



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

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

July/August 2014

## Diversity Event & Reception September 8



Labarga



Coleman

The Committee for Diversity & Inclusion is excited to announce its annual diversity program to be held on September 8. Guest speakers will be Florida Supreme Court Chief Justice Jorge Labarga and Florida Bar President Greg Coleman. Both Justice Labarga and President Coleman are “homegrown” right here in Palm Beach County and we are very proud that two of our own have been elected to lead the two most important legal institutions in the state. This event is being held at the Jupiter Beach Resort in conjunction with the Annual Education Program of the Florida Conference of District Court of Appeal Judges. Watch your email for more details about the event and how to register.

## Mark your calendar for upcoming Membership Events

### July 29:

Judicial Candidate Forum

### September 8:

Diversity Event & Reception with Appellate and Supreme Court Justices

### December 4:

Annual Holiday Party

### January 9:

“Screen on the Green” Family Event

### February 2:

Joint Luncheon with Forum Club with guest speaker U.S. Supreme Court Justice Sonia Sotomayor

### March 27:

Bench Bar Conference

## 2014-15 Board of Directors



Our annual Installation Banquet was recently held at the beautiful Breakers Hotel in Palm Beach with close to 500 attendees. Guests congratulated Jill Weiss as the outgoing president and welcomed incoming president Theo Kypreos. Congratulations and thank you to our entire Board of Directors for their time, dedication and service to our Bar.

Back row left to right directors Greg Huber, John Whittles, Lee McElroy, Jessica Callow Mason, Dean Xenick, immediate past president Jill Weiss, Sia Baker-Barnes and Edward “Ned” Reagan. Front row left to right: YLS president Lindsay Demmery, president Theo Kypreos, the Honorable Joseph Marx who administered the Oath of Office; president-elect Grier Pressly and director Julia Wyda. (not pictured NCS president Greg Yaffa)

For more photos from the event, please see page 4.

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### Rule 1.510: Summary Judgment

By Matt Triggs and Jonathan Galler

Birds of a feather... defeat summary judgment motions together?

That is what the Fourth District Court of Appeal effectively held in *Neiman v. Kahn, Chenkin & Resnick, P.L.* There, the court concluded that because “appellants were similarly situated to their codefendants,” who were successful in defeating summary judgment, “summary judgment should have likewise been denied against appellants.” *Neiman*, 2014 WL 1464576, at \*1 (Fla. 4th DCA Apr. 16, 2014).

*Neiman* was a breach of contract case brought by a law firm against its former clients for failure to pay its fees. The five defendants filed amended answers denying the material allegations of the complaint. In response to a motion for summary judgment, two of the defendants filed an affidavit. The affidavit stated that the defendants had hired the plaintiff as their counsel with the express goal of having the underlying lawsuit dismissed as quickly as possible but that the law firm failed to inform the defendants of an arbitration provision in the underlying contract that could have resulted in a quick dismissal and a savings of millions of dollars.

The trial court denied summary judgment against the two defendants who had filed the affidavit, but the court granted summary judgment against the remaining three defendants – the appellants – specifically noting that they had not filed opposition affidavits. The trial court also denied a motion for reconsideration filed by the appellants, in which they argued that the affidavit had been filed on all of their behalves and that, regardless, the same grounds that precluded summary judgment against their codefendants also precluded summary judgment against the appellants.

The Fourth District found that the appellants were similarly situated to their codefendants because “the predicate facts are shared by all defendants.” *Neiman*, 2014 WL 1464576, at \*2. In particular: (1) all of the defendants had signed the same fee agreement with the plaintiff; (2) the complaint and motion for summary judgment did not make any distinct

allegations as between the defendants; and (3) the plaintiff’s affidavit in support of summary judgment did not assert that any of the defendants should be treated differently from one another.

The court also pointed out that the defendants all filed an amended answer containing the very same assertions that were presented in one of the prevailing defendant’s answer and affirmative defenses, which, along with the successful affidavit in opposition to summary judgment, contained several allegations concerning the actions of *all* of the defendants.

Reversing the trial court’s order, the court summarized its opinion as follows: “Because all defendants were similarly situated, it does not follow that the trial court could deny summary judgment as to [two of the defendants] but grant it against appellants.” *Neiman*, 2014 WL 1464576, at \*3.

More specifically, the court explained that the prevailing defendants’ opposition affidavit had created genuine



issues of material fact common to all of the defendants.

The lesson? It may be alright to ride the summary judgment coattails of a similarly situated codefendant; just make sure they are the coattails of a codefendant who filed an opposition affidavit.

*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.*

## MCCABE RABIN, P.A. ATTORNEYS AT LAW



**Ryan McCabe**

[rmccabe@mccaberabin.com](mailto:rmccabe@mccaberabin.com)



**Adam Rabin**

[arabin@mccaberabin.com](mailto:arabin@mccaberabin.com)



**Dina Keever**

[dkeever@mccaberabin.com](mailto:dkeever@mccaberabin.com)

**Business Litigation & Disputes**

**Securities Arbitration**

**Whistleblower/Qui Tam Litigation**

**Our team consists of former federal prosecutors  
and board certified business litigators**

**Referral fees paid consistent with Florida Bar rules**

**561-659-7878**

Centurion Tower 1601 Forum Place, Suite 505, West Palm Beach, FL 33401

**[www.McCabeRabin.com](http://www.McCabeRabin.com)**