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Annual Installation of Officers and Board of Directors

Monday, September 24, 2012
Registration 11:30 a.m. - Luncheon 12:00 p.m.
Tower Club, Fort Lauderdale

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BCBA YLS co-hosted a luncheon with B'nai Brith Justice Unit. (l to r) Judge William Haury, Judge Cynthia Imperato, Judge Jeffrey Levenson, YLS President Meghan Clary, Judge Stacy Ross, and B'nai Brith President Adam Rabinowitz.



BCBA Mentor/Mentee Breakfast. (l to r) Sarah Orbe, Kristine Johnson, Elizabeth Daugherty, and Kim Sherman



BCBA All-Bar Bowling League celebrated its 3rd annual season. Glazer & Associates, P.A. team members (l to r) Eric Glazer, Brian Fogelson, Paul Kim, and Scott Shapiro.



Sabadell Bank presented the BCBA \$10,000 annual sponsorship check. (l to r) Sabadell Bank Executive Vice President Bruce Hecker, BCBA President Deborah FitzGerald, BCBA Executive Director Art Goldberg, and Sabadell Bank Vice President Frank Wagner

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Deborah FitzGerald

WELCOME to the 'new' Barrister. As the lyrics of a song goes...Everything old is new again. I am proud to be part of an endeavor to again provide our members with a printed version of our flagship publication. Several years ago our Board decided to go to a web-based publication because of the significant cost savings (over \$ 40,000 a year) which could be used to fund worthy programs of the BCBA.

However, I and other members of our Bar, still prefer paper and believe a printed version of the Barrister is still needed. So with the hard work of our Past President Jordana Goldstein, our Publicity Committee headed by Winney Kessler, our CONRIC publishing team, and others, a printed version of the Barrister has become a reality. We have entered into a contract with CONRIC Publishing to produce the Barrister, including their selling advertising space. CONRIC has a proven track record with other bar associations.

We are proud of the quality of the Barrister in its new format, and will continue to have a digital format on our website. Our goal is to continue to provide interesting and informative content. We invite submissions of articles for consideration by our Publicity Committee for publication. We ask you to support the advertisers of the

publication because without advertisers we cannot produce the publication.

If you are not aware, Legal Aid and Coast to Coast Legal (which I will refer to collectively as 'Legal Aid') is having its Annual FOR THE PUBLIC GOOD Event on September 28, 2012 at the Hilton Ft. Lauderdale Marina.

In our busy careers, too many of us do not think about, participate in, or contribute financially to Legal Aid.

Over 120 not-for-profit organizations in Broward County refer clients to Legal Aid. In 2011, Legal Aid assisted 12,000 clients, 3,000 of whom were children. Legal Aid provides assistance to children in foster care, the homeless, veterans, victims of domestic violence, senior citizens, and families losing homes to foreclosure.

As Jay Kim, BCBA Board member and current chair of Legal Aid, aptly said, "these two organizations do so much with so little and make a huge difference in peoples' lives."

As a Board, we always talk about Legal Aid, but it is now time for us to act. We have committed to volunteering at Legal Aid's Advice and Counsel Hotline 4 times this year. This is something you can do too. Another way to get involved is to join the Florida Bar's One Campaign or the Tracey McPharlin Initiative by taking a case. Legal Aid has a great website so it's easy to volunteer.

You can also donate money. The Florida Bar suggests \$350 each year. You may also donate money to the FOR THE PUBLIC GOOD Event, the biggest fund-raiser of the year. It honors, among others, members of our legal community. This year the Honorable Ron Rothschild and the law firm of WardKim will be honored.

Please join the BCBA in being a part of this Event. Be a sponsor. Attend the Event. If you can't attend, make a donation. But above all, this year make it a priority to contribute your time, expertise and money to this cause. Our community deserves no less from our profession, so please, support Legal Aid. **B**

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letter from the young lawyers' president



Meghan Clary

Being a former golf tournament chair, I cannot help but to begin talking about the Young Lawyers Section 25th Annual Charity Golf Tournament, especially since it is right around the corner. This year, we are gearing up for our biggest tournament in YLS history, and it is not just because it is our 25th anniversary. It is because we are diligently and creatively working to bring you two tremendous events for the benefit of our very deserving charitable beneficiary, Florida's Children First, which is a non-profit organization dedicated to advancing the rights of at-risk children.

Our first event is the Tee-Off Happy Hour, which will be held on Thursday, October 4th from 5:30-7:30 at the latest hotspot on Las Olas, American Social. This event is open to all and guests will enjoy a complimentary drink and appetizers. We will follow up with the main event the following week on October 13th at Jacaranda Golf Course with an 8:00 a.m. shotgun start. Each golfer will have the opportunity to win numerous prizes, including a 2012 Infiniti G37 Convertible! This is an event you will not want to miss, so if you are interested in partaking in the fun and/or being a sponsor, please contact the tournament chair, Jeffrey Wank, at (954) 492-4010, or visit our tournament

website at www.ylsgolftournament.com.

YLS has some other wonderful upcoming events in store for you, starting with our Breakfast with the Judges event, which has been moved to Friday, September 7th at 8:30 a.m. in the law library at the Broward County Courthouse. The breakfast is catered and is \$25.00 per person (free for all judiciary). Space is limited so please RSVP to Lindsay Corcoran via email at Lindsay@brydgerporras.com. In addition, we will be hosting our September luncheon at noon at the Tower Club on the 20th, featuring The Honorable Nicholas Lopane, who will be speaking on the topic "From Young Lawyer to General Magistrate to Judge - How to Place Yourself on Track to Become a Public Servant." The following month on October 18th we will be back at the Tower Club at noon, along with the Administrative Judge for the Seventeenth Judicial Circuit Civil Division, The Honorable Jack Tuter, who will be discussing the new email rule changes. Both luncheons are \$25.00 per person and you may RSVP to the Broward Bar at 954-764-8040.

While this article is being written before any of our August events have occurred, I do want to thank our panel of distinguished judges (Judge Cynthia Imperato, Judge Jeffrey Levenson and Judge Stacy Ross) for speaking about the common mistakes lawyers make at our August luncheon, which we co-hosted with B'nai B'rith. I would also like to further recognize Judge Imperato and Judge Ross, as they are our YLS judicial liaisons this year; we are honored to have you on our team.

If anyone has any questions about joining YLS or to learn more information about our events, please feel free to call me at Chorowski & Associates, P.A. at 954-525-6566 or email me at meghan@cmfamilylaw.com. You may also find a calendar of our events on the Broward Bar web site at www.browardbar.org/yls. **B**

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BANKRUPTCY

Whose Property Is It Anyway?

By Jeffrey Solomon



The title is based on a 1981 movie and an award winning play “Whose Life is it Anyway?” A quadriplegic sought judicial relief to take control of his own life by preventing a hospital from providing medical treatment that was keeping him alive. Several articles could be written with this title as to real estate, though on a far less compelling issue than in the movie. My daughter just completed first year law school which brings to mind that an article could be written about basic real property law with esoteric concepts. Remember seisin and defeasible interests? Political, philosophical, and economic analysis could be used to discuss issues such as rights and limitations of property owners in the context of zoning, condemnation and historic preservation.

When does someone on the title to real estate, a vehicle, or a bank account not really own the property? Consider a father who is co-owner and co-signer of a vehicle to enable his adult son to obtain credit; a mother who adds her daughter to a deed to avoid probate; or a daughter who is added to a bank account to be able to write checks for her elderly father. Whose property is it anyway?

Bare legal title is a critical concept for the real world practice of bankruptcy attorneys. If a debtor only has legal title with no beneficial or equitable interest, then the property cannot be taken by

the bankruptcy trustee. Recent cases have made it more difficult for a debtor to claim bare legal title as a defense to turnover to the trustee. Non-bankruptcy attorneys need to be aware of this issue to protect a client who might someday have to file bankruptcy.

In the bankruptcy court division in Broward County, Judge Ray addressed the issue of bare legal title. In re Claire Fletcher, 2012 Bankr Lexis 2458 (Bankr. S. D. FL 2012). The debtor was co-owner of a vehicle that was paid for and used by her mother. The debtor’s claim of bare legal title would seem to make sense. The debtor was a joint owner only to help obtain cheaper car insurance. But the mother was a dependent of the debtor and resided with the debtor. The debtor paid the insurance and maintenance costs. These and other related facts led the court to conclude one-half of the value of the car was property of the estate. The trustee was entitled to sell the vehicle. The court did provide an opportunity to the debtor to convert to a chapter 13 payment plan bankruptcy. Note that a chapter 7 trustee can sell the entire property and disburse one-half of the proceeds to the non-debtor (co-owner). Compare In re Mullenix, 2006 Bankr Lexis 1228 (Bankr. S. D FL 2006)(vehicle not property of the estate). (J. Olson). In re Goldstein, 135 BR 703 (Bankr. S. D. FL 1992)(Judge Mark

finding resulting trust in a certificate of deposit.)

Real estate ownership likely is the most difficult to insulate the debtor’s title interest from the trustee. In Bakst v Cario, 2012 Bankr Lexis 1389, (Bankr. S. D. FL 2012), Judge Kimball addressed the issue of a debtor claiming bare legal title on real property originally owned only by her mother. The mother by quit-claim deed added the daughter/debtor as joint tenants with right of survivorship. The deed stated on its face that its purpose was estate planning. Judge Kimball rejected arguments of bare legal title as well as of a constructive or resulting trust. The court concluded that the bankruptcy trustee could sell the property. Also see In re Sanchez-Villaba, 2012 Bankr Lexis 710 (Bankr. S.D. FL) and In re Corzo, 2008 WL 4826082(Bankr. S. D. FL) (J. Hyman)(rejecting debtor’s claim of bare legal title as to real estate.) But see In re Gonzalez, an unpublished order in Case No 11-26457. Judge Isicoff in the bankruptcy court in Miami found bare legal title in real estate and concluded the home is not property of the estate where debtors contributed nothing to the purchase, maintenance, insurance, taxes or upkeep.

Bankruptcy attorneys need to discuss these issues with clients prior to filing a bankruptcy petition. Advance planning is necessary, especially by the real estate or estate planning attorney long before a debt problem may arise. Attorneys must make an analysis of whose property is it anyway. **B**



Jeffrey Solomon is the former chair of the Bankruptcy Section of the Broward County Bar Association. He currently serves on the Board of Directors of the BCBA. For more information visit: www.solomonlawoffice.com or call 954-967-9800.

e-discovery

Florida Supreme Court Approves e-Discovery Amendments to Florida Rules of Civil Procedure

By Jason L. Molder

On July 5, 2012, the Florida Supreme Court published an opinion amending the Florida Rules of Civil Procedure to address e-discovery-related topics. Although the Federal Rules have contained provisions for dealing with electronically stored information (ESI) for some time now, this is Florida's first foray into the area. The new rules become effective September 1, 2012. Highlights of the amendments follow, along with a short practice pointer for each.

Rule 1.200. Amended to allow the trial Court to consider various issues relating to e-discovery during the pretrial conference. Such issues include: voluntary exchange of ESI; stipulations regarding authenticity of ESI; need for advance rulings on admissibility of ESI; preservation of ESI; form and manner of production of ESI; and limitations regarding the production of ESI.

Practice pointer: Don't assume that opposing counsel has any idea what e-discovery is (many times they won't). Make sure you raise any issues pertaining to e-discovery at the pretrial conference, and when it comes to issues such as form of production, be as specific as possible. If at all possible, take someone from your team well versed in e-discovery to the pretrial conference with you.

Rule 1.201. Amended to require parties involved in complex litigation to address the possibility of reaching an agreement relating to the preservation and form of production of ESI, and limitations regarding the production of ESI.

Practice pointer: Complex litigation can be complex enough, without the addition of e-discovery issues. Meet and confer with opposing counsel as early



as possible to address and try to agree on e-discovery issues. When reaching agreements on issues such as form of production, be as specific as possible. If at all possible, have someone from your team well versed in e-discovery join you in the meetings.

Rule 1.280. Amended to expressly authorize discovery of ESI. In addition, new subsection (d) authorizes objections to requests for ESI if the information is not reasonably accessible due to burden or cost, allows the Court to specifically tailor the production of ESI under such circumstances, and requires the Court to limit the production of ESI under certain circumstances.

Practice pointer: Know what information your client has, where it is located, and what steps need to be taken to retrieve it. If you have valid objections to an ESI request, raise them early on, and be prepared to support them. Do you know what questions you need to ask your client to properly evaluate an ESI request and possible objections?

Rule 1.340. Amended to expressly allow for the production of ESI. Specifies that ESI shall be produced in the form in which the ESI is ordinarily maintained or in a reasonably usable form.

Practice pointer: Do you know in what form your opposition maintains its ESI? Ask these questions before serving document requests, so you know what to ask for. If interpreted the same way as the Federal Rules, production in "reasonably usable form" will not allow your opposition to remove search functionality from previously searchable native data, or produce spreadsheets in a manner where the formulas are not visible.

Rule 1.350. Amended to expressly allow for the production of ESI. Allows a request for ESI to specify the form in which the ESI is to be produced. If the responding party objects to the requested form, or if no form is specified in the request, the responding party must state in what form the ESI is being produced. If no form is specified in the

request, the amended rule states that ESI shall be produced in the form in which the ESI is ordinarily maintained or in a reasonably usable form.

Practice pointer: With this amendment, motions to compel production in a specific form (as long as the request is reasonable) should be a thing of the past. Although the rules never prevented a party from asking for ESI in a specific form, now they expressly authorize it. If you want something in a specific form, ask for it early on, with the first discovery request. Later requests that ask for the same information but in a different form may be met with resistance by the opposition, and may not be granted by the Court.

Rule 1.380. Amended to address ESI that was lost as a result of routine, good faith operation of an electronic information system. Provides that absent exceptional circumstances, the Court may not impose sanctions on a party under the rules for failing to produce such ESI.

Practice pointer: This is NOT a green

light to spoliage electronic evidence. Be very careful here. Know what your client's data retention policies are, and make sure you are appropriately advising your client with respect to legal holds and preservation of ESI. Protect yourself! Attorney-client communication is very important in this regard.

Rule 1.410. Amended to expressly authorize a subpoena to request ESI. If no production form is specified in the request, the amended rule states that ESI shall be produced in the form in which the ESI is ordinarily maintained or in a reasonably usable form. Allows the person responding to a subpoena to object to requests for ESI if the information is not reasonably accessible due to burden or cost, allows the Court to specifically tailor the production of ESI under such circumstances, and requires the Court to limit the production of ESI under certain circumstances.

Practice pointer: Similar to the amendment to Rule 1.350. In addition, familiarize yourself with the Federal Stored Communications Act, in the

event you see a subpoena notice go out in connection with a covered third-party who may be storing ESI related to your client.

The highlights and practice pointers above are by no means exhaustive. If you are involved in litigation where e-discovery is (or may be) an issue, familiarize yourself with the subject, and most importantly, get help from those that have the technical experience to guide and advise you. E-discovery is extremely prevalent in litigation, and in many respects, it is a practice area in and of itself. **B**



Jason Molder is an attorney at Benson, Mucci & Weiss, PL, a law firm based in Coral Springs, Florida. For more information email: jason@bmwlawyers.net or visit: www.bmwlawyers.net

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UPDATE ON THE NEW COURTHOUSE

by Kathy Pugh, Trial Court Administrator



As Trial Court Administrator of the 17th Judicial Circuit, I would like to take this opportunity to bring you all up-to-date on the plans for our new courthouse. On August 21, 2012, Broward County had the groundbreaking ceremony in the west parking garage, the site for the new tower. Construction crews had previously started clearing the courtyard area near the west garage and the actual demolition process began on August 22, 2012. Once the demolition of the garage is complete, the construction will begin on the new courthouse tower.

While this is an exciting time, it will also be one fraught with possible traffic delays, construction noise and dust. I am, therefore, seeking the support and help of all the 17th Circuit agencies, along with all those on the outside, to try and keep the disruption to a minimum.

Beginning August 2, 2012, the north lane of 6th Street closest to the judicial

complex will be closed from SE 3rd Ave to SE 1st Ave. Two lanes of traffic on 6th Street will remain open. On August 22, 2012, the northbound lane on 1st Avenue, adjacent to the Judicial Complex will be closed from SE 6th Street to Courthouse Drive; the southbound lane will be open.

During the demolition and construction period, which is expected to last until 2015, you can expect a significant impact to the area surrounding the Judicial Complex. Periodic lane closures on 6th Street and SE 1st Ave will continue, with the possibility of one or both of these streets being closed altogether for a period of time. The traffic impact will be even greater because during this time the construction of the new 1,000-space parking garage that will serve the new courthouse will also be ongoing. That project is scheduled to be completed in late 2013. You should inform your clients to expect delays in

getting to the courthouse so that they will not miss any important proceedings.

Chief Judge Weinstein and I are working with the BCBA Board of Directors to find ways to alleviate some of the impact of construction to your dealings in the courthouse. To that end, Chief Judge Weinstein has asked the Judges to have more flexibility in conducting hearings via telephone and we are also looking at the possibility of utilizing video-conferencing in coordination with the BCBA.

Future updates will be made available in the Barrister. **B**



Kathy Pugh is the Trial Court Administrator of the 17th Judicial Circuit. She belongs to the New York and Florida Bars.

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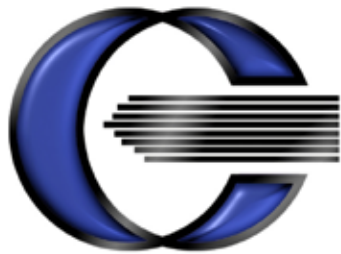
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- 6 Construction Law CLE Luncheon**
12:00 pm - 1:30 pm
Significant Changes in Florida Building Code
 Speaker: Jerome Sanzone, Code Compliance Mgr of GFA Internat'l
 Contact: Leonardo Ortiz at Ino@taylorandortiz.com or 954.530.0889
 No Charge to Attend
- 8 4-Hr Minor Guardianship Class**
9:00 am - 1:00 pm
 Approved by FL Bar for CLE credits
 Contact: Tish at 954.832.3617
 \$100.
- 11 Membership Committee**
4:00 pm - 5:00 pm
- 11 Board of Directors**
5:00 pm - 7:00 pm
- 12 e-Discovery Technology & Ethics CLE Luncheon (2 CLE Credits)**
12:00 pm - 1:30 pm
 Speakers: Jason Molder - Benson, Mucci & Weiss; and Shawn Waggoner, Terremark
 Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
 Free to BCBA Members

- 13 "The Risks of Practicing Law in Cyberspace and How to Mitigate Them" CLE Luncheon**
12:00 pm - 1:30 pm
 Speaker: Victor Nappe, CEO Cloud-jacket Security/SECNAP Network Security
 Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
 \$15 BCBA Members, \$25 Non-Members
- 15 8-Hr Adult Guardianship Class**
9:00 am - 5:00 pm
 Approved by FL Bar for CLE Credits
 Contact: Tish at 954.832.3617
 \$180.
- 18 Bench-Bar Committee Meeting**
12:00 pm - 1:30 pm
 Contact: Traci Lewis at 954.832.3618 or Traci@browardbar.org
- 19 Publicity Committee**
12:00 pm - 1:30 pm

- 19 Solo/Small Networking Dinner**
6:00 pm - 8:00 pm
 Venue: Dave & Busters
 3000 Oakwood Blvd, Hollywood
 Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
 \$35 BCBA Members, \$50 Non-BCBA Members, \$5 additional at door
- 20 Young Lawyers Luncheon**
12:00 pm - 1:30 pm
"From Young Lawyer to General Magistrate to Judge"
 Hon. Nicholas Lopane
 Venue: Tower Club
 Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
 \$25 at the door
- 27 West Broward Section Luncheon with Fourth District Court of Appeal Chief Melanie May ~ 12:00 pm - 1:30 pm**
 Venue: Plantation Preserve;
 7050 W. Broward Blvd, Plantation
 Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
 \$25 if RSVP'd or \$30 at the door

To register for all BCBA events, go to:
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Unless otherwise noted, meetings are held at BCBA Offices

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