



# The NETWORK

**INTEGRATING** 

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AND

**CONNECTIONS** 

### COMPLIANCE



Unpaid Legal Interns, Summer Associates and Contract Attorneys:

The Changing Nature of Professional Exemption for Overtime Pay



Changing the Face of Diversity & Inclusion in Our Community



A Lifetime Experience in Orlando



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#### THE NETWORK IS PUBLISHED **QUARTERLY BY**

South Florida Chapter, The Association of Legal Administrators

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#### THE NETWORK

The Network is published to provide information for the education and benefit of legal administrators, law office managers, managing partners of law firms and others interested in law firm management. Any article or advertising published here or in any prior issue of this newsletter should not be considered to be an endorsement by the South Florida Chapter of the Association of Legal Administrators of the opinions expressed therein or any products(s) advertised. Contributing writers are asked to disclose interests and affiliations that influence their may writing position so that facts may be obtained upon request.



#### WHAT YOU LEAVE BEHIND

#### PRESIDENT'S MESSAGE

JUDITH H. PAWLOSKI, CLM

PETERSON BERNARD

What pearls of my wisdom shall I impart to the Chapter members and Business Partners in this my last President's Message? Does anyone really read this column anyway? Strangely enough, I found out that someone really did and I was quite surprised. In February, Laura Broomell, ALA President-Elect, was visiting our Chapter. At our Miami luncheon, she spoke about leadership and made reference to my President's Message in a previous newsletter. I was astounded. First, I was struggling to remember what I wrote on leadership and, next, I was amazed that she had actually read my article and was drawing reference to it in her presentation. Later, I asked Laura and she confirmed she had read all of my President's Messages. Yikes! What impression had I made on this ALA colleague whom I did not really know? Had I sounded like a Bozo? Or had I come off pithy and knowledgeable?

It made me consider what impression we have on our own employees, partners, fellow ALA members and Business Partners. I recall when I was first offered the position as the "office manager," having worked my way up from receptionist/ bookkeeper to legal assistant, one of the partners asked "If you take this position, Judi, do you think the other employees will accept you in this new role?" I remember replying that it was not as important for them to like me, as it would be for them to respect me. We all know that children are like sponges watching and listening to our every word, gesture and how we handle various situations. Well, guess what? So do our employees, our partners, fellow Chapter members, Business Partners and ALA colleagues around the country. Rather than struggle to be someone you are not or to change your image to fit what others expect of you, just be you. Be honest, be humble, be sincere and work hard. If they don't like you, it's ok. Hopefully, they will respect you.

By the time you read this Message, our Chapter will be in transition to our next Board. I know I leave you in good hands. I can assure you that these members who comprise the Board and the Committees give tirelessly of their time and effort to sustain and build a great ALA Chapter. Remember when you get annoyed with them or they don't return an email quickly or an event does not go off as brilliantly as planned, they are all just volunteers doing the very best they can.

#### To My Board -

It was my honor serving with you. Thank you all for our support, reminding me to turn on my lights as I drove away from a Board meeting late at night, listening when I vented about a difficult decision and reminding me why I agreed to begin this venture so many years ago.

#### Special Thanks -

A special word of thanks to the two best friends a gal could have: Viki Allen and Paula Lawson. Without you two, I would still be sitting at the back table of an ALA meeting, not talking to anyone and never approaching a Business Partner. Thanks to your encouragement and what you saw in me, I found my voice. By the way, if you two ever volunteer me for anything again . . . :-)





**UNPAID LEGAL INTERNS, SUMMER** ASSOCIATES AND CONTRACT

**ATTORNEYS: The Changing Nature of Professional Exemption For Overtime Pay** 



Diversity & Inclusion:

Changing the Face of Diversity & Inclusion in Our Community



Conference Networking

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# COMPLIANCE

UNPAID LEGAL INTERNS, SUMMER ASSOCIATES AND CONTRACT ATTORNEYS

The Changing Nature of Professional Exemption For Overtime Pay



Contributed by:
Aaron Tandy, Esq.
Pathman Lewis, LLP

Most if not all law firms are aware that the lawyers and professional staff directly employed by their law firms are not normally eligible for overtime pay. Most firms may well realize that this is the result of an exemption for professional employees set forth directly in the Fair Labor Standards Act ("FLSA"). However, like all exemptions, the Department of Labor and the courts are actively scrutinizing employment arrangements to prevent misclassification and misapplication that would prevent otherwise qualified, eligible personnel from receiving overtime pay – even in law firms and the legal market. Now recent decisions are forcing law firms to consider whether unpaid legal interns, contract attorneys and summer associates are eligible for overtime pay.

The FLSA exemption from guaranteed overtime is for those "employed in a bona fide . . . professional capacity". 29 U.S.C. §213(a)(1). In order for lawyers to qualify for the exemption, the employee must actually be engaged in the "practice of law". 29 C.F.R. §541.304(a)(1) (2015). Applying the FLSA provisions

#### WHO IS EXEMPT?

The FLSA exemption from guaranteed overtime is for those "employed in a bona fide ... professional capacity". In order for lawyers to qualify for the exemption, the employee must actually be engaged in the "practice of law"

on overtime pay for unpaid legal interns, summer associates and contract attorneys used to be simple but is now not. Questions now arise whether the unpaid intern is actually an employee entitled to pay; whether the contract attorney's work is actually the practice of law to qualify for an exemption; and whether those summer associates, having no state issued law license, would actually be exempt from the overtime rules.

In years past, law firms might offer unpaid legal intern or clerk positions to college students who were deciding on whether to pursue a legal career. Often the arrangements were mutually beneficial – college students got exposure to law firm practice and law firms got extra pairs of hands to organize files, papers or even law books (when firms still had law libraries). However, as the Second Circuit recognized last year "there are

circumstances in which someone who is labeled an unpaid intern is actually an employee entitled to compensation under the FLSA." Glatt v. Fox Searchlight Pictures, 791 F.3d 376, 382 (2nd Cir. 2015) (establishing a flexible primary beneficiary test to determine whether an intern is entitled to minimum wage and overtime) (amended opinion at 2016 WL 284811). See also Schumann v. Collier Anesthesia, P.A., 803 F.3d 1199 (11th Cir. 2015) (discussing issues in regards to anesthesia assistants). For this reason, many law firms have moved away from providing unpaid intern positions.

Similarly, while more and more law firms are hiring contract attorneys, either directly or through staffing companies, to undertake document review and other tasks that previously were given to law clerks, paralegals or junior associates, questions have arisen as to whether those

contract attorneys would also be eligible to receive overtime for their work. Last year, the Second Circuit reversed an order granting dismissal of a contract attorney's lawsuit claiming entitlement to overtime for document review work. Lola v. Skadden, Arps, Slate, Meagher & Flom, LLP, \_\_\_ F.3d \_\_\_\_ (2nd Cir. 2015). Determining that the "practice of law" required some application of legal judgment exercised on a client's behalf, and finding that plaintiff had adequately alleged in his complaint that he had not undertaken such judgment, the Second Circuit reversed the dismissal order. This case and others have prompted law firms and legal staffing companies to consider paying overtime to contract attorneys or, alternatively, allowing them to exercise professional judgment in completing assigned tasks.

In all of this, it still remains to address how summer associates

should be treated for purposes of FLSA. For the most part, summer associates more often than not are paid and considered employees during their period of time with the law firm. And they are expected like interns to use the time at the law firm to further their education and, like professionals, to exercise some judgment as a result of their law school education. However, as the Second Circuit found: "[t]he exemption in FLSA specifically relies on the attorney possessing 'a valid

license . . . permitting the practice of law.' 29 C.F.R. §541.304(a)

(1)." Lola, \_\_\_ F.3d at \_\_\_\_. Typical summer associates do not possess a law license issued by a state and as such, may actually be entitled to overtime under FLSA if they work more than 40 hours per week.

Law firms thinking about the mix of staffing would do well to consider the FLSA implications of bringing on law clerks, contract attorneys and summer associates

and seek guidance from qualified professionals.

Aaron Tandy is a partner in the firm's Commercial Litigation Department, and is head of the firm's Employment Law Section. Mr. Tandy places a special focus on resolution of business torts, regulatory and administrative hearings, employment and HR litigation, and ecommerce and intellectual property disputes, including the gathering and proper use of electronic and social media evidence.

In addition, Mr. Tandy provides counsel to entities looking to comply with federal and state antitrust laws, including the establishment of domestic and international distribution agreements and joint ventures.

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#### **Outgoing Editor's Farewell**

By Gary Smith, Richard & Richard, P.A.



"Oh, I am fortune's fool!"
William Shakespeare, Romeo and Juliet

Honestly, when I accepted the newsletter editor position in 2010, I did so with some angst. I can't even remember who asked me to head the committee. What I do remember is that even though it wasn't my dream assignment, I was happy to pitch in. And while I may not have been delighted to head the newsletter six years

ago, I have come to appreciate my good fortune. This opportunity has made me a better legal administrator. It's provided me with knowledge, friendships and made me a better writer. Special thanks to Laura Crovo-Lane who has always done an amazing job designing and publishing our newsletter.

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## Changing the Face of Diversity and Inclusion in Our Community

#### By Felice Solomon, Solomon Search

Solomon Search has been working closely with members of the South Florida Chapter ALA and Miami Carol City Senior High School to introduce an internship program for the students of the school as part of our Diversity and Inclusion Mentoring Program.



For the last year, Solomon Search has been part of the Diversity and Inclusion Committee.

Being a part of this committee has given me the ability to take a good hard look at how my company can step up and help our youth secure better futures in the next decade starting with our corporations and law firms. Workplace

inclusion must be addressed and these young men and women need good mentors to help ensure their futures, establish career goals, and bring hope and change to their lives. Without strong mentoring programs in place, the future of these students can be gravely impacted. As community leaders, our goal should be to guide these students in becoming independent and self-sufficient young adults.

As a recruiting company, Solomon Search is devoted to making positive change in our community. We are working with the high school in devising a program whereby students will have an opportunity for summer internships.

They will be evaluated and graded by the school. Miami Carol City High School is in the process of constructing the criteria for the program and I hope to be able to entice our administrators to take part in the program.

In addition, Solomon Search is introducing a

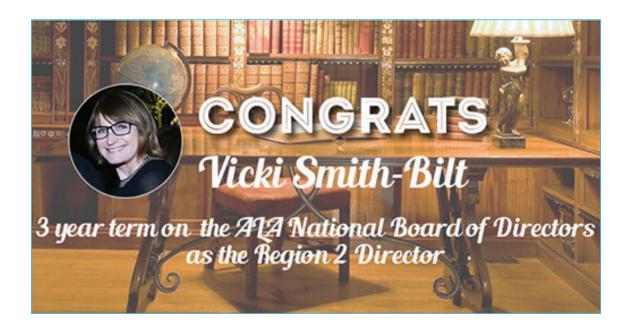
\$1,500 scholarship to the school. We believe through mentoring and financial support, like the Solomon Search Scholarship, we can change the outlook of some of our youth facing adversity. We realize the importance to honor uniqueness of each individual and embrace diverse backgrounds, values, and points of view to build a strong, inclusive community and to prepare students for lives in a multicultural society.

The Solomon Search Scholarship is only one way to assist the students of Miami Carol City High School. A mentoring program fostered by the members and law firms of the South Florida Chapter ALA will give great value to the graduating students to pursue a career in the legal community. The phrase, "It takes a village" is exactly what it will take to make positive and constructive change in the South Florida community.

It will take great leadership from our legal community to embrace the challenge to help mentor, educate, and demonstrate that we are willing to embrace diversity and inclusion and make it a living doctrine and not just good thoughts and words.

Please help us in granting some of these student internships for the summer. We look forward to rolling out our program shortly.

Stay tuned...



#### A Lifetime Experience in Orlando

#### By Nilka Gomez, Haber Slade, P.A.

As a member of the ALA South Florida Chapter since 2014, my dream and goal was to attend an ALA conference. In January 2016, I was notified via e-mail that I was approved for a scholarship. This news was like telling me I had won the lotto and it was music to my ears! That same afternoon I made plans to take care of all my firm and personal duties to prepare myself for an upcoming conference. I decided to attend the HR Conference in Orlando, Florida from February 18-20, 2016. It was actually held on my birthday weekend, which was more reason to attend and celebrate success. My first impression when I arrived at the conference was "Ok, I'm here for the next few days with no one I actually know!" I was indeed a bit discouraged, but after listening to the keynote speaker Jeff Tobe, I felt energized and excited to continue attending all the topics. Jeff was extremely enthusiastic, funny and engaging! He even pointed out that the FedEx logo contains an arrow acting as a subliminal message - how

many of you knew that one? Other sessions that day included "Manager 3.0" with Buddy Bush, another superb speaker whose presentation addressed millennials, how to better understand them and how to engage everyone at the workplace. An additional perk was that the speakers made themselves available after the sessions and also gave one the opportunity to contact them for any questions or concerns one may encounter after the conference. After breaking for lunch, I started talking to different administrators from all over the United States. Although, I must admit the minute I saw Beth Meyers from Shutts, I rushed over to her and said, "Can I sit with you? I have no idea who anyone else is here!" Beth was sitting with two other Shutts administrators, Cathy Zaccardo and Lawanna Voci. I enjoyed my experience throughout the conference as I interacted with these three highly experienced administrators and others, together with knowledgeable business partners. The social sessions of the

conference were also a hit. I was able to ask other administrators how they do things back where they live and get additional ideas, all over a nice glass of wine – how good is that?

As a result, My Managing Partner, David Haber, together with our CFO, Gillian Haber are extremely excited about the new information and proposals I have now planned for the firm.

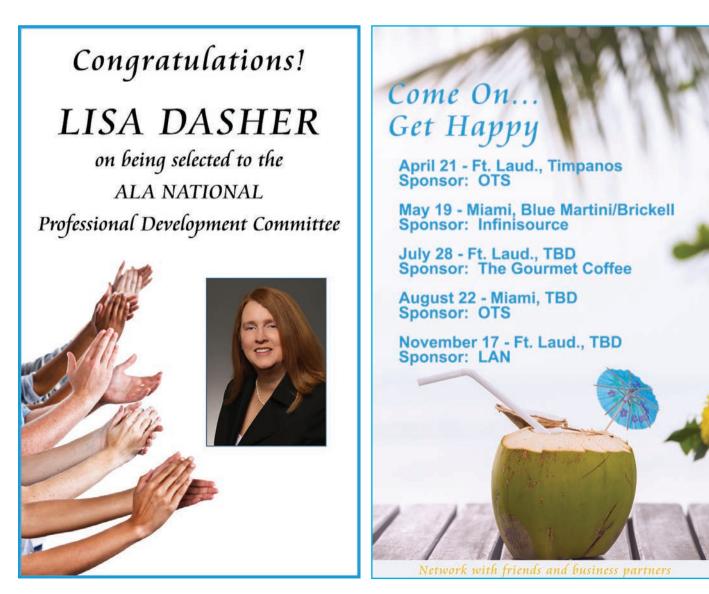
I am very thankful to the ALA, our business partners and our local chapter for providing us administrators with opportunities like these. As a person that is studying for the CLM exam in May, I was blessed with this opportunity and I will definitely continue to attend conferences throughout the years of my career. I encourage every firm to support their administrators to attend a conference as I feel my knowledge now in HR is extraordinary!

With that said, are we ready for the Los Angeles National Conference?













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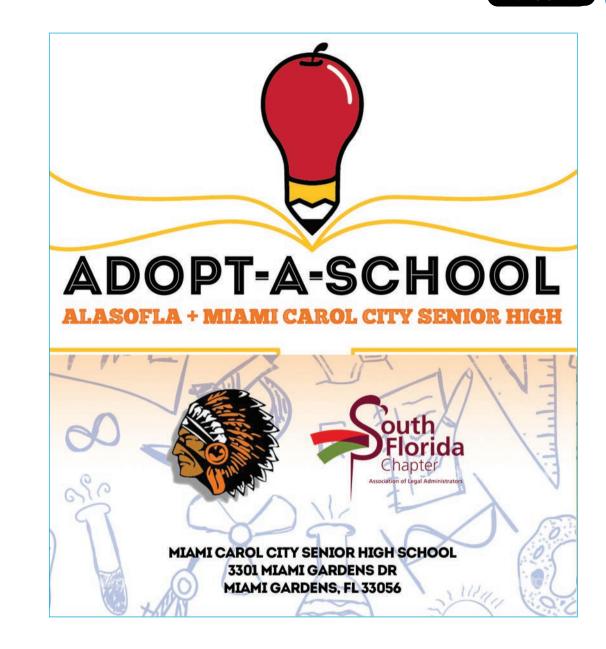


### ALASOFLA Adopts School As Part of **Chapter Mentoring Program**

The South Florida Chapter of the ALA partnered with Miami Carol City Senior High School to "Adopt-A-School" as part of a mentoring program spearheaded by our Diversity & Inclusion Committee. A ceremony was held on January 26, 2016 at the high school to introduce our chapter to the Business and Information Technology (B.I.T.) Academy's student body and outline

the program initiatives. Official proclamations were presented by city officials. The mentoring program provides junior and senior students professional opportunities such as workforce development training, paid internships, sponsored field trips to business organizations in the community, and a deserving student will be awarded a \$1,500 scholarship sponsored by Solomon Search Group.









Thanks to the outgoing board for their service. Effective April 2016, welcome our 2016-2017 board!

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**Large Firm Principal Administrators Retreat** 

August 4 - 6, Napa, CA



**Law Firm Management Essentials** 

August 24-26, Chicago, IL



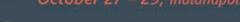
Business of Law Conference – East, Regions 1 & 2 September 8 - 10, Boston, MA



**Business of Law Conference – West, Regions 5 & 6** October 6 - 8, Phoenix, AZ



Business of Law Conference - Central, Regions 3 & 4 October 27 - 29, Indianapolis, IN





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<u>Victoria Allen, CLM</u> Rogers, Morris & Ziegler, LLP

#### Thursday, April 7, 2016

Webinar: Managing Partner/Firm Leader Integration

3:00-4:00 PM 4000 Ponce de Leon Blvd., Suite 800, Coral Gables

#### Saturday, April 9, 2016

Volunteer: Broward College Paralegal Program Mock Interviews

**Broward College Central Campus** 

#### Wed., April 13, 2016 Miami Dade Monthly

**Lunch Meeting** Workplace Bullying

Pathman Lewis

#### Thurs., April 14, 2016 Broward Monthly Lunch

Meeting

Workplace Bullying Pathman Lewis 11:45 - 1:30 PM

#### Thursday, April 21, 2016 Happy Hour - Broward

#### Wednesday, May 11, 2016

#### Technology Training & Luncheon

9:00-1:30 PM

Tips and Tricks for Word,

