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December 2008 • WWW.BROWARDBAR.ORG • 954-764-8040 • VOLUME 39, ISSUE 11

# BCBA Holiday Party Friday, December 12

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## BCBA's Annual Workers' Compensation Seminar

February 27, 2009

Noon- 4:30p.m. Riverside Hotel

For reservations call Mike at 954-764-8040 x 202 or sign up online at [www.browardbar.org](http://www.browardbar.org)

### Topics and speakers:

"View From the Bench" – Broward County Judges of Compensation Claims

"Navigating Through the Workers' Compensation System"- Deputy Chief Judge of  
Compensation Claims David Langham and Barry Keyfetz, Esquire

"How to effectively Secure and Defend Hourly Attorney Fees"- Cory Schnepfer, Esquire and  
Neal Falk, Esquire

"Practicing with Professionalism"- Mal Steinberg, Esquire and Barbara Wagner, Esquire

"Retraining and Job Placement"- Seth Abrams, Esquire and Alan Sokol, Vocational  
Rehabilitation Counselor State of Florida Bureau of Rehabilitation and Re-employment Services



## PRESIDENT'S MESSAGE by Christopher M. "Chris" Neilson

Welcome to December! It is hard to believe that we are in the middle of the holiday season. The presidential election, as well as the economy, seemed to have overshadowed the normal flow of the heat of summer into the colorful transition of fall this year. I am writing this in advance of Thanksgiving, which will be next week, so you can hopefully have this by the beginning of December.

I do not know about you, but I for one am looking forward to Thanksgiving, and am reflecting on my gratitude for God, my health, family, friends, pets, and for this wonderful country in which we live, which to me are those things that are truly important. I am also grateful for my profession, my practice, the opportunity and ability to serve as Broward County Bar Association's President, and for everything I have received in my life. I truly hope that each and every one of you had a great Thanksgiving, and has the opportunity to reflect with gratitude on what is important to you in your life.

Our Executive Committee, Board of Directors, Executive Director, staff, Committee and Section Chairs and members have been very busy at BCBA. The emergency generator is in place. The new fence has been installed. The entire exterior of both buildings has been painted, as well as the interior of the conference center, and they all look great! We have placed an order for a nice BCBA seal we designed for the front of the building (which Paul and Jamie Finizio have agreed to help pay for, which we greatly appreciate!).

On October 23rd I was honored to be a guest speaker at the Broward County Crime Commission's Annual Dinner held at the Palm Aire Country Club, and was presented an award for my service to the Community and The Criminal Justice System. The event was attended by around 300 Law Enforcement Officials from throughout Broward County, as well as numerous Broward County Judges, Broward County State Attorney Mike Satz, and several Assistant State Attorneys and personnel. Assistant State Attorney Brian Cavanaugh was awarded the Crime Commission's annual 'Prosecutor of the Year' Award at the event.

On November 1st, Art Goldberg and I spent the day at the Minority Mentoring Picnic at Amelia Earhart Park, where BCBA had a booth. We displayed our new BCBA banner, which looked great and added a nice professional feature to our presence. Quite a few Board members and judges attended the event (including Florida Supreme Court Justice Peggy Quince). BCBA Treasurer Bruce Weihe and

I met with several of the other sponsors, promoting BCBA's October 16, 2009 Quadrennial Bench Bar Convention scheduled to be held at the Broward County Convention Center next year.

On November 4th, I again appeared as a guest of Frank and Phyllis Loconto on County Line TV, and had another opportunity to speak on BCBA's position concerning the need for a new courthouse.

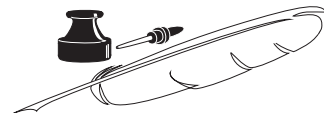
Peter Portley, Alan Fishman, Art Goldberg and I again planned the Past Presidents' Luncheon for November 6th. The event was nicely attended, and the Past-Presidents provided us with valuable insight on how to continue to improve BCBA and increase membership. We were also delighted that Chief Judge Victor Tobin celebrated with us, joined by Judge Tuter and Judge Luzzo.

On November 18th, we were fortunate to have the Fourth District Court of Appeal conduct oral arguments at the Broward County Courthouse. Following the session, BCBA hosted a reception at the 110 Tower, attended by around 150 judges and lawyers. Judge George Shahood, Judge Barry Stone, and Judge Theodore Klein (Judge Melanie May accepted on behalf of Judge Klein) were honored by your Bar Association and were presented plaques for their years of dedicated service.

On November 19th, the Solo Small firm section (in order to attend you must be in a firm of 4 or less) held its dinner meeting at Dave and Buster's, where I was privileged to be a guest speaker to the 80 attendees, and spoke about BCBA and the benefits of membership. This is a great section, and everyone had a very nice evening.

Please remember to come to our fantastic BCBA Holiday Party, which will be held at BCBA on December 12th, from 5pm till 9pm. Also, please don't forget to attend the great Young Lawyers' Section Holiday Luncheon at the Tower Club the day before, where the awesome Dillard singers will once again entertain....and later on December 11th, the North Broward Bar Association will be hosting its annual dinner at Shooters.

I truly hope that you and your families have a wonderful, safe, healthy and happy holiday this season and for years to come. All the best! Chris



## DECEMBER 2008

## CALENDAR OF EVENTS

### Thursday, December 4th:

South Broward Bar Association Luncheon  
At the The Ark Restaurant in Davie  
Guest Speaker: Judge Charles M. Greene  
Contact [www.southbrowardbar.org](http://www.southbrowardbar.org) or 954-791-3939

### Saturday, December 6th:

4 Hour Minor Guardianship class. Norma B. Howard Center, 1051 SE 3rd Ave, Ft. Lauderdale, 33316. \$100.00 per person. 9:00 a.m.- 1:00 p.m. Contact Tish at (954) 764-8040 Ext. 200.

### Monday, December 8th:

Executive Board Committee Meeting. Noon.  
Broward County Bar Association, 1051 SE 3rd Ave, Ft. Lauderdale, 33316.

### Tuesday, December 9th:

BCBA Board of Directors Meeting. 5:15p.m.  
Norma B. Howard Center, 1051 SE 3rd Ave, Ft. Lauderdale.

### Wednesday, December 10th:

Broward County Bar Association Business Section Luncheon. 12:00 p.m.- 1:30p.m. Norma B. Howard Bar Center, 1051 SE 3rd Ave, Ft. Lauderdale, 33316.

### Thursday, December 11th:

Broward County Bar Association's Young Lawyers Section holiday Party. 12:00 p.m. at the Tower Club. Cost is \$25.00 per person. Featuring Dillard High School Choir. Space is limited. Please call the Broward County Bar Association to reserve your seat 954-764-8040.

### Thursday, December 11th:

T.J. Reddick Bar Association Holiday Party. Please contact Veresa Jones Adams, Correspondent Secretary, at [Vadams@ghj.com](mailto:Vadams@ghj.com) for more information.

### Thursday, December 11th:

Broward County Women Lawyers Association Annual Holiday Judicial Reception AutoNation Building, 7th Floor. Pay by December 3rd: \$45.00 Non-members, \$40.00 Members. After December 3rd: \$50.00 Non-members; \$45.00 Members. Judiciary Complimentary! RSVP to [rsvp@bcwla.com](mailto:rsvp@bcwla.com)

### December 12th:

Puerto Rican Bar Association Holiday Party with PROFESA and Puerto Rican Chamber of Commerce Hyatt Hotel, 50 Alhambra Plaza, Coral Gables, FL 33134  
Please contact Nydia Menendez at 954-963-7220 or [nydia@menendezlawfirm.com](mailto:nydia@menendezlawfirm.com)

### Friday, December 12th:

Broward County Bar Association Holiday Party. 5:30 p.m. 1051 SE 3rd Avenue, Ft. Lauderdale, FL 33316. Bring an unwrapped child's gift for Young Lawyers Section "Holiday in January". Sponsorships available, Contact Art Goldberg at (954) 764- 8040 or [artg@browardbar.org](mailto:artg@browardbar.org).

### Saturday, December 13th:

8 Hour adult Guardianship Class. Norma B. Howard Center, 1051 SE 3rd Ave, Ft. Lauderdale 33316. 9:00 a.m.- 5:00 p.m. \$180.00 per person. Contact Tish at (954) 764-8040 Ext. 200.

### Tuesday, December 16th:

Bench and Bar Committee Meeting. Noon. At the Broward County Bar Association, 1051 SE 3rd Ave, Ft. Lauderdale.

### Wednesday, December 17th:

Broward County Justice Association Annual Judges' Night  
Panorama Ballroom, Hyatt Pier Sixty Six  
Reservations at [BCJA@att.net](mailto:BCJA@att.net) or 954-522-1662.

### Thursday, December, 18th:

Broward County Federal Bar Association Annual Holiday Judicial Reception  
5:30 to 7:30  
Riverside Hotel, Ft. Lauderdale  
Proceeds benefit Volunteer Lawyers' Project for the Southern District of Florida. Register via Email at [lwiliams@bergersingerman.com](mailto:lwiliams@bergersingerman.com)

### Thursday, January 8th 2009:

South Broward Bar Association Monthly luncheon. At the Ark Restaurant in Davie. Noon. Guest Speaker Howard Finkelstein, Public Defender. For more information contact 954-791-3939.



Lawyers in the **LIMELIGHT**

**Morrie I. Levine** has been appointed to Legal Aid Service of Broward County Board of Directors and to the board of directors of Coast to Coast Legal Aid of South Florida.

**Andrew High** of Fowler White Burnett in Ft. Lauderdale has been elected to the board of trustees for Florida Ocean Sciences Institute.

**David W. Singer** of Hollywood has been re-elected to the Art and Culture Center of Hollywood Executive Board of Directors.

**Rae E. Chorowski** of Chorowski & Moore in Ft. Lauderdale has been appointed to the Board of Directors of Legal Aid Service of Broward County, Inc., and Coast to Coast Legal Aid of Florida, Inc.

**John Eaton** of Berger Singerman in Ft. Lauderdale recently spoke on “Bankruptcy: Secondary Impacts and Perhaps Opportunities” at a Coral Springs Chamber of Commerce Luncheon.

**Richard Sachs** of the law firm Berman, Kean & Riguera in Ft. Lauderdale has been appointed to the Florida Supreme Court’s Commission on Professionalism and chair of the Broward County Bar Association Business Law Section.

**Kathy Tayon** of Fowler White Boggs Banker in Ft. Lauderdale has been elected secretary to the Florida Chapter of the National Association of Corporate Directors.

**Howard Talenfeld**, a shareholder with Colodny Fass Talenfeld Karlinsky & Abate in Fort Lauderdale, has been named president of Florida’s Children First, a nonprofit advocacy organization.

**Gary Resnick**, shareholder at the Ft. Lauderdale office of GrayRobinson, P.A., has been sworn in as mayor of Wilton Manors.

**Sheryl A. Moore**, Esquire, of Chorowski & Moore, P.A. in Fort Lauderdale, has been appointed to serve on the Board of Directors of the Susan B. Anthony Recovery Center.

**BARBARA K. SUNSHINE FOR  
THE FLORIDA BAR BOARD OF GOVERNORS**



**Barbara has proven her commitment and dedication to the members of the Broward County Bar Association by serving as a Director since 1997.**

**Barbara was President of the Broward County Bar Association from 2007-2008; she served as President-elect from 2006-2007, and was elected Secretary-Treasurer for the term 2005-2006.**

***“I will bring my leadership and energy to The Florida Bar if elected to Seat 5 of the Board of Governors, Seventeenth Judicial Circuit.”***

**Ballots will be mailed on or before March 1, 2009.**



**Message From Broward County Bar Association’s Young Lawyers’ Section President  
by Scott Chitoff**

The Holiday Season has arrived and the Young Lawyers want to invite you to lunch to get it started with the renowned Dillard High School Choir on Thursday, December 11 at 12:00 p.m. at the Tower Club. Space is limited. Reservations are required. Please call the Broward Bar at (954) 764-8040 to reserve your seat. Cost per person is \$25.00. At the lunch, the Young Lawyers will present a check to Healthy Mothers Healthy Babies, the beneficiary charity of our 21st Annual Golf Tournament which was held on November 1, 2008.

The Golf Tournament had a great turnout and we thank all the players and sponsors for supporting such a worthy cause. The tournament winners were:

- First Place: T.C. Clemmons, Jason Kosowitz, Jason Clifford and Jaqueline Revis with a score of 59 (won by tiebreaker)
- Second Place: Judge Pedro Dijols, Bill Direnzo, Mark Lyons and Jim Weick with a score of 59
- Third Place, Dennis Hall, Jr., Brian Hall, Mike Hall, Dennis Hall, III with a score of 60
- Closest to the Pin: Troy Ganter
- Longest Drive: Matthew Clary
- Straightest Drive: Beth Tobin

Special congratulations are due to David Hirschberg, the Golf Tournament Chair, Meghan Clary, the Co-Chair and their committee for the excellent work this year. I want to wish Meghan Clary good luck as next year’s Chair. I know she will continue the tradition of excellence of this event.

If you missed it, the Young Lawyers had a great turnout at their Pre-Golf Tournament Happy Hour on October 24, 2008 at SideBar. Don’t miss our upcoming events as they are announced.

Due to the current economic environment, we wanted to make everyone aware of the date of our annual Judicial Reception and ask any interested sponsors to budget sponsorship monies for it. We will be contacting former sponsors before the end of the year to remind them as well. The event will be held at the Sun-Sentinel Building on Thursday, May 7, 2009 at

**The Broward Barrister is published by the Broward County Bar Association a part of our commitment to provide membership with information relating to issues and concerns on the local level. Opinions and positions expressed in the signed materials are those of the author and may not necessarily reflect the views of this publication or the Broward County Bar Association.**

**1051 SE Third Avenue, Ft. Lauderdale, FL 33316  
BROWARD COUNTY BAR ASSOCIATION  
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RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann

1. Defamation/False Light Invasion of Privacy

Jews for Jesus, Inc. v. Rapp,  
33 Fla. L. Weekly S849  
(Fla. October 23, 2008).

Answering a certified question from the Fourth District, the supreme court held that Florida does not recognize the tort of “false light invasion of privacy” because that legal theory was largely duplicative of existing torts. The court explained that Florida does recognize a cause of action for defamation by implication, and that a communication can be considered defamatory if it prejudices the plaintiff in the eyes of a substantial and respectable minority of the community.

2. Liability For Handling Ultra-Hazardous Materials

United States v. Stevens,  
33 Fla. L. Weekly S857 (Fla. October 30, 2008).

Answering a certified question from the federal 11th Circuit, the supreme court held that a laboratory that manufactures, grows, tests or handles ultra-hazardous materials owes a duty of reasonable care to the general public to avoid an unauthorized interception and dissemination of the materials. In a suit by the widow of the recipient of a letter containing anthrax, the supreme court analyzed the application of the “foreseeable zone of risk” test in concluding that the allegations of the complaint were sufficient to establish a duty of care. The complaint alleged that the laboratory knew or should have known of the risk of bioterrorism, that it should have understood that the public would be exposed to an unreasonable risk of harm unless it implemented adequate security procedures, and that the death in this case was a foreseeable consequence of such failure.

3. Rules of Appellate Procedure/Amendments

In re Rules of Appellate Procedure,  
33 Fla. L. Weekly S908 (Fla. November 13, 2008).

The supreme court has amended several of the rules of appellate procedure, including an amendment to rule 9.130 permitting appeals from orders granting writs of replevin, garnishment or attachment, as well as orders refusing to grant, modify or dissolve them; clarifying that an order determining entitlement to an insurance appraisal is immediately appealable; and clarifying that motions for rehearing of orders granting or denying motions for relief from judgment do not toll the time for appeal. The amendments also clarify that certificates of service and compliance are excluded from the computation of page

limitations for briefs; provide for the filing of a notice in the supreme court indicating an intent to seek leave to file an amicus curiae brief should the supreme court accept jurisdiction; address the applicability of an automatic stay in administrative actions under the Administrative Procedure Act; and modify the form to be used for applications for determination of indigent status under rule 9.430. The new rules become effective on January 1, 2009.

4. Vehicle Lessor Liability/Graves Amendment

Vargas v. Enterprise Leasing Company,  
33 Fla. L. Weekly D2574 (Fla. 4th DCA October 31, 2008).

Sitting en banc, the Fourth District held that the Florida statute involving short term leases of motor vehicles was not a “financial responsibility law” and thus did not fall within an exception to the federal Graves Amendment. Accordingly, the court held that the Graves Amendment controls, and that a leasing company cannot be held vicariously liable for injury caused by the negligent operation of one of its leased or rented vehicles. In holding that the federal statute preempted the Florida statute, the majority of the court aligned itself, over a strong dissent, with other courts on the issues of preemption and the constitutionality of the federal statute. The court unanimously agreed to certify to the Florida Supreme Court the question of whether the Graves Amendment preempted the Florida statute.

5. Worker’s Compensation/Attorney’s Fees

Murray v. Mariner Health,  
33 Fla. L. Weekly S845 (Fla. October 23, 2008).

In a case challenging the constitutionality of a statute governing attorney’s fees in worker’s compensation cases, the supreme court declined to address the constitutional issues but held, based upon the plain language of the statute, that when a claimant is entitled to recover attorney fees from a carrier or employer, that fee should be a “reasonable” attorney’s fee, to be determined using the factors of rule 4-1.5(b) of the Rules Regulating the Florida Bar. The supreme court rejected the argument that such fees would be limited by the purported statutory caps on fees created by the 2003 Amendments to section 440.34, Fla. Stats.

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.

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## Board of Governors nominating petitions are due December 15

**Nominating petitions for the 2009 election for the Board of Governors of The Florida Bar must be received in the Florida Bar headquarters office on or before 5 p.m., December 15, 2008. All of the Board positions are for two-year terms.**

**Nominating petitions for the Board of Governors must be signed by no fewer than five members in good standing whose official Bar address is in the same judicial circuit (or out-of-state, if applicable) as the nominee.**

**Election ballots will be mailed on or before March 1, 2009, and voted ballots must be received prior to midnight, March 23, 2009.**

**Present Board of Governors members whose terms are expiring on June 26, 2009 and who are not seeking re-election include: Frank C. Walker, II, 17th Circuit, seat 5, elected in 2001.**

**Present Board of Governors members whose terms are expiring on June 26, 2009 and who are seeking re-election include: Nancy W. Gregoire, 17th Circuit, seat 2, elected in 2003; and Eugene K. Pettis, 17th Circuit, seat 3, elected in 2005.**

### *Broward County Bar Association's Young Lawyers Section Lunches*

**All YLS Luncheons are held at  
the Tower Club in Fort  
Lauderdale at 12:00p.m. The  
cost per person is \$25.00.  
Reservations are recommended  
at the Bar (954) 764-8040**

**Holiday/Dillard Choir  
December 11, 2008**

**Chief Judge Tobin  
January 22, 2009**

***Moving?***  
Be sure to update your  
information with the  
Broward County Bar  
Association at:  
**(954) 764-8040**



## Link In to Social Networking

By Margaret Grisdela

Wondering where you can find your next new client? Internet-savvy attorneys are hitting the keyboard to build online referral networks that supplement traditional face-to-face networking.

LinkedIn® is one of the most popular “social networking” sites among business users today. Over 30 million professionals from around the world, representing 150 industries, connect with prospects electronically on LinkedIn. You can too! Read this article to learn how.

To get started, simply go to [www.linkedin.com](http://www.linkedin.com) and fill out your profile. The next step is to start inviting co-workers, business acquaintances, friends and others to link to you. Using the “six degrees of separation” concept, you benefit by gaining potential access to hundreds or thousands of contacts as your LinkedIn network grows.

The legal community has been quick to adopt LinkedIn. Broward County and other South Florida law firms with corporate and attorney profiles on LinkedIn include Adorno & Yoss, Akerman Senterfitt, Becker & Poliakoff, Bilzin Sumberg, GrayRobinson, Greenberg Traurig, Gunster Yoakley, Holland & Knight, Ruden McCloskey, Steel Hector, and more. Basic LinkedIn service is free, with optional upgrades available for special features.

LexisNexis, the parent company of Martindale-Hubbell, announced a major data sharing partnership with LinkedIn earlier this year. Martindale.com law firm and attorney profiles now display a small blue LinkedIn icon for firms active in both services. LinkedIn members who visit the Martindale site can view common connections with a listed attorney if they allow Martindale to search their LinkedIn account. While some consider this to be intrusive or a privacy matter, it is consistent with the primary social networking goal of finding potential sources of mutual introductions for business development purposes.

Why should you join LinkedIn? Here are five reasons that come to mind immediately. First of all, it is a free way to expand your marketing efforts. Second, LinkedIn increases your search engine visibility because it is so focused on bringing people together online. Third, you have the potential to develop new business by identifying mutual connections and requesting introductions. Fourth, you demonstrate your technical mastery by building an online network. Fifth, failure to network online leaves you with a competitive disadvantage.

LinkedIn features “groups” of people with common interests, similar to a listserv. Active LinkedIn legal groups include Patent Law (2,000 members), European lawyer group (800 members), business start-up group (1,400 members), regulatory and compliance group (1,300), a personal injury attorney network (141 members) and a legal blogging group (87 members). If you don’t find a group you like, you can easily start your own.

One of the LinkedIn features we like is that you can volunteer to answer questions online in your area of expertise. While obviously you will need to be careful about

conforming to Florida Bar guidelines, positioning yourself as a source of valuable information will help to expose you to a wider online audience while being viewed as a legal leader in your field.

If you already publish a blog, you can easily display your blog posts as part of your LinkedIn profile. Use this free technique to extend the reach of your online communications. Reporters, prospective clients and other interested parties are more likely to find you online when you employ a broader range of dissemination techniques.

Promote your legal services by posting a PowerPoint presentation describing your work as part of your LinkedIn profile. It just takes a few minutes to upload a file, using shared document features available as part of GoogleDocs. You can also run text ads associated with your profile, similar to Google AdWords.

Here are two real-world examples of how you might use LinkedIn as part of your business development efforts. Say you want to meet a specific executive at AutoNation or Citrix. You can look that person up on LinkedIn, then see if the two of you have any common acquaintances. If so, you can ask for an introduction. Or perhaps one of your clients needs a referral to an employment attorney in New York for a local matter. You can check your LinkedIn network to see if someone you know might have a connection. It’s a “win-win” situation when you find the right contact on LinkedIn, because you get what you need, your referral source looks good, and your New York contact may be able to reciprocate by sending you business in the future.

There are competitive considerations in using a service like LinkedIn, of course, particularly since you are opening up your contact list for online viewing by any visitor. There are risks, however, for most Internet marketing initiatives. Overall, the benefits more than offset any disadvantages. You need to determine what is right for you.

As you can see from this article, social networking is rapidly becoming a commonly used technique to extend your referral network. Use your new understanding of LinkedIn to extend the reach of your web site, legal directory listings and other online marketing techniques.

You are now invited to join me on LinkedIn! Sign up and send me an invitation to join your network.

*About the Author: Margaret Grisdela is President of the South Florida legal marketing agency Legal Expert Connections, Inc. She is the author of “Courting Your Clients,” and 2008 Co-Chair of the Legal Marketing Association, South Florida City Group. Email her at [mg@legalexpertconnections.com](mailto:mg@legalexpertconnections.com).*



ABUSE, NEGLECT, & EXPLOITATION OF VULNERABLE ADULTS (V/A)

Arlene Lakin, Esq., Florida Bar Board Certified Elder Law Attorney  
Margate, Florida {Tel. 954/975-5159}

Did you know that if you know or suspect abuse, neglect or exploitation of a vulnerable adult (V/A), you are required to call Adult Protective Services (APS) immediately. (See Florida Statute 415.1034) - Call 1-800-962-2873

A “vulnerable adult is defined as a person 18+ years of age “whose ability to perform the normal activities of daily living, or to provide for his or her own care or protection, is impaired due to a mental, emotional, long-term physical, of developmental disability or dysfunctioning, or brain damage, or the infirmities of aging (415.101/27)

If you file a report in good faith, Florida statute provides you with immunities: Florida Statute 415.1026):

(1) If you file a report, and you are acting in good faith, you are immune from any liability, civil or criminal. A resident or employee of a facility that serves vulnerable adults may not be subjected to reprisal or discharge.

(2) If your employment or residency status is detrimentally changed due to your report, and such change occurs w/n 120 days of your report, you have a civil cause of action for appropriate compensatory & punitive damages.

However, for FALSE REPORTING - criminal penalty - 2nd degree misdemeanor (415.111/1) & administrative fines not to exceed \$10,000.00 (F.S. 415.1113)

The alleged perpetrator may be arrested. The victim (or the alleged perpetrator) may be Baker Acted under certain circumstances. (Chapter 394). An emergency temporary guardianship (followed by a “permanent” guardian) may be initiated through the Court system if no “qualifiable” family member or friend petitions for appointment as guardian.

Abuse, neglect, and exploitation are defined as follows:

“Abuse” = any willful act or threatened act [or omission] by a relative, caregiver, or household member which causes or is likely to cause significant impairment to a V/A’s physical, mental, or emotional, health (F.S. 415.102/1)

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“Exploitation” = person in position of trust/confidence w/ a V/A & knowingly, by deception or intimidation, obtains or uses, or endeavors to obtain or use, a V/A’s funds, assets, or property w/ the intent to temporarily or permanently deprive a V/A of the use, benefit, or possession of the funds, assets or property for the benefit of someone other than the V/A (F.S. 415.102/7)

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## A CRIMINAL DEFENSE ATTORNEY'S PERSPECTIVE

BY JEFF HARRIS, CHAIR: CRIMINAL LAW SECTION

"How could you?" I am often asked this question by relatives, close friends and not so close friends. "What do you mean?" I reply. "How could you represent them?" "Who's them?" "You know, the robbers, rapists and murderers." I think to myself about all the other categories left out by the speaker. "Well, that's my job," I respond. "Well, I don't know how you can do it," is the typical retort.

I follow up with a question to the speaker. "What if you were arrested and you didn't commit the crime?" They usually say, "Well, I'd tell them I didn't do it." "Very good," I say, "but how do we know you're telling the truth?" They usually respond with, "I would be emphatic by saying, 'I really didn't do it, honestly!'" I tell the speaker, "Well, everyone says that; how do I know you're telling me the truth?" Usually at this point a glazed look and blank stare comes across their face. Eventually, they see the light when I ask, "How do you prove the negative -I didn't do it?" While my point is made, the person is not usually truly convinced until either they or a loved one is arrested and in need of a criminal defense attorney.

This typical exchange often makes me question whether the administration of justice concept is really that complex? Is what I am doing as significant as "putting people behind bars"? Is my job truly important? Upon reflection, my answer is clearly "yes" to all the above.

Just ask Wilton Dedge these same questions. It was the afternoon of December 8, 1981, when a 17-year-old girl came home; while changing clothes, she heard a sound and turned to find a man armed with a knife. Her clothes were cut off her body and she was repeatedly raped. Without going into further details, a more heinous crime could not have been committed. The young lady's boyfriend immediately took her to the emergency room where she was examined, a rape kit prepared and her clothes collected.

Four days after the crime, the 17-year-old told her sister that she saw a man in a convenience store that resembled her assailant. Through a convoluted evolution of dialogue between the victim, the victim's sister and the

police, Wilton Dedge's photograph was placed before the young lady, and she immediately identified Mr. Dedge as the attacker. This was quite odd since the victim's initial description of her assailant was 6 feet tall, approximately 160 pounds with a muscular build. At the time of the arrest, Wilton Dedge weighed 125 pounds and was 5 feet, 5 inches tall.

Nevertheless, a Brevard County jury found him guilty largely based upon the eyewitness identification, hair identification testimony, dog sniff evidence and testimony from a jail house snitch. Finally, eight years after he requested post conviction DNA testing, Mr. Dedge was released from prison during the early morning hours of August 12, 2004. Only with the help of the Innocence Project, was Mr. Dedge exonerated and released after falsely serving 22 years in state prison.

Just ask Brandon Mayfield these same questions. On May 6, 2004, this 37-year-old immigration attorney was arrested in Portland, Oregon as a material witness with respect to a federal grand jury investigation of a March 11, 2004, terrorist bombing in Madrid, Spain. His crime causing detention, public scorn and ridicule, humiliation, as well as economic devastation to his legal practice, was allegedly leaving a fingerprint on a bag in Spain which contained detonation devices similar to those used in the Madrid bombings. Only due to superb lawyering by Federal Public Defenders for the District of Oregon was Mr. Mayfield released from federal custody after being wrongfully detained 18 days.

What did Mr. Dedge say when he was arrested? What did Mr. Mayfield tell the FBI agents as they were slapping on the handcuffs? Of course, their response was, "I really didn't do it, honestly!" But how would we really know if it was not for the criminal defense attorney? So now I hope my relatives and friends get it when I say I am a criminal defense attorney and that I am very proud of this fact.





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## IS MEDIATING THE ANSWER TO REDUCING THE VOLUME OF BANK FORECLOSURES IN THE SYSTEM.

by Rhonda Hollander



On May 20, 2008, a draft proposal was disseminated in Palm Beach County, providing a new procedure to expedite mortgage foreclosures. This proposal is in reaction to the dramatic increase in foreclosures. Now institutional mortgagees must at the time of filing the complaint, provide the name, address, telephone number and facsimile number of the office of the plaintiff's representative who has the authority to re-work or otherwise modify the existing loan, along with the total amount due as of the stated date which date must be no more than twenty days prior to filing. This requirement immediately opens up the door to communications and possible settlement of the pending indebtedness. It has detailed requirements with deadlines that require willing parties to negotiate within a timeline that expedites the matter. Those parties who wish to resolve their matter and get back on track have the ability to exchange information and can request a mediator to finalize any pending issues. For homesteaded debtors this is a great attempt by the courts to expedite the matter effectively and cost effectively. But will it matter for all of the other foreclosures out there?

The housing slump and the credit crisis have combined to cause a rising wave of foreclosures which have affected everyone in the court house in each county in Florida. Increasingly, the Banks have been foreclosing in the thousands per month as debtors walk away from their investments gone bad. Although arguments are being made that many homeowners are making the required payments on their loans and need assistance, those are about the only cases that will justify setting bank foreclosures for mediations.

The first thought which comes to mind when administrators suggest mediations for bank foreclosures is "how is this going to expedite the processing of bank foreclosures?". Clearly taking the additional time to resolve the matters out of court will alleviate the volume of cases being heard each morning on motion calendars. However, how many of these cases will settle out of court depends on what kind of foreclosure are taking place. Is the home being foreclosed upon a homesteaded property or an investment property. It is undisputed that a major reason the economy has been so bad is because of investors who obtained loans and then could not flip their property. If we are dealing with "those investors", then the results may not be as good. If a person is living in the property as their homestead, then certainly, the most cost efficient method of completing the matter is to have the parties go to mediation where all parties have the ability to settle at the mediation. The key to this type of successful mediation is whether the bank then has the authority to renegotiate the loan to allow for the defendant to have sufficient time and resources to avoid another default. Alternatively, if the Defendant really

has made the payments, then this is also another mediation or in some cases arbitrated, as they can be easily resolved like any other commercial transaction if the parties are prepared to sit across the table and perform the accounting functions necessary for settlement.

The problems arise when the property being foreclosed upon is one where an investor overextended himself and the banks gave them money on the overvalued property alone. If the property is overvalued and the debtor no longer desires to carry the property, then there is little to mediate other than to obtain the same judgment the bank would obtain at motion calendar. The defendants in most of these cases would rather walk away with a judgment then take back a property that is not worth what they paid for it. Alternatively, if a short sale is an option, then the defendant still has to be able to bring a buyer to the table, which in this market is extremely difficult to do.

In the end, mediation only works with parties that are open minded to consider alternate choices to the pending situation. If the Banks are unwilling to renegotiate their loans in situations where the debtor wants to pay but cannot, there is no room for negotiation. Similarly, if the bank is willing to renegotiate loans at the mediation but the debtor is a speculators who is not willing to pay more on an undervalued property, there is nowhere to go.

It is this simple analysis of the pending situation which leaves banks foreclosing on property even they don't want to own. As a mediator/arbitrator and litigator in Broward County, this writer can report that the banks are not foreclosing in a timely manner because they don't want the property either and all of the people supporting that property, either Association's, trades people and secondary lenders are being affected by the fact that the banks don't want the property either and so no one is getting paid. This is the trouble with the pending back log and volume. If the present bail out has any effect on this economy, lets hope that it will give the banks the financial backing to foreclose on the properties owned by speculators who walked away and take up the responsibilities of the properties and get them sold on the market.

*Rhonda Hollander is a certified mediator and qualified Arbitrator and trainer of the company Resolutions, Inc., that she founded. She is also the chair of the ADR section for the Broward Bar.*



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# FAMILY LAW PRACTICE AFTER THE BAILOUT

By Catherine Favitta

If you are a family law attorney, have you shared with a colleague that you are busier than ever, or are you experiencing slower work volume than ever before? What’s going on? Do national economics really have an affect on families’ involvement with local court processes?

Remember about three years ago, when houses in Broward County were worth more than we ever dreamed they would be worth? Back then, many family law attorneys were being paid their fees from the proceeds of sales of their clients’ marital homes. Most homes sold quickly during 2005 and 2006, and there was usually plenty of equity to take care of legal fees and allow clients to venture into their post-dissolution lives with enough money to rebuild.

Divorces slowed down in Broward in 2007 and 2008, likely due to couples waiting to divide into two households when they could sell their homes for the substantial profit others had enjoyed in the past few years. Other couples were unable to split due to job loss by one partner. Incidents of domestic violence increased during the same time period. People were staying together, but not happily.

According to statistics for the Seventeenth Judicial Circuit, the rate of filings for Dissolution of Marriages in Broward County decreased from 2004 to the present. Filings for Domestic Violence cases increased from 2004 to 2007, and then remained steady in 2008, as seen in the chart below.

Year	# Dissolution Filings	# Domestic Violence Filings
2004	10,023	8,009
2005	10,330	8,505
2006	11,173	8,687
2007	9,869	8,982
2008	9,317*	8,949*

\*Twelve month projection based on figures available from January through September 2008. Many thanks go to Circuit Court Judge Renee Goldenberg and Lynn E. Allen, Family Court Manager 17th Judicial Circuit, for providing access to this data. This data does not reflect the many incidents of domestic violence that were reported to police but not filed.

Whether you are busier than ever, or experiencing a slow period in your family law practice, the following tips provided by the family law bench and bar may help your firm during this unique economic quagmire.

## • Get Systems in Place

Even though the rate of dissolutions has decreased, many family law practitioners are busier than ever due to enforcement actions, requests for modifications, relocations, and paternity cases, which are not included in the statistics provided above. Each of these matters has its own specific statutes, procedures, and requirements, and a lawyer has to be up-to-date on all of them in order to have a thriving practice. Organization is the key, and the lawyer must not only be highly proficient in understanding the different substantive areas of law, but also very efficient in the business of practicing family law.

A must read for family lawyers is Judge Renee Goldenberg’s two volume Florida Family Law & Practice. In those volumes practitioners will find everything they need to know about how to run a family law practice from A to Z. Most clients don’t have a lot

of money to litigate right now, so becoming more efficient in managing cases, and learning how to resolve them on an amicable basis, is a financially prudent idea for everyone.

## • Be Willing to Accept Reduced Fees

Now is the time to offer reduced rates to prospective clients. Even if they still have a good job or have money in the bank, fear and uncertainty about market conditions are causing prospective clients to be squeamish about parting with their cash right now.

Lynn E. Allen, Family Court Manager for the 17th Judicial Circuit, believes that as a result of the current financial crisis, she is “definitely getting an increase in the number of calls or walk-ins from parties seeking help and information. When asking for a referral, most parties are asking for free or lost cost assistance to help them with the forms. No doubt about it, people are looking for assistance that’s not going to have a cost factor.”

Reduced fee cases can be some of the most rewarding because there will likely be less acrimony generated from couples who value every dollar. These clients are also usually the most appreciative and can be strong sources of referrals.

## • Accept Credit Cards

Many prospective clients don’t have cash to hire a lawyer, but still have one or more credit cards available from the days when offers stuffed everyone’s mailboxes. Other clients, who have used up their credit limits when they lost their jobs or their homes, oftentimes have extended family members who are willing to help pay for their lawyer’s advice and assistance. For convenience, credit card processing can even be done without swiping the card. Credit card terminals can be purchased or rented for a minimal outlay, and the costs to process credit cards are reasonable.

## • Collect Legal Fees Up Front

Now is not the time to have a pile of unpaid invoices, but to have 0% accounts receivable instead. When your fee is reduced and reasonable overall, the client is more willing to secure your services by paying up front. Then, the lawyer and client can concentrate on the pending legal matters, without any interfering doubt about the affordability of the situation.

According to Judge Renee Goldenberg, “a lawyer has to expect what he gets up front is all the money he or she is going to get. Either work pro bono intentionally, or get out of the case early.”

## • Make Good Use of Any Down Time

Judge Goldenberg recommends that “lawyers take care of themselves during times of economic stress. Spend more time with your family, read a book that you did not have time for before, exercise, volunteer, or join an organization to meet new sources of clients to expand your client base.”

*Catherine Favitta is a Marital & Family Law Attorney and Supreme Court Certified Family Law Mediator in Fort Lauderdale. Catherine may be reached at (954) 767-8340.*

# Broward County Bar Association Preferred Lender Program



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#### Panel Member Profile



Honorable Maile K. Bernstein has a distinguished legal and judicial career. After graduating from South Broward High School in Hollywood, Florida she received her B.S. Degree from Syracuse University and her J.D. Degree from the University of Miami Law School. She was elected to the Broward County Circuit Court in 1976 and was the first woman Circuit Judge in Broward County. She served as Chief Judge of the 17th Judicial Circuit from 1985 through 1991. She is available to serve as Arbitrator and Special Magistrate on all civil matters.

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## North Broward Bar Association 2008 Annual Holiday Party!

When: December 11, 2008

Time: 5:30 p.m. to 8:30 p.m.

Where: Shooters Waterfront Café

Second Floor overlooking the Intracoastal Waterway

3033 N.E 32nd Avenue, Ft. Lauderdale, FL 33308

**FREE for members of the North Broward Bar  
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# Broward County Hispanic Bar Association's 20th Anniversary Reception



## Aboard the party yacht "Caprice"

**You're cordially invited to attend a very special  
St. Valentine's Evening Cruise along the Intercostal.**

**Open Bar - Hors D'oeuvres - Dancing**

**Boarding: 5.45 PM | Departure: 6.00 PM | Returning: 9.00 PM**

**February 14, 2009**

**Admission: \$120 p/p | Casual Attire**

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**2008 Minority Mentoring Picnic**  
The Honorable Matthew Destry, Jesse Diner, President Elect of the Florida Bar and Christopher M. "Chris" Neilson, President, Broward County Bar Association, with law students attending the 5th Annual Minority Mentoring Picnic on November 1st.

### 2008 Past President's Luncheon

Seated (from left): Peter Portley, Linda Conahan, Russell Carlisle, Mark Butler, George Allen, Barbara Sunshine. Standing: Victor P. DeBianchi, Jr.; Hon. Jack Luzzo; Hon. Victor Tobin, Chief Judge, 17th Judicial Circuit; Christopher M. "Chris" Neilson, David Welch, Michael Carbo and Steve Moody



### T. J. Reddick Bar Association Hosts Panel



Eugene Pettis and Jesse Diner, President Elect of The Florida Bar, with Frank Wagner, from Mellon Bank, at the T.J. Reddick Bar Association meeting on November 21st.



Judge Elijah Williams, of the 17th Judicial Circuit, with Cynthia A. Everett, Esq. and Eugene Pettis, Esq., member of the Florida Bar Board of Governors, who served on a panel discussing opportunities for minority candidates seeking a seat on the bench in Broward County.



### 2008 Reception for 4th District Court of Appeal

The Honorable Barry Stone, with Chris Neilson. Judge Stone, who recently retired, was among the Judges honored at the November 18 Reception for the 4th DCA.

The Honorable George Shahood, with Chris Neilson. Judge Shahood, chief Judge of the 4th DCA, has announced his pending retirement.

Also recognized was Judge Larry Klein, who has also announced his retirement.