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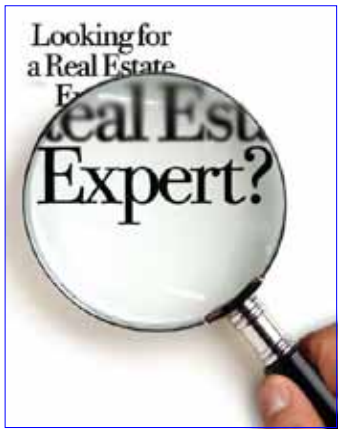

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ON THE COVER: YLS Board of Directors (l to r) Treasurer Liza Smoker, President Elect Marissa Pullano, Board Member Jeff Wank, Board Member Kelly Vogt, Board Member Stacy Weissman, Board Member Tobi Lebowitz, Board Member Patrick Douglas, Board Member Lauren Alperstein, President Meghan Clary, Board Member Sara Sandler, and Board Member Jonathan Stief with the $31,000 check that YLS raised via its annual golf tournament to benefit Florida's Children First.

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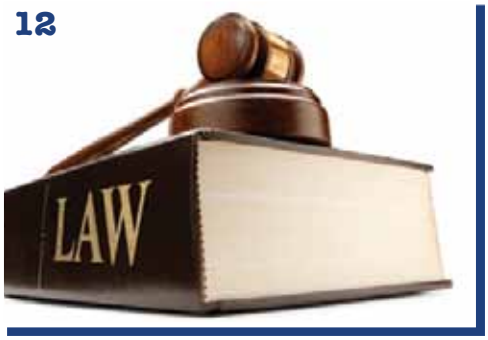

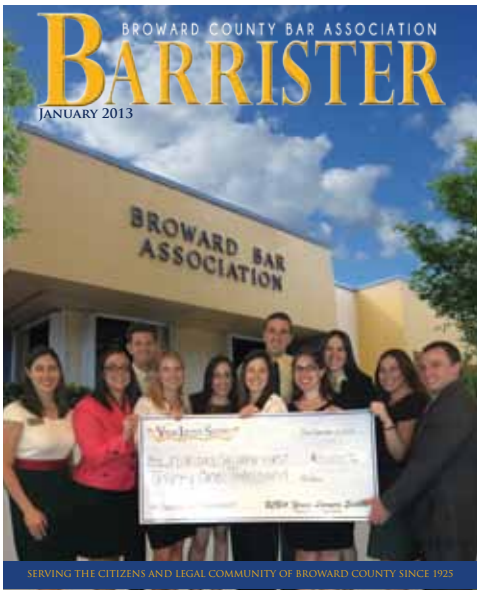

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Deborah FitzGerald

"Cheers to a new year and another chance for us to get it right."
~ Oprah Winfrey

January is a time for making New Year's resolutions. My list keeps getting longer and longer. There are the perennial resolutions to spend more time with family and friends, lose weight, drink more (water), eat healthier, and exercise. In my professional life, my resolutions include being more organized, better prepared, and more technologically proficient.

This is also a great time to resolve to get more involved in your profession. President-elect of The Florida Bar and BCBA member, Eugene K. Pettis, is launching the "GET INVOLVED' campaign to encourage greater participation on the Florida Bar level. Please read Gene's article elsewhere in this issue.

The BCBA also has many opportunities for you to contribute to your profession which include:

- Seventeen practice area sections with opportunities for CLE, speaking, and networking;
- The Young Lawyers' Section (YLS) for lawyers under the age of 36 or who have been practicing less than five years;
- Two area sections; West and Northwest, which meet monthly;
- Our Small-Solo Practice Section designed exclusively for solo practitioners or attorneys in firms of four attorneys or fewer;
- The Publicity Committee which produces the Barrister Magazine;
- Our Lawyer Referral Service which refers over 3,000 cases each year to participating attorneys.

The list of opportunities to become involved with the BCBA goes on and on…..

There are many reasons to become more active in the BCBA and The Florida Bar. In my firm, it has always been expected to join, participate and lead. In this issue, you will read about two members' views on the importance of Bar membership. And it is not too late to start. Whether you are a first year or fifty year lawyer, or somewhere in between, you can make a difference in your profession.

As we look forward to the challenges and opportunities of our profession in the coming year, I hope you will consider getting more involved with The Florida Bar AND the BCBA. Visit our website where you will find more information about what we do or contact me, our Executive Committee, Board or Staff.

In 2013, I challenge you to get it right……**GET INVOLVED.** B

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Save the Date

Annual BCBA Workers' Compensation Luncheon and Seminar

February 22, 2013
Embassy Suites Hotel
1100 SE 17th Street Hotel, Fort Lauderdale
Registration 11:30 am - 12:00 pm
Luncheon and Seminar 12:00 pm - 5:00 pm
Cocktail Reception 5:00 pm - 6:00 pm
$75 BCBA Members
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Register at www.browardbar.org/calendar/

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letter from the young lawyers' president

Meghan Clary

A new year, a new start and new resolutions are what come to mind on January 1st. Whether you are a young lawyer or not, there is always room to grow both personally and professionally. Great news — you can set out to do both by getting involved in your local bar associations.

I first became involved in the Broward County Bar Association Young Lawyers Section the first year I started practicing. In addition to meeting other young lawyers like myself, I have been meeting businessmen, Judges, prominent attorneys, and many others who have been a great source of referrals for my family law practice at Chorowski & Associates, P.A. The relationships and friendships I have built over the years of my service on the YLS Board have been a positive by-product of my service, especially since I am not from South Florida and also am not a big fan of networking!

The other benefit I have realized from being a YLS Board Member is the natural high I have felt from doing the charitable work that our organization provides to the community. Whether it is fund-raising for foster care children, helping juveniles who chose the wrong path to get back on the right track or helping underprivileged children feel the spirit of the holidays, it is such a rewarding experience to participate in these YLS charitable events. Sincerely, it is.

For instance, last month at our December luncheon, YLS presented Florida's Children First, the charitable beneficiary of our 25th Annual Charity Golf Tournament, a check for $31,000. In addition, we also gave 200 toys to Smiling Faces Forever Foundation, a charity that delivers toys to sick children in hospitals over the holidays. Next month, we will be hosting our Holiday in February event, where we have invited underprivileged children from the community to the Fort Lauderdale Museum of Science and Discovery to enjoy a day of crafts, games, food, fun and, of course, Santa Claus coming to deliver a present to each child.

So if you are not yet involved in your local bar association or know someone who isn't but should be, I strongly encourage getting involved. You can begin by joining us at our luncheon this month on January 17th at the Tower Club at noon, where Chief Judge Peter Weinstein will be giving his annual address of the State of the Circuit. The cost to attend this luncheon is $25 and you may RSVP with the BCBA at 954-764-8040.

If anyone has any questions about joining YLS or to learn more information about our events, please feel free to call me at Chorowski & Associates, P.A. at 954-525-6566, or email me at meghan@cmfamilylaw.com. You may also find a calendar of our upcoming events on the Broward Bar web site at www.browardbar.org/yls. B

Happy New Year everyone!

The Path to Unity

by Eugene Pettis, President - Elect, The Florida Bar

History provides many illustrations of the strength the legal profession has when it stands in unity on an issue. Perhaps none is as clear as the recent election cycle when there were several critical votes on the ballot pertaining to our Supreme Court Justices, Appellate Judges and Amendments to our Constitution, when lawyers across this state got engaged and stood tall in unity to protect the integrity of our judicial system and its critical role in our democracy.

I believe these moments in time provide a glimpse of the strength that the legal profession can have if we are able to get more lawyers involved. The benefits will flow not just to the profession as a whole, but to the individual participants in their professional lives and the entire community. It is undisputed that service to the Bar strengthens a lawyer's skill set, establishes a broader professional network, and provides a great platform for doing public good.

No matter what your point of interest is, there is sure to be a Florida Bar section, division or committee to meet your interests. Moreover, there are numerous opportunities in our local Bar Association and all of the voluntary Bars of this circuit that can be strengthened from your input.

The Florida Bar has had a theme of Inclusion: The Path to Unity. In order to achieve true inclusion, it must start with you! As the President-Elect of The Florida Bar, I will be making over 500 appointments starting in February, 2013 to take affect on July 1, 2013. It is my hope that through committee appointments and full membership engagement across our Bar in sections, divisions and voluntary bars, we can achieve full diversity and inclusion of all members across the full spectrum of our profession.

Therefore, I ask each of you to take 15 minutes to go on The Bar's website, "Flabar.org", and take a look at the information on the Get Involved Campaign. You will find the Inclusion logo which will take you to a webpage that allows you to click on the various committees and find out more information on which committee or other opportunity best meets your interests.

Starting December 1, 2012, the committee preference form will become available online. The form will request you to select three preferences where you would like to serve. It will also allow you to submit that document online. As it relates to sections and divisions of The Bar, there is information on this site that provides you great insight into those opportunities as well.

I want Broward County to lead the way in getting engaged across The Bar. Not only will it be rewarding to you, but will allow you to give service that can reward others. Motivational speaker Tony Robbins has said, "Life is a gift, and it offers us the privilege, opportunity and responsibility to give something back by becoming more." In my opinion, that's what this journey is all about, recognizing that it is a privilege to practice as a lawyer. Moreover, as a result of the privilege, we have an opportunity to lift others individually, our profession as a whole, and the community at large.

I'm hoping that I can count on each of you to help lead the way in getting more involved in our profession. B

Eugene K. Pettis, a co-founder of Haliczer Pettis & Schwamm, focuses his practice in the areas of medical malpractice, personal injury, commercial litigation and employment law. Mr. Pettis will be sworn in as the President of The Florida Bar in June 2013

Involvement in the BCBA: You Benefit, The Bar Benefits, and The Profession Benefits

Bruce Weihe

Unbeknownst to most members of the Broward County Bar, there is a "lifetime membership" category available to BCBA members who have been members for at least forty years, at which time the seasoned lawyer retains all rights of membership, but no longer has to pay dues. Knowing that BCBA recordkeeping may have some weaknesses – at least knowing that the Bar has no clue how many or what members have been active for forty years – in about one year I will be entitled to the benefits of lifetime membership.

This is said only to emphasize the benefits that BCBA membership provides, both long-term and for today. When I arrived in Fort Lauderdale, I was encouraged by the senior partner in my firm, Ray Ferrero, Jr., to become active in local and state bar matters, and almost forty years later, I am happy to report that I remain involved.

The philosophy of local bar involvement was strong, and the "big firms" all had active leadership roles in shaping the Broward Bar. This leadership and involvement remains strong today, as evidenced by the impressive list (see page 6 of this issue) of firms presently boasting 100% membership.

My Initial activity involved the Young Lawyers' Section, and participating with committees that allowed me to begin friendships that have lasted throughout my career, in settings inside and outside the courthouse.

Active participation in Bar sections, dealing with specialists and contemporaries in the business and banking law arenas, allowed me to share ideas and resolve questions that frequently resulted in business referrals, as well as a good bit of camaraderie.

Most recently, my involvement included serving on the Broward Bar Executive Committee, eventually serving as President in 2010-2011, which should have concluded my Bar involvement – but this year, I was pleased to speak on behalf of The Vote's in Your Court, supporting the effort to retain current Florida appellate judges.

Bar involvement has provided me with personal gratification, enjoyment, and professional advancement, and I look forward to continuing my involvement – free of dues – for years to come. B

Getting Involved - A Young Lawyer's Perspective

Toby Lebowitz

I moved to South Florida 4½ years ago to work for my current firm, Stearns Weaver Miller Weissler, Alhadeff and Sitterson, P.A. Having been born and raised in Jacksonville and worked for a large law firm there, and later clerked for a federal judge in Ocala, I knew very few attorneys in Fort Lauderdale. My firm peers knew everyone in this "big town." No doubt, these relationships had been built over time, but I needed to start somewhere.

After my first few weeks of work, I met a young lawyer who worked at another law firm in the same building. We hit it off, and she encouraged me to not only join the Broward County Bar Association but to also become active in the Young Lawyers Section. After introducing myself to several members of the section, I ran for a Board Member position. I am currently serving my third year as a Board Member and can say that I have met hundreds of young lawyers, some of whom have referred me business and, importantly, some of whom are now close friends.

I am also very active in the Bench and Bar Committee. Working on this committee I have met many members of the Bench, some of whom I litigate before. As a young lawyer, it is so much easier to argue a motion in front of a Judge that you have also had a casual conversation with outside of court.

Through my involvement in the BCBA, I have learned that this town is not so big after all! B

Special Needs Planning For Any Age

by Arlene Lakin

"Special needs planning" by attorneys usually implies legal work performed on behalf of a person with special needs, e.g., developmental disabilities (mental retardation, Down Syndrome, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome). But "special needs" also entails legal work for any person in need of special planning due to infirmities of the aged, mental health illness, or other serious medical disabilities. And such planning is for everyone because we never know when a serious injury or illness may befall us. Most of the planning is intended to avoid guardianship, remain (or become) eligible for means tested public benefits, and possibly avoid the costs of subsequent probate administration.

When my son came home from college for his first Christmas break, he was proud to show me his picture from the Duke University newspaper wherein he was photographed leaping off the steps of the Duke library, using roller blades. He was not wearing a helmet or shin guards, and I gave him the "Mommy lecture," telling him that he could have killed himself or become seriously injured. And then I realized that my 18 year old son was an adult under Florida law. He had a small bank account that we funded, but it was only in his name, hence, a potential guardianship or probate asset. He had never done any advance care directives, and if he were seriously injured, a guardianship would have been required. Granted, I could do his probate or his guardianship, but no one wants unnecessary complexity and expense. So, based on the facts, I prepared advance care directives for him

to sign - a durable power of attorney, a health care surrogate designation, and a living will. Because his only asset was a small bank account, my husband and I simply added our names to the account, thereby avoiding possible guardianship or even a probate. This is a practical example of "special needs," planning for someone who may (or may not) have "special needs" in the future.

Our other son was born with multiple congenital anomalies including profound mental retardation. When he was 18 years of age, we filed for guardianship so we could retain legal authority over his care. He never had capacity, and his impairment was profound, so my husband and I filed for plenary ("complete") control of his person and property. This is an example of planning for someone who currently has special needs.

In the elder law practice, I am always surprised to see how many seniors come to my office who have never done any basic documents or planning to avoid guardianship or probate. Frequently, the senior assumes that their adult child has brought them in for a consultation because they are terminally ill, which is usually not the case. It is just that the adult child has identified that the aging parent is declining, may need assistance including the possibility of placement in an assisted living facility (ALF) or a skilled nursing facility (SNF). But the senior has never executed basic legal documents, e.g., advance care directives, nor has the senior taken out long term care insurance to pay for their care at home, in an ALF, or in a SNF. If their

incapacity is of cognition, it may be too late to execute any legal documents, and now the family is looking at guardianship. Or, the senior is now too old and too sick to qualify for (or afford) long term care insurance which could cover the costs of home care, or placement in an ALF or in a SNF.

Frequently, I turn to their middle aged children and learn that they, too, have never seen a qualified attorney to assist them in planning for their special needs, which can occur in an instant. Reversals of health and finances can change dramatically and suddenly, so persons of all ages need to prepare for these contingencies. The concept of a living will, for example, was driven by tragedies that befell young people.

Special needs trusts (SNT) are appropriate when a family member has special needs and is receiving means-tested governmental benefits such as Medicaid or SSI. Other family members (e.g., the parents, grandparents, siblings, etc.) should consider a third party SNT so their disabled family member remains eligible for means-tested governmental benefits. These SNT's can simply be a death provision under a Will or a Trust, or it may be a free-standing SNT which may be funded today and perpetually. Such free-standing third party SNT's also serve as an available depository for estate assets by other families who would like to financially assist their disabled family member but not jeopardize his or her governmental benefits.

If the disabled individual comes into money due to an unexpected inheritance or a personal injury settlement, the disabled individual will lose their governmental benefits, as most programs allow no more than $ 2,000.00 in assets. Now we are looking at the first party (self-settled) SNT for the individual. Depending on the amount of money (and the age of the individual), the excess funds could be deposited into a pooled trust ("d4C" SNT), or else, the disabled individual may need to have a "d4A" SNT established on their behalf by a parent, grandparent, guardian, or the court.

It is imperative that everyone consider setting up the appropriate documents for themselves and for anyone they care about whom now has "special needs." One never knows what the future holds in store for us. B

Ms. Lakin is the Co-Chair of the BCBA's Elder Law Section. She may be reached at 954/975-5159 or LakinEsqLaw@aol.com or via her website www.ArleneLakin.com

Recent Developments in the Law

by Nancy Little Hoffmann

Civil Procedure/Jury Trial

The Fourth District has held that once a jury trial has been requested, that demand remains viable even if the pleading that contained it has been stricken Wolfe v. Smilack, 37 Fla. L. Weekly D2428 (Fla. 4th DCA October 17, 2012).

Evidence/Former Testimony

Affirming a defense verdict in an asbestos case, the Fourth District discussed the plaintiff's argument that the manufacturers should not have been allowed to present former testimony of presently unavailable witnesses who had testified in earlier asbestos cases. The court concluded that section 90.804 does not require strict privity between a party and his "predecessor in interest," as long as the party in the former suit had a like motive to cross examine the witness about the same matter and had an adequate opportunity to do so. _, 37 Fla. L. Weekly D2503 (Fla. 4th DCA October 24, 2012).

Negligent Entrustment

After valet service returned keys of car to an obviously intoxicated driver, whose passenger was killed in an accident, her estate sued alleging negligent entrustment. The Second District affirmed dismissal, holding there was no duty to withhold the keys from the owner under that theory. Weber v. Marino Parking Systems, Inc., 37 Fla. L. Weekly D2576 (Fla. 2d DCA November 2, 2012)..

Settlement Agreement

Enforcement of a sinkhole damage settlement was reversed, because the insured had demanded two checks, one for the insured and mortgagee and the other for the insured, attorney, and public adjuster. Because the insurer issued only one check, there was no enforceable settlement. Lunas v. Cooperative de Seguros, 37 Fla. L. Weekly D2568 (Fla. 2d DCA November 2, 2012).

Tobacco Litigation

The courts have recently issued a number of Engle progeny opinions:

R.J. Reynolds Tobacco Co. v. Jewett, 37 Fla. L. Weekly D2564 (Fla. 1st DCA Nov. 2, 2012) [reversed damages award for new trial; trial court erred in failing to give special limitation of actions instruction as to meaning of "exercise of reasonable care"].

R. J. Reynolds Tobacco Co. v. Koballa, 37 Fla. L. Weekly D2532 (Fla. 5th DCA October 26, 2012)[certified to supreme court the question of whether accepting the phase-one findings in Engle as res judicata violates the tobacco companies' due process rights].

Soffer v. R. J. Reynolds Tobacco Co., 37 Fla. L. Weekly D2498 (Fla. 1st DCA October 24, 2012) [certified the question of whether members of the Engle class are entitled to pursue an award of punitive damages under theories of negligence or strict liability].

Philip Morris USA, Inc. v. Barbanell, 37 Fla. L. Weekly D2441 (Fla. 4th DCA October 17, 2012) [on rehearing, changed ruling and affirmed denial of a directed verdict for the defense on statute of limitation grounds, rejecting defense argument that the "first-injury rule" should apply to bar the claim]. 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.

Congratulations! to Manjula Kalidindi, Esq.

Broward Lawyers Care Attorney of the Month

Broward Lawyers Care (BLC) has announced Manjula Kalidindi as the November 2012 Attorney of the Month. Ms. Kalidindi earned her law degree from Hamline University School of Law in St. Paul, MN. She is a member of the Florida Bar and the American Immigration Lawyers Association and is well versed in all aspects of immigration law.

Kalidindi has written various immigration related articles and has given seminars on the topic. She also is the Director of Sahara of South Florida, a non- profit organization established in 2004 that helps victims of domestic violence in Asian communities.

Ms. Kalidindi is a solo practitioner located in Plantation, and has been practicing immigration law since 1993. She joined Broward Lawyers Care in 2000 and has been assisting our clients since then. Recently, she accepted three VAWA (Violence Against Women Act) pro bono immigration cases. By providing high-quality legal representation to our clients, Ms. Kalidindi is making positive contributions to the community and enhancing the lives of low income women and children. B

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Legislative Affairs Presidents' Reception

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Membership Drawing Winner

(1) Representative James W. "Jim" Waldman, BCBA President Deborah FitzGerald, Representative Elaine J. Schwartz, Senator Eleanor Sobel, and Representative Joseph A. "Joe" Gibbons at the BCBA's Legislative Affairs Presidents' Reception at the Renaissance Hotel on November 28. (2) President Elect Alan Fishman and Treasurer John Jordan. (3) Membership Co-Chairperson Jeff Harris presents BCBA member W. Earl Hall with a new Kindle Fire. Mr. Hall was the winner of the membership drawing that took place in October.

Holiday Party

(1) YLS President Meghan Clary, Publicity & Publications Chairperson Edwina Kessler, Board Member Laura Varela, and Board Member Michael Kean. (2) Legal Aid Development Officer/Pro Bono Coordinator Melisa Malone, Board Member Jay Kim, Chief Judge Peter Weinstein, and Board Member Gary Singer. (3) Board Member Ken Hassett and Board Member Jeff Harris (4) Judge Ken Gottlieb, Professionalism Co-Chairperson Andrea Gundersen, Beverly Vesel, and Judge Sharon Zeller. (5) Board Member Michael Fischler and Board Member Jerry Siegel. (6) (L to R)Stuart House, Lynn Britt, and Board Member Michael Vines.

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Judicial Division Changes

Circuit Court

Division ~ Judge
41 ~ Timothy Lawerence Bailey
FG ~ Marc H. Gold
13 ~ William W. Haury, Jr.
09 ~ John T. Luzzo
05 ~ Thomas M. Lynch, IV
11 ~ Sandra Perlman
FR/FZ ~ Ari Abraham Porth
JD ~ Carlos S. Rebollo
14 ~ Carlos Augusto Rodriguez
FE ~ Lynn Rosenthal
FB ~ Michael Ian Rothschild
42 ~ Laura Marie Watson

County Court

Division ~ Judge
WB ~ Eric M. Beller
57/MV ~ Kathleen Mary McHugh
SA ~ Ian Richards
52 ~ Stacy Ross
MP ~ Olga Maria Gonzalez-Levine

Save the Date

Judicial Robing Ceremony

January 18, 2013

1:00 pm

Broward County Courthouse
201 SE 6th Street
Fort Lauderdale
3rd Floor Jury Assembly Room

No RSVP Necessary

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calendar of events

January

1 **New Year's Day**

4 **Mentor/Mentee Lunch**
12:00 pm - 1:00 pm
Contact: Braulio Rosa
braulio@browardbar.org

5 **8-Hour Adult Guardianship Class**
9:00 am - 5:00 pm
Approved by Florida Bar for CLE credits
Contact: Tish at 954.832.3617

12 **4-Hour Minor Guardianship Class**
9:00 am - 1:00 pm
Approved by Florida Bar for CLE credits
Contact: Tish at 954.832.3617

16 **Small/Solo Networking Dinner**
6:00 pm - 8:00 pm
Venue: Dave & Buster's, 3000 Oakwood Blvd., Hollywood
Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
$35 BCBA Members
$50 Non-Members
$5 Additional for Walk-ins

17 **YLS Luncheon**
12:00 pm
Speaker: Chief Judge Peter Weinstein - Annual State of the Circuit
Contact: BCBA at 954.764.8040
$25

18 **Northwest Area Section Luncheon**
12:00 pm - 1:30 pm
Venue: Mythos Greek Taverna, 2864 N. University Drive, Coral Springs
Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
$25 BCBA Members
$30 Non-Members
$5 Additional for Walk-ins

18 **Judicial Robing Ceremony**
1:00 pm - 4:00 pm
Venue: Broward County Courthouse Jury Assembly Room
Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
No RSVP necessary.

21 **Martin Luther King Day**

24 **West Broward Section CLE Luncheon with Judge Ellen Feld**
12:00 pm - 1:30 pm
Topic on Professionalism
Venue: Plantation Preserve Golf Course, 7050 W. Broward Blvd., Plantation
Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
$25 in advance / $30 at the door

24 **"Bar at The Bar" Networking Happy Hour**
5:00 pm - 8:00 pm
Venue: Chima Steakhouse, 2400 E. Las Olas Blvd.., Fort Lauderdale
Contact: Traci Lewis at 954.832.3618 or traci@browardbar.org
No Cost to Attend, No RSVP
Complimentary appetizers & drink specials

Events Coming in February
1 Mentor/Mentee Breakfast
2 8-Hour Adult Guardianship Class
22 Workers' Compensation Annual Seminar
28 West Broward Luncheon with Judge Carlos Rodriguez

Unless otherwise noted, meetings are held at BCBA offices.

To register for all BCBA events, go to: www.browardbar.org/calendar