



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^{IN}

www.palmbeachbar.org

September 2012

October 19 Diversity Luncheon - "Women in the Law"



The Committee for Diversity and Inclusion will be hosting its annual luncheon from 11:45 – 1:00 p.m. on October 19 at the West Palm Beach Marriott. This year's topic will be Women in the Law with **keynote speaker Florida Bar President Gwynne Young**. This will be followed by a panel discussion that will include the following: *Elisa Garcia (GC, Office Depot)*: Why clients hire law firms that retain and promote women, and why supporting women attorneys makes good business sense; *Tracy Gerber (Administrative Shareholder, Palm Beach North Office, Greenberg Traurig)*: How women attorneys can rise to leadership

positions and why law firms should support them; *Lou Mrachek (Managing Partner, Page, Mrachek, Fitzgerald & Rose, P.A.)*: How managing partners can retain women attorneys at their firms; *Sia Baker-Barnes (Attorney, Searcy Denney Scarola Barnhart & Shipley PA)*: How women can juggle family and life as trial lawyers; and *Allison Kahn (Associate, Carlton Fields)*: How flex-time attorneys can remain effective, valuable and profitable to firms.

Pre-registration is required for this luncheon and can be done online at palmbeachbar.org.

Mark your calendar for upcoming Membership Events

- September 29:** Lawyers Have Heart Run
- October 13:** Family Picnic at Dreher Park
- October 19:** Diversity Luncheon with guest speaker FL Bar President Gwynne Young
- November 9 (PLEASE NOTE NEW DATE):** Joint Luncheon with Forum Club with Guest Speaker Ret. U.S. Supreme Court Justice John Paul Stevens
- December 6:** Annual Holiday Party and Silent Auction at Frenchman's Reserve
- February 1, 2013:** Joint Luncheon with Federal Bar Association. Guest speaker is 11th Circuit Court of Appeals Chief Judge Joel Dubina
- March 1:** Bench Bar Conference
- April 5:** Membership Luncheon with Guest Speaker Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers
- April 30:** Annual Judicial Reception

Executive Director Patience Burns Receives Marshall R. Cassidy, Sr. Award

Congratulations to our very own Patience Burns for receiving the first annual Marshall R. Cassidy, Sr. Award by The Florida Bar. This award, named in memory of The Florida Bar's Executive Director from 1961-1980, is awarded for exemplary service and extraordinary support of the legal profession. Patience worked for Mr. Cassidy at The Florida Bar from 1978 until his retirement in 1980. Pictured with Patience is Scott Hawkins, immediate past president of The Florida Bar.



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E-Mail Service And Electronic Discovery

By Matt Triggs and Jonathan Galler

They say that to err is human, but to really mess up requires a computer. If there is any truth to that, we will all have plenty of chances to really mess up over the next few months.

That's because the most recent amendments to the rules of civil procedure have embraced the modern world of computer technology. Service by e-mail is now mandatory in most cases, and the concept of electronically stored information (ESI) has been formally incorporated into the rules governing discovery. Not too far off is electronic filing, which becomes mandatory state-wide in April 2013.

E-Mail Service

If you've ever said to yourself, "I wish I received more daily e-mail," then amended rule 1.080 is just for you.

In 2009, The Florida Bar's rules committees formed a joint committee to develop a proposal to implement e-mail service. The result of the joint committee's efforts is Rule of Judicial Administration 2.516, which establishes a uniform procedure governing the service of pleadings and papers across Florida's court system. The rule is modeled after rule 1.080, which has mostly been scrapped and now simply provides that all pleadings subsequent to the initial pleading, as well as other documents, must be served pursuant to rule 2.516. Similar amendments have been made to the corresponding rules of procedure in other Florida courts.

Under the new rule, all documents required or permitted to be served on another party must be served by e-mail in all but a few, limited circumstances.¹ Service by other methods is still permissible, but any such service must be in addition to, not in lieu of, e-mail service. An e-mailed document is deemed served on the date it is sent, and e-mail service is treated as service by mail for purposes of computation of time.

The rule requires that, upon appearing in a proceeding, an attorney must serve a designation of a primary e-mail address and may designate up to two secondary e-mail addresses. Service in that proceeding must be directed to all designated e-mail addresses. All documents filed thereafter must include the primary and any secondary e-mail addresses of that attorney. In fact, rule 2.515(a) has also been amended to require that every pleading and other paper of a party represented by an attorney must be signed by an attorney and must state not only the attorneys' address and telephone number, but also the attorney's primary and secondary, if any, e-mail addresses.

The rule does not address whether a designation of e-mail addresses must be served in pending cases in which an attorney has already appeared, but it would seem prudent for practitioners to do so.

The rule also provides specific instructions for the content of the e-mail. The subject line must begin with the words "SERVICE OF COURT DOCUMENT" in all capital letters, followed by the case number of the proceeding. The body of the e-mail must identify the court, the case number, the name

¹The new rule does not apply to applications for witness subpoenas or documents that are served by formal notice, a concept familiar to probate lawyers. In addition, pro se parties are not required to serve documents by e-mail, and the court may also excuse an attorney who has no e-mail account and lacks access to the Internet at his or her office.

of the initial party on each side, the title of each document served with that e-mail, and the sender's name and telephone number.

Any document served by e-mail must be attached as a PDF and may be signed by the "/s/" format often used in federal court, as long as the filed original is signed in accordance with the applicable rule of procedure. If the e-mail exceeds 5MB, it must be broken up into multiple e-mails.

The rule is likely to be amended again when mandatory e-filing begins. The statewide e-filing system is expected to perform automatic e-service, similar to the federal CM/ECF system.

Electronic Discovery

If you think that *Zubulake* is the machine that resurfaces ice hockey rinks, and if you are fairly certain that the Sedona Conference is an Arizona basketball league, you may want to spend some time brushing up on the last decade or so of electronic discovery jurisprudence.²

Amendments to seven rules of civil procedure now expressly incorporate issues related to ESI. Amended rule 1.200, which governs case management conferences, provides that at such a conference, a court *may* consider issues like the voluntary exchange of ESI, stipulations regarding the authenticity of ESI, the need for advance rulings on the admissibility of ESI, and the possibility of an agreement between the parties regarding the extent to which ESI should be preserved and the form in which it should be produced. The absence from amended Rule 1.200 of a mandatory meet and confer between the parties on ESI issues is the most significant difference between the amended state court rules and the federal rules of civil procedure.

However, amended rule 1.201, which governs complex litigation, does have such a mandatory "meet and confer." That rule now provides that the parties in a complex civil case must discuss the possibility of an agreement between them addressing the extent to which ESI should be preserved and the form in which it should be produced.

Amended rule 1.280 (General Provisions Governing Discovery) authorizes discovery of ESI but expressly identifies some limitations on such discovery. A person may object to discovery of ESI from sources that are not reasonably accessible because of burden or cost. On a motion to compel, if the objecting party makes such a showing, the court may nevertheless order the discovery if the requesting party shows good cause, but the court may specify conditions of the discovery and may order that some or all of the expenses be paid by the requesting party. In addition, the court must limit the frequency or extent of discovery if it determines either that (i) the discovery sought is unreasonably cumulative or duplicative,

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²See *Zubulake v. UBS Warburg*, 217 F.R.D. 309 (S.D.N.Y. 2003) and its progeny; see <https://thesedonaconference.org/>.



“Keeping Diversity on the Forefront”

Submitted by Co-Chairs Sia Baker-Barnes and Sarah Shullman

Keeping Diversity on the Forefront—this is the mission of the Palm Beach County Bar Association’s Committee for Diversity & Inclusion (CDI). As the Bar’s only standing committee, we are focused upon taking the necessary steps to ensure that Palm Beach County’s legal community reflects, and includes, our community as a whole. The “Diversity Corner” is a step in that direction and through this column, we will address successes and obstacles in the area of diversity, we will highlight diverse members of our legal community and keep you informed about our committee’s efforts throughout the year.

The CDI is divided into six sub-committees, designed to address areas of concern and need in our legal community.

Events - assists with planning and organizing the committee’s events, including the Annual Diversity Luncheon (Oct. 19), Minority Mentoring Picnic (Nov. 10) and Bench-Bar conference (Mar. 1- including the law student session highlighting the benefits of practicing and living in Palm Beach County).

Law Firm Liaison - plans and attends luncheons with law firm managing partners to discuss diversity issues, highlight the work of our committee, and increase participation in diversity hiring, including participation in the diversity internship program. We will be introducing the brown bag lunch series this year to have informal discussions about ongoing diversity issues. This sub-committee also assists in vetting nominees for the Judge Edward Rodgers Diversity Award, presented at the Bench Bar Conference.

JNC/Road to the Bench - oversees the mentorship program for diverse attorneys interested in serving on the Bench or JNC. This sub-committee also assists in planning the Road to the Bench seminar.



Diversity Internship Program -

works to promote the hiring of diverse law students in Palm Beach County by matching them with prospective employers. Also plans events over the summer including the Diversity Intern Tools & Tips Seminar and Diversity Intern Happy Hour.

Gender Equity - focuses on gender issues, including work-life balance and flex-time initiatives. This year’s focus is the diversity luncheon (Oct. 19) featuring Women in the Law, with Florida Bar President Gwynne Young as the keynote speaker, following by an outstanding panel discussion.

Public Relations/Marketing - promotes the CDI’s work and events and maintains the CDI website and jobs database for diverse candidates. Also will assist with the new “Diversity Corner” section of the bar bulletin which will address issues related to diversity or highlight diverse members of our legal community.

Among our over 50 committee members are local Judges, members of the Judicial Nominating Commission, Managing Partners and leaders of many of our local bar associations, ensuring a collaborative effort to address these important issues. We hope that you will consider joining our committee and assisting in our efforts to promote diversity and inclusion this year.

Sia Baker-Barnes and Sarah L. Shullman are the co-chairs of the Committee for Diversity and Inclusion. Sia is an attorney at Searcy Denney Scarola Barnhart & Shipley, specializing in Plaintiff’s personal injury, medical negligence, wrongful death and product liability cases. Sarah is a business litigation and consumer law attorney with the Law Offices of Sarah Shullman, P.A. in Wellington, FL, representing businesses and consumers in commercial and real estate litigation, contract disputes, consumer law and consumer finance litigation.

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or can be obtained from another source or in another manner that is more convenient, less burdensome, or less expensive or (ii) the burden or expense of the discovery outweighs its likely benefit, taking into account various enumerated factors.

The Committee Notes to amended rule 1.280 are fairly extensive. The Notes encourage the parties to confer at the earliest opportunity to discuss the reasonable scope of preservation and production of ESI. They also counsel the court to balance, under the good cause test set forth in the rule, the potential for disruption of operations or corruption of electronic systems against the relevance of the information sought. The Notes further suggest that the court may direct the parties to develop the record further by engaging in “focused discovery,” such as the sampling of the ESI sources, to learn more about what ESI may exist, the costs of obtaining the ESI, and the relevance of the ESI.

Amended rules 1.340 and 1.350 expressly address discovery of ESI, most notably providing that the producing party may

object to producing documents in a particular form, but it must state the form it intends to use. If no particular form is requested, the party must produce the information in a form in which it is ordinarily maintained or in a reasonably usable form. Additionally, amended rule 1.410, governing subpoenas, essentially incorporates the same ESI principles set forth in amended rule 1.280.

Finally, amended rule 1.380 (Sanctions) provides that, absent exceptional circumstances, a court may not impose sanctions for failing to provide ESI lost as a result of routine, good faith operation of an electronic information system.

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.