Top: The Honorable John Antoon, II; Justice Barbara Pariente; and The Honorable J. Preston Silvernail.

Bottom: Sam Cacciatore; The Honorable Bruce W. Jacobus; and The Honorable Kerry Evander.

Justice Pariente presents "Pro Bono Attorney of the Year" award to Brigitta Hawkins (top left) and "Outstanding Pro Bono Services Award" to Richard Shuster (top right).

Top: Andrew Pickett, BCBA Board Treasurer; The Honorable James Earp; The Honorable John D. Galluzzo, 18th Circuit Chief Judge; and Rob Johnson, Executive Director, Brevard County Legal Aid.

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the Ex Parte

By Members, For Members, About Members

March 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.

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Contact the Brevard County Bar Association office at (321) 254-8801 for advertising rates, specifications and deadline information.
Thank you to the over 100 BCBA members who recently visited our photographer to have their directory photos updated. This was a great turnout! It is my intention to obtain photos from county facilities for those few members for whom we presently do not have current photos. Facilities has many member photos on hand as they need them to issue courthouse access badges. Concerns pertaining to unavailable photos are now substantially resolved. I appreciate your continued patience with regard to the annual directory.

Thanks also go out to BCBA members David Volk and Andrew “Andy” Lannon - both of whom will be presenting CLEs to our membership. It is anticipated that registration for both CLEs will be available without charge to the BCBA membership.

David, who is Board Certified in Business Litigation and who sat on the Florida Bar Civil Procedure Rules Committee for a number of years, is slated to speak on how, procedurally, the Rules of Civil Procedure are modified. Having spoken with David regarding this specific topic, I am confident that the presentation will be both interesting to and worthwhile for those who are able to attend.

Andy, who is Board Certified in both Business Litigation and Local Government Law, will focus on representing companies and citizens in land use matters before local governments. Andy serves as City Attorney for Palm Bay, the city housing the highest population in our county. In this capacity, he noted that not only are very few individuals who appear before the City on land use issues (e.g., seeking a variance) represented by counsel but many of them don’t know any attorneys who practice in this area. The program will help BCBA members learn how to incorporate this little noticed practice area into their practices.

Congratulations to Melbourne High School’s Mock Trial team as they are headed to the Florida Law Related Education Association’s state competition! With BCBA members Pam Bress, Greg Donahue and Robert Hoag serving as Mel High’s attorney coaches, they are well equipped to continue their local success. Thank you additionally to the other high schools and coaches who participated in this year’s competition!

For those who have never served as jurors or coaches, I would encourage you to consider it for next year’s competition. Having served in both capacities multiple times, I can attest that it is a very rewarding experience for all involved. If you want to participate but are at all reluctant, call me or email me and I’ll happily give you more information about how the process works.

In the hopes of increasing participation for next year’s competition, I reached out to School Board member Matt Susin, who is an attorney, to drum up support and, hopefully, to encourage the School Board to fund, at least partially, stipends for teachers to encourage greater participation in the program.

You are cordially invited to attend the
Brevard Bar Foundation Dinner
Featuring the
2017 Community Leader of the Year Award
Recipient:
Robert L. Johnson, Jr.
Executive Director,
Brevard County Legal Aid
Guest Speaker:
The Honorable John D. Galluzzo
Chief Judge, 18th Judicial Circuit
Thursday, April 6, 2017
6:00 p.m.
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Limited Seating
$55 per guest
Please call 321-242-2564 or e-mail assistant@michaelkahnpa.com with any questions or to sponsor a table.
The Brevard Bar Foundation is busy preparing for our Annual Dinner to be held on April 6. This year we are excited to be honoring community leader of the year Rob Johnson, Executive Director of Brevard County Legal Aid. At the dinner, we will have the pleasure of hearing from The Honorable John Galluzzo, Chief Judge of the 18th Circuit. The dinner will be held at 6:00 p.m. on April 6, 2017 at Eau Gallie Yacht Club. You may reserve your seat at www.brevardbarfoundation.org.

The Space Coast Community Law School resumed sessions in late January and will continue to meet and educate the public about a variety of legal topics every Thursday through March 30, from 6:00 to 8:00 in the jury assembly room at the Moore Justice Center.

Thank you to everybody who participated in the Brevard Bar Foundation’s best ever golf tournament on February 11, 2017 at Baytree Golf Course. The tournament was a great success and a good time was had by all.

In February, we had the pleasure of donating to Brevard County Legal Aid. The individuals at Brevard County Legal Aid are committed to improving the quality of legal aid and assistance to protect personal safety, establish family stability, and ensure equal access to justice for low income and disadvantaged persons in Brevard County.

Many Brevard Bar Foundation members attended the Brevard County Legal Aid Pro Bono Awards Gala where our very own Britta Hawkins was recognized as Pro Bono Attorney of the Year for her pro bono representation of more than 230 clients and her role in founding and running the Space Coast Community Law School, which has provided hundreds of pro bono hours on a wide range of legal topics.

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

You can also 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 welcome, too.

You can enjoy a lifetime of membership for a one-time payment of $1,000 or you may become an annual member for $100. You may request a membership application from any of our board members.

Thank you to all of our current lifetime members.

We hope to add your name to the list.

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Edward J. Kinberg     David Volk
Hon. Stephen R. Koons Hon. Rorbert Wohn
Scott Krasny          

by Kelly G. Swartz, President
Young Lawyers Division

The Young Lawyers Division would like to thank Ryan Reporting (Melbourne) for sponsoring the most recent Happy Hour at Cabana Shores. Ryan Reporting continues to support the YLD regularly and the board cannot thank them enough for their continued active support. Remember, Ryan Reporting serves all of Central Florida.

This year the YLD formed a team to participate in the 19th Annual Great Brevard Duck Race on April 2, 2017 at 1:00 p.m. at Sand Point Park in Titusville. The YLD is also participating as a sponsor. Please contact me if you wish to participate in some way, or just show up and we will see you there!

Our next Beach Cleanup is a little different for April. On April 1, 2017 from 8:00 a.m. to noon at Bicentennial Beach Park, the YLD will be hosting the site for the Indian Harbour Beach Trash Bash! This is a collective community event to help clean the beaches of Brevard! As such, we are teaming up with the community at large and hosting the site at Bicentennial Beach Park for this event. Join us!

As always, if you have questions or suggestions or want to get more involved with the YLD, please email me any time at “shane@shanesmithlegal.com.”

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the Ex Parte
The Florida Bar Board of Governors met on January 20, 2017. The major actions of the Board and reports received included:

A new website for Lawyers Advising Lawyers, a no-cost peer-to-peer program giving members access to veteran attorneys to help answer procedural and substantive legal questions in 50 practice areas, was launched and the Board approved one hour of CLE credit for volunteer advisors who accept referrals with a maximum of five credits per year. Advisors must have a minimum of five years of experience in the respective area(s) of advice and must be a member of The Florida Bar in good standing. To become an advisor or to request advice, enroll online at http://lawyersadvisinglawyers.com/. The February 1 issue of The Florida Bar News provides more details.

Two new Florida Bar legislative positions were approved: opposing any amendment to the Florida Constitution that restricts or overturns the court’s authority to review the constitutional validity of legislation; and opposing any amendment to the United States Constitution that restricts or overturns the courts’ authority to review the constitutional validity of legislation. Also approved was reinstatement of six legislative positions from the Code and Rules of Evidence Committee.

During the upcoming legislative session, beginning March 7, The Florida Bar will be monitoring constitutional amendments filed in the Florida House and Senate focusing on judicial term limits and other Article V issues. A Senate Joint Resolution, SJR 482, would limit Supreme Court justices to two six-year terms, DCA judges to three terms, require lawyers to be at least 50 years old to serve on Florida’s appellate courts and require Supreme Court appointees to have served at least one prior year as a judge. The House Joint Resolution, HJR 1, would limit the number of years Supreme Court justices and DCA judges may hold the same office to 12 consecutive years and prohibit appellate judges from being reappointed for one year after leaving office; appellate judges in office on January 9, 2019, and future appointees would be subject to the proposed term limits. The Florida Bar will oppose any proposed legislation or amendments that would limit the independence of the judicial branch or the authority of the judiciary through this and other legislative positions: The Florida Bar opposes term limits for judges at any level of Florida’s state court system. For information on legislation of interest to the legal profession, the session schedule, links to contact legislators and other information sources, how The Florida Bar may advocate issues and all legislative positions, please visit www.floridabar.org/legislativeactivity.

Florida Supreme Court Chief Justice Jorge Labarga gave an update on the state of the judiciary. An Overview of State Courts System’s Legislative Budget Request for FY 2017-18 and an Overview of Judicial Branch Priority Issue on Staff Pay are posted at www.flcourts.org. Through work groups, the Court is evaluating security procedures, practices and perceptions at Florida’s courthouses to improve security provided at trial courts around the state and studying the way guardianship works in the state courts system. The now-permanent Florida Commission on Access to Civil Justice will continue its work at a meeting on February 3 in Tallahassee. Members of the Court in attendance were also provided with an update on Florida Bar strategic plan objectives and priorities by President William J. Schifino, Jr. and members of the Board of Governors.

An amendment to the Rules Regulating The Florida Bar Rule 4-1.2 and a new Rule 4-6.6 were approved, which, if approved by the Supreme Court, would streamline conflict of interest procedures to make it easier for lawyers to render limited legal advice to Floridians through call-in lines, booths, or other venues sponsored by law schools, voluntary bars, legal aid clinics and similar entities. The proposed rule changes will be officially noticed in the February 15 Florida Bar News and will be filed with the Court on March 17.
THE TELL-TALE PACEMAKER
From a story, almost out of an Edgar Allan Poe Novel, a man was arrested for arson based on electronic data downloaded from his pacemaker. The police were issued a search warrant to examine the data in the man's pacemaker which showed that he could not have been doing what he said he was doing (i.e. trying to escape the fire as opposed to starting it, his fake heart would have been beating a lot more) based on the information they obtained. A Cardiologist told police that the Defendant’s actions were "highly improbable" because of his medical condition, and the pacemaker data backed up the Cardiologist's testimony. The character in the Edgar Allan Poe novel confessed out of guilt. This guy wishes he was the Tin Man before he met the Wizard. [https://www.wlwt.com/article/middletown-mans-electronic-heart-monitor-leads-to-his-arrest/8647942](https://www.wlwt.com/article/middletown-mans-electronic-heart-monitor-leads-to-his-arrest/8647942)

THE PLEA COLLOQUIY MADE SIMPLE FOR MISDEMEANANTS
JUDGE: By accepting this plea you are giving up all the rights given to you under the United States and Florida Constitutions. If you don’t know what those rights are, then they probably don’t mean that much to you anyway. The only right you have left is a meaningless right to an Appeal to challenge the voluntariness and legality of your plea, which by accepting this plea you are agreeing that you are doing so voluntarily anyway, and as for the legality of your plea and sentence, the chances of success on an appeal are about the same as winning the lottery…Oh, and by the way, you might lose your license because DMV can do whatever they want.

ADDED FOR CRIMES THAT CAN BE ENHANCED: If you commit this crime again, and you are adjudicated guilty of the charge, really bad things are going to happen to you.

NOT EVERYTHING WE SAY IS HEARSAY!
Defense Lawyer: What did you do when you saw the Mailman today?
Witness: I said, "hello.”

Defense Lawyer: And what did he say?
Witness: He said, “hello.”

Plaintiff Lawyer: Objection, hearsay
Judge: Sustained.

Defense Lawyer: It is not being offered for the truth.
Judge: Well, he said, ‘hello,’ didn’t he?
Defense Lawyer: He may have, but it’s being offered merely to show he said, ‘hello,’ and not for the truth of the matter asserted.

EXPLANATION: The hearsay objection is unavailing when the inquiry is not directed to the truth of the words spoken; but, rather, to whether they were in fact spoken. (See Banks v. State, 790 So.2d 1094(Fla. 2001)

Defense Lawyer: Why did you run away?
Defendant: Because the Officer said, ‘say hello, to my little friend.’

State’s Lawyer: Objection, hearsay.
Judge: Sustained.

Defense Lawyer: It’s not being offered for the truth of the matter asserted. It’s being offered to show why he ran. It is being offered to show my client’s state of mind or the effect the words had on the listener, who is my client. Why he did, what he did.

Judge: But it’s also being offered for the truth.
Defense Attorney: But that’s not what I am offering it for.

EXPLANATION: It is axiomatic that a statement which may be considered hearsay for one purpose may nonetheless be admissible if offered for another legitimate purpose. (See Aneiro v. State, 674 So.2d 913 (Fla. 4th DCA 1996)

Instead of explaining what hearsay is, perhaps explaining what it is not will make it seem less confusing.

No aspect of the hearsay rule is as misunderstood as the second part of the definition of hearsay—that the out-of-court statement is “offered in evidence to prove the truth of the matter asserted”—which McCormick describes as a “complicated and confusing condition.” McCormick on Evidence § 246 (2d ed. 1972).

Massey v. State, 109 So.3d 324 (Fla. 4th DCA 2013)

Out-of-court statements may be offered for a multitude of purposes other than to prove the truth of the facts asserted in them. Florida has recognized these common types of nonhearsay utterances:
(1) prior inconsistent statements, because they are “not offered to prove [their] truth, only to show the inconsistency for impeachment purposes,”
(2) statements offered to prove motive
(3) statements used to establish an element of a crime,
(4) statements that describe and give significance to ambiguous acts
(5) statements that are “verbal acts,” such as the words of an oral contract or of slander, which have “independent legal significance” because “the law attaches duties and liabilities to their utterance,”
(6) statements offered to show the state of mind of, or notice to, the listener.

SOMETIMES WHAT WE DON’T SAY IS HEARSAY!
State attorney: Officer, what did the witness tell you?
Witness: The Witness told me that Neil Diamond is the one who said, ‘hello.’
Defense Attorney: Objection, hearsay.
Judge: Sustained.
State Attorney: Without telling us what the witness said, what did you do after speaking to the witness?
Defense Attorney: Objection, hearsay.
Judge: Overruled.
Officer: I arrested the defendant for saying, ‘Hello.’
Defense Attorney: It’s hearsay, Judge.

Judge: No, it isn’t. The Officer never said what the witness told him.
Defense Attorney: It’s pretty obvious the only inference that can be made is that the witness told the officer that my client, Mr. Diamond, said, ‘hello.’
Judge: But the Officer didn’t say that’s what the witness said.
Defense Attorney: He doesn’t have to for it to be hearsay. (To Officer): Isn’t it true that it was really Lionel Ritchie who said, ‘hello?’

EXPLANATION: Where “the inescapable inference from the testimony is that a non-testifying witness has furnished the police with evidence of the defendant’s guilt, the testimony is hearsay, and the defendant’s right of confrontation is defeated, notwithstanding that the actual statements made by the non-testifying witness are not repeated.” (See Diaz v. State, 62 So. 3rd 1216 (Fla. 5th DCA 2011); Walker v. State, 77 So. 3rd 890 (Fla. 2nd DCA 2012); Tumblin v. State, 747 So. 2d 442 (Fla. 4th DCA 1999); Postell v. State, 398 So. 2d 851 (Fla. 3rd DCA 1981)
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(Atticus Finch in To Kill a Mockingbird, by Harper Lee)

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Judgment At Twenty Mile Bend

Brevard County Judge, Stephen R. Koons, has written a novel. And it’s a good one. The attorney protagonist is: Jack Shook (a young Judge Koons?) working as an Assistant Felony State Attorney in Palm Beach County. The story takes place in the late 1970s. There are interesting characters, murder, sex, courtroom drama, twists, turns, and lots of suspense. It’s a must read for lawyers and anyone who likes legal thrillers. And it’s a special treat for anyone who lives in Brevard County. The cities of Cocoa Beach, Satellite Beach and Melbourne are mentioned. As are characters with the same names as some local attorneys. Such as Michael Kahn, Roy Alterman, and former Brevard County Assistant State Attorney, Nick LeCakes.

I had never heard of the Twenty Mile Bend until I read the Judge’s novel, and after reading it I plan on avoiding the area at all cost. Let’s just say I like Alligators from afar and leave it at that. I also recommend staying away from Liberty City in Miami, where a great scene in the book starts. But as an alum from the University of Miami School of Law, I already knew to stay away from the ironically named “Liberty” City before reading Judgement At Twenty Mile Bend.

Author, Stephen Koons’ Jack Shook joins the ranks of other notable lawyer protagonists, such as, John Grisham’s Sebastian Rudd, Michael Connelly’s Mickey Haller, Joseph Teller’s Jaywalker, James Grippando’s Jack Swyteck, and Mark Giminez’s A. Scott Fenney, and John Bookman.

You can purchase Judgement At Twenty Mile Bend on Amazon Kindle for $9.99 or order it in paperback. Rumor has it there is a second Jack Shook novel in the works and I can’t wait to read it.

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812-670-6201 or richarduso17@gmail.com

Administrative Orders

ADMINISTRATIVE ORDER NO. 17-10-B
Supersedes 95-28-B:
In Re: Administrative Orders – Rescinds Administrative Order 95-28-B

ADMINISTRATIVE ORDER NO. 17-11-B
IN RE: Mental Health – Baker Act Proceedings

ADMINISTRATIVE ORDER NO. 17-16-B:
In Re: Criminal – Procedures for E-Warrants for Search and Arrest Warrants
Approximately 160 invited guests from the legal and business community attended Brevard County Legal Aid’s Annual Pro Bono Awards and Recognition Gala on Friday, March 3, 2017 at Suntree Country Club in Melbourne. The annual dinner and awards event is a tribute to Brevard’s attorneys who contribute free legal assistance to help persons who are unable to afford private counsel.

Florida Supreme Court Justice Barbara Pariente was the special guest speaker and she also presented awards to recognize the efforts of Brevard’s most outstanding pro bono attorneys. Justice Pariente was introduced by 5th District Court of Appeal Judge Kerry Evander who offered some highlights from her impressive legal and judicial career which has been characterized by a steadfast commitment to access to justice. She has been a Justice since 1997 and served as Chief Justice from 2004 through 2006.

Justice Pariente has worked to improve methods for handling cases involving families and children in the courts serving as the Chief Justice’s designee to the Florida Children and Youth Cabinet and the Department of Children and Families’ Child Protection Transformation Advisory Board. She is also currently the Chair of the Supreme Court’s Steering Committee on Families and Children in the Courts, which works collaboratively to improve methods for handling cases involving children and families so that the interests and need of the child are paramount.

During her inspirational remarks at the Legal Aid Gala, Justice Pariente emphasized the importance of meaningful access to our judicial system for poor and disadvantaged members of our community. “If the measure of greatness of a society is how we treat the least among us,” she said, “then we have much work to do.” She invited all present to join her on the “journey to make the promise of equal justice for all a reality.”

Justice Pariente presented awards to local attorneys who went above and beyond in their pro bono contributions. Brittita Hawkins was recognized as “Pro Bono Attorney of the Year.” Brittita staffs monthly advice clinics at the Legal Aid office to assist individuals with social security issues. She also assists clients by providing individual representation and, since 2009, has personally provided 400 hours of pro bono service to 230 clients. Brittita also created Space Coast Community Law School, an innovative project in which attorneys, judges and paralegals, have provided hundreds of pro bono hours offering free legal seminars to the public on a wide variety of legal topics.

Other award winners included “Outstanding Pro Bono Service Awards” to Richard Shuster, Deborah Smith, Michael Howard, John Daly, Amy Romaine, Judy Stevens, Diane Baccus Horsley, Vencil Moore, Thomas Yardley, Shawn Trautman, and Joe Caruso. “Distinguished Pro Bono Service Awards” went to Julie Pierce, Steven Allender, Scott Krasny, Jeffrey Thompson, Lucinda Pruss, James Dressler, and Kyle Lieneck.

Attorney Kenneth F. Tworoger was the event’s Title Sponsor and two law firms, Shuster & Saben, LLC and Nance Cacciatore were Platinum Sponsors for the event. Gold Sponsors were: Allender & Allender, PA, Brevard County Bar Foundation, Faro & Crowder, P.A., and Michael and Roma Kahn, Michael Kahn, PA.


Top: Title Sponsor, Ken Tworoger, Gretchen Klayman, and Pat Nelson
Bottom: Legal Aid Board and Staff members with Justice Barbara Pariente.
State Attorney Phil Archer
invites you to join us for Breakfast
as we recognize
National Crime Victims’ Rights Week

Monday, April 3, 2017
9:00 a.m.

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