BROWARD COUNTY BAR ASSOCIATION ARRISTERSOCIATION OCTOBER 2015

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BCBA BENCH AND BAR CONVENTION

FRIDAY, OCTOBER 23

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A View from the Bench

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ON THE COVER:

The 2015 BCBA Bench and Bar Convention will take place on Friday, October 23 at the Broward County Convention Center. The "A View from the Bench" judiciary panel session is scheduled following our Crisis Management breakfast session. Register today at www.browardbar.org/calendar. Letter from the President Robin S. Moselle

Young Lawyers' Section Letter from the President Jeffrey M. Wank

Setting A Production Rhythm for Your Firm Assad S. Mirza



New Statute Alan Bryce Grossman

Legal Health Corner

Law Firm Cyber Preparedness Valerie B. Barnhart

Recent Developments In The Law Nancy Little Hoffman

Calendar of Events





inside this issue















letter from the president

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While We've Got Your Attention...

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Last month's President Message addressed the recommendation by the Vision 2016 subgroup to allow admission to the Florida Bar to out of state attorneys by motion through reciprocity. In conjunction with the article, the BCBA board of directors disseminated a letter and resolution in opposition to the recommendation. Many responses were received. While the majority of those responding were supportive of our position, some thought that we were being "short sighted," based our position on improper assumptions, or otherwise disagreed with our stance. The debate is still unsettled, but what is heartening is that people took time out of their busy day to read about this important

issue, educate themselves on the subject, and respond with their thoughts. Florida attorneys are getting engaged!

What is less encouraging and undeniable that today's Florida attorney faces major issues that go well beyond whether out-of-state attorneys can practice in Florida. In my position as president of the BCBA, I have met and spoken with attorneys from all across the spectrum of experience and practice area. So while we are on the subject, I wanted to address what I've noticed are the following prevailing themes:

- Recent graduates cannot find work, and are coming out of school saddled with major debt. One new attorney with whom I spoke entered law school debt free and graduated owing in excess of \$200,000! This attorney found employment in the public sector, but there is no real possibility of satisfying the loans in the foreseeable future. After gaining enough experience and making the right connections, the attorney most likely will leave for a position in private practice based solely out of financial need. Sadly, this attorney's story is not unique, but rather one that I hear often.
- Many law schools (there are now 11 in Florida alone) are lowering their standards for admissions to counter the decline in applications. Some schools will accept students regardless of their LSAT scores. Because the majority of students graduating from Florida law schools will remain in our state, this does not bode well for our profession.
- Seasoned attorneys who have maintained a successful practice for years are now facing a sharp decline in business. This downturn is being attributed to a surge in new attorneys opening practices and taking work at a heavily reduced fee. While there is nothing wrong with competition and a free market, many of these inexperienced attorneys are unable to provide effective representation. This may result in mishandled work coupled with those seasoned attorneys having to correct the situation-all at the expense of the client.

While there have been discussions about mandatory residency-type programs for law students and debt relief plans, there is no simple solution to these or other problems facing today's attorney. The Florida Bar is trying to address these issues through the Vision 2016 initiative, but it will take all of us working together to find effective solutions. Please continue the dialogue by communicating with us at the BCBA or with the Florida Bar. Your opinion does matter.

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2015-2016 BCBA Young Lawyers' Section

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letter from the young lawyers' president



By the time this article has been published, the Young Lawyers Section's 28th Annual Charity Golf Tournament will have already been successfully completed. The winners will likely be home celebrating their victory, and the participants satisfied with a great round of golf (at least we hope). But more importantly, our deserving charitable beneficiary, Habitat for Humanity of Broward County, will be thrilled with a sizable donation of over \$30,000 – exact donation will be published in next month's article...stay tuned!

This marks five consecutive years in which YLS has not only ran a sold out tournament, but also raised and donated over \$30,000 EACH YEAR to various

local charities which impact our Broward community. These amazing and deserving charities include Florida's Children First, HANDY, ARC Broward and Habitat. These charities exist to help children and families in need here in Broward County, and whom are most deserving and have a special place in our hearts. I have had the privilege of serving as the Golf Tournament Chair for many years. I have seen firsthand our tournament grow, and the direct impact our YLS Board of Directors and committee members have on bringing awareness to these organizations and the funds they receive. I can honestly say that being a part of the YLS Annual Charity Golf Tournament is one of the most rewarding experiences I've had since beginning my career in the legal profession and I'm sure that the YLS Board members and committee members who have participated feel the same. The YLS Golf Tournament not only provides a way to make a positive impact in our community, but it also provides a unique opportunity to work one-on-one with the charitable beneficiary, providing even greater insight into just how far the donation will go.

I try and live my life by asking the following questions on a daily basis: How will you be remembered and what impact will you have on this world? As members of YLS, we have the opportunity to be a part of something bigger than ourselves. YLS is our vehicle to serve the community in ways which far exceed our law degree. YLS allows us to look in the mirror at the end of a long, stressful week, and realize we accomplished more than simply pushing papers or billing hours. Not every week will end with a tremendous court victory. But practically each week there is a different YLS/BCBA event (sometimes more than one) in which you can make a difference. From CLE lunches to breakfasts with the judiciary, from networking socials to charitable events, and so much more, you have the choice to further yourself, get involved, and help our community grow.

Thank you to our entire YLS Board of Directors and Golf Tournament Committee, under the leadership of Lauren Alperstein, Esq., Stacy Weissman, Esq. and H. Seth Rosenthal, Esq., for another successful YLS Annual Charity Golf Tournament. And thank you Habitat for Humanity of Broward and all sponsors and players for your continued commitment to our organization and this amazing event,



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According to various business and industry surveys, it is estimated that only about 4% of businesses in the United States make more than \$1,000,000 of revenues per year, and only about 0.4% make more than \$10,000,000 per year. For law firms, our time is our inventory, and meeting those large revenue figures can only be attained through smart planning and synchronization. In our prior articles we discussed how to set a direction for your firm that is laser focused, how to set goals, and strategies and tactics that provide the detailed plan you will need in prioritizing and maximizing results. The new series of articles is dedicated to providing business practice pointers and tools for attorneys who are responsible for the management of their firms. Such articles will include topics on establishing core values and firm metrics, effective time management techniques, and the do's and don'ts of marketing. Specifically, this article is about getting your firm into a rhythm for production and gaining tangible results.

Synchronization - In order for a group of people (small or large) to move together toward a common goal, they have to synchronize. Synchronizing is often achieved through meetings that are short, timely, and systematic. It is an art that is performed like clockwork. To synchronize, you must have daily, weekly, monthly, quarterly, and annual meetings.

Apparently, John D. Rockefeller met with his key staff every single day, they met for lunches, made quick group decisions, and everyone was empowered to get the work done until they met again.ⁱ More meetings

by Assad S. Mirza

are preferred over less meetings. The faster your firm is growing, the more meetings you will need to have.

1. **Daily Meetings** leverage your firm's collective intelligence and clarify issues on the spot and realign business priorities. It is imperative that everyone in the firm has a meeting every day. Meet for no more than ten to fifteen minutes. Meet at the same time every day, so everyone knows what to expect. Meet while standing up and not in a comfortable chair, it helps keep the meeting short and moving. Have the same agenda every day: 1) Upcoming Deadlines, 2) What are you stuck on? 3) What was good or bad about the last twenty-four hours?

Give no more than a minute to talk with each person during these daily meetings. Watch for bottlenecks. It is a meeting not to be led by the head of the firm but by everyone. If an issue comes up that will take more time, tell those individuals to meet outside afterwards. Excuses such as "we're too busy" or "we see each other all day" are unacceptable. At the meetings you will notice how people break out of their bottleneck, how the collective group works together efficiently, and you will inform the rest of the group of what traps to avoid. You will save time by putting out fires before they begin.

2. Weekly Meetings are generally longer meetings intended to apprise the team of various fast moving projects or cases. They are intended to be strategic meetings for the purposes of assessing ongoing cases or projects. A Weekly Meeting should be between one to two hours. Each meeting should discuss the Good News (and Bad), last week's accomplishments, Upcoming Deadlines, and the status of each case (no longer than five minutes) which includes, but is not limited to, opportunities and threats, and adjustments to case strategy. Do not try to discuss all cases or projects at one time in one meeting; discuss the more relevant and faster moving ones first.

The attendees for the daily and weekly meetings should be identified by core functional groups. This means that the most interrelated staff and activities meet as one group. If you have a large firm, it's perfectly acceptable to have large groups meet (as many as twenty or more at a time) and, if need be, you can have individuals participate in different locations by teleconferencing. L

3. **Monthly Meetings** are held to discuss monthly metrics and slower moving projects. Each firm should have a monthly score card to measure its revenues, case production, billable hours, client receivables, number of new cases or clients, number of stale or stagnant cases, and profit & loss by firm or by department. In these meetings, which are generally management meetings, adjustments to processes, adjustments to direction, and how the firm is doing are discussed.

4. **Quarterly Meetings** are for updating a firm's employees. Past and future changes in the firm, restate and update quarterly goals, employee recognition, achievements for the quarter, firm events, and more are discussed. They are intended to be mostly feel-good meetings.

5. **Annual Meetings** are for having the management team come together to discuss the setting of new initiatives, new goals, and new budgets for the foreseeable future.

For a sample agenda of the Daily and Weekly Meetings go to http://www.browardbar. org/wp-content/uploads/2015/09/Business-Corner-Article-3-October-2015-Meeting-Agendas.pdf.

i Verne Harnish, Mastering the Rockefeller Habits: What You Must Do to Increase the Value of Your Growing Firm, (2002).



Assad S. Mirza, Esq., LLM, Member of AICPA, is a managing partner at Mirza Basulto & Robbins, LLP. The firm focuses its practice on community association law. He may be reached at (954)641-9600 or via email at amirza@MBRIawyers. com

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Left to right: Jamie Finizio-Bascombe, Event Co-chair; Robin Moselle, BCBA President and Juliet Roulhac, Event Cochair with FPL



Left to right: Jeff Ginocchi, Sabadell Bank; Howard N. Bienenfeld, Bienenfeld, Lasek & Starr, LLC; Assad Mirza, Mirza Basulto & Robbins, LLP; Braulio Rosa, BCBA Executive Director and Paul Botros, Morgan & Morgan.

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2015 BENCH AND BAR CONVENTION

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7:30 am - 8:30 am					Registration	
8:30 am - 9:25 am	100 - Breakfast Seminar on Effective Tools in Crisis Management: When it Can't Happe					
9:35 am - 10:25 am	210 - The View From the Bench - Do You Measure Up? Presented by Chief Judge Weinstein (Moderator), Chief Judge Ciklin (4th DCA); Judges Bidwill (Circuit), Dimitrouleas (Federal), Goldenberg (Family), and Zeller (County)			n Crisis Ma		
10:45 am - 12:00 pm	310 - Total Lawyering - the Interaction between Family, Real Property, Trusts/Estates and Bankruptcy Presented by Greg Medalie, Esq., David Neal Stern, Esq., Family Law and Real Property Sections	320 - Best Techniques for E- Discovery Presented by Jason Molder	330 - The Art of Persuasion: Judge and Jury Presented by Jeffrey Harris, Esq., Charles Morton, Esq. and Robert C.L. Vaughan, Esq.	340 - Practical Federal Procedure Presented by U.S. District Court Judge Beth Bloom, Ervin Gonzalez, Esq. and Philip E. "Phil" Rothschild, Esq.	350 - Civil Procedure: You Thought You Knew It All Presented by Judge John B. Bowman	360 - Th Stand Financia Presente Shultz and of Fiske &
12:20 pm - 1:50 pm	400 - Lunch Seminar with Keynote Speakers Chief Justice Jorge Labarga and					
2:00 pm - 2:50 pm	510 - Employment Law for Law Firms: Is Your Firm Protected? Presented by Charles Eiss, Esq. (Moderator), Lori Adelson, Esq., Gina Cadogan, Esq. and Barbara Flynn	520 - Technology and Marketing: A Guide to New Technology for Lawyers Presented by Westlaw	530 - Dos and Don'ts on the Courtroom: Good Lawyering and Ethical Conduct Presented by Judge Robert W. Lee	540 - Attorneys Fees and Entitlement: Offer of Judgment and §57.105 Presented by James Hauser, Esq.	550 - Collections and Consumer Law: Garnishments Presented by Mark Rickard, Esq.	560M - O Court: Tria for Crimin Appellate Presented Haury (C Holmes Preserving Appeal Ph Judge Mo
3:10 pm - 4:00 pm	610 - Maximizing Voir Dire Presented by Dr. Melissa Ann Pigott, Magnus Research Consultants	620 - Ethics and Pitfalls of Social Media 2015 and Beyond Presented by Jan Jacobowitz of University of Miami School of Law (Ethics Credit Applied For)	630 - PIP Open Forum Presented by Judge John D. Fry and Judge Robert Lee	640 - Locking the CyberSafe: CyberSecurity Obligations in the Law Office Presented by Bryan Barnhart and Valerie Barnhart, Esq.	650 - Collections and Consumer Law: Proceedings Supplementary Presented by Mark Rickard, Esq.	(4th DCA Closed D
4:10 pm - 5:00 pm		700 - Re-	Defining Generation	onal and Cultural D	iversity in 2015 Pre	sented by C
5:00 pm - 6:00 pm					Recention	

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Reception

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appen Here... And it Does Presented by Bruce Hennes

s Management: One Step at a Time Presented by Bruce Hennes

- The Daubert tandard and ancial Experts sented by Sheri and Katie Gilden ske & Company	380 - LGBT Goes to Court Presented by Judge Merilee Ehrlich, Judge Scott Bernstein, Nancy Brodzki, Esq. and Laura Hohnecker, Ph.D. (Ethics Credit Applied For)	390 - Resolving Ethical and Cultural Dilemmas in Mediation Presented by Leonore Greller, Esq. and Meah Tell, Esq. (CME Credits including Ethics Credit Applied for)
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a and Florida Bar President Ramón Abadin

I - Order in the : Trial Advocacy iminal, Civil and ellate Lawyers anted by Judges ury (Civil), and mes (Criminal) rving Issues for al Presented by ge Melanie May DCA) Behind ed Doors at the CA: Presented by ges Conner (4th Damoorgian(4th Forst (4th DCA), ngensmith (4th A), Warner (6th CA), and Lonn shlum (4th DCA)	570M - The American Dream Turns into the American Nightmare and Condos, HOAs and Bankruptcy Presented by Real Property Section	580M - The Changing Landscape in Family Law Presented by Judges Dennis Bailey and Tim Bailey, Nancy Brodzki Esq., Christopher Rumbold, Esq. and Ted Uno, Esq.	590M - The Path from Pleading to Order in the Probate Court - Views from the Probate Judges, Clerk, and Staff Attorneys Presented by Judge Gold, Judge Greene, Judge Speiser, Mihaela Cabulea, Esq. , Dian S. Diaz, Esq., Insiya Joher, Esq., Greg Medalie, Esq., and Trevor Quinlan, Esq.	
by Chris DeSantis (Ethics Credit Applied For)				

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Tenants of residential property sold in foreclosure received new protection from the Florida Legislature. Effective June 3, 2015, F.S. 83.561 requires purchasers of residential property at a foreclosure sale to give bona fide tenants 30 days' notice before termination of the tenants' possession.

The Legislature realized that many "[t]enant[s] are often unaware that they are renting a home in foreclosure." Often the residential tenants' first knowledge occurs when they receive the sheriff's writ of possession. With this change, the Legislature attempted to fill a gap in the law caused by the 2014 expiration of the federal Protecting Tenants at Foreclosure Act of 2009. That act had provided tenants with 90-days' notice before removal from the foreclosed home.

Purchasers, including the foreclosing mortgagee, must now give specific, statutory notice that includes a date possession is to be turned over to the new owner. The notice must be served on the tenants the same as a three-day eviction notice (F.S. 83.56(4)). If the tenant stays beyond by Alan Bryce Grossman

that date, the landlord is entitled to a writ of possession from the court (F.S. 83.62). During that 30-day possession period, the tenant is required to pay rent to the landlord. However, neither determination of the amount (perhaps based on the presumptive rental agreement) nor remedies for nonpayment are specified by the statute. Also, unlike a standard eviction, attorneys' fees are not included.

The new notice protects only bona fide tenants, but not a subset of "tenants," including the mortgagor, his child, spouse or parent, or where the rental agreement is not from an arm's length transaction or provides for substantially less rent than the fair market value, except when government subsidized rent is being paid.

The new landlord is required to comply with the provisions of F.S. 83.67, which provides protection to the tenants from "prohibited practices" by the landlord. Such practices include interrupting utility services, changing locks, discriminating against a service member, preventing the display of a U.S. flag, and removing doors, windows or a tenant's personal property. Beyond that the landlord owes no duty regarding the property during this period. L

Despite the apparent intent to provide notice to tenants, the new law assumes that the tenant has been properly served process in the foreclosure. The new landlord needs make sure that this happened because failure to serve current tenants (even if prior tenants were served) could be a denial of due process and possibly delay the purchaser's right to take possession.

Both purchasers and tenants of foreclosed property should examine the statute to know how it applies to their interest in the property.



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 Florida and the University of Baltimore School of Law. He can be reached at alan@ abgrossman.com or by calling 954-364-2024.

WHERE IN THE WORLD IS THE BARRISTER?!?



BCBA Annual Sponosr **Andy Sokol** of Copy-Scan at the Liberty Bell in Philadelphia.



BCBA member **James C. Sawran** along the Danube River in Vienna, Austria with his new BMW which he picked up at BMW WELT ("The World") in Munich, Germany.

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Ramón A. Abadin 67th Florida Bar President

The Florida Bar Association welcomes Ramón Abadin as its new president. Mr. Abadin focuses on technology issues and the need for lawyers to embrace change. Mr. Abadin believes it is imperative to move forward to modernize the rules and standards of practice and plans to encourage all Florida lawyers to take course on technology related subjects.

Mr. Abadin, a civil trial attorney with Sedgwick, leads the third-largest state bar organization in the country with more than 100,000 lawyers. He is the third consecutive president from South Florida. Mr. Abadin moved through the ranks of leadership positions in the association and the community, serving as president of the Cuban American Bar Association, and chair of both the Third District Court of Appeal Judicial Nominating Commission and the American Bar Association's President's Commission on Diversity.

He credits much of his success from the volunteer bar association experience. As a young lawyer he realized the importance for attorneys to be involved. In his experience, the volunteer bar





association brings typically like-minded people together, providing greater networking opportunities. By discussing similar cases and sharing ideas with his fellow lawyers not only brought success professionally, it also helped establish leadership in the community.

His vision of the future of the legal community, he said depends on how lawyers in Florida react to the technological changes in practicing law. "If we embrace change, we can survive in the market place," he said. He also sees a need for lawyers to use websites and new in all areas of law to keep abreast of the modern digital age. As an immigrant, he realizes the importance of adapting and embracing opportunities in growth and change.

Mr. Abadin is a keynote speaker at the 2015 Bench and Bar Convention in Fort Lauderdale on Friday, October 23. To register, visit www. browardbar.org/calendar.

Jeni Meunier is a Major Account Manager for Ricoh Legal. Ricoh Legal specializes in eDiscovery and forensics for large litigation cases. She may be reached at 954-298-2015 or Jeni.Meunier@ Ricoh-usa.com





ECO ESCAPES

by Shari Scalone



We, as attorneys, spend thousands of hours a year in an office tied to our desks. No wonder the legal profession is engulfed with stress, which can lead to reduced cognitive function, anxiety disorders, and depression. Chronic stress not only affects our mental health, but takes a major toll on our physical health as well. Stress directly contributes to poor sleeping habits, increased blood pressure, and decreased immunity.

Nevertheless, Broward County Parks and Recreation is coming to the rescue! With nearly 3,500 acres of natural areas, not only does Broward County Parks allow for perseveration of indigenous flora and fauna, but it also provides residents a local eco-escape.¹

Spending a few moments out of the office (perhaps even during a lunch break) can foster a sense of calm and tranquility. Being away from the hustle and bustle of urban life and exposing ourselves to green spaces can elevate mood and lower blood pressure. Furthermore, studies have shown that there is a "restorative value of nature as a vehicle to improve cognitive function-ing."² Even brief interactions with nature can produce marked increases in cognitive control and focus.

Taking a stroll or going on a nature walk is also linked to enhanced mental health and positivity.³ Japanese researchers have proven significant benefits by combining mindfulness and spending time in nature. This practice is known as "forest bathing" or Shinrin-yoku, a termed coined by the Japanese Ministry of Agriculture, Forestry and Fisheries in 1982. "The results of studies performed on the physiological effects of Shinrin-yoku show that forest environments could lower concentrations of cortisol, lower pulse rate, lower blood pressure, increase parasympathetic nerve activity, and lower sympathetic nerve activity compared with city settings."⁴

So take some time to immerse yourself in nature, away from your pleadings, correspondence, and court deadlines. Be adventurous. Visit one of the local natural areas listed below today!

CRYSTAL LAKE SAND PINE SCRUB	3299 N.E. Third Ave., Pompano Beach, FL 33064
HELENE KLEIN PINELAND PRESERVE	4701 W. Hillsboro Blvd., Coconut Creek, FL 33073
HIGHLANDS SCRUB NATURAL AREA	4050 N. Dixie Hwy., Pompano Beach, FL 33064
HILLSBORO PINELAND NATURAL AREA	5591 N.W. 74th Place, Coconut Creek, FL 33073
PINE ISLAND RIDGE NATURAL AREA	3900 S.W. 100th Ave., Davie, FL 33328
SAW PALMETTO NATURAL AREA	4856 N.W. 71st Place, Coconut Creek, FL 33073
SNAKE WARRIOR'S ISLAND NATURAL AREA	3600 S.W. 62nd Ave., Miramar, FL 33023
TALL CYPRESS NATURAL AREA	3700 Turtle Run Blvd., Coral Springs, FL 33067
WEST CREEK PINELAND NATURAL AREA	4900 W. Hillsboro Blvd., Coconut Creek, FL 33073
WOODMONT NATURAL AREA	7250 N.W. 80th Ave., Tamarac, FL 33321
MILITARY TRAIL NATURAL AREA	4600 N.W. Ninth Ave., Military Trail, Deerfield
	Beach, FL 33442

¹ Natural Areas, BROWARD.ORG, http://www.broward.org/Parks/FindNature/Pages/NaturalAreas.aspx (last visited Sept. 9, 2015).

² Marc G. Berman et al., The Cognitive Benefits of Interacting With Nature, PSYCHOLOGICAL SCIENCE, Dec. 1, 2008, at 1211, available at http://www-personal.umich.edu/~jjonides/pdf/2008_2.pdf.

³ Melissa R. Marselle et al., Examining Group Walks in Nature and Multiple Aspects of Well-being: A Large Scale Study, ECOPSYCHOLOGY, Sept. 19, 2014, at 134-147.

⁴ Bum Jin Park et al., The Physiological Effects of Shinrin-yoku (Taking in the Forest Atmosphere or Forest Bathing): Evidence from Field Experiments in 24 Forests Across Japan, ENVIRONMENTAL HEALTH AND PREVENTATIVE MEDI-CINE, Jan. 2010, at 26, available at http://www.ncbi.nlm.nih.gov/pubmed/19568835.



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LAW FIRM CYBER PREPAREDNESS

Trusted with clients' highly valuable, sensitive information, law firms are increasingly attractive targets for cyber attacks. This should put cybersecurity at the top of the priority list for senior firm leadership. However, most law firms either struggle to comprehend their threat profile or do appreciate the risk but are reluctant to spend needed funds on adequate cybersecurity measures.

Mandiant, a security-consulting firm, reported that in 2011 an estimated 80 percent of the 100 largest revenue-generating law firms in the United States suffered a cyber incident. Cyber incidents can take many forms, including intrusions, malware, lost mobile devices, and employee misconduct or mistake. Although law firm leaders acknowledge that cybersecurity is a critical consideration in their risk management strategy, a Marsh 2014 Law Firm Cyber Survey reveals that cyber preparedness is lacking. According to the survey, 51 percent of law firms have failed to evaluate the probable cost of a cyber incident, and more than 40 percent of firms have failed to insure against the risk of a cyber incident

Although the possibility of a cyber incident remains a critical concern, most firms have also not accounted for the scale of financial losses they could encounter in the wake of a data breach. A cyber attack can result not only in losses of a client's valuable information assets such as sensitive corporate records, trade

by Valerie B. Barnhart

secrets and intellectual property, but in reputational harm and loss of competitive advantage of the law firm and irreversible destruction of client relationships. Further, most law firms cannot absorb downtime, and a lack of business continuity in the aftermath of a cyber incident can amplify the firm's losses by devastating amounts.

The risk to law firms is real, and clients are taking notice. In fact, the spate of law firm data breaches in recent years has resulted in large institutional clients, particularly banks and financial services companies, demanding more stringent information security procedures and even conducting their own audits of their law firm's cyber practices.

Aside from the potential monetary fallout and increasing pressure from clients to devise and implement more robust protective measures, the risk of a cyber incident also implicates lawyers' ethical obligations to protect clients and their information assets. This professional responsibility is underscored by the recent resolution passed by the American Bar Association at its most recent annual meeting. The Resolution "encourages all private and public sector organizations to develop, implement, and maintain an appropriate security program" and to "develop and test a response plan for possible cyber attacks, including disclosure of data breaches, notification of affected individuals, and the recovery and restoration of disrupted operations." This is just one signal that failure to implement reasonable protections of client confidential and proprietary data could trigger ethical implications for lawyers and law firms alike.

To mitigate the potentially devastating financial impact of a cyber incident, many law firms are securing cyber insurance, which can help offset the costs involved in the aftermath of an incident, such as forensic investigation, business interruption, incident response costs, etc. Law firms can also reduce their exposure by implementing and testing incident response plans, devising appropriate data retention policies, and encrypting back up media, among other practices. The threat of a cyber incident is persistent, and lawyers and law firms must stay up to date on the best practices for protecting their clients' data, and themselves. To learn more about Cybersecurity, attend the seminar, Locking the Cyber-Safe: CyberSecurity Obligations in the Law Office at the BCBA 2015 Bench and Bar Convention on October 23. To register, visit www.browardbar.org/calendar. **B**



Valerie Barnhart is a partner with the full-service law firm of Kelley Kronenberg PA. She represents businesses in data privacy and security matters, business transactions, and business litigation. She can be reached at vbarnhart@kelleykronenberg.com.



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SUPREME COURT: A DEFAULT JUDGMENT IS VOIDABLE, NOT VOID, WHERE THE COMPLAINT UPON WHICH IT IS BASED FAILS TO STATE A CAUSE OF ACTION.

In a quiet title action by a condominium association against the holder of a mortgage on one of the units, a default judgment was entered after the defendant bank failed to answer or otherwise respond. Over a year and a half later, the bank moved to vacate the judgment pursuant to Rule 1.540(b), arguing that it was void because the complaint failed to state a cause of action. The trial court granted the motion.

The Fourth District reversed. Although it agreed that the complaint failed to state a cause of action, it held that the judgment was merely voidable and not void. Accordingly it could not be collaterally attacked after one year. In so doing, the DCA receded from its own precedent and certified conflict with decisions from the First and Third Districts. The Supreme Court majority approved the Fourth District's decision, stressing that the bank had ample opportunity to challenge the default judgment but failed to do so. Justice Lewis dissented on the basis that a by Nancy Little Hoffman

default only admits well pleaded allegations. Bank of New York Mellon v. Condominium Assn. of La Mer Estates, Inc., 40 Fla. L. Weekly S_ (Fla. September 17, 2015).

SUPREME COURT ADOPTS BAR RULE AMENDMENTS DEFINING TYPES OF ATTORNEY'S FEES.

The Court adopted Bar-proposed amendments to Rule 4-1.5(e) of the Rules Regulating the Florida Bar to provide definitions for the terms "retainer," "flat fee," and "advance fee." It also amended the comments to that rule, providing guidance as to whether such fees should be deposited into an attorney's operating or trust account. In re Amendments to Rule Regulating the Florida Bar 4-1.5, 40 Fla. L. Weekly __(Fla. September 17, 2015).

SUPREME COURT UPHOLDS VA-LIDITY OF PRENUPTIAL AGREE-MENT WAIVING ALL RIGHTS TO PROPERTY ACQUIRED DURING THE MARRIAGE.

In their prenuptial agreement, the parties agreed that neither spouse would ever claim any interest in the other's property. The agreement purported to waive and release all rights to property acquired during the marriage. Twenty-two years and two children later, the parties sought to dissolve the marriage, the wife arguing that she was entitled to share in assets acquired during the marriage or appreciated in value due to the parties' marital efforts. The Fourth District held that the language of the agreement was sufficiently broad to preclude such a claim. However, it recognized that opinions from the Second and Third Districts had found similar language insufficient to do so. Accordingly, it certified conflict as well as certifying this to be a question of great public importance.

The Supreme Court held that the agreement was valid and served to waive the wife's claim. Hahamovitch v. Hahamovitch, 40 Fla. L. Weekly S477 (Fla. September 10, 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.

October

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8 CLE & Reception – Cuban Enigma; What Every Attorney Needs to Know. Time: 5:30 p.m. – 8:30 p.m.

Venue: BCBA Conference Center Cost: \$25 General Admission

9 The Florida Bar Family Law Section - Membership and Mentoring Reception

Time: 5:30 p.m. – 7:30 p.m. Venue: BCBA Conference Center Cost: No Charge

 13 North Broward Section Luncheon Time: 12:00 p.m. – 1:30 p.m.
Venue: Isabella's Italian Restaurant Cost: \$20 BCBA Member; \$25 Non-Member

16 "Bar at the Bar" Networking Event Complimentary Beverage and

appetizers provided Time: 4:30 p.m. – 7:30 p.m. Venue: Bull Market

23 2015 Bench and Bar Convention

7 CLEs included (Ethics included depending on seminar selection) **Time:** 8:30 a.m. – 6:00 p.m. **Venue:** Broward County Convention Center **Cost:** \$195 BCBA Member; \$235 Non-Member

Bankruptcy: Chapter 7 Trustee Panel Discussion Time: 12:00 p.m. – 1:30 p.m.

Venue: BCBA Conference Center Cost: \$15 BCBA Member; \$20 Non-Member

28 BCBA Mentor Express 2.1

Time: 5:30 p.m. – 7:30 p.m. Venue: BCBA Conference Center Cost: No Charge – BCBA Members Only

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December 10, 2015 Annual BCBA Member Holiday Party

calendar of events

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