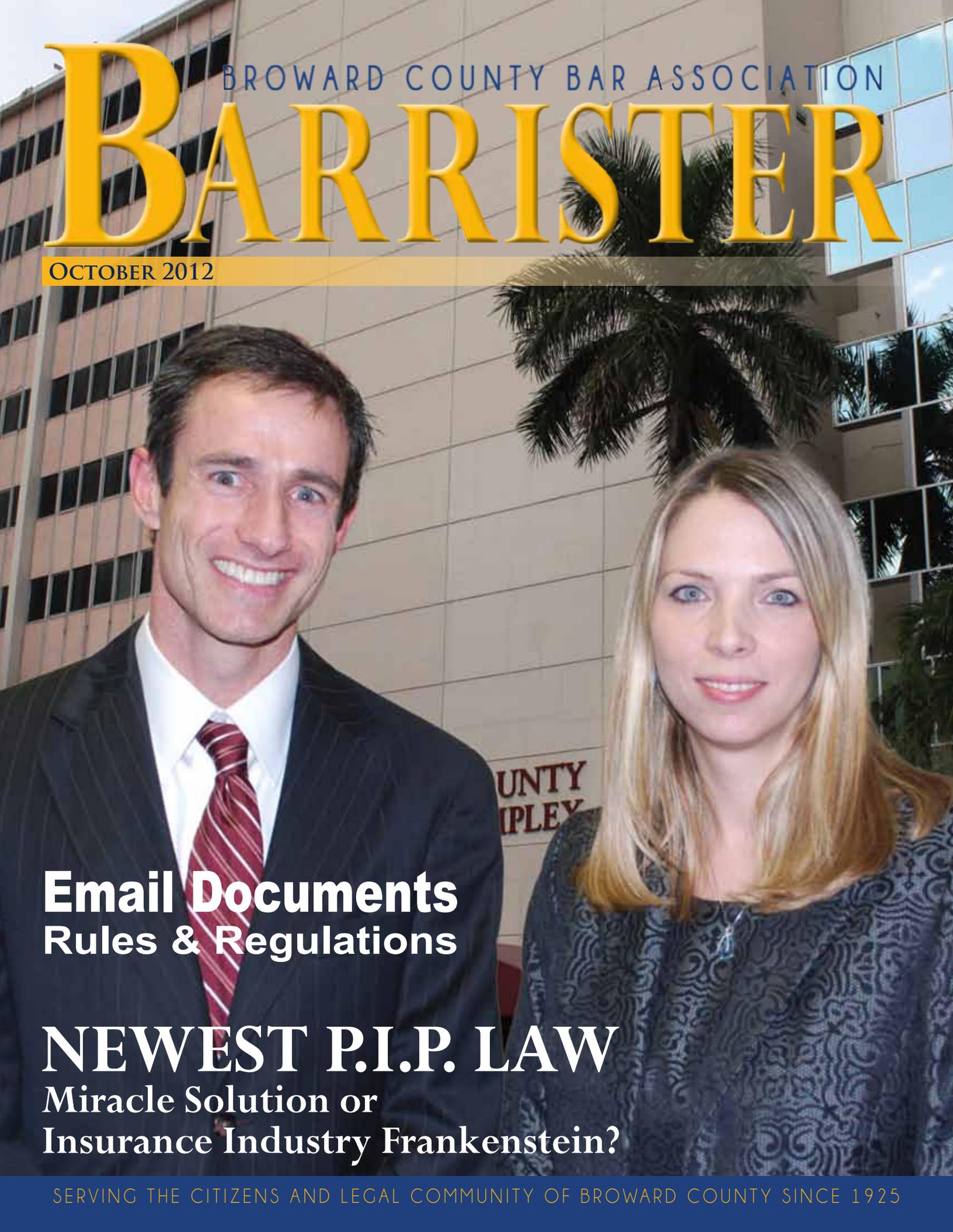


BROWARD COUNTY BAR ASSOCIATION BARRISTER

OCTOBER 2012

A man and a woman are standing in front of a building. The man is on the left, wearing a dark suit, white shirt, and a red and white striped tie. He is smiling. The woman is on the right, wearing a dark patterned top. She has blonde hair and is looking directly at the camera. The background shows a building with windows and a palm tree. The text 'BROWARD COUNTY BAR ASSOCIATION' and 'BARRISTER' is at the top. 'OCTOBER 2012' is in a yellow bar. 'Email Documents Rules & Regulations' is in white text on the left. 'NEWEST P.I.P. LAW' is in large white text. 'Miracle Solution or Insurance Industry Frankenstein?' is in white text below it. 'SERVING THE CITIZENS AND LEGAL COMMUNITY OF BROWARD COUNTY SINCE 1925' is at the bottom in a blue bar.

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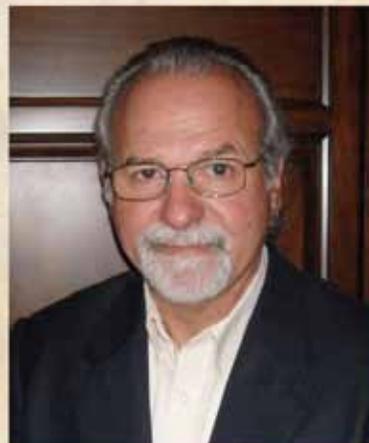
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staff box

PUBLISHER

Connie Ramos-Williams
239.690.9840

EXECUTIVE EDITORS

Art Goldberg
Braulio Rosa

LAYOUT AND DESIGN

April Bordeaux

ADVERTISING DIRECTOR

Linda Fiore

ACCOUNT EXECUTIVE

Sue Bridges

CONTRIBUTING WRITERS

Deborah FitzGerald
Meghan Clary
Greg Medalie
Russel Lazega
Gary Singer

BILLING INQUIRIES

954.764.8040 Ext. 201

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On the Cover: Probate & Trust Section Chairperson Greg Medalie and 17th Judicial Circuit Probate Counsel Christin Gallardo.

4 Social Scene →



5 Letter from the President
Deborah FitzGerald

7 Young Lawyers' Section Letter from the President
Meghan Clary

9 Welcome Judge Pole to the Bench →
Gary Singer



10 Service by Email
Greg Medalie

12 Florida's Newest New PIP Law →
Russel Lazega



15 Recent Fourth District Opinions
Nancy Little Hoffmann

17 Calendar of Events

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West Area Luncheon



Barrister Launch Party



West Section Luncheon: (1) West Section President Randy Rosenblum with Judge Edward Merrigan and Don Fucik on August 23rd. Judge Merrigan discussed the newly created Veteran's Court and the value it provides our community. **Barrister Launch Party:** (2) Art Goldberg and Braulio Rosa of the BCBA with Connie Ramos-Williams, the Publisher of the new Barrister magazine (3) Allen Bennett, Christine Saclarides and Jacqueline Johnson (4) Attorneys Lori Cottone and Michele Primeau (5) Allison Lovelady, Joseph Discepolo, Paul Galsterer, Justin Carlin, and Ross Abramowitz (6) Carrie Barros, John Baker, Braulio Rosa, Donna Kadosh and Kristine Johnson (7) Traci Lewis, Art Goldberg, Judge Cynthia Imperato and Carey Fischer (8) Stephen Feidelman, David Singer and David Silverstone.

2012 - 2013

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Deborah FitzGerald

Professionalism and civility. It seems simple enough. Follow the Golden Rule by treating others as we would like to be treated. We all know it's not as simple as it sounds and I certainly have had lapses in my career.

However, lapses of professionalism and civility have reached epidemic proportions, so serious that on September 12, 2011 our Florida Supreme Court amended the oath of admission to the Florida Bar to include a pledge of "fairness, integrity and civility towards the court and opponents in all written and oral communications."

Lapses in professionalism and civility may lead to disciplinary sanctions. In the July 15, 2012 edition of The Florida Bar News it was reported that the Supreme Court's Commission on Professionalism adopted a proposal which would allow the Florida Bar or local voluntary bars with professionalism programs to receive complaints about lawyers' lack of professionalism. This proposal is now being considered by The Florida Bar's Board of Governors and the Judicial Conferences of judges throughout the state.

"take action to promote professionalism and civility"

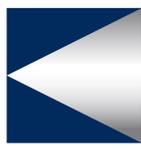
The Supreme Court has approved sanctions against lawyers for lapses in professionalism and civility. Kevin Tynan, who practices in the area of lawyer discipline, has stated "recent disciplinary actions by The Florida Bar clearly indicate that the Bar has gotten the Supreme Court's message that more enforcement is needed regarding civility between lawyers and between lawyers and judges."

Your Bar Association has joined with six chief judges and thirty-four other voluntary bar associations (and counting) throughout South Florida in adopting a Joint Resolution of South Florida Voluntary Bar Associations Regarding Lawyer Civility. The entire text of the Resolution appears on our website, www.browardbar.org.

The intent of this Resolution is not to be just another platitude about the need for professionalism and civility but a commitment by all of the associations to take action to promote professionalism and civility. Adam Rabin, President of the Palm Beach County Bar Association, summed it up by saying:

"We expect that both increasing awareness of the Oath of Civility, and bridging the communication gap with non-members of the voluntary bars, will help ebb any further decline in lawyer civility. Indeed we hope that by improving civility awareness, we can continue to create an improved practice culture throughout South Florida, where lawyers are more respectful and courteous to each other and, in turn, enjoy their careers more."

Please join your Bar and me in taking steps to address this serious problem which affects all lawyers. **B**



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letter from the young lawyers' president



Meghan Clary

Times are changing for the Seventeenth Judicial Circuit, and I am not just referring to the new courthouse that is being built outside my office window. By now, you may have learned that our very own civil circuit court is about to embark on a pilot program for E-Orders. If you want to be up to speed on E-Orders, what better way than to attend this month's YLS luncheon at noon on October 18th at the Tower Club, where Judge Jack Tuter, the Administrative Judge for the Civil Division, will be speaking about E-Orders and what you need to know. Christin Gallardo, the Seventeenth Judicial Circuit Program Attorney, will also be speaking and she

will be giving tips on how to effectively E-File and E-Serve. The cost is \$25.00 to attend this CLE luncheon, and you may RSVP (space is limited) to the Broward Bar at 954-764-8040.

But before we bring you this highly informative luncheon on E-Orders/E-Service/E-Filing, YLS will be hosting its premier event --- the 25th Annual Charity Golf Tournament. Please join us as we tee things off this upcoming Thursday on October 4th at American Social on Las Olas from 5:30-7:30 for our Tee-Off Happy Hour. Everyone attending will enjoy a free drink, free appetizers and drink specials. The following week on October 13th we will continue with the festivities at Jacaranda Golf Course, with an 8:00 a.m. shotgun start. Each golfer will enjoy breakfast, unlimited beverages during play, an awards luncheon and the opportunity to win numerous prizes, including a 2013 Infiniti G37 Convertible. Don't be discouraged if you are not a scratch golfer; we will be selling mulligans, and we will be raising money for a very deserving charity, Florida's Children First. If you have not taken the opportunity to check out our golf tournament website, please do so at www.ylsgolftournament.com, and you can learn more information on how you and/or your business can be in on the fun.

Before I wrap things up, I can't forget to mention the success of last month's events, starting with our first quarterly Breakfast with the Judiciary. We had a phenomenal turnout, and the lawyers in attendance were appreciative of this unique opportunity to get to know our judiciary in such a casual atmosphere in the courthouse law library. In addition, Judge Nick Lopane brought a creative topic to the Tower Club at our September luncheon, when he spoke about his climb up the ladder from a young lawyer, to general magistrate, to judge. We graciously thank Judge Lopane for speaking at our luncheon, and we also thank the remaining members of the judiciary for supporting last month's events.

If anyone has any questions about joining YLS or to learn more information about our events, please feel free to call me at Chorowski & Associates, P.A. at 954-525-6566 or email me at meghan@cmfamilylaw.com. You may also find a calendar of our events on the Broward Bar web site at www.browardbar.org/yls.

If you have never been to a YLS event, this is the month to partake, regardless of your age or how long you have been practicing. I welcome you and hope to see you there. **B**

Save the Date for our third birthday celebration!



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November 8, 2012

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THE BROWARD COUNTY BAR ASSOCIATION *Welcomes Judge Christopher W. Pole to the Bench*

By Gary M. Singer

The Broward County Bar Association and Broward County legal community welcomes Judge Christopher P. Pole to the County Court. Judge Pole began his term on July 2, 2012 filling the seat vacated by Judge Lisa von Tefs, after being appointed by Governor Scott on June 8, 2012, who noted, "Over his long career, Chris has gained the respect and accolades of his fellow lawyers and his community. He possesses the integrity, discipline and dedication that make him a valuable public servant and jurist."

Judge Pole earned his law degree from Nova Southeastern University and is a native of Fort Lauderdale. He attended law school with an eye on working with the Federal Bureau of Investigation and instead took employment after graduation as an Assistant State Attorney for the 17th Circuit from 1981 to 1985. He then worked for the Law Office of Allene Nicholson, as in-house counsel for AIG Insurance Company, and Conroy, Simberg and Lewis before hanging his own shingle in 1988. While in private practice he also worked as an adjunct professor at his alma mater. His law practice focused on criminal and insurance defense law where he worked on many prominent cases including the highly publicized defense of Randy Tundidor Sr., the Plantation man convicted of murdering his landlord two years ago. Judge Pole is AV rated by Martindale and is well known and respected in the legal community.

Judge Pole approaches his new role with a philosophy of, "Be punctual, prepared, polite and professional," and is on the bench every morning at 8:30 a.m. ready to preside over cases. The Judge understands that everyone who appears in his courtroom deserves to have their case heard and to be treated fairly and with respect. He wants them to know



that he will listen to them and cares about the situation that caused them to have to appear before him. When asked why he applied for the job, Judge Pole replied that he wanted to use his experience and knowledge of over thirty years of practice to serve the people of Broward County. Although he only recently took the bench, he is already surprised by the amount that he learns everyday from all of the people that he comes into contact with.

"I find being a judge requires the same attributes as being a good attorney. The judge and the attorney must be punctual, prepared and professional"

said Judge Pole. "Of course you are no longer an advocate." The Judge insists on courtesy in his courtroom; his pet peeve being, "an attorney being discourteous to another attorney or to the Court."

Judge Pole is working in the County Criminal Court, Division MH, at the Main Courthouse in Courtroom 345, Chambers 206. His Judicial Assistant Wendy Miller-Yost can be reached at 954-831-5597. **B**

Gary M. Singer is an attorney licensed to practice law in the State of Florida. He is Board Certified as an Expert in Real Estate Law by the Florida Bar. Gary M. Singer is a member of the Florida Bar, and the Broward County Bar Association,

Service by Email Under FRJA 2.516

By Greg Medalie

When an attorney files a document in Florida court, he or she must serve copies of the document on the other parties to the proceeding. Effective September 1, 2012, such service must be made by email, subject to the exceptions discussed below. The Florida Supreme Court created this requirement by enacting Florida Rule of Judicial Administration (“FRJA”) 2.516. The Court also created and revised other procedural rules consistent with the email service requirement. For example, FRJA 2.515 requires attorneys to include their email addresses on all documents filed, and Probate Rule 5.041 states that “interested persons” in probate proceedings (e.g., beneficiaries and creditors) are deemed parties for the purpose of applying FRJA 2.516.

FAQ

When is service by email required?

FRJA 2.516 requires copies of documents filed in Florida courts to be served by email unless:

- A rule, statute or court order requires a different method for service. For example, Civil Procedure Rule 1.070 requires service of process upon commencement of a civil action, and Probate Rule 5.025 requires formal notice in adversarial probate proceedings.
- The document being filed is an application for witness subpoena.
- Serving an attorney with no email address and no internet access, as found by a court order in the proceeding.

- Serving someone who is not represented by an attorney in the proceeding (unless such person has designated an email address for service).

How do I designate the email address to which others will serve me?

In each proceeding, designate the one, two or three email addresses to which you will be served. Do so by including the addresses in the signature block of all documents filed. Consider filing a separate Designation of Email Address as well. Multiple addresses are useful if you want copies of service to go to other attorneys or staff working on the proceeding with you. See FRJA 2.515 and 2.516(b)(1)(A).

Which email addresses must I use to serve others?

You must serve all email addresses properly designated by the parties being served. If an attorney has not designated any email addresses, serve the email address for him or her on record with The Florida Bar (www.flabar.org). See FRJA 2.516(b)(1)(A).

What are the requirements for serving by email?

The subject must be “SERVICE OF COURT DOCUMENT” (in all capital letters) followed by the case number. The body must include:

- The court, the case number and the name of the initial party on each side (which can be copied and pasted from the caption of a document filed in the proceeding)



- Your name and telephone number
- The title of each document attached

The documents being served must be signed by the attorney and attached in PDF format. The size of the email, including attachments, cannot exceed 5 MB (5,000 KB). These requirements are specified in FRJA 2.516(b)(1)(E).

How do I create PDF files?

Use either of the following two methods:

- Using your word processing program (e.g., Word or WordPerfect), “sign” the document using /s/ and then convert it to PDF using “save as PDF” or “print to PDF”, if available on your computer. (If not available, try installing PDF software discussed below.)
- Print the document, sign it, and scan it. Note that this method results in substantially larger files. If you need to reduce the file size to stay within the 5 MB limit, set the scanner resolution to no more

than 300 dpi, use file compression, and/or divide the document into multiple files (which can be sent in separate emails, per FRJA 2.516(b)(1)(e)).

Tips

- Install PDF software such as Adobe Acrobat or CutePDF to convert documents to PDF and to combine and split up PDF files.

- Maintain a list of all the email addresses for service in each proceeding. Do so using a contact group in your email program or a Word or WordPerfect file. If using a file, the addresses can be copied and pasted into the address field of an email.

- Give descriptive names to PDF files, e.g., “Email Address Designation.pdf.”



- Before sending an email, open each attachment to confirm that it is the document you intended, and that it is signed (either literally or using /s/).

- Create an email rule to flag any message with “SERVICE OF COURT DOCUMENT” in the Subject.

- Create a template for your service emails.

- Set your email software to “Request a Delivery Receipt” or use RPost (see www.rpost.com) to verify receipt of your service emails. **B**

¹ In the Criminal, Traffic and Juvenile divisions, the effective date will be October 1, 2013.

² See 2012 SC10-2101.



Greg Medalie is an attorney at Medalie & Medalie, PA in Fort Lauderdale. He is the chair of the Probate & Trust Law Section of the Broward County Bar Association, and his practice areas are wills, trusts, estates and business law. He thanks Rohan Kelley and Christin Gallardo for their valuable input on this article.



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Florida's Newest New P.I.P. Law

What Every Injury Lawyer Needs to Know

By Russel Lazega

So am I the only one who's got a bit of whiplash from watching our politicians go back and forth to Tallahassee each year with another brilliant "fix" for our P.I.P. system? Latest count is it's the fifth time in roughly 10 years they've tried to gut no-fault and create an insurance industry Frankenstein that keeps in tact insurers' favorite tort injury threshold parts while chucking those pesky "swift and virtually automatic medical payment" components that insurers find so unsightly.

So what's in this year's law?

Actually, maybe it's better to start with what's not stitched into this monster: namely, rate relief. The bill trumpeted as the miracle solution to lowering driver's premiums never actually really mandated that rates drop. Instead there's a suggestion that P.I.P. companies begin a rate rollback or write to the insurance commissioner explaining why rates

don't go down. That's it. A state-funded actuarial study has already reported that we shouldn't hold our breath for reductions any time soon.

So what did consumers get from this reform designed to put money back in our pockets? Consumer advocates say less coverage for more money. Insurance companies say greater fraud and cost controls.

✓ *Limitation of Coverage to \$2,500 for Non-Emergency Conditions*

First, P.I.P. policies will now offer only \$2,500 in coverage (down from \$10,000) if a medical provider determines that there's **no** "emergency medical condition" ("EMC"). If it sounds a bit backwards – it is. The statute doesn't set the base P.I.P. at \$2,500 and then increase them to \$10,000 if there's an EMC. Rather it does the opposite and expressly fixes required

minimum P.I.P. benefits at \$10,000 and then provides that:

1) If a provider (presumably a treating physician, but excluding a chiropractor) determines that an emergency medical condition ("EMC") exists then the benefits remain \$10,000;

2) If a provider determines that no EMC exists then the maximum available P.I.P. benefits are \$2,500. In other words, *the only time that coverage drops to \$2,500 is if a listed provider affirmatively declares that there's no EMC*. While it remains unclear whether an insurance company IME physician could make this determination, the statutory term "provider" suggests that only certain enumerated treating physicians can decide "EMC". Moreover, if a medical record is silent as to whether there's an EMC then the default appears to remain \$10,000 in coverage. This hazy provision will no doubt be litigated.

✓ *Certain Services No Longer Covered*

Services like massage and acupuncture will no longer be covered – period. While a physician may continue to offer these services and charge for them – P.I.P. won't pay for it and the patient will have to pay out of pocket or from the injury settlement.



✓ *14 Days to Seek Care*

The new P.I.P. law places a strict time limit for claimants to seek treatment. Specifically, there is no P.I.P. coverage at all unless the patient presents to a qualified physician within 14 days of the accident. Qualified physicians include: 1) a medical doctor 2) an osteopathic physician 3) a chiropractic physician 4) an advanced registered nurse practitioner (ARNP) 5) a dentist or 6) EMT/rescue.

✓ *Covered Care Must be Consistent with the Initial Diagnosis*

For patients who do seek timely treatment, only follow-up services “consistent with” the physician’s initial diagnosis will likely be covered. In other words, if the ER omits an injury in their records, watch out: the insurer

may disclaim follow up care -- even if you prove that the ER just missed it. The question also arises: What if the injuries don't show on the initial visit? For example, what if the patient presents immediately to the ER reporting shock and general discomfort and the following day returns with neck/back pain. Is this “consistent?” The answer is hazy and turns on how courts construe the term “consistent.”

✓ *Fee Schedules to Apply with Additional Medicare-Based Cuts and Limitations*

Treating doctors and hospitals can expect lower reimbursements based on new fee schedules which will be set once per year in March and cap payments at 2x the Medicare Part B participating provider rate for most services. Hospitals will face a flat 25% cut to their charges plus the insurer may possibly apply additional Medicare reimbursement limitations, coding policies and payment methodologies to further reduce payments in certain cases.

✓ *Insurer May Delay Claim for an Additional 60 Days to Investigate Fraud*

Watch for slower payments based on provisions allowing an additional 60 days for insurers to investigate suspected fraud. An insurer that has a “reasonable suspicion” of fraud may delay payment for an additional 60 days to investigate. If the insurer pays the claim after the investigative period it must also pay a little interest (currently 4.75%/annum).

✓ *Examinations Under Oath Required*

Finally, if you thought the new law was going to make P.I.P. claims quick and painless – think again. The new P.I.P. statute now specifically authorizes examinations under oath of claimants

(and possibly medical providers) and effectively forces you to file a lawsuit if you want documentation verifying why your client's claim isn't being paid (the statute now requires insurers to keep payment logs but appears to only require production if suit is filed).

✓ *\$5,000 Death Benefits Payable in Addition to \$10,000/\$2,500 P.I.P. Benefit*

One improvement for consumers is an increase in the P.I.P. death benefit based on how it's calculated. P.I.P. now provides a flat \$5,000 death benefit which is (for the first time) furnished **in addition to the \$10,000 medical/wage loss benefit.**

Conclusion

It seems like whenever we've finally got a new P.I.P. law figured out the legislature goes and tinkers with the concept of massive reform and sends legions of puzzled lawyers back to the courts and back to my P.I.P. seminars looking for answers. It looks like 2012 will be more of the same. Oh well, there's always next year. **B**

¹ In fact most IME physician reports expressly state that the IME doctor is NOT giving any care, treatment or advice but just evaluating for the insurance company.

² “Reasonable suspicion” is undefined.



Russel Lazega is an attorney and author of *West's Florida Motor Vehicle No-Fault Law & Practice (P.I.P.) (Florida Practice Series Volume 7)*. Mr. Lazega represents over 400 medical providers, including 11 Florida hospitals, and is based in Dania Beach, Orlando, North Miami, Tallahassee and Tampa, Florida.

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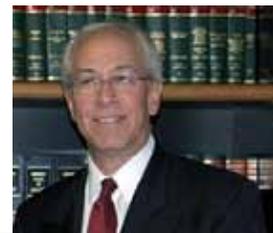
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RECENT FOURTH DISTRICT OPINIONS

by Nancy Little Hoffmann

Discovery From Experts

Smith v. Eldred,
37 Fla. L. Weekly D2140
(Fla. 4th DCA September 5, 2012).

The Fourth District quashed a discovery order allowing a plaintiff to serve a subpoena or a request for production upon defendant's liability expert witness, on the basis that rule 1.280(b)(4) does not allow a party to obtain information in that manner. The court discussed the scope of that rule in some detail, noting that a party may first propound interrogatories to identify expert witnesses and may then depose a witness once disclosed as an expert. The court stressed that the rule "means what it says and says what it means," and that a request for production is not a method condoned by the rule.

Judicial Disqualification

Domville v. State,
37 Fla. L. Weekly D2126
(Fla. 4th DCA September 5, 2012).

A criminal defendant sought to disqualify a judge because he was a

Facebook friend of the prosecutor assigned to the case. After the judge denied the motion as legally insufficient, the Fourth District issued a writ of prohibition, holding that disqualification was required because the judge's action in identifying a lawyer as a "friend" conveyed the impression that the lawyer was in a position to influence the judge.

Prejudicial Closing Argument

Reffae v. Wal-Mart Stores, Inc.,
37 Fla. L. Weekly D2138
(Fla. 4th DCA September 5, 2012).

A shopper who slipped and fell in a Wal-Mart alleged injuries requiring neck and shoulder surgeries, with medical bills of \$150,000.00. The jury awarded slightly less than \$50,000.00 for medical expenses and \$50,000.00 for past pain and suffering, but found that the plaintiff was 80% comparatively negligent; thus, the total award was less than \$20,000.00. The Fourth District reversed for a new trial on damages because of defense counsel's improper closing argument which, with no support in the record, impugned the credibility and objectivity of the plaintiff's treating neurologist by arguing

that he had a "business relationship" with personal injury law firms. The court held that Wal-Mart had failed to carry its burden of showing that this improper argument did not influence the verdict

Legally Inadequate Verdict

Santiago v. Abramovitz,
37 Fla. L. Weekly D2132
(Fla. 4th DCA September 5, 2012).

The Fourth District reversed a zero verdict and ordered a new trial on damages, holding that the verdict was inadequate as a matter of law because the defendant had stipulated that the plaintiffs had sustained a permanent injury as a result of the accident, and the trial court had so instructed the jury. The Fourth District noted, however, that if the evidence were conflicting, and reasonable persons could believe that the plaintiff sustained no damages, a zero verdict would have been upheld. **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 NancyLittleHoffmann.com.

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