Above: Judge Lisa Davidson and guest, David Post.

Above: Evelyn Araud, Judge Michelle Naberhaus, Judge A.B. Majeed.

Below: Judge Jim Earp, Cindy Earp and Jonah

Above: Gift basket raffle table. Proceeds from the raffle were designated for Hacienda Girls Ranch.

Left: Judge Tonya Rainwater and husband, Giles.

Right: Judge Jennifer Taylor and husband, Dan Heller.

Above: Judge Lisa Davidson and guest, David Post.

BCBA 2016 Holiday Celebration

Additional photos on Page 8
AUTO / MOTORCYCLE ACCidents
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the Ex Parte

By Members, For Members, About Members

January 2017

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the Ex Parte is a monthly publication for the members of the Brevard County Bar Association. the Ex Parte encourages unsolicited submission of articles, comments, photographs and notes of interest to Brevard County Bar Association members.

Publishing and editorial decisions are based on the editor’s judgment of the quality of the writing, timeliness of the article and potential interest to the readers. Occasionally, the Ex Parte may publish articles dealing with controversial issues.

Views expressed in the Ex Parte are those of the authors and not necessarily those of the officers, directors or employees of the Brevard County Bar Association. No endorsement of those views should be inferred unless specifically identified as the official policy of the Brevard County Bar Association.

Advertising copy may be submitted. All advertisements are reviewed; however, the Brevard County Bar Association does not endorse or guarantee any product or service advertised in the Ex Parte or express an opinion concerning said advertisers or their products or services. Nothing contained in any advertisement should be taken as the opinion or an endorsement of Brevard County Bar Association or any of its officers, directors or employees.

Contact the Brevard County Bar Association office at (321) 254-8801 for advertising rates, specifications and deadline information.
By now, most folks are getting back into the swing of things, having had a bit of time off over the holidays. For the roughly 200 of you who were able to make it to the Association holiday party, it was great seeing you! While our cost per registrant increased slightly over the prior year, our cost per attendee decreased based upon a higher percentage of those having registered actually attending.

2017 brings with it judicial investitures for Judges Serrano, Naberhaus, and Ingram along with retirement parties for outgoing Judges Majeed, Clarke, and Maxwell. The Association wishes well the retiring judges and looks forward to working with the newly invested judges.

Some of you may have made New Year’s resolutions. The irrefutable Wikipedia traces the cultural and religious roots of such resolutions to Babylonian and Roman times. I encourage you to check out the article; it’s a succinct and interesting read. If you haven’t yet made a resolution, there’s no reason you must wait another eleven months for the opportunity to do so.

Now is as good a time as any to set out one or more achievable goals. The achievable part is critical. I could strive to forego cassata cake at Amici’s but it wouldn’t last long. I could strive to be more politically correct but that, too, would fail. I like sugar too much and I can’t help but call things as I see them.

This year, I fully intend to decline representation on a handful of cases I would otherwise have accepted in order to have more time to spend with my family. I also plan to resume teaching, as an adjunct, after I finish serving with the Association. While both goals entail an opportunity cost, they are dually achievable and will improve my quality of life.

On the BCBA front, CLEs will remain a focus of mine as we enter this second half of the present fiscal year. I am especially looking forward to our first ever technology CLE slated for April 27. Our planned February evidence CLE is still in the works and, consequently, is likely to be rescheduled to a new date.

Expanding our already developed membership base is another initiative for 2017. Past Association President Doug Beam’s firm has generously agreed to sponsor first year’s BCBA membership dues for up to 10 public service attorneys who have been licensed to practice for less than 10 years. My firm will match that and sponsor up to an additional 10 such attorneys to join. Please expect an email with more details about this opportunity in the near future.

What else can the Association do for you? Please email me at bryan@loberlaw.com and copy Executive Director Terrie Callahan at bcba@brevardbar.org if there is something you’d like to see implemented. While I can’t guarantee we’ll be able to accommodate all requests, I assure you all ideas will be run by the board for consideration.
The Brevard Bar Foundation is gearing up for a busy spring. The Space Coast Community Law School will resume sessions in January, we will host a fundraising golf tournament on February 11, 2017, and our annual dinner honoring community leader of the year Rob Johnson on April 6, 2017. Everybody is welcome to all of these events and we encourage you all to attend.

This month, our members’ support allowed us to donate to No Bad Days Foundation, which supports children in Brevard County that have medical disabilities, but are unable to acquire life enhancing medical devices and other necessities that could forever enhance the life of a child because insurance companies do not find the items “medically necessary” and coverage is denied.

No Bad Days Foundation gives 100% of all donations directly to the children they support. There are no administrative costs or overhead. Mark Warzecha, a partner with Widerman Malek, is the director of No Bad Days Foundation and recently met with Chance, a wonderful, intelligent young man with a great sense of humor who has cerebral palsy. Although Chance is non-verbal, he speaks through his iPad and expressed he feels like a burden to his family. His mother, who is also disabled, is his primary caregiver. When his mom’s caregivers do not show up, Chance’s mom is unable to transport him from his bed to his wheelchair to engage in daily hygiene or therapy. On days like this, Chance must stay in his bed all day. The No Bad Days Foundation is raising money to purchase Chance a "lift system" so Chance’s mom can transport Chance from his bed to his wheelchair and dramatically improve Chance’s quality of life.

Each year, No Bad Days Foundation puts on a kickball tournament and family fun day to raise money to be used to purchase these medical devices and equipment for the children. This year the fundraiser will be held on February 18th. At Viera Regional Park from 10:00 a.m. to 3:00 p.m. Please come out and join the fun. More information can be found at nobaddaysfoundation.com.

If you have a suggestion for one of our monthly donations, please let any of our board members know. Donations are voted on by the Foundation board and priority is given to donations suggested by Foundation members.

You can support the work of the Brevard Bar Foundation by becoming a member. Members provide financial support of varying levels and are not required to attend meetings or otherwise volunteer their time, though that is always welcomed, too. You may join as a lifetime member for $1,000 or an annual member for $100. Membership applications may be requested by emailing Kelly@USLegalTeam.com.

Thank you to all of our current lifetime members. We hope to add your name to the list.

| John Alpizar       | Bryan Lober       |
| Roy Alterman       | Troy Lotane       |
| Kevin Bailey       | Mark Malek        |
| Douglas Beam       | Robert Moletteire |
| R. Mason Blake     | Maureen Matheson  |
| Sammy S. Cacciatore| Clifton A. McClelland |
| Steven G. Casanova | Joan Berry Nassar |
| Leslie J. Castaldi | James M. Nicholas |
| Stephen Charpentier| Arthur W. Niergarth |
| Hubert Childress   | Mark Peters       |
| Joseph G. Colombo  | Robin M. Peterson |
| Gregory Donoghue   | Julie Glocker Pierce |
| Charles Dorfman    | Hon. Tonya Rainwater |
| Hon. Thomas G. Freeman | Kim Bonder Rezanka |
| Daniel Freyberg    | Amy Romaine       |
| Carmine D. Gigliotti| Walter C. Shepard |
| Margorie S. Green  | Eric Shuman       |
| Gregory Hansen     | Charles R. Stack  |
| Michael H. Kahn    | Nicholas E. Tsamoutales |
| Edward J. Kinberg  | Kenneth F. Tworoger |
| Hon. Stephen R. Koons | David Volk       |
| Scott Krasny       | Hon. Robert Wohn  |
The YLD worked to close out 2016 with a bang and to attack the new year like a lioness! The Board carried on the torch this year conducting and supporting the holiday toy drive to benefit the Children’s Home Society. When commenting on the YLD's work with the Children’s Home Society, Director Stephen Reyner commented, “we’ve been so very blessed.” Reyner is depicted in the photo below (right) alongside YLD Board Member Jeff Nuckols (left).

In January of 2017, President-Elect Robert Hoag will present the Brevard YLD’s Grant Proposal at the statewide Affiliate Outreach Conference. At first, Robert was wary to tackle this tall task, but then we told him he would get his room comped over at the Grand Floridian Disney Resort in Orlando. So, if you have not heard from Robert in weeks and months, it is undoubtedly due to his work preparing for this presentation. Maybe Robert will “go live” and broadcast his presentation on Facebook? We can only hope.

Our next beach cleanup is on Saturday, February 4, 2017 at 9:00 a.m. at Bicentennial Beach Park in Indian Harbour Beach, Florida. Please come join us! The YLD recently renewed our adoption of this section of the beach and we have a great time coming together in order to keep it pristine. As always, free doughnuts will be provided. If anyone wants to enjoy a wheatgrass smoothie, just email me ahead of time and that will be provided as well. I look forward to seeing you at the beach!

On January 19, 2017 at 5:30 p.m. at The Mansion in downtown Melbourne, the Law Offices of Donoghue & Associates will host the next YLD Happy Hour. The firm’s practice areas include car, truck, and motorcycle accidents, watercraft accidents, slip and fall accidents, defective airbags and products, medical malpractice, workers’ compensation, insurance disputes, and more. Check out their website at http://www.donoghuelaw.com/.

Come out and join us at any or all of the above events—we look forward to seeing you! If you are interested in sponsoring or participating in any of our events and would like to discuss further, email me any time at shane@shanesmithlegal.com.
Above: Michelle Suskauer, Candidate for President-elect, Florida Bar and BCBA President, Bryan Lober.

Above: Kelly Swartz, BCBA Board of Directors.

Top left: Philip Zies, Secretary, BCBA Board of Directors

Bottom left: Scott Robinson, BCBA Board of Directors and Andrew Pickett, Treasurer, BCBA Board of Directors

Below: Childcare room
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“You never really understand a person until you consider things from his point of view.”
(Atticus Finch in To Kill a Mockingbird, by Harper Lee)

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Our County is a special place for many reasons. We don't have a lot of traffic or violent crime. People are generally polite and friendly if you engage them in conversation. We have beautiful nature attributes like the Ocean and the Indian River which our voters have stood up for by approving a one-half cent sales tax to improve its health. It seems like we get almost daily announcements of great new business relocation or expansion including a robust effort by the private sector for Space exploration and development.

We have a generally collegial Bar with judges that care and seek fairness when we appear before them. They don't always see it our way, but I rarely see examples of bad results generated through indifference. It is beginning to sound like Garrison Keillor's characterization of Lake Wobegon where "all the women are strong, all the men are good looking, and all the children are above average." With all this going for us, how could we possibly improve?

Very simply. By cooperating wherever possible in the pleadings and discovery stage and by judicial impatience for those who make delay their way.

We commercial law litigators are probably more sensitive to and affected by these afflictions than most because of the wide variety of causes of action and scope of discovery limited only by the universe of commercial endeavors. I assume the battle goes on in different ways in the other areas. For instance, my torts professor said that a personal injury case could only get seriously considered for settlement after the defense has done their dairy work. You know, milked the file. Defense lawyers, that is a joke. We all have to do our job to properly vet a case to evaluate the risk if our client is being sued. What I am not joking about is obstructionism for its own sake. Making a case significantly more expensive and time consuming as a strategy for success is wrong. It injects an unnecessary problem in to each case.

So, how do logrollers make delay their way? They move to dismiss every complaint in every case until ordered to answer. So, at the very beginning, that case has a problem. They insist on reading the perfect complaint before they consider it worthy enough to respond to its merits. They object so much, no restaurant would ever serve them once their style became known. Imagine if you will the logroller at lunch.

‘This dish is not perfect.’ Over and over and over until told, ‘yes, it is okay. Eat it or leave.’ The worst of this species says the complaint fails to state of cause of action and does not explain why. That is not a serious response especially where it is apparent the complaint drafter put a good deal of time and effort in to creating a complaint that fairly apprises the opponent of the claimed wrongdoing.

And, when they receive a discovery request, they produce not a single document or answer a single interrogatory until ordered to do so. That case has a problem. If you make a request for production and your counterpart will not give you a single document or gives you the mundane and hides the important, you know you are dealing with a logroller. They object so much, I shudder to think how they would pick apart the Constitution. They would adjudge it utterly invalid due to its lack of specificity and imposition of undue burden.

With Orders and Judgments, if a transcript has to be ordered every time because the other lawyer eliminates or invents findings and rulings less than or beyond what the Judge said or refuses to cooperate in working out the language, that case has a problem. If we have to waste a Judge's time to tell us again what he or she told us the first time, that is not right.

If a lawyer instructs staff to never coordinate a hearing without talking to the lawyer first, that case has a problem. Many matters are routine and do not need a lawyer's involvement for scheduling. So here is how they do it: 'I cannot coordinate that. I need to talk to Mr. Jackleg first.' And, it gets repeated over and over. It seems Mr. Jackleg is never available, and his poor staffer can never get an answer out of him as to whether he will consent to a date and time for the hearing. Mr. Jackleg has decided he has veto power over hearings!

We lawyers have to ask ourselves whether each contemplated action is undertaken in pursuit of fairness or of gamesmanship. Are you needlessly driving up the cost to the other side by what you do?

For those not sure where the concept of zealous representation can go too far, concrete guidance is available. The following is a sample from the Standards of Professional Courtesy in Orange County, Florida. These were approved by the Bar Association and the Judges of the Ninth Judicial Circuit in 2009. If you take these principals to heart, you realize your role is to our
Lawsuit Professionalism (cont.)

justice system as well as to your individual clients.

Discovery, Litigation Practice, and Scheduling

1. Attorneys shall refrain from discovery requests not reasonably related to the matter at issue. Attorneys shall not use discovery for the purpose of harassing, embarrassing, causing needless duplication of effort, or causing the adversary to incur unnecessary expenses.

2. Attorneys shall not propound or object to discovery for the purpose of causing undue delay, needless vexation or obtaining unfair advantage.

3. Attorneys shall ensure that responses to reasonable discovery requests are timely, complete, and consistent with the obvious intent of the request. Attorneys shall not, and must counsel their clients not to produce documents in a way calculated to hide or obscure the existence of documents.

4. Attorneys shall, whenever appropriate, discuss and coordinate discovery planning with counsel for each party to the action (e.g., counsel should cooperate in scheduling and coordinating depositions after requested documents pertaining to the deponent have been disclosed).

5. When setting hearings, conferences, and depositions, Attorneys shall not schedule any matter without first making a good faith effort to coordinate the date and time with counsel for each party to the action. Depositions and hearings shall only be set, with less than one week’s notice, by agreement of counsel or when a genuine emergency exists. When scheduling hearings, Attorneys shall reserve sufficient time to permit a complete presentation by counsel for all parties.

6. Upon receiving a scheduling inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, Attorneys shall promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible. When scheduling changes are absolutely necessary and requested due to professional or family commitments or emergencies, Attorneys shall cooperate with each other in agreeing to calendar changes when rescheduling will not have a material adverse effect on the rights of the client.

7. Reasonable extensions of time should be granted where such extensions will not have a material adverse effect on the rights of the client or result in undue delay (e.g., permitting a deadline for a response to discovery to be extended or not objecting to a first-time motion for extension of time in which to file an appellate brief or reply, etc.).

https://www.orangecountybar.org/standards_of_practice contains those standards and the following categories.

II. Conduct toward the Court, Attorneys, and Other Participants

III. Candor and Fairness to the Court, Counsel, and Others

V. Efficient Administration of Justice

V. Courtroom Decorum

It is a quick read and helpful in understanding that we do not have to try to win at all costs to do our jobs properly.

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Clerk of Courts Update

Guardianship Report Database Project

The Brevard Clerk of Court’s Guardianship Department has been creating a database for delinquent guardianship reports. While the database is not complete, we will be happy to send attorneys partial lists of their cases that are delinquent.

You may contact Mary Lee Parrott or John Pilley in the Guardianship Audit office to have a list prepared.

Please let us know if any information is incorrect or needs updating.

If you have a question regarding accounting and plan filing requirements, the Guardianship department of the Clerk’s Office is here to help. Sometimes a simple phone call can avoid the need for an amended filing, saving you time and the Ward money!

Guardianship Department Contact information

Court Supervisor

Rachel Sadoff, Assistant Court Supervisor
Rachel.Sadoff@BrevardClerk.us

Mona Smith, Guardianship Accountings
Mona.Smith@BrevardClerk.us

Mary Lee Parrott
MaryLee.Parrott@BrevardClerk.us
(321) 637-6500 ext. 59090

John Pilley
John.Pilley@BrevardClerk.us
(321) 637-6500 ext. 59123

Guardianship Plans
Ellie Burt
Ellie.Burt@BrevardClerk.us
(321) 637-6500 ext. 59103

Probate / Guardianship Group
ProbateGuardianshipGroup@BrevardClerk.us

Probate eFiling Assistance
ProbateeFilingAssistant@BrevardClerk.us

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OPEN CONTAINER LAWS: YOU CAN GET 60 DAYS FOR BEING IN POSSESSION OF AN OPEN CONTAINER OF ALCOHOL WITHIN 100 YARDS OF A BUSINESS

Really? This should be a crime alongside Theft of something less than a $100.00, Simple Assault, Criminal Mischief for causing damage less than $200.00, Open Carry of certain firearms? Having an open container of alcohol in your car is not a crime, and neither should possessing an open container of alcohol within 100 yards of a business. "Hey, what are you in jail for?" "I was possessing an open container of alcohol within 100 yards of a business. It was 80 proof so don't mess with me."

LEGALLY BALD QUOTES:

"Do not call me if when I call you back your, 'voice messaging system has not been set up yet.'"

"If you're the only one in the room who's right, then you're wrong."

LEGALLY BALD STUPID RULE OF THE DAY

Florida Rule of Civil Procedure, 1.071 states that if a person files a motion asking the Court to find a Statute Unconstitutional, the person must also send by certified mail a Notice to the State Attorney's Office letting them know that they are questioning the Constitutionality of the Statute in the Motion that they already sent them questioning the Constitutionality of the Statute. So even though every motion must be e-filed and the State receives it, a person also must send the state a notice by Certified Mail to let the state know that they have already been sent the motion that they already received. This is like creating a Committee to create another Committee.

WHEN I GROW UP I WANT TO BE A NON-LAWYER JUDGE

Seriously, do not waste money on Law School. Not only can you practice law without going to Law School, you can even be a Judge. No Law School debt. No fear of being disbarred, or sued for malpractice. No Malpractice insurance. No stress. The suicide rate for non-lawyers who practice law is zero. They do not have substance abuse problems. It's the best job you can get in Law. When I grow up I want to be a Non-Lawyer!

THE BOOK BURNING OF THE MONTH CLUB HAD THEIR ANNUAL FAHRENHEIT 451 PARTY ON DECEMBER 15TH IN ACCOMACK COUNTY, VIRGINIA

In Accomack Virginia, they burned such classics as "To Kill A Mockingbird" and "Huckleberry Finn," because they contain the "N-word." May as well burn Alex Haley's book "Roots," too, while they're at, really prove how stupid they are.

mockingbird-huck-finn-suspended-in-accomack-schools/361105694

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HOW MUCH DOES A CONDIMENT EXPERT GET PAID?

How do you even become a Condiment Expert? Do you go to school for this? Is there a Condiment course I can take? A Condiment school? Is this a job people want to have? Dream about?

"What do you want to be when you grow up?"

"A Condiment expert."

"What is that?"

"A person who is an expert in condiments."

"Like Mustard, Ketchup?"

"And Relish, Mayonnaise, salt, pepper, etc.."

"So you just woke up one morning and said to yourself, "I want to be a condiment expert? I love ketchup, and mustard and relish and I just think I know more about those condiments and condiments in general than anyone else."

"Yes."

"Just because you spill ketchup on your shirt does not make you an expert on ketchup."

"I know ketchup like no one knows ketchup."

CONDIMENT EXPERT: "HE DIDN'T PASS THE KETCHUP."

I never knew they had Condiment Experts or that I would ever need one. But I used one in a trial to show that the woman who claimed she was hit by my client at a Thanksgiving Dinner by an errant ketchup bottle was in fact lying. The Condiment expert opined that her injuries were inconsistent with being hit by a Ketchup bottle. He opined that she was hit by a Relish Bottle. My client was found not guilty, and the Relish Hurler was arrested. http://www.orcexperts.com/experts.asp?strSearchType=all&strQuery=condiment

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Legally Bald — And other strange law-related thoughts by Geoffrey Golub

(All complaints and comments please send to: geoffgolubpa@aol.com) © 2016 Please remember the views of Legally Bald are in no way whatsoever (not even remotely) the views of the BCBA or any of its members, employees, advertisers, and affiliates.
Attached is a.o. 16-34-B AMENDED SUPERSEDES 16-34-B: IN RE: JUDGES – CASELOAD ASSIGNMENT – ASSIGNMENT OF CASES IN FELONY CRIMINAL DIVISION

THE CHANGES ARE HIGHLIGHTED IN THE A.O.

17-01-B SUPERSEDES 16-06-B AMENDED: IN RE: JUDGES – DIVISION ASSIGNMENTS

17-02 SUPERSEDES 16-14 2ND AMENDED: IN RE: JUDGES – ADMINISTRATIVE JUDGES (THE ONLY CHANGE IS JUDGE TAYLOR IS NOW CIRCUIT-WIDE FAMILY ADMINISTRATIVE JUDGE)

17-03 SUPERSEDES 16-22: IN RE: JUDGES – APPOINTMENT OF COUNTY COURT JUDGES TO HANDLE CIRCUIT CASES (JUDGE NABERHAUS AND INGRAM WERE ADDED)

17-04 SUPERSEDES 16-07 AMENDED: IN RE: APPOINTMENT OF CIRCUIT JUDGES TO HANDLE COUNTY COURT CASES (JUDGE SERRANO WAS ADDED)

17-05-B: IN RE: CASELOAD ASSIGNMENT REASSIGNMENT OF CASES ASSIGNED TO JUDGE CHRISTINGA SERRANO

17-06-B: IN RE: CASELOAD ASSIGNMENT REASSIGNMENT OF CASES ASSIGNED TO JUDGE KELLY INGRAM