



Broward County Bar Association
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Broward County Bar Association BARRISTER

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PRESIDENT'S MESSAGE

by Carlos M. Llorente



In this month's President's Message I will break from tradition, and will exercise a point of personal privilege, to address the "elephant in the room". I want all who read this to understand that the expressions written here, are my personal views, and mine alone. This message does not necessarily reflect the view of the BCBA membership or it's Board.

For years it was either rumored or believed by those in Broward's legal community that there is an unwritten rule that one should not run against a sitting judge. Recently, the unwritten rule has become a shadow of its former self and an alarming trend seems to be forming. Sitting judges in Broward are being challenged. The fact that it is happening now should not come as a surprise, as it was always feared that the trend from our neighboring county to the south, would someday migrate north. What is alarming, are the reasons that judges are being challenged, or in some cases, targeted.

I hope that this message reaches the many colleagues who have opened campaigns for Judicial races, stated that they would run, or thought of challenging a sitting judge and yes, I can also hope that perhaps some of those colleagues have second thoughts or reconsider after reading these lines. For this reason I feel that I should share a few aspects about my own background so that the reader understands and grasps the foundations for my beliefs and opinions. From 1992—1996, I was a 17th Circuit JNC Commissioner. I once applied for a Circuit Court

vacancy. I also ran for (and lost) an open Circuit Court Seat. I served as a Traffic Court Magistrate/Hearing Officer for nearly 10 years. These experiences have given me insight into every aspect of the road to the judiciary and a taste of it.

As for the road, there are two paths, selection and election. Both are political. But of the two, the less political, in my view, is election. The selection process has several layers of politics, and as I once told a JNC applicant after several attempts, "...this is not your JNC". Note, however, that some years later, that same applicant found his JNC and is a sitting judge today. The election process could cost you a life's savings and hurt your friends and family in the pocket book; all the while making you run from one end of the county to the other, to make it to this or that event. It's an experience and challenge, but I wouldn't say it is fun.

My own personal beliefs on the road to the judiciary are as follows. An open seat is just that, open. Go for it, spend your savings, ask your friends and family for money, run around the county, good luck. As for challenging a sitting judge, one should never run against a qualified sitting judge. As for an unqualified judge, when the disqualification process is not the most efficient method of removal, then election may be. But when considering the challenge, be certain that the one believed to be unqualified, is universally thought to be unqualified by colleagues and the legal community as a whole. One should never

Continued on page 2

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challenge a judge because they did not like a certain ruling, or base the decision to run upon the judge's sex, race, religion, name recognition, party affiliation, or because one did not like the Governor who may have made the appointment. One should never run against a sitting judge believing that voters will vote based on name recognition, or that a judge does not have the financial means to fight off an opponent. There are moral reasons for my personal beliefs, but below I will address the practical reasons, and hope that any one, or a combination of reasons, will help stop the trend.

When I started practicing in Broward in the 80s, I liked the fact that it was an inviting legal community and relatively small for an area of its size. I for one never subscribed to the unwritten rule but felt that judges went unchallenged out of respect, courtesy, civility and professionalism. The first one, respect, is not necessarily respect for an individual judge, but rather respect for the judiciary as a whole. The other three are what I found most inviting about the Broward Legal Community. The courtesy, civility and professionalism made the practice of law here fun and made you feel you were a part of something special.

Times do change, but change just for the sake of change is not always good. When it comes to the judiciary, it is never a good idea to change it with the frequency of the current trend. Think of the message that is being sent to the general public when every election pits a lawyer against a sitting judge.

The comments to Rule 4-8.2 of the Rules of Professional Conduct state: "To maintain the fair and independent administration of justice, lawyers are encouraged to continue traditional efforts to defend judges and courts unjustly criticized." By inference and inference alone, the challenged judge is being criticized. To maintain independence, judges must be clear of mind and can not be influenced by outside factors in rulings and decisions. Maintaining clarity and independence, can be a daunting task when the judge is under constant threat of a challenge. The notion that some in the legal profession may want to have judges under constant fear and threat of losing their seats is not lost with me. To those who feel that way, the only comment I can offer is: think back to the reasons you wanted to be a lawyer in the first

place. I assure you it wasn't because you wanted to run in a contested race against a judge.

A respectful, courteous, civil, and professional lawyer understands that a selected judge may have given up something he or she can not readily get back: a law practice. The same can be said of elected judges. Imagine if you will, practicing 20 years and having built a healthy practice. You run for an open seat and win only to lose it 6 years later. If you were selected the outcome could be even more despairing since you may lose the seat within 2 years.

I can go on forever finding practical and professional reasons as to why the trend must stop, but I will leave you with the following anecdote. When I was an Assistant Public Defender in the 80s, a client came to my office for the initial consultation. He sat quietly as I read the probable cause affidavit that charged him with various crimes. After several minutes, I looked him straight in the eye and stated, "I will win your case". How can any of us make such a bold statement today? Back then two things came into play that allowed me not only to make the statement, but to make it come true. First, I had read enough of the probable cause affidavit to know that I would file a motion to suppress the evidence, but more importantly, I knew that the judge assigned to the case would follow the prevailing case law and grant the motion. Consistency in judicial rulings can be a valuable asset to have in the judiciary and the knowledgeable practitioner relies on it every day. For those who choose to run against sitting judges, they should be mindful of the possible consequences. For one, if the trend continues we will lose talented judges and the pool from which to draw them. A drastic consequence could be the loss of the election process altogether and finally your investment in time, effort and money to obtain that seat could be as short as one term if the trend does not end.

CALENDAR OF EVENTS

MARCH 2010

Thursday, March 4th:

BCBA Legislative Affairs Committee Meeting. 5:30p.m. At the Broward County Bar Association, 1051 SE 3rd Ave., Fort Lauderdale. RSVP to: Traci at 954-764-8040 Ext. 202

Thursday, March 4th:

Commercial Section, Happy Hour, at YOLO, 333 E. Las Olas Blvd. Fort Lauderdale. 5:30p.m. RSVP to Kferrin@becker-poliakoff.com.

Monday, March 8th:

FREE CLE Seminar. Topic: "2010 Roth IRA Conversion opportunity". 5:00p.m. 1 Hour CLE Credit. At the Broward County Bar Association, 1051 SE 3rd Ave., Fort Lauderdale. Please contact Myles German for more information 561-961-9311 or at Myles.German@AXA-advisors.com.

Tuesday, March 9th:

BCBA Board of Directors Meeting. 5:15 p.m. Broward County Bar Association Conference Room.

Tuesday, March 9th:

Palm Beach Judicial Reception. 5:30p.m.- 7:00p.m. Morton's Steakhouse, 777 South Flagler Drive, West Palm Beach. Please RSVP by phone at (305) 284-3470.

Thursday, March 11th:

South Broward Bar Association President's Installation Dinner. Keynote speaker Barbara J. Pariente. 6:00p.m. Cocktails, 7:00p.m. Dinner and presentation. Signature Grand, 6900 W State Road 84, Davie. Cost: \$75 for members, \$95 for non members, \$60 governmental attorneys & students, Judges and 1 guest complimentary. RSVP to Claudia@bplawfl.com or 954-921-2001.

Friday, March 12th:

Stephen R. Booher Inns of Court Luncheon. Featuring: Supreme Court Justice Ricky Polston. Noon. Riverside Hotel, Fort Lauderdale. Members FREE. \$55 non-Inns of Court members; \$45 Government Employees. For more information or to RSVP contact: tracilewis@bellsouth.net

Saturday, March 13th:

4 Hour Minor Guardianship Class. 9:00a.m.- 1:00p.m. Norma B. Howard Center, 1051 SE 3rd Ave., Fort Lauderdale, FL. Cost: \$100.00. Attorneys welcome, approved by the Florida Bar for CLE Credits. Guardian for anyone under the age of 18. To sign up please call Tish at 954-764-8040 Ext. 200.

Saturday, March 13th:

ASFMA Annual Educational Seminar. Marriott North Hotel, Andrews Ave. and Cypress Creek. Featured Speaker: Janice Fleischer, New DRC Director. Topic: Legislative Update for Mediators and Arbitrators. Total Seminar Credits: 9 CME's. Breakfast, lunch and breaks included. Price: \$190.00 Members; \$240.00 Non-Members. New Members signing up at event: \$265.00 (includes seminar and 15 month ASFMA membership). Additional event details and RSVP information at www.asfma.org.events

Tuesday, March 16th:

17H Grievance Committee meeting. 2:00p.m. Broward County Bar Association, 1051 SE 3rd Ave., Fort Lauderdale, FL 33316.

Tuesday, March 16th:

Bench and Bar Meeting. 12:00 p.m. Norma B. Howard Bar Center, 1051 SE 3rd Ave., Fort Lauderdale, FL 33316. To RSVP call (954) 764-8040.

Tuesday, March 16th:

Elder Law CLE Seminar. Noon. Tower Club in Fort Lauderdale. Cost in advance: \$20 for members; \$25 for non-members, At the door: \$25.00. RSVP to BCBA at 954-764-8040.

Wednesday, March 17th:

Solo Small Networking Dinner. For attorneys in firms with four or fewer lawyers. 6:00p.m. At Dave and Buster's, 3000 Oakwood Blvd. Hollywood, FL 33020. \$35.00 for BCBA members and \$40.00 for non-members. At door, \$5 more on a space available basis. Credit card and check payments accepted. For more information contact the BCBA at 954-764-8040, or log on to www.browardbar.org/events to RSVP.

Saturday, March 20th:

The Broward County Bar Association Young Lawyers' Section & Cystic Fibrosis presents The 8th Annual Bowl-A-Thon. 5:00p.m.- 8:00p.m. Manor lanes, 1517 NE 26th Street, Wilton Manors, FL 33305. For more details and sponsorship information please contact Matt Lerner at 954-966-0011 or mgllaw@fdn.com or Vickie Swain at 954-739-5006 or vswain@cff.org.

Sunday, March 21st:

The B'nai B'rith Justice Unit #5207 Annual Installation Brunch. 9:30a.m. Renaissance hotel, 1230 South Pine Island Road, Plantation. (I-595 and Pine Island Road). A Gourmet brunch will be served. Cost: \$50.00. For more information and to RSVP see www.justiceunit.org.

Wednesday, March 24th:

BCBA Young Lawyers' Section Board of Directors meeting. At the Broward County Bar Association, 1051 SE 3rd Ave., Fort Lauderdale. 5:30p.m.

Thursday, March 25th:

BCBA Young Lawyers' Section Luncheon. Noon. Speaker: Fort Lauderdale Mayor Jack Seiler. At the Tower Club in Fort Lauderdale. RSVP to BCBA at 954-764-8040.

Saturday, March 27th:

8 Hour Adult Guardianship Class. 9:00a.m.- 5:00p.m. Norma B. Howard Bar Center, 1051 SE 3rd Ave., Fort Lauderdale 33316. Cost: \$180.00. Attorneys welcome, approved by the Florida Bar for CLE Credits. Guardian for anyone over the age of 18. To sign up please call Tish at 954-764-8040 Ext. 200.

APRIL

Saturday, April 10th:

4 Hour Minor Guardianship Class. 9:00a.m.- 1:00p.m. Norma B. Howard Center, 1051 SE 3rd Ave., Fort Lauderdale, FL. Cost: \$100.00. Attorneys welcome, approved by the Florida Bar for CLE Credits. Guardian for anyone under the age of 18. To sign up please call Tish at 954-764-8040 Ext. 200.

Friday, April 16th:

Raising the Bar Family Law Seminar. 8:30a.m.- 4:00p.m. Hilton, Fort Lauderdale. For more information please go to page 3.

Saturday, April 17th:

8 Hour Adult Guardianship Class. 9:00a.m.- 5:00p.m. Norma B. Howard Bar Center, 1051 SE 3rd Ave., Fort Lauderdale 33316. Cost: \$180.00. Attorneys welcome, approved by the Florida Bar for CLE Credits. Guardian for anyone over the age of 18. To sign up please call Tish at 954-764-8040 Ext. 200.

APRIL 2010

OFFICE SPACE

DAVIE

Share office space with 2 other attorneys - possible referrals. Office condo built in 2005 - on ground floor, free parking for you and clients. Receptionist provided. Office is 16' x 11' with built-in shelving, cabinet and window, includes use of kitchen, storage & copier. Additional work space is available, easy access to SR7, I-595, and Turnpike. Monthly rent and utilities \ \$1575. Contact Jay 954-252-7774 or Michael 954-252-7458.

DELRAY/ BOYNTON

Law Office has several space options available near Delray Beach courthouse. Includes use of reception area, conference room, file room and kitchen. Call for options and prices. 561-737-3133.

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The Broward County Bar Association, Broward County Bar Association Family Law
Section and Legal Aid Service of Broward County

RAISING THE BAR - Family Law Seminar

Friday, April 16, 2010

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Denise Jensen dlj@gwpa.com (954) 761-9994 or Kimberly Zaffere kzaffere@legalaid.org
(954) 736-2426



A Message from Michael B. Gilden President, Young Lawyers' Section

My message this month begins with a tremendous thank you to Chief Judge Tobin who gave a fantastic 2010 State of the Circuit address to one of the largest luncheon crowds that the Young Lawyers Section has ever had. Over 100 people came to hear Judge Tobin at the Tower Club on January 21st and his message was informative, humorous, but mostly serious in stressing the improvements necessary to make the 17th Judicial Circuit viable to thrive as we head into the future. Judge Tobin made it clear to the lawyers, judges, and professionals of all ages in attendance that it is everyone's responsibility to become active in pushing for the improvements to our courthouse and to the systems that we all use on a daily and weekly basis. It is these improvements that will make our jobs easier and benefit the public at large. Again, the YLS sends its most sincere gratitude to Chief Judge Tobin and we look forward to his January 2011 address.

By now everyone should have seen both in the part Barrister, as well as by e-mail the promotions for the YLS 8th Annual Bowl-A-Thon which is scheduled for Saturday, March 20, 2010 beginning at 5:30 p.m. at Manor Lanes in Wilton Manners. The Young Lawyers Section has once again teamed up with the Cystic Fibrosis Foundation to co-host this fun event. We invite everyone to sign up a bowling team, but to also consider sponsorship opportunities which are still available. Please see the Bowl-A-Thon flyers in the Barrister or attached to our e-mails from more information. Also, please contact Matt Lerner at (954) 966-0011 to learn how you can participate.

The YLS Judicial Reception planning is now in full swing and is scheduled for Thursday, May 6, 2010 at the New River Center Rotunda beginning at 5:30 p.m. All of the Judiciary has already saved the date and we expect, as always, great attendance from our Judges and General Magistrates. I take this opportunity to specially thank our title sponsor of the Judicial Reception, Fowler White Burnett. There are, however, a multitude of other high level sponsorships available for this event and becoming a sponsor demonstrates your appreciation for all of the hard work put forth by our Judiciary. Flyers describing the sponsorship opportunities that are available, as well as how to purchase tickets for the event are available in the Barrister, as well as attached to our e-mails and posted in the courthouse. I encourage you to contact the events co-chair, Shayna M. Reitman at (954) 377-8175

for more information.

The YLS monthly luncheons continue at the Tower Club and we have been excited about the great attendance that we have had all year. Please continue to look out for our e-mails which announce our speakers for each month. Also, please be reminded that our April luncheon is where we hold the elections for next years Board of Directors positions. I encourage anyone who wants to run for a Board position to attend this luncheon and to bring people to support your nomination.

If anyone has any questions about how they can participate with or in the Young Lawyers Section, please feel free to call me at Kopelowitz Ostrow Ferguson Weiselberg Keechl at (954) 525-4100 or gilden@kolawyers.com.

Young Lawyers' Calendar

March 20, 2010- YLS Bowling Tournament
May 6, 2010- YLS Judicial Reception
June 6, 2010- YLS Family Day at TY Park, Hollywood.

The Broward Barrister is published by the Broward County Bar Association a part of our commitment to provide membership with information relating to issues and concerns on the local level. Opinions and positions expressed in the signed materials are those of the author and may not necessarily reflect the views of this publication or the Broward County Bar Association.

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Salary Range (based on experience):

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Application Procedures:

Letter of Interest and Resume must include documentation specified in the Request for Letter of Interest (RLI), Section III: Submittal Requirements. Be advised all applications are subject to the Florida Public Records Law. Specify in your application your interest in full time employment as the in-house General Counsel to The School Board or a specified attorney from a Law Firm interested in providing the services to serve as the full time General Counsel while remaining an employee/member of the law firm.

To review the Request for Letter of Interest (RLI), job qualifications and application procedures, access The School Board of Broward County's website: www.browardschools.com, Employment, Administrative. **Submissions must be received no later than 5:00pm on May 15, 2010.** The School Board of Broward County, Florida is an Equal Opportunity Employer.

SEND ONE (1) ORIGINAL AND SEVEN (7) COLLATED COPIES OF YOUR LETTER OF INTEREST AND RESUME TO:

Ms. Gracie M. Diaz
Acting Associate Superintendent of Human Resources
600 SE Third Avenue, 10th Floor
Fort Lauderdale, FL 33301 • (754) 321-1840




Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida Name 2010 Chair of Executive Council

Plantation, FL – February 19, 2010 - Andrew R. Cagnetta, President, Transworld Business Brokers, LLC, was appointed Chair of the 2010 Executive Council at the January meeting, it was announced today by Anthony J. Karrat, Executive Director, Legal Aid Service of Broward County and Barbara J. Prager, Esq., Executive Director, Coast to Coast Legal Aid of South Florida.

Members of the Executive Council are:

Katherine Birnbaum, Esq., Kirschbaum, Birnbaum, Lippman & Gregoire, PLLC;
Anthony J. Carriuolo, Esq., Berger Singerman;
Joey Epstein, RSM McGladrey, Inc.;;
Cindy Niad Hannah, Esq., ATD Mediation, LLC;
Carlos M. Llorente, Esq., Office of Robert F. Tacher;
Jean Karadbil Mignolet, Mignolet Business Research Consultants, Inc.;;
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RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann



1. Attorney's Fees/Independent Expert Testimony

Sea World of Florida, Inc. v. Ace American Insurance Companies, Inc., 35 Fla. L. Weekly D361 (Fla. 5th DCA

February 12, 2010).

Certifying conflict with an opinion from the Third District, the Fifth District has held that where a party seeks to recover attorney's fees as part of its damages in a contractual indemnity claim, it is not required to present independent expert testimony to corroborate the reasonableness of the amount. The court also joined the Fourth District's view questioning the continued need for the rule requiring such expert testimony where a party is seeking fees incurred in the same action.

2. Attorney's Fees/Timeliness

Ramle International Corporation v. Greens Condominium Association, Inc., 35 Fla. L. Weekly D356 (Fla. 3rd DCA February 10, 2010).

Eleven months after a final summary judgment was entered, which included a finding that the plaintiff was entitled to attorney's fees and costs, reserving jurisdiction to determine the amount, plaintiff filed its motion to determine those fees and costs. Although the defendant argued that the motion was untimely because not filed within 30 days of the judgment as required by rule 1.525, Fla.R.Civ.P., the Third DCA held that it was timely, in accordance with the Florida Supreme Court's recent opinion allowing fees after an eight month delay. The supreme court had reasoned that once the court determined that the prevailing party is entitled to fees and costs, any concern of prejudice or unfair surprise to the losing party is eliminated, and the 30 day time requirement need not be applied.

3. Civil Theft/Demand for Payment

McCormack v. Flens, 35 Fla. L. Weekly D308 (Fla. 2nd DCA February 5, 2010).

After a psychologist failed to return the unearned portion of his retainer, a jury found him liable for civil theft and awarded treble damages. Although the trial court thereafter directed a verdict for the defendant because the plaintiff had failed to comply with the notice requirements of the civil theft statute, the Second DCA reversed because, since he never paid the money after acknowledging that it belonged to the former client, he was not prejudiced by the premature filing of the lawsuit against him.

4. Estates/Timeliness of Claim

Grainger v. Wald, 35 Fla. L. Weekly D381 (Fla. 1st DCA February 12, 2010).

The appellee sued the decedent for personal injury and prevailed, but the judgment was not rendered until after the decedent's death. The appellee filed a claim against the probate estate which the personal representative claimed was untimely, but the probate court disagreed. Reversing, the First District held that the probate court erred in finding service of the notice to creditors was

ineffective because it was served upon appellee's "personal injury" attorney rather than upon his "probate" attorney. The court rejected that argument as "bizarre," also noting that the appellee had actual knowledge of the claim deadline. A dissenting judge argued that the estate's appeal should have been dismissed because the posthumous judgment was entered against the estate, and appellant was a judgment creditor of the estate and not of the decedent.

5. PIP Insurance/Retroactive Application of Statute

Menendez v. Progressive Express Insurance Company, Inc., 35 Fla. L. Weekly S81 (Fla. February 4, 2010).

The supreme court quashed an opinion from the Third DCA which had retroactively applied section 627.736(11), Florida Statutes (2001) to an insurance policy issued prior to the enactment of the statute. The Third DCA improperly held that the statute, which imposed presuit conditions to filing an action for an overdue claim for benefits, was "merely procedural" and did not unconstitutionally alter any existing rights. The supreme court, citing conflicting decisions, concluded that the 2001 amendment creating the statutory presuit notice provisions constituted a substantive change to the statute and could not be retroactively applied to an insurance policy issued before the effective date of the amendment.

6. Relief from Judgment

Hermitage Insurance Company v. Oxygen in the Grove, etc., 35 Fla. L. Weekly D342 (Fla. 3rd DCA February 10, 2010).

The Third District has again reminded us that although rule 1.540, Fla.R.Civ.P., authorizes the trial court to vacate a judgment on the basis of negligent mistake or error, the rule is not intended to provide relief for judgmental mistakes or tactical errors of counsel, nor from mistakes of law.

7. Rules of Procedure/Foreclosure

In Re Amendments to the Florida Rules of Civil Procedure, 35 Fla. L. Weekly S97 (Fla. February 11, 2010).

In order to ease the backlog of pending residential mortgage foreclosure cases, while protecting the rights of parties, the supreme court has adopted certain amendments to the rules of civil procedure, including the requirement that a mortgage foreclosure complaint be verified under penalties of perjury; the creation of a form for a motion to cancel and reschedule a foreclosure sale; and amendments to the forms for final judgment of foreclosure and the affidavit of diligent search and inquiry.

Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com.



Stuck in the Mud on Marketing?

By Margaret Grisdela

Imagine the scene... members of the firm's Executive Committee sitting around a conference table, unable to reach agreement on which marketing programs to implement. There are so many choices now, from Google AdWords to Twitter, Facebook, LinkedIn, and other forms of social media.

Marketing used to be simple. The Yellow Pages served as a leading advertising channel for personal injury attorneys, while a basic website and nice brochure met the marketing needs of most plaintiff or defense law firms. Add in a strong referral network, and the average law firm of 20 years ago was able to keep the phones ringing without too much work.

How times have changed! Effective legal marketing now involves many specialists, from search engine optimizers to video technicians and website analytics experts. Of course, you still need copywriters, graphic designers, and event coordinators.

Today's competitive marketplace frequently delivers business to the law firms that can master marketing, rather than the best law firms. Does all this sound familiar?

Avoid Inaction in the Face of Uncertainty

Confusion is a common response I see among lawyers struggling to select the best marketing approach. A natural tendency under these circumstances is for the law firm to either do nothing, or to continue with the same tired marketing techniques that deliver unsatisfactory results.

Marketing your law firm is a critical issue, and the economic downturn has left many firms scrambling to fill their pipeline. There is no time to wait. The good news is that there is a silver lining in the rapid changes of technology and promotional techniques.

Let the Market Guide your Promotional Campaigns

Rather than fighting with your law partners over who

has the best marketing ideas, turn to the marketplace for answers. Marketing is both art and science, where only actual response rates can truly determine the best promotional campaigns for your law firm.

Develop a plan to systematically test new or modified marketing strategies, keeping those that work and discarding the rest. Internet marketing offers an unprecedented ability to monitor campaign performance on an almost real-time basis, so you will be able to compare response rates and client acquisition costs across multiple promotions.

Smart Choices in Budget Allocations

Your marketing budget should be spread across an integrated set of marketing channels (i.e., Internet, sponsorships, events, and advertising) and scheduled against a written timeline with specific goals. Remember that current clients are your best source of new revenue, so be sure to earmark funds for client retention. Take advantage also of the many free or low cost legal directories offered by firms like Avvo, Justia and HG.org to easily increase your online visibility.

Remember, never stop marketing! The author invites your questions and comments.

About the Author: Margaret Grisdela is the president of Legal Expert Connections, a national legal marketing agency. She is available to conduct CLE marketing seminars approved by The Florida Bar in the convenience of your office. Reach her at 561-266-1030 or mg@legalexpertconnections.com.

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REPORTING ATTORNEY MISCONDUCT

by Morrie I. Levine – Inn Historian

Could there be a more relevant topic to attorneys and the general public in Broward County? On Friday, March 12, 2010, at 12:00 P.M., at the Riverside Hotel, the Stephen R. Booher American Inn of Court will be presenting Florida Supreme Court Justice Ricky Polston, who will be delivering a Professionalism Seminar entitled, "Reporting Attorney Misconduct is an Ethical Obligation."

For several months now, you couldn't pick up a newspaper in Broward County without reading about a certain "Ponzi scheme." The questions have arisen how the partners and associates of this attorney could not have known of his misconduct. The question on the mind of almost every attorney in a law firm is, "What is my ethical obligation to report such misconduct?" Supreme Court Justice Ricky Polston will be answering that question.

The Stephen R. Booher American Inn of Court is a chapter of the American Inns of Court. The Inns of Court are designed to improve the skills, professionalism, and ethics of the bench and bar. The membership of the Inn is comprised of Judges, attorneys, and law students. One of the ways the Inn seeks to reach its goals is by mentoring the law students and young attorneys in the chapter. Another way is to present programs such as Florida Supreme Court Justice Polston's seminar to the legal community at its annual public luncheon or at dinner meetings held for the Inn membership. Membership in the Inn is considered an honor and is by invitation.

Sponsorship opportunities are available for Justice Polston's luncheon. For more information, please contact the Stephen R. Booher Inn of Court's Administrator at: tracilewis@bellsouth.net. The luncheon is free for members of the Inn. For non-members of the Inn, the luncheon costs \$55.00 per person, \$45.00 per person for attorneys practicing less than 5 years, governmental attorneys, educators, and members of the judiciary. CLE Credit is available.

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Ft. Lauderdale District Office Marks Significant Timeliness Improvements in 2009

by Deputy Chief Judge David William Langham

The Florida Office of Judges of Compensation Claims (OJCC) is responsible for mediation, adjudication and resolution of workers' compensation (WC) benefit disputes throughout Florida. Such disputes are pled in WC by filing a Petition for Benefits (PFB) with the OJCC Tallahassee central office. Fiscal 2009 began July 1, 2008 and was a busy year for the Florida Office of Judges of Compensation Claims (OJCC). In the midst of internal innovation and process changes, much attention of workers' compensation practitioners and constituents was riveted to the Supreme Court proceedings in Murray v. Mariner Health, 994 So.2d 1051 (Fla. 2008), which was argued before the Supreme Court late in Fiscal 2008. The anticipation and debate of the Court's decision ended with publication of their decision on October 23, 2008.

The Murray case was the Florida Supreme Court's first substantive analysis of a 2003 statutory amendment to the section controlling claimant's attorney fees. Since the passage of the broad statutory amendments in 2003 Florida PFB filings had decreased (52%) from 151,021 in Fiscal 2003 to 72,718 in Fiscal 2008. Some analysts believed that some portion of this decrease was attributable to the fee structure changes. During the first half of Fiscal 2009, July 2008 through December 2008, the downward PFB trend continued. Filings in the second half of fiscal 2009 increased, however, resulting in an overall 2009 statewide PFB volumes of 73,871, representing the first increase (1.6%) in annual filing volumes since the broad 2003 amendments.

The Florida Legislature addressed WC fees again in the 2009 Session, intending to legislatively reverse Murray. The effects of the Court's action and the Legislature's action are not identical. Murray results in the potential applicability of hourly attorney fees for all cases between October 1, 2003 and June 30, 2009; controlled by the Court's interpretation of Fla. Stat. §440.34(2003) in Murray. That October 2008 decision effected a change applicable to a population of filed and potential cases for dates of accident in the past. The Legislature's 2009 statutory amendment applies only to cases in which the accident occurs after the amendment's effective date, i.e. after June 30, 2009. Thus, the Murray analysis of the 2003 law will control and hourly fees will remain payable for claims on dates of accident between October 1, 2003 and June 30, 2009. With hourly fees applicable to this potentially large volume of outstanding cases, many expected that the PFB filing rates would continue their upward trend in Fiscal 2010. However, through the first six months of Fiscal 2010, Florida PFB filings have resumed their pre-Murray downward trend. Overall, PFB filings in 2010 are down almost six percent compared to the same six month period (July through December) in 2009.

The OJCC consists of thirty-two Judges, and operates seventeen district offices throughout Florida. These offices range in size from one to five Judges, and each District has primary responsibility for adjudicating and mediating the PFB for accidents in the certain counties assigned to that District. The PFB filing volume is rarely close to uniform throughout the various Districts, and the OJCC has striven to appropriately distribute workload among these Districts and Judges. This effort has included reapportionment of districts and temporary "visiting judge" efforts by Judges in some Districts. In Fiscal 2009, the OJCC completed deployment of video teleconference system (VTS) capabilities in all Districts, facilitating assistance in busier Districts by other Judges, and without the attendant monetary and time expense of travel. One of the 17 District Offices is in Lauderdale Lakes (FTL), on North State Road 7; District FTL includes only Broward County. This three-Judge District is lead by Judge Daniel Lewis, who serves as Administrative Judge. In addition to his docket and case responsibilities, Judge Lewis manages the premises, equipment, security, and personnel issues in District FTL. Serving with him in that Office are Judge Kathryn Pecko and Judge Geraldine Hogan. Approximately nine and one-half percent of Florida's population resides in this three-Judge District; with 32 Judges in the system, three percent represents an equal distribution of responsibility among the various Judges. Therefore, population per Judge

in District FTL is generally consistent with an equal population distribution.

Litigation in Florida workers compensation is begun with a Petition for benefits ("PFB"). Each PFB might seek a single benefit, or many benefits. A given workers' compensation trial might decide the issues in one PFB or several PFB serially filed prior to trial. The overall number of PFB filed is therefore one measure of workload volume. A second measure of workload volume for a WC Judge is the volume of "new cases" assigned each year. Each District FTL Judge has historically experienced above-average PFB and "new case" filing volumes, disproportionate to the District population. This trend continued in 2009 with each Judge receiving about four percent of the state's PFB volume, when an equal distribution would have been approximately three percent. Fiscal 2008-09 is significant, however, because "new case" volumes for each Judge in District FTL was either below or only slightly above the statewide average.

The vast majority of issues in PFB filed in Florida must be mediated; the statute requires that mediation occur within 130 days of the PFB filing. Three full-time OJCC mediators are assigned to District FTL, Maria Brea, Esq., Michael Smith, Esq., and Lynn Koepfel. Ms. Brea is assigned to Judge Hogan's division, Mr. Smith to Judge Lewis' division, and Ms. Koepfel to Judge Pecko's division. The average time between PFB filing and the initial mediation in 2009 was less than the 130 days required by statute in each of these three divisions. Significantly, this marks the first time that any of the FTL mediators achieved this statutory requirement. This is a dramatic improvement from the significantly longer periods (as high as 257 average days) in this District in the past, and is clearly indicative of significant effort at providing timely service. Following trial, Judges of Compensation Claims (JCC) are required to enter their resulting order within 30 days. Judge Lewis led the FTL District averaging only three days in 2009, and Judge Hogan averaged nineteen days. In 2009, Judge Pecko continued a dramatic recent pattern of improvement and rendered her trial orders in an average of twenty-two days. Judge Lewis' achievement of this measure in 2009 marked a continuation of past performance; he has consistently achieved this goal. Fiscal 2009 marked the first time Judges Hogan and Pecko have achieved this goal, and their significant effort and focus on this statutory requirement is apparent.

In addition to his docket and office management responsibilities, Judge Lewis is active in the local bar. In 2008-09 he presented "View from the Bench -Questions You Always Wanted to Ask the Broward JCCs" at the Broward County Bar Association Workers' Compensation Section seminar, "Practicing Workers' Comp Law Effectively (Post Emma Murray)," in Fort Lauderdale. He also presented "Current Trends from the Judges' Perspective" at the Broward County Bar Association Workers' Compensation Section seminar, "Stayin' Alive in Workers' Compensation Today," in 2008, and was a Judge in the Workers' Compensation Trial Advocacy Program presented by The Florida Bar Workers' Compensation Section in 2009.

Judge Hogan serves on the scholarship selection committee for the Friends of 440. Last year she presented a seminar for the Broward County Bar Association.

District FTL is demonstrating a definitive trend toward timely and efficient service to the Floridians in Broward County. Fiscal 2009 was a year of improvement in the District FTL office. The improvements in trial order timeliness and mediation timeliness illustrate significant effort on the part of all three Judges, the mediators, and the FTL staff. The achievements of the OJCC generally, and District FTL specifically, are detailed in the OJCC 2009 Annual Report. This statutorily mandated report is published annually on the OJCC website at www.fljcc.org, under the "reports" tab.

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At its January 29 meeting in Tallahassee, The Florida Bar Board of Governors:

- Approved a motion to support a petition filed at the Florida Supreme Court asking the court to establish an Innocence Commission to explore reasons for a large number of exonerations in first degree murder and other crimes in recent years. Former ABA President Sandy D Alemberte made the request.
- Budget Committee Chair Jake Schickel said the Bar should also be in the black this year with its budget, despite initially expecting a small deficit. Incoming Budget Committee Chair Dan DeCubellis said initial expectations are the Bar's 2010-11 budget will also be in the black.
- Heard ABA President-elect Steve Zack ask the board for help on his top three priorities. Those include having an "Opening of the Legal Year" ceremony similar to those in England, France, Canada, and Australia which will promote the rule of law, improving civics education so citizens have a better understanding of how government works, and improving the legal response to disasters, both natural and man-made. Zack also said he plans to set up a Commission on Hispanic Civil Rights.
- Heard Chief Justice Peggy Quince talk about the court's priorities for the upcoming legislative session, including protecting the money in the state court trust fund and improving the mental health system. She also expressed support for the court electronic filing program and for the One pro bono campaign.
- Voted to revamp the Bar's Legal Publications office, including reducing the staff size and having Lexis/Nexis take over more of the production work of producing legal handbooks. The action also divides into separate operations the office's duties of producing legal publications and staffing procedural rules committees.
- Heard from the Board Review Committee on Professional Ethics that a special committee will be appointed to study rules and ethics issues involving using reverse contingency fees to hire lawyers to negotiate medical liens in personal injury cases. Bar President Jesse Diner said that board member Jay Cohen will chair the committee. The BRCPE also considered changes to Ethics Opinion 07-2 on outsourcing legal services, but decided not to make any alterations.
- Received on first reading several rule and policy changes relating to the Clients Security Fund. Amendments include increasing from \$2,500 to \$5,000 the fee amount that can be repaid when an attorney provides no useful services and rewriting the rule defining what constitutes useful services. Board member Greg Coleman, chair of the Clients Security Fund Review Committee II, said the committee is still studying ways to prevent losses from trust accounts, including random audits and/or requiring surety bonds.
- Received two items on first reading from the Disciplinary Procedure Committee. Standing Board Policy 15.92 on public reprimands will clarify when in-person public reprimands are necessary and provides that all in-person public reprimands must be before the Board of Governors. Proposed changes to Rule 3-5.2 will eliminate the need for a separate complaint to be filed by Bar counsel when there is a petition filed for emergency suspension or interim probation. The emergency motion will serve as the bar's formal complaint in those cases.

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By Michael J. Wrubel, P.A.

FOR decades, when troubled homeowners and banks battled over delinquent mortgages, it wasn't a contest.

On top of that, Courts... took banks at their word when the lenders said they owned the mortgage notes underlying troubled properties...

[B]anks and borrowers still do battle over foreclosures on an unlevel playing field that exists in far too many courtrooms. But some judges are starting to scrutinize the rules-don't-matter methods used by lenders and their lawyers in the recent foreclosure wave. On occasion, lenders are even getting slapped around a bit.

In today's economic environment thousands of Broward County homeowners are "underwater" meaning they owe more money than their homes are worth. It's easy to be an arm chair quarterback and say they should have known better. It's also easy to forget that rather than their loans remaining with local banks, they usually were provided by zealous mortgage brokers looking to maximize their fees before selling the loans to another entity which packaged them to investors who bought them as mortgage backed securities. While the big players in this colossal waste of wealth have been supported for making rational decisions such as intentionally defaulting, entering bankruptcy, seeking stimulus lifelines, etc., the homeowners have been accused of immoral conduct for prematurely defaulting or defending their delinquent positions in court.

Our society is use to criminal defense lawyers standing firm and demanding that prosecutors "prove their case" when representing clients who everyone one knows "did it." When weaknesses emerge in criminal cases, it is expected the lawyers will take advantage and minimize the damage to their clients. Foreclosure defense lawyers are increasingly demanding that creditors "prove their case." However, in a court system swamped by new case filings, foreclosure defendants have yet to receive the type of understanding and tolerance generally afforded to accused criminals. Nevertheless, the pendulum may be beginning to swing in the debtors' direction.

One of the consistent legitimate issues raised by debtors is whether the Plaintiff, seeking to part the defendant from his property, legally owns the note and mortgage. After years of frenzy at the lending trough this is by no means an academic question. This past month in BAC Funding Consortium Inc. v. Jean-Jacques, No. 2D08-3553, 2010 Fla. App. LEXIS 1447,

(2nd DCA, Feb. 12, 2010) the court reversed a summary judgment which had been granted in favor of U.S. Bank National Association, the trustee of a securitized trust. U.S. Bank had contended it was entitled to prevail, because it had filed the original note with the court. Id. pp. 6. It maintained that it had no obligation to file an assignment of the note or the mortgage. Id. p 7. An invalid assignment was in the court file which among other things was not authenticated. Id. p. 2. The note identified a different entity, Fremont Investment, as the lender. Id. p. 1. No evidence was presented to show that U.S. Bank "had purchased the note and mortgage" Id. p. 7. The court stated that

U.S. Bank was required to establish, through admissible evidence, that it held the note and mortgage and so had standing to foreclose the mortgage before it would be entitled to summary judgment in its favor. Whether U.S. Bank did so through evidence of a valid assignment, proof of purchase of the debt, or evidence of an effective transfer, it was nevertheless required to prove that it validly held the note and mortgage it sought to foreclose...

U.S. Bank failed to establish its status as legal owner and holder of the note and mortgage...

Id. pp. 7, 8.

Before homeowners are separated from their property, they need to confirm that the proper party is obtaining relief at their expense. While this process unfolds many homeowners are given an opportunity to get back on their financial feet and become current with their obligation or to find feasible living alternatives. Regardless of motive foreclosure defendants have a right to their day in court. As is noted in BAC Funding

Given the vastly increased number of foreclosure filings in Florida's courts over the past two years, which volume has taxed both litigants and the judicial system and increased the risk of paperwork errors, it is especially important that trial courts abide by the proper standards and apply the proper burdens of proof when considering a summary judgment motion in a foreclosure proceeding.

Id. p. 9.

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Judge Carlos Augusto Rodriguez



Judge Barbara Anne McCarthy



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Judge Edward Harold Merrigan, Jr. new County Court Judge being robed by family members.

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