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The Barrister is published monthly by the Broward County Bar Association. All editorial, advertising and photos may be submitted for consideration through email to: braulio@browardbar.org

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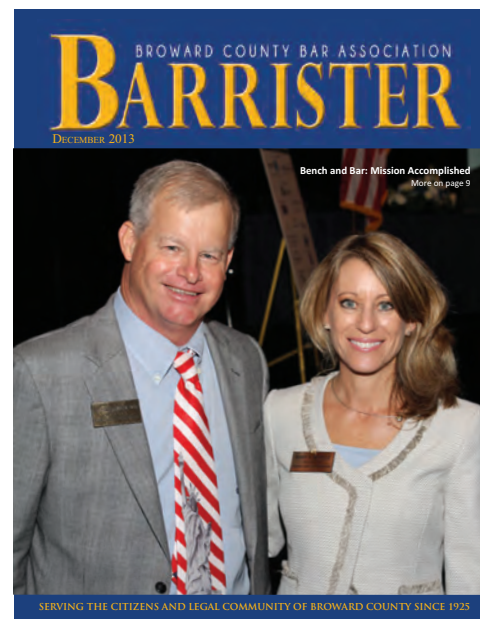
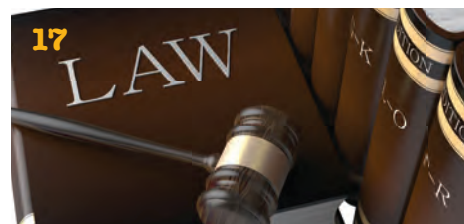
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www.browardbar.org/calendar/

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letter from the president



Alan S. Fishman

When most of us graduated from law school, we were hired by seasoned attorneys who taught us how to actually practice law. We learned how to deal with clients and other lawyers, how to handle ourselves in courtrooms, and what our responsibilities as lawyers were to the community.

All of that has changed for many new attorneys in the past ten years. With the scarcity of jobs, many new graduates have been forced to practice by themselves or with other new graduates. They are not getting the benefit of the crucial training we got from our bosses, and instead

they are left to their own resources. The influx of young attorneys who never got the chance to learn what we learned is one of the major reasons for the decline in professionalism that is so alarming to the legal community today.

With that in mind, state and local bar associations have begun to tackle the problem. The BCBA mentoring program is one example. Andrea Gundersen, who has been very involved in issues of professionalism, went to a program in Palm Beach last year and brought back the idea of having a breakfast for newly sworn in attorneys with a panel of judges to talk to them about how to become practicing attorneys. The result was our own breakfast, which she put together with Judge Weinstein and our staff, for 80 new attorneys at the 110 Tower. They had a chance to eat and mingle with judges, many of them for the first time. A panel of our administrative judges then took turns giving them the benefit of their years of practice as attorneys and judges as to how to become “complete” attorneys.

From my vantage point, the attendees were clearly engrossed in what they were hearing. As I listened to each judge give a different perspective, it occurred to me that not only did new attorneys need this information, but those of us who have been practicing for a number of years could benefit from a refresher course on these concepts.

I would like to share with you an important glimpse into what I relearned. Judge Martin Bidwell told us about the four “P”s. Be Prepared for meetings with clients, other lawyers, and for Court. Be Professional in dealings with clients, lawyers, and judges. Participate in the legal community; get involved in voluntary bar associations. Live up to the oath we all took by getting involved in Pro bono work. To that I would add another “P” mentioned by several of the other judges: be Prompt in meetings with clients, opposing counsel, and especially the Court.

It all sounds obvious when you hear it, but we would all be better lawyers if we would remind ourselves from time to time of these basic concepts. **B**



Fowler White Boggs Names Adele I. Stone Managing Shareholder of Fort Lauderdale Office

An AV® preeminent rated attorney by Martindale-Hubbell and Florida Bar board certified in real estate law, Ms. Stone brings more than 30 years of legal experience to every engagement. In addition to her real estate practice, she also has built a robust business law practice, including the structuring of new entities, preparation of business agreements and asset based transactions. She is also an arbitrator with the American Arbitration Association.

A leader in Florida professional and community organizations, Ms. Stone served as president of The Florida Bar Foundation from 2009 – 2010 and was on the Board of the Foundation for eleven years. She is also a founding member and past chairperson of the Executive Council of Legal Aid Services of Broward County/Coast to Coast Legal Aid of South Florida. Ms. Stone was elected to the Florida Bar Board of Governors from the Seventeenth Judicial Circuit and served as a Governor from 2011 – 2013.

Ms. Stone is a fellow of the American College of Real Estate Lawyers and authorized title insurance agent for Old Republic National Title Insurance Company, Chicago Title Insurance Company and First American Title Insurance Company. She earned her Juris Doctorate from the University of Miami School of Law in 1978 after graduating with high honors from the University of Florida in 1975.

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letter from the young lawyers' president

Marissa J. Pullano, President

"The joy of brightening other lives, bearing each others' burdens, easing others' loads and supplanting empty hearts and lives with generous gifts becomes for us the magic of the holidays." - W. C. Jones

"Tis the season" for giving gifts, that for many symbolize the magic of the holiday season. The Young Lawyers Section sincerely hopes that you will join us at our annual holiday luncheon being held at the Tower Club on Thursday, December 5, 2013 at noon. Before hearing the carols from the students of Dillard High School's Magnet Center for Performing Arts, YLS will present HANDY, the charitable beneficiary of our Twenty-Sixth Annual Charity Golf Tournament, with a check for \$35,000.00 – the most we have ever raised and donated to a charity in the history of YLS. Additionally, at our holiday luncheon we will be donating toys to Smiling Faces Forever Foundation, Inc., which is a local charity that spreads joy to children during their hospital stays. The cost to attend our holiday luncheon is \$25.00, and you may RSVP to the Broward Bar at 954-764-8040 or online at the BCBA website.

You will also have another opportunity to share the holiday cheer on December 5th by joining YLS at the Broward County Bar Association Center from 5:30 pm to 8:00 pm for the BCBA Annual Holiday Party. At the party, YLS will be collecting unwrapped toys or cash donations for foster care children for our Holiday in February event. No RSVP is necessary and we hope to see you there with a toy in hand to support our Holiday in February Event. We are grateful for your continued support year after year – it truly means the world to these children!

On behalf of the Young Lawyers Section, we wish you a very happy holiday season, a healthy and prosperous New Year and thank you for continued support of YLS and our events. 2014 holds much promise for YLS and we urge you to start the New Year off right with us!

If anyone has any questions about joining YLS or to learn more information about YLS and our events, please feel free to call me at 954-522-2200 or email me at marissa.pullano@brinkleymorgan.com. You can also find a calendar of our events on the Broward County Bar Association web site at www.browardbar.org/yls <<http://www.browardbar.org/yls>> .

On behalf of the YLS Board of Directors, we wish you a wonderful holiday season! **B**



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Bench and Bar: Mission Accomplished

By Thomas Oates

The numbers are in, and they are better than expected. The Broward County Bar Association's Bench and Bar Convention at the Convention Center in October was a resounding success. This was due in no small part to the efforts of Bench and Bar Committee Co-Chairs, Robin Moselle (Board Treasurer) and Charles Morehead (Board Secretary), Bar Staff Braulio Rosa (Executive Director), Bonnie Ross (Events and Media Manager) and the many other Bar staff, members and volunteers that worked the event. Thanks to their efforts your Bar was able to gross over \$119,000 through registrations, sponsorships, exhibitBoys and advertising.

Participants were treated to a commencement address by Broward Circuit Court Judge Renee Goldenberg, and a keynote address by Florida Supreme Court Justice Barbara J. Pariente. Additional presentations and seminars were presided over by Judges from the Fourth District Court of Appeal, US District Court for the Southern District of Florida, Broward County Judiciary, as well as local legislators, elected officials, and many other distinguished speakers. With over 70 seminars and presentations to choose from across varying practice areas, participants were able to earn a full day's continuing legal education (CLE) credits for a very nominal admission fee.

The Bar Association has been conducting seminars similar to the Bench and Bar since at least 1974. Starting in 1997 the format was changed to an every four year event closely resembling its present form. Going forward, your BCBA Board of Directors has accepted a new challenge of planning and conducting this convention every other year. In order to make our next convention date of October 16, 2015, planning has already begun.

Mark your calendars now for October 16, 2015. If our past success is any indication, the next Bench and Bar Convention will be the best ever. **B**

The LAWTECH Certification Program

By Bianca X. Moreiras

The Broward Bar Association Paralegal Section is pleased to present a series of programs which will help paralegals sharpen their skills and increase their value. The Association is working with Bianca Moreiras, Firm Administrator of Wintter & Associates, & P.A., to bring professional development programs to the legal community. The objective of these programs is to immediately improve, enhance and perfect skills used during routine tasks and procedures in the modern law firm.

Introducing The LAWTECH Certification Program. This is the first certification program specifically designed to provide legal professionals with a comprehensive understanding of technology in the everyday practice of law. The program is geared toward all legal professionals - attorneys, paralegals, and legal assistants.

The program was developed and will be presented by Adriana Linares who is the president and founder of Law-Tech Partners, a training and consulting firm specializing in the legal community who has perfected this type of learning and training. Her practical and personal approach to technology helps legal professionals use the gained to maximize skills and to be passionate about their careers.

Adriana is a frequent speaker at national technology conferences and a regular contributor to legal and business publications. She has been involved with the planning board of the ABA TECHSHOW, was an editor for Techno-lawyer's Blawgworld. She is an active member of the Law Practice Management Section of the ABA and the Legal Marketing Association. She currently serves as a technology consultant to the Florida Bar Communications Committee and as Chair of the Research & Technology Subcommittee of the Law Practice Management Section of the ABA

Reserve your seat for this incredible program today. Please visit www.browardbar.org for more information. **B**

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New Attorney Orientation Breakfast Great Success!

On Friday morning November 8, 2013, the BCBA hosted its inaugural New Lawyers' Orientation Breakfast. The newly established professionalism seminar for new lawyers was chaired by Andrea Ruth Gundersen, Esq.

Ms. Gundersen proposed the idea to the Bar's Board of Directors and Chief Judge Peter Weinstein last year as an important effort to establish a high level of professional conduct among lawyers who are new to the 17th Circuit or new to the practice of law. Nearly 100 new Broward lawyers heard directly from a panel of judges including Chief Judge Weinstein, Judges: Jack Tuter, Martin Bidwill, Arthur Birken, Hope Bristol, Robert Lee and Steven DeLuca. The panel gave important insights and tips to the audience of new attorneys on managing their time, their cases and adhering to the local code of conduct. Also in attendance were representatives from the various local voluntary bar associations to inform the new attorneys of the many opportunities for professional growth and development as well as local social and networking events.

"This was just one more of Broward County Bar Association's continued efforts to promote professionalism and to help familiarize the newly licensed attorneys with Broward County's local legal practice," said Andrea Ruth Gundersen, Esq. "We had a wonderful attendance and we are getting great feedback from both the Judges and the attorneys. I am certain that this will be only the first of our renewed efforts to fully prepare attorneys to achieve the highest standards of conduct and integrity on which we all depend." **B**



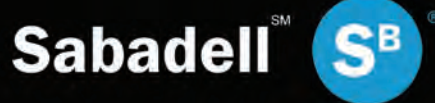
Judge Robert Lee, Andrea Gundersen, Judge Steven DeLuca, BCBA President Alan Fishman, and Judge Hope Tieman Bristol at the New Attorney Orientation Breakfast.



Chief Judge Peter M. Weinstein swears in new attorney, Daniel Fierst, at the New Attorney Orientation Breakfast.

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BUSINESS SUCCESSION (A/K/A “BUY-SELL”) AGREEMENTS: PLAN AHEAD FOR THE UNEXPECTED

By Lawrence M. Ploucha

Unexpected events happen in business, just as in all other aspects of life. The death, disability, retirement or “divorce” of business owners can jeopardize a healthy business or send it into a financial tailspin. That is why it’s so important for the owners to create a buy-sell agreement that spells out what will happen under certain scenarios.

Buy-sell agreements cover, among other things, who buys, who sells, under what conditions, at what price, on what terms and how the transaction is funded. They allow owners to make these strategic decisions in advance, long before a crisis occurs. By setting forth the terms and conditions for buying out an owner’s interest, they eliminate or at least reduce the turmoil of a key risk to the health of the business.

An effective buy-sell agreement can help the owners make a successful transition, while maintaining the ongoing business operations and survival. For example, the two owners of a grocery business corporation signed a buy-sell agreement after their father, the company founder, passed away, and modified it several times through the years. When one of the owners accidentally died, his shares were purchased from his estate using life insurance proceeds, providing liquidity to his

surviving spouse. In turn, the surviving owner was able to become the 100% owner of the company and eventually sold/distributed a portion of his shares to his children, who remained active and ultimately took over the business.

That’s a far better outcome than a deadlock or prolonged struggle for control among the surviving owner and the spouse of the deceased owner – a frequent occurrence without a plan and effective buy-sell agreement. By way of example, assume you are the surviving co-owner of a business suddenly forced to deal with the spouse or children of your late partner, who now holds a 50% inherited equity interest. That family may not understand the business or its market, be qualified (or want to) work in the business and may hold different values or beliefs than you. If co-ownership continues and you cannot find a way to work together effectively, your business will be in deep trouble – sooner rather than later.

Consider the Scenarios

Qualified business lawyers can draft agreements that make for orderly exits of the owners, regardless of whether the business is a corporation, limited liability company (LLC) or a partnership. Because there are many “moving parts” in a

typical buy-sell agreement, it’s important to have a team of experts involved, including an accountant, insurance expert and estate-planning attorney as members.

If a buy-sell agreement is not yet in place, sit down with your business attorney and discuss how to handle various exit scenarios:

- How could the business’ ownership be made secure if an owner suddenly passed away?
- What if an owner announced plans to retire right away or in a few years?
- Is there a mechanism in place to purchase the shares of an owner who departs for other reasons – voluntarily or involuntarily?
- How can these transactions be financed without endangering the cash flow of the business or its remaining owners?

If your business already has an agreement in place, take time to review it periodically and consider the various scenarios and solutions. After all, the business world continues to change, as do the goals of the owners and the value of the company.

Whether creating a new agreement or modifying an existing arrangement, it is important to understand that each buy-sell agreement is dif-

ferent. The number of owners, their percentage interests and talents/contributions to the business, their ages, their goals in life and even their personalities can affect the planning process. The size and scope of the business also needs to be considered. For instance, it's usually much easier to address a business that is more passive, such as a rental real estate management company, where the day-to-day issues involve signing leases and sending out maintenance requests, than to run a multi-store retail chain, a five-star resort or a startup biotech company, to name just a few examples. Also, the professionals owning an accounting, law, medical or dental practice may also face licensing limitations or other requirements limiting their ability to sell or convey their shares to a non-professional.

In some cases, the best option for exit planning is a redemption type agreement, where the company buys the interest of an owner who dies or retires. Another approach is a cross-purchase agreement, where one or more of the remaining owners buy the departing owner's interest. Of course, there can be other solutions as well, such as a hybrid with the business buying part of the interest and the remaining owners purchasing the balance. Perhaps some or all of the interest of the departed owner is allowed to remain in her hands, or the hands of her family, with changes in voting rights and management authority.

These business agreements should be integrated with individual and family estate plans – a particularly important consideration for succession planning if members of the

“younger generation” are active in the business.

Using Insurance to Fund Buy-Sell Agreements

Because implementing a buy-sell transaction can create an unexpected drain on the financial resources of the business or the remaining owners, insurance is a common funding vehicle.

A common structure has the business purchasing a life insurance policy on each owner, naming the business the beneficiary. The business pays the premiums. When an owner dies, the proceeds from the policy (some of which may also be designated as “key man” insurance to help the business through the difficult time) are used to redeem the interest from the deceased owner's estate. It's essential, however, for the ownership and objectives of the insurance policies to align with the buy-sell agreement. For instance, if not properly coordinated a policy may pay the death benefit to the surviving owner without a corresponding contractual obligation to use the money to purchase the surviving spouse's interest. That would give the owner a cash windfall and leave the spouse with an illiquid interest in the business.

While the most common focus is on life insurance as a funding solution due to its ready availability and generally reasonable cost, there is actually a much higher risk of an owner suffering a disability, temporary or permanent, during their working-age years before retirement. What would happen to the business if the “rainmaker” owner is in a car acci-

dent and can't work for six months? What if a chronic disease like cancer makes it difficult for an owner to devote more than a few hours a day to the business? What if there is a disagreement among the owners over whether an owner is actually disabled?

Because of the statistically higher prevalence of disability – and the many shades of gray involved in a disability claim – buy-sell agreements should provide specific mechanisms that cover these types of problematic scenarios. Funding considerations should also be addressed, since it's usually far more expensive to insure against disability than death.

Other Funding Options

While insurance can help in many situations, buy-sell agreements should also include provisions for funding other types of exits for which insurance is not available or cost prohibitive. What if the owner simply wants to sell her interest or is forced to sell because of ill health or personal finances? How will the business find enough cash to retain control of those shares in order to avoid having the shareholder sell to an outsider?

A common technique is to give the business a right of first refusal to buy the departing owner's interest under terms and conditions contained in the agreement. While an owner might prefer a lump-sum payment, the most practical approach from the business' standpoint is to structure an installment purchase plan over several years.

(continued next page)

Reducing those monthly or quarterly payments to the exiting owner is particularly important if that vacated position needs to be filled right away. After all, it can be difficult to pay the replacement high salary while making a substantial buyout payment.

Depending on the amount of the owners' equity and the cash flow requirements of the business, the buyout installment payments could be stretched out over 5, 10 or 15 years, with a reasonable interest rate applied to the balance. If a second owner leaves during that timeframe, the payments to the first departing owner could be reduced to avoid an onerous expense to the business. That's just one of the nuances in drafting and funding this type of agreement.

A well-crafted buy-sell agreement can also provide a financial incentive for an owner to work until a specified retirement milestone, rather than leave early. If one of the owners makes an abrupt departure, the agreement can provide for a reduction in the buyout price.

Finally, business owners should consider the tax implications when drafting and funding their buy-sell agreements. The personal finances of individual owners may dictate the most effective approaches for minimizing potential income and estate tax liabilities.

As the nation's economy recovers and many businesses dust off their growth plans, now is an excellent time to create or revisit buy-sell agreements. After all, there's a lot

of truth to the old adage, "An ounce of prevention is worth a pound of cure." **B**



Lawrence M. Ploucha is a shareholder at Fowler White Boggs in Fort Lauderdale. He has more than 30 years of experience working with shareholders, professional firms, closely held businesses, individuals and families, providing guidance to clients in all phases of a business endeavor.

The advertisement features a large, stylized logo for "Boss" in a bold, red, serif font with a white outline. Below the logo, the text "CERTIFIED REALTIME REPORTING, INC" is written in a smaller, red, sans-serif font. In the background, a wooden gavel rests on a wooden surface. At the bottom left, there is a Facebook logo. To the right of the Facebook logo, the text "BROWARD" is above the phone number "(954) 467-6867". To the right of that, the text "DADE" is above the phone number "(305) 446-4022". At the bottom center, the website "www.BossReporting.com" is displayed in a large, white, sans-serif font with a black outline.

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RECENT DEVELOPMENTS IN THE LAW



By Nancy Little Hoffman

THE RULES HAVE CHANGED. HERE ARE SOME BUT NOT ALL:

Effective immediately (November 14, 2013):

Rules regarding electronic filing now provide that an attorney who e-files a document through a Portal that provides for service upon other counsel need not also serve it through e-mail. However, the filer must verify that the Portal uses the email addresses provided by the recipients. If serving by e-mail, you must also include in the certificate of service the recipient's mailing address as well as the e-mail address. In re Amendments to Florida Rules of Judicial Administration, Case No. SC-1915 (Fla. Nov. 14, 2013)

Effective January 1, 2014:

There have been significant changes to the civil procedure rules. In re Amendments to Florida Rules of Civil Procedure, Case No. SC13-74 (Fla. Nov. 14, 2013).

1. **Rule 1.431(i)** governs all communications between the judge and courtroom personnel and the jurors. It is intended to ensure that parties and their counsel are aware of all contact with the jury that could affect the outcome of the

case, given the fact that trial judges may have differing views on what constitutes harmless or routine ex parte communications.

2. **Rule 1.442 (c)(2)(B)** deals with the contents of proposals for settlement. The amendment eliminates the requirement that a proposal "identify the claim or claims the proposal is attempting to resolve," and clarifies that a proposal must resolve all claims between the proponent and the party to whom the proposal is made except claims for attorneys' fees, which may or may not be resolved in the proposal.

3. **Rule 1.451** is a new rule which allows a witness to testify at a hearing or trial by contemporaneous audio or video equipment, either by agreement or for good cause shown. The rule and the committee note set out the factors to be considered in deciding whether good cause exists, and the rule specifies what type of equipment is required and how the oath is to be administered.

4. **Rule 1.480(b)** has been amended to extend from 10 to 15 days the time for service of a motion to set aside a verdict in accordance with a motion for directed

verdict. Caution - until January 1, 2014, the deadline is still 10 days.

5. **Rule 1.490** governs the use of magistrates in civil cases. The changes require that the notice of hearing must state whether electronic recording or a court reporter will be used; provide for the filing of cross-exceptions to a report; and specify what the record in support of exceptions must contain.

6. **Rule 1.530(b) and (g)**, like Rule 1.480(b), are also amended to provide that a party will have 15 days to serve a motion for rehearing or new trial, or a motion to alter and amend a judgment. Subdivision (d) also gives the court 15 days to order a rehearing on its own initiative. Again - these changes are not effective until January 1, 2014. **B**



Nancy Little Hoffmann is a Board-Certified Appellate Lawyer practicing in the Fort Lauderdale area since 1974. She may be contacted at 954-771-0606 or by e-mail at NLHappeals@aol.com. For more information, see Nancy LittleHoffmann.com.

New Member Reception

October 30, 2013 – Broward County Bar Association hosted its annual New Membership Reception at the Norma B. Howard Center located on the BCBA campus. The two hour social networking event was well attended by over 100 combined new members, local Judiciary, and BCBA Board of Directors. Chief Judge Peter Weinstein and Judge Jeffrey Levenson, BCBA President Alan Fishman and Executive Director Braulio Rosa welcomed the attendees. A brief overview of Broward County Bar Association's member benefits were reviewed including CLE Education Seminars, Mentoring Program, Upcoming Events, Member Discounts and Networking opportunities to name a few. The event was sponsored by Legal Video Services, Inc. of Fort Lauderdale, Florida. **B**



Left to Right: Victor DeBianchi, Jr. (2006-07) Past President BCBA, Judge John B. Bowman, Nicholas Johnson, Judge Christopher W. Pole, Judge Raag Singhal, and Nykeah Cohen.



Left to Right: Judges Giuseppina Miranda, Renee Goldenberg, and Stacy Ross.



Braulio Rosa, Executive Director and Fred Aumick, President of Legal Video Services/Event Sponsor

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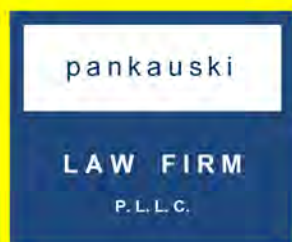


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December

calendar of events

5 2013 BCBA Holiday Party

5:30 pm – 7:30 pm

Description: We look forward to celebrating the holiday season with our BCBA Members. Please RSVP.

Venue: BCBA Conference Center

Contact: Bonnie Ross, bonnie@browardbar.org

Register For Event: <http://www.browardbar.org/2013-bcba-holiday-party-rsvp/>

7 8 Hour Adult Guardianship Class

9:00 am - 5:00 pm

Description: \$180 Attorneys Welcome, approved by the Florida Bar for CLE credits

Venue: BCBA Offices

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

Contact: Tish (954)832-3617

12 CLE - Who Says It's a Man's World?

12:00 pm - 1:30 pm

Description: Speaker: Cori Flam Meltzer, Esq. Cost: \$15 BCBA Members; \$25 No-BCBA Members; N/C to Judiciary BCBA Members. Women and men often negotiate very differently – and get different results. Come hear how you can best represent yourself and your clients with authority and confidence.

Venue: BCBA Conference Center

Contact: Bonnie Ross, bonnie@browardbar.org or 954-862-3618

Register For Event: <http://www.browardbar.org/event-registration/?ee=45>

14 4 Hour Minor Guardianship Class

9:00 am - 1:00 pm

Description: \$100 Attorneys Welcome, approved by the Florida Bar for CLE credits

Venue: BCBA Offices

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

Contact: Tish (954)832-3617

