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- ADR
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- Labor & Employment

MARIJUANA TRACK

- Primer/Update and Legislative Update
- Land Use and Zoning
- Issues Affecting Practice Sections

TRIAL TRACK

- Expert Witnesses
- Jury Selection
- Three Hour Mock Trial

One Day. One Place

Inside This Issue: 2017 Bench & Bar Agenda

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ON THE COVER

The 2017 BCBA Bench and Bar Convention will take place on Friday, October 20th at the Broward County Convention Center. See pages 10 and 11 for full convention agenda. Register today at www.browardbenchandbar.org.

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• Land Use and Zoning	• Jury Selection
• Issues Affecting Practice Sections	• Three Hour Mock Trial

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Thomas Daniel Oates

Thank you, Hurricane Irma, for the reminder that hurricane preparedness is important for both our homes and our businesses. With sustained winds of 185 mph for well over 24 hours Irma could have been the most powerful Atlantic hurricane landfall on record. We certainly dodged a bullet that could have been far more devastating. Even still, our friends and colleagues dominated our social media feeds complaining about lack of power or internet. We should keep things in perspective however, this storm set a record for the largest ever evacuation of South Florida and I think we all performed

well.

As I write this President’s Message (September 18, 2017) I just received internet service at my office. For seven days I had power but no internet. Not since Hurricane Wilma (October 2005) have I had a loss of utilities for such an extended period of time. We shall see how hurricane Irma compares to Wilma which was the fifth costliest hurricane (sixth costliest overall) in the Atlantic Basin with damages of \$29.5 billion. My expectation is this will be a far costlier storm, covering a broader area of our State. I am hopeful that in true Florida style we will bounce back quickly.

What lessons are there with Irma? In my own personal practice and industry wide there has been a migration to hosted data services. These comprise cloud based billing, accounting and practice manage software. Also included are the voice over internet (voip) solutions which bring us feature rich telephone service over the internet. We’ve become a society deeply dependent on our electronic connections and the internet of things.

During the four days I had electric but no internet, I and my office staff were going to be helplessly unproductive if I couldn’t find a solution to reconnect. In a moment that would have made Macgyver proud, I sent my staff to purchase every last USB wi-fi adapter they could find at Best Buy and Target. I used those devices to pair each computer with my cellular phone’s hotspot. Four days and almost six gigabytes of data later we retire those adapters for the next outage.

Let us not forget that we are still in hurricane season. Hurricane Maria and Tropical Depression Lee are looming on the horizon. Make sure you change the oil in those generators and make sure they are ready for the next marathon. **B**

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30TH ANNUAL CHARITY GOLF TOURNAMENT

The Broward County Bar Association Young Lawyers Section is proud to announce 4KIDS of South Florida as its charitable beneficiary for the 30th Annual Charity Golf Tournament! All tournament and event related proceeds will be donated directly to 4KIDS of South Florida.

Saturday, October 28, 2017

8:00 a.m. Shotgun Start
Jacaranda Golf Club

\$150 Single Player

\$500 Foursome

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letter from the young lawyers' president



Sara M. Sandler

"Don't tell me this town ain't got no heart."

The weeks leading up to and following Hurricane Irma have been tough for everyone. Not surprisingly, Broward County truly came together in Irma's aftermath. Law firms that were fortunate enough to have power opened their doors to those law firms that didn't. The incredible staff at the Broward County Bar Association worked without air conditioning to ensure our legal community was aware of community happenings and to keep things running smoothly. The Young Lawyers Section partnered with the TJ Reddick Bar Association, the Caribbean Bar Association, and the Haitian Lawyers Association to collect donations for those victims of Hurricane Irma in the Florida Keys and the Caribbean. Without a doubt, there were countless acts of kindness here in Broward as we helped each other to recover from the storm.

Unquestionably, however, we all look forward to putting Irma in our distant memories and getting our lives back on track. Fortunately, YLS is here

to help with that!


If you're anxious for things to get back to normal, I encourage you to take part in the Young Lawyers Section 30th Annual Charity Golf Tournament. Yes, I said 30th! I'd say that any event that has been taking place for 30 years has got to be 1) totally normal; and 2) totally amazing. All proceeds from our Tournament will be donated to 4KIDS of South Florida, one of the leading foster care agencies in south Florida. This year's Tournament will take place on Saturday, October 28th. There are still foursomes and sponsorship opportunities available, but they are going fast. We will also be hosting our Tee Off Happy Hour on Thursday, October 26th for a little extra fun before the Tournament. For more information about our 30th Annual Charity Golf Tournament, check out the Tournament website at: <http://www.browardbar.org/ylys/young-lawyers-golf-tournament/>.

If perhaps you've gotten used to switching things up a bit (thanks, Irma!), consider trying something new with our Thriller Dance Challenge! The Young Lawyers Section has challenged all voluntary bar associations in the state to take part in our first of its kind Thriller Dance Challenge – encouraging our members, and the members of other voluntary bars, to take part in a flash mob-esque tribute to Michael Jackson's Thriller, all in anticipation of the ever exciting Friday, October 13th (i.e., the ultimate Friday the 13th). Voluntary bar associations that are participating will record their members dancing to Thriller and then post their Thriller Dance Challenge videos to Facebook where the first video to reach 500 "likes" will be declared the Thriller Dance Challenge Champion. The Young Lawyers Section will be donating \$1 for every "like" our Thriller Dance Challenge video gets to the Fort Lauderdale Ronald McDonald House in furtherance of throwing a Halloween party for the children staying at this location. If you'd like to get involved in the Thriller Dance Challenge, as a YLS member or as a member of another voluntary bar association, please check out our Thriller Dance Challenge webpage for more information: <http://www.browardbar.org/ylys/thriller-challenge/> (you may even want to check out the site just for the cheesy videos we produced!).

If you're looking for something that falls in between the normal and the new, check out our October luncheon, taking place on October 12th, where we've partnered with YLS annual sponsor, U.S. Legal Support for a great CLE approved presentation on FIPA, HIPAA, and data breach notification rules. This presentation will cover the requirements of maintaining the security of electronic client information, including personal, financial, medical and sensitive information.

Slowly but surely we have found ourselves getting back to normal and rebuilding following Irma. While it hasn't been easy, we can all count our blessings that it wasn't much worse. We can also remember the encouraging way our community came together to support one another:

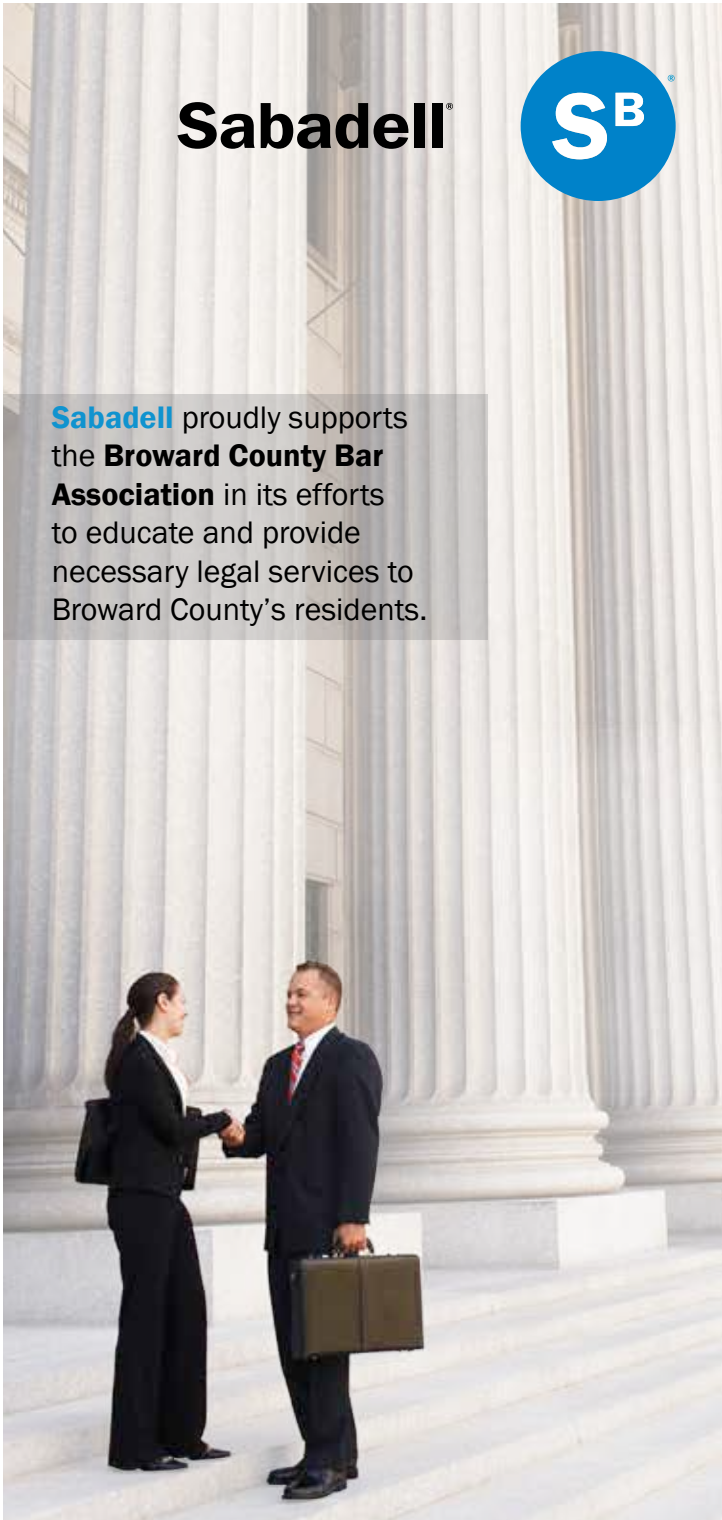
The wind in the willow's playing "Tea for Two,"
The sky was yellow and the sun was blue,
Strangers stopping strangers just to shake their hand,
Everybody's playing in the heart of gold band, heart of gold band.

Until next time, keep truckin'. 

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8:15 AM – 8:45 AM	BREAKFAST Client and Business Development Presented by: Dale Carnegie					
9:00 AM - 10:25 AM	200 The View From the Bench - Do You Measure Up? Presented by Chief Judge Jack Tuter (Moderator), Chief Judge K. Michael Moore (Federal), Chief Judge Elect Spencer D. Levine					
Session 3 10:45 AM – 12:00 PM	Seminar 310 Employment Claims in Court: A Judge's Viewpoint Presented by Judge Beth Bloom & Judge John Bowman Moderated by Brian L. Lerner, Esq.	Seminar 320 Navigating the Web Presented by Brian M. Karpf, Esq. and Michael Goldstein TECHNOLOGY CLE	Seminar 330 ADR Seminar Mediation: Breaking the Impasse Presented by Meah Tell, Esq., & John Salmon, Esq. Moderated by Aaron J. Horowitz, Esq. CME CLE	Seminar 340 The Perils & Pitfalls of Proposals for Settlement Presented by Kelley B. Stewart, Esq., Raymond L. Robin, Esq., & Tobi Perl, Esq. Moderated by Holly D. Krulik, Esq.	Seminar 350 Behind the Closed Doors at the 4th DCA Presented by Chief Judge Elect Spencer D. Levine, Judge Dorian K. Damoorgian and Judge Mark W. Klingensmith Moderated by Michele K. Feinzig, Esq. & Louis Reinstein, Esq.	Seminar 360 Criminal Law Presented by H. Scott Fin...
12:20 PM – 1:50 PM	LUNCH Keynote Speaker Supreme Court Justice C. Alan Lawrence					
Session 5 2:00 PM – 3:00 PM	Seminar 500 CRC – An insider's View on Amending Florida's Constitution Presented by: CONSTITUTION REVISION COMMISSIONER Belinda Keiser FLORIDA BAR BOARD OF GOVERNORS CONSTITUTION COMMITTEE MEMBERS Gary S. Lesser, Esq. & Leslie J. Lott, Esq. ETHICS CLE			Seminar 510 ADR Seminar The Art of Arbitration Presented by Karen Evans, Esq., Aaron J. Horowitz, Esq. & Larry R. Leiby, Esq.	Seminar 520 Optimizing the Results of your Investigation Presented by Don Blair President Claims Investigation Agency, Scott R. Schomber, Esq. & Taysha L Carmody, Esq. TECHNOLOGY CLE	Seminar 530 Employment National Relations Presented by David Cohe... Director of...
Session 6 3:10 PM – 5:00 PM	Seminar 600 Human Trafficking Epidemic Presented by Craig Bakker, & Jumorrow Johnson	Seminar 610 Your Firm: Is it Secure and Efficient? Technology Seminar Presented by Adriana Linares, Legal Technology Consultant TECHNOLOGY CLE	Seminar 620 PIP Open Forum Presented by Judge Nina Di Pietro & Judge Daniel J. Kanner	Seminar 630 Hot Topics in the Family Law Division Presented by Judge Fabienne E. Fahnestock, Judge Keathan B. Frink, & Judge Nicholas Lopane Moderated by Rae Chorowski, Esq.	Seminar 640 Immigration Migration Become a Pro in Lecture Presented by Connie Kaplan, P. Patricia Cooper, Esq. Moderated by Elizabeth R. Blandor	ADVANCE CLE
5:00 PM – 6:00 PM	COCKTAIL RECEPTION					

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ADVANCE CLE				
Presented by: C. Alan Lawson				
Seminar 530 Employment Seminar National Labor Relations Board <i>Presented by</i> David Cohen, Regional Director of the NLRB	Seminar 540 Forensic Accounting: Investigations, Fraud or Abuse <i>Presented by</i> Sheri Fiske Schultz, CPA/ABV/CFF; David Kaplan CPA/ABV/CFF, JD, CVA - BDO National Co-Leader; & George Socha, Esq., BDO Consulting Managing Director	MEDICAL MARIJUANA TRACK Land Use and Zoning <i>Presented by</i> Jamie Alan Cole, Esq. & Alicia Lewis, Esq.	TRIAL TRACK Mock Trial <i>Moderated by</i> Judge Mindy F. Solomon Robert C.L. Vaughan, Esq., <i>Featuring</i> Walter G. Campbell Jr, Esq., Jay Cohen, Esq., Jami Gursky, Esq. Joseph S. Kashi, Esq., Peter K. Spillis, Esq., Diana Santa Maria, Esq., Charles B. Morton, Esq. <i>Witnesses</i> Omar A. Giraldo, Esq Kimberly L. Wald, Esq.,	
Seminar 640 Immigration Magic: Become a Pro in one Lecture <i>Presented by</i> Connie Kaplan, P.A. & Patricia Cooper, Esq. <i>Moderated by</i> Elizabeth R. Blandon, Esq.	Seminar 650 Advanced Elder Law: Capacity & The Law <i>Presented by</i> Michael G. Brannon, Psy.D., Sandhya Nemade, M.D., Enrique Zamora, Esq., Judge Peter M. Weinstein, & Judge Ginger Lerner-Wren	MEDICAL MARIJUANA TRACK Issues affecting different sections of Law Labor & Employment Adam Kempler, Esq. Licensing Matthew Ginder, Esq. Technology and Product Liability Robert McKee, Esq.		
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Client Communication Regarding Proposals for Settlement Can Prevent Legal Malpractice Claims

by Dena B. Sacharow

It seems like every week a new opinion is published regarding the enforceability of proposals for settlement. While attorneys are constantly trying to keep up with the law to determine when a proposal is appropriate or enforceable, they often overlook a key issue – whether a proposal they receive or serve can subject them to a claim for legal malpractice.

A. Serving Proposals for Settlement

An attorney can be subject to a claim for legal malpractice where the client prevails and should be able to recover attorney's fees pursuant to a proposal, but the proposal is deemed to be unenforceable. To minimize this possibility, proposals should be carefully drafted. Regardless of familiarity with the law, Section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442 should be reviewed to ensure that the proposal includes the correct language and properly accounts for the 25 percent differential (which is different if you represent the Plaintiff or the Defendant). Counsel should fully advise the client in a detailed *written* communication about the purpose of the proposal, the basis for the settlement amount included in it, the likelihood that it would be enforceable, and the consequences of its acceptance or rejection. It is worth mentioning to a client that the case law on these proposals is fluid and ever changing, so there is the possibility that a proposal that is ostensibly valid when served may be found to be unenforceable in the future. Finally, a release should not be included unless there is a very good reason to do

so. While attorneys like to condition proposals on the execution of a release, which is generally permitted, a release can render a proposal unenforceable.

B. Receiving Proposals for Settlement

A malpractice claim can also arise where a judgment is entered against a client based on an enforceable proposal, and the client alleges that it was not adequately appraised of the meaning and consequences of the proposal and the merits of its claims or defenses. When receiving a proposal, it is imperative not only to provide the client with sufficient information to make an informed decision, but also to document having done so. When a proposal is served against a client, it is important to: (1) immediately calendar the 30-day deadline and a date before the 30 days to follow up with the client; (2) promptly provide the client with a copy of the proposal; and (3) send a detailed written communication analyzing the strengths and weaknesses of the client's case, an evaluation of the amount of the proposal and the potential consequences of accepting and rejecting the proposal.

The bottom line is that an uninformed client who goes through a case blissfully, but unrealistically, believing that it will be recovering its attorney's fees or a large judgment at the end of the case only to find out that the proposal it made is unenforceable or that it could have accepted a proposal and received payment but instead now has to pay the opponent's attorney's fees, will not be happy. Following the pointers set out

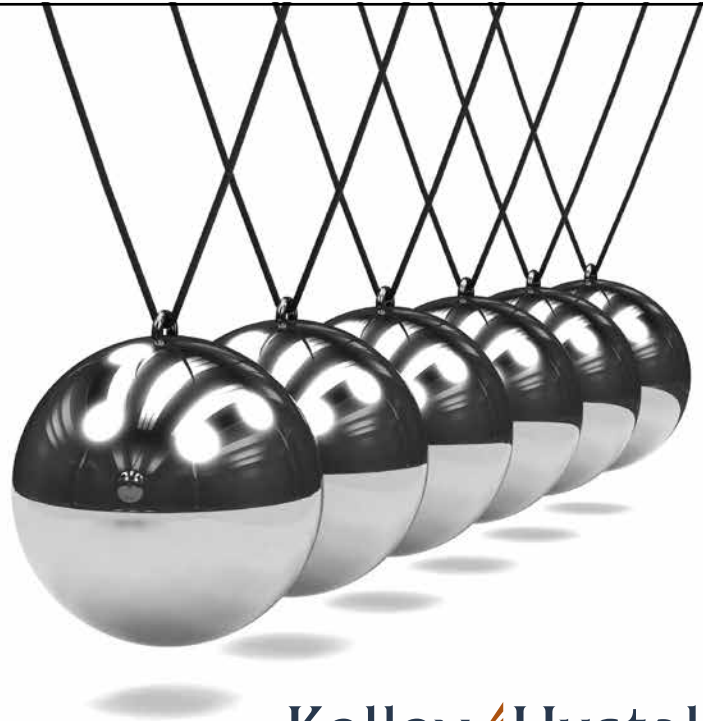
above will hopefully reduce the client's expectations and if not, at least reduce the likelihood of being sued because of those unrealistic expectations.

To learn more about protecting against legal malpractice claims, we invite practitioners to attend the Broward County Bar Association's 2017 Legal Malpractice Summit Seminar being held on Oct. 27, 2017, from 8:30 a.m. to 1:05 p.m. Broward County Judges and Attorneys will serve as panelists in presentations which address: how to protect law firms and clients from liability for data hacks; how to reduce malpractice claims based on engagement letters, due diligence on clients, withdrawing from representation and firm breakups; how to avoid malpractice claims following mediation, settlements and proposals; and common ethical and malpractice issues among various practice areas. **B**



Dena B. Sacharow is a Senior Associate at Keller Landsberg PA, where she defends lawyers and law firms in malpractice claims, represents lawyers in grievance matters before the Florida Bar and defends personal injury, property damage and bad faith claims

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DISPARITIES IN THE CRIMINAL JUSTICE SYSTEM: IT'S NOT JUST BLACK AND WHITE, IT'S **RED AND **GREEN**.**

by Arielle Demby-Berger

Everyone is aware of the recent deluge of news reports and studies on the sentencing disparities between minorities and non-minority defendants. An equally important and less discussed factor, however, is financial means. Whether a defendant has financial means effects even the beginning stages of the criminal justice system: bond. Although it is not perfect, the system has improved and pre-trial release tries to ensure that no one stays in custody while awaiting trial solely for not being able to pay. Many people might not have the money to post 10% of the standard bond. The system of inequality seems to get worse from that point forward. Once defendants post bond, how would they hire counsel and pay for the costs to prepare for motions, trials, and sentencing?

Eric Schwartzreich, a former Assistant Public Defender and now a private criminal defense attorney, has seen it all trying cases involving clients from all different income levels. He explains, “[m]oney can buy justice -- it’s unfortunate but it happens.” Imagine having unlimited resources and, for instance, you want to dispute fingerprints or DNA evidence. Who has the money to hire 4 or 5 experts? For the average defendant, this seems

like a pipe dream. It’s a fact that a single defendant will not likely have an endless array of experts. The Justice Administrative Commission has a system in place to appoint experts and other things needed for indigent clients, but they have a cap; they must be budget conscious to ensure all defendants get what they need to mount a defense. There are experts that will work for a reduced rate that are the unsung heroes, but sometimes it’s simply not enough. Eric explains it is always nice to have more tools for his toolbox.

Some of his wealthier clients can afford mock jury panels, private investigators to do dumpster dives, crime scene reconstructionists, and fly in 4-5 experts on the same topic. Imagine having your pick of world renowned experts. “Facts are facts but more access to finance can sometimes uncover facts are fiction.” Obviously, these tangibles affect the outcome. When it comes to financial crimes, having a wealthier client matters even more. Many victims of financial crimes only want to be made whole again. Being able to pay restitution is an obvious way in which sentences are lowered accordingly. One factor for a downward departure from a prison sentence is the need for

restitution, not to mention being able to afford a treatment facility. Many drug offenders are awaiting beds in the very limited spaces for drug rehabilitation. If a client has the means, the availability of various treatment centers is greatly expanded. Being cognizant of the problem is the first step to fixing it. It’s time we focus on equaling the playing field for everyone involved with the criminal justice system. **B**



Arielle Demby-Berger is an Assistant Attorney General and Special Assistant Statewide Prosecutor at the Office of the Attorney General, Medicaid Fraud Control Unit.



Florida's Security Deposit Withholding Requirements

by Joseph S. Hughes

Residential landlords must follow Florida's security deposit laws carefully if they are to avoid exposing themselves to liability for attorney's fees and costs in small claims court.

The Broward County Landlord-Tenant Walkthrough Inspection Ordinance requires a landlord collecting a security deposit from a tenant to conduct a move-in walkthrough inspection in the presence of the tenant, to write down any damage or defects found by the parties during that walkthrough, to obtain the signature of the tenant or tenant's agent on that written list, and to furnish the tenant with a duplicate copy of the writing.

Generally, the security deposit must be held by the landlord in a segregated account, separate from the landlord's other monies. If the landlord rents five or more dwelling units, the landlord must give the tenant written notice within 30 days of receiving the deposit stating the name and address of the institution where the deposit is being held, and whether the tenant is entitled to interest. It must also include specific language required by Section 83.49 (2)(d). This notice should

be re-sent to the tenant with each subsequent lease renewal.

At the time the tenancy terminates, if the landlord intends to impose a claim on the tenant's security deposit, generally the landlord must send a notice of intent to impose a claim on the tenant's security deposit to the tenant's last known mailing address within 30 days from the date the tenant vacated. If the landlord was never provided with a new mailing address for the tenant, the last known mailing address is the subject-leased property. This way, if the tenants notified the post office of their new address, the notice would be forwarded to the new location.

The notice must be sent by certified mail. It must contain a statement in substantially the same form as the language included in Section 83.49(3)(c). If the landlord fails to send the notice within the 30-day period, the landlord forfeits the right to impose a claim on the deposit, which must be immediately returned to the tenant. If a compliant notice is properly sent and the tenant fails to send the landlord an objection to the notice within 15 days from its receipt, the landlord is only then

permitted to deduct the claimed amount from the tenant's security deposit.

The landlord cannot deduct for normal wear and tear. For example, if a \$500 carpet is two years old at the beginning of a one-year tenancy and has a class life of five years, and the tenant destroys the carpet, the landlord must still account for the three years of ordinary wear and tear and the two-year remainder of the useful life of the carpet. $\$500/5 = \100 per year $\times 2$ years = \$300. The landlord here can claim only \$300, not the entire \$500.

Landlords would be well advised to adhere to the above guidelines if they wish to avoid being sued in small claims court, and losing more than just the security deposit. **B**



Joseph Hughes is a sole practitioner and trial lawyer in Fort Lauderdale, practicing in South Florida and around the state. He can be contacted at Jhughes@Jhugheslegal.com or (954) 256-5125.

Benefits of Volunteering: My Time at Camp Yofi

by Shari Scalone



adult activities. I saw children express themselves and feel special. Many siblings may receive less one-on-one time with their parents when the parents are tending to the special needs of the child with autism. At Camp Yofi the siblings receive so much individualized attention and get an opportunity to interact with other children who face the same challenges they do. Same goes for the adults. The parents get to fully unwind because they trust that the volunteers always have a vigilant eye on their children. For many parents, the nighttime activity is the first chance in months that they get to spend quality time with each other. I, along with other volunteers, planned and ran the evening events which included a murder mystery night as well as a ‘Top Chef’ competition.

The smiles on everyone’s faces are what makes Camp Yofi so rewarding. The volunteers and staff end the program late on Saturday night expressing what was the most memorable moment they had at camp. It is an emotional experience to see so much hard work and planning come to fruition with the grateful families who look forward to this week all year. As an attorney who litigates countless cases and meets the demands of the profession, I felt it was just as important to prioritize my time at Camp Yofi. Volunteering and giving back to the community helps to revitalize my energy and well-being in all aspects. I encourage my fellow colleagues to find ways and schedule time for helping others whether inside or outside the legal field. **B**



Shari E. Scalone is an Assistant Attorney General at the Office of the Attorney General, Child Support Enforcement Bureau.

Time is a premium for attorneys. The legal world revolves in six minute intervals. On occasion, however, it pauses for a moment and we get to enjoy our time and pursue our passions. One of my passions is volunteering at Camp Yofi. The camp is located at Camp Ramah Darom in Clayton, Georgia. Camp Ramah Darom is a Jewish camp that runs throughout the summer, but on the last week of summer something magical happens. Camp staff, volunteers, and families converge to spend quality time in a beautiful place with the focus on inclusion. What makes Camp Yofi so unique is that it is devoted to families of children with autism. The entire transformation takes place in a matter of hours as camp staff and volunteers prepare the grounds and events that are forthcoming; the amount of coordination is unparalleled.

Once the families arrive everything is a buzz. Staff and volunteers spring into action conducting activities such as sports, climbing tower, dancing, and singing. The first night, called Ooey, Goey, Sticky Night, is particularly engaging for the children and exposes them to various sensory input such as whipped cream, foam, balls submerged in liquid, and spaghetti. The best part is also

that volunteers babysit at the various cabins after the children are put to sleep to allow fun activities for the adults. This time for the parents and caregivers is a great opportunity for respite from the daily routine. It affords time to interact with other parents who understand the intricacies of raising a child with autism.

During the day, there are programs for the families to be together as a group as well for the individual family members to interact with their peer groups. For instance, each child with autism is designated a volunteer, a chaver, or “friend,” who partakes in all the activities with the child. The children are divided into groups and follow an itinerary throughout camp which includes age-appropriate cooking classes, art projects, time in the garden or pool, and hiking. While the children are having fun, adults can also partake in lectures and interactive classes to learn tools for managing behaviors. Interspersed among the events are Jewish-related activities including lighting candles, celebrating Shabbat, and studying Torah.

My time at camp was devoted to the youngest sibling group as well as the nighttime

4 Bankruptcy CLE: Cautionary Tales of a Bankruptcy Auctioneer

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5 Hispanic Heritage Event: S.O.S Venezuela

Time: 5:30 p.m. – 8:30 p.m.

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Cost: \$25 General Admission

12 YLS October Luncheon

Time: 12:00 p.m. – 1:30 p.m.

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18 Construction CLE: Climbing the Rungs to Ladder Safety

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28 YLS 2017 Golf Tournament

Time: 8:00 a.m. Shotgun Start

Venue: Jacaranda Golf Club

Cost: \$150 Single Player; \$500 Foursome

31 Government CLE Luncheon

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Venue: BCBA Conference Center

Cost: \$15 BCBA Member; \$25 Non-Member

31 Northeast Broward Section Luncheon

Time: 12:00 p.m. – 1:30 p.m.

Venue: ROIG Lawyers Office

Cost: \$15 BCBA Member; \$25 Non-Member

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