



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

www.palmbeachbar.org

June 2014



YLS to Host Fishing Tournament June 14

The Young Lawyers Section will be hosting its fifth annual fishing tournament on Saturday, June 14 to benefit a local charity. Entry fee is \$250 per boat and all activities will be held at the Palm Beach Yacht Club. For more information, go to the Bar's website at www.palmbeachbar.org



Members of the Young Lawyers Section, together with members from the Catholic Lawyers Guild, provided toys and dinner for the families at Quantum House. A special appearance was also made by the Easter Bunny (special thanks to Chris Cortez). Volunteers pictured above are Dane Leitner, Lindsay Demmery, Jamie Gavigan, Leslie Metz, Julia Wyda, event chair Christine Bialczak, Jack Rice, Colleen Farnsworth, Bill Bosso, Louise Marra, Bridget Berry and Alison Percy. *Not pictured is Brian McMahon*

Mark your calendar for upcoming Membership Events

June 7

Annual Installation Banquet

June 14

Young Lawyers Section Fishing Tournament

June 19

Young Lawyers Section Happy Hour

September 8

Diversity Event & Reception with
Appellate and Supreme Court Justices

December 4

Annual Holiday Party

March 27

Bench Bar Conference



Dues Statements Mailed

Annual membership dues statements have been mailed to all PBCBA members for fiscal year 2014-2015, which begins July 1. If you did not receive a bill, contact Shoshanah at the Bar Office (687-2800) or sspence@palmbeachbar.org

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Rule 1.442(h): Proposals for Settlement Made in Good Faith

By Matt Triggs and Jonathan Galler

Determining whether a defendant's proposal for settlement was made in good faith will turn on a number of factors. But one of those factors may surprise you – namely, whether the proposal was made in a case pending in the Third District Court of Appeal or the Fourth District Court of Appeal. Those two district courts apply distinct standards for determining good faith, and, on occasion, the difference makes a difference.

Florida Rule of Civil Procedure 1.442(h)(1) provides: "If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees."

The issue of whether a proposal for settlement was made in good faith typically arises when the proposal is nominal. In *Citizens Prop. Ins. Corp. v. Perez*, 2014 WL 1373817 (Fla. 4th DCA Apr. 9, 2014), Citizens served a proposal for settlement in the amount of one-thousand dollars. The plaintiff in that case brought suit to enforce a homeowner's insurance policy, but the plaintiff had not informed Citizens of the alleged damage until four years after it occurred. Further, the plaintiff failed to timely provide certain information requested by Citizens. The claim was dismissed on summary judgment, and Citizens moved to recover its attorneys' fees on the basis of its statutory proposal for settlement.

The trial court found that Citizen's nominal proposal for settlement was not made in good faith and, for that reason, the court disallowed the recovery of attorneys' fees. But the Fourth District reversed, concluding that the trial court had improperly relied on the "too onerous" standard of the Third District. *Perez*, 2014 WL 1373817 at *3.

The standard applied by the Third District provides that "[a] reasonable basis for nominal offer exists only where the undisputed record strongly indicates that the defendant had no exposure in the case." *Event Servs. America, Inc. v. Ragusa*, 917 So. 2d 882, 884 (Fla. 3d DCA 2005).

By contrast, the standard applied by the Fourth District provides that "a minimal offer can be made in good faith if the evidence demonstrates that, at the time it was made, the offeror had a reasonable basis to conclude that its exposure was nominal." *State Farm Mut. Auto Ins. Co. v. Sharkey*, 928 So. 2d 1263, 1264 (Fla. 4th DCA 2006).

In *Perez*, the Court discussed the difference between these two "good faith" tests. The Third District appears to demand an undisputed record that there is no exposure, whereas the Fourth District requires only a reasonable basis to conclude that exposure is nominal.

Applying the Fourth District's standard, the Court in *Perez* concluded that Citizen's nominal proposal for settlement of one-thousand dollars had been made in good faith because the plaintiff's failure to report the alleged damage for nearly four years constituted "enough evidence in the record to conclude that Citizens only faced nominal exposure." *Perez*, 2014 WL 1373817 at *3.

Of course, the Third District never



actually had a chance to apply its standard to the facts of *Perez*, but the opinion suggests that the Third District might well have affirmed, meaning that "good faith" in one district may not amount to "good faith" in another – another excellent reminder that the appellate courts are not always consistent with one another in their respective interpretations and applications of the rules of civil procedure.

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

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