



PALM BEACH COUNTY BAR ASSOCIATION BULLETIN

www.palmbeachbar.org

February 2012

Deadline February 27 to Register for Bench Bar Conference

This year's Bench Bar Conference has been scheduled for Friday, March 9 at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms are available online. Last year, over 1,000 people attended throughout the day and unfortunately, due to space limitations, many attorneys were turned away. Be sure to register by the deadline of February 27.



Mark your calendar for upcoming Membership Events

**North County Section
BBQ & Casino Night**
February 2
Bonnette Hunt Club, Palm Beach Gardens

Bench Bar Conference
March 9
Palm Beach County Convention Center

Annual Judicial Reception
May 1
The Harriet at City Place

Law Day Luncheon
May 4
Marriott WPB
Guest Speaker: Elizabeth Smart

Annual Installation Banquet
June 2
The Breakers Hotel, Palm Beach

We're Moving! New Bar Headquarters to Open February 13



The Bar is officially moving to its permanent headquarters on February 13. The office will be closed on Friday, February 10 for the actual move. We will start our first day in our new office with our annual ADR Seminar in our new state-of-the-art conference and seminar room graciously sponsored by Searcy Denney, Scarola, Barnhart & Shipley. Watch your email for information about our open house. We hope you will be as proud as we are of this new building where we will continue to work hard to serve you... our members.



Thanks to all the members who bid on silent auction items at the holiday party at Frenchman's Reserve. Your bidding enabled the YLS to buy toys for 75 foster kids and host a holiday party for them with food, drinks and Santa Claus! Back row: Colleen Farnsworth, Jamie Gavigan, John Howe, Santa and his elf, Jason Lazarus, Tim Stevens, Julia Wyda, Stephanie Rapp, Noelle Page, Melissa Lazarchick, John Whittles, Bill Lazarchick and Ashlee Richman. Front Row: Lou Delgado, Lee McElroy and Miles McGrane.

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Rule 1.090(b): Enlargement of Time

By Matt Triggs and Jonathan Galler

A wise procrastinator once said that if it weren't for the last minute, nothing would ever get done. But, thanks to Rule 1.090(b), even "the last minute" can be postponed. *Sometimes.*

Rule 1.090(b) authorizes the court, in its discretion, to extend certain types of deadlines. It even authorizes the court to effectively grant an extension after a deadline has already passed, so long as the failure to act was the result of "excusable neglect."

However, the rule expressly states that the court "may not extend the time for making a motion for new trial, for rehearing, or to alter or amend a judgment; making a motion for relief from a judgment under Rule 1.540(b); taking an appeal or filing a petition for certiorari; or making a motion for a directed verdict."

But there is yet another category of deadlines, one far less obvious, that cannot be extended under Rule 1.090(b): deadlines that are established pursuant to special statutory proceedings.

Rule 1.090(b) is limited, by its terms, to acts that are required or allowed to be done within a specified time by order of court or by the rules of civil procedure. Thus, "by not expressly mentioning statutes, [Rule 1.090(b)] is inapplicable to procedural deadlines under a special statutory proceeding."¹

This is consistent with Rule 1.010, which provides that the "time for pleading in all special statutory proceedings shall be as prescribed by the statutes governing the proceedings unless these rules specifically provide to the contrary." Because Rule 1.090(b) does not "specifically provide to the contrary," enlargements of time in special statutory proceedings are prescribed by the statutes governing the proceedings, not by the rules of civil procedure.

By contrast, the rule that governs how to *compute* time, Rule 1.090(a), does "specifically provide to the contrary." That rule governs the computation of "any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute." Thus, the computation of time for special statutory proceedings is prescribed by Rule 1.090(a).

Interestingly, as the Second District Court of Appeal has noted, "there is no specific definition of 'special statutory proceedings.'"² Some of the proceedings that have earned the label, however, include garnishment, lien enforcement, adoption, eminent domain, attachment, and replevin.³

Attempting to rely on Rule 1.090(b) for an extension of time in a special statutory proceeding can have severe and unpleasant consequences. A lien enforcement proceeding is a powerful example. A complaint brought under Fla. Stat. § 713.21(4) triggers a strict 20-day deadline within which a lienor must file an action to enforce the lien or show cause why an enforcement action should not be commenced. The Fourth District Court of Appeal has stated that "[t]he twenty day period provided in

section 713.21(4) does not allow for exceptions, such as extensions of time & nor does it leave the court with any discretion to excuse a failure to comply."⁴ As

a result, there are several reported cases of parties who have lost their right to enforce their liens (and the accompanying right, under section 713.29, to prevailing party attorneys' fees) because of a missed deadline.⁵ Rule 1.090(b) was not of any help.

Even where Rule 1.090(b) does apply, one question that arises periodically is whether merely filing a pre-deadline motion for an extension of time automatically tolls the deadline at issue, pending an order on the motion. The courts that have addressed the issue seem to have taken the position that it does.⁶ Rule 1.090(b) itself, however, does not address this. Appellate practitioners will note that Rule 9.300(b) expressly provides that, other than specifically enumerated exceptions, service of any appellate motion tolls the time of any proceeding in the appellate court until disposition of the motion. Such a rule may be a better fit for the appellate courts, however, where the timing of a decision on a motion does not turn on the parties' inclinations to set a hearing.

Finally, as long as we are on the subject of rules governing time, we note that proposed Rule of Judicial Administration 2.514, if adopted, will establish a new uniform computation of time rule. As of the submission deadline for this column, Rule 2.514 had not yet been adopted by the Florida Supreme Court. If it is adopted, we expect to address the new rule in a future column.

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Circuit Court Report CIVIL DIVISIONS • As of December 15, 2011

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
AA KELLEY	05-12	05-12	01-12	1475
AB HAFELE	06-12	06-12	02-12	1527
AD FRENCH	04-12	04-12	01-12	1771
AE MCCARTHY	09-12	09-12	01-12	1880
AF KEYSER	06-12	06-12	01-12	1601
AG CROW	06-12	04-12	01-12	1862
AH BROWN	05-12	05-12	12-11	1537
AI SASSER	04-12	02-12	12-11	1122
AJ ROSENBERG	04-12	04-12	01-12	1222
AN COX	04-12	04-12	02-12	1615
AO BARKDULL	03-12	03-12	02-12	1582

¹BNP Paribas v. Wynne, III, 944 So. 2d 1004, 1006 (Fla. 4th DCA 2005).

²Cartwright v. State, 870 So. 2d 152, 162 (Fla. 2d DCA 2004).

³See Bruce J. Berman, Florida Civil Procedure § 010.5, at 9 (2010 ed.) (providing citations).

⁴Brookshire v. GP Constr. of Palm Beach, Inc., 993 So. 2d 179, 180 (Fla. 4th DCA 2008).

⁵See, e.g., Brookshire, 993 So. 2d at 179; Dracon Constr., Inc. v. Facility Constr. Mgmt., 828 So. 2d 1069, 1070-71 (Fla. 4th DCA 2002); Sturge v. LCS Dev. Corp., 643 So. 2d 53, 55 (Fla. 3d DCA 1994).

⁶See Pinnacle Corp. of Cent. Florida, Inc. v. R.L. Jernigan Sandblasting & Painting, Inc., 718 So. 2d 1265, 1266 (Fla. 2d DCA 1998) (citing Goldy v. Corbett Cranes Svcs., Inc., 692 So. 2d 225, 228 (Fla. 5th DCA 1997)).