



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

January 2012



Lawyer Variety Show – Buy Your Tickets Today!

If you haven't already done so, be sure to buy your tickets and join us for our Third Annual Lawyer Variety Show on Saturday, January 21 at the Eissey Theatre in Palm Beach Gardens.

The evening includes a cocktail reception beginning at 6:30 p.m. followed by great entertainment at 7:30 p.m. Tickets are just \$30.00 for orchestra seats and \$20.00 for the balcony. Seating is reserved. The deadline for purchasing tickets online is January 12.



The Collection of the Supreme Court of the United States.

January Membership Luncheon to Feature U.S. Supreme Court Justice Samuel Alito

The Palm Beach County Bar Association, along with the Forum Club of the Palm Beaches, is pleased to announce that U.S. Supreme Court Justice Samuel Alito will be the guest speaker at a joint luncheon to be held on January 31. The luncheon will be held at the Palm Beach County Convention Center from 11:15 - 1:00 p.m. Registration will be by pre-paid reservations only and can be made at www.palmbeachbar.org.

Samuel Anthony Alito, Jr., Associate Justice, was born in Trenton, New Jersey on April 1, 1950. He married Martha-Ann Bomgardner in 1985. After graduating from Yale Law School in 1975, he served as a law clerk for Judge Leonard I. Garth of the United States Court of Appeals for the Third Circuit from 1976-1977. He served as an Assistant U.S. Attorney, District of New Jersey, 1977-1981, as Assistant to the Solicitor General, U.S. Department of Justice, 1981-1985, as Deputy Assistant Attorney General, U.S. Department of Justice, 1985-1987, and as U.S. Attorney, District of New Jersey, 1987-1990. He was appointed to the United States Court of Appeals for the Third Circuit in 1990. President George W. Bush nominated him as an Associate Justice of the Supreme Court, and he took his seat on January 31, 2006.

Mark your calendar for upcoming Membership Events

Investiture Ceremony for Judge Robert Panse

January 20, 2012
Palm Beach County Courthouse

Third Annual Lawyer Variety Show

January 21, 2012
Eissey Theatre, Palm Beach State College

Joint Luncheon with Forum Club

Speaker: U.S. Supreme Court Justice Alito

January 31
Convention Center

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

Annual Installation Banquet

June 2
The Breakers Hotel, Palm Beach

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place via online voting in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 15 and are due back in the office by 5 p.m. on January 13. Petitions for director-at-large seats will be available on December 22 and are due back in the Bar office by 5 p.m. on January 23. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it at pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that sign their petitions are members in good standing, otherwise, the petition will be deemed invalid.

Inside...

President's Message	3	Probate Corner	11
Who Are They?.....	4	Civil Procedure Corner	12
Capital Campaign	5	Professionalism Corner.....	13
Fourth DCA Reception.....	6	New Members.....	14
North County Section.....	7	Holiday Party	15
Diversity Intern Program.....	8	Lawyers For Literacy.....	16
Bankruptcy Corner.....	9	Technology Corner	17
Real Property Report	10	Bulletin Board.....	21

Rules of Civil Procedure

By Matt Triggs and Jonathan Galler

Amended Rule 1.720: Mediation Procedures

President George H.W. Bush was fond of saying that ninety percent of life is just showing up. But when it comes to mediation, the definition of “just showing up” is not always as simple as it sounds. And the consequences for not showing up can prove costly. The recent amendments to Rule 1.720, which took effect on January 1, 2012, explain what “showing up” means in a mediation setting.¹

Rule 1.720 governs mediation procedures, including the requirement that a party or its representative be physically present, as well as the availability of sanctions for noncompliance.

The amended rule is the culmination of work begun in November 2006 by the Supreme Court Committee on Alternative Dispute Resolution Rules and Policy.² The Committee initially set out to resolve the tension between the statutory requirement that all mediation communications must remain confidential, on the one hand, and the procedural rule authorizing sanctions for failure to appear, on the other hand. As noted by the Committee, the confidentiality requirement would seem to preclude any participant in the mediation from actually reporting noncompliance to the court for the purpose of seeking to impose sanctions.³ Ultimately, the Committee proposed substantial revisions to Rule 1.720, which the Supreme Court adopted in November 2011.⁴

Notable Amendments

Subsection (b) of the rule now relates solely to the issue of appearance at mediation. It clarifies that an appearance, for purposes of mediation, means the physical presence of (1) the party or a party representative having full authority to settle without further consultation; and (2) the party’s counsel of record, if any; and (3) a representative of the insurance carrier for any insured party. The Committee emphasized that the amended language is intended to eliminate the possibility that a party would designate its counsel as its party representative, a practice that the Committee called “a subversion of the process.”⁵

Subsection (c) of the rule now defines a “party representative having full authority to settle” as “the final decision maker with respect to all issues presented by the case who has the legal capacity to execute a binding settlement agreement on behalf of the party.”



Practitioners should be mindful that the Fifth District has held that the presence of a party representative, in lieu of a party, “relates to a party such as a corporation, partnership, incapacitated person, or minor which must appear through a duly authorized representative.”⁶ The implication is that a party who sues, or is named as a defendant, in his or her individual capacity does not have the option of designating a representative for purposes of attendance at mediation.

Subsection (e) of the rule is the most significant of the revisions. It requires that, unless otherwise stipulated by the parties, each party must file with the court and serve on all parties a written notice identifying the person or persons who will attend the mediation as a party representative or as an insurance carrier representative and confirming that those persons have the requisite authority. The pre-mediation notice must be filed and served at least 10 days before the mediation. The Committee explained that the pre-mediation notice is intended to address the tension described above: “Filing the notice prior to mediation places in the court file a record document unrelated to confidential mediation communication, thereby later affording the court an opportunity, upon motion, to consider imposition of sanctions without imposing an obligation upon the mediator or anyone else to report matters subject to confidentiality provisions under the statute.”⁷

Subsection (f) of the rule authorizes the imposition of sanctions for failure to appear. The text remains unchanged from the prior rule but for the addition of a provision that the failure to file the pre-mediation notice described in subsection (e), or the failure of the persons identified in that notice to appear at the mediation, creates a rebuttable presumption of a failure to appear.

The language of the other portions of the amended rule remains substantially unchanged.

Matt Triggs is the head of the litigation department of Proskauer Rose LLP in Boca Raton. Jonathan Galler is a senior associate in the department. Both concentrate their practices in commercial and probate litigation.

¹ Incidentally, President Bush attributed the quote to Woody Allen, who acknowledged authorship but recalled having put the percentage at merely eighty. See William Safire, *On Language*, N.Y. Times Magazine, Jan. 14, 2001.

² See Petition of the Committee on Alternative Dispute Resolution Rules and Policy to Amend the Florida Rules of Civil Procedure, http://www.floridasupremecourt.org/decisions/probin/sc10-2329_Petition.pdf.

³ See *id.*

⁴ *In re: Amendments to Florida Rule of Civil Procedure 1.720*, 2011 WL 5216685 (Fla. Nov. 3, 2011).

⁵ See Petition of the Committee at p.10.

⁶ *Carbino v. Ward*, 801 So. 2d 1028, 1031 (Fla. 5th DCA 2002).

⁷ See Petition of the Committee at p.12.

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