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# Broward County Bar Association BARRISTER

July-August 2007

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VOLUME 36, ISSUE 7

## 2007 ANNUAL MEETING AND INSTALLATION DINNER JUNE 19, 2007



*Barbara K. Sunshine taking the oath of office as BCBA president, administered by Hon. Dale Ross.*

*Newly elected Secretary-Treasurer, Carlos M. Llorente (center) with 2007 President Elect Christopher Neilson and Judge Dale Ross.*



*Chris D. Connally is sworn as president of BCBA Young Lawyers' Section.*

*See Photo Gallery on pages 12-13*

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### PRESIDENT APPOINTS JUDICIAL LIAISON



Barbara K. Sunshine introduced The Honorable Stacy Ross as the 2007-2008 Judicial Liaison at the June 21 Installation Dinner. "It will be both an honor and a privilege for me to serve in such an excellent organization," said Judge Ross upon learning about her appointment. "I will personally encourage the Broward judges to not only join BCBA but also to get more involved." The appointment was made pursuant to Article VII, Section 1 of the Bylaws.



## PRESIDENT'S MESSAGE *by Barbara K. Sunshine*

### DIVERSITY

One of my platforms this year is diversity. I was pleased when the votes were counted and seven females were elected, joining Diana Santa Maria (Southwest), Marie Montefusco (West), and me. Carlos Llorente is serving as our Secretary/Treasurer, our first Cuban American officer and a founding member of the Broward County Hispanic Bar Association. Jordana Goldstein, Membership Chair, and I have met with Past Presidents Peter Brandt and Steve Moody, and Roshawn Banks, a new Board member who is our Voluntary Bar Liaison Chair. Roshawn is a Past President of T.J. Reddick Bar Association. We hope to partner with the other local voluntary bar associations in as many events as we can. Our goal is to work together and grow together.

### VACATIONS

Some people don't take enough. I've been practicing for 23 years. If I worked for a company, I'd probably be eligible for six to eight weeks off. I love summer, especially when I'm out of Florida. We have great weather six months out of the year. The rest, it's just way too hot. The best part of summer is vacations—such an important part of raising a family. Memories that last forever. My brother and I own a cottage on Lake Michigan. The front of the house looks out on woods—deer in the mornings. The view from the back deck is the lake. Bill and I walk for miles on the beach picking up Petosky stones and beach glass. Then he goes fishing with my brother, Rick, out on the lake for salmon and later in the

day, fly-fishing in the streams and rivers for trout. We are five miles from town, so our cell phones don't work. We have a land line, but we're not home much to answer. After all, if we don't "get away" from the office entirely, what's the point?

### PRACTICE SECTION CHAIRS/COMMITTEE CHAIRS

I have made all of the appointments. Each Practice Section Chair has a Board member as liaison. The task is to have a seminar (even if only a lunch seminar at the Norma B. Howard Bar Center) and write an article for the "Barrister."

The Bylaws allow the Board to create Committees. They change from year to year. I have already mentioned Membership and Voluntary Bar, but another very important one is the Building Committee. Chair Deborah FitzGerald brings years of leadership to this position. Don Walters is Chair of the Bylaws Committee. The Bylaws are an ever-changing document and Don and his Committee will examine each Section to determine whether changes should be made. Finally, the Nominating Committee has been appointed—one member from each geographical area. I thought this should be done immediately, because we are often losing our Board members to the judiciary (Congratulations—this is a good thing!) or for some other reason like moving away or being too busy.

September 20 is our annual Cruise on the River of Knowledge, coordinated by the Family Law Practice Section. There is one hour ethics credit along with great food, interesting people, and of course, the cruise down the Intracoastal. Hope to see you there!

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# CALENDAR OF EVENTS

## Monday, August 6

Florida Grievance Committee Meeting  
2:00p.m. at the Broward County Bar Association

## Monday, August 6

Traffic Magistrate Luncheon noon Norma B. Howard Center

## Wednesday, August 8

Free Lunch and Learn Seminar Myles German, Financial Advisor from 12:00p.m.-1:00p.m. at the Broward County Bar Association 1051 SE 3rd Avenue, Fort Lauderdale. Topic: Retirement Plans for Business Owners RSVP to Myles German (561) 961-9334

## Monday, August 13

University of Miami Paralegal Certificate Program Open House for prospective students. 6:00 p.m. Norma B. Howard Bar Center.

## Tuesday, August 14

North Broward Bar Association luncheon held 12:00p.m. at the Steak & Ale Restaurant 6300 N. Andrews Avenue, Fort Lauderdale. For more information, please call: Alan Fishman (954) 975-7800.

## Wednesday, August 15

Processing Court Documents - Federal and County. Stay up to date! Build your case! Help grow your practice! And earn 1 CLE credit. Broward County Law Library, County Courthouse, North Wing, First Floor. 10-11 A.M. Walk-ins welcome!

## Friday, August 17

CLE- "Florida Law Update" at the Broward County Bar Association 1051 SE 3rd Avenue, Fort Lauderdale, FL To register: Please call the Florida Bar for details

## Tuesday, August 21

Florida Grievance Committee Meeting(17H) 2:00p.m. at The Broward County Bar Association 1051 SE 3rd Avenue, Fort Lauderdale

## Thursday, August 30

Construction Committee Meeting at the Broward County Bar Association (Norma B. Howard Center) 1051 SE 3rd Avenue, Fort Lauderdale at noon. Lunch will be served at the cost of \$10.00. RSVP to lcherubin@smithcurrie.com Member and non-members are welcome. For more information, contact Brian A. Wolf at 954-761-8700.

## Thursday, August 9, 2007

Broward County Hispanic Bar Association & Broward County Bar Association Luncheon. Guest Speaker: Chief Judge Victor Tobin. "A New Direction for Broward County's Judiciary", Tower Club, 11:45 a.m. RSVP to Carmen@velasquez-law.com.

## Thursday, August 23, 2007

Broward County Hispanic Bar Association. Wine Tasking 101: An Introduction to Wine Tasting. Crown Wine & Spirits, 1030 NE 15 Ave., Fort Lauderdale. Free Riedel wine glass gift, appetizers. Cost: \$30. Tickets on sale at door on the day of the event.

## FINDING TIME...

### TRACKING TIDE OF EVENTS IS NO DAY AT THE BEACH by Art Goldberg



Sometimes, I find it hard to keep track of political proceedings, the continuous whirlwind of eye-popping events that wash ashore from over the horizon. Maybe this summer I can catch up on my reading at the beach.

There is a sea of knowledge to perceive - about the drought throughout the Southeast, Gore's warning on Global Warming, even the level of big Lake O is exceeding historical lows. It's impossible to find the time to analyze events in depth; I can barely skim the surface of the data stream.

There's the war in Iraq, the consequence of Hamas defeating Abbas in Gaza, harmful products imported from China, the spinning of each Iranian and/or South Korean centrifuge. I wrestle with the battles between branches of government, the showdown with the VP over his exercise of EP (Executive Privilege), the firing at Justice of the eight prosecutors - will the Constitution be accosted by D.C. secrecy? There's the failure to reform US policy on Immigration, the 5-4 decision against School Integration, whether \$3 is really the true cost of a gallon or are we being screwed? I can't decide among the twenty-odd candidates as to whom I want to be my President, months prior to any caucus or primary.

Add in the local real estate crisis, ridiculous property insurance prices, the predication of a harsh Hurricane Season, the negative publicity surrounding the courts, the problem of municipal financial support - and on and on and on. There's just too much news to assemble and fuse into a universal view that can unequivocally value.

So I hit my computer, seeking illumination. Ironic as it appears, I proceeded to google *information overload* in an attempt to free-up my mind. I was immediately transported to Columbia University's Graduate School of Journalism, immersed in an arcane academic debate about how news is best delivered and consumed.

Traditionally, the print media lays out events in straight forward language that most readers can comprehend. Yet newspapers feel financially pinched, as more news is digested on line.

In a Mar/Apr 2007 article, "Beyond News", published in the *Columbia Journalism Review*, Mitchell Stephens denotes that to compete with the immediacy of news transported digitally, traditional print media must repackage their product to present more than just timely news.

*"(Newspapers) can and must regularly add analysis: thoughtful,*

*incisive attempts to divine the significance of events - insights, not just information. What is required - if journalism is to move beyond selling cheap, widely available, staler-than-your muffin news - is, to choose a not very journalistic sounding word, wisdom."*

I, for one, would welcome and happily applaud the inclusion, in any newspaper, more articles that offer valuable insight and non-biased perspective, especially in light of the latest Paris Hilton Report loading on my cell phone, even as I roam.

Yet the modern view is that we are blessed by technology that transfers facts so fast that we begrudge any sluggish turnover. But what are we getting for the money? Ok, Net info is essentially free and immediate, but quality should count, none the less.

In the Jan-Feb issue of *Columbia Journalism Review*, Robert Love, in his article "Before Jon Stewart - The Truth About Fake News. Believe it", sounds the call for citizen-searchers to be alert to the preponderance of digital propaganda, faux facts presented as legit.

*"The new digital toolbox has given third-party players - government, industry, politicians, you name 'em - sleeker weapons and greater power to turn the authority of the press to their own ends: to disseminate propaganda, disinformation, advertising, politically strategic misinformation - to in effect use the media to distort reality."*

So the digital road is loaded with potholes of bogus minutia, according to Love of Columbia. I don't know about you, but anything new I need to know, including far-flung facts, product breakdowns, medical essentials, I go Net-direct, potholes notwithstanding. And yet, despite my dependence on speed and convenience, I still cling to my daily newspaper to get a foothold on current events. It's comfortable for me, like an old shoe.

However, whereas I want my news to be well-researched and timely, multi-sourced and thoughtfully analyzed, my problem is, with a huge amount to absorb, it remains nonetheless for me, in either media form, much too fractionalized. *There's just a heap of stuff happening all the time.* It's a thousand piece puzzle - break it down, put it together, break it down, put it together...is this piece part of some universal framework? Is that piece just propaganda to eshew?

Oh well, five years from now, we should have an appropriate historical perspective to give context to help disentangle today's thorny matrix of complicated news. Five years - how many nano-seconds does that convert into? Maybe there's a site, somewhere, to tell me the right formula to use.

## COURTHOUSE PARKING RELIEF

Are you tired of the frustration of trying to find parking at the Broward County Courthouse every morning? Does it make you ill that the cost of parking around the Courthouse has increased faster than the price of gasoline? If you answered "Yes" to either or both of these questions, then your Broward County Bar Association Parking Committee may have a solution for you. We have been working with Chief Judge Dale Ross and the Broward County Commission on long-term solutions to the problem. However, we also have been working with a private vendor to provide some short-term relief.

We are tentatively scheduled to start offering parking at the Broward County Bar Association Building, 1051 S.E. 3rd Avenue at the very reasonable, competitive hourly basis, and we are offering \$200.00 per month for a permanent, reserved space. There will be a shuttle service available to take you door-to-door. At this time we are requesting that if you are interested in reserving a parking space on a monthly basis, or if you desire additional information, to contact Executive Director Art Goldberg at the Broward County Bar Association at (954) 764-8040.





# Message From Broward County Bar Association's Young Lawyers' Section President

By Chris D. Connally

The installation dinner on June 21, 2007 was a great success and I was honored to be a part of it! As incoming President of the Young Lawyers' Section, I would like to thank a number of people for their continued support. First and foremost, I would like to thank this year's past Broward County Bar Association officers, Victor DeBianchi, Barbara Sunshine and Chris Neilson for their overwhelming support and I look forward to the BCBA's continued guidance. I am also looking forward to working with incoming BCBA President, Barbara Sunshine, along with Chris Neilson and

Carlos Llorente.

I would like to welcome back past YLS Board Members, Greg Haile, David Hirschberg, Bart Ostrzenski, Brandon Pratt, Adam Rabinowitz, and Alan Raines, as well as congratulate Michael Golden on becoming Secretary / Treasurer and Scott Chitoff on becoming President Elect. I also would like to welcome newly elected Board members, Meghan Clary, Joy Huppert and Sue Ann Robinson. A well-deserved congratulations to Greg Haile and I wish him the best of luck as incoming President of the TJ Reddick Bar Association.

The YLS is very excited to announce its first annual co-sponsors, Mellon United National Bank and Berenfeld, Spritzer, Shechter & Sheer Certified Public Accountants and Consultants! The YLS has formed a strategic alliance with Mellon & Berenfeld and look forward to a long-lasting and mutually beneficial relationship for many years to come. Mellon & Berenfeld have already demonstrated their commitment to the YLS and the legal community by their involvement at the past Judicial Reception, various luncheons and the Installation Dinner. If anyone has any questions about either Mellon or Berenfeld, et al. please feel free to contact Frank Wagner, Mellon Vice President, Relationship Manager at (954) 768-5972 or Michael O'Rourke, CPA/ABV, CVA with Berenfeld, et al. at (954) 728-3750.

This coming year, we look forward to having many exciting speakers with more CLE credits available to attendees. As some of you may be aware, there is no luncheon for the month of July. We will however, resume our monthly luncheons at the Tower Club beginning at 12:00 p.m. on Thursday, August 23, 2007. The August speaker has yet to be determined and we will announce this information via email shortly. The cost is still \$25.00 per person. For those of you who like to organize their calendars in advance, the tentative dates for this year's luncheons are: August 23<sup>rd</sup>, September 27<sup>th</sup>, October 25<sup>th</sup>, November 15<sup>th</sup>, December 13<sup>th</sup>, January 24<sup>th</sup>, February 28<sup>th</sup>, March 27<sup>th</sup>, April 24<sup>th</sup> and May 22<sup>nd</sup> of 2008. Please remember to RSVP with the BCBA office at (954) 764-8040.

Our next major event is the October 6, 2007 YLS Annual Charity Golf Tournament. This year's beneficiary, Healthy Mothers-Healthy Babies Coalition of Broward County, is an amazing charity. Their mission is to reduce infant mortality and improve birth outcomes for women and infants of all walks of life by providing resources and education to pregnant women, parents and their families. In addition to providing resources

and education to members of the community, Healthy Mothers-Healthy Babies puts on its Annual Forget-Me-Not Celebration in October dedicated to the many babies who have died in Broward County but who will never be forgotten. Additionally, Healthy Mothers-Healthy Babies assist new borns and young children with a safe place to sleep thanks to their Cribs For Kids Program. Please come out and support this worthy charity by either signing up to play at this year's Golf Tournament to be held at Jacaranda Golf & Country Club for \$100 per person and/or attend the Friday, October 5, 2007 Happy Hour. There is no charge for the Happy Hour; however, a \$5 donation would be much appreciated. Each attendee will be entitled to a free drink and free appetizers.

Last, but certainly not least, I would like to thank the YLS Past-President, Anne Ogden, for all her hard work and devotion not only this past year but for all of her years of service on the YLS Board. She will be missed greatly. I, along with the rest of the Board, are very excited about this year's coming term and hope to see more and more people at our events this coming year. To borrow a line from Anne, "remember, you do not have to be young or a lawyer to attend our events!" As always, should you have any questions, please do not hesitate to contact Chris D. Connally (Connally@bktriallaw.com).

## RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann

### 1. Attorney's Fees/Proposal for Settlement

[ED. NOTE: ALL LITIGATORS MUST READ THIS ONE!]

#### Campbell v. Goldman,

32 Fla. L. Weekly S320 (Fla. June 14, 2007).

Quashing an opinion from the Fourth District, the supreme court held that a proposal for settlement which fails to recite that it is based on section 768.79, Florida Statutes, is not enforceable. The court reasoned that since the statute is in derogation of the common law rule, its requirements must be strictly enforced, including the requirement that a proposal recite the statute upon which it is based – even though there is now only Florida statute which applies to proposals for settlement.

### 2. Attorney Malpractice/Disclosure of Confidential Communications

#### Elkind v. Bennett,

32 Fla. L. Weekly D1526 (Fla. 4th DCA June 20, 2007).

The Fourth District has held that when a lawyer discloses confidential communications, that lawyer breaches a legal duty owed to the client, and that an action for malpractice against that lawyer lies when the disclosure causes damage to the client. It is not necessary that the attorney still have been in privity with the client when he disclosed the confidential information, nor does the fact that the duty of confidentiality appears in the rules of professional responsibility prevent the breach of that duty from being enforced as a tort.

### 3. Certiorari/Discovery Orders

#### Power Plant Entertainment, LLC v. Trump Hotels and Casinos

#### Resort Development Company,

32 Fla. L. Weekly D1525 (Fla. 4th DCA June 20, 2007).

In an *en banc* decision, the Fourth District receded to some extent from prior opinions refusing to review orders denying discovery. Although still of the view that few orders denying discovery will warrant certiorari review, the court ruled *en banc* in order to announce that it no longer has a *ihard* and fast rule against reviewing orders denying discovery.

### 4. Criminal Law/Duty to Retreat

#### Smiley v. State,

32 Fla. L. Weekly S303 (Fla. June 7, 2007).

Answering a certified question, the supreme court has held that the statute providing that a person has no duty to retreat and has the right to stand his or her ground if attacked, enacted in 2005 (Section 776.013), does not apply to criminal cases pending at the time the statute became effective.

### 5. Dissolution of Marriage/Child Support Arrearages

#### Vitt v. Rodriguez,

32 Fla. L. Weekly D1481 (Fla. 5th DCA June 15, 2007).

In an apparent case of first impression, the Fifth District held, in a split decision, that child support payments must first be applied to the current child support installment due. As to past due amounts, payments must first be applied to accrued and outstanding interest on the delinquent child support obligations, and finally to the principal amount due on unpaid child support. The dissenting opinion concluded that the manner in which arrearage payments are to be applied was a matter of equity to be determined based on the trial judge's discretion after consideration of all relevant facts and circumstances.

### 6. Public Records/Legislative Claim Bills

#### Wagner v. Orange County, Florida,

32 Fla. L. Weekly D1491 (Fla. 5th DCA June 15, 2007).

After obtaining a wrongful death judgment against the county in excess of \$100,000.00 and pursuing the excess judgment through a legislative claim bill, the plaintiff sought access to records held by the county and its law firm. Interpreting section 768.28(16)(b), Fla. Stats., which protects confidentiality of those records only until termination of all litigation and settlement of all claims arising out of the same incident, the court concluded that the pendency of a legislative claim bill was a continuation of the litigation, and that the records should remain confidential.

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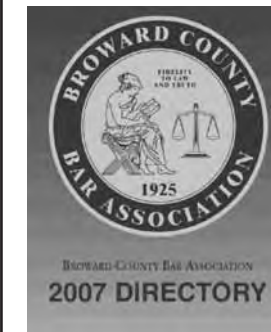
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### BROWARD COUNTY BAR ASSOCIATION OFFICERS AND DIRECTORS JULY 1 2007- JUNE 30, 2008

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The Honorable Stacy Ross

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# Lawyers in the **LIMELIGHT**



The Partners at Fisher & Phillips LLP elected **Charles Caulkins** to the firm's Management Committee. Mr. Caulkins began his three year term on June 1, 2007.

Three attorneys from **Colodny, Fass, Talenfeld Karlinsky & Abate** have been named "Super Lawyers" by Florida Super Lawyer Magazine, an annual publication that recognizes the top five percent of attorneys in the state. They are: **Mike Colodny, Howard Talenfeld and Fred Karlinsky.**

**Robert A. Dressler** has received the "Distinguished Citizen" award from the Fort Lauderdale City Commission, along with a bronze plaque at City Hall.

The North Broward Bar Association held its annual election of officers on May 8, 2007. Re-elected for a second term in office were: **Alan Fishman, President; Stuart House, Vice President; Thomas Oates, Secretary/Treasurer.**

**Jeff Harris**, Board Certified Criminal Law Trial Attorney, was recently honored by receiving from the Broward Association of Criminal Defense Lawyers the prestigious Harry Gulkin award presented to a criminal defense practitioner for demonstrating exceptional character, competency, and honesty.

**Bobbi L. Meloro** has opened the Law Offices of Bobbi L. Meloro, P.A. in Fort Lauderdale. Ms. Meloro practices in the areas of business and commercial litigation, employment law and contract and real estate disputes in Florida state and federal courts. She can be reached at (954) 577-1010 or [bobbi@melorolaw.com](mailto:bobbi@melorolaw.com).

The Florida Super Lawyer Magazine has also recognized these attorneys from **Gunster Yoakley** in Fort Lauderdale. They are: **Linda A. Conahan, James B. Davis, Donald R. Hall, Robert B. Judd and Martin Press.**

## MEMORIAL RESOLUTION

### of the BROWARD COUNTY BAR ASSOCIATION

**WHEREAS**, our great friend and Brother at the Bar, **AUGUST "AUGIE" PAOLI**, was born in New York, New York on November 13, 1915; and

**WHEREAS**, throughout his childhood, during which he was a star in high school and college in track and field, **AUGIE's** parents encouraged him to pursue a career as a lawyer; and

**WHEREAS**, **AUGIE** began his legal journey at Fordham Law School in New York, but the career was interrupted during World War II by his service in the United States Navy as a Lieutenant Commander, being stationed in the European Theater from 1942 to 1946 during four invasions, leading a flotilla of LCTs that were first to land on Omaha Beach in Normandy on D-Day, and participating in all major European amphibious landings in North Africa, Sicily, and Anzio; and

**WHEREAS**, as a result of his long and honorable military service, **AUGIE** was chosen as Naval Attache before his move to Florida and, thereafter, was selected as the United States Navy's representative at Port Everglades, aboard the USS Normandy, on the 50th Anniversary of D-Day; and

**WHEREAS**, after his military career, **AUGIE** resumed his goal to become a lawyer and graduated from the University of Miami School of Law, where he was the initiator and first editor of the esteemed University of Miami Law Review, the first Law Review in the State of Florida; and

**WHEREAS**, in the years following his graduation from law school, **AUGIE** served his community and his State as City of Attorney of Hollywood, Assistant Municipal Judge of the City of Hollywood, member of the Broward County Bar Association, The Florida Bar, the American Bar Association, the Florida Board of Bar Examiners, Vice Chairman of the Board of Trustees of Nova Southeastern University, Member and Chairman of the Nova Southeastern University Shepard Broad Law Center, Fellow of the American College of Trust and Estate Counsel, Past President of the Florida Council of Bar Associate Presidents, Fellow Life Member of the Florida Bar Foundation, Member and Past President of the Hollywood Junior Chamber of Commerce, and Vice President of the Florida Chamber of Commerce; and

**WHEREAS**, **AUGIE** also served his community as a Pioneer Representative of the City of Hollywood, Director of the Hollywood Chamber of Commerce, President of the Hollywood Optimist Club and Hollywood Beach Kiwanis Club, Chairman of the Committee of 100 of Hollywood, Chairman of the Miss Hollywood Beauty Pageant, Chairman of the Miss Tropical Fiesta of Hollywood, Director of SunTrust Banks, Member of the United Fund of Broward County, President of the Broward County Foundation, Member of the Law Library Board of the Broward County Bar Association, Past President of the Hundred Club of Broward County, Member of the Board of Trustees of Holy Cross Hospital, Life Member of the Fourth Degree of the Knights of Columbus, and long time member of Little Flower Catholic Church in Hollywood; and

**WHEREAS**, during his long life, **AUGIE's** commitment to his God, his family, his community, the highest ideals of his chosen profession, and his personal values was unequaled; and

**WHEREAS**, for his commitment to the highest standards of life and the legal profession, **AUGIE** was admired and respected by his peers; and

**WHEREAS**, **AUGIE** departed this life on Tuesday, June 26, 2007, surrounded by his family and survived by his beloved wife of 60 years Toni, their three children Anita Paoli Kotler, Alan Paoli, and Vicki Paoli Fordyce, their seven grandchildren Jillian and Joshua Kotler, Jennifer, Ashley, and A.J. Paoli, and Artie and Anthony Fordyce, their great-grandson Andrew Fordyce, Augie's brother Charles Paoli, his sister Loretta Whiting, and his cousin Anne Reife; and

**WHEREAS**, we mourn **AUGIE's** passing because it ends a life full of wisdom, compassion, dedication, and love, and thus lessens all of us by its absence; and


**WHEREAS**, the Broward County Bar Association wishes to express to the family of **AUGUST "AUGIE" PAOLI** the overwhelming sadness and loss felt by each member of the Association and to extend its sympathy and condolences not only to the family of **AUGUST "AUGIE" PAOLI** but to every member of this Community, who will miss him so sorely;

**NOW, THEREFORE, BE IT RESOLVED** by the Board of Directors of the Broward County Bar Association this 14th day of August 2007 that:

**THIS ASSOCIATION EXPRESSES TO** the family of **AUGUST "AUGIE" PAOLI** the deep sorrow felt by the Officers, Directors, and Members of the Broward County Bar Association at his death and extends to them our profound sympathy on the loss of their beloved husband, father, grandfather, great-grandfather, brother, and cousin, and our treasured friend, and expresses gratitude for the years we were honored to know **AUGUST "AUGIE" PAOLI** and for his tireless, dedicated, and compassionate service to this Association, to The Florida Bar, to our Community, and to our world.

**ADOPTED** this 14th day of August 2007.

**BROWARD COUNTY BAR ASSOCIATION**

By:   
Barbara K. Sunshine, President

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## YOU'VE BEEN REFERRED TO ARBITRATION: NOW WHAT?

Judge Robert W. Lee and Rhonda Hollander



Mandatory non-binding arbitration was authorized by the Florida Legislature in 1987. The Florida Supreme Court adopted procedural rules the same year to implement the statutory scheme, and further promulgated the Florida Rules for Court-Appointed Arbitrators in 1994. In 2003, Broward implemented the first real arbitration process in Florida. Although most practitioners are familiar with the trial de novo deadline, they are not familiar with the other deadlines that are traps for the unwary.

Initially, trial courts and parties were slow to embrace the arbitration process as a new tool for dispute resolution. In the decade of the 1990s, less than ten reported decisions addressed the parameters of these statutes and rules. In 2006, however, the number of cases arbitrated in the Seventeenth Judicial Circuit alone exceeded the number of cases arbitrated in the entire State during the 1991-1995 five-year period. Currently in Broward County, more than ten judges in the civil divisions of the Circuit and County Court regularly refer cases to the mandatory arbitration process.

Under *Gallardo v. Scott*, "the only means by which parties may now engage in non-binding arbitration ordered by a court" is through use of the statutory and rule scheme. As a result, the only way to contest an arbitration decision is through use of relevant statutes and rules. Since parties must understand the rules which contain several critical deadlines not spelled out in the Court Order of Non-Binding Arbitration, they are addressed herein.

When a party receives an Order for Non-Binding Arbitration, they first ask whether their type of case is excluded from the process. The rules are very broad, and under Florida Statute §44.103(2), most civil cases are eligible for referral to mandatory non-binding arbitration. Cases which are required to be referred to mediation may often be sent to mandatory non-binding arbitration instead. Nothing prohibits a judge from referring a case to arbitration after an unsuccessful mediation or the parties agreeing to engage in a hybrid of arbitration then mediation in the same session. A court may also refer only a portion or less than all of a civil case to arbitration. Nevertheless, a few areas of the civil docket are off limits. First, under Rule 1.800(1) and (2), most civil cases arising from criminal proceedings are exempt from referral to arbitration, specifically bond estreatures, habeas corpus, and other extraordinary writs. Second, under Rule 1.800(3) and (4), bond validations and contempt proceedings are similarly excluded. Under Rule 1.800(5), the chief judge of each circuit may specifically set forth in an administrative order "such other matters" to be excluded from arbitration however, Broward County's administrative order does not exempt any other types of cases from the process.

Once counsel realizes that their case is subject to the mandatory process, a review of the rules permits a party to move to dispense with arbitration despite the fact that it may not be exempt from the process. Rule 1.700(b) provides a strict (15) fifteen-day time limit for moving to dispense with arbitration. As such, a lawyer must seek immediate written relief upon receipt of the Court's Order. The deadline for a motion to dispense with arbitration is triggered from the date of the order of referral. However, since the court mails the order of referral, five additional days will likely be added to the fifteen day window. The motion to dispense with arbitration must set forth one of four grounds provided in the rule: 1) the issue to be considered by the arbitrator has been previously arbitrated between the same parties pursuant to Florida law; or 2) a party may believe that the issue referred represents a question of law only; or 3) the party may believe that the order of referral violates rule 1.800, dealing with specific matters excluded from arbitration or 4) for "other good cause shown." Once it is established that the matter is subject to the mandatory non-binding arbitration process and the matter may not be dispensed with, the parties must address whether they consent to the court appointed arbitrator. Under Rule 1.700(d), the arbitrator may be disqualified from presiding over a case for "good cause" shown. Good cause may arise when a party has reason to believe that the arbitrator may not be impartial. The procedure for moving to disqualify is to file a motion with the presiding judge, not the arbitrator. However, a phone call to the appointed arbitrator or choosing another arbitrator within the (15) fifteen day time

limit could alleviate the problem. If however, the parties determine the arbitrator has a conflict and the arbitrator refuses to withdraw, and the time limits have passed, they may file a motion reflecting a basis for the court to find good cause to disqualify the arbitrator. Although the court is required to enter an order designating the new arbitrator, nothing in the language of the rule requires that the presiding judge have a hearing to make this decision. During the time between the submission of the motion to disqualify and the court's subsequent decision, any deadlines under the original order of referral are tolled. Once the parties have agreed upon the Arbitrator, the only remaining issue is whether the case may be deferred to allow for more time so that the arbitrator can rule on the merits of the case.

The parties and arbitrator are not at liberty to act on their own to delay the arbitration process and must seek relief from the courts pursuant to the rules. Under Rule 1.700(c), if a party desires to defer mandatory non-binding arbitration, the party must file a motion to defer arbitration within (15) fifteen days of the order of referral. This motion is submitted to the court, not the arbitrator. Unlike many aspects of the non-binding arbitration scheme, requesting deferral of arbitration requires a hearing. However, in order to avoid incurring additional time and expense, many judges allow the motion to be accompanied by an Agreed Order setting forth the name of the arbitrator and the new date and time of the arbitration. If an Agreed Order is not possible, then a notice of the hearing must be provided to the parties, as well as the arbitrator. A motion merely requesting a deferral of arbitration will be insufficient on its face. Rather, the moving party must "set forth, in detail, the facts and circumstances surrounding the motion." As with filing a motion to disqualify an arbitrator, a motion to defer arbitration operates to toll any deadlines set forth in the statute, rule, or order of referral.

Many parties are also unaware of the time restrictions placed upon the Court appointed arbitrator. Under rule 1.700(a)(1), a "first hearing" must be held within sixty days from the date of the order of referral, unless the court orders another deadline. The parties, including the arbitrator, cannot extend this deadline without court approval and the arbitrators are responsible to schedule the date, time and place, but cannot accomplish this task without the cooperation of the attorneys of record. Thereafter, the process must be completed within thirty days of the first hearing, unless the court extends the deadline pursuant to motion. A motion to continue the deadline may be filed by a party or the arbitrator and may be accomplished with an Agreed Order. However, under rule 1.820(g)(1), a court cannot extend the deadline for more than sixty days after the first arbitration hearing which is why lawyers should be diligent in filing their motion to defer within the first (15) fifteen days of receipt of the initial Court Order of Mandatory Non-Binding Arbitration. Unlike a motion to disqualify an arbitrator and a motion to defer arbitration or a motion to dispense with arbitration does not toll any deadlines under any applicable statute, rule, or provision of the order of referral. An arbitrator is required to perform his or her "services in a timely and expeditious fashion, avoiding delays whenever possible." Under rule 1.820(g)(3), the arbitrator is required to notify the parties of the written decision within ten days of the "final adjournment of the arbitration hearing." However, in *Klein v. J.L. Howard, Inc.*, this provision was deemed "directory" rather than "mandatory." Therefore, the failure to timely issue a written decision does not affect the validity of the decision, however, the longer it takes for a ruling to be rendered, may frustrate the parties and ultimately delays the process. The rules contain no provision to seek to have an arbitrator rehear or clarify the decision so arbitrators should be diligent in providing written findings of fact rather than a one page ruling with numbers only. The statistical results from Broward County reflect that mandatory non-binding arbitration make civil proceedings less costly and time consuming. Although the process has met with some resistance, the experience of those circuits more widely using the procedure suggests that mandatory non-binding arbitration leads to the resolution of most cases referred similar to the results of mediation. As the use of mandatory arbitration continues to grow, practitioners should accordingly become familiar with the relevant procedures and laws to avoid pitfalls and how to successfully navigate their cases through the process.

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### NOMINATING COMMITTEE 2007-2008

President Barbara K. Sunshine has appointed the following Board members to the Nominating Committee, pursuant to Article VIII, Section 1(A) of the Bylaws:

<b>Northeast</b> Patrick B. Giunta	<b>West</b> Jordana L. Goldstein
<b>Northwest</b> Jorge E. Hurtado	<b>Southeast</b> Morrie I. Levine
<b>Central</b> John G. Jordan	<b>Southwest</b> Diana Santa Maria

### COMMITTEE CHAIRS 2007-2008

Article IX, Section 1 of the Bylaws provides for the formation of Committees. President Barbara K. Sunshine has appointed the following Committee Chairs:

<b>Bench and Bar Building</b> Deborah Poore FitzGerald	<b>Lawyer Referral Membership</b> Anthony V. Scalese
<b>Bylaws</b> Donald R. Walters	<b>Professionalism</b> Jordana L. Goldstein
<b>Clerk and Bar</b> Michael R. Romm	<b>Publications</b> James A. Cobb, Jr.
<b>Finance</b> Carlos M. Llorente	<b>Co-Chairs:</b> Morrie I. Levine Patrick B. Giunta
<b>Judicial Evaluation</b> Bruce A. Weihe	<b>Social/Sports/Goodwill</b> Diana Santa Maria
<b>Law Week</b> Allison K. Bethel	<b>Voluntary Bar and Law School Liaison</b> Roshawn J. Banks

## PRACTICE SECTION CHAIRS 2007-2008

Pursuant to Article IX, Section 2 of the Bylaws, President Barbara K. Sunshine announces her appointment of the following Practice Section Chairs and Board Liaisons:

### PRACTICE SECTION

#### Alternative Dispute Resolution (ADR)

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#### Business Law

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#### Criminal Law

Joseph J. Carter

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Co-Chairs: Arlene H. Lakin

Robert M. Trinkler

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Kimberly A. Gilmour

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#### Government Law

Julie Klahr

#### Intellectual Property Law

Joseph R. Englander

#### Probate and Trust Law

Jody Leslie

#### Real Property Law

Richard L. DeNapoli

#### Solo and Small Firm

Loring N. Spolter

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The Florida Bar Annual Membership Fees are due in August along with the mandatory reporting of your July 1, 2006- June 30, 2007 Pro Bono professional obligation. If you have not participated or contributed in any pro bono activities for this time period there is still time to make a minimum contribution of \$350.00. If you contributed your \$350.00 or volunteered your minimum 20 hours for July 1, 2006- June 30, 2007, please be sure to report that on your annual dues statement.

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THE STAFF AT THE LAWYER REFERRAL SERVICE WOULD LIKE TO ACKNOWLEDGE ATTORNEY CHRISTOPHER HARRIS AS THE ATTORNEY OF THE MONTH FOR JULY/AUGUST. HE HAS BEEN A TREMENDOUS ASSET TO THE BCBA IN HELPING OUR LAWYER REFERRAL SERVICE RUN SMOOTHLY AND EFFICIENTLY. HE HAS GONE THE EXTRA MILE TIME AND TIME AGAIN IN HELPING OUR STAFF/CLIENTS AND CAN ALWAYS BE COUNTED ON AT A MOMENTS NOTICE.

HE IS A TESTAMENT TO HIS PROFESSION!

THANK YOU, CHRISTOPHER,  
FROM THE STAFF OF THE LAWYER REFERRAL SERVICE.

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# Photo Gallery - 2007 Installation Dinner



Angel Petti Rosenberg receives 2007 YLS Paul May Professionalism Award, with Victor P. DeBianchi, Jr., Chris Connally and Anne Ogden.



Judge Dorian Damoorgian accepts 2007 Booher Award from Victor P. DeBianchi, Jr.



Outgoing YLS President Anne D. Ogden receives YLS appreciation award.



Clerk of Court Howard Forman with Steve E. Moody, 2007 Recipient of the 2007 Lynn Futch Professionalism in Practice Award.



Carol Lee Ortman, Court Administrator, recipient of 2007 Executive Director's Award.

