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ON THE COVER:

The Young Lawyers' Section of the BCBA is seeking new recruits for the Second Annual BCBA YLS Boot Camp. For enlistment information read more on page 15. Pictured left to right: Todd Baker, Sara Sandler, and Brent Reitman of the YLS Board of Directors.

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letter from the president



Robin S. Moselle

January (in Latin, Ianuarius) is named after Janus, the god of beginnings and transitions. He is usually depicted with two faces looking in opposite directions representative of looking back to the departed year and at the same time to the new year ahead. The name has its beginnings in Roman mythology, coming from the Latin word for door (ianua) since January is the door to the year.

January, a month emblematic of a new start. With most of the country blanketed in white (although so far this year seems to be an exception), January brings to mind a clean slate and fresh beginnings. People return from the vacations and holiday celebrations armed with resolutions and ready to tackle the upcoming year.

The Broward County Bar Association is no exception. Fully rested after three successful holiday parties (the joint party with the Weston Bar Association, the North and Northwest Broward holiday party, and the annual BCBA Holiday Party-whew), we enthusiastically meet the new year with vigor and an excitement for upcoming events.

2016 will see a continuation of the tremendous programming presented by our sections. In January alone, the BCBA Bankruptcy Section, Intellectual Property Section, Wills, Trusts and Estates Section, and West and North Broward Sections will all offer gatherings that include CLE credits. So wherever you are in Broward County, you will be able to earn educational credit while networking with your colleagues and members of the judiciary.

January also marks the inaugural Young Lawyers Section Poker Tournament. Registered players will have an opportunity to designate proceeds from the tournament to a charity of their choosing. Socializing with the legal community continues with our monthly "Bar at the Bar", and you can join Team BCBA at the Mercedes-Benz Corporate Run in April.

On the horizon for the upcoming year is the robing ceremonies for the new judges, Raising the Bar, Workers Compensation Conference, our Law Day Luncheon, and of course Installation of the BCBA President and Board of Directors at our annual dinner meeting in June. The BCBA will also continue its collaboration with the Broward County Women Lawyers Association to present its very successful Women Leaders in the Law Series, and the Young Lawyer Section Boot Camp series is underway.

The BCBA remains on the forefront of issues facing today's attorneys. We are closely monitoring the recommendations of the Florida Bar's Vision 2016 committee and will keep our members apprised on any new developments. We are also following issues related to the Lawyer Referral Service and are speaking with members of our Board of Governors about creative and innovative ways to assist the underrepresented population with their legal needs, and the new attorneys looking for employment.

We hope that 2016 is off to a good start for you, and we look forward to having you join us this upcoming year. **B**

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letter from the young lawyers' president



Jeffrey M. Wank

As we begin the new year, let us take a look back at some of the highlights from the Young Lawyers Section in 2015:

• **Young Lawyers' Boot Camp Series:** YLS, in conjunction with the BCBA, kicked off its inaugural Young Lawyers' Boot Camp Series. The Boot Camp Series included four educational sessions on various topics for lawyers who recently started practicing. The topics were focused around real, practical situations.

• **Holiday in February:** YLS hosted its annual Holiday in February event at the Museum of Discovery and Science, which provided a day filled with holiday cheers and gifts to 50-60 local foster care children.

• **Breakfasts with the Judiciary:** Each quarter, YLS invited the Judiciary to breakfast with our members at the Broward County Law Library. These events are a wonderful way for our members to become acquainted with the

judiciary in a small, casual atmosphere. At our last breakfast this year, YLS also invited the judicial assistants.

• **Judicial Reception:** YLS hosted a Judicial Reception for all Judges in the 17th Judicial Circuit and Fourth District Court of Appeals. The event had over 200 judges, lawyers, and law students in attendance.

• **CLE Luncheons for Members:** YLS hosted monthly educational luncheons with CLE credits for our members. Throughout 2015, some of the luncheons we hosted ranged from "Technology and Access to Justice", to "The Best Practices for Attorneys" with a Judicial Panel featuring *Judge Alfred Horowitz, Judge Sandra Perlman, and Judge Mily Rodriguez-Powell*, to "A Century of Black Life, History, and Culture".

• **Sweatworking! and Social Events:** Recognizing the many benefits of exercise, YLS embarked on an exciting and fun new way to encourage young lawyers to exercise, and network at the same time! On the flip side, YLS hosted monthly happy hours benefitting a different local charity each month.

• **Charity Golf Tournament:** In October 2015, YLS hosted its 28th Annual Charity Golf Tournament and Tee-Off Happy Hour for the benefit of Habitat for Humanity of Broward County. Through the efforts of our golfers, raffles, and sponsorships, YLS was able to donate \$35,000.00 to Habitat!

• **Pro Bono and Legal Aid:** YLS committed to provide Legal Aid of Broward County with attorney volunteers for its Advice & Counsel Hotline for low-income Broward County residents for all of 2015. YLS secured volunteers for each month in 2015 to provide pro bono legal services for hundreds of people in Broward County. YLS was honored by the Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida and received the Spirit of Justice Award during the 14th Annual "For the Public Good" event.

• **Broward Lawyers for Literacy Guest Reading:** YLS recruited lawyers and judges to read in six different public schools throughout the county in May 2015.

• **National Adoption Day:** YLS was the Title Sponsor of this year's National Adoption Day event in Broward County, donating \$1,000. Hosted by Broward Circuit Judge John Bowman, 48 children were adopted at the event held at the Broward County Courthouse.

These are only a portion of the events and success YLS achieved in 2015. YLS's mission consists of (1) enhancing the educational and professional advancement of less experienced attorneys; and (2) giving back to our community through various events and charitable donations. We look forward to accomplishing even more and reaching new heights in 2016! **B**

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The Pitfalls of Relying on Zillow's Zestimate

by Daniel Lindeman

There is a vast amount of home valuation information on the Internet. While some of the information can be of value, the majority of this information has little worth and can be inaccurate. The key is to understand where to find information that is valuable and accurate and what areas one must avoid.

Holding to the old saying, "if it's in the papers, it must be true," many people put too much trust and reliance in information they find online. In today's times, people tend to believe that all information found on the Internet, must be accurate. That's not always the case, in fact, too often it's quite the opposite.

Courts Have Determined Zillow's Zestimate Not Accurate

There are flaws in using sources that are unverified or that are editorially enhanced. The facts can become clouded or obscured by the opinion of an outside source with a vested interest, a skewed opinion due to open sourcing or even a faulty computer algorithm. This can cause serious issues for homeowners, realtors, attorneys and even judges. For example, this past summer, a trial court in New Hampshire was found to have erred when it conducted its own internet research on Zillow to ascertain a home's value and to choose a valuation date.ⁱ Two years prior, a California appellate court found that a trial court should have acknowledged a disclaimer on Zillow's website stating that its estimates are not appraisals but rather were to be used merely "as a starting point in determining a home's value."ⁱⁱ

While the Internet makes many tasks simple and easy for us, some tasks require hard work, skill and the expertise of a professional. Relying on sources such as these real estate sites to determine a home's value can be detrimental to attorneys and their clients alike. While it may seem efficient at the time, it's a shortcut with a high potential for inaccuracy that can create long-lasting problems. Agreeing to a home's value based on Zil-

low in mediation, negotiation, or any proceeding is dangerous. That's why attorneys in a vast number of specialties need to have accurate information about real estate valuation. Along with real estate attorneys, practitioners in trusts and estates, bankruptcy, banking and finance, family law, tax law, and mediators all require accurate valuation data to provide the best possible service to their clients and avoid potential complaints and or even malpractice.

Zillow's Zestimate

Zillow's Zestimate is the company's tool to estimate the market value of a property. It's created by using a proprietary formula. Zillow even states on its website that "[t]he Zestimate's accuracy depends on location and availability of data in an area."ⁱⁱⁱ In one analysis of the Miami-Fort Lauderdale metro area, Zestimate had a median error rate of 8.8 percent, and was within 5% of the final sale price only 31.3 percent of the time. This is because Zillow relies primarily on public records for its data on a home's value. That is how Zillow can provide such breadth of data. However, that data is only an inch deep.

While public records are one component of the accurate value of a home, a professional appraiser will physically measure the residence to obtain the correct living area. In addition, an appraiser inspects the entire interior and exterior of the home, which Zillow does not. Also, public records will not notice a water stain on the ceiling or a newly remodeled kitchen with high-end appliances.

Likewise, Zillow and similar sites do not understand location. An appraiser who is onsite can verify if the home backs up to a golf course or to a noisy major thoroughfare. Comps, or comparable home sales, are critical in real estate valuations as well. A professional appraiser selects only homes with similar features and conditions to compare to the subject property. Zillow does not find the most similar comparable sales,

instead it uses every sale to conduct an automated analysis. Most importantly, the Zillow Zestimate can be manipulated, Zillow allows users to edit a property's "home facts", which in turn will cause a Zestimate to arrive at a higher or lower value. When both parties use a Zestimate and rely upon it, it can be dangerous—one party could potentially alter the results to suit their needs without the other party knowing.

Its recommend that Zillow and other free real estate websites be used for what they are and what they claim to be, a starting point to determine a home's value. Use an experienced professional appraiser for every other consultation you might require. Remember, Zillow will not testify in court for you, but an appraiser can. Appraisers are also required to be a neutral third-party who will determine the most accurate value of a home. In the end, this will save your clients money and protects you from potential liability.

Your clients value your judgment and expertise. Do the same and work with a professional appraiser. **B**

ⁱ In Matter of Rokowski, --- A.3d ---, 2015 WL 4480890 (N.H. July 23, 2015), at 3.

ⁱⁱ In re Marriage of Trejo, Not Reported in Cal.Rptr.3d, 2013 WL 1779606 (Cal.App. 4 Dist. April 26, 2013).

ⁱⁱⁱ ZILLOW WEBSITE, <http://www.zillow.com/zestimate/#acc>.



Daniel Lindeman is a state certified residential real estate appraiser and owner of Empire Appraisal Group, Inc. in Coral Springs. Daniel has been providing appraisal services to Broward and Palm Beach Counties since 2003 and has completed over 7,000 home appraisals. He can be contacted at (561) 441-9298 or via e-mail at Dan@EmpireAppraisalGroup.com.



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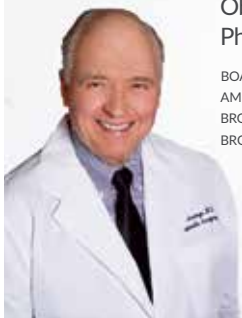
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Pictured left to right: Patricia Hernandez, BCBA Membership Coordinator; Sean Smith; and Braulio Rosa, BCBA Executive Director.

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Is the Bar Good for Your Health?

by Roberto Cruz

Belonging means acceptance as a member of a group. A sense of belonging is a human need, just like the need for food and shelter. Some find belonging in organized religion or sport teams, some with friends, some with family, and some on Facebook or other social media. Some see themselves as connected only to one or two people. Others believe and feel a connection to a greater community. Lawyers have the Bar.

Our interests, motivation, health and happiness are inextricably tied to the feeling that we belong to a greater community that may share common interests and aspirations (Walton, 2007). The good news is that it does not seem to matter if we have a large network of close relationships or not. What seems to make a difference is if, and how often, we cooperate in activities and share our personal feelings as well as provide support to a friend or relative (Lu & Argyle, 1991) (Brown et al., 2003). In essence, it is the quality of our relationships that matters - not the quantity.

The Broward County Bar Association was founded in 1925 to foster courtesy, ethics, and professionalism among Broward County

lawyers. The Bar offers plenty of opportunities to form quality relationships between fellow barristers. Last year, members enjoyed tournaments, sports, receptions, cocktails, fundraisers, conventions, parties and networking events. It is not all business.

Busy lawyers, however, find it hard enough to respond to emergencies, manage multiple cases and maintain their own schedules in order to meet clients' expectations, and still find time for personal relationships. In the age of virtual offices, clouds, portable computers, wireless broadband and smartphone apps, a lawyer is never truly out of the office. When needed, lawyers can do almost anything for their clients over the Internet. Technology created a generation of lawyers who sleep with their smartphones. Nonetheless, the same technology that keeps lawyers up at night also provides a 24/7 social life.

Social media "meets our basic need for a sense of belonging," states JoAnne Cantor, Ph.D., author of *Conquer CyberOverload: Get More Done, Boost Your Creativity and Reduce Stress*. "Hearing from our friends and family members makes us feel important and loved... We

don't want to be the last to know about some important, or even trivial, event of interest."

And, our devices help us satisfy our curiosity.

Alex Oliveira of Prediq Media agrees with Dr. Cantor. The social media marketing consultant says "it also satisfies other human needs," which is why "every generation is using social media" and doing well across platforms.

This year, get a social life. Spend some quality time with your colleagues at the Bar. If time is limited, get connected through Facebook, Google+, LinkedIn, Twitter or YouTube. The Broward County Bar is where you belong. **B**



Roberto Cruz, Esq. is a public interest attorney with Coast to Coast Legal Aid of South Florida, Inc., and the former Advocacy Director of the Legal Advocacy Center of Central Florida, Inc. Cruz provides legal services in the following areas: Consumer Protection, Housing, Family Law, Civil Rights Restoration and Public Benefits. He is a prolific writer working with the Public Interest Research Bureau at the Florida Coastal School of Law. Read more of Cruz' blog posts at robertocruzsite.wordpress.com.



Warn Your Senior Clients to be Wary of Medical Identity Theft

by Ferial Andre

It's easier than you think for a thief to use your clients' health insurance to see a doctor, obtain prescription medication, or to file false claims with their insurance provider!

Encourage your clients to protect their medical information and insurance statements just like they would credit card information, and to store these items securely so they don't inadvertently fall into the wrong hands. Please advise them to not throw items in the trash with medical and/or insurance information, but to be sure to "shred instead." Seniors should always check their medical records and insurance records for errors, just like bank statements, in order to look for red flags and to correct any mistakes immediately.

Attorneys can help protect their clients from medical identity theft and insurance fraud by urging them, or their family members who might be their caregivers, to develop good safety habits like those listed below. Attorneys who serve as trustees or guardians for a client should take these precautions:

- Reviewing the Explanation of Benefits (EOB) statement or monthly summary as soon as it is received;
- Verifying that the dates, provider, medications or therapies administered are all correct; and
- Ascertaining that the claims paid do match up with the diagnosis and services received.

Attorneys should also be aware of and share with clients the warning signs of medical identity theft, which include:

- Bills for medical services, medications, therapies and/or equipment not

received;

- Debt collectors calling for medical debt not owed;
- Collection notices on a credit report that are incorrect;
- Health plan notices stating that benefit limits have been reached when that is clearly false; and
- Denial of insurance for a condition the client doesn't have!


As always, an ounce of prevention is worth a pound of cure. Therefore, share these top tips below with seniors to help them steer clear of insurance fraudsters and healthcare scams:

- Never sign blank insurance claim forms;
- Never give blanket permission to a medical provider to bill for services not yet rendered;
- Ask medical providers what they charge and what is expected to be paid for out-of-pocket;
- Carefully review the insurer's explanation of benefits statement inquiries;
- Give insurance/Medicare identification only to those who have provided you with medical services;
- Keep accurate records of all health care appointments and know if your physician ordered medical equipment or therapy for you; and
- Beware of salespeople trying to sell you something they claim is FREE or will be paid for by Medicare.

Here are some links to share with those seniors who need to learn more about insurance fraud and medical scams, and how to avoid them. The Department of Justice created the Elder Justice Website, <http://www.justice.gov/elderjustice/>, a one-stop information website for vic-

tims, families, caregivers, prosecutors and practitioners. You can report elder fraud and financial abuse at the above stated website, at the local Adult Protective Services or at the Area Agency on Aging. Other resources include: www.ncoa.org/SavvySeniors, www.Stopfraud.gov, and the National Center on Elder Abuse website (www.ncea.aoa.gov).

Local resources include the Certified Case Managers (CCM), Certified Dementia Practitioners (CDP), and Geriatric Care Managers (GCM) who are trained to recognize financial exploitation of the elderly. These professional care management clinicians serve as advocates for the elderly. After assessment by these clinicians, they will advise if assistance with managing financial resources is in order, or if protection and legal advice is required because financial abuse, fraud, and exploitation may have occurred.

This article is not intended as medical, financial or legal advice. 



Ferial Andre, RN, CCM, CDP, AEd, is the Founder and CEO of Regal Home Health and Care Management. Ferial is a Registered Nurse, Certified Case Manager, Certified Dementia Practitioner, and a Certified Alzheimer's Educator. Regal Home Health is an accredited private duty nursing agency and care management resource serving Palm Beach, Broward, and Martin Counties. Ferial can be reached at ferialandre@regalcares.com or at 561-499-8382. For more information visit: www.regalcares.com

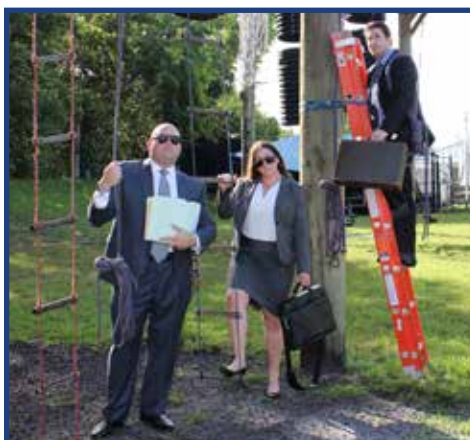
Seeking New Recruits - 2016 BCBA Young Lawyers' Boot Camp

by Gawayne Kelly

It is time again for the BCBA Young Lawyers' Boot Camp! This Continuing Legal Education series is directed towards new attorneys and an excellent learning opportunity for any attorney interested in gaining litigation skills.

The boot camp will consist of four sessions. The first session will be held on February 2, 2016, the second will be held on March 1, the third on April 26 and the final session will take place on May 31. The March session will be held at the Broward County Courthouse while the others will be at the BCBA's Conference Center.

The first session, "Dispositive Motion Workshop" will focus on courtroom decorum. Attorney Robert Vaughan and the Honorable Judge William W. Haury will offer advice on how to avoid common mistakes and pitfalls that many new attorneys encounter in early practice.



At the second session, "Evidence Boot Camp", Charles Morton and the Honorable Judge Mindy Solomon will discuss how to properly present evidence and defeat objections by opposing counsel.

The third session, "Deposition Training" led by Attorney D. David Keller features tips on how to prepare for trial ranging from how to most effectively organize your clients to

asking the right questions at the right time.

The final session, "Win the War When You've Lost the Battle" will offer guidance on how to preserve issues for appeal. At the conclusion of this session, there will be a cocktail reception where attendees and presenters will have the opportunity to mix and mingle.

Gear up and get ready for these sessions! Register at www.browardbar.org/calendar to enlist today. **B**



Gawayne Kelly, Esq. is a Florida International University College of Law graduate. He practices in the areas of criminal and family law throughout Broward, Miami-Dade and Palm Beach counties.

1st Annual YLS-quire

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The Casino gaming tables are provided for entertainment purposes only by Casino Party Nights Florida Inc., tel. 954-926-4219. All Donations and proceeds go to the participating charities. *Must Be 18 Years or Older To Play*.

WHERE IN THE WORLD IS THE BARRISTER?!?

BCBA Members Edwina Kessler and Andrea Kessler
at the St. Simmons Island Lighthouse, Georgia.

We want to see you in the next Barrister publication!
Email a hi-res picture of yourself with a Barrister when on vacation
or business trip to ads@browardbar.org.

The Magic of Mentoring

by Todd Baker



Todd Baker is a Personal Injury lawyer with Steinger, Iscoe & Greene, P.A. He can be reached at 954-491-7701 or tbaker@injurylawyers.com.

The 2015 Mentorship program was a great success. We'd like to thank all of the participants for their involvement and feedback. To build off that success, our 2016 program will have a more open format that places mentees/mentors into Mentorship groups. This will allow mentees to reach out to different mentors for help with various issues and is designed to increase the connections made through the program and encourage greater involvement with the BCBA. We will still utilize the Mentor Express format, but instead of pairing, it will help get the group acquainted. Mentors will be available for their group, but they also have the option of being a mentor for a practice area/section of the BCBA. Mentors for the practice areas/sections will be available to help any young lawyer with an issue in that area, hopefully leading to more young lawyer participation in the sections. Mentees are attorneys with zero to five years of practice and Mentors need to have 8 or more years. For the attorneys in the five to eight year range, we will have a Law School Mentorship component with a similar format.

In addition to the mentorship groups, the BCBA will host breakfasts, lunches or afternoon panels led by mentors on various topics related to work-life balance, stress management, voluntary bar association and charity involvement. There will also be socials and other events, exclusively for mentorship participants.

On behalf of the Mentorship Committee, we look forward to the 2016 program and hope you will join us. If you are interested in becoming a mentor, please email Patricia Hernandez, BCBA's membership coordinator at patricia@browardbar.org.



Dan S. Arnold III is an attorney and counselor specializing in Business Litigation, Insurance, Personal Injury and Appellate Practice law. He can be reached at 954.764.4849 or dan@danarnoldlaw.com.

"The law affords nearly endless opportunity: profit, not-for-profit, big firm, solo practice, government, private. I have taken advantage of nearly all of these. For the last 17 years, since the closing of Fleming O'Bryan, I have settled on the life of a solo practitioner. There is something special about calling the shots and being responsible for the ups and downs. I love it. But solo practice has its drawbacks. Among these are a loss of camaraderie and a loss of the ability to mentor young attorneys. The Broward County Bar Association's mentor program allows me to fill both of those voids and pass onto younger attorneys lessons I have learned. It has been a pleasure for me to participate in this program. Also, and as important, it allows me to do something besides bemoan the state of professionalism. Too often we hear of the decline in civility among attorneys. The BCBA mentor program allows us to do something besides talk. We become part of the solution. In many instances, the only way a young attorney will learn the right way to practice is by being mentored by someone who had a good mentor themselves and who has learned tough lessons the hard way. I enjoy working with my mentee, Matthew McGuigan. He is a very nice young man from a great family who, I believe, will be an excellent attorney and shining example to the community. Thank you BCBA for allowing me to participate in your mentor program and thank you, Matt, for your positive approach."



Matthew R. McGuigan is an attorney with Mill Stone Legal Group. He can be reached at 754-227-1610.

"I always desired a mentor since becoming a lawyer but never could find an attorney that was willing to take the time and effort to mentor a young attorney. When I got the email invitation to participate in the mentor/mentee program I jumped at the opportunity. I was matched up with Mr. Dan Arnold III, who is a solo practitioner in Fort Lauderdale. I feel as though I could not have been luckier. Dan grew up in Fort Lauderdale, and from my experience, he seems to know everybody in town, including everybody that has ever worked at the courthouse. Being from Philadelphia and only living in Florida for about 14 months, Dan has been a tremendous mentor to me and an overall great person. He has taken me to various lunch functions where he has introduced me to local judges, fellow attorneys and other local professionals. He has also provided me with ideas on how to grow my own business and has shared some of the secrets to his success. Most importantly he takes the time out of his busy day and gives it to me when he could be spending it with his family or on growing his own business. This has been a worthwhile endeavor and once I get my own firm established and have more wisdom to share, I will take on the position of mentor and become a mentor to another young lawyer as Dan has become to me." **B**

Register for BCBA Events
www.browardbar.org • 954-832-3618



A MESSAGE FROM STEVE E. MOODY

Dear BCBA Members,

After 44 and a half years of practice here in Broward, I have decided to let the rest of you fight the good fights seeking justice for your clients.

Possibly, I can help. My mediation practice, which has been part time for 4 years, will become my full time occupation after December 31 (and if that doesn't work, I may try to revive the sorely missed position of Walmart greeter).

Thank you, BCBA members, for all you have done for me since I came into town on the turnip truck in '71!

Sincerely,

Steve E. Moody
BCBA Prez (2004 -2005)



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Recent Developments In The Law

by Nancy Little Hoffman

SUPREME COURT LIMITS “INEVITABLE DISCOVERY” EXCEPTION TO WARRANTLESS SEARCH EXCLUSIONARY RULE.

Although the Fourth Amendment prohibits warrantless searches, and evidence obtained as a result is of an illegal search is inadmissible, an exception has been recognized where “the evidence would have inevitably been discovered in the course of a legitimate investigation.” The purpose of that exception is to “balance the need to deter police misconduct with the societal cost of allowing obviously guilty persons to go free.”

The question in this case was whether the inevitable discovery exception requires the prosecution to show that the police were in the process of obtaining a warrant when the intrusion occurred, or whether it is sufficient that a warrant could have been obtained based on the available information at the time. In a 4 to 3 opinion, the Court held that the exception cannot be applied unless the police were actually in pursuit of a warrant. As this case involved the sanctity of the home, the opinion stressed that the “constitutional guarantee to freedom from warrantless searches is not an inconvenience to be dismissed in favor of claims for police and prosecutorial efficiency.” The Court further explained that where a warrant was not being actively pursued prior to the illegal police activity, application of the inevitable discovery exception would effectively nullify the Fourth Amendment’s protection. Rodriguez

v. State, 40 Fla. L. Weekly S691 (Fla. Dec. 10, 2015).


FOURTH DISTRICT FINDS NO FIRST AMENDMENT PROTECTION FOR FLYER WHEN MAILED TO VICTIM’S HOME; FINDING OF STALKING UPHOLD.

An abortion protestor mailed a flyer to the home of a clinic’s employee and posted it around her neighborhood, accusing the employee, who is African-American, of working for the KKK and “killing black babies.” The flyer included her full name, picture, and address and contained racial slurs and encouraged her neighbors to approach her at her home. While finding that the language in the flyer itself did not express a “true threat” of violence under First Amendment principles, the court held that the flyer was generated, mailed and distributed with the intent to harass the victim, and that the protestor’s behavior in seeking to invade the privacy of the victim’s home was not protected by the First Amendment. *Thoma v. O’Neal*, 40 Fla. L. Weekly D2721 (Fla. 4th DCA Dec. 9, 2015).

WHERE A PLAINTIFF MOVES FOR SUMMARY JUDGMENT BEFORE AN ANSWER IS FILED, IT HAS A HEIGHTENED BURDEN OF PROOF.

In a foreclosure case, the mortgagee filed a motion for summary judgment before the owner had filed its answer, although the

owner did file an affidavit in opposition to the motion. On appeal from the summary judgment and final judgment, the owner argued that the mortgagee had failed to carry its heightened burden of proof. The Fourth District agreed, holding that the mortgagee was required not only to establish that the record revealed no genuine issue of material fact, but also to establish that no answer which the owner might file could present such an issue. That was not established in this case, and the summary judgment was reversed.

Of interest is the fact that the owner also argued that the trial judge showed a clear bias against it and should have granted its motion for disqualification. The Fourth District held that the motion was untimely and thus was properly denied. However, it noted that “based upon our review of the hearing transcript and the trial judge’s comments made therein, we suggest that on remand, future proceedings in this case be held before a different judge.” *Statewide Homeowners Solutions, LLC v. Nationstar Mortgage, LLC*, 40 Fla. L. Weekly D2723 (Fla. 4th DCA Dec. 9, 2015). 



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

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January

calendar of events

- 9 Guardianship Class - 8 Hour Adult**
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: \$180; No Walk-ins accepted
- 12 North Broward Luncheon**
Time: 12:00 p.m. – 1:00 p.m.
Venue: Isabella's
Cost: \$20 BCBA Member; \$25 Non-Member
- 13 Bankruptcy CLE: Bankruptcy & IP**
Sponsored by: The Bankruptcy Bar Association
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: Free BCBA Bankruptcy Section and BBA Members; \$15 BCBA Member; \$25 Non-Member
- 16 Guardianship Class – 4 Hour Minor**
Time: 9:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: \$100; No walk-ins accepted
- 20 IP CLE: The Necessity of Having Patent Counsel in Patent Litigation**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 20 Wills, Trusts and Estate CLE: Recovery & Liability for Attorneys' Fees**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$10 BCBA Member; \$20 Non-Member
- 20 Solo/Small Networking Dinner**
Time: 6:00 p.m. – 8:00 p.m.
Venue: Dave and Busters – Hollywood
Cost: \$35 BCBA Member; \$50 Non-Member *\$5 Additional at the door
- 21 Construction CLE: FL State Statue 489**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: No Charge BCBA Construction Section Member; \$25 Non-Member
- 21 CLE: Unmet Civil Legal Needs of Domestic Violence Survivors I**
Time: 4:00 p.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: BCBA Member: \$10 each or 2 for \$15; Non-Member: \$20 each or 2 for \$30
- 22 Broward Local Government Legal Summit**
Time: 9:00 a.m. – 4:00 p.m.
Venue: Oak Ridge Auditorium - Tree Tops Park
Cost: \$25 General Admission
- 26 Women Leaders in the Law Series - Session 2**
Time: 5:00 p.m. – 7:00 p.m.
Venue: BCBA Conference Center
Cost: \$25 BCBA Member; \$35 Non-Member
- 28 West Broward Luncheon**
Time: 12:00 p.m. – 1:30 p.m.
Venue: Lago Mar Country Club
Cost: \$25 BCBA Member; \$35 Non-Member; \$10 extra for walk-ins

Upcoming Special Events

February 19

2016 Judicial Robing Ceremony

Mark your Calendar!

Venue: Broward County Courthouse – Jury Assembly room

Sponsorships Available

February 26

2016 Workers Compensation Conference

Time: 11:30 a.m. – 5:00 p.m.

Venue: Riverside Hotel

Cost: \$85 BCBA Member; \$100 Non-Member

Sponsorships Available