



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

January 2013

The Board of
Directors and
Bar Staff
Wish you and your
families a
Happy New Year!

Mark your calendar for upcoming Membership Events

February 1: Joint Luncheon with Federal Bar and Bankruptcy Bar Associations. Guest speaker is 11th Circuit Chief Judge Joel Dubina

March 1: Bench Bar Conference

April 5: Joint Membership Luncheon with PBC Justice Assn. Guest Speaker: Marsha Hunter – Consultant on Persuasion and Public Speaking Techniques for Lawyers and Judges

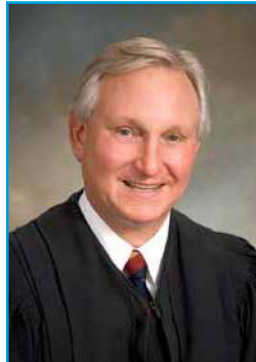
April 24: Celebrate Administrative Professional Day with a Firm Trivia Contest

April 26: Inaugural Golf/CLE Program

April 30: Annual Judicial Reception

May 3: Law Day Luncheon with guest speaker Michael Glazier, Nationally Prominent Attorney Representing Universities Under NCAA Investigation

June 1: Annual Installation Banquet



U.S. Court of Appeals 11th Circuit Chief Judge to Speak February 1

Judge Joel F. Dubina will be the guest speaker at a joint luncheon of the PBCBA, the Federal Bar Association and the Bankruptcy Bar for the Southern District of Florida. The luncheon will be held on February 1 from 11:45 – 1:00 p.m. at the Marriott West Palm Beach. Judge Dubina was nominated to the 11th Circuit by President George Bush in October 1990 and he was appointed as chief judge in June 2009. Prior to joining the 11th Circuit, Judge Dubina was in private practice from 1974-1983, served as a U.S. Magistrate Judge from 1983-1986 and was a U.S. District Judge for the Middle District of Alabama from 1986-1990. He received his B.S. from the University of Alabama and his J.D. from Cumberland School of Law. Judge Dubina is married, has three children and six grandchildren. Pre-registration for this luncheon is required and can be done on the Bar's website at palmbeachbar.org

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 14 and are due back in the office by 5 p.m. on January 14. Petitions for director-at-large seats will be available on December 21 and are due back in the Bar office by 5 p.m. on January 21. 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.

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Rule 1.500: Defaults and Final Judgments Thereon

By Matt Triggs and Jonathan Galler

Imagine being persuasive enough to have a judge look right at you and say, "Counselor, you've presented your case so well that I am going to give you everything you've asked for & *and more*."

Sounds pretty good, right? Not necessarily.

The dangers of overreaching were discussed by the Fourth District Court of Appeal in *Mullne v. Sea-Tech Construction, Inc.*¹ In that case, the plaintiff filed a lawsuit against a husband and wife. The plaintiff alleged that it had entered into a contract with the wife for a construction project on property owned by the wife with her husband. Count I of the complaint asserted a breach of contract claim against the wife only. Count II of the complaint asserted a claim against both defendants to foreclose a construction lien on the property.

The defendants did not respond to the complaint, and the plaintiff obtained a default final judgment as to the first count of the complaint. However, the judgment that was entered entitled the plaintiff to recover from *both* defendants the total amount due under the contract, plus interest, costs and attorneys' fees. In other words, even though the complaint alleged a breach of contract claim against the wife only, the court entered a default judgment

¹84 So. 3d 1247 (Fla. 4th DCA 2012).

on that count against both defendants.

The husband moved to vacate the default judgment entered against him. The trial court denied the motion, but the Fourth District reversed on grounds that the default judgment was void.²

When a defendant moves, pursuant to Rule 1.500(d), to set aside a default judgment entered due to the defendant's failure to file responsive pleadings, the court ordinarily must determine (1) whether the defendant has demonstrated excusable neglect; (2) whether the defendant has demonstrated a meritorious defense; and (3) whether the defendant has exercised due diligence in seeking relief from the default judgment.³ If the default judgment is void, however, the defendant need not establish these elements.⁴

In *Mullne*, the Court held that the default judgment was void "not because the complaint failed to state a cause of action... but because the trial court was without jurisdiction to award relief that was not requested by the complaint."⁵

²Id. at 1250.

³Id. at 1249 (citing *Halpern v. Houser*, 949 So. 2d 1155, 1157 (Fla. 4th DCA 2007)).

⁴Id. (citing *Green Solutions Int'l, Inc. v. Gilligan*, 807 So. 2d 693, 696 (Fla. 5th DCA 2002)).

⁵Id. (citing *Fine v. Fine*, 400 So. 2d 1254, 1255 (Fla. 5th DCA 1981) and *Sterling Factors Corp. v. U.S. Bank Nat'l Ass'n*, 968 So. 2d 658, 665 (Fla. 2d DCA 2007)).



As the Court explained, a default judgment "operates as an admission of the truth of the well pleaded allegations of the pleading, except those concerning damages "but" does not admit facts not pleaded, not properly pleaded or conclusions of law."⁶ Moreover, "[t]he party seeking affirmative relief may not be granted relief that is not supported by the pleadings or by substantive law applicable to the pleadings."⁷

So if your final default judgment grants more than you sought in your pleading, it is not just a case of getting more than you asked for – it's probably more than you want.

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.

⁶Id. (citing *Bd. of Regents v. Stinson-Hear, Inc.*, 504 So. 2d 1374, 1375 (Fla. 4th DCA 1997)).

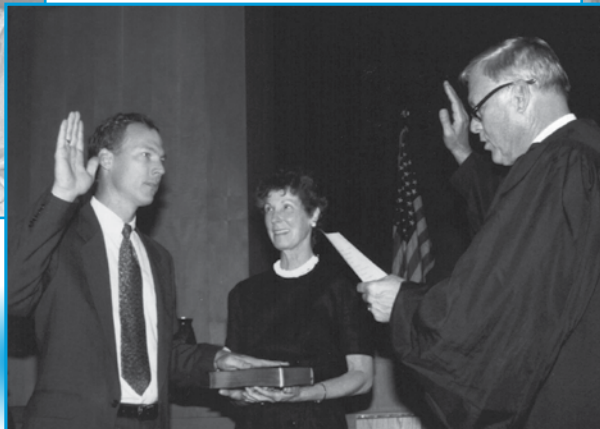
⁷Id.

Photos from the past



Brian O'Connell

Lois Frankel and Joseph Karp volunteering for law week ask-a-lawyer booth at the mall



Judge Jeffrey Colbath gets sworn in by his father, Judge Walter Colbath

