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DAILY BUSINESS REVIEW

DailyBusinessReview.com

An ALM Publication VOL. 89, NO. 16 \$2.00

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LAW

\$3M AWARD REVERSED FOR BANK

The Third District Court of Appeal overturned the verdict against Bank of America for lack of malice by the suspicious teller who triggered the alarm. **A3**

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COMMENTARY: DEFIBRILLATOR USE

The Florida Supreme Court has agreed to hear a case arguing there should be a penalty for failing to use publicly owned defibrillators purchased to help people suffering heart attacks, plaintiffs attorney Craig Goldenfarb said. **A5**



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The Puerto Rican government signed a law in early 2012 that creates a tax haven for U.S. citizens if they live on the island for at least 183 days a year. **A14**

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PORT STRIKE THREAT SPURS TALKS

A strike or lockout at ports whose operations contribute to 12.5 percent of gross domestic product would be a blow to the economy and could be a public relations disaster for a union whose members earn from \$25 to \$40 an hour. **A13**

PUBLIC NOTICES & THE COURTS

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Public notices from Miami-Dade, Broward and Palm Beach also available at DailyBusinessReview.com/public_notices.jsp. Public notices published in newspapers statewide available at FloridaPublicNotices.com.

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Postmaster: Send address changes to Daily Business Review, PO Box 010589, Miami, FL 33101. Published daily Monday through Friday, except legal holidays. By ALM Properties, LLC, 150 3rd Ave., Suite 900, Miami, FL 33131, (800) 377-3721. © 2014 ALM, Daily Business Review (ISSN 1943-3000) (USPS 1328-1310). Miami Subscription Rates: One year (12) issues - basic, individual and small firms: \$129 plus tax, discounted group rates available. Single copies \$6.95. \$2 back issue when available (66-6). \$5. Periodicals postage paid at Miami, FL.

SPECIAL REPORT Litigation

Will there be a next generation of trial lawyers?

Alternative dispute resolution is the epitaph that may end up on the American trial's tombstone.

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About 99.7 percent of cases are resolved without a jury trial, which drastically shrinks the opportunity for trial experience. **A9**

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A resurgence in construction-related legal services is expected to follow the recent resurgence of the construction industry itself. **A12**

BETTER OPTION FOR DEVELOPERS

Developers of a distressed project will have an incentive to file Chapter 11 instead of losing their projects to foreclosure. **A12**



PHOTO ILLUSTRATION: JOHN BENOUIL/ALBERT DAZ

JUSTICE WATCH John Pacenti

'Rock star' litigators at forefront of same-sex marriage fight

by John Pacenti
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When it came to challenging Florida's ban on same-sex marriage, the South Florida lesbian, gay, bisexual and transgender community tapped two attorneys on the forefront of fighting for the disenfranchised: Elizabeth F. Schwartz and Sylvia H. Walbolt.



Pacenti

Schwartz has long made a name for herself in

the LGBT community at the Miami Beach family law firm that bears her name. She was instrumental in litigation that paved the way for gay couples to adopt children.

Walbolt, a partner at Carlton Fields Jordan Burt in Tampa, has represented Guantanamo detainees, migrant workers and organizations that feed the hungry, just to name a few in a 51-year legal career. She is legendary in the pro bono arena.

Walbolt received the 2009 modal of honor from the Florida Bar Foundation, one of the highest honors bestowed on lawyers by the

legal profession in the state.

Carlton Fields partner Jeffrey M. Cohen in Miami also did heavy lifting on the challenge to the state constitutional amendment banning gay marriage. It's his first time working with Schwartz, but he said working with Walbolt is an honor.

"Sylvia is one of the most amazing lawyers in the history of Florida. She is amazing," Cohen said. "Working with Sylvia is like playing on a team with a Hall of Famer."

Schwartz in 2012 received the

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JUDICIAL PROFILE

Miami-Dade Circuit Judge Sigler showed resolve in 'outing'

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JUDGE VICTORIA SIGLER

FROM PAGE A1

JUSTICE WATCH: Attorneys lauded for work in LGBT community



Miami-Dade Circuit Judge Sarah Zabel is being asked by the plaintiffs to back them on a summary judgment motion without a trial by finding the ban unconstitutional.



Elizabeth F. Schwartz was instrumental in litigation that paved the way for gay couples to adopt children.



Sylvia H. Walbolt received the 2009 medal of honor from the Florida Bar Foundation, one of the highest honors bestowed on lawyers by the legal profession in the state.

National Gay and Lesbian Task Force's Eddy McIntyre Community Service Award in recognition of her work. She married in Vermont—the first state to recognize same-sex marriage—to veteran Miami Herald reporter Lydia Martin. Shannon Minker, legal direct of the National Center for Lesbian Rights in Washington, said Schwartz is a pioneer for LGBT rights in Florida.

"For many years, she has been on the forefront of establishing legal protections in the courts for same-sex parents and through her work are now creating families through adoption and surrogacy," Minker said. "She is also at the forefront of estate planning for same-sex couples, which is very complex because of severe discrimination."

Cindy Brown, a longtime lesbian activist and executive director of the Miami Beach Botanical Garden, said she has known Schwartz since she graduated from the University of Miami School of Law. She said Schwartz was instrumental in getting Miami Beach to compensate gay city workers for the tax hit they absorb for sharing medical insurance with their partners.

"She is a rock star," Brown said. Besides working on the civil rights front, Walbolt is a successful appellate attorney. She has been active in the Florida Bar, serving or chairing on several committees, including appellate

practice certification and antitrust. But pro bono work is her passion.

PRO BONO WORK

When Walbolt received the Tobias Simon Pro Bono Service Award from the Florida Supreme Court in 2008, she said those licensed to practice law don't deserve the proud title of lawyer unless they are willing to give generously of their time to those who need legal services and cannot afford them.

"Law has become too important in our society to deny anyone access to it," she said. Walbolt and Cohen handled the arguments Wednesday before Miami-Dade Circuit Judge Sarah Zabel on a request by eight couples and the Equality Florida Institute to strike down the state ban.

Also representing the plaintiffs are Orlando attorney and LGBT activist Mary B. Mooka and the National Center for Lesbian Rights.

"Our legal team is a cohesive group in constant contact with one another as each decision is made—and there are many, seemingly daily," said Schwartz, who has been the face of the litigation. "I worked very closely on plaintiff selection and on legal strategy throughout."

She said her daily work with LGBT individuals, couples and families gives an "on-the-ground perspective" on how to present life-altering cases.

Walbolt at Wednesday's hearing tied same-sex marriage to a 2010 decision by the Third District Court of Appeal in Miami overturning the state ban on gay adoption. Schwartz worked on two similar lawsuits on behalf of families in Monroe and Miami-Dade counties. She has handled hundreds of gay adoptions since then.

Walbolt told Zabel the marriage barrier for same-sex couples "humiliates them and their children and stigmatizes them."

Florida voters passed the referendum banning gay marriage in 2008. The state is one of several facing legal challenges since the U.S. Supreme Court struck down the Defense of Marriage Act last summer.

Attorney General Pam Bondi's office was represented by Chief Deputy Solicitor Adam Tanenbaum of Tallahassee. He argued the U.S. Supreme Court decision was not binding, urging Zabel to not "second guess the voters."

Tanenbaum said the controlling precedent was a 1971 decision by the U.S. Supreme Court upholding a Minnesota law limiting marriage to people of the opposite sex.

Walbolt said that decision in *Baker v. Nelson* has simply drowned in a "tidal wave" of 21 recent rulings by courts striking down gay marriage bans.

The Miami-Dade case is playing out in state court. Two similar cases are in a federal court in Tallahassee. Zabel is being asked by the plaintiffs to back them on a summary judgment motion without a trial by finding the ban unconstitutional as a matter of law.

Schwartz said the marriage issue is a proxy for the many ways same-sex couples are deprived of dignity.

"As I committed to fighting the gay adoption ban until it was declared unconstitutional, I will be relentless until this victory is secured for all loving Florida couples who wish to commit to one another in the institution of marriage," Schwartz said.

TYRANNY OF THE MAJORITY

Cohen downplayed his role in the litigation, joking he was chosen to address the court only because of his startling white beard. But in his rebuttal, he was especially eloquent, referring to the "tyranny of the majority" as opponents of the lawsuit sat in the courtroom with "Respect My Vote" stickers on their shirts.

He noted the hearing came during the week of the 50th anniversary of the landmark Civil Rights Act of 1964 and read a moving letter from Mildred Loving. She was a black woman sentenced to prison for marrying a white man and the plaintiff in the landmark U.S. Supreme Court case that invalidated laws prohibiting interracial marriage in 1967.

Cohen told the Daily Business Review before the hearing that supporters of the state ban are advocating on an issue that doesn't impact their lives in any way.

"It appears they are coming from this situation from a religious perspective, and while religion is an important part of life for America and human life all over the world, it's not something to be imposed upon someone who does not share that belief," he said.

Schwartz said the civil rights work in the LGBT community continues. "Next up includes securing employment protections, equal access to health care especially for the trans community and safe spaces for our youth and elders," she said.

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Carlton Fields partner Jeffrey M. Cohen in Miami helped with the heavy lifting on the challenge to the state constitutional amendment banning gay marriage.



Chief Deputy Solicitor Adam Tanenbaum, representing Florida Attorney General Pam Bondi's office, argued the U.S. Supreme Court decision that struck down the Defense of Marriage Act last summer was not binding.