



PALM BEACH COUNTY BAR ASSOCIATION BULLE^TIN

www.palmbeachbar.org

July/August 2013

Florida Bar President to Speak September 27



Florida Bar President Gene Pettis will be the keynote speaker during our annual Diversity Luncheon on Friday, September 27 at the Marriott in West Palm

Beach. Pettis is co-founder of Haliczor Pettis & Schwamm, a Ft. Lauderdale firm, where he focuses his practice in the areas of medical malpractice, personal injury, commercial litigation and employment law. Pettis is the first African-American in the Bar's history to serve in the position of President. Join us for this special luncheon where we will also recognize outgoing Chief Judge Peter Blanc for his dedication and commitment to the 15th Circuit and welcome incoming Chief Judge Jeffrey Colbath. This luncheon is expected to be sold out. Be sure to save your seat by registering online at www.palmbeachbar.org



Mark your calendar for upcoming Membership Events

September 19: Third Annual Membership Speed Networking Event

September 27: Diversity Luncheon with Guest Speaker Florida Bar President-elect Eugene Pettis

October 26: Family Day at Dreher Park Zoo

December 5: Annual Holiday Party and Silent Auction

March 7, 2014: Bench Bar Conference

Presenting Your Board of Directors for 2013 - 2014



Congratulations to Jill Weiss who was recently sworn in as the Bar Association's 91st President during the Installation Banquet at the Breakers Hotel in Palm Beach. More than 425 guests attended the event honoring Jill and our Board of Directors. Sponsors included Sabadell United Bank; Searcy Denney Scarola Barnhart & Shipley; Sachs Sax Caplan; Daily Business Review; Daszkal Bolton; Northwestern Mutual; Pressly & Pressly, P.A.; Fox Rothschild, LLP; Joel M. Weissman P.A. and Visual Evidence. **Front row:** Theodore Kypreos, president elect; Jill Weiss, president and Adam Rabin, immediate past president

Standing left to right: Julia Wyda, YLS president; Greg Huber, director; Lee McElroy, director; Grier Pressly, director; John Whittles, director; Sia Baker Barnes, director; Todd Stewart, NCS president; Ned Reagan, director, Jessica Callow Mason, director and Dean Xenick, director.

Photo by Tracey Benson

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Rule 1.310: Depositions

By Matt Triggs and Jonathan Galler

Location, location, location.

When scheduling depositions, it's an issue that can create minor delays and skirmishes or that can snowball into the sort of mess that famously drove one federal judge to order the dispute to be resolved by a round of "rock, paper, scissors." See *Avista Management, Inc. v. Wausau Underwriters Ins. Co.*, 2006 WL 1562246 (M.D. Fla. Jun. 6, 2006). (If you've never read that order, put down this Bulletin and look it up on Google.)

Perhaps surprisingly, the rules of civil procedure do not prescribe the location for the deposition of a corporate defendant. But, as the First District recently reiterated, case law makes clear that the corporate defendant's principal place of business – not the venue in which the injury took place or where the action is proceeding – is the appropriate location for the defendant's deposition. That is, as long as the defendant is not seeking affirmative relief. *CVS Caremark Corp. v. Latour*, 109 So. 3d 1232 (Fla. 1st DCA 2013).

In *Latour*, a Judge of Compensation Claims denied a motion for protective order that sought to relieve the employer's corporate representative of the obligation to travel 60 miles to attend a deposition in the county where the plaintiff worked. The plaintiff argued that the location was proper because that was where the injury occurred and where at least one of the employer's businesses was located.

The employer sought certiorari review. Before addressing the merits of the appeal, the First District analyzed whether certiorari review was appropriate. For such review to be proper, the defendant had to show more than legal error. The order had to "depart from the essential requirements of law and thus cause material injury to the petitioner throughout the remainder of the proceedings below, effectively leaving no adequate remedy on appeal." *Latour*, 109 So. 3d at 1234.

The court concluded that certiorari review was indeed appropriate, and irreparable harm shown, merely because the deposition notice sought to require 60 miles of travel. The court reasoned that the deposition cannot be "un-taken," and thus

found that there was irreparable harm. Nevertheless, as the court noted, the focus of its opinion was on whether there had been a departure from the essential requirements of the law.

The court held that there was such a departure. Because the corporate defendant had not sought any affirmative relief, it could be deposed only where its principal place of business was located. Any other result would constitute an undue burden or expense upon the defendant. *Latour*, 109 So. 3d at 1235-36.

In reaching its conclusion, the court relied heavily on the Third District's decision in *Fortune Ins. Co. v. Santelli*, 621 So. 2d 546 (Fla. 3d DCA 1993). *Fortune* held that although a plaintiff's deposition can be noticed for the county in which the action is pending, the converse did not necessarily hold true. According to *Fortune*, a defendant can be required to appear for a deposition in the county in which the action is pending only if the defendant is seeking affirmative relief. *Fortune*, 621 So. 2d at 547.

On that basis, the *Latour* court distinguished its own decision in *Ormond Beach First National Bank v. J.M. Montgomery Roofing Co.*, 189 So. 2d 239 (Fla. 1st DCA 1966). There, the court quashed an order that precluded the defendant from taking the deposition of the officers of a corporate plaintiff (i.e., the party seeking affirmative relief) in the county where the action was pending. *Latour*, 109 So. 3d at 1236.

Left open to debate is the question of what it means for a defendant to seek affirmative relief. It seems obvious that asserting a counterclaim would qualify, but the case of *Kaufman v. Kaufman*, 63 So. 2d 196 (Fla. 1952) seems to allow for the possibility that even pleading affirmative defenses might, at least in some instances, subject a defendant to the requirement of traveling for a deposition. *Id.* at 202-03 ("Ordinarily a defendant should not be required to travel any great distance in order to be examined by the plaintiff for discovery purposes when no affirmative defenses or counter claims are involved.").

Interestingly, the *Latour* court



issued its opinion – and quashed the challenged order – even though the deposition at issue had already been taken in the interim (in the county of the defendant's principal place of business). Ordinarily, the taking of the deposition would moot the appeal, but the court decided to proceed with the appeal and decide it on the merits because the plaintiff had indicated that she intended to seek sanctions based on the defendant's insistence that the deposition take place in the county of its principal place of business.

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.

Discounted Movie Tickets – Another Membership Benefit



The PBCBA has discount movie tickets available for members. Remember, these tickets make great gifts for family, babysitters, staff, clients and teachers. Savings are available for the following theaters:

- * **Muvico Theater - \$8.00 each**
- * **Regal Theaters - \$8.00 each**

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