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NOVEMBER 2013

Legislative Affairs Presidents' Reception:  
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## letter from the president



*Alan S. Fishman*

Your Broward County Bar Association serves many purposes. We hold the Bench and Bar Convention, which many of you just attended. On a regular basis, we provide interesting programs and continuing education to our members through the practice sections and CLEs. We also serve as the link between lawyers and the community, the judiciary, the administration of the courts, and the Clerk of Courts, as well as the link between our members and the local law schools, the other voluntary bar associations, and Legal Aid. Additionally, our Professionalism

Committee helps to insure the integrity of our profession.

This month I would like to highlight another very important role your Bar Association takes very seriously - our relationship with the Broward County members of the Florida House and Senate. In every area of practice, the laws passed in Tallahassee impact the practice of law, the lives of attorneys, and the lives of our clients.

On November 21, the Legislative Affairs Committee of the BCBA, led by Alan Pascal and Michael Leader, will host its annual reception for Broward's legislators at Mancini's on Law Olas Blvd. at 5:30 PM. Each Broward legislator has been personally invited and we are hopeful that most, if not all of them, will attend. The evening will feature, for the nominal cost of \$15 for our members and \$20 for nonmembers of the BCBA, very nice hors d'oeuvres (an important goal of my Presidency) and drinks. Our judges are also invited to attend. The restaurant will provide a 10% discount on your dinner bill, should you choose to stay and dine.

This event will provide a unique opportunity for us to convey to our legislators our appreciation for the work they have done in the past year for the legal community. Even more importantly, it will provide all who attend with the opportunity to convey to them, live and in person, our opinions on the important matters they will be considering this coming year that will impact the legal community and our clients. You, our members, including our judges, represent every area of law and have unique concerns that affect your particular legal interests. It is critical that as many of you as are able attend this event and that you speak to as many of the legislators as possible. Let them know your name, your opinions, and that you will be contacting them as the session unfolds to help them keep their fingers on the pulse of their constituents.

We who live in South Florida face increasing threats to our practices and the rights of our clients from the rural legislators who too often get their way in crucial legislation. Give our representatives the support and ideas they need to protect us by being an active part of this important event. **B**





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Fowler White Boggs is proud to welcome Mary Beth Ricke as an associate to the firm's Fort Lauderdale office.

Mary Beth Ricke will practice in the firm's Employment Practice Group and concentrate her practice in the areas of labor and employment law, focusing on sexual harassment matters, FMLA cases, FLSA overtime, wrongful termination, wage, and unemployment claims. She received her J.D., cum laude, from Washington University School of Law in St. Louis, where she served as the Chief Executive Notes and Projects Editor for the Washington University Journal of Law & Policy. She earned her B.A. in History, cum laude, from Rhodes College.



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## letter from the young lawyers' president

### Marissa J. Pullano, President

"Let us remember that, as much has been given us, much will be expected from us, and that true homage comes from the heart as well as from the lips, and shows itself in deeds." ~Theodore Roosevelt

How appropriate it is—with Thanksgiving just a few weeks away—for the Young Lawyers Section to express its deepest appreciation and gratitude to the lawyers, businesses, judges and members of our community who came together to support our Twenty-Sixth Annual Charity Golf Tournament. Although this article is being written before the final numbers have been tallied, the support for this year's tournament was phenomenal, allowing us to fill the course weeks before the event. On behalf of our organization and our charitable beneficiary, HANDY, thank you so much for your generosity and for making this year's tournament such a success. An additional debt of gratitude to the law firm of Carner, Newmark, and Cohen for their generous support as this year's exclusive title sponsor, and to our annual sponsors, Sabadell United Bank, US Legal Support and The Eppy Group, who make our charitable endeavors possible.

In addition, we cannot go without thanking the speakers of our October luncheon, Judge Feld and Judge Levey Cohen who presented "A View From the Bench: The Importance of Professionalism" Judge Levey Cohen has served on the County Court Professionalism Committee statewide since 2011. We appreciate your putting together this informative presentation on such an important issue for our legal community.

This month we have other events lined up for you to look forward to, starting with our Happy Hour and Networking Event with the South Palm Beach County Bar Association's Young Lawyers Section on November 7, 2013 at 6 pm at Alpine Jaguar located at 6606 North Andrews Avenue, Fort Lauderdale. The Joint Happy Hour and Networking Event will benefit Boca Helping Hands, a community based 501(c)(3) organization. The event is free to all BCBA and SPBCBA members. Voluntary contributions will be collected and would be greatly appreciated. Two drink tickets will be available for beer and wine as well as complimentary hors d'oeuvres and valet parking. Members of the BCBA and SPBCBA will be volunteering at Boca Helping Hands on Saturday, November 16, 2013. If you are interested in volunteering with YLS at Boca Helping Hands, please contact me at marissa.pullano@brinkleymorgan.com no later than November 5, 2013.

We will also continue our outreach to the Juvenile Diversion Record Expunction Workshop on November 14, 2013 from 5:30 pm – 8 pm at the Urban League in Fort Lauderdale (located at 560 NW 27th Avenue, Fort Lauderdale, Florida 33311). The Workshop assists youth who have successfully completed a diversion program within the last six (6) months expunge their record. The Record Expunction Workshop is part of the Broward Diversion Coalition led by Assistant State Attorney Maria Schneider which offers an array of services to non-violent, first-time misdemeanor offenders in an effort to better outcomes for at-risk youth.

On behalf of the Young Lawyers Section, we wish you a very Happy Thanksgiving, and thank you for continued support of YLS and our events. Much has been given to us as members of the Florida Bar, the Broward County Bar Association, and as members of our respective communities, may we continue to pay forward our blessings in a way that benefits our South Florida legal community and the most vulnerable members of our population.

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 November programs and events.

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](http://www.browardbar.org/yls). **B**

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# The Florida Bar Foundation provides leadership and funding for justice

*By Adele I. Stone*

As lawyers we share a commitment to justice. The Florida Bar Foundation, a 501(c)(3) public charity, turns that commitment into action through its funding of programs that provide access to justice for Floridians living in poverty. Through our support of The Florida Bar Foundation, we can demonstrate our belief that the justice system works best when it works for everyone - regardless of his or her economic status.

Locally, The Florida Bar Foundation is a vital funding source for the Legal Aid Service of Broward County, as well as Coast to Coast Legal Aid of South Florida, which also serves Broward County. Through its improvements in the Administration of Justice Grant Program, the Foundation also helps fund special projects and initiatives across the state such as the Innocence Project of Florida, which has succeeded in exonerating 13 wrongfully imprisoned Floridians using DNA evidence since 2003, as well as the Florida Law Related Education Association, which teaches Florida students about democracy and the American legal system.

If you visit the Foundation's website at [www.floridabarfoundation.org](http://www.floridabarfoundation.org), you will be impressed with the number and diversity of the grantees assisted by the Foundation.

Since 1981, the primary source of funding for The Florida Bar Foundation has been Florida's Interest on Trust Accounts (IOTA) Program, which has enabled the Foundation to provide about a third of the total funding for civil legal aid organizations in Florida. Over the past 32 years, Florida's IOTA Program has distributed more than \$425 million to help hundreds of thousands of poor people receive critically needed free civil legal assistance throughout Florida.

The Foundation also funds initiatives such as salary

supplementation and loan repayment programs that help attract and retain legal aid attorneys. The salary supplementation grant for the Legal Aid Service of Broward County was \$281,600 in 2012-13.

In recent years, due to the impact of extremely low bank interest rates on IOTA revenue, the Foundation has had to drastically reduce its grants. Whereas in 2010, the Legal Aid Service of Broward County received a Foundation general support grant of \$1,285,642 to provide legal services, as well as a \$139,050 Foundation grant specifically for Children's Legal Services, in 2013 those grant amounts were \$584,967 and \$60,714, respectively. Still, the Foundation provided a quarter of overall legal aid funding statewide in 2012.

I urge you to take a few minutes to learn more about The Florida Bar Foundation, an organization in which all of us, as Florida attorneys, can take tremendous pride, and one that brings critical resources back to our community. If you have questions about the Foundation, feel free to ask me or one of The Florida Bar Foundation's other past presidents from Broward County, Mickey Cummings or Terry Russell, or current board member Juliette Lippman. **B**



*Adele I. Stone  
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# Ethics in Government Needed Now More Than Ever

*By John Rayson, Esq.*

The old adage that “ethics is what you do when no one is looking” still rings true. So does “to err is human,” yet every time I think of throwing a gum wrapper out of a car window, I can’t. I throw it on the rear passenger floor. On Fridays I clean my rear car floor by putting any litter gathered there into the garbage can. Ethics and ethical training are essential for all lawyers and for elected officials. I have served in both capacities. I’ve been an attorney for 39 years and served a third of that time as an elected official. I am a member of three state bars – Illinois 1974, Florida 1975 and Georgia 2011. When I applied for comity acceptance to the Georgia Bar based on my still active Illinois license since Florida does not have comity with Georgia, I was surprised when the Georgia Bar told me that I would have to take the ethics portion of the Georgia Bar exam since it was not offered when I took the Illinois and Florida Bars. Further I was told that although a minimum passing score for the MPRE was 70 in Georgia, I would be required to score 80 which is the minimum passing grade in Illinois. I decided to get some MPRE study guides and stud-

ied on my own. I found it more difficult than I thought it would be, but I learned a lot. I was proud of the 109 score that allowed me to become a member of the Georgia Bar. Recently Alan S. Fishman, President of the Broward County Bar Association, asked me to chair the government section. I accepted and quickly found out I would be asked to write an article for the *The Barrister* and present a course on the Broward County Ethics Ordinance at the Bench and Bar Convention just days away from the submission of this article.

In the legislature this was called “jumping into the tank.”

I have come to realize that it is more important than ever for lawyers to be trained continually in ethics. It is shameful to read about attorney elected officials being arrested, lawyers helping clients hide ill-gotten assets and state, county and local officials prosecuted for crimes and ethical lapses. A former police officer recently asked me, in a discussion about ethics, “Do you know what it’s like to open a trunk and find \$500,000 in cash?” Some set of facts, for sure,

but we all know right from wrong and we know we cannot compromise ourselves.

On October 11, 2011, the Broward County Commission enacted the Code of Ethics for Elected Officials which became effective January 2, 2012. One Commissioner had gone to jail and a former Commissioner was charged in an honest services case. The citizens of Broward County overwhelmingly voted for the creation of the Office of Inspector General to whom investigatory powers were given to respond to complaints of elected official misconduct.

The Broward County ethics ordinance applies to individuals serving as members of the governing bodies of municipalities within Broward County as well as the County Commission. It prohibits Broward County elected officials from lobbying within Broward County. Elected officials may not accept any gifts from lobbyists or vendors. Gifts from other sources given to an elected official may not be in excess of \$50 and are subject to reporting requirements of the State Ethics Law, Florida Statute



112.3148. Immediate family members or staff of an elected official may not act as lobbyists before any governing body in Broward County either. Under the County Ordinance all outside employment must also be disclosed and filed for public inspection on an annual basis. Lobbyists are required to log in prior to meeting with elected officials and each communication must be disclosed within 10 business days and before any vote on the subject of the lobbying.

There are new rules for fundraising. No municipal or County staff may be used for campaign solicitations. Although elected officials may solicit for charities there must not be any direct or indirect benefit between the solicitor and the solicited.

Campaign reports and financial disclosures must be filed for public in-

spection. Elected officials are no longer allowed to serve on municipal procurement committees. Financial Disclosure is required to be filed annually with the Supervisor of Elections.

In my current capacity as Davie Town Attorney, I am authorized to issue ethics advisory opinions as are all municipal attorneys. If the elected official acts in accordance with the opinion provided by their municipal attorney, he or she will not be in violation of the Broward County Elected Official Code of Ethics. These are known as safe harbor opinions and municipal attorneys are keen on providing opinions which have merit and legal support

Finally, the County Ordinance requires that newly elected officials receive at least 4 hours of training

on the Sunshine Law, public records and ethics within 120 days after taking office. Thereafter, elected officials are required to receive at least 8 hours of continued training on public service ethics on an annual basis. Make no mistake these are substantive and serious changes to our local law. I believe they should not only be welcomed but will provide a clear standard which will result in more ethical government.



*John Rayson is a graduate of the University of Rochester with a BA in History, 1971, and a graduate of Case Western Reserve University School of Law, JD 1974. He is Town Attorney for Davie, Florida, and chairs the Government Section of the Broward County Bar Association.*

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## YLS Golf Raises \$35,000 for HANDY: Most Ever!



L to R: Jeff Wank (YLS Golf Tournament Chair), Beth Bryant (Director of Development, HANDY), Kirk Brown (Sr. VP Programs & Business Development, HANDY), and Lauren Alperstein (YLS Golf Tournament Co-Chair)



L to R: Matt Williams, Bart Ostrzenski (Past President YLS 2011-2012), David Hirschberg (Past YLS President 2010-2011), and Steven Orchard



L to R, Judge Kenneth Gillespie, Judge Andrew Siegel, Judge Jack Tuter, and Judge Jeffrey Streitfeld



L to R: Beth Bryant (Director of Development, HANDY), Scott Newmark, Carner, Newmark & Cohen Exclusive Title Sponsor for 26th Annual YLS Golf Tournament, Kirk Brown (Sr. VP of Programs & Business Development, HANDY), and Jeff Wank (YLS Golf Tournament Chair)



Photo Credit: Dr. Tom Latrielle  
L to R front row: Kelly Vogt (YLS Board Member), Liza Smoker Faw (YLS President-Elect), Tobi Lebowitz (YLS Treasurer)  
L to R back row: Marissa Pullano (YLS President), Patrick Douglas (YLS Board Member)

Photo Credit: Dr. Tom Latrielle  
L to R: Anthony Quackenbush (YLS Board Member), Evan Goldman (CEO, HANDY)





# RECENT DEVELOPMENTS IN THE LAW



*By Nancy Little Hoffman*

## **Fact that Medical Malpractice Defendant Repeatedly Failed Board Exams Held Irrelevant.**

A trial court judge did not abuse his discretion in disallowing evidence that a physician sued for malpractice repeatedly failed board certification exams. The Second District held that although such evidence would be relevant had he testified as an expert, it was not relevant to the question of his negligent treatment of the plaintiff. However, the defense verdict was reversed because the judge revealed his prejudice against the plaintiff by writing a derogatory note about her. The note showed his bias, even though not communicated to jury, and the trial was thus unfair. *M.B. v. S.P.*, 38 Fla. L. Weekly D2192 (Fla. 2d DCA Oct. 18, 2013).

## **Law Firm Should Not Have Been Disqualified Despite Having Access to Irrelevant Confidential Information About Plaintiffs.**

In an action by former Publix employees against managers who allegedly conspired to have them fired, the trial court disqualified the defendants' law firm because of its access to certain information in their files as a result of the firm's former representation of Publix in an employment discrimination case. The Fourth District quashed that ruling,

holding that the information, although confidential and irrelevant, was not the equivalent of privileged attorney-client information, and that the employees' privacy rights could have been protected by less drastic means. *Caruso v. Knight*, 38 Fla. L. Weekly D2171 (Fla. 4th DCA Oct. 16, 2013).

## **Default-Based Jury Verdict Set Aside Where Complaint Failed to State Cause of Action.**

After the defendant in a premises liability case failed to answer, the plaintiff who had been injured in a fall on the property obtained a default and went to trial, receiving a million-dollar jury verdict and judgment. However, because there was evidence that the defendant had sold the property before the accident occurred, the Third District held that the complaint did not state a cause of action, and that the defendant's motions to vacate the default and default judgment should have been granted. *Mauna Loa Investments, LLC v. Santiago*, 38 Fla. L. Weekly D2176 (Fla. 3d DCA Oct. 16, 2013).

## **Second District Certifies Question: Can Engle Progeny Plaintiff Seek Punitive Damages on Negligence and Strict Liability Claims?**

Two defendant tobacco companies ap-

pealed a judgment of \$1 million in compensatory damages and \$1.5 million in punitive damages, raising various issues. The Second District affirmed, rejecting the defense argument that the res judicata effect of the Engle Phase I findings, which included dismissal of punitive damage claims by the original plaintiffs, precluded individual plaintiffs from thereafter seeking punitive damages on their negligence and strict liability claims. Placing itself in conflict with decisions from the First and Fourth DCAs, the Second DCA held that plaintiffs were not barred from seeking such damages. It certified conflict with those decisions and also certified the question to the Florida Supreme Court. *Philip Morris USA v. Hallgren*, 38 Fla. L. Weekly D2189 (Fla. 2d DCA Oct. 18, 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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Robin Moselle • Charles A. Morehead, III**

**Legal Aid For the Public Good  
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**Commitment to Justice Award to Lisa Goldberg:** (L to R) Barbara Prager (Exec. Director Coast to Coast Legal Aid), Lisa Goldberg



(Supervising Attorney Family Law Unit Coast to Coast), Morrie Levine (Chairman Legal Aid & Coast to Coast), Anthony Karrat (Exec. Director Legal Aid)

**Attorney of the Year Award to David Bazerman:** (L to R) Barbara Prager (Executive Director Coast to Coast Legal Aid), Morrie Levine (Chairman Legal Aid & Coast to Coast), David S. Bazerman (Director of the Tracey McPharlin Pro Bono Dependency Project),



Anthony Karrat (Executive Director Legal Aid)

**Family Law Award to Jorge E. Hurtado:** (L to R) Morrie Levine (Chairman Legal Aid & Coast to Coast), Barbara Prager (Executive Director Coast to Coast Legal Aid), Jorge E. Hurtado (Jorge E. Hurtado, P.A.), Anthony Karrat (Executive Director Legal Aid)



**Law Firm of the Year to GrayRobinson, P.A.:** (L to R) Morrie Levine (Chairman Legal Aid & Coast to Coast), Barbara Prager (Executive Director Coast to Coast Legal Aid), Tom Loffredo (GrayRobinson Managing Partner), Anthony Karrat (Executive Director Legal Aid)



**Russell E. Carlisle Advocacy Award to The Honorable Arthur J. England, Jr., (posthumously):** (L to R) Russell E. Carlisle, Andrea England, and Karen England.

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## November

## calendar of events

### **2 8 Hour Adult Guardianship Class** **9:00 am – 5:00 pm Events**

**Cost:** \$180

**Description:** Attorneys Welcome, approved by the Florida Bar for CLE credits

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

**Contact:** Tish 954-832-3617

### **6 Breaking Impasse & the Martial Arts: Advancing as a Negotiator!** **4:00 pm - 6:00 pm Featured Education**

**Cost:** \$15 BCBA Members; \$25 Non-BCBA Members

**Description:** This highly interactive seminar trains litigators and mediators in conflict resolution from the perspective of an experienced mediator and martial artist. Learn how to defend yourself and your clients from the dreaded "impasse."

**Address:** BCBA Conference Center, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316

**Contact:** Bonnie Ross [bonnie@browardbar.org](mailto:bonnie@browardbar.org)

### **8 New Attorney Breakfast Events**

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

**Address:** 110 Tower Club, Fort Lauderdale, FL

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org)

### **19 "Bar at the Bar" Networking Event** **5:00 pm - 8:00 pm Events**

**No registration Fee**

**Description:** Join us!!! First Drink Free and Light Appetizers will be served.

**Address:** Tap42, 1411 South Andrews Ave, Fort Lauderdale

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org) or 954-832-3618

### **20 Solo/Small Networking Dinner** **6:00 pm - 8:00 pm**

**Cost:** \$35 BCBA Members, \$50 Non-Members, \$5 additional for walk-ins

**Address:** Dave & Buster's, 3000 Oakwood Blvd. Hollywood, FL

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org) or 954-832-3618

### **21 West Broward Section CLE Luncheon** **12:00 pm - 1:30 pm**

**Description:** From Frye to Daubert: The Recent Amendment to §702 of the Florida Evidence Code presented by The Honorable Martin Bidwell

**Cost:** \$25, \$30 at the door

**Address:** Plantation Preserve Golf Course, 7050 W. Broward Boulevard, Plantation, FL

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org) or 954-832-3618

### **21 Legislative Affairs Presidents' Reception**

**6:00 pm - 8:00 pm**

**Description:** Enjoy an evening of fine hors d'oeuvres, drinks, and good company. A networking event introducing current members of the Broward County Legislative Delegation & BCBA Officers and Board Members.

**Cost:** \$15 BCBA Members & Dignitaries  
\$20 Non-BCBA Members

**Address:** Mancinis on Las Olas, 401 East Las Olas Boulevard #150, Fort Lauderdale, Florida 33301

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org) or 954-832-3618

### **22 An Introduction To The New Loss Mitigation Mediation (LMM) Program**

**12:00 pm - 1:30 pm**

**Cost:** \$15 BCBA Members; \$25 Non-BCBA Members

**Address:** BCBA Conference Center

**Contact:** Bonnie Ross at [bonnie@browardbar.org](mailto:bonnie@browardbar.org) or 954-832-3618

