

BROWARD COUNTY BAR ASSOCIATION BARRISTER

OCTOBER 2013

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ON THE COVER:

The fountain in front of the Broward County Convention Center (BCCC). Picture courtesy of the BCCC.

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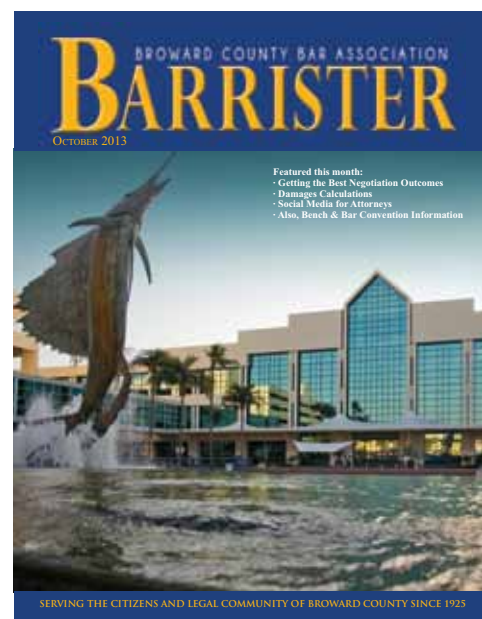
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letter from the president



Alan S. Fishman

On September 11, 2013, the BCBA named Braulio Rosa as its new Executive Director. Many of you know Braulio from working with him as Assistant Executive Director beginning in 2011 and then as Acting Executive Director since May of this year. He has done an outstanding job in his time at the Bar. Some of you also know him on a personal level as former BCBA President Victor DiBianchi's brother-in-law.

As many of you are aware, Past President Bruce Weihe chaired an Executive Director Search Committee over the past few months. The Committee put in a lot of hard work reviewing and interviewing qualified people from all

over the country with a variety of backgrounds. Braulio was the unanimous choice of the committee and was recommended to the Board for selection.

Braulio brings a wide educational and employment background to our Bar Association. He obtained a Bachelor of Arts in English Literature and Masters degrees in both Teaching and Public Administration, all from Florida Atlantic University. He also was a Hebrew linguist during his service in the U.S. Navy.

In 1994, he began his professional career as Adolescent Services Coordinator at Broward College. He then spent thirteen years working for the Town of Davie. His first position there was as event specialist, where among the events he supervised was the Davie Rodeo. Planning and supervising our events is obviously a major part of his new job. He then moved to Davie's Public Information Department. Much of the experience he gained there prepared him for key responsibilities with our Bar, as well. Among his responsibilities there was to be the editor of the official town publication. When he came to the BCBA, he spearheaded the transformation of the Barrister from an ordinary newsletter that cost the Bar thousands of dollars each year into the professional magazine you are now reading, which is already paying for itself.

Perhaps the most valuable skill he brought to us from Davie was his experience in strategic planning. For many years, members have questioned what the long term vision was for our Bar Association. During his interview with the committee, Braulio laid out some exciting ideas to expand our Bar's programming and to create new services for our members. Braulio has worked with myself and Michael Fischler to set aside a portion of our Board meetings during which Michael leads the Directors in a strategic planning workshop on a different topic each month.

On a personal level, Braulio has been married to the lovely Marilyn for 18 years and has two beautiful children, Annabelle and Anthony.

All of us are excited about working with Braulio as he leads our Bar Association into providing new levels of service to our membership and the community in the coming years. **B**



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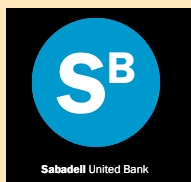
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letter from the young lawyers' president

Marissa J. Pullano, President

A paralegal in my office circulates a daily email usually chock full of inspiration. Today's email focused on the importance of September 23rd as "one of the most important days of your life." Well, it turns out that September 23rd marks the final 100 days of the year. The import of the email is that September 23rd and surely the month of October provides us with an opportunity to redeem ourselves by finishing the year strong. If you are new to the Florida bar, the Broward County area, or the Young Lawyers Section, we encourage you to finish the year strong with us!

There are plenty of opportunities to become involved with the Young Lawyers Section beginning with our biggest event of the 2013 - 2014 year, our 26th Annual Charity Golf Tournament on October 19, 2013, benefitting our very deserving charitable beneficiary, HANDY (Helping Abused Neglected Disadvantaged Youth). We will have a great day of golf at the beautiful Jacaranda Golf Club in Plantation. Our Tee-Off Happy Hour will be held on Thursday, October 17, 2013 at American Social on Las Olas. This event is open to all and guests will enjoy a complimentary drink and appetizers. Also, for the very first time this year, we are hosting a Golf Tournament Brunch. Join us for bottomless mimosas, bloody marys, and tequila sunrises, while the golfers are competing. There will be raffle items, silent auction prizes, and local vendors. The cost is \$35.00 and all proceeds benefit HANDY. I can assure you that our Golf Tournament is an event that you do not want to miss, so if you are interested in participating, joining us for the brunch, and/or being a sponsor, please contact the tournament chair, Jeffrey Wank, at (954) 492-4010, or visit our tournament website www.younglawyersgolftournament.com. Please join us in raising funds for a very deserving charity.

YLS will be hosting our October luncheon at noon at the Tower Club on Thursday, October 31, 2013 with a presentation by Judges Feld and Levey Cohen. The topic of the presentation will be "A view from the bench: The Importance of Professionalism" and the CLE application is in process. The luncheon is \$25.00 per person and you may RSVP online or to the Broward Bar at 954-764-8040. Please consider joining us for this very important and informative luncheon.

While this article is being written before our first quarterly Breakfast with the Judiciary, I do want to thank our Broward County Judiciary for their support of this event which was held on September 27, 2013.

Please stay tuned for our November 2013 events which include a joint happy hour with the Palm Beach County Young Lawyers Section and a volunteer opportunity at Helping Hands Soup Kitchen in Boca Raton, Florida in connection with YLS on November 7th and November 16th respectively.

If anyone has any questions about joining YLS or to learn more information about YLS and our events, please feel free to call me at 954-522-2200 or email me at marissa.pullano@brinkleymorgan.com. You can also find a calendar of our events on the Broward County Bar Association web site at www.browardbar.org/yls.

As always, it is an honor to serve the community and our profession this year as the YLS President. I look forward to seeing you at our October programs and events and our 26th Annual Charity Golf Tournament on October 19, 2013. **B**



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Jose M. Faverola* joins the Law Offices of David M. Brandwein, P.A. from Krupnick Campbell Malone, et al, in Fort Lauderdale. Jose is a Venezuelan Attorney, certified by The Florida Bar as a Foreign Legal Consultant in Venezuelan Law, and will work to offer his services in Florida.

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HOW TO GET THE BEST NEGOTIATION OUTCOMES

(hint: the answer is not what you think)

By Cori Flam Meltzer, Esq.

Who's the best negotiator you know? A fellow attorney? Your law partner? A hard-driving client? Your thirteen year-old daughter?

If you ask one hundred lawyers this question, many will say that the "best" negotiator is hard-nosed, aggressive, forceful, and assertive. He comes with a number in his head and will hold the line until he gets what he wants.

As a mediator, I often see these types of attorneys, and it ain't always pretty. While this approach works for some of the people some of the time, it often backfires, leaving everyone frustrated and dissatisfied.

Women attorneys, in particular, tend to be hindered by this rigid view of what a strong negotiator looks like because if they perform in a manner that is "too aggressive," their likeability suffers as a result. This ultimately diminishes their effectiveness both in the negotiation and elsewhere.

The true picture of a successful negotiator is often very different from the stereotype described above. In reality, there are many qualities that can lead to success at the bargaining table, and attorneys should stop assuming that aggressiveness always yields the best results.

Research by UC Berkley Business School Professor Laura Kray shows that when attorneys – especially female attorneys -- are taught to value the broad range of qualities that contribute to negotiation success, something called stereotype regeneration occurs. In other words, you take the stereotype and turn it on its head.

Here's how it works: Imagine an attorney who's incredibly good at forming and nurturing relationships, working cooperatively, and understanding the nature of people's problems. If that attorney is told that the only way to succeed in a negotiation is to act aggressively, that attorney will achieve a less favorable outcome in the negotiation. But if that same attorney is told that her relational and empathetic skills are valuable negotiating tools, that same attorney will reach a more favorable outcome. The real point? Once people value and validate the negotiation skills they have, success becomes a self-fulfilling prophecy.

Indeed, Professor Kray found that stereotype regeneration actually improves people's outcomes at the bargaining table. Her research demonstrates that when people understand the

diversity of skills that lead to high performance in a transaction – and they feel that they possess those skills -- they get better results for their clients.

So what are some of the qualities that contribute to negotiation success that are often discounted or undervalued by attorneys because they are not associated with the stereotypical "strong" negotiator?



The ability to discern people's interests, to listen carefully, and to communicate effectively are all essential negotiating skills that are frequently overlooked. These traits allow attorneys to:

- Communicate and share experiences to build trust and establish connections
- Listen to the needs and concerns of the other side to find a win-win
- Preserve and enhance long-term business relationships
- Use conversations to relieve social tension and show solidarity
- Take a broad or collective perspective and see the big picture
- Maintain openness to others to produce more creative or alternative solutions
- Be unafraid to apologize to create a bond or restore a relationship
- Allow another party to save face
- Generate discussion and build consensus

So right here, in reading this article, you have experienced a form of stereotype regeneration. As a result – simply by understanding how communication and listening skills can be an asset in negotiations -- it will strengthen your hand the next time you're at the bargaining table. **B**



Cori Flam Meltzer, Esq. is the Principal Mediator at CFM Mediation, LLC, a full-service commercial mediation firm serving clients in Broward, Miami-Dade, and Palm Beach Counties. She can be contacted at 954-554-8412 or by email at cori@cfmmediation.com. For more information see www.cfmmediation.com. Ms. Flam Meltzer is a presenter at the Bench & Bar Convention.

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Damages Calculations Require a Balanced Approach and a Sanity Check!

By Sheri F. Schultz

In cases involving damages, the courts favor a credentialed, independent financial expert who shows fairness and brings credibility to the table by considering both sides of the story.

Both Sides of the Story Count!

Historical and statistical analyses are useful tools in damages calculations, but not if the court views the analyses as too speculative. For example, when a valuator predicts lost profits using historic revenue and expense trends, they will typically factor in economic data such as the performance of the guideline companies, market surveys, and the company's pre-litigation financial projections.

Unlike traditional business appraisals, damages calculation analyses benefit from hindsight, so valuers will use ex post data, in addition to information known when an injury or event occurred.

There may be many reasons why a plaintiff's profits have declined. Defendants aren't responsible for losses caused by external events, such as a weak economy, new technological advances, or new competition in the market. A balanced analysis takes into account increases in cost savings, including reduced overhead costs, working capital requirements and capital investments that might have resulted from a defendant's alleged wrongdoing.

Mitigating Factors

Damages are seldom permanent. Most plaintiffs can eventually recover from a defendant's wrongdoing, and the Court expects plaintiffs to take reasonable

steps to mitigate damages once they have discovered a defendant's wrongdoing. An independent expert considers what the plaintiff did — or could have done — to offset the defendant's tortious acts. For example, the plaintiff may have selected an alternative supplier, reduced excessive capacity or, in the event of eminent domain, made an effort to find a suitable alternative location. Generally, the defendant bears the burden of proving that the plaintiff failed to reasonably mitigate damages.

How Relevant are Profits?

Often in determining damages, lost profits aren't as relevant as lost business value. To illustrate, in 1992 egg producer Rose Acre Farms* claimed that the USDA's salmonella regulations resulted in a "regulatory taking" that violated the Fifth Amendment. The Court of Federal Claims awarded \$5.4 million to Rose Acre Farms.

In 2009, the U.S. Court of Appeals for the Federal Circuit reversed that award, ruling that lost profits must reflect real-world costs and mitigations, including the value of Rose Acre Farms as a going concern and the government's need to protect the public through food-safety regulation. The appellate court estimated that government regulations caused the company's eggs to lose only 10% of their value — nowhere near the 219% profit loss the plaintiff claimed. The court held that a 10% loss "did not even approach the level of severe economic harm" that would persuade it to rule in favor of Rose Acre Farms.

*Rose Acre Farms, Inc. v. United States (559 F.3d 1260, Fed. Cir. 2009, Sept. 17, 2009).

Reason Usually Wins

After a professional valuator has estimated damages, his or her final step should be a sanity check: "Does this number make sense?" The ceiling for damages is often an entire business' value, but rarely does a defendant's action completely bankrupt a plaintiff. How much the defendant actually profited from wrongdoing should be considered as should the plaintiff's damaged operations considered against performance in an undamaged location or undamaged product market. The last thing any plaintiff wants to admit is that external factors, or they themselves could be to blame for any financial losses, let alone that the alleged "wrongdoer" might have done something that saved the plaintiff money!

Using empirical data and reasonable analysis rather than speculation and unfounded estimates is most likely to convince the court that the damages calculation is objective and fair. In cases involving damages, credentialed, independent financial experts bring credibility to court rather than a hired gun or "do-it-yourself" calculations. **B**



For more information, please contact Sheri F. Schultz, CPA/ABV/CFF, Director of Business Valuation Services for Fiske and Company (a BCBA & Bench and Bar sponsor), by email at sheri@fiskeco.com or by phone at 954-236-8600. Ms. Schultz is a presenter at the Bench & Bar Conference.

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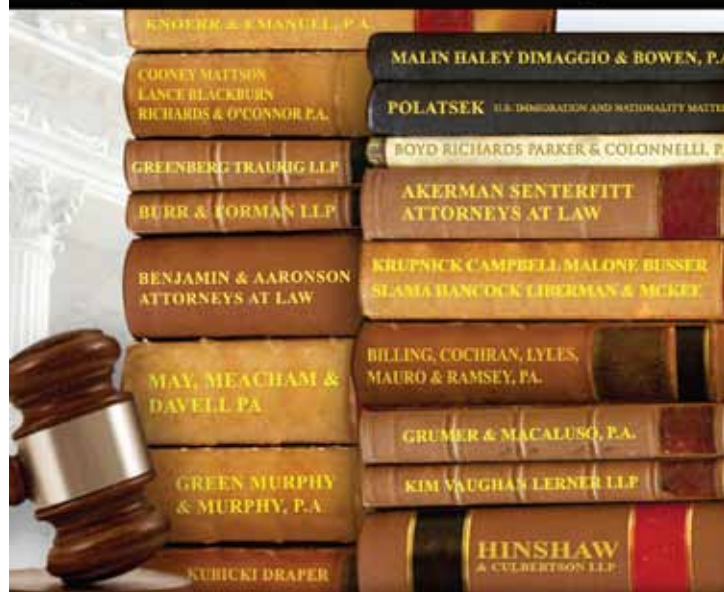


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Lawyers should be using LinkedIn and Twitter, even Facebook

By Don Silver

Social media is perplexing for Silicon Valley gurus who find it difficult to turn a profit from popular games and apps like FarmVille and Instagram. So why should a lawyer get active in social media?

There is much to be gained from being online – the right way. Just as attorneys make connections at meetings, online networking can generate new business and keep you close to clients. When potential clients search for an attorney, the first item in the search results could be one of your posts on a social media site.

Going online is not difficult or time consuming. Here are three simple steps:

- Join LinkedIn. Setting up a profile is as easy as uploading your title, a listing of your practice areas and a recent photo – all of which you already have on your website. You can maintain your profile for free.
- Reach out to people in your business email address book (LinkedIn will do the search for you) to find who else is online and connect with them. It's OK; the Florida Bar is on LinkedIn, too.
- You can ask clients to post recommendations describing their satisfaction with the work you provided for them. They can also list your areas of knowledge. Review what's said about you before it's published so that you don't run afoul of Bar advertising rules.
- Start looking for firms and businesses that you want as clients or for referrals. People you know on LinkedIn are probably connected to them. Your contacts can make introductions. While Bar rules prohibit direct solicitations, these links can lead to conversations online and in person.

Couldn't you accomplish this offline? Maybe. But many potential clients aren't as accessible in the real world as they are online. In day-to-day business, their calls are screened and unsolicited emails deleted. On LinkedIn and other social media sites, those same people are putting

themselves in public view. They join groups, post news and information, and connect with others.

Could you add a client through LinkedIn? Certainly. You may already have added an account through your firm's website. LinkedIn is another avenue for generating new business. It's also a way to keep an eye on your competitors.

Once you're set up your LinkedIn profile, you need to engage. Just as you would at a Bar or business event, you've got to start talking to people. Here's how to start a conversation:

- Take the same professional conversations you have with clients and colleagues and move them to LinkedIn. Express yourself in your own style; even online, people can tell when you are pretending to be something you're not.
- Share news articles, alert others of new legislation or case law, and generally show that just how well you know your area of law.
- Meet new people by joining a LinkedIn Group related to your practice. If your area of law is highly specialized, you may want to start your own group and be its administrator.

When people link to your profile or comment in one of your groups, build an online conversation. Get to know these people; they can help you develop new business. And when others are looking for an answer to their legal problems, they can find you through those posts.

Twitter is even faster and simpler, and can be just as professional. It takes less time to get connected on Twitter than LinkedIn. Sign up for free, post a photo and short business bio, and link to your Web page on your firm's website.


Write something brief or post a link to an interesting Web page and you're tweeting. Want to connect with a potential client or referral source? Start following that person and send replies to his or her tweets.

At the beginning, you'll follow other Twitter accounts. As you post tweets, people will start following you back and new people will follow you before you reciprocate. Once you're connected, you can send private messages.

Here's a little secret: Twitter is a terrific news digest. Almost every newspaper, TV station and legal publication posts its top stories in the morning. You can scan headlines on your smartphone just by flicking your thumb through your Twitter feed. You'll be caught up on the news before you finish your first coffee.

So, what about Facebook? It's extremely effective for shaping your image. You can post news and photos about your involvement in the community and support for charitable organizations and even posts on specific practice area-centric topics of interest to clients and prospects alike. If your practice is more with people than businesses, you can demonstrate that you're not just a good attorney, but a good person.

And then there's the rest: Pinterest, Instagram, Snapshot, Tumblr, Google Plus, DeviantArt (not your scene unless your clients are artists), Four-square and so on. Should you invest your time with them? Not until you exhaust the potential of LinkedIn, Twitter and Facebook. They provide more opportunities to connect in a professional setting.

When venturing into social media, start small, especially if you're new to the online world. You'll find that a few clicks accomplish what you want. Stick with it and you'll make connections that will help your practice and career. 



Don Silver is COO of Fort Lauderdale-based Boardroom Communications, a statewide PR and integrated marketing firm with a significant experience representing law firms. For more information visit www.boardroompr.com or call (954) 370-8999. Mr. Silver is a presenter at the Bench & Bar Convention.



The Arias Law Group, P.A. is pleased to announce that we have merged with Mager Lawyers, LLC and Scott Mager has joined our firm as Senior Counsel.



Scott Mager is a nationally renowned Attorney with over 25 years of legal experience, having received nationwide recognition for handling a variety of legal issues at the State, Federal and Supreme Court level cases. Mager has handled very significant plaintiff and defense cases, representing an array of individuals to multi-billion dollar companies to representation of an entire country, and was honored by a multi-billion dollar insurance conglomerate with the National Litigator of the Year award. He is also a Florida Supreme Court Certified Civil Mediator.

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Coast to Coast Legal Aid of South Florida to receive the JFS KOLOT Coalition's 2013 Ending Abuse Award



CCLA Family Law Attorneys: Cindy Woodward, Marta Estevez, Mindy Jones, Lisa Goldberg, and CCLA Executive Director Barbara Prager will receive the prestigious 2013 Ending Abuse Award for their outstanding commitment to the provision of critical legal services to those impacted by domestic violence.

Photo credit: Shannon Saint Dennis Photography



On September 12, the Elder Law Section hosted a successful CLE event at the BCBA titled, "A View from the Agencies." Thanks to our Co-Chairs Arlene Lakin and Victor DeBianchi for a job well done.



Florida Power and Light Company CEA Regional Manager Juliet Roulhac, center, presents FPL's annual corporate sponsorship check to the BCBA. (l to r) BCBA President Alan Fishman and Executive Director Braulio Rosa

BROWARD COUNTY BAR ASSOCIATION

Young Lawyers Section

Charity Golf Tournament

26th
Annual

2013 Infiniti
Win!
from Warren Henry Infiniti

Shotgun Start, 8 a.m., Saturday, October 19, 2013, Jacaranda Golf Club, Plantation, Florida

4 person scramble • unlimited beverages • prizes • putting contest • raffles • silent action • continental breakfast • awards luncheon

Happy Hour: Thursday, October 17, 2013 from 5:30 – 7:30 p.m.

American Social on Las Olas

Visit www.younglawyersgolftournament.com for more information or
Jeffrey M. Wank, Esq. at jwank@cftlaw.com or 954-492-4010

All Proceeds donated to HANDY (Helping Abused Neglected Disadvantaged Youth)

title sponsor (Carner Newmark & Cohen) • Golf Tournament Brunch!!!



RECENT DEVELOPMENTS IN THE LAW

By Nancy Little Hoffman

Supreme Court Clarifies Standard For Granting and Reviewing New Trial Orders

Resolving a conflict between the Fourth and First Districts, the Supreme Court held that both courts erred to some extent. The high court clarified that where a new trial is granted because the verdict is contrary to the manifest weight of the evidence, based at least in part on a legal error, the appellate court should give no deference to the trial court's decision on the legal issue and should review it de novo. It must, however, defer to the trial court's findings of fact and determinations of credibility. It is the trial court, not the appellate court, which must weigh the evidence and determine whether the jury reached an unjust decision on the facts. The appellate court decides only whether reasonable persons could disagree as to whether new trial should have been granted, and not whether the verdict was supported by competent substantial evidence. *Van v. Schmidt*, 38 Fla. L. Weekly S618 (Fla. Sept. 4, 2013).

PIP Insurer Cannot Require EUO Where Accident Pre-dates Statutory Amendment or Where Refusal to Attend was Reasonable.

Consistent with recent Florida Supreme Court opinions, the Fourth District held

that where an accident occurred prior to January 1, 2013, a PIP insurer could not deny benefits based on its insured's refusal to attend an examination under oath. The court further held that even in cases where the amended statute, sec. 627.736(6)(g), applies, a jury issue may exist as to whether the policy was materially breached where there was a reasonable explanation for the insured's noncompliance under the conditions required by the insurer. *Lewis v. Liberty Mutual Ins. Co.*, 38 Fla. L. Weekly D1928 (Fla. 4th DCA Sept. 11, 2013).

Third District Cautions Young Lawyers

In a strongly-worded opinion imposing sanctions on a petitioner and its counsel for filing a frivolous petition for prohibition, the Third District noted that lead counsel had previously been sanctioned for a frivolous filing by another DCA and ordered that the file and opinion be sent to the Bar for possible disciplinary proceedings. The court specified that the sanctions and Bar referral applied to the associate in the law firm who also signed the petition, specifically cautioning young lawyers that under Rule 4-5.2 of the Florida Bar, a lawyer is bound by the disciplinary rules "...notwithstanding that the lawyer acted at the direction of another person." It cited with approval a

statement from a recent California court that a lawyer's independent duties are not reduced because a superior in the firm directed a certain course of action. *Briarwood Capital v. Lennar Corporation*, 38 Fla. L. Weekly D1925 (Fla. 3d DCA Sept. 11, 2013).

Delayed Discovery Rule Applies Only to Intentional Abuse

An action against a Diocese for failing to prevent abuse by its priests was barred by the statute of limitations despite a claim that traumatic amnesia blocked plaintiff's memory of the abuse. The Third District held that the delayed discovery doctrine applies only to intentional tort actions against the perpetrator, not to negligence claims. *Cisko v. Diocese of Steubenville*, 38 Fla. L. Weekly D1902 (Fla. 3d DCA Sept. 4, 2013). **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. For more information, see NancyLittleHoffmann.com.

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Sabadell congratulates our good client and friend of the past 17 years, **Eugene K. Pettis**, on his historic Inauguration as the 1st African-American President of the Florida Bar.



FROM LEFT TO RIGHT: Eugene K. Pettis, Co-Founding Partner of *Haliczer Pettis & Schwamm*, sharing a moment with his Sabadell friends Bruce Hecker, Frank Wagner, Patrick Morris and Terry Biddulph.

As the “Presenting Sponsor” at the Inaugural Celebration along with the Florida Alliance of Minority Voluntary Bar Associations on 6/28/13 Frank Wagner of Sabadell gave this toast, ***“Gene as proud as everyone in this room is of your accomplishments to date culminating in today’s historic Inauguration I am confident that we will be even more proud a year from now when we gather again and reflect upon the impact and legacy of your Presidency relative to your themes of inclusion, getting engaged, giving back and reaching out to lift others up.”***

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October

calendar of events

2 10 Things Estate Planners & Probate Attorneys Need to Improve and Protect their Practice

12:00 pm - 1:30 pm

Description: Hosted by Pankauski Law Firm; 1 CLE

Cost: No Charge for BCBA Members - MUST Preregister Online; \$25 - Non-BCBA Members

Venue: BCBA Conference Center

Contact: Bonnie Ross at bonnie@browardbar.org or 954-863-3618

5 8 Hour Adult Guardianship Class

9:00 am - 5:00 pm

Description: \$180 Attorneys welcome, approved by the Florida Bar for CLE credits

Venue: BCBA Conference Center

Address: 1051 SE 3rd Avenue
Fort Lauderdale, FL 33316

Contact: Tish at 954-832-3617

16 BCBA "Bar at the Bar" Networking Event

5:00 pm - 7:00 pm

Description: Join us for "Meatballs & Martinis" and network with other BCBA members.

Venue: Anthony's Runway 84

Address: 330 W State Road 84,
Fort Lauderdale, FL 33315

Contact: Bonnie Ross at bonnie@browardbar.org

18 2013 Bench and Bar Convention

12:00 am - 12:00 am

Description: \$220 BCBA Members; \$245 Non-BCBA Members

Venue: Broward County Convention Center

Address: Broward County Convention Center, 1950 Eisenhower Blvd. Fort Lauderdale

Contact: Bonnie Ross at bonnie@browardbar.org or 954-863-3618

Register For Event: <https://www.browardbenchandbar.org>

19 4 Hour Minor Guardianship Class

9:00 am - 1:00 pm

Description: \$100 Attorneys welcome, approved by the Florida Bar for CLE credits

Venue: BCBA Conference Center

Address: 1051 SE 3rd Avenue, Fort Lauderdale, FL 33316

Contact: Tish at 954-832-3617

24 West Broward Section CLE Luncheon

12:00 pm - 1:30 pm

Description: \$25 PreRegistration; \$30 at the door

Venue: Plantation Preserve Golf Course

Address: 7050 W. Broward Boulevard, Plantation, FL

Contact: Bonnie Ross at bonnie@browardbar.org or 954-832-3618

