



Broward County Bar Association
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Broward County Bar Association BARRISTER

May 2009 • WWW.BROWARDBAR.ORG • 954-764-8040 • VOLUME 40, ISSUE 5

HOLD THE DATE... THURSDAY, JUNE 11, 2009

BROWARD COUNTY BAR ASSOCIATION ANNUAL MEETING AND INSTALLATION DINNER

Hyatt Regency Pier Sixty-Six Panorama Ballroom
2301 SE 17th Street, Fort Lauderdale

Cocktail Reception 5:30p.m. Dinner 6:30p.m.

Menu includes choice of Beef, Chicken or Fish

Cost: \$85 for members/ \$95 for non-members

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Contact Mike Ortiz at (954) 764-8040 x 202 or via email: mike@browardbar.org

Register on line at www.browardbar.org/events

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2009 BCBA Bench and Bar Convention set for October 16

The 2009 Quadrennial Bench-Bar
Conference is scheduled for Friday,
October 16, 2009
at the Broward County Convention
Center in Fort Lauderdale.

Seven hours of CLE credit (including 1.0
hour of ethics credit or more) will be
available. If you are interested in presenting
one of the 50 minute seminars or an entire
track of (6) seminars, contact Morrie
Levine, Esq., 954-925-9000. There are
limited sponsorship opportunities still
sponsor of this event, please contact Robin
Moselle, Esq. at 954- 315-0923 for
sponsorship information.

Congratulations to New Judges!



Judge Jonathan Gerber of the 15th Judicial
Circuit was appointed by
Governor Crist to the Fourth District Court of
Appeal on April 7, 2009.

Fort Lauderdale attorney Spencer Levine was
appointed by Governor Crist to
the Fourth District of Appeal on April 7, 2009.



Attorney Edward H. Merrigan, Jr., Fort
Lauderdale, was appointed to the Broward
County Court bench by Governor Crist
on April 8, 2009.



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

Welcome to May! We have really enjoyed the spectacular April spring weather leading into summer. Since we live in Hollywood, only a few miles from the ocean, it is so nice to open the windows and feel the cool, dry air flowing through our home. Soon, the houses will

be buttoned up tighter than a drum and the neighborhood will be abuzz with the constant drone of 24 x 7 air conditioners.

On April 17th, I had the privilege of attending the Hispanic Bar Association's last luncheon of the year under current president Juan Arias, who has done a fabulous job this year. Congratulations, Juan. Florida Bar President-Elect Jesse Diner was the featured speaker. Jesse spoke about the financial crisis facing our State Court System and the need for a permanent funding source for the courts. Chief Judge Victor Tobin also spoke briefly and stressed this crisis. Obviously, an adequately funded system of justice is of paramount concern to lawyers, since attorneys are Officers of the Court, and our profession, our clients, and our community depend upon it.

Mr. Diner reminded us that as a co-equal branch of government (Legislative, Executive and Judicial), the Judicial branch only receives .07 percent of the entire budget for The State of Florida. Many assume co-equal means just that, i.e. that each branch receives an equal 1/3rd of the budget, which simply isn't the case. It is very troubling to realize that our State Court System receives only less than one percent of the state budget...and that amount is being cut. It is up to all of us to do whatever we can to ensure fair and adequate access to our courts. Please educate yourself, your clients, your friends, and your neighbors about this vital area of concern.

Our staff works very hard to ensure you receive your Barrister each month. Unfortunately, since we do not print in house, the printing and mailing process sometimes causes delays beyond our control. You may be unaware, however, that we always post the monthly online version on our website, www.browardbar.org, with the link on the bottom right side of our home page. For current events, please note that there is an updated calendar on our home page as well.

One of my goals this year was to continue "greening" BCBA. If you would like to help, please notify staff at 954-764-8040 that you would prefer your Barrister on line, which will ensure you receive it hot off the press, help us to reduce costs and also help us to be "green" and save some trees in the process. We realize that many of you enjoy having the hard copy, and for the time being will continue to furnish these.

We recently completed mailing the ballot for our annual election of Officers and Directors. Since there was not a current electronic ballot in place, we printed and mailed the ballot to our 2500 members. As a further attempt to "green" BCBA, we included a questionnaire asking the voters for their preferences for future elections. On April 20th, we met to manually tally the ballots and the questionnaire. As you can imagine, this is a time consuming manual effort, which would best be done electronically. Special thanks to board members Edwina Kessler, Barbara Sunshine, Alan Fishman

and Michael Vines, along with BCBA Executive Director Art Goldberg and staff member Tish Guiffreda for helping me to tally the 476 paper ballots. Congratulations to everyone who chose to run, and to our new Secretary Deborah P. FitzGerald, and to our new Board Members John Jordan, Angel Petti Rosenberg, Paul Finizio, and Jim Cobb from Central, and Michelle Cavallaro from South.

We will advise you of the survey results when they are finalized. I truly hope that BCBA can take a further step into "Greenland", as well as embrace what technology has to offer for future elections, by adopting an electronic ballot for future elections.

BCBA last published its member directory in 2007, which was an expensive "hard" copy. Keeping with the "green" theme, as well as cost reduction, staff has been instructed to expand our web-site to create an on-line membership directory, for members only, on our members page. Obviously, this will be a continuing work in progress, but it will be a significant asset to our members. Once initiated, we will notify our members as to how to access this page, and request that you please check your listings to be sure they are current (and to advise us of any changes). Please be patient with this transition, since we are dealing with 2500 members, and contact information is changing all the time.

On April 25th BCBA held its long envisioned "Mortgage Burning BBQ". This event was to thank all of our members, especially those who have contributed, since 2005, to this worthwhile project. We have recognized all of these contributors in the Barrister, and would especially like to thank the Past President's Council for Major Gift Contributions. I wish to especially thank Past President Roger Staley for his efforts in helping to coordinate the campaign.

The mortgage pay down was a major focus of Past President Barbara Sunshine's presidency. I also included this in my platform, and advised that we would somehow complete this project this year. The project began in 2005, when our economy was more robust. Thanks to the selfless contributions of those who gave, we have finally been able to pay off the encumbrance on our property.

I have always loved the law in its purest form, which for me was actually at law school. I still remember first year Property at Nova Law School like it was yesterday, with Professor Ron Brown, even though it was over 25 years ago! Those fascinating early cases about the rights of title to wild animals, or of ownership issues of such things as lumber being argued, since its genre had changed by its conversion to furniture, etc.

You might recall the old feudal system of livery of seisin (feoffment), by transferring ownership of real property, by actually delivering clumps of sod or dirt or branches off of trees from the affected property as ownership of the property. Actually, a freehold in possession could only be created or transferred by handing a twig from the property and uttering appropriate words to indicate an intent to transfer title (Cases and Text on Property, Casner and Leach, 1969, page 320). We use keys and mortgages today!

I mention this trip down memory lane, since I thought it would be educational, interesting and fun to have a similar

CALENDAR OF EVENTS

MAY 2009

Friday, May 1st:

Law Day Luncheon. Keynote Speaker: Professor Bruce Rogow, Nova Southeastern Shepard Broad Law Center. 12:00 p.m. Tower Club, 1 Financial Plaza, 100 SE 3rd Ave, 28th Floor Fort Lauderdale. RSVP to Broward County Bar Association at (954) 764- 8040.

May 4th:

Grievance Committee 17G Meeting. 2:00 p.m. Broward County Bar Association's, Norma B. Howard Center, 1051 SE 3rd Ave. Ft. Lauderdale, 33316.

Thursday, May 7th:

Young Lawyers Section Judicial Reception. Sun-Sentinel building, 5:30 p.m. Sponsorships available. Individual tickets are \$40.00. For more information contact Alan Raines at alan.raines@brinkleymorgan.com.

Thursday, May 7th:

South Broward Bar Association Monthly Luncheon. Noon. At the Ark Restaurant in Davie. Guest Speaker: Judge Robert Rosenberg. For more information contact (954) 791- 3939.

Saturday, May 9th:

4 Hour Minor Guardianship class. 9:00 a.m.- 1:00 pm. At the Norma B. Howard Center, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316. \$100.00 per person. Guardian for anyone under the age of 18. Attorneys welcome. APPROVED BY THE FLORIDA BAR FOR CLE CREDIT. To sign up please contact Tish at (954) 764- 8040 x 200.

Monday, May 11th:

6th Annual Judicial Reception and Program coordinated by the Jewish Federation of Broward County. Topic: Is Florida Gambling In Its Future? 5:30- 6:15p.m.- Judicial Reception. 6:15- 7:30p.m.- Program. Fort Lauderdale Museum of Art, One Las Olas Blvd. Fort Lauderdale. \$20 per person. To register log on to www.jewishbroward.org after April 1st.

Monday, May 11th:

Broward County Bar Association's Executive Committee Meeting. Noon. At Broward County Bar Association, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316.

Monday, May 11th:

FREE CLE Seminar. Topic: The Roadmap to Retirement. 1 Hour CLE. 4:00 p.m. At the Broward County Bar Association Conference Room 1051 SE 3rd Ave, Fort Lauderdale, FL 33316. Please RSVP to (561) 961-9311.

Tuesday, May 12th:

BCBA Board of Directors Meeting. 5:15 p.m. At the Broward County Bar Association conference room, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316.

Wednesday, May 13th:

Broward County Bar Association Solo/ Small Law Firm Networking Dinner. 6:00 p.m. At Dave and Busters in Hollywood, 3000 Oakwood Blvd. Hollywood, FL. \$35 for members; \$40 for non-members. To sign up please call Mike at (954) 764- 8040 x 202 or log on to www.browardbar.org.

Wednesday, May 13th:

Employment Law Seminar. 8:30a.m.- 1:30p.m. Cost: \$50 including lunch. Title: "Survival of Employment Law under the Obama Administration". SEE PAGE 17 for AGENDA & REGISTRATION. At the Norma B. Howard Bar Center, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316. To register please call the BCBA at (954) 764- 8040 X 202 or register on line at www.browardbar.org/events

Wednesday, May 13th:

SOLO / SMALL LAW FIRM NETWORKING GROUP Dinner Meeting. Dave & Busters. See page 14 for details.

Friday, May 15th:

Legal Aid Service of Broward County's 8th Annual "For the Public Good". Celebrating Legal Aid Services' 35th Anniversary. Fort Lauderdale Grande Hotel. 6:00- 10:00p.m. For more information please contact Kathy Thomsen at kthomsen@legalaid.org or 954- 736-2429. Or log on to www.legalaid.com.

Friday, May 15th:

The Florida Bar Continuing Legal Education Committee Presents: Basic Federal Practice Seminar. Hyatt Pier 66, Fort Lauderdale, FL. 8:00a.m.- 5:00p.m. To register log on to www.flabar.org/CLE.

May 19th:

Grievance Committee 17H Meeting. 2:00 p.m. Broward County Bar Association's, Norma B. Howard Center, 1051 SE 3rd Ave, Ft. Lauderdale, 33316.

Wednesday, May 20th:

BCBA's Young Lawyers Section Board Meeting. 5:30p.m. At the Broward County Bar Association Conference Room, 1051 SE 3rd Ave. Fort Lauderdale, FL 33316.

Thursday, May 21st:

Young Lawyers Section of the Broward County Bar Association monthly Luncheon. With Florida Bar President-Elect Jesse Diner. Noon. At the Tower Club in Fort Lauderdale, FL. Cost per person is \$25.00. Reservations are recommended due to limited seating. Please call the BCBA at (954) 764- 8040 to RSVP.

Saturday, May 23rd:

8 Hour Guardianship Class. 9:00a.m.- 5:00p.m. Norma B. Howard Center, 1051 SE 3rd Ave. Fort Lauderdale, FL 33316. Cost: \$180.00 per person. Guardian for anyone over the age of 18. Attorneys welcome. APPROVED BY THE FLORIDA BAR FOR CLE CREDIT. To sign up contact Tish at (954) 764- 8040 x 200.

Thursday, May 28th:

BCBA Seminar. OSHA- Inspections, Citations, and after the Citations are issues. By Larry D. Leiman, BS, CSSM, Safety Engineer. At 12:00p.m. At the Broward County Bar Association, 1051 SE 3rd Ave, Fort Lauderdale, FL 33316. CLE credits available. For more information, or to RSVP contact Randall L. Gilbert Esq. at (954) 620-5000.

Thursday June 11th:

Hold the Date for Broward County Bar Association's Installation Dinner. More details to come.

JUNE 2009

OFFICE SPACE

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Class A downtown Broward law offices with beautiful 20th floor view, within established firm. Nice appearance, collegial atmosphere. One or two offices available, with secretarial stations. Receptionist, copier, fax, scanner and library. Call Richard at 954-463-8456.

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One or two offices available with room for secretary(ies). Each office has floor to ceiling tinted windows. Conference room and small kitchen. Fax and copier available. Class A Building great location across from Broward Mall. Rent: Negotiable. Call (954) 423-4440.

WESTON TOWN CENTER

Office space to share with two other attorneys. Sublease of 2 offices and 1 legal assistant area for immediate use. Conference room, copier, facsimile, and phone system available. Contact John Sorkin, Esq. at 954- 515-0011 or john@johnsorkinpa.com.

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Broward County Court Administrator's Office is presently seeking applicants for the following State-funded position: Circuit Judicial Assistant -- \$34,039.56

This position will remain open until filled. Official application and additional information may be obtained from the Court Administrator's Office, Broward County Courthouse, 201 S.E. 6th Street, Room 470, Ft. Lauderdale, FL 33301 or visiting our website at www.17th.flcourts.org. E/O/E

**HOLD THE DATE...
Friday June 19, 2009**

**A Marlins outing with the
North Broward Bar
Association**

Start time: 7:00 p.m.

Sign up now at www.northbrowardbar.org

Mortgage Burning Ceremony for BCBA. Nova Law Professor Joe Grohman graciously agreed to attend our ceremony to give it a little Middle Ages ceremonial flair (many thanks to Professor Grohman, and to Professor Brown who although out of town for the ceremony, however still assisted in the program presented by Professor Grohman).

And, many thanks to Mark Butler and John Primeau, who spent countless hours reviewing the histories and abstracts of our properties, and actually preparing a fascinating Proclamation for the ceremony.

By eliminating our mortgage and monthly payments, we have thereby created a more positive cash flow for our operating expenses. This should be a source of great pride for all of our members, and especially so for all of those who gave to make it possible. Thanks so very, very much again to all of you.

BCBA has a beautiful, unique, tranquil, serene and quiet property on the Tarpon River estuary. If you haven't already, take some time to visit our wonderful property. We have a lush canopy of trees. Even on hot days, it is cool under the canopy down by the river. Iguanas, peacocks, and birds of all types frequently pass through. I really hope that our property will remain a tranquil place that our members can visit and utilize well into the future. It truly is a fortress of solitude amidst the burgeoning metropolis surrounding it. Let's never change that.

UPCOMING EVENTS

MAY 1, 2009

We are busy preparing for our annual Law Day Luncheon, which will be held at The Tower Club at noon on **Friday, May 1st**. Nova Southeastern Shepard Broad Law Center Professor Bruce Rogow will be our featured speaker. I know from having Bruce as one of my Professors over 25 years ago that we will be in for a very interesting and informative presentation.

MAY 7, 2009

Please remember the Young Lawyers Section Judicial Reception at the New River Center Rotunda (Sun-Sentinel Building) on 200 East Las Olas Boulevard on **Thursday, May 7** from 5:30 to 7:30 p.m.

MAY 15, 2008

On May 15th, please mark you calendar for Broward County Legal Aid's 35th Anniversary Dinner, to be held at the Fort Lauderdale Grande Hotel (now Hilton) on 17th Street. Actually, this year BCBA will be recognized by Legal Aid (BCBA created Legal Aid). And, BCBA and Legal Aid Service of Broward County will be teaming up to help fight foreclosure by co-hosting a full day seminar. The date and location of the seminar will soon be announced.

JUNE 11, 2009

Please save the date for BCBA's Annual Meeting and Installation Dinner, which will be held on June 11 at the Pier 66 Panorama Room on 17th Street Causeway.

OCTOBER 16, 2009

Finally, please remember that on October 16, 2009, BCBA

will be hosting its Quadrennial Bench-Bar Convention, all day at the Broward County Convention Center, including breakfast, lunch, 7 CLE's, 90 Workshops, Exhibitors, Door-prizes, and Reception. It is and excellent time to get in on the ground floor of this tremendous convention. If you know of anyone who would like to be an exhibitor, presenter, or sponsor, and to have a full day presence with hundreds of lawyers and judges, please contact our Exhibitor Chair Robin Moselle at 954-315-0923; our CLE Chair Morrie Levine at 954-925-9000; Convention Chair Christopher Neilson at 954-920-4LAW, or our Executive Director Art Goldberg at 954-764-8040.

As you can see, we have lots of opportunities for service. Someday, I would really like to see ALL 8000 lawyers in Broward County become BCBA members. As professionals, I believe that we should all do something to give back to our profession, our community, and ourselves. It is truly by giving that one receives.

All the best! Chris



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.

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BROWARD COUNTY BAR ASSOCIATION
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Courthouse Advisory Taskforce Sends Interim Report to County Commission
 By Scott Chitoff, President, Young Lawyers Section

As a member of the Courthouse Taskforce representing the interests of the Bar Association, it is my pleasure to share with you the 'Key Areas of Agreement'

regarding the building of a new courthouse facility. They are part of the Interim Report that was sent to the County Commission. After the County Commission considers the Interim Report, it is expected to take up and vote on the recommendations.

Key Areas of Agreement of the Courthouse Taskforce:

- (1) A new courthouse is critically needed.
- (2) Renovating the old courthouse is not cost effective.
- (3) Given the risk of building/system failure our priority is to concentrate on the new courthouse.
- (4) Postpone other projects in bond issue- save \$58 million.
- (5) Agencies - Public Defender, State Attorney, Court Administration - should remain in the newer North and East Wings. The long term goal is for the SAO & PD to be in a separate facility nearby.
- (6) The new courthouse should provide adequate space for all agencies to meet their needs in phases.
- (7) Identify options to meet future space needs once the old courthouse is demolished.
- (8) The new courthouse needs to be "flexible" which may include Shell Space, Office space that can convert to courtrooms/chambers, Multipurpose rooms, Shared spaces/movable walls and Co-location of divisions with similar needs.
- (9) The new courthouse must be secure.
- (10) The new courthouse should be constructed

on the site of the Judicial Garage.

- (11) The County should seek a developer as soon as possible to construct additional parking.
 - (12) Maximize revenues from parking and courthouse concessions.
 - (13) Courthouse funding plan should minimize tax burden; avoid increase in taxes; use existing funds; and utilize non-voted debt.
 - (14) Provide secure parking during construction.
 - (15) Maximize use of existing satellite Courthouses by adding one additional courtroom at South and one at West.
 - (16) The new courthouse should include latest technology to improve court operations and conserve space. Note: Including e-filing, biometric security, electronic signage and queuing to assist visitors, video conferencing in civil courtrooms and monitors for judges and lawyers.
 - (17) Remodel the third floor of the Midrise for the Public Defender
 - (18) Lease space in nearby buildings such as the 110 Tower to "fill in the gaps" between building phases. Note: 110 Tower is not on the market –and not suitable to remodel for use as a courthouse.
 - (19) New courthouse should include more judicial offices than courtrooms for senior judges and new judges. The new courthouse should have judicial offices and litigation spaces on the same floor; include shell space; eliminate separate chambers; and litigation spaces that vary in size to meet the unique needs of each division.
- For further information, including copies of the Task Force's working papers, please go to <http://www.broward.org/courhousetaskforce>.



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Law Offices of Joanne Fanizza, P.A.
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 Farmingdale, New York 11735
 (516) 586-6036
 jojfpa@optimum.net
 2631 E. Oakland Park Blvd., Suite 205
 Fort Lauderdale, Florida 33306
 (954) 565-5445

Dear Colleagues,

For more than 20 years I have had the pleasure of practicing law with some of the finest lawyers in the U.S. – the members of the Broward County Bar Association. And while I enjoyed being part of the vibrant and diverse legal community of South Florida, some time ago I decided to relocate back to my home state of New York to be close to my extended family.

Since my return I have opened a law office in Farmingdale, New York, on the border of Nassau and Suffolk Counties on Long Island. Meanwhile, I maintain an office in Fort Lauderdale and I visit there frequently.

If any of you has the need to refer a client or other legal matter to a lawyer in this area, I ask that you consider calling my office. I continue to provide personal, caring service to clients in the areas of estate planning and administration, real estate, corporate/commercial law and civil litigation.

Thank you for your continued friendship and I look forward to seeing you on one of my future trips to South Florida.

Joanne Fanizza, Attorney at Law
 Member of FL, NY and DC Bars

RECENT DEVELOPMENTS IN THE LAW

by Nancy Little Hoffmann



1. Civil Procedure/Vacation of Judgment **Leach v. Salehpour,** **34 Fla. L. Weekly D795 (Fla. 2nd DCA April 17, 2009).**

Reversing an order vacating a final judgment, the Second District held that a trial court lacks jurisdiction to correct its own judicial error even on its own initiative, unless it does so within ten days. Although it was argued that the trial court correctly vacated the judgment under rule 1.540 based on “mistake,” the appellate court held that the type of mistake the trial court corrected was not a mistake correctable through a 1.540 motion, but was a legal error which could only be corrected within ten days via rule 1.530 or through appellate review.

2. Discovery/Work Product **Neighborhood Health Partnership, Inc. v. Merkle,** **34 Fla. L. Weekly D766 (Fla. 4th DCA April 15, 2009).**

In denying a petition for certiorari and rejecting a claim that certain documents were protected as work product, the Fourth District clarified that the work product privilege is not a “general shield for materials routinely prepared in the ordinary course of business.” The court emphasized that a document is not “prepared in anticipation of litigation” so as to be protected as work product unless, at a minimum, a specific litigation matter can be reasonably anticipated as a result of a particular act or circumstance.

3. Nursing Homes/Arbitration **Curcio v. Sovereign Health Care of Boynton Beach, LLC,** **34 Fla. L. Weekly D719 (Fla. 4th DCA April 8, 2009).**

The Fourth District reversed an order compelling arbitration and dismissing a wrongful death action against a nursing home. The plaintiff had challenged the enforceability of the arbitration provision in the resident admission and financial agreement, because the decedent had no choice but to sign it in order to obtain necessary medical care and treatment and because she did not understand the rights she was waiving. Because the trial judge did not hold an evidentiary hearing to resolve these issues, the Fourth District further held that if, after an evidentiary hearing, the trial court should decide to compel arbitration, it should nonetheless stay rather than

dismiss the plaintiff’s case.

4. Settlement/Enforcement **Baratta v. Bradford Electric, Inc.,** **34 Fla. L. Weekly D764 (Fla. 4th DCA April 15, 2009).**

After defendant made a settlement offer which was to expire in thirty days pursuant to rule 1.442, F.R.C.P., plaintiff’s counsel requested an additional twenty days to respond, which was granted. The plaintiff accepted the offer but with additional conditions which defendant rejected. On the last day of the extension, plaintiff then accepted the proposal without conditions. Several months later, plaintiff repudiated the settlement, whereupon the defendant filed a motion to enforce the settlement, which the trial court granted. Affirming, the Fourth District rejected plaintiff’s argument that since he had not accepted the proposal initially within thirty days, it should be deemed rejected and unenforceable. The court observed that although the rule requires strict compliance, it would not prevent the offeree from actually accepting an untimely offer and avoiding trial; it merely prevents the offer from later serving as a basis for an award of fees. In this case, because there were exchanges of offers and a final acceptance, the settlement was enforceable.

5. Sovereign Immunity/Negligent Licensing **Department of Children & Family Services v. Chapman,** **34 Fla. L. Weekly D754 (Fla. 2nd DCA April 15, 2009).**

In a lengthy opinion tracing the history of governmental liability law in Florida, the Second District held that the statutory duties of DCF to license substance abuse service providers are general duties owing to the public. The statute did not create an actionable duty that would permit families to recover damages caused by DCF’s negligent licensing of an individual counselor. In this cases, families of two children who were seriously harmed by the actions of the counselor had recovered a substantial jury against DCF. The Second DCA reversed the judgment and remanded for entry of judgment in favor of DCF, but certified to the supreme court the question of whether a tort duty arose under the circumstances.

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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REDEFINING "PATENTABLE"

By Allen F. Bennett

We patent attorneys dwell in a relatively remote neck of the legal woods. Our legal brethren rarely venture into our area of practice, and forays by the courts are few and far between. This allowed our secluded realm to remain relatively unchanged for years. The laws became established, legal doctrines were thoroughly fleshed out and patent law, while esoteric and technical, was well defined.

Unfortunately, the rules became a little too relaxed and the legal hoops an inventor must jump through to obtain a patent were lowered and widened a bit too much. This led to some rather dubious patents being issued. For example, U.S. Patent No. 6,004,596 granted a monopoly to its owner on a peanut butter and jelly sandwich having crimped edges. U.S. Patent No. 5,443,036 granted its "inventor" the exclusive right to "exercise" a cat by having it chase the red dot from a laser pointer. Such dubious patents make for good stories in our patent community. However, our founding fathers really intended patents to encourage innovation and not to reward a man with a laser pointer and a penchant for teasing his cat.

With the number of such dubious patents rising, the Courts finally decided to step in and toughen the rules for obtaining a patent. Two recent cases, KSR v Teleflex and In re Bilski, have drastically curbed this trend. Ensuring that patents are used for their intended purpose, to encourage real innovation, is a worthy goal. However, our legal system is not susceptible to a ready, sure fix. These two cases have started what could become a forest fire in the usually quiet realm of patent law.

Prior to KSR, patent worthy innovation could be demonstrated by showing that there had been no previous "Teaching, Suggestion or Motivation" for a person to design the subject invention (the "TSM" test as it was known). An inventor merely had to show that there no one had actually encouraged or suggested his particular. That is, unless a Patent Examiner found actual evidence that another person had suggested crimping the edges of a peanut butter and jelly sandwich, a patent would be issued for such an idea. KSR changed that. Now, the inventor and the Patent Office must speculate and debate what "one skilled in the art" would or would not do. That is, the new test requires an inventor to convince the Patent Office that it would not occur to an average peanut butter and jelly aficionado to crimp the edges of his or her sandwich.

In many ways this is a good thing. However, the patent attorneys "skilled artisan," like the "reasonable person" or tort law, is difficult to define. The result is increased legal fees paid to a patent attorney to debate with the Patent Examiner over what a person skilled in making a PB&J would or would not do. The end result is that patents are harder to come by, take longer and cost

more.

Another and far more drastic change to patent law came when the CAFC handed down its decision in In re Bilski. In Bilski, the Court declared unpatentable any "method" patents not tied to a particular machine or produce a tangible end product. This ruling has dire consequences to many common types of patents, such as software patents. Software generally only manipulates information, and information itself is not considered a tangible product. This means that unless the software is directly tied to machinery and does more than process data, it is likely unpatentable. Software giants such as Microsoft® may see much of their intangible assets evaporate.

The Bilski decision is also creating havoc in the medical industry. In Prometheus v. Mayo, the Court cited Bilski in determining that a human body's reaction to a chemical or drug is a natural phenomenon and therefore not patentable. Other recent cases have found that new methods on diagnostic testing and the growing field of personalized medicine are also not patentable. While the large pharmaceutical companies garner little sympathy, these decisions affect the types of patents that are often the primary assets of relatively small medical companies. New chemical compounds and drugs are still patentable. However, the discovery that an old medicine can be used in a novel way may not be. For example, under the test announced in Bilski, an inventor who learns how to cure cancer using, say, Viagra®, has only discovered a natural phenomenon, not a patentable cancer treatment. Without the rewards granted by a patent, companies have little motivation to spend the enormous time and money required to develop new diagnostic tests and treatments.

Both of these cases have made it far more difficult to obtain patents. This is compounded by another, perhaps larger problem: issued patents, previously considered quite valuable and enforceable, are of questionable validity. Companies and inventors who obtained patents prior to these decisions must now take a second look at their patent portfolios and re-evaluate their worth. It is probably fair to say that the intellectual property "bubble" has burst along with that of the real property "bubble."

While the patent neck of the legal woods has by no means been clear cut, lots of dead wood and some good wood has been cleared away. And, while the KSR decision has led to uncertainty, that will pass as the courts define what this modified test means. The Bilski decision, on the other hand, has received a lot of criticism for its perambulatory logic and vague reasoning. The next few years will certainly be interesting as we see how the Supreme Court and other courts handle this decision.

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Friday, June 12th, The Ark, 6255 Stirling Road, Hollywood, (954) 584-3075, RSVP to: David Silverstone (954) 367-0770 and or david@dsilverstone.com.

Tuesday, June 16th, Olive Garden, 807 S. University Drive, Plantation (954) 424-7201, RSVP to: John Rizvi (954) 452-0033 and or johnrizvi@ideaattorneys.com.

Friday June 19th, East City Grill, 1800 Bell Tower Lane, Weston Town Center, Weston (954) 659-3339, RSVP to: Rick Woolf (954) 252-0043 and or rwoolf@woolffinancial.com.

Friday, June 26th, @ J. Marks Restaurant, 1490 Copans Road, Pompano Beach, (954)782-7000, RSVP to: Jane Bolin, (954) 316-1339 and or jane@peytonbolin.com.

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Broward Attorneys Embracing YouTube

By Margaret Grisdela

“A New York minute” is starting to look slow in comparison to changes taking place on the Internet today.

Just when you were getting comfortable with web sites, blogs and LinkedIn, progressive attorneys now need to figure out new ways to communicate online through the use of other “social media.” Web users have free technology at their fingertips to generate their own content, creating entirely new ways for everyone from pros to amateurs to start or contribute to an online dialogue.

Take YouTube (www.youtube.com) as an example. In less than five years, YouTube has gone from a way to share personal videos to the largest global aggregator of videos for web watchers around the globe. Speaking of that New York minute, YouTube claims that ten hours of video is uploaded to YouTube every single minute. Every day brings hundreds of thousands of new videos.

What does YouTube mean for the legal profession? The answers are many; here are just a few.

FIRST and most obvious, law firms anxious to reach a consumer audience see YouTube as yet another way to extend their reach in a media format not yet saturated by other attorneys.

SECOND, lawyers can secretly discover what local or national competitors are doing with video online. See what works and adopt those ideas that are well suited to your firm.

THIRD, it's a great way to level the playing field. Smaller firms are likely to find they can be more nimble than their larger brethren without the need for a huge budget. While professionally-produced video clips give a polished appearance, more casual videos are also commonplace.

A few of the many popular ways attorneys are using YouTube include:

- Post a television interview on YouTube to reach a larger audience over the longer term
- Gain competitive intelligence by watching other attorneys' ads
- Educate your audience on changes in the law
- Share firm news, like new hires or service areas
- Offer examples of how your firm is helping clients overcome business or personal challenges

Broward law firms are stepping up to the plate. Search for the following videos at YouTube to get a better sense of how it works.

- Tripp Scott offers a series of webcasts, including one featuring firm President Edward J. Pozzuoli interviewing Lori Parrish, Broward County Property Appraiser. This ten minute video clip, also available on the firm's web site, was posted in February and already viewed over 40 times by early April. It's educational in format, featuring an exploration of how economic times are impacting the value of Broward county properties.

- Romney Rogers, Fort Lauderdale attorney, talked to the Sun Sentinel editorial board and reporter Brittany Wallman about his bid for City Commission District IV. Posted in January 2009, the campaign video has been viewed over 80 times.

- Criminal defense attorney John J. Richardson, posts interviews in which he appears as a commentator on segments originally broadcast on Fox News.

- EmploymentCrossing.com and LawCrossing.com feature news on the Labor and Employment practice area at local firms Greenspoon Marder and Akerman Senterfitt.

- Greenberg Traurig LLP features an interview with the Managing Shareholder of the Shanghai office.

Is YouTube right for you? The answer depends on your practice, your comfort level with technology, your audience, and how you choose to use the medium. It works equally well for educational or promotional purposes.

Attorney Advertising Guidelines

As the reader most likely knows, The Florida Bar has been reviewing attorney advertising guidelines relative to web sites for over five years. Most recently, the Bar petitioned the Florida Supreme Court to consider proposed amendments to rule 4-7.6 (Computer-accessed Communications) on February 28, 2008. The Court declined to adopt the proposed amendments, in an order issued February 27, 2009.

Basically, The Florida Bar's proposal would have treated a law firm's home page as subject to all substantive lawyer advertising guidelines while treating interior pages as providing information “on request.” The Court objected to this suggested approach, particularly in regard to the Bar's proposed allowance of testimonials, information regarding past results, and statements characterizing the quality of services being offered.

What does this mean for a technology like YouTube? Section 4-7.6 applies to “computer accessed communications,” including information that appears “on search engine screens and elsewhere.” Check with the Bar if you have questions about your intended campaign.

ABOUT THE AUTHOR: Margaret Grisdela is the president of the legal marketing agency Legal Expert Connections, Inc. She is the author of the book “Courting Your Clients: The Essential Guide to Legal Marketing.”

Contact her at mg@legalexpertconnections.com.



**YOUNG LAWYERS SECTION
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DATE: Thursday, May 7, 2009
TIME: 5:30 - 7:30 p.m.
LOCATION: New River Center Rotunda
 200 East Las Olas Boulevard
 (Sun-Sentinel Building --
 S.W. corner of Las Olas & 3rd Ave.)

LEVELS OF SPONSORSHIP:

SUPREME CONTRIBUTOR.....\$1,000.00 (8 tickets)
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All sponsors will also receive:

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Individual tickets for reception are \$35.00 for members of the BCBA and \$45.00 for non-members. Entrance tickets include complimentary hors d'oeuvres, cocktails and desserts.

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 IN MEMORY OF MELISSA LEWIS**

Wednesday, May 13, 2009

NORMA B. HOWARD CENTER, Fort Lauderdale

\$50 for BCWLA/BCBA Members; \$60 for Non-Members

Agenda- 4 CLE Credits Applied For • SEATING IS LIMITED!

8:30—8:55 AM	Registration and Coffee
8:55—9:00 AM	Welcome Remarks
9:00—9:45 AM	Karen Evans, Esq. Litigation Resolution, Inc. Mediation Do's and Don't's for Employment Cases
9:45—11:00 AM	Daniel R. Levine, Esq., Shapiro, Blasi, Wasserman & Gora, P.A. ADA and FMLA Updates for the Florida Employer
11:00—11:10 AM	BREAK
11:10—12:15AM	Randy A, Fleischer, Esq. Law Offices of Randy A. Fleischer Employment Updates and changes in Washington impacting employment laws
12:15—1:15 PM	Lunch Lunchtime Speaker Michael A. Pancier, Esq. Rothstein, Rosenfeldt and Adler Fair labor Standards Act and attorney fees
1:15 -1:30 PM	Closing Remarks

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***Broward County Bar Association's
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Florida Bar President-Elect

Jesse Diner

May 21, 2009

6TH Annual Judicial Reception and Program

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Monday, May 11, 2009

5:30pm -6:15pm – Judicial Reception

6:15pm – 7:30pm – Program

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The Caribbean Bar Association

The Hispanic Bar Association

The Puerto Rican Bar Association

The T.J. Reddick Bar Association

Board Summary

At its April 3 meeting in Coral Gables, The Florida Bar Board of Governors:

- Heard Bar President Jay White announce that he has appointed a special task force to study the Clients Security Fund program, which is facing both more claims and a higher amount of claims. Board member Greg Coleman, chair of the task force, said the program will have to dip into its reserves for the first time in several years, or it won't be able to pay the maximum guaranteed reimbursement of \$25,000 to all claimants this year. He said the task force would have recommendations for the board's May meeting.
- Approved in concept having a Bar-sponsored voluntary self-disclosure form for candidates running for election for the trial courts, upon the recommendation of the Program Evaluation Committee. The PEC is still studying a specific candidate questionnaire recommended by the Judicial Evaluation and Administration Committee. The self-disclosure questionnaire is aimed at helping educate voters about candidates in judicial elections.
- Approved a new legislation position proposed by the Attorney-Client Task Force to back expanded protection for the attorney work product for government lawyers advising public bodies. But the board stopped short of agreeing to a proposal to keep confidential details of meetings between public agencies and their attorneys, unless a court ordered a transcript of those meetings released. However, the new position calls for allowing more parties to participate in those closed sessions. Legislation Committee Chair Greg Coleman said the committee split over that task force proposal and is continuing to study it.
- Deferred action on a rewriting of Ethics Opinion 90-6, which governs an attorney's duty when he or she discovers a criminal defendant client is proceeding under a false name. The Board Review Committee on Professional Ethics was unable to make a recommendation to the board on the issue after a member was delayed getting to that meeting by an auto accident, resulting in the BRCPE lacking a quorum.
- The board voted to approve guidelines recommended by the Professional Ethics Committee for "offshoring" legal work to another country. Those guidelines will now be posted on the Bar's website and otherwise disseminated. The ethics panel is continuing to work on possible rules for offshoring legal services.
- Approved a recommendation from the Program Evaluation Committee to end the annual Midyear Meeting, beginning in the 2010-11 Bar year, a move that reflects falling attendance at the Bar's three main annual gatherings (General Meeting, Midyear Meeting, and the Annual Convention), increasing use of tele- and video conferencing, and which will save the Bar around \$50,000. The action has the approval of more than 80 percent of the Bar's committee chairs.
- Approved the Bar's 2009-10 budget. Budget Committee Chair-elect Jake Schickel said the \$38 million budget is projected to have a \$290,000 deficit, for which the Bar has more than adequate reserves. The budget does not have a annual membership fee increase, raises the amount of annual fees allocated to the Clients Security Fund from \$20 to \$25, and allocates funding to overhauling and improving the Bar's website. The board will consider member comments on the budget at its May meeting.
- Heard a report that the Bar is monitoring a petition filed at the Supreme Court asking the court to order Gov. Charlie Crist to fill a vacancy on the Fifth District Court of appeal from a list of six candidates submitted by the Fifth DCA Judicial Nominating Commission. Crist has declined to make the appointment, saying he wants a more diverse list of candidates, but the JNC has refused to change its nominations. Bar President Jay White said the Bar is unlikely to take any action unless and until the Supreme Court decides whether it will accept jurisdiction on the case.

**NOMINATION APPLICATION FOR THE
BROWARD COUNTY BAR ASSOCIATION'S
LYNN FUTCH PROFESSIONALISM IN PRACTICE AWARD**

Person Nominating:	Person Nominated:
Name _____	Name _____
Law Firm _____	Law Firm _____
Address _____	Address _____
Telephone _____	Telephone _____

Nominations should be submitted to:

Art Goldberg • Executive Director
Broward County Bar Association
1051 Southeast Third Avenue • Fort Lauderdale, Florida 33316
and must be received no later than May 31st, 2009

Criteria for Nomination:

1. Current contributing member of the BCBA.
2. Exhibition of the highest degree of professionalism in accordance with BCBA Standards of Professional Conduct and the Florida Rules of Professional Conduct.
3. Demonstrated respect for the law and preservation of decorum and integrity of the legal system.
4. Conduct which has enhanced the image of the legal professional, either through practice or programs and activities that educate the public about the law or the American legal system.
5. Additional general characteristics may include:
 - A role model for the legal community
 - Integrity
 - Timeliness and promptness
 - Mentoring of others
 - Zealous advocacy while maintaining civility
 - Decorum and demeanor
 - Credibility
 - Courtesy to counsel, the court, and the parties
 - Preparedness

Additional Information About Nominee

Please attach an explanation of why Nominee rises above others in exhibiting professionalism in his/her practice of law, bar activities, community activities, or other organizations and include specific examples of conduct. (Attach a resume, if available).



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Panel Member Profile



Myron "Mike" Burnstein has over 50 years of legal experience. Mr. Burnstein graduated from the University of Chicago Law School (JD 1956) and received his undergraduate degree from Antioch College (BA 1953). He was Deputy and Special Counsel to the Florida Office of Attorney General, Honorable Robert Butterworth, from February 1992 to January, 2003. Experienced in all civil litigation, Mr. Burnstein is a Florida Supreme Court Qualified Arbitrator and is a Certified Circuit Civil Court Mediator.

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Lawyers in the **LIMELIGHT**

Richard Rosenbaum, partner with the Fort Lauderdale law firm Arnstein & Lehr and a nationally recognized criminal defense attorney, presented at the Florida Association of Criminal Defense Lawyers' (FACDL) fifteenth annual Death Penalty Seminar in Orlando, FL on March 28, 2009.

David W. Singer has been re-elected to the Greater Hollywood Chamber of Commerce Board of Directors for 2009. This will be Singer's 20th consecutive year elected to the board, which makes him the longest serving board member of the Chamber. In previous years, he has served as both treasurer and vice president of the Chamber.



Timothy Bailey has been elected to represent the 17th Judicial Circuit on The Florida Bar Board of Governors. He will fill the seat that was recently vacated by Frank C. Walker.

"I hope to make an impact on the future of the practice of law in Florida and ensure proper funding of our judicial system. I would like to thank the attorneys in Broward County. I pledge to work hard to represent our common interests," Mr. Bailey said.

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MAY 13, 2009

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Dear Members:

Our **New Professionalism Award** is designed to recognize a practitioner with 5 to 20 years experience. Today we are announcing a contest for the name of the new award.

Please get your nomination in by May 31 and include your name suggestion for the new award.

Thank you for your participation,

Jim Cobb
Broward County Bar Association
Professionalism Committee Chair

NOMINATION APPLICATION FOR THE BROWARD COUNTY BAR ASSOCIATION'S 'NEW PROFESSIONALISM AWARD'

Person Nominating:

Name _____

Law Firm _____

Address _____

Telephone _____

Person Nominated:

Name _____

Law Firm _____

Address _____

Telephone _____

My idea for naming the new award: _____

Nominations should be submitted to:

Art Goldberg • Executive Director
Broward County Bar Association
1051 Southeast Third Avenue • Fort Lauderdale, Florida 33316
and must be received no later than May 1st 2009

Criteria for Nomination:

1. Current contributing member of the BCBA;
2. Is a practicing attorney with legal experience of 5 to 20 years;
3. Exhibits the highest degree of professionalism in accordance with the BCBA Standards of Professional Conduct and the Florida Rules of Professional Conduct;
4. Demonstrates respect for the law and preserves decorum and the integrity of the legal system;
5. Enhances the image of the legal profession through civic involvement;

Additional Information about Nominee:

Please attach an explanation of why Nominee rises above others in exhibiting professionalism in his/her practice of law, bar activities, community activities, or other organizations and include specific examples of conduct. (Attach a resume, if available).



Having "The Conversation"

By Alice Reiter Feld

We live in a young society. This is not a surprise to anyone. The increase in the numbers of people having plastic surgery is staggering, with men making up a large part of the increase. There are aisles in Walgreens dedicated to products to keep us young. Americans and particularly baby boomers simply cannot accept the fact that they are aging.

Guess what? We no longer have that luxury. We probably haven't had it for a while. We are all getting older. No one can stop the clock.

As an attorney, it's not the social aspect that concerns me. It's the head in the sand attitude that society has regarding issues such as long term care, retirement planning, asset protection and estate planning. No one wants to talk about death, dying, illness or the aging process; not doctors, parents, children or even their lawyers. But we have to.

Every 7 seconds a baby boomer turns 60. The average baby boomer should have at least \$250,000 in cash and/or long term care insurance to pay their health care costs for their lifetime. The oldest baby boomers are 63. Many of these "senior citizens" are still caring for aging parents. I am one of them. My 62 year old brother tells me every time we speak how lucky he is to have me. He's right!

As non-elder law attorneys you can facilitate "the conversation". You can help get the word out that there is help out there. You can spot some of the "warning" signs. This not only makes you a better attorney and adds value to your practice but you will really feel good about what you do. Your clients will thank you. Elder law attorneys are blessed with the ability to help families. Almost a day doesn't go by where a client doesn't thank me for giving them "peace of mind". You can be part of it. What a gift!

Elder Law is the umbrella for Estate Planning, Asset Protection, Medicaid, Veteran's Benefits, Long Term Care Planning, Incapacity Planning, Public Benefits, Advance Directives, End of Life Care, Elder Abuse and Exploitation, Special Needs Trusts and Probate and Trust Administration. Elder Law attorneys are trained in estate planning and death planning but our focus is on lifetime planning.

In our office, we talk to our families about the "Elder Care Journey" As we age, the health care and long term care costs increase and the available resources decrease. Knowledge of the public benefits system and how to shelter assets and qualify is an important part of the Elder Law attorney's value. Nursing home costs are approximately \$70,000 per year. Not many of our families can afford this for any period of time.

Some issues to look out for:

- Are your clients talking about aging parents? Probe a little. You may be able to make a referral that will change this person's life.
- Is your client asking you to draw up a "simple will" or a "form" power of attorney? This can be a red flag that there is more going on. Also, these documents are not forms. They are carefully drafted to be responsive to issues such as gifting, doing Medicaid applications, setting up certain special Medicaid trusts, etc. that the average "form" will not address.
- Is your client asking to do a "deed"? I put this apart from the above because transfers of property can create serious problems for future public benefits applications.
- Is your client complaining about the cost of long term care? Have they sought the counsel of a professional? I had a client about 10 years ago who spent down more than \$400,000 on the care of her mother because the nursing home gave her wrong information. I could have sheltered all that money. I still cringe when I think about it.
- Have your senior clients had major changes in their life? Have they addressed the issues of incapacity and long term care planning. Do they even know the difference between Medicaid and Medicare?
- Is a client selling their or their parent's house? This can be a disaster for any future public benefits applications. If you do closings, question whether they have sold the home as part of a plan established with an elder law attorney.

Use "Elder Law Month" to dedicate yourself to helping out at least one caregiver, one senior citizen, one baby boomer who is struggling with these issues. Feel free to call me if you have any questions but don't be surprised if I'm not in my office. Elder Law attorneys still make house calls!

St. Thomas More Society of South Florida

20th Annual Red Mass, Reception & Dinner

Thursday, June 4, 2009

Red Mass Celebrated by Archbishop John C. Favalora
6:00 P.M.

St. Anthony Catholic Church
901 N.E. 2nd Street
Ft. Lauderdale, Florida

Complimentary Reception - 7:30 P.M.
Dinner - 8:30 P.M.

Marriott Harbor Beach Resort
3030 Holiday Drive
Ft. Lauderdale, Florida

**Guest Speaker: Cardinal Theodore Edgar McCarrick,
Cardinal Archbishop Emeritus of Washington, D.C.**

\$ 65.00 per person

Limited Seating/Reservations only/Reservations Deadline is May 15, 2009

Mail Checks, made payable to "St. Thomas More Society", to:
Donald A. Wich, Jr., Esq.
WICH, WICH & WICH, P.A.
2400 East Commercial Blvd., Suite # 620
Fort Lauderdale, FL 33308

**Professionalism Seminar - 3 Florida Bar CLE Credits
[Date to be announced.]**

FOR MORE INFORMATION ABOUT THE ST. THOMAS MORE SOCIETY, VISIT
THE WEBSITE AT WWW.REDMASS.COM.
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