

# BROWARD COUNTY BAR ASSOCIATION BARRISTER

OCTOBER 2014

## FIRST ANNUAL SOUTHEAST LEGAL MALPRACTICE SUMMIT



**Friday, October 10**  
**8:30 am – 3:30 pm**  
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*John G. Jordan*

The Ice Bucket Challenge has been an overnight phenomenon. It raised awareness of Amyotrophic Lateral Sclerosis (ALS) and about \$110 Million Dollars in the last few months. Many family and friends of ALS patients accepted the challenge, pouring cold ice and water on their heads, in front of their cell phones, posting the videos on their social media network accounts and donating money to ALS research. Celebrities received publicity by following suit and challenging other celebrities. It is a great example of how social media can be used for a good cause.

I have a personal connection to this terrible neurological disease called ALS, also known as Lou

Gehrig Disease, named after the great New York Yankee baseball player who contracted the disease at the height of his career. He announced his retirement to the astonishment of the entire sports world. I am a caretaker for my wife, Diane, who has ALS. She has lost her ability to talk, to eat food and to walk. As a former elementary and pre-school computer teacher and graphic artist, she uses her computer skills to join in the conversation, using her iPad to speak. She is an amazing woman who still loves to laugh and enjoy the company of her family. I am glad for the exposure and awareness of ALS and for the funds that have been raised for research to find cure.

My long time heroine has been my sister-in-law, Andrea Kessler, an attorney. She is a 20 year survivor of a double transplant of a kidney and pancreas because of diabetes. This was the first double transplant in Florida. Very risky. Very experimental. Very trying on the body. Very scary. Andrea, her husband, Thomas Jordan, her mother and her sisters and fellow attorneys, Edwina and Paula, accepted the challenges given to Andrea. She had a second kidney transplant when the first transplanted kidney was failing. Now, by the grace of God and wonderful doctors, she is practicing full time as a partner at Catri, Holton, Kessler and Kessler P.A.

Another heroine was Judge Susan Aramony. She battled health issues for many years. She continued to sit on the bench and address family law matters with great compassion and insight. She passed away about a year and a half ago. I am inspired by these outstanding individuals. They have made the best of living with these terrible diseases. Catastrophic illnesses like these do not discriminate; they attack everyone, including attorneys. We all do the best we can with what is thrown our way and we go forward.

We can take heart and do what we can to help others that are struggling. We can get involved and donate to organizations that improve these conditions. Our immediate benefit is that good feeling we get when we help others.

At his farewell, on July 4, 1939, at Yankee Stadium, Lou Gehrig captured these sentiments in a succinct and sincere manner when he said, "Fans for the past two weeks have been reading about the bad break that I got. Yet, today, I consider myself the luckiest man on the face of the earth." **B**

# WHERE IN THE WORLD IS THE BARRISTER?!?



**Howard Friedman** of Fischler & Friedman, P.A. on the summit of Mount Moran in Grand Teton National Park located in western Wyoming on August 3rd.



**CC Traina and Chris Traina** of the newly rebranded intellectual property firm Garrity Traina, P.A., enjoying a peaceful sunset while nestled in North Carolina's Smoky Mountains.

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## The Broward County Bar Association's Criminal Law Section *presents*

Bruce Rogow's Experience in  
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*plus* an Ethics Presentation with Perspectives from  
The Judge, Prosecuting Attorney and Defense Attorney

**Friday, October 17, 2014**

**Time:** 1:00 pm - 4:00 pm

**Cost:** No Charge; Includes 3 CLE (applied for)

**Venue:** Broward County Courthouse Jury Room

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**For seminar agenda and registration, visit:**  
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## letter from the young lawyers' president



*Liza Smoker Faw*

Last month, the Young Lawyers Section of the Broward County Bar ("YLS") recognized the many men and women who graciously serve Broward daily in the public sector. On September 11th, a special event was held at the Public House in appreciation of the public sector and especially our government attorneys and firefighters. It was an event to remember, and \$1,000.00 was raised for Davie Fire Rescue Benevolent Association. A big thank you to the event's title sponsors, Alpine Jaguar, and firm sponsors, Ellsley Sobol and Rogers, Morris & Ziegler LLP, who made this event possible. Todd Baker, Esq., did a wonderful job heading up this event, and we were happy so many government attorneys and firefighters attended.

Another highlight for September was our first quarterly Breakfast with the Judiciary of the year. These breakfasts are a favorite event for our Young Lawyers and provide an opportunity to meet our Judges in a more casual setting. We also enjoyed meeting our newly elected Judges at this event. Thank you to Eric Rosen, Esq., for coordinating these Breakfasts and to Coffey Trial Law who sponsored this event.

October is going to be a great month with many events, further details of which can be found on our online calendar at [www.browardbar.org/YLS](http://www.browardbar.org/YLS). Here are a few highlights:

- Tee-Off Happy Hour (Oct. 15): We will kick off our 27th Annual Charity Golf Tournament with a Tee-Off Happy Hour at Grille 401 on Las Olas Boulevard on Wednesday, October 15th from 5:30PM-7:30PM. This event includes a free drink, free appetizers, raffles, and prizes.
- 27th Annual Charity Golf Tournament (Oct. 18): One of our signature events is our charity golf tournament. The event will take place at Jacaranda Golf Club in Plantation and includes breakfast, lunch, unlimited beverages, raffles, and contests including a hole-in-one contest for a chance to win a brand new Jaguar! The tournament is sold out, however you can still sign up to attend the luncheon with awards ceremony, raffles, and silent auction immediately after the tournament. There are also several great sponsorship opportunities available. To attend or sponsor this event please contact Jeff Wank, Esq., at [jwank@cftlaw.com](mailto:jwank@cftlaw.com) or visit our website at [www.arcbroward.com/YLSgolf](http://www.arcbroward.com/YLSgolf). Please also see page 19 of the Barrister for more information on this event and our charity.
- Read for the Record (Oct. 21): As a follow up event to our "Lawyers for Literacy" campaign, YLS will participate in Jumpstart's Read for the Record which is a national event mobilizing millions of children and adults to celebrate early childhood literacy by reading the same book on the same day as part of the largest shared reading experience. YLS was awarded a grant of \$1,500.00 to purchase books for this event. If you would like to read to a classroom on October 21st, please contact Cherine Smith Valbrun, Esq., at 954-527-1115. Thank you to Cherine, our Judicial Liaison, Judge Robert Diaz, and our immediate past president, Marissa Pullano, Esq., for their commitment to this initiative!
- Luncheon with Supervisor of Elections, Dr. Brenda C. Snipes, and Mayor John P. "Jack" Seiler (Oct. 23): With November elections around the corner, you will not want to miss our October 23rd luncheon featuring a presentation on the election process by Supervisor of Elections, Dr. Brenda C. Snipes, followed by remarks from Fort Lauderdale Mayor John P. "Jack" Seiler. The event will take place downtown at the Tower Club at noon. Discounted tickets are available with early registration.

Lastly, if you are interested in joining a committee, partnering with YLS on an event, or have any questions, please feel free to contact me at Rogers, Morris & Ziegler LLP at (954) 462-1431 or via email at [LFaw@rmzlaw.com](mailto:LFaw@rmzlaw.com). **B**

# To Have and to Hold: Modern Family Formation and Application of Constitutional Principles

By Sheryl A. Moore and Allegra P. Clemente

Family law is a compilation of many areas of the law. The cornerstone principles of constitutional law have recently elicited important legal questions for our family law practitioners and judges.

Recall the year 1868 and Section 1 of the Fourteenth Amendment of the U.S. Constitution:

*“All persons born and naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”*

It is well settled that out-of-state traditional marriages are recognized in Florida pursuant to Article IV, §1 of the U.S. Constitution, which states:

*“Full Faith and Credit shall be given in each State to the public Acts, Records, and Judicial Proceedings of every other State.”*

Why then would Florida not extend the same rights and privileges to out-of-state same-sex marriages and civil unions? Specifically, Article I, § 27, of the Florida Constitution and Florida Statute 741.212 prohibit same-sex marriages in the State of Florida and do not recognize same-sex unions within or performed outside of Florida. The statute, as written, is silent with respect to whether Florida courts can dissolve a same-sex marriage, leaving many interpretational ambiguities and uncharted territory

for our Florida courts.

The United States is hardly united when it comes to same-sex marriage issues. Unlike Florida, 19 states, plus Washington D.C., currently have the freedom to marry for same-sex couples. Three states offer substantial protection for same-sex couples just short of the full protections of traditional marriage. Nearly 44 percent of the U.S. population lives in a state with the freedom to marry for same-sex couples. Despite the disparities between the states, marriage litigation is currently pending in all states lacking the freedom for same-sex couples to marry.

According to recent polls, the majority of Floridians support some form of legal recognition for same-sex couples. An April 2014 poll found that 56 percent of Florida residents supported allowing same-sex couples to marry in Florida, with 39 percent opposed, and 5 percent unsure or refusing to answer. While there is no legal recognition for same-sex couples to marry in Florida, nine of Florida's 67 counties, including Broward County, recognize domestic partnerships.

One year ago, the U.S. Supreme Court in *United States v. Windsor*, 133 S. Ct. 2675 (2013) held that the federal government cannot refuse to recognize a valid state-sanctioned same-sex marriage with regard to federal legislation. Specifically, the federal Defense of Marriage Act, which defined marriage and spouse to exclude same-sex partners, was declared unconstitutional since the Act, “for no legitimate purpose overcomes the purpose and effect to disparage and to injure those whom the State, by its marriage laws, sought to protect in personhood and dignity.” The opinion delivered by Justice Kennedy stated that, “By seeking to displace this protection and treating

those persons as living in marriages less respected than others, the federal statute is in violation of the Fifth Amendment.” The Supreme Court's opinion and holding was confined to lawful marriages.

Since the landmark *Windsor* decision in June 2013, there have been 36 consecutive nationwide rulings for proponents of the freedom to marry. Locally, in early August 2014, Broward Circuit Judge Dale Cohen was called upon to decide whether *Windsor* applies to Florida's state law, which prohibits same-sex marriages or civil unions. In *Brassner v. Lade*, The Honorable Dale Cohen declared:

The issue before this Court is whether the State of Florida's definition of marriage is in violation of the United States Constitution. After applying the law and considering all the issues, this Court finds that Florida's ban on same-sex marriage violates the guarantees of due process and equal protection under the laws. Florida's prohibition on same-sex marriage denies some citizens, based upon their sexual orientation, the fundamental right to marry, and does so without a legitimate state purpose.

Order Granting Petitioner's Motion for Declaratory Judgment, Case No. 13-012058 (Fla. Cir. Ct. Aug. 4, 2014).

In *Brassner*, Ms. Brassner was joined by civil union in Vermont to Ms. Lade in 2002. The only process to dissolve civil unions in Vermont is for both parties to sign the requisite forms. In this case, despite diligent search, Ms. Lade was unable to be located in order to sign the necessary forms. Furthermore, Ms. Brassner had been a resident of Florida

for 14 years. Ms. Brassner now desired to marry a new partner, whom she could not marry, since marrying a new partner without first dissolving her prior civil union would constitute an invalid, bigamous marriage. For additional support, the Petitioner cited *Elia-Warnken v. Elia*, 463 Mass. 29 (2012), wherein the Supreme Judicial Court of Massachusetts held that because a civil union was the equivalent of marriage, it was entitled to recognition by the Commonwealth of Massachusetts under the principle of comity. Therefore, the civil union needed to be dissolved for the marriage to be valid. Since the civil union had never been dissolved in *Elia*, the subsequent marriage was invalid.

Nancy Brodzki, attorney for the Petitioner in *Brassner*, argued that, due to her circumstances, there was no adequate remedy at law for Ms. Brassner except for the court to grant her a dissolution of her civil union. Judge Cohen agreed and entered an order on August 4, 2014. The order declared that Florida's explicit failure to recognize legal out-of-state civil unions, without any rationale basis, violates the Due Process and Equal Protection Clauses of the United States Constitution." Judge Cohen's opinion is drafted with constitutional prose with advice for a changing society to recall that "equality is the cornerstone of our nation." His ruling garnered both national and international press. On September 9, 2014, the day before the final hearing was scheduled to take place, Judge Cohen vacated his August 4, 2014 order due to a Florida Statute requiring the Florida Office of the Attorney General to be notified of all pending proceedings via certified or registered mail in the event the Florida Constitution is being challenged. Although the office was electronically served notice of the final hearing, it was not notified via certified or registered mail. Therefore, the court vacated the order on procedural grounds. Judge Cohen encouraged the Petitioner to re-file her petition.

Other Florida circuit courts have arrived

at similar decisions. On January 21, 2014, in *Pareto v. Ruvin*, Miami-Dade Circuit Judge Sarah Zabel struck down Florida's ban on marriage for same-sex couples, ordering the Miami-Dade county clerk to stop enforcing Florida's anti-marriage constitutional amendment. On July 17, 2014, in *Huntsman v. Heavilin*, Chief Circuit Judge Luis Garcia struck down Florida's ban on marriage for same-sex couples, ordering the Monroe county clerk to stop enforcing Florida's anti-marriage constitutional amendment. All of these court orders, and those of like-nature, have been stayed pending Attorney General Pam Bondi's appeals. Most recently, Ms. Bondi filed a motion to freeze all same-sex marriage litigation on the state level until such time that the U.S. Supreme Court settles the issue nationally. Ms. Bondi cited the conservation of tax payer dollars as a rationale for her request.

On a national level, the U. S. Supreme Court will commence the 2014-2015 term this Fall, at which time it may consider many petitions seeking certiorari that have been filed during its summer recess. At the time of the drafting of this article, there are seven petitions filed in five different cases. Of those decisions on hold pending the Supreme Court's review, federal district and appellate judges have agreed that state bans on same-sex marriage should be struck down as unconstitutional. Thus, it is expected that the Supreme Court will soon render landmark decisions to resolve the issue of whether same-sex marriage is unconstitutional.

Recalling the 1967 landmark decision *Loving v. State of Virginia*, 388 U.S. 1 (1967), the Supreme Court held that Virginia's anti-miscegenation statute violated both the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment, Chief Justice Earl Warren's opinion for the unanimous court stated that: "Marriage is one of the most basic rights of man, fundamental to our very existence and survival. To

deny this fundamental freedom on so unsupportable a basis as the racial classifications embodied in these statutes, classifications so directly subversive of the principle of equality at the heart of the Fourteenth Amendment, is surely to deprive all the State's citizens of liberty without due process of law. The Fourteenth Amendment requires that the freedom of choice to marry not be restricted by invidious racial discrimination. Under our Constitution, the freedom to marry, or not marry, a person of another race resides with the individual and cannot be infringed by the State.

Is Florida's failure to grant a divorce to all of her citizens analogous to *Loving v. State of Virginia* wherein it was found unconstitutional to deny the most basic right to marry to a class of citizens due to their race? Society is changing, modern families are forming, and the law is evolving. A review of the basic principles upon which our great nation was founded will serve our practices well as we continue to navigate emerging issues to protect the rights of all people, no matter what their religion, race, creed or sexual orientation. **B**



*Sheryl A. Moore is a shareholder at the law firm of Fowler White Burnett, P.A. Ms. Moore is Board Certified in Marital and Family Law and focuses on all aspects of family law. She may be contacted at 954-377-8137 or via email at [smoore@fowler-white.com](mailto:smoore@fowler-white.com)*



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# The Government Needs a Warrant to Search Your Cell Phone

By Gawayne Kelly

On June 25, 2014, the U. S. Supreme Court ruled unanimously in *Riley v. California*, 573 U.S. \_\_\_\_ (2014), that law enforcement personnel must have a warrant to search an individual's cell phone. This decision is one of the most important decisions in our present era.

Cell phones can carry copious amounts of information about an individual. This information can include intimate photographs, personal conversations, and confidential information. This information also reveals where the cell phone's owner has traveled, the owner's likes and dislikes, and a number of other intimate details. "It is no exaggeration to say that many of the more than 90 percent of American adults who own a cell phone keep on their person a digital record of nearly every aspect of their lives," Chief Justice John Roberts wrote.

Law enforcement officials who support the warrantless cell phone searches state that being able to search cell phones will help with officer safety and lessen the risk of the destruction of evidence that may be stored on the phones. The Court suggested that under exigent circumstances, such as a suspect texting someone who might detonate a bomb, police may be able to search the phone without a warrant. "Cell phones have become important tools in facilitating coordina-

tion and communication among members of criminal enterprises, and can provide valuable incriminating information about dangerous criminals," Roberts wrote. While acknowledging that "privacy comes at a cost," Roberts continued, "[O]ur answer to what police must do before searching a cell phone seized incident to an arrest is accordingly simple — get a warrant."

The Supreme Court stated in its ruling that cell phones are unlike other items that may be found on an arrestee. Chief Justice Roberts wrote, "Many of these devices are in fact minicomputers" akin to "cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, televisions, maps, or newspapers." Privacy advocates applauded the decision. Allowing law enforcement to search an individual's cell phone without a warrant would be similar to allowing them to search an individual's home without a warrant. When the Founders wrote the Constitution, they required law enforcement to acquire warrants before entering a person's home because it contained, among other things, a record of the occupant's personal history.

Currently, cell phones have given individuals the ability to carry these records with them wherever they may travel. As Chief Justice Roberts wrote, this modern capabil-

ity "does not make the information any less worthy of the protection for which the Founders fought." With that being said, the Supreme Court's decision is a logical one, as a person's home can only be searched under exigent circumstances in the absence of a warrant.

The ruling was as a result of the Court hearing appeals of *California v. Riley* and *United States v. Wurie* both of which were criminal cases. The impact on civil cases is still not clear. However, it does set a precedent that courts may look at cases involving searches of cell phones with a stricter scrutiny than they may have in the past. **B**



*Gawayne Kelly, Esq. is a graduate of Florida International University College of Law. He practices in the areas of criminal and family law throughout Broward, Miami-Dade and Palm Beach counties.*

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## FLMIC and BCBA's 2014 Legal Malpractice Summit

By Cassandra Castellano Lombard

On Friday, October 10, 2014, Florida Lawyers Mutual Insurance Company, as part of its 25th anniversary celebration and in collaboration with the Broward County Bar Association will present the 2014 Legal Malpractice Summit. The company was created by the Florida Bar with the primary mission of being a source of professional liability insurance and related services to Florida lawyers. During its 25-year history, the company has been significantly involved in providing ways and opportunities to improve the competency, ethics, civility and professionalism of Florida Bar members. The summit will provide important information on how to establish and implement a successful risk management and avoidance program within a law firm. An esteemed list of speakers will cover an array of topics ranging from what to do if you have an “oh, no!!” moment to avoiding ethical and malpractice risks in the courtroom. The summit will take place from 9 a.m. to 3:30 p.m. at the 110 Tower Building located at 110 S.E. 6th St., Ft. Lauderdale, FL 33301. Some of the speakers include: U.S. Southern District Judge William Dimitrouleas; Deborah Fitzgerald, Esq.; 17th Circuit Judge Alfred Horowitz; D. David Keller, Esq.; Charles Morehead, Esq.; M. Benjamin Murphey, Esq.; Emily Romano, Esq.; 17th Circuit Judge Jeffrey Streitfeld; Kevin Tynan, Esq.; Cherine Valbrun, Esq.; Kelly Vogt, Esq.; Bruce Weihe, Esq.; and 4th DCA Judge Alan Forst. For more information or to register please visit [www.browardbar.org](http://www.browardbar.org) or call 954-832-3618. The cost is \$100 for Broward County Bar Association members or those insured by the company, \$125 for non-association members. CLE: 6 hours (2 Ethics & 1 Professionalism) have been applied for. **B**



*Cassandra Castellano Lombard, Esq. is an attorney with Gordon & Doner and focuses her practice in the areas of personal injury, product liability & wrongful death. She can be reached at 754-333-3333 or at [ccastellano@fortheinjured.com](mailto:ccastellano@fortheinjured.com). For more information visit [www.fortheinjured.com](http://www.fortheinjured.com).*

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# Looking for a Creative Outlet? Try Blogging.



By Kimberlee De Biase

When I think of professionals whose jobs require the use of their creativity, I think of people such as artists, fashion designers, film directors, or graphic designers. Although many aspects of the practice of law involve the use of creativity, we attorneys still remain largely constrained by precedent. We analyze the facts of our clients' scenarios and apply the governing law, we draft documents that will protect our clients' interests, and we advocate for clients' positions. Let me be clear: it is not my intention to downplay the talent required to be a successful attorney. I am merely distinguishing between the creative and the analytical parts of our minds. I have found that exercising both of these components of my mind on a regular basis keeps my stress level low and my contentment level high.

A few months ago, I decided to start a blog to share my passion for finding ways to lead a healthy lifestyle while working in a demanding profession. Some of you may not be familiar with what a blog is. A blog is a website on which someone writes about personal opinions, activities, and experiences." My blog is a place where

I share my thoughts, which makes it like a modern-day journal, and a place where I share recipes, which makes it like a virtual cookbook.

What I have found is that even after a long day at the office, I look forward to creating a blog post! Some days, I am trying out a new recipe and taking photos of my "masterpiece." Other days, I am sharing a new routine or a recent personal experience. I do not burden myself with a length requirement or a minimum number of posts to create per week, but there is some level of accountability involved in the blogging process. When I make food choices or debate whether to hop on the treadmill, I start thinking about how that very decision could be content for my next blog post. Also, when I round out a week and have not yet posted any new blog content, I am inspired to create a healthy meal and blog about it. I am so glad that I found this creative outlet that also keeps me on track with my lifestyle goals.

I challenge you to take some time over the next few weeks to think about whether blogging can be a creative outlet for you. You can blog

about any personal experience at all. Your blog can be about your family life, your love of water sports, or your passion for rescuing animals. It can be about a future goal, such as your journey to the finish line of the next triathlon, your desire to open your own law firm, or your mastery of a foreign language. Just keep in mind that any content you put on the internet can easily be accessed by clients unless properly protected, so it may be wise to keep a professional filter on this peek into your personal life. Whatever you choose to write about, think of it as an opportunity to showcase your passion for a certain subject matter or cause, as well as the writing skills that you have honed and developed through the practice of law.



*Kimberlee De Biase is in-house counsel at Empire Title Services, Inc. She also practices probate and real estate litigation with Richard P. Breger, P.A. The URL to Kim's blog is [growing-healthy4life.com](http://growing-healthy4life.com) and she can be contacted at [kim@empiretitleservices.com](mailto:kim@empiretitleservices.com).*

# Things a First-Year Associate Should Know

By Jared Guberman

After three years of law school, two and a half months of studying for the bar exam, and an unbearable two-month wait, a law student's entire legal education comes down to one day: the day the bar exam results are finally released. The only question on each bar exam taker's mind awaiting his or her bar results was: Did I pass, or did I not pass?

On Monday September 23, 2013, that question was finally answered. I passed! Although I was ecstatic and relieved to have passed, it was only the beginning. At that very moment, a line of demarcation was drawn. It was time to begin my career as a lawyer—which was both exciting and nerve-wracking.

After completing my first year as a civil and commercial litigation associate, I have come to realize that nothing, not even law school, truly prepared me for the “real world” as a practicing attorney. After a tough, yet fun year full of ups and downs and hard work, I have learned many things. Below are just some of the things I would like to pass on to the newly barred attorneys:

**1. You Know Nothing.** Even though you have a job and are licensed to practice law, you ultimately know nothing. Do not be afraid to ask your supervising attorney questions. But more importantly, make sure you understand the answer given to you. Have all of your written work reviewed prior to filing with the court. You will

learn a lot by taking the time to analyze the revisions.

**2. Learn, Learn, Learn.** Be a sponge. Learn from your supervising attorney, learn from each judge you come into contact with at hearings, learn from opposing counsel, and learn from your clients. Every experience during your first year is a learning experience, especially if it is a bad one. Learn from your mistakes and do not make the same mistake twice.

**3. Always Be Prepared.** Never go into your supervising attorney's office, a hearing, deposition, mediation, trial, or phone call without being prepared. Anticipate all arguments and questions that may arise. Always expect the unexpected.

**4. Stay Organized.** Organization is key when you practice law. Make sure you stay on top of all of your assignments and deadlines. Always be one step ahead. Maximize your Microsoft Outlook calendar by setting reminders for approaching deadlines and upcoming scheduled events (e.g. depositions, hearings, or appointments).

**5. Learn the Rules and Procedures.** Always take into consideration that different rules or procedures may apply. Whether your matter is in state court, federal court, or the complex business litigation section, be

mindful that there are specific rules applicable within each forum. Further, each judge presiding over your matter may have unique procedures. Moreover, the Florida Rules of Judicial Administration and the Florida Rules of Professional Conduct must also be considered. Be sure to know these rules and procedures and have them easily accessible.

**6. Give Everyone the Same Level of Respect.** Treat administrative staff (including but not limited to legal assistants and paralegals) with the utmost respect. These individuals are essential for any successful legal operation to run smoothly. Moreover, as an officer of the court and a member of the Florida Bar, respect all attorneys, judges and court employees. Remember to treat everyone how you want to be treated.

Everything you learn in your first year is geared toward your future. Welcome to the profession, enjoy the ride, and learn as much as you can. **B**



Jared Guberman is a civil and commercial litigation attorney with GPG Law in Fort Lauderdale. He may be contacted at 954-533-5530 or by e-mail at [jared@gpplawfirm.com](mailto:jared@gpplawfirm.com).

## Young Lawyers' Charity Golf Tournament

The Broward County Bar Association Young Lawyers Section ("BCBA YLS") is hosting its 27th Annual Charity Golf Tournament on Saturday, October 18, 2014, at Jacaranda Golf Club in Plantation. All proceeds from this tournament will be donated to the ARC Broward Preschool. We will be kicking off the event with our Tee-Off Happy Hour at Grille 401 on Wednesday, October 15 from 5:30 - 7:30 p.m., and all are welcome! We are pleased to announce that the tournament was sold out (144 golfers) over one month before the event!

Since 1956, ARC Broward has been serving children and adults with special needs in Broward County. ARC Broward's mission is to transform the community by providing opportunities for people with disabilities and other life challenges to realize their full potential.

Our goal this year is 100% participation from the Broward legal community. You can get involved and support ARC Broward and BCBA YLS by sponsoring the event. Golf tournament sponsors have the opportunity to connect with an enthusiastic and varied audience, ranging from young professionals to South Florida's largest corporate supporters. Sponsorships start at \$250.

You can learn more about our events or sign up to sponsor at [www.arcbroward.com/YLSgolf](http://www.arcbroward.com/YLSgolf). Otherwise, contact the golf tournament co-chairs, Jeffrey Wank at [jwank@cftlaw.com](mailto:jwank@cftlaw.com), or Lauren Alperstein at [LAlperstein@bsflp.com](mailto:LAlperstein@bsflp.com). **B**



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# Recent Developments in the Law

By Nancy Little Hoffman

## **FOURTH DISTRICT HOLDS THAT CLAIM FOR WRONGFUL DEATH RESULTING FROM BEING DROPPED ON X-RAY TABLE WAS A MEDICAL NEGLIGENCE CLAIM REQUIRING COMPLIANCE WITH PRE-SUIT REQUIREMENTS.**

A patient died from complications of a broken back allegedly received when hospital personnel accidentally dropped her while being moved from a gurney to an x-ray table. Her personal representative brought a wrongful death action against the hospital without complying with the pre-suit requirements of Chapter 766, and the trial court dismissed. The Fourth District rejected his argument that the claim was founded in simple negligence, as opposed to medical negligence, and affirmed the dismissal. *Buck v. Columbia Hospital Corporation of South Broward*, 39 Fla. L. Weekly D1921 (Fla. 4th DCA Sept. 10, 2014).

## **TRIAL COURT LOSES JURISDICTION TO GRANT SUMMARY JUDGMENT AFTER IT DISMISSES ACTION WITHOUT PREJUDICE FOR LACK OF PROSECUTION.**

In a mortgage foreclosure action, the trial court dismissed the case without prejudice for lack of prosecution. Although the bank had not refiled the action, it moved for summary judgment, which the trial court granted. Reversing

the final judgment in favor of the bank, the Fourth District held that the lower court erred in entering that order, noting that there was no motion for rehearing or motion to vacate the order of dismissal, and that the court had thus lost jurisdiction over the case. *Magloire v. Bank of New York*, 39 Fla. L. Weekly D1927 (Fla. 4th DCA Sept. 10, 2014).

## **TRIAL COURT ERRED IN VACATING FEE ENTITLEMENT ORDER AFTER APPELLATE COURT AWARDED FEES FOR APPEAL.**

The plaintiff brought a defamation action against his former employer, who denied wrongdoing and served a \$1,500 proposal for settlement, to which the plaintiff never responded. After summary judgment was entered for the employer, the plaintiff appealed. While the appeal was pending, the lower court entered an order finding that the employer was entitled to its fees and costs. The Third District affirmed and awarded appellate fees and costs to the employer, remanding for a determination of amount. On remand, a successor trial judge held that the offer had not been made in good faith, and he vacated the entitlement order as to trial fees. The trial court determined the amount of appellate fees, finding that he had no discretion on that point. In the resulting appeal and cross-appeal, the Third District affirmed the appellate award and reversed the order vacating

the trial award, holding that its order had become the law of the case, and that the trial court could not thereafter address the issue of good faith. *Arce v. Wackenhut Corp.*, 39 Fla. L. Weekly D1932 (Fla. 3rd DCA Sept. 10, 2014).

## **LITIGATION PRIVILEGE IS ABSOLUTE, EVEN IF STATEMENTS ARE FALSE AND MALICIOUS.**

Based on accusations of misconduct against former law partners made in pleadings filed in his divorce proceeding, petitioner was sued by those lawyers for defamation. The trial court denied his motion to dismiss based on the absolute litigation privilege. The First District granted certiorari, holding that the privilege must be upheld; that the falsity or maliciousness of the statements was irrelevant; and that the parties' non-disparagement agreement could not waive the privilege. *James v. Leigh*, 39 Fla. L. Weekly D1914 (Fla. 1st DCA Sept. 5, 2014). **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 [NancyLittleHoffmann.com](http://NancyLittleHoffmann.com).



# Reauthorization of Broward's Children's Services Council

By Howard Talenfeld

On Tuesday, November 4, 2014, Broward voters will be asked to make a critical decision regarding the health, well-being and future of the children of Broward County—whether to vote for the reauthorization of the Children's Services Council of Broward County. Since 2001 when Broward voters authorized the council, it has been the lifeline protecting Broward's children. However, in 2010 the Florida Legislature passed legislation requiring voters in counties having children's services councils to hold referenda to decide whether each such council will continue to exist.

The council in Broward was created in response to widespread failures in the county's child protection system after a 1997 class action lawsuit was settled. The lawsuit alleged that the system harmed far too many children who were physically and sexually abused, truancy was rampant, and there were more than 100 children missing from Broward foster care. In the spring of 1998, a Broward County grand jury issued its report on the failures of the county's child protection system. The grand jury's report found that there was overwhelming evidence that children in the custody and care of the Florida Department of Children and Families were in danger

from such things as high case loads, high turnover, child-on-child sex abuse, and shortages of foster and adoptive homes. Furthermore, Broward County's child welfare system was the poorest funded child-welfare system in Florida.

After the grand jury called for changes to ensure further tragedies do not occur, State's Attorney Michael Satz and members of Broward's business community convened a county-wide summit to explore solutions to the child welfare crisis. The one unanimous recommendation was to create a dedicated source of funding to provide programs to protect our children. In the Spring 2000, Rep. Debbie Wasserman Shultz sponsored HB 1701, which passed the Florida Legislature and authorized a referendum to create Broward's Children's Services Council. After a bipartisan steering committee was created, Democrats and Republicans worked together, and on September 5, 2000, the community spoke, with 57 percent voting in favor of creating Broward's present council.

Since this creation by the voters of Broward County, the council now helps 150,000 children each year through 150 programs implemented by 100 providers. The council keeps

children at home and out of foster care, keeps children out of the delinquency system, keeps children in school, and keeps children safe.

Through your local property tax dollars, capped at less than the .5 millage rate, the council received over \$62 million in funding per year with 96 percent going to these programs. These dollars are distributed to protect children by non-profits organizations such as the YMCA, JAFCO, Children's Home Society, ARC Broward, Soref JCC, Hispanic Unity, HANDY, Henderson Mental Health, Broward Legal Aid, Kids in Distress, Boys and Girls Club, the Urban League of Broward County, and Family Central, just to name a few.

Please study this critical issue because Broward County cannot afford to lose the CSC which is the lifeline for our children. **B**



*Howard Talenfeld, President of Florida's Children First, Inc. focuses his legal practice on protecting the rights of children and disabled persons. He may be contacted at (954) 492-4010, or by email at htalenfeld@cflaw.com.*

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## October

## calendar of events

- 1 CLE - Key Things to Consider When Filing for Bankruptcy and Preparing Schedules**  
Time: 12:00 pm - 1:30 pm  
Speakers: Marc P. Barmat, Esq., Les Osborne, Esq., and Chad S. Paiva, Esq.  
Cost: \$15- BCBA Members; \$25 - Non-members  
Venue: BCBA Conference Center
- 2 Hispanic Heritage Night Reception**  
Time: 5:30 pm - 8:30 pm  
Cost: \$25 per person  
Venue: BCBA Conference Center
- 8 Webinar CLE - Microsoft Excel**  
Time: 12:00 pm - 1:00 pm  
Cost: \$25 BCBA Members; \$35 Non-members
- 8 Women Leaders in the Law #3 - Managing & Senior Partners**  
Time: 3:30 pm - 6:30 pm  
Speakers: Adele Stone, Esq., Michele Cummings, Esq., Stephanie Toothaker, Esq., and Michele L. Stocker, Esq.  
Cost: \$25 BCBA & BCWLA Members; \$35 Non-members  
Venue: BCBA Conference Center
- 10 2014 Legal Malpractice Summit Seminar**  
Time: 8:30 am - 3:30 pm  
Cost: \$100 - BCBA Members; \$100 - FLMIC Insured Member (Non BCBA Member); \$125 - Non-members  
Venue: 110 Tower - 7th Floor
- 14 North Broward Bar Section Luncheon**  
Time: 12:00 pm - 1:00 pm  
Cost: \$20 BCBA Members; \$25 Non-members  
Venue: Champpps Americana, 6401 N. Andrews Avenue, Fort Lauderdale  
Contact: Tom Oates at toates@pompano-law.com
- 15 CLE - Inside Criminal Minds**  
Time: 12:00 pm - 1:30 pm  
Speaker: E'lyn Bryan, CFDE,BAI  
Cost: \$15- BCBA Members; \$25- Non-members  
Venue: BCBA Conference Center
- 16 CLE - Setting Yourself Apart from the Masses**  
Time: 12:00 pm - 1:30 pm  
Speaker: Adam J Ouellette, Esq.  
Cost: \$15- BCBA Members; \$25- Non-members;  
Venue: BCBA Conference Center
- 17 CLE - Criminal Law Section Presents Bruce Rogow's Experience in Front of the U.S. Supreme Court Plus an Ethics Presentation with Perspectives from The Judge, Prosecuting Attorney and Defense Attorney**  
Time: 1:00 pm - 4:00 pm  
Speakers: Jeffrey Harris, Esq., Charles "Chuck" B. Morton, Jr., Esq., Bruce Rogow, Esq., and Judge Raag Singhal  
Cost: No Charge  
Venue: Jury Room (3rd Floor) at the Central Courthouse
- 21 "Bar at Bar" Networking Event**  
Time: 5:30 pm - 7:30 pm  
Cost: Complimentary beverage ticket and light appetizers  
Venue: American Social on Las Olas
- 22 CLE - Ethics of Technology Assisted Review**  
Time: 5:30 pm - 7:00 pm  
Speaker: Mark A. Moore, Esq.  
Cost: \$10 BCBA Member; \$25 Non-member  
Venue: BCBA Conference Center
- 23 West Broward Section CLE Luncheon: Social Media**  
Time: 12:00 pm - 1:30 pm  
Cost: \$25 Advance Registration; \$30 Walk-in Registration  
Venue: Plantation Preserve Golf Club
- 23 CLE - Office Conflict, Resolution, and What Keeps You Up at Night**  
Time: 6:00 pm - 7:30 pm  
Speaker: Bianca Moreiras  
Cost: \$15 - BCBA Members; \$25 - Non-members  
Venue: BCBA Conference Center
- 24 BCBA Real Estate Section presents 2014 Roger Staley Memorial Seminar**  
Time: 10:00 am - 4:00 pm  
Cost: \$50 - BCBA Members; \$75 - Non-members  
Venue: BCBA Conference Center
- 29 CLE - Strategies, Professionalism and Ethics: Getting the Most Out of Your Mediation Process**  
Time: 12:00 pm - 1:30 pm  
Speaker: Bruce A. Blitman, Esq.  
Cost: \$15 - BCBA Members; \$25 - Non-members  
Venue: BCBA Conference Center
- 31 New Attorney Breakfast Orientation**  
Time: 9:00 am - 12:00 pm  
Cost: No Fee to Newly Sworn in Attorneys  
Venue: 110 Tower - 7th Floor

To register for BCBA events,  
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**NEW Website at**  
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### November Special Events

- 14 2014 Nuts and Bolts Family Law Seminar Presented by the Broward County Bar Association's Family Law Section**  
Time: 8:30 am - 5:30 pm  
Cost: \$75 BCBA Member; \$100 Non-member  
Includes 8 CLEs, Breakfast, Lunch, and Cocktail Reception