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NOVEMBER 2016



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- Recent Changes to Limits on Cuban Cigars and Rum
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ON THE COVER:

The Broward County Bar Association invites our members to our 2016 Annual Holiday Party on Thursday, December 1. We will continue the celebration in Weston on Tuesday, December 6 with our West Broward/Weston Bar Sections at Moon Thai. Our Northeast and Northwest Broward Sections invite you to celebrate at Alpine Jaguar on Thursday, December 8. Register at www.browardbar.org/calendar.

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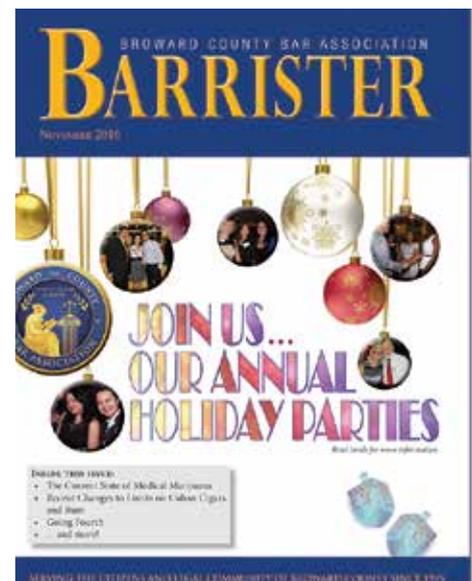
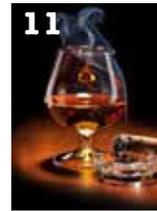
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Charles A. Morehead III

Greetings from the President. Fall has come and gone and the new courthouse is still unavailable. We are now told that we should be in the new courthouse after the first of the year.

A Certificate of Occupancy was issued in mid-September, so hopefully the lengthy punch list will be concluded and the move may begin at the end of October. As I dictate this, that seems unlikely.

The Lawyer Referral Service issues pending before the Florida Supreme Court where we have filed a response to the Bar's request have been accepted by the Florida Supreme Court and are available electronically online at <http://bit.ly/2eoDIN6>. No positive comments were received from any source; it will be very interesting to see what the Florida Supreme Court does on this important issue.

Due to age, attrition and resignations, there are five open judgeships in Broward County. Please encourage your colleagues to apply for a judgeship if they are qualified and willing. One of the problems we face in our county is a general apathy toward applying for these important positions. If you know someone who would be a good fit for a judgeship, pick up the phone and call them and encourage them to download the application to apply.

As I dictate this the final debate has just been held for this year's presidential election that is just weeks away. It is comforting to know that our Republic is a strong one and will endure, no matter the winner. Our Constitution is a great document and has stood the test of time well.

May you and your family have a joyous Thanksgiving. ■

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letter from the young lawyers' president



Todd L. Baker

As attorneys, we can't be everything to everyone. We can't always be available when our boss needs us. We can't answer every call we get from our clients. We can't take on every case, due to either a lack of experience, lack of time, or a client who cannot afford us. We can't always grab lunch; a drink after work; see a concert or sporting event. We can't travel with our family or friends on a whim. Sometimes we have to step out of the movie or excuse ourselves from dinner to take an important client call. We can't be everything to everyone and with experience, we learn to strike a balance between our professional and personal lives. Time management is a skill, not a talent. It is

learned from experience and some people learn faster than others.

There was recently an article put out by the Young Lawyers Division of the Florida Bar about "Over-Commitment-itis." I encourage everyone to read this article. It's hard not to overcommit – there are too many great voluntary bar organizations, charities, and other, non-legal related clubs. It's hard to say no to helping people in need but it may be necessary to say no, or re-prioritize your list of obligations. Overcommitting could mean you are taking up a position meant for someone else who could significantly contribute. It also may make you derelict in your duties, which could hurt your reputation. Before committing to something, you really need to decide if you can hold up your end of the bargain. It is an unfortunately reality, but we really can't do everything.

That being said – you have to do something for your community. Join a committee, help a charity, get on a board. It is not as hard as you think with the caveat that you shouldn't overcommit. Over 400 people have signed up for our YLS Committees because they want to get involved. It is now our obligation to engage everyone who signed up. That might mean working on scheduled events for some people or the creation of new events and activities for others. If you want to do something, YLS will help find something for you to do.

BCBA members recently did something for the people of Haiti who found themselves victims of Hurricane Matthew. Dozens of donors filled a conference room full of food, clothes, medicine, personal hygiene products, bedding, etc. to be donated. For some, these items were just sitting around the house waiting to be donated or discarded. The people that did something should be proud of themselves. If you could not contribute this time around, I encourage you to do something at a later date. We, as the collective term for individuals, cannot do everything, but we, as the collective term for the legal community, can do so much. If you are reading this, I hope you will do something for your community in the near future when the opportunity presents itself. 

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Going Fourth: Harmless Twitter Ramblings Held Not Juror Misconduct

by Alan Bryce Grossman

The Fourth District Court of Appeal recently explored the extent that a juror's use of social media during a trial might constitute juror misconduct to warrant a new trial.

In a case of first impression, in *Murphy v. Roth*, decided by the Fourth District on October 5, 2016, the court upheld the Palm Beach Circuit Court's denial of a request for mistrial based on alleged juror misconduct. During the trial of a negligence action stemming from a car accident, anonymous "Juror 5" had posted a series of tweets on his Twitter account.

After the 5-day trial resulted in a jury verdict, the plaintiff sought a new trial based on the following three tweets by Juror 5:

- a) I got picked as a juror... I hate this s - - - I'm so pissed, I even half assed all my answers and I dressed terrible.
- b) Being a juror isn't bad, people I'm working with are pretty cool. But I still hate the fact that I have to be here all day.
- c) Everyone is so money hungry that they'll do anything for it.

Relevant to the appellate analysis was the trial court's instruction, once the jury was selected and sworn, "not to talk about this case by using an elec-

tronic device.... not [to] send or accept any messages related to this case or your jury service... [and] not [to] discuss this case or ask for advice by any means at all, including posting information on an Internet website, chatroom, or blog."

The judge conducted two hearings, and asked Juror 5 if he understood the instruction not to communicate about the case or his jury service on social media. Juror 5 said that he did not intentionally or deliberately disobey the court's order. Juror 5 explained that his tweet about his "half assed" answer happened because he did not know what to say in response to questions. Lastly, on inquiry by the judge about the tweet of everyone being "money hungry," Juror 5 said that referred not to the case but to an accident he was in with his father.

In affirming the denial of a new trial, the Fourth District exclaimed that Juror 5's tweets were "potentially offensive on a number of levels", but held that the lack of evidence of any other juror seeing the tweets, and that nothing in the tweets was specific about the case, along with the trial court's ruling that Juror 5 misinterpreted the instructions, supported the trial court's ruling.

The "money hungry" tweet post did

not demonstrate bias against the plaintiff, because the trial court determined that it wasn't about the plaintiff nor the case. This was supported by the fact that Juror 5 had expressed a similar opinion in open court during voir dire.

It seems clear that the holding is based on the fact that (1) there was nothing specific about the case in the tweets, (2) they were discovered after the verdict, and (3) the misconduct was not intentional. Review of case law outside Florida showed similar holdings, where a new trial based on juror misconduct by social media must arise to a level of prejudice instead of simple ramblings about the general nature of jury service. **E**



Alan Bryce Grossman is a sole practitioner in Cooper City, practicing in South Florida, and around the state, and elsewhere, for 26 years. His areas of practice include litigation and appeals in commercial, property, and probate matters. He is a graduate of the University of Florida and the University of Baltimore School of Law. He can be reached at alan@abgrossman.com or by calling 954-364-6294.

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Recent Changes to Limits on Cuban Cigars and Rum

by Allen F. Bennett



On October 17, 2016, President Obama eliminated some of the restrictions on the amount of merchandise, including rum and cigars, that U.S. travelers may bring back to the

United States from Cuba.

Previously, United States citizens traveling to Cuba could return with no more than \$100 worth of rum and cigars for personal consumption. In addition, purchasing cigars and rum of Cuban origin over the internet or while in a third country, e.g. Mexico, and returning with them was completely prohibited. This restriction has also been removed, meaning that

travelers to the Mayan Riviera can also return with Cuban merchandise.

There remains the restriction that any Cuban cigars or rum brought into the country must be solely for personal, not commercial use. Thus, this policy change will not have a significant commercial impact. Most apparent next steps in the rapidly warming U.S. and Cuba would be to loosen the commercial restrictions.

While this is welcome news for cigar aficionados and lovers of Cuban rum, it is more complicated for Trademark owners. Fidel Castro maintains that the name "Cohiba" belongs to the Cuban people. Not surprisingly, original makers of Cohiba cigars, who fled to the Dominican Republic, claim they are the true inheritors of the name. Who is correct? Bacardi Rum faces similar questions. There are

no easy answers, but those wishing to sell Cuban made brands in the future will likely find themselves in the middle of these conflicts.

Join the Broward County Bar Association as we discuss changes in Cuba at our Cuban Enigma: A Year Later CLE and Reception event on Wednesday, November 16. For more information visit www.browardbar.org/calendar. **B**

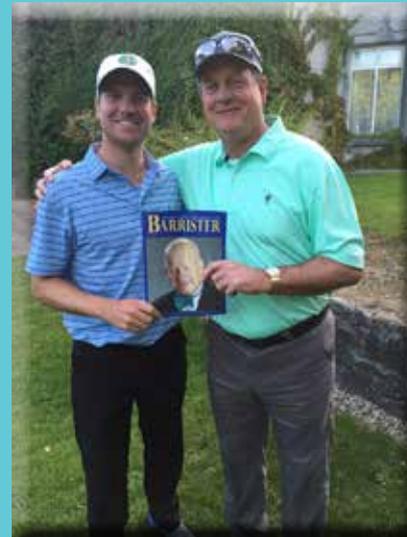


Allen F. Bennett is a Registered Patent attorney and has focused his practice exclusively to Intellectual Property law, including patents, copyrights, trademarks, and IP litigation. He formed Bennett Intellectual Property in 2010 and represents a wide range of clients from individuals to multimillion dollar companies. Mr. Bennett can be reached at (561) 860-0654 or visit the firm website at www.afbip.com.

WHERE IN THE WORLD IS THE BARRISTER?!?



BCBA member **H. Mark Purdy** visiting the 800 year old Leaning Tower of Pisa.



BCBA members **Cam Rogers** (left) and **Romney C. Rogers** (right) in Ireland on a golf getaway.

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The Current State of Medical Marijuana in Florida

by Jared Guberman
Part 2 of a 3-part series.

On June 16, 2014, Florida Governor Rick Scott signed the Compassionate Medical Cannabis Act of 2014 (“Act”), now known as section 381.986, *Florida Statutes*, which allows specified licensed physicians to order a low-THC/non-euphoric strain of cannabis (this strain of marijuana is known as “Charlotte’s Web”) for qualified patients suffering from cancer, severe seizures or muscle spasms. Under the Act, cannabis shall be obtained from dispensing organizations approved by the Florida Department of Health. One may have expected that individuals would start receiving medical marijuana immediately after the Act’s enactment. However, that has not been the case. It has taken over two years for the first patient to receive medical marijuana in Florida. This significant delay resulted from a number of factors, including the Department of Health’s struggle to create and implement rules and regulations as to the implementation of the Act, an arduous application process for marijuana-dispensing organizations to become potential dispensaries in Florida, as well as a myriad of legal challenges.

During this delay, on March 26, 2016, the Act was expanded to allow medical marijuana to be ordered for a patient suffering from a terminal condition as determined by two separate physicians. A terminal condition is defined as one that will result in death within one year of diagnosis if the condition runs its normal course. Unlike the low-THC/non-euphoric strain of cannabis prescribed for the various non-terminal conditions stated above,

the medical marijuana product that can be ordered for terminal conditions contains significant levels of the psychoactive ingredient THC and may produce the “high” commonly associated with cannabis.

Currently, there are six dispensing organizations that are approved to grow, dispense and sell medical marijuana in Florida. The first medical marijuana dispensary, Truileve, located in Tallahassee, opened in late July 2016 in order to start delivering marijuana statewide. The first medical marijuana product delivered to a patient was in August 2016. A couple weeks ago, Modern Health Concepts, located in Miami-Dade County, began to sell “Haleigh’s Hope,” similar to Charlotte’s Web, an anti-seizure strain of low-THC cannabis oil.

Pending the possible passage of Amendment 2, an amendment to Florida’s Constitution which would allow medical use of marijuana for a broad range of debilitating medical conditions, and further state regulations, cities across Florida have implemented moratoriums to allow time to study how city zoning and building regulations should be applied to medical marijuana dispensaries and related businesses. It is expected that after the vote, cities will be approached by businesses interested in opening dispensaries. However, to date, the vast majority of city zoning codes and regulations do not address any rules about dispensaries. Some cities have already implemented zoning and business regulations. For example, loca-

tion/spacing requirements, prohibition or non-prohibition on the uses regarding cultivation, processing, etc., permit requirements, security requirements, hours of operation, signage, and real property requirements.

In the meantime, law firms have launched practice groups focusing on “marijuana law” in order to advise growers, sellers, doctors, patients, and caregivers to comply with the ever changing Florida marijuana laws, other state law, local ordinances, and federal law.

Despite Florida’s slow pace thus far, medical marijuana is here to stay and is quickly changing in the next couple of months and in years to come. The next step, as discussed in Part I of this three part series, will shed some light on the future of medical marijuana in the state when Floridians vote on Amendment 2 in November. **B**



Jared Guberman, Esq. is a civil and construction litigation attorney with Vincent F. Vaccarella, P.A. in Fort Lauderdale. He may be contacted at 305-932-4044 or by e-mail at jguberman@v-law.net.

Tribute To Tony

by Melisa Malone

It seems like everyone knows Tony Karrat. Whenever Legal Aid is mentioned, people say, "oh yes, Tony." The name has become synonymous with Legal Aid Service of Broward County. Not surprising, as he has been the Executive Director of Legal Aid for the past 40 years.

Difficult as it may be to believe, Tony didn't start his career here in Broward County. After law school at the George Washington University Law Center, Tony spent three years with Seattle (Washington) Legal Services specializing in general poverty law issues, family law matters and as a supervisor in a prison law project.

He then joined Legal Aid Service of Broward County in 1975 as a branch office supervising attorney prior to being named Executive Director in 1976. Under his direction, Legal Aid has grown from a three attorney office to a regional law firm with a staff of more than 90 people. During these years, the program



Tony Karrat

has had a significant impact on the low income community of Broward County in areas as diverse as housing conditions for the poor to protecting victims of domestic violence, to helping the homeless, veterans, senior citizens, children and people living with HIV/AIDS.

Throughout his tenure, Tony has earned a

reputation as a devoted advocate for the poor and disadvantaged of our community. He is committed to providing the highest quality of legal representation to clients who cannot afford to hire a private attorney.

Although it would be easy to say that Tony is the "face" of Legal Aid, it would be more accurate to say that he is the heart and soul of the organization and the face of equal justice for all. Indeed, Tony Karrat is a Warrior for Justice. **B**



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.browardlegalaid.org.

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Tried and True Tips to Stay in Shape while on a Trip for Business or Pleasure

by Michelle K. Suarez

What does my trip to Buffalo, New York, a bachelorette party in the Keys, and the Florida Bar Annual Convention in Orlando all have in common: FITNESS. Wherever I go, be it for business or pleasure, there are certain things I always do to prepare for my trip to make sure that my fitness goals are never compromised. In my fifteen years of living a healthy lifestyle I've learned the adage remains true that fitness is a journey and not a destination. On my journey, I have learned various ways to ensure that my vacation never interrupts my fitness and health goals. I love working out in new environments! It is one of my favorite things to do. So here are a few valuable tips I have learned that help me stay on track when I am away from home.

First, do your homework on where you are staying. Almost all hotels nowadays have a decent gym with various cardio equipment and a few weight machines. Many even have a full free weight set ranging from 5lb to 40lbs which allow you to do several exercise variations. Hotels often have pictures of the gym on their website which allow you to see the equipment they have so that you can plan your workouts in advance. If you are staying with family or at a location that does not have a gym on site, you can look up parks nearby to go for a walk or run, or just see tip

number three below.

Second, find out if where you are staying has a fridge. Most hotels have a small fridge where you can bring along pre-cooked foods like eggs, vegetables and yogurt and store it in the fridge so that you can have snacks with you to avoid binge eating. I always call in advance to ask about gym hours and the fridge. If you're flying to your destination, there is likely a grocery or pharmacy store within walking distance with produce and snacks that you can buy and take back to your room.

Third, map out interesting landmarks that are 1 to 3 miles away from your hotel and plan on walking there. This is harder to do if you are not familiar with the area. But you may find, like I did in Buffalo, that you can get to know a city intimately by walking and get exercise at the same time. On our third day there we logged ten miles! We hardly even noticed because we were so captivated with the people and the architecture.

Fourth, as obvious (or not so obvious) as it may seem, always always always pack at least two pairs of exercise outfits and one pair of all use sneakers (that can be used for running or lifting weights). I find that just by packing exercise clothes I am more likely than not to exercise

on my trip. There is something sub-consciously reinforcing about it and it takes away any excuse you might find not to work out if you had not packed any.

We often use a trip as an excuse to come between our health and fitness goals, but why? It doesn't have to be. Going away should never be a reason to put your health and fitness goals on the back burner. It should be motivation to pursue them and find creative ways to stay healthy! I hope my tips help you stay on track on your next trip, and that you come back feeling healthier, happier, and maybe even a little lighter. Stay healthy my friends. **B**



Michelle Karinne Suarez, Esq. is a business attorney practicing transactional and litigation work at Kelley Kronenberg, P.A.'s Fort Lauderdale office. She is also a fitness competitor. She can be reached at (954)370-9970 or via email at msuarez@kelleykronenberg.com.



Recent Developments in the Law

by Nancy Little Hoffman

FLORIDA SUPREME COURT SPEAKS ON CAPITAL PUNISHMENT STATUTE - TWO OPINIONS:

I. In *Hurst v. State*, 41 Fla. L. Weekly S433 (Fla. Oct. 14, 2016), the Florida Supreme Court addressed the United States Supreme Court's opinion, which held that Florida's capital sentencing statute was unconstitutional to the extent that it failed to require the jury, rather than the judge, to find the facts necessary to impose the death sentence. In a lengthy *per curiam* opinion, the court discussed prior opinions by both courts on the issue and explained that the death penalty may now be imposed only if the jury finds "the existence of the aggravating factors proven beyond a reasonable doubt, that the aggravating factors are sufficient to impose death, and that the aggravating factors outweigh the mitigating circumstances." When Mr. Hurst was sentenced in 2012 those same requirements existed, but it was the trial judge and not the jury who made the findings.

The United States Supreme Court had expressly declined to decide whether that Sixth Amendment violation was harmless, as the State contended. In this opinion, the Florida court held that it was subject to a harmless error review, but that

it was not harmless in this case beyond a reasonable doubt. Accordingly, the defendant was entitled to a new penalty review proceeding.

The defendant and supporting *amici* argued that because his death sentence must be vacated, he should now receive an automatic life sentence based on section 775.082(2), *Florida Statutes*. That statute provides that if the death penalty should be held unconstitutional, the trial court must sentence an affected defendant to life imprisonment. However, in this opinion the Florida court agreed with the State that the statute existed only to assure that a life sentence will be imposed on individuals previously sentenced to death if capital punishment is declared unconstitutional.

Finally, the Florida court held that the jury's findings and recommendation of a death sentence must be unanimous. It explained that this ruling was based not only on Florida's history of requiring unanimity in jury verdicts, but also that it is required by the Eighth Amendment.

II. In *Perry v. State*, 41 Fla. L. Weekly S449 (Fla. Oct. 14, 2016), the Florida Supreme Court answered two certified questions from the Fifth District Court of

Appeal, asking whether the United States Supreme Court's decision in *Hurst v. State* declared Florida's death penalty unconstitutional and if not, whether the newly enacted sentencing statute applies to pending capital prosecutions occurring prior to its effective date. The Court concluded that the *Hurst* opinion did not declare the penalty unconstitutional.

As to the new statute, the Court resolved many of its provisions as complying with the *Hurst* requirements. However, it concluded that the new statute may not be constitutionally applied because it requires that only ten jurors recommend a sentence of death rather than a unanimous twelve-person jury. **B**



Nancy Little Hoffman 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

- 1 ADR CLE: Mediator Ethical Pitfalls: Chapter 1**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 3 CLE: Hot Trends in Employment Law**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 3 Yoga for Lawyers**
Time: 5:30 p.m. – 7:30 p.m.
Venue: BCBA Conference Center
Cost: \$10 BCBA Member; \$15 Non-Member
- 4 YLS 2nd Annual Pro Bono Breakfast**
Time: 7:30 a.m. – 8:30 a.m.
Venue: BCBA Conference Center
Cost: Free Honorees and Judiciary; \$10 General Admission
- 5 Guardianship 8-hour Adult**
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: \$180; No Walk-ins accepted
- 8 Northeast Broward Section Luncheon**
Topic: PIP Law Updates
Time: 12:00 p.m. – 1:30 p.m.
Venue: ROIG Lawyers Office
Cost: \$15 BCBA Member; \$25 Non-Member
- 12 Guardianship 4-hour Minor**
Time: 9:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: \$100; No Walk-ins accepted
- 16 Appellate CLE: County to Circuit Appeals: Meet the Appellate Panel**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 16 *Date Change Due to Hurricane Matthew**
The Cuban Enigma: A Year Later CLE & Reception
Time: 5:30 p.m. – 8:30 p.m.
Venue: BCBA Conference Center
Cost: \$25 General Admission; No charge BCBA Judiciary
- 16 Solo/Small Networking Dinner**
Time: 6:00 p.m. – 8:00 p.m.
Venue: Dave and Busters
Cost: \$35 BCBA Member; \$25 Non-Member * \$5 additional at the door
- 17 CLE: How to Maximize the Use of Your Mediator**
Sponsored by: Upchurch Watson White & Max
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 18 2016 Nuts and Bolts Family Law Seminar**
Time: 9:00 a.m. – 5:00 p.m.
Venue: BCBA Conference center
Cost: \$75 BCBA Member; \$100 Non-Member
- 29 Construction CLE: Stucco – Facts & Myths**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 29 Northwest Broward Section Luncheon**
Topic: LGBT
Time: 12:00 p.m. – 1:30 p.m.
Venue: Runyon's Coral Springs
Cost: \$15 Northwest/Northeast Section Members; \$25 General Admission

Upcoming Special Events

Visit our online Calendar for more information.

December 1**2016 BCBA Annual Member Holiday Party**

Time: 5:30 p.m. – 8:30 p.m.

Venue: Fort Lauderdale Antique Car Museum

Cost: No Charge BCBA Member; \$25 Member Guest

December 6**West Broward & Weston Sections Holiday Party**

Time: 5:30 p.m. – 8:00 p.m.

Venue: Moon Thai – Weston

Cost: No Charge Section Member; \$10 BCBA Members; \$25 Non-Members; Free Judiciary

December 8**Northeast & Northwest Broward Sections Holiday Party**

Time: 5:30 p.m. – 7:30 p.m.

Venue: Alpine Jaguar

Cost: No Charge Section Member; \$10 BCBA Member; \$25 Non-Member; Free Judiciary

February 10**2017 Marijuana Legalization Summit**

Venue: Bahia Mar Fort Lauderdale Beach (DoubleTree by Hilton)

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