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"Connecting Today. Connecting Tomorrow." BCBA membership provides legal professionals with educational, networking and career building opportunities. See Page 16 to read about some of our members find value in the Broward County Bar Association.

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## letter from the president



*Robin S. Moselle*

### The More Things Change...

"The future and vitality of our profession lies not in its adroit legal ability to police and resist encroachment by other institutions into its till, but in its own ability to adapt to the present day needs of all members of the public. We delude only ourselves in continuing under anachronistic rules adopted in and for a time long past, and by failing to establish a working rapport with the vast market of potential clients needful of legal services..."

You may think those words were spoken recently by a member of the Florida Bar Board of Governors, or appeared in the Florida Bar News about the proposed changes to the rules governing the Lawyer Referral Services in Florida. Yet in fact,

that statement was made in the January 1973 edition of the Barrister. In an article entitled "The Greening of the Legal Profession", author J. Charles Shores invited BCBA members to attend a general lunch meeting (at the Red Coach Grill on Federal Highway at the cost of \$3.00 including tax and tip) to learn about prepaid legal cost insurance. The article encouraged members of the Broward County Bar Association to embrace the "revolutionary system" of prepaid legal services, and asked us to envision the program "in the best interest and tradition of the Bar."

Flash forward 43 years. Although there is a proliferation of prepaid legal services companies, they are not the panacea that was envisioned when the program was presented. And now, once again looking to close the still present gap between those needing legal assistance and attorneys seeking to expand their client base, the Florida Bar is considering a proposal to relax restrictions on the lawyer referral service rules that would allow matching services (think Avvo, Rocket Lawyer, LegalZoom) the ability to make it easier for them to do business in Florida. According to a recent article in the Florida Bar News, the proposal, if approved, would do away with many of the restrictions currently contained in the rules governing Lawyer Referral Services and Lawyer Directories including the elimination of the \$100,000 malpractice insurance coverage requirement, and removal of the required language in advertisements that the company is a lawyer referral service and that lawyers pay to be part of that program.

Shores was correct when he stated "In an era of consumerism, public demand is certainly relevant and cannot be ignored." The legal profession cannot hide its head in the sand and disregard that the way we do business is changing. With one click of the mouse a person can now be matched with a doctor, a plumber or even a mate, and yes, with an attorney. However, our leaders should be mindful of making sure that partnering with these for profit, "qualifying providers" (as they will be called if the proposal is passed) will not compromise the quality of service that is being provided. Why throw the proverbial baby out with the bathwater when there are programs, such as the Lawyer Referral Services sponsored by the Florida Bar, already in place? Through this program, over 94,000 referrals were made to over 1,600 attorneys across Florida last year, with our own BCBA Lawyer Referral Service leading the way. The Florida Bar is encouraged to augment this successful program with an enhanced online presence and increased marketing budget. At the same time, efforts should continue to make sure that the young lawyers looking for work are adequately trained before being matched with a client based on their registration on a website. **B**

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## letter from the young lawyers' president



*Jeffrey M. Wank*

### Practicing with Professionalism

Opposing counsel was vicious. He was out for blood. Not only was his client extremely aggressive and interested in using every litigation tactic in the book, but counsel himself had a reputation for being an attack dog, known to not play by the rules (and not to play well with others). Opposing counsel was also rude, unpleasant, and outright unprofessional. It was the type of case where everything was followed up in writing.

Ever find yourself in a similar situation? A case which keeps you up at night questioning why you decided to swim in debt only to be abused by a colleague. You're not alone. Many

young lawyers I speak with on a weekly basis bring up the topic of professionalism more than any other issue (aside from student loans and jobs). We constantly hear from more seasoned attorneys how important it is to treat our fellow lawyers and the judicial process with respect and honor. But why then do we routinely find ourselves wondering if everyone is playing by the same rules? Likewise, is it appropriate to defend yourself and engage in the unprofessional behavior if you are attacked?

I believe more and more young lawyers are not receiving the training and mentoring needed to fully develop their skills, both from a legal and professional perspective. One can look at the rise of newer attorneys in our state, or realize that many clients are not paying lawyers the way they used to pay, as a basis for this problem. This can be traced to the changes in the landscape of the practice of law, which has changed the economic dynamics and has arguably forced lawyers to do more with less, creating a more competitive and hostile profession. As such, finding a job with a law firm that provides a mentor or legal training has become a premium, and something I do not believe my peers should take for granted. Enhance, refine your career by connecting with a mentor via the BCBA Mentorship Program, and/or connect with other top-notch professional attorneys via the networks you develop at the BCBA. These will last you a lifetime and will guide you along the right path.

Many of the examples relating to unprofessional behavior can be linked to improper training and development. Certain lawyers' actions are not surprising once we learn the atmosphere in which they learn how to practice law. I urge all young lawyers not to engage in such rhetoric, and continue to take the high road when pressed by opposing counsel's unethical tactics. Such behavior will be noticed, for better or for worse. And should you find yourself in a firm which engages in such questionable practice, do not fall victim to unprofessional conduct which will follow you for the remainder of your long career.

Finally, if you are a witness to unprofessionalism, do not hesitate to educate your colleague and explain why his or her actions are damaging to our profession. Take the time to engage in a positive discussion, and perhaps you may not only help your opponent, but your client as well. **B**

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# Investigation Interview Tips

by Michael L. Buckner

Interviews are one of the most important methods of collecting evidence during an internal investigation. An attorney or investigator (for purposes of this article, referred to as the “investigator”) can rely on basic strategies, techniques and protocols to increase the success of an interview. For example, an investigator can use the following tips to plan, prepare to conduct a comprehensive interview:

- Conduct the interview in: (a) a neutral location; and (b) a place where the interview subject feels comfortable to talk. If possible, avoid locations where the interview subject retains leverage over the investigator.
- Use introduction questions (e.g., what is your name, where did you attend college, where do you live) to obtain an interview subject’s “baseline” body language (e.g., posture, arm position, eye contact). Observe any deviations from the baseline when the interview proceeds into difficult questioning. A deviation from the baseline may indicate: (a) the interview subject is uncomfortable with the question or response; or (b) the interview subject is providing false or misleading information.
- Use the “funnel technique”, which involves: (a) starting with broad, open-ended and cognitive questions, which

enhances the retrieval of information from an interview subject’s memory; and (b) ending the discussion with narrow and detailed follow-up questions.

- Restate information on important testimony, issues or points to confirm with the interview subject what was discussed.
- Simplify a series of questions or statements to encourage more complete responses.
- Refrain from an interviewer’s natural tendency to talk a great deal in order to eliminate telegraphing the “right” answer to a question.
- Avoid interrupting the interview subject, which can cut off the conclusion to a subject’s thought.
- Remain silent after the interview subject completes an answer. This technique can cause an interview subject to continue talking in order to fill in the silence.
- Ask any unfriendly or embarrassing questions at the end of the interview since these type of questions may cause an interview subject to become defensive if offered at the beginning of the interview.
- Maintain a list of documents provided to each interview subject during the interview.
- Ask questions that will produce relevant facts, suitable leads or potential

interview subjects.

- Use “who, what, when, where, how, and why” questions on every topic and issue.
- Refrain from offering opinions or conclusions.
- Confirm the interview subject’s recollection has been exhausted on all pertinent issues and topics by asking appropriate follow-up questions and checking interview notes to see if all areas have been covered thoroughly.
- Conclude a series of questions on a topic or issue by posing a “closing” question to place a “button” on the topic or issue.
- Ask the interview subject “if there are any questions that could have been asked, but were not?” at the conclusion of the interview. The response may identify topics or issues unknown to the investigator.. **B**



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# Bankruptcy Sales – Squeaky Clean Title and Tax Exempt!

by Christian Savio

Most investors or purchasers of real estate may be weary of the word bankruptcy. In fact, they may even avoid investing in properties that are in some stage of the bankruptcy process. Bankruptcy sales provide one enormous advantage that your clients may simply be unaware of and that is clean title free and clear of liens, claims and encumbrances!

Unlike in a foreclosure action, where the transfer of title is dependent on naming of lienholder or interested parties in the action, the bankruptcy sale is subject to providing notice to constituents. In other words, there is no requirement that a lienholder participate in the actual process. As long as, the interest holders are provided notice of the sale motion, then title may transfer free of the interests, whereas, the foreclosure is dependent on the party being formally sued and obtaining judgment.

The Bankruptcy Code provides for a sale of property of the bankruptcy estate "... free and clear of any interest in such property..." if certain conditions are met. 11 U.S.C. §363(f). The existing encumbrances attached to the proceeds of the sale, the in rem inter-

est is cut-off.

Effective December 1, 2009, an order authorizing the sale, use, or lease of property is automatically stayed until the expiration of 14 days after the entry of the order, unless the Court orders otherwise. Bankruptcy Rule 6004(h).

Once the time period has elapsed, a certified copy of an order of the bankruptcy court authorizing the sale and record proof that all parties having an interest in the property were given proper notice of the hearing related to the proposed sale is in most cases sufficient for title and insuring purposes. This often provides a much more streamlined closing for the real estate practitioner.

Not only can your buyers purchase the properties free and clear, they may even be able to exempt the documentary stamps taxes if the sale occurs pursuant to a plan. Florida Administrative Code 12B-4.013(19) and 12B-4.014(15) provides in relevant part:

"Transfer in Bankruptcy Sale: Sale of real property by trustees, debtors or receivers in federal bankruptcy

proceedings is subject to tax unless the transfer is made pursuant to a plan confirmed under s. 1129 of the Bankruptcy Code, is a precondition or essential to the confirmation plan, or is necessary to consummate or implement a confirmed plan and the debtor is a party to the transfer. If the bankruptcy court does not ultimately confirm the plan under s. 1129, the transfer would not be exempt pursuant to 11 U.S.C. §1146(c), and would be subject to tax."

Depending on the sale price of the property, this can amount to substantial savings and perhaps seal the deal for your client. **B**



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# 5 Ways to Use the Internet as Your Personal Marketing Tool

by Jennifer Ruiz Garay

Everyone knows that you have to network to get work. For many lawyers, this means pounding the pavement and meeting people in an attempt to garner referrals and build name recognition. But what if I were to tell you there's a smarter way to invest your time, energy and money? What if I were to suggest a widely available and far-reaching marketing method that could give you exposure to millions of potential clients for free or next to nothing?

You guessed it--I'm talking about the Internet. More than 25 years old now, it is still regarded as a new technology and avoided due to perceived intricacies in its navigation. On the contrary, it's so simple toddlers can use it, and many do. So how can you make the Internet work for your firm? Here are 5 effective ways to market yourself online:

## 1) Start a blog

Nowadays, people like to Google something and get an answer. You can easily climb to the top of search results by starting a blog and establishing yourself as an expert in your field. Answer common questions about your area of law. Write about changes in policy or little-known loopholes. The more people see you as an authority, the more they will

want to pay for your expertise.

## 2) Create a Twitter account

Only a marginal number of attorneys actually use Twitter, let alone for business purposes. This is unfortunate because, like Facebook or LinkedIn, Twitter can build brand recognition and drive traffic to your site. It also has the added benefit of easy access to high profile individuals. Stay relevant by posting about current events in your field, and watch your following grow.

## 3) Build your email list

Increasing your online exposure will do you no good if you fail to secure information from potential clients to turn them into leads. There should be a "subscribe" option at the end of every blog post and also as a pop-up on your home page. Offer free content as an incentive for signing up. For instance, family lawyers could email a list of the top 10 mistakes people make when filing for divorce and how to avoid them as a gift to new subscribers.


## 4) Monitor your analytics

Knowledge is power, and knowing where the biggest boost in your traffic comes from can help you replicate that success in the future. Google Analytics is the foremost website moni-

toring tool, providing you with information such as the demographics of site users, the most popular times for viewing posts and your number of unique monthly visitors. Use this information to tailor content accordingly.

## 5) Embrace the power of video

Even more underutilized than Twitter is YouTube. With over 4 billion views a day, this is a huge market that lawyers are essentially ignoring. Post self-made commercials to a YouTube account and share the videos on other social media pages. It's comparable to buying a tv commercial or radio ad, only free and plays in perpetuity. Brian Wilson, the "Texas Law Hawk," has more than 2 million views on YouTube due to his over the top but effective videos.

With a little practice, patience and continued posting, you too can make the Internet your personal marketing tool. 



*Jennifer Ruiz Garay, Esq. is an associate attorney with Gonzalez & Goetz, LLC, a Social Security disability law firm in downtown Fort Lauderdale. Jennifer can be reached at (954)764-8989 or at [jennifer@gglaw.info](mailto:jennifer@gglaw.info)*



# My Experience with the BCBA Lawyer Referral Service

by Gawayne Kelley

When I started my own law firm, I asked myself one very important question: Where will I be able to obtain clients? After months of trying to grow my business and expand my client base utilizing various referral sources, I could not get the results I expected. Worse yet, the referral sources charged premium rates for their services!

Enter the Broward County Bar Association's (BCBA) Legal Referral Service. Initially brought to my attention during a conversation I overheard at a BCBA event, I decided to try it out. It was the best decision I could have made for my business based on ease of use, cost, and ability to give back to the community.

## Ease of Use

To start, joining the BCBA's Legal Referral Service is incredibly easy. An attorney need only be a member of the BCBA, have an office located in Broward County, and have legal malpractice insurance. Once an attorney becomes a member of the referral service, the experienced counselors on

staff conduct initial screenings of potential clients. Personally, most of the service's referrals have become actual clients of mine. I believe this is due to the counselors' ability to condense the client's issues and assess my ability to render aid. This allows me to build a relationship with the prospective client rather efficiently because I have already been briefed on the client's situation by the referral service.

## Cost

The BCBA's Legal Referral Service is hands down the best bang for an attorney's buck. As previously mentioned, I had spent thousands of dollars on referral sources that were not nearly as effective as the BCBA's Legal Referral Service. The BCBA requires one low annual fee. Depending on the case type and after the client has rendered payment to the referral service attorney, an additional 10% fee may need to be paid to the service. Obviously, BCBA's Legal Referral Service is very cost effective.

## Community Assistance

In my opinion, the best aspect to this service is the "low cost" component for clients. When an attorney joins the BCBA Legal Referral Service, he or she can elect to

receive case referrals which cap attorney's fees. I look forward to doing these types of cases because I really feel like I am giving back to the community and helping individuals who, without the reduced costs, would not be able to obtain legal representation. Additionally, the attorney does not even have to expend any time determining a potential client's suitability for low cost aid since this is performed by the Service's experienced staff.

As a young attorney starting a new law firm, I had to keep costs low but I also needed to have more referral services to grow my business. The BCBA's Legal Referral Service has been my answer. I highly recommend the BCBA's Legal Referral Service and implore all fellow attorneys to discover what the service can do for them. **B**



*Gawayne Kelly, Esq. of Gawayne Kelly Law, P.A. 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. He can be contacted at [gak@gawaynekellylaw.com](mailto:gak@gawaynekellylaw.com).*

# Broward County Bar Association Membership

## Connecting Today. Connecting Tomorrow.

The BCBA is committed to serving a diverse membership, strengthening our justice system, and building a stronger community.



"Being a member of the Broward Bar allows me to feel like I'm a part of the legal profession. I have gained many friendships through the Young Lawyer's Section in addition to invaluable networking opportunities and connections. For the first time, I feel like I'm a lawyer, working to expand my brand both in and out of the office, as opposed to just an employee going to and from work. I have no shortage of CLE credits, and not from a computer screen that you half pay attention to, but from live lectures and interactive activities I've actually enjoyed attending. Also, I came from out of state, so it was difficult for me to transition into a new legal community. Joining the Broward Bar and a committee therein gave me instant access to others with similar interests. I felt an immediate sense of welcome and belonging and look forward to our monthly meetings now. As a young lawyer, I cannot think of a better way to discover the joys of our profession than by making a time to join the Broward Bar, and participate in as many events as possible. You get out of the experience far more than what you put in." -*Jennifer Ruiz Garay*

"When I moved my practice to Broward County, I was already blessed with many friends and a network of attorneys who practiced here. Even so, I still felt like there was something missing, like I wasn't quite connected and at home. Joining the Broward County Bar Association changed that. I met many new friends and professional acquaintances who became like an extended family. As cheesy as it sounds, it's true (and I have the crazy "uncles" to prove it).



As I got more involved in the BCBA and in committee and Board service, I had more opportunities to work closely with a diverse group of dedicated lawyers and judges who to this day continue to inspire me. I was exposed to their humor, their passion for service, our many varied and shared interests, and of course, our common experience as Florida lawyers, sworn to serve our clients and our profession. Participating in the BCBA is like having a backstage pass to Broward County's legal community. I get to meet and work with men and women for whom I have developed a level of fond respect. And, as if that weren't enough, the referrals aren't bad either!

Get involved. It will be the best decision you ever made!"  
-*Robert C.J. Vaughan*



"I have been fortunate to be an associate member of the Broward Bar Association for over 2 years. It has been a catalyst in my professional life. The Broward Bar is the hub of the Broward legal community. As an Account Manager at Ricoh Legal, I specialize in eDiscovery and forensic for large litigation cases working with all size law firms. The Broward Bar is dedicated to all attorneys, young and/or experienced while targeting all local firms - small, medium and large.

The Broward Bar has a full calendar of networking and social events each month. The professional development and educational events cater to all practices. Their networking and social events have given me the opportunity to meet many potential clients and new friends. Being a member of the Broward Bar brings the benefit of referrals and keeps me informed in the local legal community.

As a member, I have been welcomed to join their committees. I serve on the Publicity Committee, the New Member Committee and the Mentoring Committee. I enjoy working with the staff and the attorneys involved with the committees. I even ran a 5K with clients and the Broward Bar Members. It has been a great learning experience while creating friendships that I know will last for years to come.

I credit much of my success to the volunteer bar association experience. The cost of an associate membership is minimal compared to the benefits offered. I urge all in the legal community to join and get involved. Not only will you have fun, but your business will grow as well. The Broward Bar has become my second family." -*Jeni Meunier*

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# The Broward County Bar Association Family Law Section 2016 RAISING THE BAR SEMINAR



Stacy Weissman (left) with Judge Renee Goldenberg (right). The Family Law Section awarded Judge Goldenberg a Distinguished Service Award for her dedication and service on the bench. Judge Goldenberg plans on retiring this year.

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# Members Engage Local Representatives: Legislative Affairs Reception A Success

by Nikki Fried

The Broward County Bar Association's Legislative Affairs Committee hosted its annual Legislative Affairs Reception on March 30th. Nikki Fried, a partner in Colodny Fass P.A., moderated the legislative panel of members of the Broward County Legislative Delegation: Representative Gwyndolen Clarke-Reed, Representative George Moraitis and Representative Joe Geller.



(Left to right) Representative Joe Geller; Representative George Moraitis; Nikki Fried, partner at Colodny Fass P.A.; Representative Gwyndolen Clarke-Reed and Braulio Rosa, BCBA Executive Director.

Following some networking, the distinguished panel had an in-depth conversation about issues they dealt with during the 2016 Legislative Session that impacted not only Broward County, but also the legal community. One of the most controversial pieces of the legislation was HB 197 by Representative John Wood regarding term limits for the Appellate Courts. While the legislation passed the Florida House by a vote of 76-38, it was died in the Florida Senate. Each panelist expressed significant concerns for placing term limits on the judiciary and voted against the legislation. The Florida Bar took a strong position opposing such measures and was integral in its ultimate defeat in the Senate.

Alimony reform became another highly debated issue throughout the legislative session and the weeks leading up to Governor Scott's veto of the legislation. The bill had initially been supported by the Florida Bar and the Family Law Section which would have ended permanent alimony, but after a last minute amendment that would establish a "premise" that all divorce cases involving children should start on the basis of equal child sharing, they were urging the Governor to veto the measure.

The event was highly attended by numerous prominent local attorneys and judges. B



Nikki Fried is a Partner in Colodny Fass' Lobbying and Governmental Consulting and Insurance Regulatory Law Divisions. Ms. Fried currently sits on The Florida Bar's Standing Committee on the Legal Needs of Children Committee and was appointed in 2013 to The Florida Bar Young Lawyers' Division Board of Governors and re-appointed for the next two years. She also serves as Chair of that Board's Legislative Affairs Committee. Ms. Fried serves to the Board of Directors of Broward Days and on the Board of Directors for the Girls Scouts of the Southeast. She can be reached 954.492.4010 or by email at [nfried@colodnyfass.com](mailto:nfried@colodnyfass.com).

## Broward County Bar Association

### 2016 Legislative Affairs Reception

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## BCBA and Legal Aid Team Up for Health

by Melisa Malone



Broward County Bar Association/Legal Aid's 2016 Mercedes-Benz Corporate Run Team (pictured). Special thanks to the event sponsors: Exquisite Catering by Robert, Kaylin Promotions, Law Offices of Paul G. Finizio, P.A., Orange Legal, PICTERA Solutions, Ricoh USA Inc., BCBA Young Lawyers Section (YLS), Broward County Women Lawyers Association (BCWLA), Broward County Justice Association (BCJA), Dive Bar, Federal Bar Association – Broward County Chapter, and South Broward Bar Association (SBBA).

We all know that exercise is healthy, but have you ever considered the benefits of a workplace wellness program or group exercise? The annual Mercedes-Benz Corporate Run promotes running and walking as a means to a fit, healthy lifestyle for people from all walks of corporate life. The Broward County Bar Association teamed up with Legal Aid Service of Broward County and Coast to Coast Legal Aid of South Florida on Thursday, April 7th to participate as one team – boasting 109 members strong. The team was one of the 231 teams participating in the event which drew 8,097 registered participants this year.

Many companies are building fitness opportunities into the workplace to help employees stay fit, healthy, and, not least of all, happy. Benefits of exercise include stress reduction, improved learning and memory, as well as improved body image and self esteem – all very important to attorneys. The expectation is that the investment in fitness programs make good business sense.<sup>1</sup> Maintaining a healthy workforce can lower direct costs such as insurance premiums and worker's compensation claims. Employers promoting health and wellness activities have demonstrated that employees have more energy throughout the day, resulting in increased worker productivity, as well as needing fewer sick days.<sup>2</sup> In addition,

one company surveyed said that for every dollar spent on its health and fitness programs, three dollars were saved on health care costs.<sup>3</sup>

Health is more than simply the absence of disease and, according to the World Health Organization, includes a state of complete physical, mental and social well-being. Employers who support and enhance the broader view of employee health create opportunities to build morale and increase engagement at work.<sup>4</sup>

The Team Kick-off event was a social mixer held the night before the "Run" and was hosted by Orange Legal. Team members stopped by to mingle with other team members and to pick up their Race Bags, which included team t-shirts, water bottles and other goodies provided by our supporting team sponsors.

Event day arrived with perfect South-Florida weather. The team tent was stocked with fresh fruit and beverages for pre-run hydration, and carbo-load pasta and meatballs for post-run enjoyment.

The BCBA/LAS/CCLA team was truly a cross-section of the local legal community. It included Judges, attorneys from all fields of expertise, pro bono attorneys, legal support staff, and family members.

Family law attorney and BCBA member Carolann Mazza, was the top female finisher for the team with a time of 24:05.6, and Dean Harley was the top male finisher for the team with a time of 23:20.0. Dean is the spouse of Legal Aid staff attorney Jennifer Harley.

We look forward to enjoying the health benefits – physical and mental – as we prepare for next year. Hope you can join us! **B**

1. Making a Business Case, Centers for Disease Control and Prevention, <http://www.cdc.gov/workplacehealthpromotion/businesscase>
2. Goetzel RZ, Ozminkowski RJ. The health and cost benefits of work site health-promotion programs. *Annu Rev Public Health.* 2008;29: 303-323.
3. Naydeck BL, Pearson JA, Ozminkowski RJ, Day BT, Goetzel RZ. The impact of the Highmark employee wellness programs on 4-year health care costs. *J Occup Environ Med.* 2008;50(2):146-156.
4. Tanja Madsen, The 5 Pieces of Employee Wellness, BenefitsPro.com (July 10, 2015), <http://www.benefitspro.com/2015/07/10>



Melisa Malone is the Marketing & Communications Manager at Legal Service of Broward County and Coast to Coast Legal Aide of South Florida. For more information visit [www.browardlegalaids.org](http://www.browardlegalaids.org)



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## WHERE IN THE WORLD IS THE BARRISTER?!?



BCBA member **Ross Abramowitz** with **Katie Butler** at the top of the Empire State Building.



BCBA past president and member **Alan Fishman** with his family visit Haight-Ashbury in San Francisco.

*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](mailto:ads@browardbar.org).*





# Recent Developments in the Law

by Nancy Little Hoffman

## **SUPREME COURT: WHERE PUBLIC ENTITY VIOLATES PUBLIC RECORDS ACT, PREVAILING PARTY IS ENTITLED TO ATTORNEY'S FEES WITHOUT PROVING AGENCY ACTED IN BAD FAITH.**

There has been a dispute among the DCAs as to whether an agency which violates the Public Records Act, by failing to permit public records to be inspected or copied, is required by the Act to pay the prevailing party's attorney's fees. The Third, Fourth, and Fifth Districts have required a showing that the agency acted unreasonably or in bad faith before attorney's fees can be awarded; the First and Second Districts have concluded that the Act contains no "good faith" or "honest mistake" exception to the statutory award of fees. The Supreme Court has now resolved that conflict in favor of the liberal construction of the Act by the First and Second District and disapproved the conflicting opinions of the remaining DCAs. In a 5-2 opinion, the Court explained that the Act must be construed in favor of open access to public records. If a trial court finds that an agency violated the Act by refusing to grant such access, thereby requiring a party to seek relief in the courts, the agency must pay that party's attorney's fees regardless of whether the agency acted reasonably or in good faith. *Board of Trustees v. Lee*, 41 Fla. L. Weekly S146 (Fla. April 14, 2016).

## **DOT OBLIGATED UNDER RAILROAD**

## **CROSSING AGREEMENT TO INDEMNIFY RAILROAD FOR SETTLEMENT PAID TO VICTIMS OF ACCIDENT AT CROSSING; DOT HAS NO RIGHT TO SOVEREIGN IMMUNITY.**

In 1936, CSX's predecessor agreed to allow DOT's predecessor to use the railroad's land to construct a road crossing. The sole consideration for the agreement was a requirement that DOT indemnify the railroad for losses arising out of its activity on the land. In 2002, an accident occurred at the crossing, allegedly because of negligent maintenance of the roadway. The railroad settled the negligence action, and the trial court required DOT to indemnify the railroad. DOT argued on appeal that it was entitled to sovereign immunity, or that its obligation was at least limited to \$200,000 under the waiver statute. Answering a certified question from the Second District, the Supreme Court rejected both arguments, holding that DOT's liability was based on a valid contract; that tort immunity thus did not apply; and that DOT was required to honor the indemnity agreement. *Florida Department of Transportation v. Schwefringhaus*, 41 Fla. L. Weekly S137 (Fla. April 7, 2016).

## **SUPREME COURT REAFFIRMS RESTRICTIONS ON SECOND-TIER CERTIORARI JURISDICTION.**

A driver's license was suspended for one year for his refusal to submit to a blood-al-

cohol test. The circuit court invalidated that suspension, holding that the hearing officer had violated the driver's due process rights by refusing to allow his expert to testify. The Fifth District granted certiorari to review that order. The DCA held that the circuit court misapplied the law by directing that the license be reinstated, and that another administrative hearing was required. On further review, the Supreme Court held that the DCA had inappropriately exercised its certiorari jurisdiction, and that second-tier certiorari should not be used simply to grant a second appeal or to review the correctness of a circuit court's decision. The Court reaffirmed that such review is appropriate only where there has been a "violation of a clearly established principle of law resulting in a miscarriage of justice." Since there was no miscarriage of justice here, the DCA was without jurisdiction, and the Court quashed the DCA's decision. *Futch v. Florida Department of Highway Safety and Motor Vehicles*, 41 Fla. L. Weekly S150 (Fla. April 14, 2016). **B**



*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](mailto:NLHappeals@aol.com)*

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**To register, or for more information: [nossacr.org/conferences](http://nossacr.org/conferences)**



**6 2016 Law Day Luncheon: Miranda Rights**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** Bahia Mar - Fort Lauderdale Beach  
**Cost:** \$35 BCBA Member; \$50 Non-Member

**7 Guardianship Class – 8 Hour Adult**  
**Time:** 9:00 a.m. – 5:00 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$180; No Walk-ins accepted

**10 North Broward Luncheon**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** North Regional Courthouse  
**Cost:** \$20 BCBA Member; \$25 Non-Member

**12 Construction CLE: Ethical Issues in Preservation and Collection**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** Free BCBA Construction Section, \$15 BCBA Member, \$25 Non-Members  
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**12 YLS Judicial Reception**  
**Time:** 6:00 p.m. – 8:00 p.m.  
**Venue:** Broward Center for the Performing Arts  
**Cost:** \$40 BCBA Member; \$45 Non-Member; \$55 Walk-in  
*Sponsorships Available!*

**17 Northwest Broward Luncheon**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** Runyons, Coral Springs  
**Cost:** \$15 BCBA Member; \$25 Non-Member; Walk-in \$10 additional

**18 Workers' Compensation CLE: Presumption Laws**  
**Time:** 11:00 a.m. – 1:45 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** Free BCBA Workers Compensation Section; \$15 BCBA Member; \$25 Non-Member

**18 Solo/Small Networking Dinner**  
**Time:** 6:00 p.m. – 8:00 p.m.  
**Venue:** Dave and Busters  
**Cost:** \$35 BCBA Member; \$50 Non-Member; \*\$5 Additional Walk-in

**19 CLE: When to Appeal**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$15 BCBA Member; \$25 Non-Member

**20 Bar at the Bar**  
**Time:** 5:00 p.m. – 7:00 p.m.  
**Venue:** Bull Market

**21 Guardianship Class - 4-Hour Minor**  
**Time:** 9:00 a.m. – 1:00 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$100; No Walk-ins accepted

**24 CLE: Introduction to IP for Business Litigators**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$15 BCBA Member; \$25 BCBA Member

**24 CLE: Got Civility?**  
**Time:** 5:30 p.m. Seminar; 6:30 p.m. Reception  
**Venue:** 200 East Las Olas Blvd.  
**Cost:** \$10

**26 The Essentials Guide Session 3 Choosing a DUI Attorney**  
**Time:** 12:00 p.m. – 1:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$15 BCBA Member; \$25 Non-Member

**31 Young Lawyers' Bootcamp Session 4**  
**Time:** 5:30 p.m. – 7:30 p.m.  
**Venue:** BCBA Conference Center  
**Cost:** \$25 BCBA Member; \$35 Non-Member

### Upcoming Special Events

**June 28**  
**4th DCA Reception**  
**Time:** 5:30 p.m. Reception  
**Venue:** Historic Maxwell Room  
**Cost:** \$25 BCBA Member; \$35 Non-Member  
*Sponsorships Available!*

**June 30**  
**BCBA Annual Installation Dinner Live Music! Black Tie Optional**  
**Time:** 5:30 p.m. Cocktail Reception; 6:30 p.m. Dinner  
**Venue:** Hyatt Regency Pier 66 – Crystal Ballroom  
**Cost:** \$95 BCBA Member; \$115 Non-Member  
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