

# BROWARD COUNTY BAR ASSOCIATION BARRISTER

SEPTEMBER 2013

Justice Barbara J. Pariente  
Florida Supreme  
Court 2013  
Bench & Bar Keynote  
Speaker



Also in this issue:

- 16th Annual Russell E. Carlisle  
Advocacy Award
- iPads in the Courtroom

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### ON THE COVER:

Justice Barbara J. Pariente  
Florida Supreme Court 2013 Bench & Bar  
Keynote Speaker

## inside this issue

### 5 Letter from the President *Alan S. Fishman*

### 7 Young Lawyers' Section Letter from the President *Marissa J. Pullano*

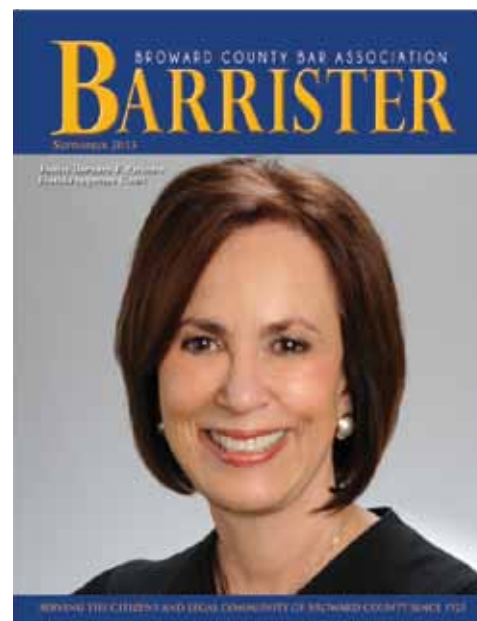
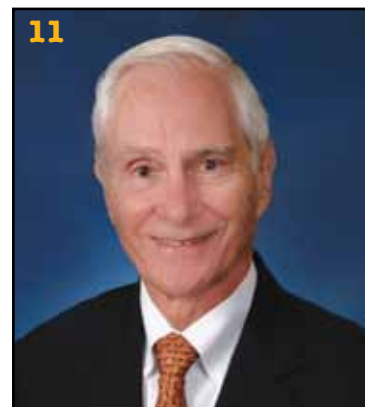
### 9 Bench & Bar Convention Keynote Speaker

### 11 16th Annual Russell E. Carlisle Advocacy Award

### 14 iPads in the Courtroom *Charles A. Morehead III, Esq.*

### 17 Latest Fourth District Decisions *Nancy Little Hoffman*

### 19 Calendar of Events



For information on upcoming  
events, please check out:  
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## letter from the president



*Alan S. Fishman*

From the beginning of my practice as a small firm practitioner, I relied heavily on expensive yellow page advertising to attract potential new clients, which brought in a mixed bag, to say the least. Then, about ten years ago, Loring Spolter brought to the BCBA the idea of creating a small solo networking group. He hosted a networking dinner at a restaurant for attorneys who were in law firms of four or fewer attorneys. He tinkered with and eventually developed the present format.

The BCBA's current version of the group has become an indispensable part of my practice and that of one hundred fifty of our members. Under the current leadership of Section Chair John Rizvi and with the invaluable organization of staff member Tish Guiffreda, we meet at Dave and Buster's for dinner on the third Wednesday of every odd month. Only attorneys are allowed to attend, with one exception that I will explain in a minute. We have a networking cocktail hour for the first hour, and then sit down to dinner. Anyone attending for the first time is invited to the podium for a brief introduction and a list of their practice areas. Then the attendees acknowledge the people who have given or received a case referral since the previous dinner. It is then that the amazing success of the group is evident. Almost everyone in the room lists from one to as many as ten clients given or received in the previous two months! Five or six law students available to clerk or do research are introduced. Finally two or three attendees speak for a few minutes about their practices.

The only non-attorney in attendance is financial planner Myles German, who provides us a week after the dinners with our "bible" - a directory of everyone in the group by practice area and contact information. That "bible" sits next to my phone. I am able to refer anyone who needs an attorney in an area other than those in which I practice information about a trusted colleague who does what they need.

On the even months except December, under the direction of "Lunch Admiral" Evan Ostfeld, the group holds seven networking lunches spread around the county. With fifteen to twenty people in attendance, the lunches, which are often free due to sponsors, provide a more intimate networking opportunity.

I spoke last month about the importance of socialization in our work. The members of this group have become friends and look forward to seeing each other at the events. Needless to say, I happily wrote my last check to the yellow pages soon after getting involved in the group. For those of you who are in firms of four or fewer, I encourage you to come to a lunch or dinner. All you have to gain is quality referrals of new clients and new friends. **B**



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October 18, 2013

Broward County Convention Center • Fort Lauderdale

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*Keynote Speaker*

*Florida Supreme Court Justice Barbara J. Pariente*

*Keynote Breakfast Speaker*

*The Honorable Renee Goldenberg of the 17th Judicial Circuit will present:  
REAL LIFE: Top Ten Societal Shifts that Affect Legal Ethics and Professionalism*



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## letter from the young lawyers' president

### Marissa J. Pullano, President

The month of September always finds the Young Lawyers Section in full swing. By the time this article hits the presses, YLS will have already hosted a Breakfast with Judge Ari Porth, participated in the Juvenile Diversion Record Expunction Workshop as part of the Broward Diversion Coalition, hosted our 3rd Annual Judicial Panel Luncheon with Judges Haury, Bailey and Towbin Singer, and co-hosted a Happy Hour with Emerge Broward and the Ghost Light Society. Yet there is no time to stop to catch our breath, as we have our biggest event of the 2013-2014 year before us—our 26th Annual Charity Golf Tournament on October 19, 2013, benefitting our very deserving charitable beneficiary, HANDY (Helping Abused Neglected Disadvantaged Youth). HANDY's mission is to embrace, educate, and empower vulnerable youth to become engaged, productive adults. Since 1985, HANDY has met the needs of more than 45,000 Broward County children and youth in foster care and relative/non-relative care under protective supervision. HANDY annually serves more than 1,300 at risk children and youth between the ages of birth to 23 years, and its programs focus on education, youth development and economic self-sufficiency. HANDY's mission aligns perfectly with YLS' devotion to at risk youth in our Broward County community. We are thrilled and honored to be partnering with HANDY for what we hope will be our biggest tournament in YLS history.

Please consider participating or sponsoring this 26th Annual Charity Golf Tournament. We will have a great day of golf at the beautiful Jacaranda Golf Club in Plantation, FL. The event will also include a 4 person scramble, breakfast, unlimited beverages and an awards luncheon and reception following golf. 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. Please visit our tournament website at [www.ylsgolftournament.com](http://www.ylsgolftournament.com). 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 and/or being a sponsor, please contact the tournament chair, Jeffrey Wank, at (954) 492-4010, or visit our tournament website. Please join us in raising funds for a very deserving charity.

YLS has some other wonderful upcoming events in store for you, starting with our Breakfast with the Judges event, which has been set for Friday, September 27, 2013 in the law library at the Broward County Courthouse. The breakfast is catered and is \$25.00 per person (free for all judiciary). Space is limited so please RSVP to Eric Rosen via email at [esr@kulaw.com](mailto:esr@kulaw.com). In addition, we will be hosting our September luncheon at noon at the Tower Club on September 19, 2013, featuring Retired Judge Mark Purdy, who will be speaking on the topic of attorneys' fees. The luncheon is \$25.00 per person and you may RSVP online or to the Broward Bar at 954-764-8040.

While this article is being written before our August luncheon, I do want to thank our panel of distinguished judges (Judge William Haury, Judge Tim Bailey and Judge Michele Towbin Singer) for speaking about common mistakes by young lawyers. I would also like to further recognize Judge Imperato and Judge Ross, as they are our YLS judicial liaisons this year; we are honored to have you on our team.

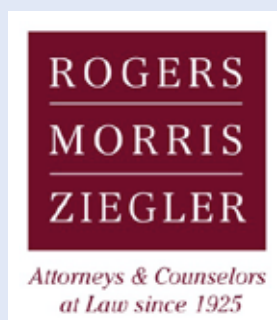
If anyone has any questions about joining YLS or to learn more information about YLS and our events, please feel free to call me at 954-522-2200 or email me at [marissa.pullano@brinkleymorgan.com](mailto:marissa.pullano@brinkleymorgan.com). You can also find a calendar of our events on the Broward County Bar Association web site at [www.browardbar.org/yls](http://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 September programs and events and our 26th Annual Charity Golf Tournament on October 19, 2013. **B**

## **Rogers, Morris & Ziegler, LLP**

is pleased to announce two new attorneys have joined our firm.

**Daniel Te Young** has become a partner in the firm. Mr. Young is Board Certified in Construction Law and will continue to focus his practice in the area of construction law and litigation.

**JoAnne Daudt** has become of counsel to the firm. Ms. Daudt brings 25 years of experience in estate planning and probate to the firm.



We would like to wish the community  
the Happiest of Holidays during  
this month of September

September 5-6	Rosh Hashana
September 14	Yom Kippur
September 19-25	Sukkot
September 26	Shimini Atzeret
September 27	Simchat Torah

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BROWARD COUNTY BAR ASSOCIATION

**Young Lawyers Section**

**26<sup>th</sup> Annual Charity Golf Tournament**

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**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.**

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Jeffrey M. Wank, Esq. at [jwank@cftlaw.com](mailto:jwank@cftlaw.com) or 954-492-4010

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



# Justice Barbara J. Pariente

## 2013 BCBA Bench & Bar Convention Keynote Speaker

Justice Pariente's legal and judicial career has spanned over 40 years. She has been a Justice since 1997 and served as Chief Justice from 2004 through 2006. She has been a Floridian since 1973, having been born in New York City in 1948 and attended public schools in New York and New Jersey. She graduated with highest honors from Boston University. She then attended George Washington University Law School, where she graduated fifth in her class in 1973, earning highest honors and membership in the Order of the Coif. She moved to Fort Lauderdale, Florida in 1973 for a two year judicial clerkship with United States District Court Judge Norman C. Roettger, Jr., of the Southern District of Florida.

After her judicial clerkship, Justice Pariente settled in West Palm Beach, where she joined the law firm of Cone, Wagner and Nugent in 1975 and became a partner in 1977. In 1983, she formed the law firm of Pariente & Silber, P.A. In both firms, she specialized in civil trial litigation. She earned certification by the Florida Bar as a Board Certified Civil Trial Lawyer as well as nationally by The National Board of Trial Advocacy. She was awarded an AV rating, the highest available, by Martindale-Hubbell. During her eighteen years in private practice, Justice Pariente served on the Fifteenth Judicial Circuit Grievance Committee, the Florida Bar Civil Rules Committee, and the Fifteenth Judicial Circuit Nominating Commission. She was instrumental in organizing Palm Beach County's first Bench-Bar Conference.

In September 1993, Justice Pariente was appointed to the Fourth District Court of Appeal, where she served until her appointment as the seventy-seventh Justice of the Florida Supreme Court on December 10, 1997.

Justice Pariente is currently the Chair of the Supreme Court's Steering Committee on Families and Children in the Courts, which works collaboratively to improve methods for handling cases involving children and families so that the interests and need of the child are paramount.

Justice Pariente was inducted into the Florida Women's Hall of Fame in 2008. She is the recipient of numerous awards and honors, including the George Washington University's Distinguished Alumni Award, the American Academy of Matrimonial Lawyers' Jurist of the Year Award, the Florida Association of School Social Workers' Lifetime Achievement Award, the Palm Beach County League of Women Voters Good Government Award, the

William M. Hoeveler Judicial Professionalism Award, the Visionary Award of the Family Law Section of the Florida Bar, the Jewish Museum of Florida's Breaking the Glass Ceiling Award, the Florida Council on Crime and Delinquency Distinguished Judicial Service Award, the Florida Association of Women Lawyers' Award in recognition of lifelong dedication to the success of women lawyers in the legal profession, the American Bar Association's Law Day Speech Award, the Lifetime Achievement Award presented by the Palm Beach County Jewish Federation and the Palm Beach County Legal Aid Society Civil Litigation Pro Bono Award.



Justice Pariente speaks frequently throughout the state to promote better awareness of the need for increased focus on civic education, on topics ranging from professionalism, judicial independence, the unified family court, juvenile justice and crime prevention. Justice Pariente's past publications include a contribution to the Cardozo Journal of Law & Gender entitled "A Symposium with Women Chiefs" at the Benjamin N. Cardozo School of Law. Volume 13, No. 2 (April 2007); a contribution to Women Trial Lawyers: How They Succeed in Practice and in the Courtroom (Prentice-Hall 1987); and a contribution to the Saint Thomas Law Review Symposium Issue: "Therapeutic Jurisprudence in Clinical Legal Education and Legal Skills Training" St. Thomas Law Review (Spring 2005). In addition, she authored an article in the Florida Bar Journal entitled "A Profession for the New Millennium: Restoring Public Trust and Confidence in Our System of Justice." 74 Fla. B.J. 50 (January 2000) and co-authored an article in the Florida Bar Journal entitled "Teaching Them a Lesson," 77 Fla. B.J. 6 (June 2003) about girls in the Juvenile Justice system.

Justice Pariente is married to the Honorable Frederick A. Hazouri, who retired in January 2013 as a judge of the Fourth District Court of Appeal and now serves as a mediator. Together, they have three married children and eight grandchildren, all of whom live in Florida. Read a Conversation with Justice Pariente by Jodi Wilkof, a Profile of Justice Pariente published in the October 2004 Bar Journal, and an article on her in the Bostonia alumni magazine. **B**

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# The Honorable Arthur J. England, Jr. to Receive the 16th Annual Russell E. Carlisle Advocacy Award Presented by Legal Aid Service of Broward County

Russell E. Carlisle, Esq. and Anthony J. Kar-rat, Esq., Executive Director, Legal Aid Service of Broward County, announced that the Honorable Arthur J. England, Jr., former Chief Justice of the Supreme Court of Florida, has been selected to receive the 16th annual Russell E. Carlisle Advocacy Award at the 12th Annual *FOR THE PUBLIC GOOD*. The event will be held Friday, September 27, 2013 at the Hilton Fort Lauderdale Marina.

**The Russell E. Carlisle Advocacy Award** is given annually to an advocate whose actions exemplify a personal and professional commitment to making justice available to the poor and disadvantaged. Throughout his long and distinguished legal career, Arthur J. England, Jr. has advocated for the creation of programs to finance the provision of legal services to low income members of our communities. He was elected to the Supreme Court of Florida and took office in January 1975. He then was elected by his colleagues as Chief Justice in 1978. While on the Court, he authored the nation's first program for the generation of interest on lawyer's trust accounts (IOLTA). At the time, law firm managed trust accounts did not earn interest. England drafted the guidelines to establish what would become known as the Interest on Trust Accounts (IOTA) program. Since its inception, IOTA has contributed between \$2 billion and \$4 billion to Legal Aid programs.

*"We are thrilled that Arthur England has been selected as this year's recipient of the Russell E. Carlisle Advocacy Award," said Kar-rat, "His work to establish IOTA programs throughout the United States has created a legacy of providing free legal services to low income members of our communities. Mr. England epitomizes the purpose of this award – to honor someone who has made a commitment throughout his career to ensure that our judicial system is available to all and without regard to economic status."*

The nation's first IOTA program was implemented by the Florida Supreme Court in 1981 and has served as a model for similar programs across the country. These programs create millions of dollars in funding for legal aid each year. Prior to IOTA, the primary source of funds for legal services for the poor were the federal funds allocated by

the Legal Services Corporation (LSC). England realized there was a need for a more enduring program if legal aid services were to continue.

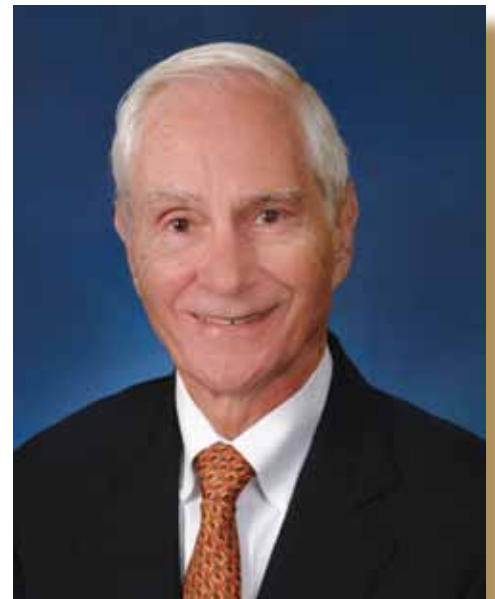
*"We [the Florida Supreme Court] intended at the outset to create an IOTA model for other states, as well as to become the first in the country to adopt an IOTA program. The opinions I wrote were designed as roadmaps for other states – laying out the problems, anticipating objections and constitutional issues, as well as the hurdles that had to be overcome with regard to banking laws, IRS regulations and all of the other implementation challenges." Arthur J. England, Jr.*

Revenue from Florida's IOTA program is the chief source of support for The Florida Bar Foundation's grant programs. The Foundation provides approximately one-third of the total funding for Legal Aid organizations throughout Florida – funding that enables legal aid and pro bono attorneys to help Floridians who have nowhere else to turn when they are facing domestic violence, unlawful evictions, scams such as mortgage fraud, or denial of child support or public benefits to which they are entitled.

After leaving the bench, England lobbied with Russell Carlisle, Esq., Randall C. Berg, Jr. (Executive Director of the Florida Justice Institute <[http://en.wikipedia.org/wiki/Florida\\_Justice\\_Institute](http://en.wikipedia.org/wiki/Florida_Justice_Institute)> ), and Donald Middlebrooks (current Southern District Court Judge), throughout the country and Canada for IOTA funds to be used to fund Legal Aid programs. Upon returning to the private practice of law, England devoted his practice to appellate law, administrative law, and constitutional law. He formed, and served for 20 years as co-chair of the National Appellate Practice Group of Greenberg Traurig P.A.

Regrettably, Mr. England passed away on August 1, 2013.

The Russell E. Carlisle Annual Advocacy Award was named after its first (1998) recipient, Mr. Carlisle himself. He is a life-long champion of the rights of the poor and disadvantaged and was the first president of Legal Aid Service of Broward County's



Board of Directors in 1974.

Past recipients of the award, who traditionally convene to choose the new recipients, are:

Bruce Rogow, Esq. – 1999, Don A. Wich, Jr., Esq. – 2000, the late Henry Latimer, Esq. – 2001, Sharon Bourassa, Esq. – 2002, Jerome Ira Solkoff, Esq. – 2003, Howard Talenfeld, Esq. – 2004, Nancy W. Gregoire, Esq. – 2005, Levi G. Williams, Esq. – 2006, Terrence Russell, Esq. – 2007, Andrea L. Moore, Esq. – 2008, Adele I. Stone, Esq. – 2009, Belinda Keiser – 2010, Walter Honaman, Esq. – 2011 and Roy Rogers – 2012.

**FOR THE PUBLIC GOOD** is an annual fundraiser held by Legal Aid Service of Broward County (LAS) and Coast to Coast Legal Aid of South Florida (CCLA) with proceeds benefiting families and individuals in gaining access to equal justice.

Join over 450 of Broward County's finest lawyers, judges and community leaders as LAS and CCLA recognize individuals and entities who have volunteered their skills and time to provide free, quality, civil legal assistance to low income individuals and families faced with a multitude of issues ranging from children's advocacy, domestic violence, foreclosure, veterans issues, consumer issues, homelessness and other civil legal issues.

For tickets, sponsorship, advertising opportunities or to place an advertisement congratulating the Honorable Arthur J. England, Jr., contact [development@legalaid.org](mailto:development@legalaid.org) or call 954-736-2429. 





Honorable Renee Goldenberg

## Our breakfast keynote speaker in October for the Bench and Bar Convention

The Honorable Renee Goldenberg is a Circuit Judge in the Seventeenth Judicial Circuit, Broward County, serving in the Family Division since January 7, 1997. Judge Goldenberg is the Past Chair of the Family Law Section of the Conference of Circuit Judges, and served on the Executive Committee. She graduated summa cum laude from Nova-Southeastern University in 1984, where she served as Executive Editor of Law Review. She is a fellow of the American Academy of Matrimonial Lawyers, Florida Chapter; a Florida Bar Certified Marital and Family Lawyer, and a Supreme Court certified family mediator. She served as a member of the State Commission on Family Courts which recommended the institution of family divisions, the State Commission on Child Support Enforcement, which developed the preliminary draft of the child support guidelines, and has served as an adjunct professor of law. Judge Goldenberg was the Chair of the Family Law Section of the Florida Bar in 1995-6. She has written and lectured extensively on family law to law students, lawyers and judges. Judge Goldenberg received the 2010 Jurist of the Year Award from the American Academy of Matrimonial Lawyers, Florida Chapter, which "is presented for the most outstanding contribution to the field of matrimonial law by a member of the Judiciary." Judge Goldenberg received the 2001 Outstanding Jurist Award from the Young Lawyers Division of The Florida Bar which "annually goes to a Judge with the finest credentials, finest demeanor, finest commitment to justice and the finest respect for young lawyers practicing in the State of Florida." Judge Goldenberg is the author of a two volume book, *Florida Family Law and Practice*, published in 2005 by James Publishing, Inc. and updated each year since. **B**

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\*Includes Mission United Pro Bono Veterans Project, Tracey McPharlin Pro Bono Dependency Project and Advice & Counsel Hotline.



*By Charles A. Morehead III, Esq.*

The iPad was a breakthrough device for the use of electronic presentations in courtrooms or elsewhere for evidence and document handling. Today I try to make you better lawyers through the use of technology. .

Many applications have surfaced which serve as conduits for the presentation of evidence in today's courtroom. These include TrialPad, Exhibit "A", and RLTC Evidence by Rosen, Ltc, Inc.

With today's software you can work in any orientation you wish using either landscape or a portrait orientation, you may e-mail any evidence that you place on your iPad anywhere in the world from the courtroom and you can also obtain website support if necessary.

TrialPad allows you to support multiple cases, view them in any fashion you wish, and sort them by date or alphabetically. You can duplicate an entire case folder and e-mail it to a colleague and you can import files in

the courtroom, assuming you have any sort of wireless connectivity.

TrialPad allows you to use photographs, videotape with edits and almost any document format to be imported and used during your trial. After spending twenty minutes with TrialPad you will wonder how you got along without it.

#### **THE NUTS AND BOLTS**

I start by uploading every document in my case that I think that I am going to use during the course of the case – not the trial – onto my iPad. I use a third party upload service called DropBox, which allows me to share documents with clients anywhere in the world free of charge. It also allows me to upload these documents and retain a copy in the DropBox "Cloud" where they are stored securely at no cost to me. You can also buy more storage than you can ever use for a nominal fee. Once you upload documents to DropBox, you can then upload them easily to your iPad using TrialPad.

#### **TRIAL PREPARATION**

Once a file is imported to a particular case folder, you then begin to work with the documents using the features of the App itself. This includes highlighting in five different colors, underlining and telestrating in five different colors, whitening out any sections you wish, pulling out bullet points from any document and using a laser pointer while you have the document displayed in front of the jury. Evidence stickers may be electronically applied in any corner of the document.

The App also contains an electronic "white board" that allows you to draw live in the courtroom and retain those drawings for use with other witnesses or in your closing argument. Once anything has been drawn or used by a witness, that can then be exported immediately to your office or your expert, if allowable, to allow him to understand what went on in the courtroom. It has the further advantage of having your opponent not be able to destroy your in-court



drawings which you worked so hard on (in the old days) with your tablet on an easel creaking away in front of the jury. No more slashes with red pens across your expert's hard work or your recitation of damages or injuries – anything that you create in the courtroom is yours alone to be used as you see fit.

#### USE IN TRIAL

The application allows you to select documents with blank screen in front of the court and jury, and then present only what you wish them to see in an instant. You may toggle between videos, photographs and documents instantly, thus systematically arranging any presentation as you want it to come before the jury in your argument, rather than how it was actually presented in the courtroom. The converse is also true – you can keep your iPad in the exact order that things were taught to the jury and present them exactly as they witnessed them.

The software also allows you to redact immediately any section of any document completely, thus using documents that are “clean” in front of the jury rather than with Post-it notes or whiteout being placed on original documents. You can also print in the courtroom with a wireless printer.

I have sought and received on the three occasions that I have used it in court, permission from opposing counsel to scan or photograph the exact items of evidence, show them to them electronically so that they understand that I have not altered the evidence in any way, and then use it with witnesses in the courtroom without digging through a pile of exhibits on the table or otherwise hunting the courtroom for this board or that poster or this photograph. It simply makes you a tighter, better lawyer.

Applications for use at trial are ex-

ploding. The potential for electronic presentations at mediation, client meetings, business meetings, etc., is obvious. All of the information which we use in a courtroom can be used throughout the case as the case builds toward trial. Electronic evidence is here to stay and the skilled practitioner will do well to keep abreast of each and every development.

To learn more about this topic, attend our Bench and Bar Convention on October 18, 2013, where a more comprehensive presentation will be offered. **B**



*Charles A. Morehead, III, Esq. is a partner at Moody Jones, Ingino & Morehead. He has practiced law for over 28 years and is a Board Certified Civil Trial Lawyer. Mr. Morehead can be contacted at 954-880-2020 or at [cmorehead@moodyjones.com](mailto:cmorehead@moodyjones.com).*

The advertisement features a background image of a wooden gavel resting on a wooden surface. Overlaid on this image is the company logo, which consists of the word "Boss" in a large, stylized, red font with a white outline. Below "Boss" is the text "CERTIFIED REALTIME REPORTING, INC" in a smaller, white, sans-serif font. At the bottom of the advertisement, there is a Facebook logo on the left, followed by the text "BROWARD (954) 467-6867" and "DADE (305) 446-4022" in white. The website address "www.BossReporting.com" is displayed in a large, white, sans-serif font across the bottom.

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## YLS Breakfast Hosted by Judge Ari Porth.



(L to R) Judge Ari Porth and BCBA Board Member Thomas Oates



(L to R) YLS President Marissa Pullano, YLS Board Member Lauren Alperstein, Judge Ari Porth, and YLS Board Member Eric Rosen.

## News and Events



(L to R) Judge Mark A. Speiser, Judge Charles M. Greene, and Judge Mel Grossman served as the panel for the BCBA CLE seminar titled: Probate Law: A View from the Bench 2013.

Frank Wagner, Vice President Sabadell Bank, center, presents the BCBA with its exclusive annual sponsorship check.  
(l to r) Acting Executive Director Braulio Rosa and President Alan Fishman.



# LATEST FOURTH DISTRICT DECISIONS

*By Nancy Little Hoffman*

## **Judge Cannot Voluntarily Disclose Relationship to Party, Invite Motion to Disqualify, and then Deny Motion**

The Fourth District granted a petition for prohibition, holding that where a judge makes a disclosure, invites the parties to file a motion to disqualify and suggests that such a motion would be granted, the judge must thereafter grant such a motion if it is filed. *Manor Care Health Services, Inc. v. Gipson*, 38 Fla. L. Weekly D1692 (Fla. 4th DCA August 7, 2013).

## **Where Improper Closing Argument Affected only Damages, New Trial on Liability Should Not Have Been Granted**

In the trial of an automobile accident case, defense counsel made an inflammatory closing argument minimizing the injured motorist's injuries when compared to the paraplegia of Marc Buoniconti. The trial court sustained an objection but denied a mistrial, and the jury awarded the plaintiff far less in damages than she had sought. The trial court ordered a new trial on liability and damages. The Fourth District reversed the new trial on liability, finding that the improper argument "could not possibly be construed as affecting any issue related to liability." Although affirming the new

trial on damages, the Fourth District cautioned that if the trial court had denied the motion on the facts of this case, and the plaintiff had appealed, it would have found no abuse of discretion in that denial either. *Choy v. Faraldo*, 38 Fla. L. Weekly D1682 (Fla. 4th DCA August 7, 2013).

## **Fourth District Discusses Requirements for Sec. 57.105(1) Fee Motions**

On appeal from a judgment awarding attorney's fees on the basis that a claim was not supported by the material facts or law, the Fourth District explained that when a party seeks sanctions by successive motions under section 57.105(1), the subsequent motion must, if it raises a new ground not raised in the original motion, independently comply with the twenty-one day "safe harbor" provision of the statute. Where it does not, the trial court may still consider the first motion, but only as to the grounds raised in that motion. *Lago v. Kame by Design, LLC*, 38 Fla. L. Weekly D1688 (Fla. 4th DCA August 7, 2013).

## **Tobacco Wrongful Death Verdict Affirmed; No Error in Jury Instruction, and Defendants Failed to Preserve Issue as to**

## **Improper Closing Argument**

The Fourth District rejected an argument that a concurring cause instruction was erroneous, where the only possible cause of death of plaintiff's decedent other than tobacco addiction was his own negligence in failing to quit smoking. The Court explained that while the instruction was not necessary, the giving of it was not reversible error. The Court further held that it could not reverse based on the closing argument of plaintiff's counsel, since the defendants failed to raise a contemporaneous objection. Although agreeing with defendants that the argument was improper, the Court found that the remarks did not rise to the level of fundamental error. *Philip Morris USA, Inc. v. Tullo*, 38 Fla. L. Weekly D1685 (Fla. 4th DCA August 7, 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](mailto:NLHappeals@aol.com). For more information, see [Nancy LittleHoffmann.com](http://NancyLittleHoffmann.com).*



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# September

## calendar of events

- 7 9:00 am – 5:00 pm**  
**8 Hour Adult Guardianship Class**  
**Description:** \$180 Attorneys welcome, approved by the Florida Bar for CLE credits  
**Venue:** BCBA Offices  
**Address:** 1051 SE 3rd Avenue, Fort Lauderdale, FL 33316  
**Contact:** Tish (954)832-3617 to register
- 12 4:00 pm - 6:00 pm**  
**Elder Law Seminar “A View from the Agencies” CLE Seminar**  
**Description:** \$15 BCBA Members; \$25 Non-BCBA Members Includes Light Refreshments and CLE  
**Venue:** BCBA Conference Room  
**Address:** 1051 SE 3rd Avenue, Fort Lauderdale, FL 33316  
**Contact:** Bonnie Ross, bonnie@browardbar.org or 954-832-3618 to register.
- 17 12:00 pm – 1:00 pm**  
**BCBA Bench and Bar Committee Meeting**  
**Venue:** BCBA Conference Center  
**Contact:** Bonnie Ross, 954-832-3618 or bonnie@browardbar.org
- 18 6:00 pm - 8:00 pm**  
**Solo/Small Networking Dinner**  
**Description:** \$35 BCBA Members \$50 Non-Members \$5 additional for walk-ins  
**Venue:** Dave & Buster’s  
**Address:** 3000 Oakwood Blvd. Hollywood, FL  
**Contact:** Bonnie Ross, 954-832-3618 or bonnie@browardbar.org
- 21 9:00 am - 1:00 pm**  
**4 Hour Minor Guardianship Class**  
**Description:** \$100 Attorneys welcome, approved by the Florida Bar for CLE credits  
**Venue:** BCBA Offices, Address: 1051 SE 3rd Ave., Fort Lauderdale, FL 33316  
**Contact:** Tish 954-832-3617
- 26 12:00 pm - 1:30 pm**  
**West Broward Section Luncheon with Sheriff Scott Israel**  
**Description:** \$25 preregistration; \$30 at the door  
**Venue:** Plantation Preserve Golf Course  
**Address:** 7050 W. Broward Boulevard Plantation, FL  
**Contact:** Bonnie Ross, 954-832-3618 or bonnie@browardbar.org
- 27 12 pm**  
**12th Annual For the Public Good Event**  
**Description:** Annual fundraiser held by Legal Aid Service of Broward County (LAS) and Coast to Coast Legal Aid of South Florida (CCLA) with proceeds benefiting families and individuals in gaining access to equal justice.  
**Venue:** Hilton Ft. Lauderdale Marina  
**Address:** 1881 SE 17th Street, Ft. Lauderdale, FL  
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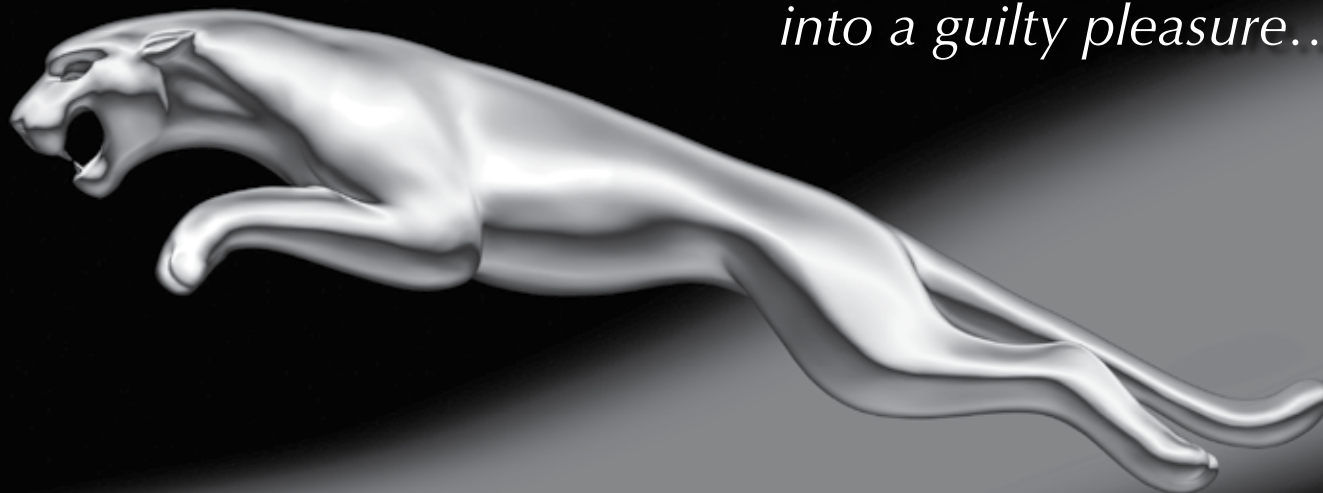
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