**

3:10: **Nursing Home Cases in a Nutshell** - Joseph Landy Esq., Lesser, Lesser Landy & Smith, PLLC, Board Certified in Civil Trial Law

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DAVID M. GARTEN

Application Of The Delayed Discovery Doctrine To Undue Influence Claims

A cause of action accrues or begins to run when the last element of the cause of action occurs. An exception is made for certain causes of action in which the accrual of the cause of action is delayed until the plaintiff either knows or should know that the last element of the cause of action occurred. This is commonly referred to as the “Delayed Discovery Doctrine”.

The general statutory basis for the Delayed Discovery Doctrine is §95.031(2)(a), F.S. which reads: “An action founded upon fraud under s. 95.11(3), including constructive fraud, must be begun within the period prescribed in this chapter, with the period running from the time the facts giving rise to the cause of action were discovered or should have been discovered with the exercise of due diligence, instead of running from any date prescribed elsewhere in s. 95.11(3), but in any event an action for fraud under s. 95.11(3) must be begun within 12 years after the date of the commission of the alleged fraud, regardless of the date the fraud was or should have been discovered.”[Emphasis added]

With regard to non-disclosures in trust accountings and a trustee’s active concealment of facts supporting a cause of action for breach of trust, refer to §736.1008, F.S. Subsection 6(b) reads: “When a beneficiary shows by clear and convincing evidence that a trustee actively concealed facts supporting a cause of action, any existing applicable statute of repose shall be extended by 30 years.”

In Florida, the Delayed Discovery Doctrine has limited application:

Cause of Action	Apply?	Authority
Fraud	Yes	Davis v. Monahan, 832 So. 2d 708 (Fla. 2002)
Products liability	Yes	Id.
Professional & medical malpractice	Yes	Id.
Intentional torts based on abuse/ childhood sexual abuse	Yes	Id.
Undue influence	Yes	*Flanzer v. Kaplan, 2017 Fla. App. LEXIS 17696; 42 Fla. L. Weekly D 2525; 2017 WL 575904 (Fla. 2nd DCA 11/29/17) *In re Guardianship of Rekasis, 545 So. 2d 471 (Fla. 2nd DCA 1989)
Breach of fiduciary duty (generally)	No	*Patten v. Winderman, 965 So. 2d 1222 (Fla. 4th DCA 2007) *Davis v. Monahan, 832 So. 2d 708 (Fla. 2002)
Breach of trust	Yes	§736.1008, F.S.
Breach of conduct	No	*Access Ins. Planners, Inc. v. Gee, 175 So. 3d 921 (Fla. 4th DCA 2015) *Med. Jet, S.A. v. Signature Flight Support Palm Beach, Inc., 941 So. 2d 576 (Fla.4th DCA 2006)

Application Of The Delayed Discovery Doctrine To Undue Influence Claims (con't.)

Cause of Action	Apply?	Authority
Negligence (generally)	No	D.H. v. Adept Cmty. Servs., 217 So. 3d 1072 (Fla. 2nd DCA 2017)
Tortious Interference with Business Relationships	No	Yusuf Mohamad Excavations, Inc v. Ringhaver Equip., Co. 793 So.2d 1127 (Fla. 5th DCA 2001)
Defamation	No	Id.
Unfair and Deceptive Trade Practices	No	Id.

UNDUE INFLUENCE:

Application of the Delayed Discovery Doctrine to undue influence claims is well documented in Florida. For example, in *In re Guardianship of Rekasis*, supra the guardian filed a complaint against the Hogans to set aside certain inter vivos transfers of the Ward's assets over the past 10 years on the basis of undue influence. The Hogans raised the defense of statute of limitations. In response, the guardian argued that the statute of limitations did not begin to run until the Hogans' alleged undue influence over the ward had terminated and the ward, or someone on her behalf, became aware of the existence of the Hogans' alleged undue influence and the resulting misdeeds by the Hogans. The appellate court agreed. The court reasoned in part:

Undue influence is a species of fraud. It differs from fraud to the extent that it can exist even where all of the facts surrounding a transaction infected with undue influence have been truthfully and fully represented. 27 Fla. Jur. 2d 294 Fraud and Deceit § 10 (1981). Undue influence is treated as fraud in general [citations omitted].

* * * *

Courts in other jurisdictions have held that as a matter of law, facts giving rise to a cause of action based on undue influence do not become discoverable by the exercise of reasonable diligence until the termination of the influence [citations omitted].

In *Flanzer v. Kaplan*, supra Gloria and Louis Flanzer created an irrevocable trust in 2005. Louis died in 2013 and Gloria died in March of 2015. In November of 2015, the petitioner sued to revoke the irrevocable trust on the basis of undue influence. In response, the trustees raised the defense of statute of limitations. On appeal, the petitioner argued that since courts treat undue influence as a species of fraud, undue influence is therefore subject to the delayed discovery doctrine. The appellate court agreed. The court reasoned in part:

To be sure, undue influence claims and fraud claims are distinct causes of action. [citations omitted]. But the uses of the prepositions "founded upon fraud" and "founded on fraud" in sections 95.031(2)(a) and 95.11(3)(j), respectively, plainly countenance a broader class of claims than merely actions alleging fraud in general. As such, we see no reason why section 95.031(2)(a) would not apply to Flanzer's claim—provided that Flanzer otherwise satisfies the requirements of that section.

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8:00 Late Registration/Check In/ Breakfast

8:25 Welcome, Opening Remarks, Introduction of the Smiths

Duane Pinnock, Esq.*, Boyes, Farina & Matwickzyk, Chair, Estate and Probate Committee;
Lawrence Miller, Esq., Guttter Chaves et al; Peter Sachs, Esq.***, Jones Foster;
Brett Barner, Esq., Barner & Barner

8:30 Mr. Smith Goes to A Lawyer: What to Look for and How to Assist the Elderly Client

Grier Pressly, Esq., Pressly, Pressly Randolph & Pressly

10:10 Break

10:20 What Do I Do Now? Guardianship and Estate Planning

Adam Sabocik, Esq., Boyes, Farina & Matwiczyk

12:00 Lunch

1:00 RIP Mr. Smith: Estate Administration

Jamison Evert, Esq., Gunster

2:40 Break

2:50 Death is not the End, Smith v. Smith: Estate Litigation

Jorja Williams, Esq., Beller Smith, P.L. and Jenna Rubin, Esq., Gutter Chaves

4:30 Judicial Panel with The Honorable Janis Brustares Keyser and Jessica Ticktin

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WOMEN IN LAW Townhall

In January the PBCBA, JRC and FAWL held a Townhall discussion addressing the advancement of women in law. The program focused on issues from a law firm and court perspective.



(l-r) Sia Baker-Barnes, Rina Clemens, Judge Sheree Cunningham, Judge Daliah Weiss, Fred Cunningham, Judge Jessica Ticktin, Nicole Atkinson and Katherine Kiziah



Florida Association for Women Lawyers Palm Beach County

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Assistant State Attorney, Chief of Major Crimes
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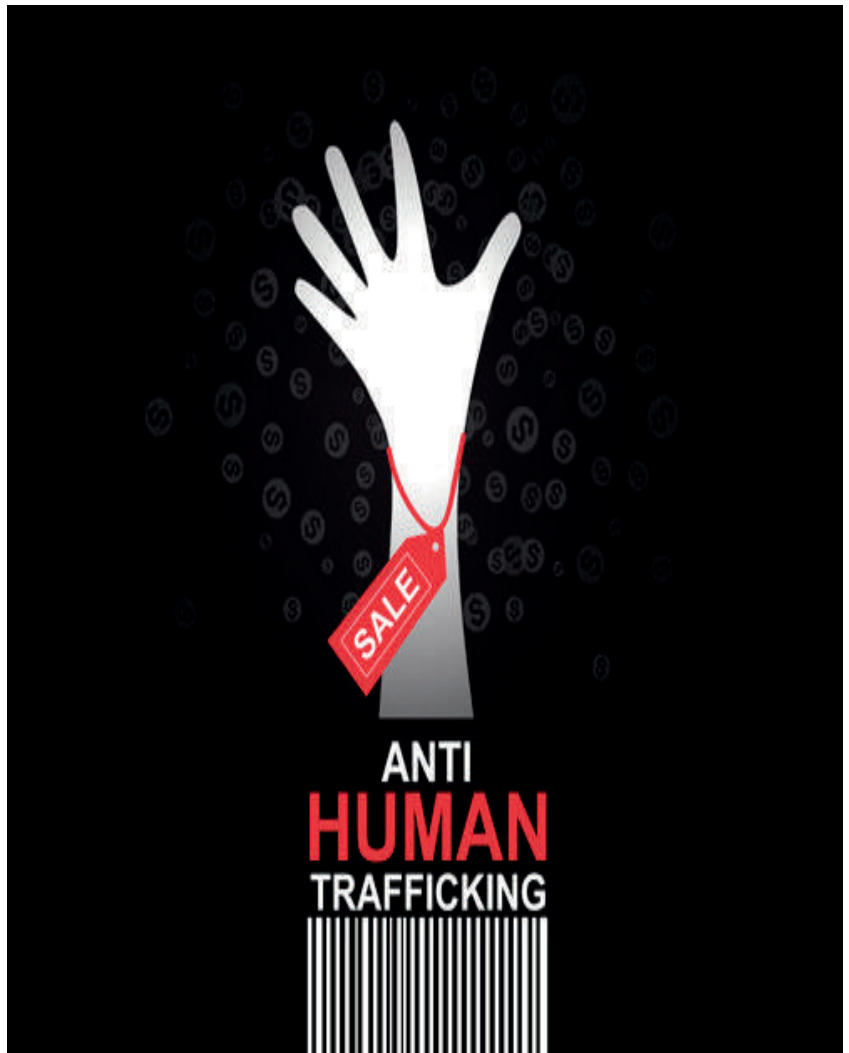
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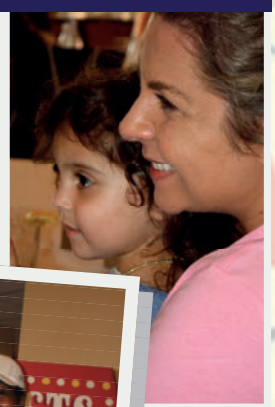


Human Trafficking is a form of modern-day slavery where people profit from the control and exploitation of others. As defined under U.S. federal law, victims of human trafficking include children involved in the sex trade, adults age 18 or over who are coerced or deceived into commercial sex acts, and anyone forced into different forms of “labor or services,” such as domestic workers held in a home, or farm-workers forced to labor against their will. The factors that each of these situations have in common are elements of force, fraud, or coercion that are used to control people. Then, that control is tied to inducing someone into commercial sex acts, or labor or services. Numerous people in the field have summed up the concept of human trafficking as “compelled service.” Every year, human traffickers generate billions of dollars in profits by victimizing millions of people around the world, and here in the United States. Human trafficking is considered to be one of the fastest growing criminal industries in the world.

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MANNY FARACH

Florida Real Property and Business Litigation Report

Vibe Micro, Inc. v. Shabanets,
Case No. 16-15276 (11th Cir. 2018).

A district court must sua sponte give a litigant that files a shotgun pleading, is represented by counsel, and fails to request leave to one chance to replead before dismissing his case with prejudice on non-merits shotgun pleading grounds.

US Bank National Association v. Tranumn,
Case No. 1D16-4911 (Fla. 1st DCA 2018).

A party may use certiorari as a vehicle to seek appellate review of an order denying a motion to sever counterclaim so long as irreparable injury is demonstrated.

Greenberg Traurig, PA v. Starling,
Case No. 2D17-772 (Fla. 2d DCA 2018).

A party must perfect its charging lien by filing in the court file the communications demanding payment before the lawsuit is dismissed.

Lowe v. Nissan Of Brandon, Inc.,
Case No. 2D17-1104 (Fla. 2d DCA 2018).

Documents executed contemporaneously with each other should be interpreted as a whole, including therein arbitration provisions.

Sun 'N Lake of Sebring Improvement District v. Ayala, Case No. 2D17-2440 (Fla. 2d DCA 2018).

The State of Florida has not waived sovereign immunity for claims under the Florida Deceptive and Unfair Trade Practices Act, Florida Statute sections 501.201-.23.

Jockey Club Condominium Apartments, Inc. v. B.V.K., LLC, Case No. 3D17-0038 (Fla. 3d DCA 2018).

A motion for rehearing from an order deciding a Florida Rule of Civil Procedure 1.540(b) motion.

Queiroz v. Bentley Bay Retail, LLC,
Case No. 3D17-1604 (Fla. 3d DCA 2018).

Witnesses and parties in attendance in court outside of the territorial jurisdiction of their residence are immune from service of process while attending court and for a reasonable time before and after going to court and in returning to their homes, except only when there is (1) identity of parties and (2) identity of issues.

Wells Fargo Bank National Association v. Bird, Case No. 5D16-669 (Fla. 5th DCA 2018).

There is no right to contractual prevailing party attorney's fees when the instrument containing the contractual provision is void for lack of a valid signature.

Commodores Entertainment Corporation v. McClary, Case No. 16-15794 (11th Cir. 2018).

A performer who leaves a musical group that has established a common-law trademark leaves behind his or her rights to the group's trademark, and may not use the mark.

Spicer v. Ocwen Loan Servicing, LLC, Case No. 4D16-2335 (Fla. 4th DCA 2018).

A substituting plaintiff acquires the standing of the substituted plaintiff.

Velden v. Nationstar Mortgage, LLC, Case No. 5D16-3628 (Fla. 5th DCA 2018).

While a lender may foreclose even if there exist missed payments outside the statute of limitations, it is not entitled to an award of damages for missed payments outside the statute.

District of Columbia v. Wesby,
Case No. 15-1485 (2018).

The totality of the circumstances (the condition of the home, condition of partygoers, activities at the party, etc.) may give police officers probable cause to arrest people for unlawful entry at "pop-up" parties where owner has not given permission to use the home.

Artis v. District of Columbia,
Case No. 16-460 (2018).

The meaning of "tolled" within 28 U. S. C. section 1367(d) (the period of limitations for refiling in state court a pendent state claim that is dismissed when the federal claim is dismissed is "tolled" for 30 days after dismissal) is that the time period stopped running due to the federal suit but recommences running from the point stopped upon dismissal of the federal suit with attached pendent state claims.

Banco de los Trabajadores v. Moreno,
Case No. 3D17-730 (Fla. 3d DCA 2018).

The connexity requirement of Florida's long-arm statute section 48.193(1)(a) (a cause of action must arise from an enumerated act and that enumerated act must occur in Florida) is not satisfied when the only tort relied upon to confer jurisdiction is civil conspiracy to commit a tort, and no element of the underlying tort is alleged to have occurred in Florida.

Goldman v. Lustig,

Case No. 4D16-1933 (Fla. 4th DCA 2018).

A party that has the right to use a dock attached to an adjoining party's land is not entitled to an easement of necessity across the neighbor's land to access the dock; the party seeking to use the dock must build a separate access dock or access the dock from the water.

DFG Group v. Heritage Manor of Memorial Park, Inc., Case No. 4D16-2972 (Fla. 4th DCA 2018).

A party that affirms a contract upon prevailing on a tort claim arising out of a contract is entitled to the profit plaintiff would have earned had the agreement been performed but not for the cost of preparing to perform.

Longo v. Associated Limousine Services, Inc., Case No. 4D17-516 (Fla. 4th DCA 2018).

A plaintiff seeking Florida Statute section 56.29 proceedings supplementary against a third party based on alter ego need not describe the property of the third party sought to be executed (as required by the text of section 56.29(2)), but instead may simply state the third party is the alter ego of the defendant.

Penton Business Media Holdings, LLC v. Orange County, Florida,

Case No. 5D16-3935 (Fla. 5th DCA 2018).

The Doctrine of Avoidable Consequences is not a duty to mitigate, and holds that a plaintiff is responsible only for damages it could have avoided using "ordinary and reasonable care."



BRIAN MOSKOWITZ

Mindfulness...To What End?

The latest and greatest buzzword is “mindfulness.” Before writing this article I did a quick google news search and here are a few of the top results: “How to use mindfulness to manage your money better”; “Mindfulness: a solution to unconscious bias in healthcare”; “How To Actually Have a Mindful Relationship With Your Phone.” A mindful relationship with your phone? Seriously??? Mindfulness has become the panacea for all that ails the world.

The legal profession has jumped on the mindfulness bandwagon as well. There are books on mindfulness for lawyers, Continuing Legal Education seminars, businesses providing mindfulness training for lawyers, and the University Of Miami School Of Law even offers a course called the “Mindfulness in Law Program.” But to what end?

Before we get to the end, we need to go back to the beginning. What is mindfulness? Although the term has been used interchangeably with the word meditation, mindfulness is much broader. And if you ask ten experts to define mindfulness, you’ll get ten different answers. But within those different answers you will find a common theme – that mindfulness is being present, paying attention, and being aware of what is going on around you.

Now that you know what mindfulness is, how do you become mindful? By practicing mindfulness. At its most basic, a mindfulness practice is anything that keeps you focused on the present moment. For example, as you’re reading this article are you fully present? Are you giving this article your full attention to the exclusion of what’s going on around you? Or are you checking emails, on the phone, or maybe eating lunch?

The most popular type of mindfulness practice is meditation. You can download a meditation app onto your phone and start meditating today. Two meditation apps I’ve used are Headspace and Calm. But you don’t need an app, a course, or even a YouTube video. You can just sit up straight, put your feet flat on the floor, close your eyes, and

breathe...keeping your focus on your breath. One thing I’ve noticed about the word meditation and meditating, however, is some people are turned off by the word. Because of their beliefs about what meditation is and the type of person that meditates, meditation is just something they won’t do. I used to feel the same way. Then I spent three days training with former Navy SEALs. I no longer feel that way.

Meditation is a huge part of Navy SEAL training, they just don’t call it meditation. To them, it’s just breathing. When the world is literally exploding around you, you need to be fully present and aware of your surroundings. So they practice breathing.

During the training we started every morning with twenty minutes of box breathing. Picture a box, with its four sides. Start by taking a deep breath in through your nose and into your diaphragm (across the top of the box), hold your breath (down the side of the box), exhale (across the bottom of the box), and hold your breath (up the other side of the box). Repeat.

To start pick a length of time you’re comfortable with. I started with 4 seconds – inhale for 4, hold for 4, exhale for 4, and hold for 4. You can increase the time as long as you’re comfortable.

While meditation or breathing are great mindfulness practices, they are not the only ones. You can practice mindfulness while exercising, journaling, doing yoga, driving, doing the dishes, having a conversation, or doing anything anywhere. Remember, mindfulness is just being present, paying attention, and being aware of what is going on around you.

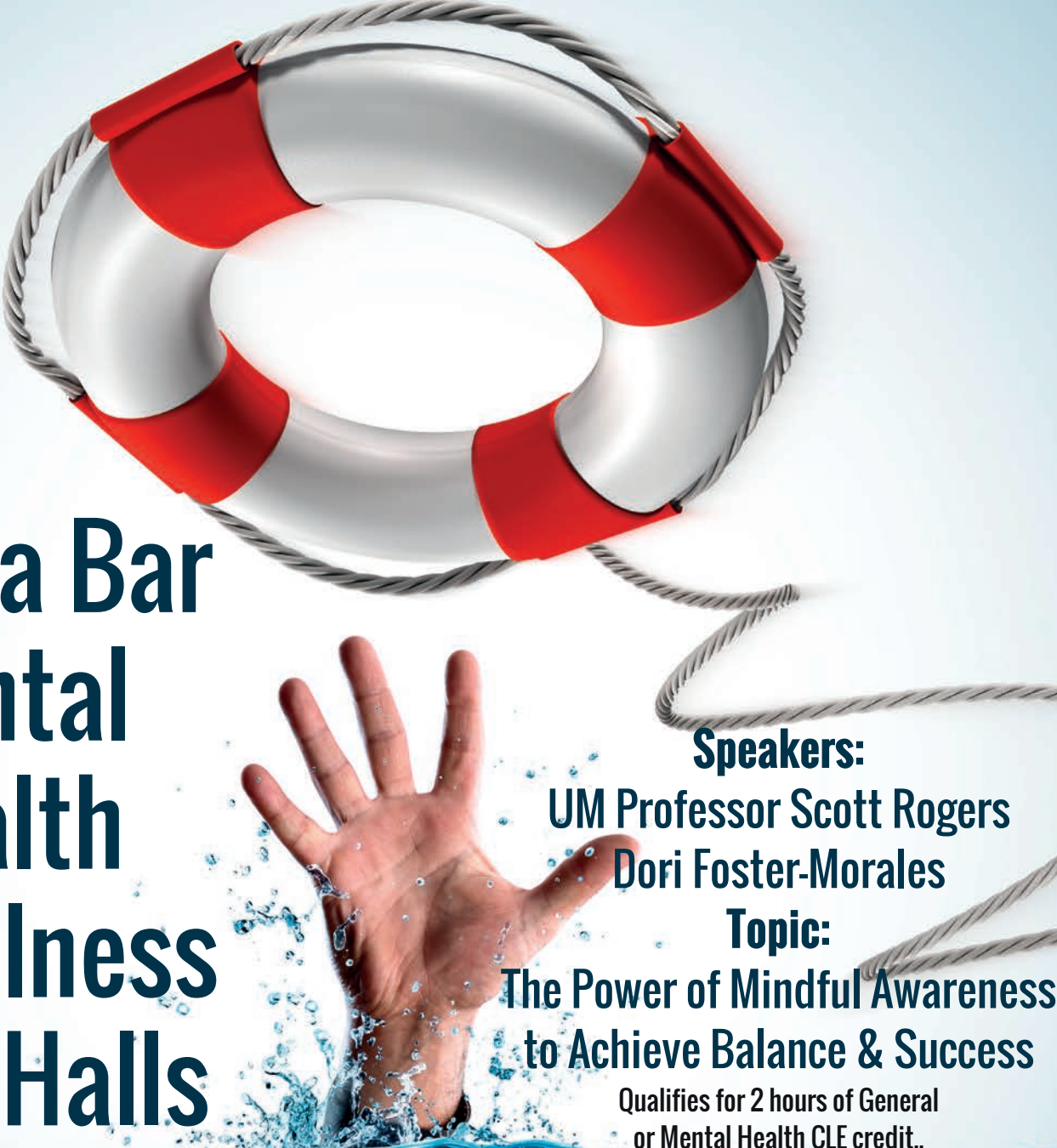
So to what end do we practice mindfulness? The benefits of being mindful are numerous and have been scientifically proven. A few of the greatest benefits, especially for lawyers, are that being mindful reduces anxiety, stress and feelings of overwhelm. When you’re focused on the present moment, you can’t be stressed, anxious or overwhelmed about the past or the future.

Another great benefit for lawyers is that mindfulness improves cognition by increasing your ability to focus and sustain attention for longer periods of time. So when you’re working those 12-14 hour days, preparing for trial, reviewing documents, meeting with a client, or just need to block out the noise and distraction...having a mindfulness practice will help you stay on task.

Practicing mindfulness also has proven health benefits. A few of the benefits are increased immune function, lowered blood pressure, lowered heart rate, and decreased symptoms of depression.

At this point you need to ask yourself, does the end justify the means? Does spending as little as ten minutes a day practicing mindfulness justify having less stress, less anxiety, an increased immune system, lower blood pressure, a lower heart rate, and increased focus and attention? For more and more attorneys the unequivocal answer is YES.

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



Florida Bar Mental Health & Wellness Town Halls

Speakers:

**UM Professor Scott Rogers
Dori Foster-Morales**

Topic:

**The Power of Mindful Awareness
to Achieve Balance & Success**

**Qualifies for 2 hours of General
or Mental Health CLE credit..**

April 18th

11:45 – 2:00 pm

Palm Beach County Bar Association

Location: Admiral's Cove

Register at www.palmbeachbar.org

(Members \$40, free of cost for Judges)

Also sponsored by: The Federal Bar Association, F. Malcolm Cunningham, Sr. Bar Association, PBC Hispanic Bar Association, PBA of Criminal Defense Lawyers, PBC Florida Association of Women Lawyers, South County Palm Beach County Bar Association, PBC Judicial Relations and Solo/Small Firm Committees

15th Judicial Circuit Professional Panel



FIFTEENTH JUDICIAL CIRCUIT PROFESSIONALISM PANEL

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

January 9, 2018

Sent by Email Only

Re: Closing of Referral to the Fifteenth Judicial Circuit Professionalism Panel Per SC13-688
 Recommendation: Let Time Pass or Use Your Draft Emails Folder

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 willingness to meet and discuss the referral by a colleague and member of the Bar. Pursuant to Administrative Order 2.105-11/16 ("AO"), the Panel met with you on January 8, 2017 and discussed the referral and your violations of Expectations 2 and 5.

The basis for the referral was contained in a series of emails in which you called another attorney an "a--hole" and a "f--g pr--k." We discussed that these pejorative names have zero place in our profession, no matter what your opinion of or history with the attorney may be. The Panel was impressed with the sincerity of your initial statement that you were embarrassed and "could give reasons, but it is irrelevant." We asked you for the explanation and you willingly told us you were being protective of your family member, who was providing a marketing service to your law firm. You perceived the referring attorney's email - which prompted the exchange - as calling your family member's advertising email into question. This stirred your protective ire, but with the wholly inappropriate use of the above expletives.

Pursuant to the AO, the Professionalism Panel 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. While this Panel has authority to make a referral to the Florida Bar's Attorney/Consumer Assistance Program (ACAP), we find no reason to do so.



Kara Berard Rockenbach
 Professionalism Committee Co-Chair



Judge Cory Ciklin
 Professionalism Committee Co-Chair



Join Us To Celebrate Our 30th Annual Pro Bono Evening!

- One-Of-A-Kind Auction
- Dinner
- Dancing

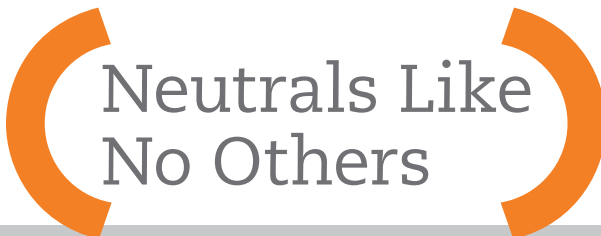
Saturday, May 12, 2018

Palm Beach County Convention Center

To Purchase Your Tickets visit our website at
www.legalaidpbc.org

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For more information, or to have an invitation mailed
 directly to you, contact Michelle Gale at 561-721-6206 or
mgale@legalaidpbc.org



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**Lucy Chernow
 Brown**

Retired Judge 15th
 Judicial Circuit



**David F.
 Crow**

Retired Judge 15th
 Judicial Circuit



**Jeffrey
 Grubman, Esq.**

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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

The North County Section is accepting letters of recommendations for its 16th Annual Jurist of the Year Award. Send us a letter including which local judge you feel deserves to be honored and state why?

The letters will be reviewed and voted on by the section's Board of Directors. A recipient will be selected based upon the following criteria:

1. The judge should be one with an excellent reputation for sound judicial decisions and an unblemished record of integrity as a lawyer and as a judge.
2. The judge should be recognized by Bar members as highly qualified.
3. The judge should be active in Bar related activities.
4. He or she should be respectful of the law and understanding of cases.

Who is eligible? Any judge who currently presides over cases in Palm Beach County will be eligible to win the award.

Who can make a nomination? Any NCS member.

Send your nomination by email to lpoirier@palmbeachbar.org no later than Friday, April 6.

Previous winners include Judges Mary Lupo, Roger Colton, Peter Blanc, Thomas Barkdull, Barry Cohen, Jonathan Gerber, David Crow, Edward Fine, Jack Cook, Ron Alvarez, Richard Oftedal, Lucy Brown, Ken Marra, John Phillips and Laura Johnson.



North County Section to host its Second Annual

DINNER & CASINO NIGHT

Las Vegas Style: You Never Know Who You're Going To Meet!

Thursday, April 12, 2018
5:30 pm - 8:00 pm

Admirals Cove - Harbor View Room
200 Admirals Cove Blvd, Jupiter

Play Classic Casino Games including Craps, Roulette and Blackjack with a chance to win GREAT prizes!

Everyone eligible to win whether you play or not.

- NCS Members: \$45.00
- Spouses: \$60.00
- Attorneys who are not NCS Members: \$75.00
- Judges: Complimentary

Price increases after 4/9/17

Purchase tickets online @ www.palmbeachbar.org



North County Section to host

SOCIAL MEDIA e-DISCOVERY

PART II

What every attorney needs to know about e-Discovery with Judge Meenu Sasser and Spencer Kuvin, Esq.

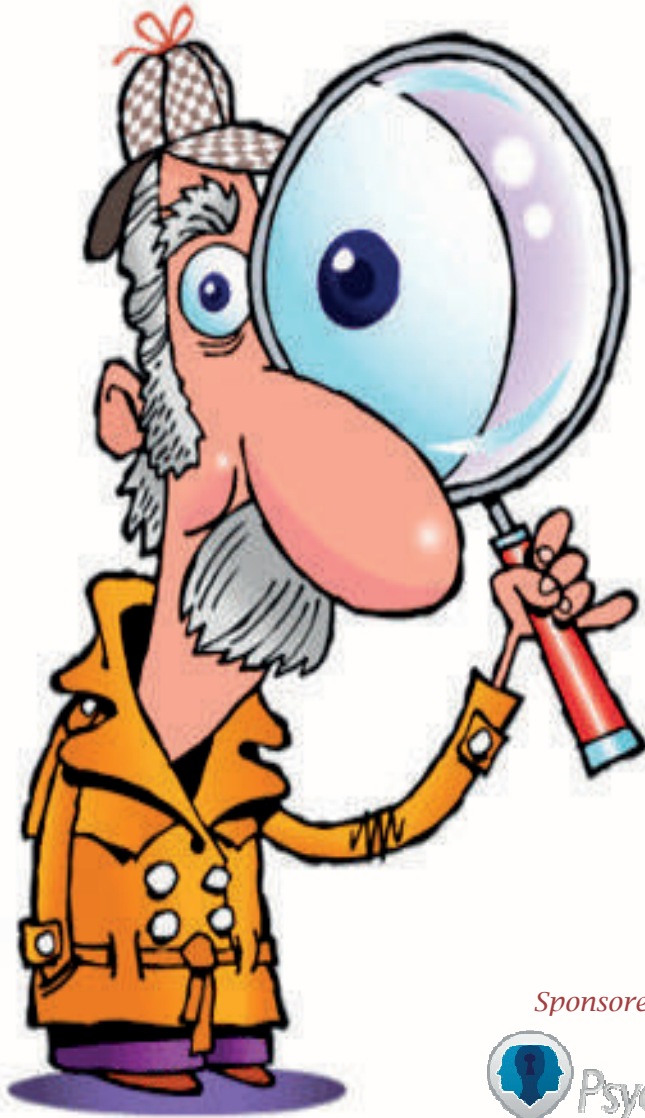
FRIDAY, APRIL 6, 2018

11:30 a.m. to 1:00 p.m.

Palm Beach Gardens Marriott

4000 RCA Blvd.

Palm Beach Gardens



Last year's program was so successful our members requested Part II. Join us for lunch and learn FIVE EASY STEPS to social media readiness, plus find out how Courts handle social media issues with a View from the Bench. Have questions? There will be time for Q and A.

Sponsored By:



Psychological Affiliates

Social Media e-Discovery Part II

*** Friday, April 6, 2018 ***

Lunch, Networking and Four (4) CLE credits, including 2.0 General and 2.0 Technology

RSVP ONLINE TODAY @ www.palmbeachbar.org



Reduced Price for NCS Members \$30.00, includes lunch and CLE credit from the Florida Bar

Attorneys who are not Section members are welcome for \$50.00

Price increases by \$5.00 after 4/4/18

YOUNG LAWYERS Section

YLS Won Division Member Service Project of the Year Award

Congratulations to the PBCBA Young Lawyers Section! YLS won The Florida Bar Young Lawyers Division Member Service Project of the Year Award for its Sidebar Series.



YLD Awards Chair Annika Ashton(L) and Lauren Johnson (R)

YLS Happy Hour

PBCBA YLS and South County Bar Association YLS enjoyed an evening out for Happy Hour the Copperpoint Brewing Company.



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sbaughan@uww-adr.com

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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	Commercial 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	

Name: _____

Firm Name: _____

Street Address _____

City _____ State _____ Zip Code _____

Telephone: _____

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
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

Turn around time: 7 days	Shipping Cost:	\$ 10.00	\$ 10.00
Rush orders: 3 Business days	Rush Fee: (add'l \$25.00)	_____	_____
	TOTAL DUE:	_____	_____

Please print and mail this form along with your check made payable to:

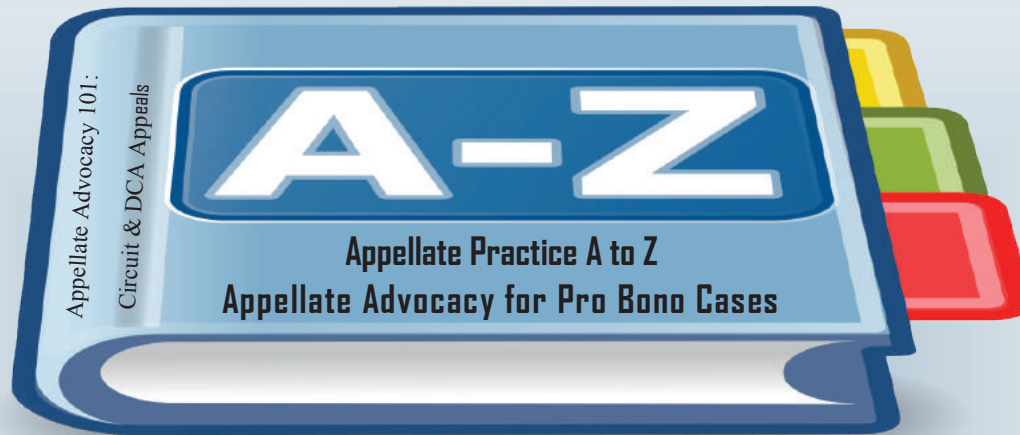
Palm Beach County Bar Association
Attention: Eva Gray
P. O. Box 17726
West Palm Beach, FL 33416

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

The Appellate Practice Committee of the Palm Beach County Bar Association and the
Appellate Practice Section of The Florida Bar present



Monday, April 16, 2018

CLE & LUNCH INCLUDING A VIEW FROM THE BENCH

10:00 a.m. – 1:00 p.m. ~ Fourth District Court of Appeal
110 S. Tamarind Avenue, West Palm Beach

PANELISTS:

Robert J. Hauser, Pankauski-Hauser; PLLC*
Jane Kreusler-Walsh, Law Office of Kreusler-Walsh, Vargas & Serafin, P.A.*
Julie Littky-Rubin, Esq., Clark, Fountain, La Vista, Prather, Keen & Littky-Rubin*
Tracy T. Segal, Esq., Akerman LLP
Nichole J. Segal, Esq., Burlington & Rockenbach, P.A.*

*Board Certified in Appellate Practice

VIEW FROM THE BENCH:

The Honorable Robert M. Gross
The Honorable Melanie G. May
The Honorable Alan O. Forst

Moderator Thomas E. Warner, Esq., Carlton Fields, P.A.

Sponsored By:



3.0 CLER and 3.0 Certification credits in Appellate Practice

Cost: \$ 0. Private practice attorneys who attend will be asked to handle one case pro bono case. 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. Please include \$10 for shipping and handling. Allow 1 week for delivery. PBC Bar Association, P.O. Box 17726, West Palm Beach, FL 33416. 561-687-2800. 4/16/18 Appellate seminar

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

Lost Profits Damages in Commercial Litigation

Wednesday, April 25, 2018, 12:30 to 5:00 p.m.
Fourth District Court of Appeal
110 S. Tamarind Ave., West Palm Beach, FL

Program Schedule



- 12:30: Sign-in/lunch/Introductions: William B. Lewis, Esq., Morgan & Morgan, Business Trial Group
- 1:00: Joseph G. Galardi, Esq. of Beasley, Kramer & Galardi on Florida Law Regarding Lost Profits and Damages
- 2:15: Break
- 2:30: Richard A. Pollack, CPA and Scott M. Bauchner of Berkowitz Pollack Brant on Bulletproof Lost Profits Analysis and Effective Expert Presentation
- 3:45: Break
- 4:00: Judicial Panel on Daubert/Frye Challenges to Lost Profits Analyses, Speculative Damages Theories, and Presenting Damages Analyses to Juries
- 5:00: Happy hour



Registration Information

Expected credit: 4.0 CLER. Cost: \$ 100 members; \$ 140 non-members. Those registering after 4/18/18 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.
4/25/18 Business Litigation

Palm Beach County Bar Association's Elder Law Affairs Committee presents:

18th Annual

VIEW FROM THE BENCH:

Cocktails & Dinner & CLE

The evening features dinner and a panel of Probate and Guardianship Judges answering your questions about practicing in Palm Beach County.

With Judges Catherine Brunson, Charles Burton,
Howard Coates, Jr., Kathleen Kroll, Janis Keyser,
Karen Miller, Rosemarie Scher, Scott Suskauer, Jessica Ticktin

Thursday, April 26, 2018

6:00 pm to 8:30 pm

The Colony Hotel, 155 Hammon Avenue, Palm Beach

Have an issue or question you would like the judges to address?

Email Heather Samuels: HSamuels@solkoff.com

MENU CHOICE. Please select one of the following:

- Brown Sugar & Horseradish Crusted Salmon, Mascarpone Mashed Potatoes, Grilled Zucchini
- Chicken Marsala, Mascarpone Mashed Potatoes, Grilled Zucchini
- Cheese Tortellini with Golden Tomato Fondue, White Truffle Essence

Evening includes dinner, CLE, complimentary drink and valet parking

Event Sponsored by:



Jo Ann Abrams



CLER in process. Cost \$85.00 for PBCBA members/paralegals; \$125.00 for non-PBCBA attorney members/paralegals registered by 4/19/18; add \$20.00 to registration fee after that date. All refund requests must be made no later than 48 hours prior to the date of the event.

Name: _____ Telephone #: _____

Address: _____ Email Address: _____



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LAWYER REFERRAL SERVICE



BENCH BAR SPECIAL!

Stop by the Lawyer Referral table at the event and sign up to receive
one FREE ticket to the Judicial Reception on April 24.

For more information about LRS, contact Eva Gray at 561.687.3266 or email

egray@palmbeachbar.org
PALMBEACHBAR.ORG

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

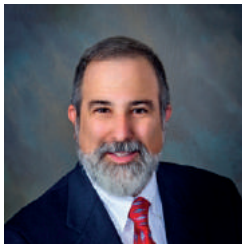
GREY TESH: "Law is not black or white, it's Grey." Passionate, caring, truthful, prepared. Soul (sic) practitioner. Criminal Defense (Board Certified in Criminal Trial) and Personal Injury. Over 100 jury & non-jury trials to verdict. Federal & State | 515 N. Flagler Drive greytesh.com (561) 686-6886

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



Jones, Foster, Johnston & Stubbs, P.A. announces that shareholder attorney Scott G. Hawkins has been installed as a Member of the Economic Council of Palm Beach County.



Michael J. Gelfand of Gelfand & Arpe, P.A. has been appointed to liaison for issues arising before the Florida Constitutional Revision Commission by The Florida Bar's Real Property, Probate & Trust Law Committee.



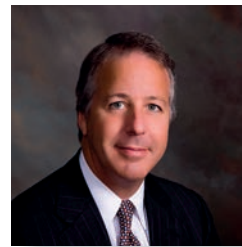
As Florida Legal Services president, West Palm Beach attorney Edrick E. Barnes is serving as a 2017-18 designated director on the board of The Florida Bar Foundation, a statewide charitable organization whose mission is to provide greater access to justice.



Jones, Foster, Johnston & Stubbs, P.A. announces that attorney Karl J. Sanders, formerly a sole practitioner in Jacksonville, has joined the firm.



Gary Betensky, a shareholder with Richman Greer, P.A. in West Palm Beach, has been recertified by The Florida Bar in Business Litigation Law



Jones, Foster, Johnston & Stubbs, P.A. announces that Shareholder Peter A. Sachs was elected to the firm's Board of Directors at its annual Officer's meeting. Larry B. Alexander was re-elected as firm Chairman and Scott G. Hawkins was re-elected as Vice Chair. Also serving on the firm's Board of Directors are Shareholder attorneys Theodore S. Kypreos and Tasha K. Dickinson

Comiter, Singer, Baseman & Braun, LLC (CSBB), a nationally recognized law firm specializing in tax and transactional issues including estate and tax planning, as well as trust and guardianship litigation, announces its newest addition to their team, Devon M. Goldberg, Esq

Employment

Klett, Mesches & Johnson, P.L., a business litigation law firm in Palm Beach Gardens, seeks associate attorney with minimum 2-5 years experience in business, commercial, real estate transactions, or general litigation. E-mail Resumes to Linda Philbrick at lphilbrick@kmjlawgroup.com. No phone calls please.

West Palm Family Law Firm is seeking an experienced lead attorney licensed in Florida, who has represented individuals in divorce and custody proceedings with at least 15 jury trials under your belt who is passionate about helping people in disintegrating relationships build a better and brighter future who can hit the ground running and give our clients outstanding representation. ssutera@cjamiesonlaw.com

Miscellaneous

ARE YOU CONSIDERING RETIREMENT IN THE NEXT 6-12 MONTHS?
Why not be compensated for the clients that you have developed over your career? Join Loren & Kean Law and be an active part of the transition of your clients into capable hands after your retirement. Please email Bruce Loren at bloren@lorenkeanlaw.com or call 561-615-5701

Office Space

Fully furnished executive office with optional secretarial cubicle and optional paralegal office available for lease in the Barrister's Building, 1615 Forum Place in West Palm Beach through David R. Rigell & Associates, P.A. Includes scanner/copier/fax, wifi, internet, kitchen, conference room, reception services, notary, and parking. Telephone service and hardware provided by tenant. Please contact Lauri at (561) 688-9899 or by email: lauri@rigelllaw.com



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

CALENDAR OF EVENTS

MARCH 2018

THURSDAY, MARCH 1
12:00PM – 1:00PM
JUDICIAL RELATIONS
COMMITTEE MEETING
JUDICIAL CONFERENCE ROOM

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

FRIDAY, MARCH 2
3:00PM – 6:00PM
APPELLATE
4TH DCA

SATURDAY, MARCH 3
11:30AM – 12:00PM
THRIVE YOGA

WEDNESDAY, MARCH 7
5:30PM – 6:30PM
SPBCBBA BOARD MEETING
SACHS SAX CAPLAN

FRIDAY, MARCH 9
8:00AM – 6:00PM
BENCH BAR CONFERENCE
PALM BEACH CONVENTION
CENTER

MONDAY, MARCH 12
12:00PM – 1:00PM
CONSTRUCTION
LAW COMMITTEE
BECKER & POLIAKOFF

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

TUESDAY, MARCH 13
12:00PM – 1:00PM
PARALEGAL COMMITTEE
515 N FLAGLER DRIVE

TUESDAY, MARCH 13
12:00PM – 1:00PM
YLS BOARD MEETING
515 N FLAGLER DRIVE

WEDNESDAY – FRIDAY, MARCH
14-16
ABA BAR LEADER'S INSTITUTE
CHICAGO

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

THURSDAY, MARCH 15
PI COMMITTEE MEETING
12:00PM – 1:00PM
JOE LANDY'S OFFICE

THURSDAY, MARCH 15
UNIFIED FAMILY PRACTICE
COMMITTEE
12:00PM – 1:00PM
JUDICIAL CONFERENCE ROOM

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

FRIDAY, MARCH 16
FEDERAL BAR ASSOCIATION
LUNCHEON
11:45AM – 1:45PM
COLONY HOTEL

TUESDAY, MARCH 20
CDI MEETING
12:00PM – 1:00PM
AMERICAN LUNG ASSOCIATION

WEDNESDAY – SATURDAY
MARCH 21-24
FLORIDA BOARD OF GOVERNORS
SARASOTA

WEDNESDAY, MARCH 23
YLS BOARD PETITIONS DUE

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

WEDNESDAY, MARCH 28
JUDICIAL LUNCH
11:45AM – 1:00PM
NORTH END CAFETERIA

WEDNESDAY, MARCH 28
REAL ESTATE COMMITTEE
MEETING
12:00PM – 1:00PM
THE BOULEVARD GOURMET DELI

WEDNESDAY, MARCH 28
BAR BOARD MEETING
5:00PM – 6:00PM

WEDNESDAY, MARCH 28
SMALL CLAIMS PROGRAM
6:30PM – 7:30PM

MADRID PUBLIC LIBRARY
FRIDAY, MARCH 30
GOOD FRIDAY
BAR OFFICE CLOSED



PRESORT STD
US POSTAGE
PAID
WEST PALM BEACH FL
PERMIT NO. 66

PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

PO BOX 17726 WEST PALM BEACH, FL 33416 WWW.PALMBEACHBAR.ORG

COMMITTEE FOR DIVERSITY AND INCLUSION

On February 3, 2018 CDI Members attended the Annual Kozyak Minority Mentoring Picnic hosted at the Miami Zoo.

