



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

April 2012



## Save the Date!

Please join us for our Annual Installation Banquet on Saturday, June 2 at the Breakers Hotel in Palm Beach. A cocktail reception will be held from 7:00 - 8:00 p.m. with dinner and dancing immediately following. Celebrate this special occasion as Adam Rabin is sworn in as president along with our slate of directors. Invitations will be mailed at the end of the month. Law firms interested in sponsoring this event should contact Lynne Poirier at the Bar Office (687-2800).



## Mark your calendar for upcoming Membership Events

### Annual Judicial Reception

May 1  
The Harriet at City Place

### Law Day Luncheon

May 4  
West Palm Beach Marriott  
Guest Speaker: Elizabeth Smart

### Annual Installation Banquet

June 2  
The Breakers Hotel, Palm Beach



## Elizabeth Smart to speak May 4

Please join us for our annual Law Day Luncheon on Friday, May 4 from 11:45 to 1:00 at the Marriott Hotel in West Palm Beach. The keynote speaker will be Elizabeth Smart. You may remember Elizabeth was kidnapped from her parent's Salt Lake City home in 2002. She was just 14 years old. Smart was found alive nine months later about 18 miles from her home in the company of Brian Mitchell and Wanda Barzee. Mitchell and Barzee were indicted for her kidnapping, but initially were ruled unfit to stand trial. They were eventually convicted.

The abduction of Elizabeth and her recovery were widely reported and were the subject of a made for television movie

and a published book.

This luncheon is expected to sell out. To reserve your seat, RSVP online at [www.palmbeachbar.org](http://www.palmbeachbar.org).

Sponsors for the luncheon include Complete Legal Investigations, Daskal Bolton, Sabadell United Bank and Visual Evidence.

## Don't Forget to Vote - Bar elections taking place online

This year's election for the Board of Directors is being conducted electronically. Voting will begin on April 5 and will end on April 16 at 5 p.m. Winners will be announced via e-mail and will be posted on the Bar's website.

There are seven members running for five seats: Jessica Callow, Ettie Feistmann, Greg Huber, Theo Kypreos, Maureen Martinez, Ned Reagan and John Whittles.



## Dues Statements Mailed

Annual membership dues statements have been mailed to all PBCBA members for fiscal year 2012-2013, which begins July 1. If you did not receive a bill, contact Shoshanah at the Bar Office (687-2800) or [sspence@palmbeachbar.org](mailto:sspence@palmbeachbar.org)

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## Rule 1.240: Interpleader

By Matt Triggs and Jonathan Galler

For most people, a discussion about interpleader is the conversational equivalent of a dose of Ambien. But insomniacs aren't the only ones who can benefit from a review of the interpleader rule. Most litigators could use an occasional refresher as well.

The equitable remedy of interpleader, codified in Rule 1.240, is used to determine the rights of parties each of whom claim the right to distribution of the same fund or property that is held by a disinterested third person.<sup>1</sup>

The rule provides, in part, as follows: Persons having claims against the plaintiff may be joined as defendants and required to interplead when their claims are such that the plaintiff is or may be exposed to double or multiple liability.

The recent appellate case of *Rainess v. Estate of Machida* arose from an interpleader action brought by Bank of America to determine the beneficiaries of an IRA worth in excess of \$1.5 million.<sup>2</sup> Following the death of the account holder, the bank was unable to locate the paperwork establishing the beneficiaries. Competing evidence suggested either that the account holder's husband was the sole beneficiary or that he and the account holder's nephew were each 50% beneficiaries. The trial court ultimately determined that each was a 50% beneficiary. On appeal, the Third District addressed several interesting aspects of an interpleader action.

### Plaintiff Must Be Exposed To Present Or Future Multiple Liability

The husband in *Rainess* claimed that the action was improper because the bank failed to satisfy all common law elements of an interpleader. However, as the Third District pointed out, the common law standard was superseded by Rule 1.240, which clearly articulates but one requirement for the commencement of an interpleader action: that the stakeholder is or may be exposed to double or multiple liability.<sup>3</sup> In fact, Rule 1.240 expressly rejects at least one of the common law elements by providing that [i]t is not ground for objection to the joinder that the claim of the several claimants or the titles on which their claims depend do not have common origin or are not identical but are adverse to and independent of one another...."

Notably, the interpleader action may be premised not just on present exposure to multiple liability, but on potential, future exposure to multiple liability. But the plaintiff must have a reasonable and bona fide fear of exposure to multiple liability at the time interpleader is sought. In other words, a stakeholder may not interplead based on an unreasonable fear of a merely hypothetical claim that lacks merit grounded in law or in fact.<sup>4</sup>

An interpleader action typically proceeds in two stages.



The first stage involves a determination as to whether a plaintiff meets the only element of the cause of action required. During the second stage, the court determines the merits of the competing claims to the property at issue.<sup>5</sup>

### Interpleader Is An Equitable Action

The *Rainess* Court was also called upon to address whether interest could be awarded in conjunction with a decision as to entitlement to the funds at issue. Because interpleader is an equitable proceeding, the Third District concluded that interest was not awardable. Specifically, because the trial court's determination that the husband was a co-beneficiary of the IRA did not constitute an award of damages, the Court concluded that interest was not awardable. In the case of pre-judgment interest, such an award is only proper where a verdict liquidates damages on a plaintiff's out-of-pocket, pecuniary losses.<sup>6</sup> Similarly, the *Rainess* Court reversed the trial court's award of post-judgment interest because section 55.03(2), Florida Statutes, provides for an award of post-judgment interest only in connection with a judgment for money damages, an order for a judicial sale, or any process or writ of execution.<sup>7</sup>

### Plaintiff May Be Awarded Attorneys Fees

A plaintiff may be entitled to attorneys' fees and costs in an interpleader action, but the plaintiff must prove his or her disinterest in the interpleaded property and, further, must show how that he or she did nothing to cause the conflicting claims or to create the exposure to multiple liability.<sup>8</sup>

In *Rainess*, the Third District affirmed the trial court's denial of the bank's motion for attorneys' fees on the ground that the bank's recordkeeping had contributed significantly to the need for the interpleader action.<sup>9</sup>

### Federal Interpleader Rule

Finally, because Rule 1.240 is virtually identical to its federal counterpart – Fed. R. Civ. P. 22 – Florida courts have held that cases interpreting the federal rule are persuasive in cases arising under the Florida rule.<sup>10</sup>

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<sup>1</sup> *Zimmerman v. Cade Enterprises, Inc.*, 34 So. 3d 199, 201-02 (Fla. 1st DCA 2010).

<sup>2</sup> 2012 WL 283089 (Fla. 3d DCA Feb. 1, 2012).

<sup>3</sup> *Id.* at 4 (internal quotation marks omitted). As the Court also noted, some Florida courts nevertheless continue to cite the common law elements instead of the rule.

<sup>4</sup> *Id.* at 4 (internal quotation marks and citations omitted).

<sup>5</sup> *Zimmerman*, 34 So. 3d at 203.

<sup>6</sup> *Rainess*, at 5 (citations omitted).

<sup>7</sup> *Id.* at 9.

<sup>8</sup> *Id.* at 8 (internal quotation marks and citations omitted).

<sup>9</sup> *Id.* at 8.

<sup>10</sup> *Id.* at 9, n.4; *Newkirk Constr. Corp. v. Gulf County*, 366 So. 2d 813, 816 n.2 (Fla. 1st DCA 1979).