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ON THE COVER:

On Friday, May 6, 2016 the Broward County Bar Association will host its annual Law Day luncheon. On the cover (left to right), are keynote speakers Charles B. Morton, J. David Bogenschutz and Ron Gunzburger. Learn more about this extraordinary event on Page 10.

5 Letter from the President
Robin S. Moselle

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

9 Tips for Florida Co-op and Condo Owners
Locksley A. Rhoden

10 Law Day
Jennifer Ruiz Garay

14 Workers' Compensation Conference Wrap-Up
Mary Beth Ricke

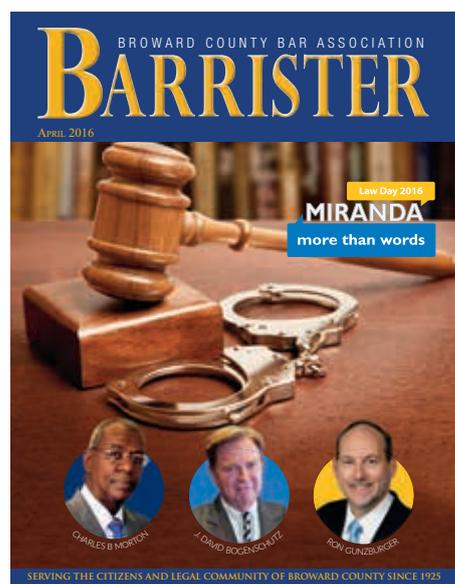
16 Legal Health Corner
Shari Scalone

19 College Sports Investigations
Michael L. Buckner

20 World Intellectual Property Day
Jeffrey D. Feldman

22 Recent Developments In The Law
Nancy Little Hoffman

23 Calendar of Events



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Robin S. Moselle

BCBA Lawyer Referral Service - Assisting The Public

The Broward County Bar Association is most often associated with quality continuing legal education courses, an emphasis on professionalism and ethics, and networking opportunities among the legal community. However, there is another component of the BCBA that, while not as well-known as other programs, is equally, if not more important. That program is the Lawyer Referral Service.

The BCBA Lawyer Referral Service was formed to assist the general public in finding a qualified attorney. Too frequently, a person needing an attorney will not know where to turn and rely solely on the catchiest advertisement or the name that

appears first in a directory. The Lawyer Referral Service provides a consultation with an attorney for a small fee. The staff overseeing the Lawyer Referral Service ensures that a consultation takes place within 2 business days of a call and will also strive to accommodate for geographic location and language preference. For certain cases and after a brief prequalifying financial screening, a referral to a low cost panel can be made. Any charge for legal services beyond the initial consultation will reflect a reasonable attorneys' fee, in keeping with the goal of increased access and service to the public. There are very few areas of law that are not covered by the Lawyer Referral Service. In order to be on the Lawyer Referral List, the attorney must be in good standing with the Florida Bar, carry professional liability insurance and certify that they are skilled in handling matters in their area of practice. This program fills the need for quality legal representation at a reasonable cost, and assists those who cannot afford an attorney but who do not qualify for Legal Aid.

With two full time employees, very little advertising, and someone assisting part time, the Lawyer Referral Service has done a herculean job of managing cases. In 2015 alone, the BCBA Lawyer Referral Service referred an incredible 2,589 people for legal services. Through careful stewardship of the program, the BCBA Lawyer Referral Service was able to generate a profit in 2015 second only to the Orange County Bar Association in Florida. These funds are used to continue operation of the program, and also to help fund the other programs vital to the operation of the Broward County Bar Association.

Why is this program successful? In part, because the attorneys on the referral list are Broward County attorneys familiar with our courts and procedures and experienced in their area of law. As members of the Broward County Bar Association these attorneys are also active participants of our legal community. There is also oversight of each case, which is carefully tracked by the staff, and who follows the case to its conclusion.

The Broward County Bar Association's Lawyer Referral Service is doing its part to assist the ever increasing segment of the public who cannot afford legal services. The program provides the "human touch", not possible with the proliferation of online programs now flooding the internet, and all of this is done with a small staff generating a large profit. The program should serve as a model for other lawyer referral services around the state and the country. Hats off to the Broward County Bar Association Lawyer Referral Service! **B**

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letter from the young lawyers' president



Jeffrey M. Wank

New Opportunities

This past month I accepted a position with Kelley Kronenberg, joining the firm as a partner in their Fort Lauderdale office. This is a tremendous opportunity for me and my family, and a reflection of my hard work and dedication to the legal community over the past several years. The decision to join Kelley Kronenberg was not easy; I had built many relationships and connections at my previous firm of Marshall Dennehey, et. al. Both firms have excellent reputations and provide superior legal work. My supervisor, Michael Packer, was an amazing mentor and brilliant attorney. However, at the end of the day, the decision to move firms was a choice that I believe will allow me to expand my practice and develop additional and existing business.

As young lawyers, we are constantly looking to make a name for ourselves and search for new opportunities. These opportunities may be at current firms, outside of your existing firm, or perhaps in solo practice. Some opportunities may even be stumbled upon by chance, whether it is through a new relationship or being at the right place at the right time. Regardless, we are always in search of looking for the next best thing.

The question becomes: How do I open the door and navigate through the legal profession to find the new opportunity? The simple answer: Excel in what sets you apart. Many young lawyers are great writers, researchers or trial attorneys. Others strive to be rainmakers or marketing machines, while some young lawyers have an amazing work ethic and find it easy to bill over 200 hours per month. There are other young lawyers who are good at fostering existing relationships and building upon the foundation already laid. Whatever your calling, my advice to every young lawyer is to find your niche (both law and business related) and excel in that area. If you have great trial experience, sell yourself on the ability to handle a case from the beginning to the end, which is becoming extremely rare in our profession. If you believe you are a good networker and can bring in business, prove it – go out and land a significant client. The point is to make yourself “indispensable” and to set yourself apart in a way which makes your existing firm, other firms, or colleagues notice your potential, and the benefit to having you on their side.

Finally, never burn bridges or forget the people who helped get you to the top. You never know when you may need to rely on the support or receive help from a former boss, assistant, colleague, mentor or mentee. Good luck on your climb! 



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Five Tax and Estate Planning Tips for Florida Co-op and Condo Owners

by Locksley A. Rhoden

Most people would rather not talk or think about planning for their death. As unpleasant as the thought of estate planning may be, it is a vital consideration that every condo or co-op unit owner must not overlook. When arranging plans for who will inherit a condo or co-op unit after the owner's death, one should consider these five tax and estate planning tips to assure grieving family members will receive title to the unit seamlessly during an emotional and financially challenging time.

1. Review the Nature of Title to the Condo Unit or Co-op Shares

First, determine how title to the condo unit or co-op shares is held; i.e. whether in one's individual name (fee simple), as joint tenants with a spouse (tenants by the entireties), or with another person as tenants in common or jointly with rights of survivorship. While jointly held interests will automatically vest to a surviving joint tenant upon death, an individual or tenants in common owner may need to actively plan to avoid subjecting the unit or shares to scrutiny by creditors in probate court. If joint ownership is not practical, the owner will want to plan for the conveyance of their unit or shares within a last will and testament or revocable living trust, particularly, if the owner has multiple beneficiaries or children that could lay claim to future ownership.

2. Evaluate Association Governing Documents to Confirm Unit Transfer Methods

The association's governing documents should be reviewed to identify rules for transfer or conveyance of title to the unit. Typically, this means reviewing the association's bylaws and lease or occupancy agreement to determine whether the

association allows units to be transferred to family members by will or trust. Although a post-mortem transfer may be preauthorized by the association, a bequest of the unit by will or trust may not guarantee loved ones access to the unit until the association approves their membership. Further, any concerns regarding assessments in arrears or loans encumbering the unit should be addressed before speaking with the association to affirm transition title of the unit by will or trust.

3. Prepare a Will or Trust to Dispose of the Condo Unit

More commonly these days, condo associations are amending their governing documents to allow members to convey units at death by will or trust to a limited pool of beneficiaries. Typically, this includes the decedent's spouse, children, siblings or other loved ones who meet the age and financial requirements for association membership. Before naming a beneficiary to inherit your unit by will or devisee to inherit your unit by trust, contact the association's attorney to verify any restrictions on transfer and to obtain pertinent association documents required to memorialize your present or future interest transfer of the unit.

4. Implement a Land Trust to Dispose of the Co-op Unit and Co-op Stock

Rights to ownership of cooperative corporation stock and corresponding leasehold interests in the co-op unit may be transferred to beneficiaries by a Florida land trust agreement. In the case of multiple beneficiaries, a trust will assure each beneficiary retains a right to occupy the unit during their lives or otherwise receive a share of proceeds upon its sale. The trust should

be drafted consistent with Florida homestead laws and give a surviving spouse and minor children appropriate legal rights to own and occupy the unit. Before assigning the unit to trust, the association attorney should be contacted to confirm any guidelines or language required to be incorporated into the trust document to memorialize the present interest transfer of the co-op shares to trust.

5. Consider U.S. Income Tax Implications of Unit Ownership

Because a great percentage of Florida condo and co-op unit owners are snowbirds, i.e. non-Florida residents that spend the majority of their time outside the state, their condo unit or co-op shares represents an asset that is subject to U.S. federal income gift, and estate tax reporting requirements. Further, if the unit is rented or sold or the unit owner dies, there may be income and/or estate tax consequences. When coupled with potential probate administration concerns if the owner dies as a resident of the state, it may be advisable to contact a tax and probate attorney to advise about potential tax ramifications and recommendations for conveying unit of shares to Trust to prevent the unit or shares from becoming subject to probate administration. **B**



Locksley A. Rhoden, Esq., J.D., LL.M. is founder of The Asset Protection Firm with offices in Fort Lauderdale and Aventura, Florida. His practice focuses on the representation of individual persons, families, entrepreneurs, licensed professionals, and closely-held business owners in the areas of entity structuring, business strategies, federal and state taxation, trust and estate planning, trust and probate administration, tax-exempt organization planning, and IRS tax controversies. For more information, please www.theapfirm.com or email lrhoden@theapfirm.com.

Law Day 2016

MIRANDA

more than words

by Jennifer Ruiz Garay

It is hard to believe that it's been only 50 years since the words "you have the right to remain silent" became the official prologue to any custodial interrogation. Since then, the litany of rights afforded to suspects in police custody has become commonplace-warnings often recited and heard without any appreciation for their true meaning.

In actuality, the Supreme Court's decision in *Miranda v. Arizona* is a cornerstone of the American judicial system and reflects a continued commitment to protecting the Fifth and Sixth Amendment rights of every individual, especially those who are socially or economically disadvantaged. Prior to *Miranda* becoming law, very few suspects were ever made aware of the fact that they had a right to counsel or could refuse to answer questions posed by police in order to avoid self-incrimination.

At the time it was decided, *Miranda* was thought to be the end of the crimi-

nal justice system, with many fearing it would be impossible to get a confession or conviction after a recitation of rights. Those fears proved to be unfounded. Moreover, with communities and law enforcement agencies still at odds 50 years later, *Miranda* remains a necessary safeguard.

This year, the American Bar Association is celebrating *Miranda* and all that it entails on Law Day with the theme, "Miranda: More than Words." Law Day is a national day observed every May 1st that is meant to facilitate the discussion of and appreciation for the rule of law.

Local bar associations and organizations are encouraged to host their own Law Day events throughout the week. The Broward County Bar Association will be partaking in the festivities and is scheduled to host a luncheon under the same *Miranda* theme on Friday, May 6, 2016 at the Bahia Mar in Fort Lauderdale.

Keynote speakers will include J. Da-

vid Bogenshutz, founding member of Bogenshutz, Dutko & Kroll, P.A.; Ron Gunzburger, General Counsel for Broward Sheriff's Office; and Charles B. Morton, former Chief Assistant State Attorney for the 17th Judicial Circuit. All members are encouraged to attend and partake in what is sure to be a memorable and timely Law Day discussion.

You have the right to stay informed and involved! We hope to see you there. For more information, please visit www.browardbar.org. **B**



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2016 Workers' Compensation Conference Wrap-Up

by Mary Beth Ricke



On February 26, 2016, the Workers' Compensation Section of the Broward County Bar Association presented the 2016 Workers' Compensation Section Conference and Reception: Shaping the Future at the Riverside Hotel in downtown Fort Lauderdale. It was a great success! Thank you to our section chair, Henry Roman and all who attended. A special thank you to all of the supporting sponsors. Attendees mingled with each other and the sponsors over lunch before the discussions began. The first topic was a legislative update on how the upcoming legislative session may impact the workers' compensation arena. This discussion related to the third discussion: Case Law Update, Emerging Trends from the First District Court of Appeals. As addressed during both discussions, attorneys should keep a close eye

on *Stahl v. Hialeah Hospital* regarding the constitutional challenge to Florida's current workers' compensation system. The Florida Supreme Court granted review of the First District Court of Appeals' decision and is currently scheduled to hear oral arguments on April 16, 2016. The decision centers on whether Florida's workers' compensation system is an adequate exclusive remedy for injured workers.

Other topics included an instructive discussion on Major Contributing Cause: Causation in 2016 with helpful case citations and analysis of recent decisions. The final topic was with a question and answer discussion with Broward County

Judges of Compensation Claims. These Judges provided valuable, practical insight on a variety of topics. A special thank you to these Judges for taking time out of their busy schedules and providing an educational discussion on these topics. The day concluded with a reception on the hotel's veranda for all attendees, speakers and sponsors to enjoy.

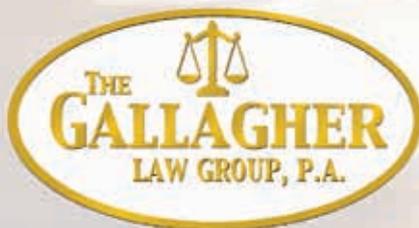
Thank you again to all who attended. Be on the look-out for the next section event! 



Mary Beth Ricke is an associate attorney with Buchanan Ingersoll & Rooney PC and focuses her practice on labor and employment law. She can be reached at marybeth.ricke@bipc.com or by calling (954)703-3651.



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Benefits of Vacationing

by Shari Scalone

According to Expedia.com, Americans are experiencing vacation deprivation. “Americans earn fewer vacation days than people in most countries, but still leave 2 days unused on average.”¹ What are the effects of vacation deprivation? In turn, what are the benefits of vacationing in relation to our health and productivity?

Firstly, there is a marked improvement in cardiovascular health by vacationing, as evidenced by the pivotal Framingham Heart Study.² This study, the nation’s longest running large-scale analysis of cardiovascular disease, revealed that women who only took a vacation once every six years or less were almost eight times more likely to have a heart attack or develop coronary heart disease compared to women who vacationed twice a year.³ Moreover, men who did not take a vacation for several years were 30 percent more likely to suffer a heart attack. Men who took more frequent vacations also lived longer.

Secondly, various studies have shown a decrease in depression attributed to leisure activities, particularly vacationing. A study conducted by Marshfield Clinic of 1,500 women in rural Wisconsin determined that those who vacationed less often than once every two years were more likely to suffer from depression and increased stress than women who took vaca-

tions at least twice a year.⁴ Furthermore, a Canadian study of a sample of 887 lawyers concluded that “active and social leisure activities or taking a vacation are important in reducing lawyers’ depression, whereas participating in passive leisure is not.”⁵ Similarly, the University of Pittsburgh’s Mind Body Center surveyed approximately 1,400 individuals and found that leisure activities, including taking vacations, contributed to higher positive emotional levels and less depression.⁶

Lastly, in regards to productivity, there is a restorative power of taking time off. According to internal research by audit firm EY (formerly Ernst & Young), employees who use more vacation days end up with better performance reviews. “In the U.S. and Canada... for each 10 vacation hours a person took, we found on average that performance reviews were 8 percent higher,” stated Maryella Gockel, flexibility strategy leader at EY.⁷

Overall, I can personally attest to the benefits of vacationing while I was overseas with my fiancé. I felt enthralled knowing I was creating priceless memories. Even better, the biggest boost in happiness can come from planning the vacation. According to WebMD, you can feel the effects up to 8 weeks before your trip, so start packing!⁸

The Broward County Bar Association launched “Where in the World is the Barrister?” in 2014 which was envisioned by BCBA President John Jordan (2014-2015). It has gained popularity for sharing member pictures on vacation with the Barrister publication in hand. So, when you take your next vacation bring your Barrister and share it with us!

Happy travels! 

¹ Expedia Vacation Deprivation Key Statistics, EXPEDIA.COM (Oct. 27, 2012), https://www.expedia.com/p/info-other/vacation_deprivation.htm; See also <https://images.trvl-media.com/media/content/expus/graphics/other/pdf/Expedia-VacationDeprivation2012.pdf>.

² See generally www.framinghamheartstudy.org.

³ Road Trip! Health Net Points Out the Health Benefits of Vacations, HEALTHNET.COM, https://www.healthnet.com/portal/home/content/iwc/home/articles/health_benefits_of_vacations.action (last visited Mar. 17, 2015).

⁴ Vatsal Chikani, et al., Vacations Improve Mental Health Among Rural Women: The Wisconsin Rural Women’s Health Study, 104(6) WIS. MED. JOUR. 20-23 (2005), available at https://www.wisconsinmedicalsociety.org/_WMS/publications/wmj/pdf/104/6/20.pdf.

⁵ Allan D. Joudrey & Jean E. Wallace, Leisure as a Coping Resource: A Test of the Job Demand-Control-Support Model, 62(2) HUM. REL. 195-217 (2009); See also http://www.huffingtonpost.com/glenn-d-braunstein-md/taking-vacation_b_1688148.html.

⁶ Sarah D. Pressman, et al., Association of Enjoyable Leisure Activities with Psychological and Physical Well-Being, 71(7) PSYCHOSOM MED. 725-32 (2009).

⁷ Bob Sullivan, Want a Raise? Try Taking a Vacation, CNBC (Aug. 27, 2014), <http://www.cnbc.com/2014/08/27/vacations-help-you-get-ahead-at-work-ey.html>.

⁸ Michael W. Smith, Give Yourself a Break Today, WEBMD (Nov. 14, 2013), <http://www.webmd.com/balance/features/take-a-break>.



Shari Scalone is a Family Law attorney with The Law Offices of Daniel S. Rakofsky, P.A. She can be reached at shari@rakofskylaw.com or 954-745-0792. For more information visit www.rakofskylaw.com.

WHERE IN THE WORLD IS THE BARRISTER?!?



BCBA member **Gary Singer** in the Atacama Desert in Chile.



BCBA Members **David Bogenschutz** and **Gordon James** at the Windsor Court Hotel at a conference in New Orleans, Louisiana.



BCBA member **Wendy J. Stein** on an South Africa safari trip. Check out the photo bomber! A Nyala, a spiral-horned antelope native to southern Africa.



BCBA member **Bill Sullivan** proudly displays the Barrister while visiting the famous Moai on Easter Island in the South Pacific during his trip in January 2016.



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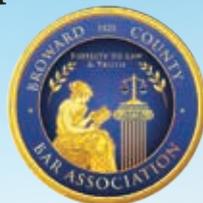
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Lessons from College Sports Investigations: Internal Investigation Policies

by Michael L. Buckner

Internal investigations of alleged NCAA rules-violations at colleges and universities offer important lessons for attorneys conducting workplace investigations and other inquiries at businesses and other organizations. This article uses examples from intercollegiate athletic programs to provide attorneys with helpful insight when designing or revising a client's internal investigation policy.

The modern athletic department often is confronted with allegations, rumors and innuendo involving possible violations of athletic regulatory (e.g., NCAA, NAIA or NJCAA) legislation, criminal statutes and campus policy. Athletic administrators have learned conducting a thorough and effective internal investigation permits the institution to support the fair and consistent enforcement of athletic regulatory and campus rules, as well as to take immediate corrective action to prevent additional illicit behavior. Further, an internal investigation assists an athletics department with identifying and minimizing legal risk.

Most NCAA athletics programs have adopted formal investigation policies or procedures, which explain the protocols the organization will follow during an internal investigation. For example:

- Clemson University uses a specific procedure for employees, student-athletes and other individuals to report possible rules-violations to the athletics department.¹
- The University of Georgia's athletics compliance manual includes specific procedures on how allegations are processed and investigated once reported to

the institution.²

- The University of North Dakota's policy designates a "primary" and several "back-ups" investigators, as well as lists an investigative timeline.³
- Western Washington University's NCAA Infractions Policy outlines the contents of an investigation report.⁴

Based on best practices in intercollegiate athletics, a typical investigation policy:

- Is in writing and disseminated throughout the organization
- Follows industry-specific standards and requirements
- Has been approved by the chief executive officer or governing board
- Identifies the individual or office to receive allegations
- Describes the method to select the investigator
- References other organizational policies, procedures and protocols:
 - Duty to report allegations
 - Retaliation and harassment
 - Human resources/personnel
- Denotes the investigation timeline and tasks
- Outlines:
 - The duties and responsibilities of pertinent personnel during an investigation
 - The retention and release of documents generated during the investigation
 - The provision of notice to government and private regulatory agencies
 - The documentation of investigative findings
 - The internal and external disclosure of the investigative findings

- Requires the investigator (or other appropriate party) to:
 - Assess risk
 - Develop corrective measures
 - Propose self-imposed penalties (if necessary)
- Mandates a timely review of the allegations
- Is legally compliant:
 - Due and fair process (if applicable)
 - National, state and local laws
 - Collective bargaining agreements (if applicable). **B**

¹ Coaches Compliance Manual, Clemson University (last visited Dec. 31, 2015), http://www.clemsontigers.com/fls/28500/old_site/pdf/genrel/coaches_compliance_manual.pdf?DB_OEM_ID=28500.

² Compliance Manual, University of Georgia (last visited Dec. 31, 2015), <http://compliance.sports.uga.edu/links/policies/compliance-manual>.

³ Policy and Procedures Manual (December 2015), University of North Dakota Department of Athletics (last visited Dec. 31, 2015), http://www.undsports.com/fls/13500/Athletic%20Dept/AthleticsPolicyProcedureManual.pdf?DB_OEM_ID=13500.

⁴ "NCAA Infractions Policy", Western Washington University Compliance (last visited Dec. 31, 2015), <http://www.wvuikings.com/compliance/wwu-infractions-policy.html>.



Michael L. Buckner, Esq. is president and shareholder of Buckner, an education and sports law firm. He conducts investigations of alleged misconduct, regulatory infractions, doping violations and unethical conduct for universities, sports organizations and business entities. He can be reached at mbuckner@bucknersportslaw.com or 951-941-1844 ext. 1.



World Intellectual Property Day

by Jeffrey D. Feldman

World Intellectual Property Day is April 26. Established in 2000 by the World Intellectual Property Organization (WIPO), this special day is dedicated to celebrating creativity, and raising awareness of how intellectual property rights impact daily life. Various events related to patents, trademarks and copyrights are scheduled on five continents. In South Florida, the intellectual property law firm, Feldman Gale P.A., will be supporting WIPO's commitment to global IP outreach by offering a CLE seminar, the "Introduction of Intellectual Property to the Business Litigator." In anticipation of the event, below is a brief introduction to IP law, and how it contributes to fostering creativity and innovation in society.

Intellectual property refers to works or inventions that are creations of the mind. IP protection is based on a quid pro quo: Inventors and artists are granted a period of time to profit from their labor without fear of misappropriation by others in exchange for public disclosure of their knowledge. IP law not only incentivizes creativity that enhances the quality of life, but organizes vast repositories of human ingenuity, and makes it accessible to all.

Article I, Section 8 of the U.S. Constitution authorizes Congress to grant artists

and inventors exclusive rights to their creations. The United States Patent and Trademark Office (USPTO) and the U.S. Copyright Office administer all intellectual property legislation passed by Congress.

Patent, Trademark or Copyright?

Patents protect new products and processes, like Edison's light bulb, or Amazon's "1-Click shopping" method. Depending on the type of invention, patent rights are valid for up to 20 years. Patent holders can exploit their invention by excluding others from using it, or by licensing its use by others. Patentable items and designs must be found to be novel, useful and non-obvious by the USPTO.

Trademarks identify certain goods or services, like the McDonalds' golden arch and Coca-Cola's font. Trademarks date to ancient times, and symbolize the goodwill that a business has built with consumers regarding the quality and recognition of its goods and services. Trademarks may be a word or phrase made of letters and numbers, and may consist of drawings, symbols, or three-dimensional signs. Trademark rights can be renewed indefinitely.

Copyrights protect original works of authorship by artists, authors and other

creators by granting them, and their heirs, certain rights. The rights holder(s) can authorize or prohibit a work's: reproduction in all forms, including print form and sound recording; public performance and communication to the public; broadcasting; translation into other languages; and its adaptation, such as from a novel to a screenplay for a film. A work is automatically copyrighted upon its creation and fixation, although it must be registered with the Copyright Office to collect damages and attorney's fees from an infringer. Different standards based on when a work was created determine copyright durations in the United States.

Join us at our CLE Luncheon Seminar on Tuesday, May 24, 2016 at the Broward County Bar Association. For more information, visit www.browardbar.org/calendar. 



Jeffrey D. Feldman is a founding member of Feldman Gale, P.A. A national firm practicing intellectual property and litigation. Mr. Feldman is Board Certified as a Specialist in Intellectual Property and an AV Rated trial lawyer with more than 30 years of state and federal jury trial experience. Mr. Feldman practices out of the firm's Miami office and can be reached at (305) 358-5001 or JFeldman@FeldmanGale.com.

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Criteria for Nomination:

1. Current active and contributing member of the BCBA.
2. Exhibition of the highest degree of professionalism in accordance with BCBA Standards of Professional Conduct and the Florida Rules of Professional Conduct.
3. Demonstrates respect for the law and preservation of decorum and integrity of the legal system.
4. Conduct which has enhanced the image of the legal profession either through practice or programs and activities that educate the public about the law or the American legal system.
5. Professionalism Committee members may not be nominated.

Additional general characteristics:

A role model for the legal community • Integrity • Timeliness and promptness • Mentoring of others • Zealous advocacy while maintaining civility • Decorum and demeanor • Credibility • Courtesy to counsel, the court, and the parties • Preparedness

Nominee Name: _____

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Additional Information About the Nominee:

1. Practice Area and Years of Practice

2. Organization Affiliates:

3. Bar Activities:

4. Community Activities:

5. Detailed Description / Explanation of How and Why Nominee Rises Above Others in Exhibiting Professionalism in His/Her Practice of Law, Including Specific Examples of Conduct (Please attach a separate sheet if the space below is insufficient):



Recent Developments In The Law

by Nancy Little Hoffman

SUPREME COURT: INDIVIDUAL MEMBERS OF ENGLE TOBACCO LITIGATION CLASS MAY SEEK PUNITIVE DAMAGES.

Quashing a First District decision, disapproving decisions of the Third and Fourth Districts, and approving a Second District opinion, the supreme court held that Engle progeny plaintiffs are entitled to seek punitive damages under theories of negligence or strict liability following decertification of the class action. *Soffer v. R.J. Reynolds Tobacco Co.*, 41 Fla. L. Weekly S ___, Case No. SC13-139 (Fla. March 17, 2016).

SUPREME COURT REAFFIRMS LIMITATION ON COURT'S REVIEW WHEN DETERMINING WHETHER COMPLAINT STATES CAUSE OF ACTION.

In a premises liability case, the trial court entered a default against the alleged property owner and refused to set it aside, even though the plaintiff later filed a separate action against another entity, alleging in that complaint that it was the owner at the time of her injury and attaching a warranty deed demonstrating the date of the conveyance. The two cases were later consolidated, but the second case was voluntarily dismissed. The trial court denied successive motions to set aside the default and ultimately entered final judgment on a jury verdict for the plaintiff. The Third District reversed, holding that based on the dismissed complaint, the first complaint failed to state a cause of action and

the judgment was void. Quashing that decision, the supreme court held that it was error to consider the allegations in, or attachments to, the separately filed complaint, and that the longstanding "four corners" rule should have been applied. *Santiago v. Mauna Loa Investments, LLC*, 41 Fla. L. Weekly S ___, Case No. SC13-2194 (Fla. March 17, 2016).

SUPREME COURT RESOLVES CONFLICT REGARDING CIRCUMSTANTIAL EVIDENCE STANDARD IN CRIMINAL CASES

Because of conflict with decisions from the First, Second, and Fourth Districts, the Fifth District certified to the supreme court a question regarding application of the circumstantial evidence standard of review. That standard, as previously announced by the supreme court, provides that where the only proof of guilt is circumstantial, no matter how strongly the evidence may suggest guilt, a conviction cannot be sustained unless the evidence is inconsistent with any reasonable hypothesis of innocence. In this case, the defendant was convicted of constructive possession of cannabis, even though the knowledge element of the crime was supported by only circumstantial evidence. While declining the Fifth DCA's suggestion that the circumstantial evidence standard should be abandoned in Florida, the supreme court clarified that the standard applies only where the proof of all elements of a crime is circumstantial, and it disapproved decisions from the Second DCA holding to the contrary. *Knight v. State*, 41

Fla. L. Weekly S82 (Fla. March 10, 2016).

A CONTRACT FOR SALE OF HOMESTEAD PROPERTY IS ENFORCEABLE BY SPECIFIC PERFORMANCE.

After the owners contracted to sell their home, they refused to close on the contract. The buyer brought a specific performance action, but the trial court granted summary judgment for the sellers on the basis that specific performance was not available to enforce a contract for sale of homestead property. The Third District held that the trial court departed from the essential requirements of law in so ruling, since both homeowners joined in the contract, and it was not a constitutionally protected "forced sale." *Mirzataheri v. FM East Developers, LLC*, 41 Fla. L. Weekly D683 (Fla. 3d DCA March 16, 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

- 6 CLE: Why Care Management**
Sponsored by: Regal Home Health and Care Management
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference
Cost: No Cost BCBA Member; \$25 Non-Member
- 8 2016 Raising the Bar Seminar**
Time: 8:30 a.m. – 5:00 p.m.
Venue: Bahia Mar Fort Lauderdale Beach
Cost: \$125 BCBA Member; \$150 Non-Member
Sponsorships Available!
- 12 North Broward Luncheon**
Time: 12:00 p.m. – 1:30 p.m.
Venue: Isabella's in Pompano Beach
Cost: \$20 BCBA Member; \$25 Non-Member
- 13 Bankruptcy CLE: Bankruptcy & State Court Practice Issues**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 13 Paralegal CLE: Service Process, Judicial Decisions & Legislative Updates**
Time: 5:30 p.m. – 7:00 p.m.
Venue: BCBA Conference Center
Cost: \$10 BCBA Member; \$20 Non-Member
- 14 CLE: Construction Employment Laws**
Sponsored by: Phipps Reporting, INC
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: Free Construction Section; \$15 BCBA Member; \$25 Non-Member
- 14 Group Mentoring Event**
Time: 5:30 p.m. – 7:30 p.m.
Venue: BCBA Conference Center
Cost: No Cost – BCBA Members ONLY
- 15 YLS Breakfast with the Broward County Judiciary**
Time: 7:45 a.m.
Venue: Broward County Courthouse Law Library
Cost: \$10 General Admission
- 15 CLE: How to Manage High Conflict People**
Time: 11:00 a.m. – 1:00 p.m.
Venue: BCBA Conference Center
Cost: \$25 BCBA Member; \$35 Non-Member
- 15 Appellate CLE: 4th DCA Seminar**
Time: 1:30 p.m. – 5:00 p.m.
Venue: BCBA Conference Center
Cost: \$50 BCBA Member; \$75 Non-Member
- 19 Women Leaders in the Law Series – Session 4**
Time: 5:00 p.m. – 7:30 p.m.
Venue: BCBA Conference Center
Cost: \$25 BCBA Member; \$35 Non-Member
- 20 CLE: Designing your Financial Future**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 20 Tax Relief Bar- at the Bar**
Time: 5:30 p.m. – 8:00 p.m.
Venue: Blue Martini Fort Lauderdale
- 21 YLS Election & CLE Luncheon**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$20 BCBA Member; \$30 Non-Member
- 22 The Essentials Guide to Criminal Defense Series – Session 2**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 26 Young Lawyers' Bootcamp Series – Session 3**
Time: 5:30 p.m. – 7:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 27 Wills, Trusts, and Estates CLE: Best of Heckerling 2016**
Time: 12:00 p.m. – 1:30 p.m.
Venue: BCBA Conference Center
Cost: \$15 BCBA Member; \$25 Non-Member
- 29 Conquering the Courtroom: Winning Your Case with Precision Salvos**
Sponsored by: Alpine Jaguar
Time: 8:30 a.m. – 11:30 a.m.
Venue: Weston Hills Country Club
Cost: \$50 BCBA Member; \$75 Non-Member

Upcoming Special Events

May 6
2016 Law Day Luncheon: Miranda
Speakers: J. David Bogenschutz, General Counsel Ron Gunzburger and Charles B. Morton, Jr.
Time: 12:00 p.m. – 1:30 p.m.
Venue: Bahia Mar Fort Lauderdale Beach
Cost: \$35 BCBA Member; \$50 Non-Member
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May 12
YLS Judicial Reception
Time: 6:00 p.m. – 8:00 p.m.
Venue: Broward Center of the Performing Arts

June 30
BCBA Annual Installation Dinner
Time: 5:30 p.m. – 9:00 p.m.
Venue: Hyatt Pier 66 Crystal Ballroom

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