PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org September 2014

Diversity Event & Reception September 8

Florida Bar President Greg Coleman and Florida Supreme Court Chief Justice Jorge Labarga will be the featured speakers at the Committee for Diversity and Inclusion's Annual Diversity Event on September 8 from 5:00 – 6:00 p.m. at the Jupiter Beach Resort. A cocktail reception will follow from 6:00 – 7:00p.m. The event, entitled "Diversity in the Legal System: Past, Present, and Future," will feature a conversation between the current leaders of Florida's bench and bar on the state of diversity initiatives in Florida to date. In addition, the discussion will focus on the future of diversity in Florida's bench and bar, as well as some "hot" diversity topics today, such as disability, same-sex partnerships, and national origin. The conversation will be moderated by Florida Bar Board of Governors representative David Prather. Pre-registration for this event is required and can be done by going to the Bar's website palmbeachbar.org

Mark your calendar for upcoming Membership Events

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

May 1:
Law Day Luncheon

YLS Fishing Tournament Raises Money for Legal Aid

Congratulations to our Young Lawyers Section for hosting another successful fishing tournament! Over 15 teams participated in this year's sold-out event, which was held at the Palm Beach Yacht Club in West Palm Beach. With a matching grant from the Richard & Peggy Greenfield Investment in Justice Challenge, a total of $20,000 was raised for the Legal Educational Advocacy Program. Pictured from left to right: Lindsay Demmery, YLS President; Jamie Gavigan, event co-chair; and Bob Bertisch, Executive Director of Legal Aid Society.

PBCBA Wins Florida Bar Diversity Award!

The PBCBA was honored with The Florida Bar's Outstanding Program Award by their Standing Committee on Diversity and Inclusion. The award was presented at The Florida Bar's annual meeting in June and was given to recognize the efforts of the PBCBA's Committee on Diversity and Inclusion for all of our efforts over the past five years including our diversity internship program, our diversity jobs database, the road to the bench mentor program, inclusion of diversity students at our annual bench bar conference and several other programs. Kudos to all past and current chairs of our CDI Committee, John Howe, Adam Rabin, Jessica Callow Mason, Sarah Shullman, Sia Baker-Barnes, Laurie Cohen, Chioma Deere, John Whittles, Julia Wyda and Kalinthia Dillard.

Inside...

Rule 1.530: Motions for Rehearing

by Matt Triggs and Jonathan Galler

As the *Ally McBeal* character Richard Fish famously said, "Never trust a second thought. Where there is two, there is three. You will end up thinking forever."

Fortunately for litigants and the judiciary, the Rules of Civil Procedure do allow judges, in some instances, to have and act on second thoughts. But, perhaps recognizing Mr. Fish's concerns, the Rules do not allow that process to go on forever. Finality is key. The case of *Helmich v. Wells Fargo Bank, N.A.*, 136 So. 3d 763 (Fla. 1st DCA 2014) is a solid illustration.

Helmich was a foreclosure action in which the court entered a final judgment in October 2010. Nearly two years later, the defendant filed a motion for relief from judgment under rule 1.540, which the trial court denied. At that point, the trial court's role should have concluded, and any further "second thoughts" should have been left to the appellate court. But the defendant filed a rule 1.530 "motion for rehearing/reconsideration" of the trial court's denial of his motion for relief from judgment, and that is where the case entered a procedural quagmire.

The trial court referred the "motion for rehearing/reconsideration" (the rule 1.530 motion) to a magistrate. The magistrate, in turn, recommended that the motion be denied, and the trial court adopted that recommendation. The defendant then appealed the trial court's denial of his motion for relief from judgment (the 1.540 motion). However, more than 30 days had elapsed since that denial and, for that reason, the First District dismissed the appeal as untimely.

An authorized motion for rehearing under rule 1.530 tolls the time to appeal a final judgment. However, "a motion for rehearing/reconsideration directed at denial of relief from judgment is unauthorized and will not toll the unwavering thirty-day time limit." *Helmich*, 136 So. 3d at 764. As the First District pointed out, case law already makes clear that this is true even when the trial court improperly entertains such a motion for rehearing.

What captured the First District's interest, which it described as an issue of first impression, was the question of whether the trial court's referral of the motion for rehearing/reconsideration was a permissible *sua sponte* grant of the rehearing that was sufficient to toll the time to appeal. The Court held that it was not. Under rule 1.530(d), the trial court may act on its own initiative "not later than fifteen days after entry of judgment or within the time of ruling on a timely motion for a rehearing or a new trial made by a party,"[1] but *only* "for any reason for which it might have granted a rehearing or a new trial on motion of a party." Thus, because a party is not authorized to move for rehearing of a denial of relief from judgment, the court likewise cannot properly initiate *sua sponte* a rehearing of such a denial.

The First District also noted that trial courts generally have inherent authority to reconsider their own interlocutory orders prior to final judgment. Here, however, the trial court was without such inherent authority because the denial of the motion for relief from judgment was not interlocutory or non-final. *Id.* at 766.

In summarizing the "depth of review" contemplated by the rules, the Court concluded that the existing process adequately balances the need for correctness with the need for finality.

[1] Effective January 1, 2014, the time period was expanded from ten days to fifteen days.

Rule 1.530(d) provides the first ability to attack a 'judgment' within ten/fifteen days of rendering. Rule 1.540 then permits a second challenge to the already final judgment sometimes many years afterwards. And, finally, this second challenge (to something already final and potentially reheard) would be reviewed by an appellate court. *Id.*

Put differently, there is room for second thoughts in the rules. But it cannot go on forever. Instead, it must be tempered by the need for finality.

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.