



PALM BEACH COUNTY BAR ASSOCIATION

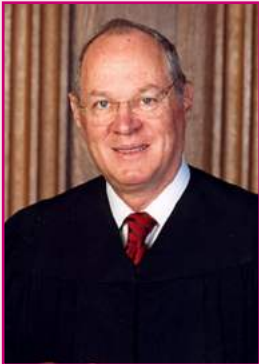
BULLETIN

www.palmbeachbar.org

April 2010

Save the Date!

The Palm Beach County Bar Association, along with the Forum Club of the Palm Beaches, are proud to announce that U.S. Supreme Court Justice Anthony Kennedy will be the guest speaker at a joint luncheon to be held on **May 14**. The luncheon will be held at the Cohen Pavilion at the Kravis Center from 11:15 - 1:00 p.m. Each organization will have 350 to sell, and our tickets will be limited to members of the Palm Beach County Bar Association. Registration will be by pre-paid reservations only and can be made at www.palmbeachbar.org



Alabama Circuit Judge Helen Shores Lee to speak May 7

Please join us for our annual Law Day Luncheon on Friday, May 7 from 11:45 to 1:00 at the Marriott Hotel in West Palm Beach. The keynote speaker will be Judge Helen Shores Lee from Alabama. Lee's father was a civil rights lawyer and argued local civil rights cases with Justice Thurgood Marshall when he was a lawyer. Hear her family story of growing up in a segregated society, having her house bombed and more. Judge Helen Shores Lee promises to be a great speaker. Don't miss it!

Mark your calendar for upcoming Membership Meetings

Investiture Ceremony for Judge Leonard Hanser
Friday, April 23, 4:00 p.m.
Courtroom 11A,
Palm Beach County Courthouse

Annual Judicial Reception
May 5, 5:30 – 7:00 p.m.
The Harriett at City Place

Law Day Luncheon
May 7, 11:45 – 1:00 p.m.
West Palm Beach Marriott
Guest Speaker:
Alabama Judge Helen Shores Lee

Joint Luncheon with the Forum Club
May 14, 11:15 – 1:00 p.m.
Guest Speaker: U.S. Supreme Court Justice Anthony Kennedy
Cohen Pavilion at the Kravis Center

Young Lawyers Section Fishing Tournament
Saturday, June 5

Annual Installation Banquet
June 12, 7:00 p.m.
The Breakers Hotel, Palm Beach

Judicial Candidate Forum
June 16, 11:45 – 1:00 p.m.
Crowne Plaza Hotel

Annual Membership Happy Hour & Spelling Bee
August 19, 5:30 – 7:30 p.m.

Don't Forget to Vote!

This year's election for Board directors will be conducted electronically. An email will be sent to all members in good standing. **Please be sure to set your spam filters to preapprove anything from ballotboxonline.com** Voting will take place through April 15 through April 26 at 5 p.m. Winners will be announced via e-mail and will be posted on the Bar's website. There are eight members running for five director seats: Robin Bresky, Jason Guari, Hampton Keen, Theo Kypreos, Tanique Lee, Maureen Martinez, Jill Weiss and John Whittles. Please see their candidates' statements on pages 5-7.

Executive Director Patience Burns Honored

Imagine working for the same organization for 30 years, having 30 different bosses, coordinating 30 Installation Banquets and attending 300 monthly Board of Director meetings. And, imagine 30 years ago some of our members weren't even born!

This year, Patience celebrates her 30th anniversary with our Bar. To recognize her dedication and tireless efforts, Michelle Suskauer and Michael Napoleone surprised her at the Bench Bar Conference with diamond earrings from the Board. (As the editor of our monthly Bar Bulletin, she's also going to be surprised when she receives this issue and sees her picture on the front page!)

Patience, from the staff and 2,800 members, we sincerely thank you for making our Association one of the most well respected Bars in the country.

Happy Anniversary!



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THE
BULLETIN

**PALM BEACH COUNTY
BAR ASSOCIATION**

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www.palmbeachbar.org

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Executive Director

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The mission of the Palm Beach County Bar Association is to serve its members, foster professionalism and enhance the public's understanding and awareness of the legal system.

LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.



Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1601 Belvedere Road, #302E
West Palm Beach, FL 33406

Law Suit Day Clothing Drive

It's time to clean out your closet! The Law Week committee will be collecting ladies and men's clothes suitable for court and for every day wear. All sizes are needed and will be donated to the Public Defender's Boutique and to The Lord's Place. In addition, personal hygiene items are also needed. If you're going away for spring break, or taking a business trip, be sure to collect the hotel shampoos, soaps, toothpaste and tooth brushes.

Your items can be dropped off at the Bar Office between now and April 30.

Alijewicz & Lee Law Week Co-Chairs

Sara Alijewicz and Tanique Lee have been named as co-chairs for Law Week, May 3 - 7. Sara works for the Palm Beach County Legal Aid Society as the Supervising Attorney of the Medical-Legal Partnership with the Health Care District. Tanique is an attorney with Gelfand & Arpe. Both are long time members of the Law Week Committee volunteering for nearly every program including Mock Trials, Speakers Bureau, Shadow a Judge and Dial a Lawyer.

This year, the committee will present four legal education programs on topics such as Mortgage Foreclosures and Rescue Scams; Medicaid Planning and Nursing Home Dangers; Small Claims and Mediation; and Condo and Homeowners.

There will also be events for our members starting with the annual Judges/Attorney Law Day Softball game on Saturday, April 24 at John Prince Park in Lake Worth. The Judicial Reception will be held on Wednesday, May 5 at the Harriett in West Palm Beach followed by the Law Day Luncheon on Friday, May 7. Please mark your calendar to hear the inspiring and moving story of Alabama Judge Helen Shores Lee. To RSVP for the reception and for the luncheon, please log onto www.palmbeachbar.org. For other details contact Sara at 655-8944 or Tanique at 655-6224.



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President's Message



Why should I do it?

By Michelle R. Suskauer, President

There are not enough hours in the day to do it all: we can't get through the pile on our desks, can't read every single email, can't put away all the laundry, can't seem to get to the gym regularly. We run to court, do our billing, meet with clients, go to soccer games and dance recitals, scramble to make dinner, walk the dog, and try to reconnect with our families. So why would we give some of our non-existent time to the Palm Beach County Bar Association, to our legal community?

I'm not going to tell you that it is easy to dedicate time to Bar service. Anything worthwhile isn't easy. However, giving of your time to your Bar Association will prove to be rewarding both professionally and personally. Ghandi said, "The best way to find yourself, is to lose yourself in the service of others". If we want to work in a legal community that we are proud of, then we must work to improve the practice for all attorneys. Our recent Bench Bar Conference is a great example. More than 750 lawyers cared enough to spend the day at the Palm Beach County Convention Center and engage in honest conversations with our judiciary to work together to improve the practice in our county.

This month, you will be receiving your Committee Preference form. If you take the time to review it, you will truly be amazed at the sheer number and variety of opportunities to serve. We need you to be involved. The Bar has 34 active working committees that are the backbone of our organization. We have something for everyone: from Elder Law Affairs to Technology, Community Association Law to Criminal, and everything in-between. How about joining the Young Lawyers or North County Section? They offer opportunities to network but also to do good works for our community, like Habitat for Humanity and Café Joshua. Also, please remember, if you are already serving on a committee and wish to continue, you must fill out and return this form. President-elect Michael Napoleone will begin reviewing these forms and making his appointments at the end of April, so be sure to complete it today online at www.palmbeachbar.org/commpref.php

Winston Churchill put it best, "You make a living by what you get, but you make a life by what you give."

Board of Directors Meeting Attendance

	June Retreat	Aug	Sept	Oct	Nov.	Dec.	Jan	Feb.
Bowden	x	x	x	x	x	x	x	x
Guari	x	x	x	x	Phone	x	x	x
Howe	x	x	x	Phone	x	x	x	x
Jenks	x	x	x		x	x	x	x
Kypreos	x	x	x	x	x	x	x	x
Martinez	x	x	x	x	x	x	x	x
Napoleone	x	x	x	x	x	x	x	x
Pressly	x	x	x	Phone	x	x	x	Phone
Rabin	x	x	x	x	x	x	x	x
Schuler	x	x	x	x	x	x	x	Phone
Suskauer	x	x	x	x	x	x	x	x
Weiss	x	x	Phone	x	x	x	x	x
Whittles	x	x	x	x	x	x	x	x

Volunteers needed to serve on committees

This is the time of year that the president-elect, Michael Napoleone, will begin working on appointing volunteers to serve on the various Bar committees. Your involvement is essential to the success of this organization. Please give us the benefit of your ideas and talents by volunteering to serve on one or more of our committees. If you are currently serving on a committee, please be sure to fill out the form to indicate your willingness to continue serving. Committee preference forms were recently e-mailed to all Bar members. Additionally, the form is also available on-line at the Bar's web site – www.palmbeachbar.org. Please take the time to volunteer to serve YOUR Bar Association.



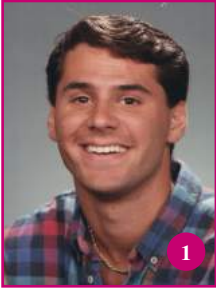
Dues Statements Mailed

Annual membership dues statements have been mailed to all PBCBA members for fiscal year 2010-2011, which begins July 1.

If you did not receive a bill, contact Shoshanah at the Bar Office (687-2800) or sspence@palmbeachbar.org. Please take a moment to see a list of the many benefits of remaining a member on page 10.

Who are they?

Can you guess who these members are? Answers can be found on page 15. If you have old pictures of yourself or other members that you'd like featured, please send them to Patience Burns at the Bar Office.



Save the Date!

Mark your calendar now for the
PBCBA's Annual Installation Banquet
which has been scheduled for
Saturday, June 12 at the Breakers Hotel in Palm Beach
A reception will be held from 7:00 - 8:00 p.m.
with dinner and dancing immediately following.

Support our Advertisers.

Mention that you saw their ad
in the *Bulletin!*

Thinking of Making a Move?

Office space available for lease.

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just north of Good Samaritan Hospital.

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For more information or to view the space, please contact us at **(561) 366-9099**.

2010-2011 Board of Directors Election Candidates Statements

As has been done in the past, the Bar's elections for Board of Directors will be conducted online. This year there are eight (8) members running for five (5) Board seats. Each member in good standing will receive an email with information on how to vote (please be sure to set your spam filters to pre-approve anything from ballotboxonline.com) beginning on April 15 and voting will end at 5 p.m. on April 26. The winners will be announced via email and will also be posted on the Bar's website. To assist you in making your selection, please take the time to read the information about the candidates below. Successful candidates will be sworn in at the Bar's annual installation banquet at the Breakers Hotel on June 12.

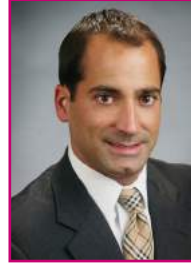


Robin Bresky

Firm: *Law Offices of Robin Bresky*
Year admitted to practice: 1997
Law School: *Chicago Kent College of Law*
Year joined PBCBA: 2001
What do you feel you can contribute to the Association as a Board member?

I would be honored to serve on the Palm Beach County Bar Association's Board of Directors and feel I can contribute fresh ideas and a new perspective to further the goals and aspirations of the association. I have held many leadership positions in various voluntary bar associations in both the state and local level. Positions I have held for the PBCBA over the last several years include this year's Chairperson of the PBCBA annual Bench Bar conference, Chairperson of the Appellate Practice Committee, Vice Chair for the Appellate Practice Committee, Independence of the Judiciary Committee member, Solo Practice Committee member, and Vice chair of the Leadership Academy, 2009.

I have enjoyed working with many of the leaders of the association throughout the years. Most recently, the experience of chairing the 2010 Bench/Bar conference afforded me a fantastic opportunity to gain insight into the inner workings of the PBCBA and work alongside leaders, members, and incredible staff. As a result of this experience, I have many new ideas on how to improve an already amazing organization. I sincerely hope I will be given the opportunity to do so as a member of your board of directors. Thank you!



Jason Guari

Firm: *Murray & Guari Trial Lawyers, PL*
Year admitted to practice: 1996
Law School: *The Thomas M. Cooley Law School*
Year Joined PBCBA: 1996
What do you feel you can contribute to the Association as a Board member?

I have enjoyed serving the Palm Beach County Bar Association.

I first volunteered as a PBCBA - Young Lawyer's Section (YLS) Board member and worked my way up through the organization to become President of the YLS and ultimately a Board Director.

While at the YLS, I worked on or chaired numerous Committees such as Youth Court, Holidays in January, Palm Beach Public School Supply Distributions and YLS Happy Hours. I organized a CLE entitled What Every Young Lawyer Should Know to help young lawyers. As the YLS President, I attended PBCBA's meetings and obtained a greater sense of the inner-workings of our Bar Association.

Two years ago, I was elected to sit on the Board under Richard Schuler, Esq. and Michelle Suskauer, Esq.'s Presidencies. I oversaw CLE and have been working diligently with the proposed Bar Building Planning Committee. I traveled with the leadership to Hillsborough County to examine their Bar Building Project and have been working with the Board to make the idea of our Bar Association owning its own building a reality. Much more work needs to be done and I trust that if re-elected, I will foster this Committee's goals.

Recently, in my Board capacity, I have been working with the leadership to assist with implementing the PBCBA- Foreclosure Mediation Program in securing lease space.

I am dedicated to serving the Bar and its great mission. It is an honor to serve this organization and you-my friends.

All the best, Jason J. Guari, Esq.



Hampton Keen

Firm: *Lytal, Reiter, Clark, Fountain & Williams*
Year admitted to practice: 1995
Law School: *University of Florida 1995*
Year Joined PBCBA: 1999
What do you feel you can contribute to the Association as a Board member?

As a Board member, I will contribute to the Association as a person of action and commitment. I believe I have a unique perspective on the privilege of practicing law and the profound impact we as advocates can have on our society based on my two different careers before becoming a lawyer. Prior to law school, I worked as a teacher at an alternative school for juvenile delinquents and also as a corporate financier.

Since joining our Bar Association when I arrived in Palm

Beach County in 1999, I have actively worked with other members to help make our local Bar one of the best in the state. I served as a member of the Young Lawyers Executive Board for several years, the chairperson and co chairperson of the membership committee for multiple years, member of the judicial relations committee, member of the special needs committee, as well as helping to fill the gap on various other Association activities, including purchasing and distributing toys for the Young Lawyers' "Holidays in January" party for underprivileged children, participating in Career Day at various schools, law week, and distributing supplies to underfunded schools, among other things.

I am also actively involved in our local Craig S. Barnard Inn of Court. I am a member of the Florida Bar's Speaker's Bureau, "AV" rated by Martindale-Hubbell, and a Trustee of the YMCA.

Continued on next page



Theo Kypreos

Firm: *Jones, Foster, Johnston & Stubbs, P.A.*

Year admitted to practice: 2002

Law School: *University of Florida*

Year Joined PBCBA: 2002

What do you feel you can contribute to the Association as a Board member?

I have been fortunate to serve on the Young Lawyers Section executive committee since 2002. After serving as YLS Treasurer, Secretary and President-Elect, I have spent the past year serving as YLS President, during which time I have been committed to getting our membership more involved in the PBCBA and our community. I am proud that the YLS held its first Habitat for Humanity service day on March 6, and this summer it will host its inaugural seminar for military veterans. The YLS also recently established a new committee to facilitate PBCBA members regularly volunteering at local schools.

As YLS President, I have enjoyed serving as a member of the PBCBA Board of Directors. Through that experience, I have learned that being a Board member is much more than attending monthly meetings and occasional social functions. It means committing to every aspect of the PBCBA, including budgetary and fiscal decisions, outreach programs, member benefits, CLE programming, and long-range planning. Serving on other PBCBA committees, including most recently the Bench Bar Conference Committee, has also given me an appreciation for the structure of the PBCBA and the responsibilities of its Board members.

It is imperative that we, as attorneys, take actions to improve the reputation of our profession. I have been and will remain committed to this goal, and I humbly ask that you allow me an opportunity to continue serving our community and profession by electing me to the PBCBA Board of Directors.

Thank you for your consideration and support!



Tanique Lee

Firm: *Gelfand & Arpe, P.A.*

Year admitted to practice: 1997

Law School: *Temple University Beasley School of Law*

Year Joined PBCBA: *I think 2000*

What do you feel you can contribute to the Association as a Board member?

I look forward to the opportunity to contribute to the continued growth, strength and success of our local Bar Association as a board member. As a Bar member I volunteer on committees that promote our Bar Association and legal profession to the community, promote diversity in our Bar Association and encourage future lawyers to join our legal community. Currently I am co-chair of Law Week and a member of the Committee for Diversity and Inclusion.

To promote our Bar Association to the local community, I have been a Law Week committee member for several years. As a committee member I organize the "Shadow a Judge" portion of Law Week. The "Shadow a Judge" portion provides local high school students and their teachers an overview of the operation of our local court system.

To assist the Bar's efforts to promote diversity, I have been chair of the Bar's minority internship program for placement of local law students in local law firms and governmental agencies. Thus, through the programs provided by our local Bar Association we have encouraged future lawyers to join our local legal community.

As a member of our Bar Association, I intend to continue my participation to ensure the continued success of our local Bar Association. As a board member I will continue to promote the growth, strength and diversity of our local Bar Association.



Maureen Martinez

Firm: *Williams, Leininger & Cosby, P.A.*

Year admitted to practice: 1997

Law School: *Nova Southeastern University*

Year Joined PBCBA: 1997

What do you feel you can contribute to the Association as a Board member?

The last two years I have had the honor and privilege to serve as a Director of the Palm Beach County Bar. In addition to serving on the Board, I actively served on the Judicial Relations Committee, Law Week Committee, Bench Bar Committee, Diversity Task Force, and am currently the chair of the Mock Trial Committee.

In years past I have also been an active member of the Bar. In 2007 and 2008 I was chairwoman of the Law Week Committee, and co-chair of the Law Week Committee in 2009, as well as being a member of other Bar committees such as the

judicial relations committee. My involvement in the legal community extends beyond the Palm Beach County Bar. I was a Director of the Florida Justice Association, Young Lawyers Section from 2005- 2009; Board of Director of the Belli Society from 2005- 2009; member of the executive board of the Craig S. Bernard, American Inns of Court LIV (Secretary) 2007- present; Florida Justice Association /Research & Education Foundation, Hon. E. Earle Zehmer Law School Mock Trial Competition Chair 2005,- 2007; and Palm Beach County Justice Association Board of Directors 2004 – 2007.

I have always had a passion for taking on leadership roles and would appreciate the opportunity to continue my service with the Palm Beach County Bar. If re-elected I will continue to strive for excellence on behalf of the Palm Beach County Bar and the Bar membership.



Jill Weiss

Firm: *Rutherford Mulhall, P.A.*

Year admitted to practice: 2003

Law School: Nova Southeastern University

Year Joined PBCBA: 2003

What do you feel you can contribute to the Association as a Board member?

As a Director of the PBCBA, I am privileged to have the opportunity to use my leadership skills to benefit our membership and our bar. As a proven leader, I have demonstrated a commitment and ability to get things done. Before becoming an attorney, I enjoyed a successful career in business. This unique perspective and my breadth of experience has been of great benefit while serving the bar.

As the current liaison for the Palm Beach Lakes Pre-Law Magnet Program, we enabled its Mock Trial team to spend the day at our Courthouse where they attended a trial, observed UMC hearings and met with members of our judiciary; the additional magnet students will visit the courthouse in April. I previously served as Chair of the 2008-2009 Palm Beach County Bench Bar Conference which built on the success of the previous year's conference and made substantial improvements to specific practice areas.

As your Director, I have served on the Finance committee and recognize that in these challenging economic times it is more important than ever that we are diligent and active in safeguarding your money. I previously served on the Professionalism, Judicial Relations and Membership committees as well as on the 1916 Courthouse Fundraising Committee which raised over \$250,000. I am proud to be a Past President of the Palm Beach County Chapter of FAWL and serve as the Development Director for State FAWL.

I would very much appreciate your vote to continue my service as a member of the Board.



John Whittles

Firm: *Richman Greer, P.A.*

Year admitted to practice: 1999

Law School: *Nova Southeastern University*

Year Joined PBCBA: 2000

What do you feel you can contribute to the Association as a Board member?

I will contribute experience, leadership and enthusiasm. I worked very hard for nine years on the PBC Bar's Young Lawyers Section Executive Committee (including serving as President of YLS in 2009) and I not only participated in but founded many community service projects that benefitted our members and the community, including the YLS Adopt-A-School Class Field Trip and the YLS Café Joshua Project.

After being elected by you to the PBC Bar's Board of Directors in 2009, I immediately took on a leadership role on the Board as Chairperson of the Finance Committee and of the Newsletter Committee. I love our Board's energy and the fresh ideas that we are cultivating for our membership and for our community – ideas like fiscal accountability to our members, enhanced service to our members and to our community and fostering inclusion in the practice of law here in Palm Beach County. I would be honored if re-elected to serve for another term and will make you all very proud. John.



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Is There a Good Faith Requirement for a Corporate Chapter 7 Debtor?

Submitted by: Marc P. Barmat

Section 707 of the Bankruptcy Code, which is divided into two basic sections, authorizes the dismissal of a bankruptcy under certain circumstances. Section 707(a)¹ applies in all chapter 7 bankruptcies and allows for dismissal based upon “cause” whereas, section 707(b) of the Bankruptcy Code only applies to consumer debtors. This article focuses on section 707(a) and the issue of whether bad faith can constitute “cause” for dismissal of a corporate chapter 7 debtor. This issue was recently addressed in the Southern District of Florida Bankruptcy Court in the case of In re Boca Village Association, Inc., 2009 WL 5217057 (Bankr. S.D. Fla. 2009).

In In re Boca Village Association, Inc., the debtor, a non profit condominium association, made a special assessment and held \$148,000.00 of funds to pay for roof and other repairs. A dispute arose among between the debtor and the roofing company which ultimately led to the entry of a final judgment in the amount of \$123,084.50 against the debtor. The debtor disagreed with the final judgment and deliberately and improperly hid the special assessment and other funds in a new account under the name of their management company. The debtor admitted that it took this action for the purpose of avoiding roofing company’s collection efforts. The debtor further failed to disclose certain assets in its initial bankruptcy schedules such as perfected liens on individual units and that it had a lien on all dwelling units. Id. at 2

In his opinion, Chief Judge Paul G. Hyman, Jr. stated that “Although filing bankruptcy to thwart a judgment creditor’s collection efforts by itself may not be indicative of bad faith, dishonesty is. The debtor’s concealment of special assessment funds under the name of its management company was dishonest.” Id. at 6. Based upon these facts, Judge

Hyman concluded that the totality of the circumstances leading up to the filing of this case, including the debtor’s motive in filing, evidenced the debtor’s lack of good faith. Id.

The Eleventh Circuit has not addressed the issue of whether bad faith can constitute cause for dismissal under 707(a) of the Bankruptcy Code. Although there is substantial case law on both sides of this issue, courts that have considered the issue generally begin their analyses by noting that the statute’s three listed cause for dismissal grounds are illustrative and not exhaustive. See e.g. In re Padilla, 222 F.3d 1184, 1191 (9th Cir.2000). The minority position is that bad faith does not provide cause for dismissal under § 707(a) and the majority position is that a debtor’s lack of good faith in commencing a Chapter 7 case can constitute cause for dismissal under § 707(a). In re Kane & Kane, 406 B.R. 163, 167 (Bankr.S.D.Fla.2009) (citing In re Tallman, 397 B.R. 451, 454 (Bankr.N.D.Ind.2008)).

Upon concluding that the debtor lacked good faith, Judge Hyman adopted the majority position that lack of good faith in commencing a chapter 7 case can constitute cause for dismissal under § 707(a) and in fact dismissed the bankruptcy case. Judge Hyman limited his ruling to the particular facts and circumstances of this case. Id. at 5. In evaluating the case, Judge Hyman stated that “It is generally understood that chapter 7 serves the twin purposes of providing the honest but unfortunate debtor with a fresh start while providing for the orderly liquidation of the debtor’s non-exempt assets for the benefit of all creditors. However, the objective of providing the honest but unfortunate debtor with a fresh start is not served in a corporate chapter 7 case because corporate debtors are ineligible for discharge. See, 11 U.S.C. § 727(a)(1).

Thus, although § 707(a) applies equally in individual and corporate chapter 7 cases, corporate chapter 7 cases present unique considerations. Among these considerations is the fact that many Bankruptcy Code provisions designed to protect creditors from chapter 7 debtor misconduct are irrelevant in corporate Chapter 7 cases.” Id. at 5.

Although the potential bases for dismissal of a corporate chapter 7 debtor on grounds of bad faith are narrow, corporate chapter 7 debtors need to be aware that bankruptcy courts will look to the totality of the circumstances to determine whether the debtor’s motive and purposes are consistent with the purpose of chapter 7.

This article was submitted by Marc Barmat, Furr and Cohen, P.A., One Boca Place, Suite 337 West, 2255 Glades Road, Boca Raton, FL 33431; mbarmat@furrcohen.com

¹ Section 707(a) of the Bankruptcy Code provides that:

- (a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including-
- (1) unreasonable delay by the debtor that is prejudicial to creditors;
 - (2) nonpayment of any fees and charges required under chapter 123 of title 28 [28 U.S.C. §§ 1911 et seq.]; and
 - (3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

11 U.S.C. § 707(a).

North County Section

North County Section to Host Annual Jurist of the Year Dinner

Thursday, May 13

Ruth's Chris Steak House
North Palm Beach

5:30 p.m. to 8:00 p.m.

Cost: \$60.00 for NCS Members; judges are complimentary. To avoid a \$10.00 late fee, RSVP no later than Noon on 5/10.

Due to limited seating, this event is only for NCS members and the judiciary. Should seating be available spouses are welcome for \$65.00. (For space, check the Bar's website after Noon on 5/10)

Sponsored by: Lawrence P. Buck, P.A.; Sabadell United Bank and Smith, Ivey & Fronrath, P.L.



Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to provide members with a quick and simple way to obtain advice, ideas, suggestions, or general information from an attorney that is more experienced in a particular area of law. The mentors provide a ten-to-fifteen-minute telephone consultation with a fellow attorney, at no fee. Any member of the Palm Beach County Bar, whether newly admitted or an experienced practitioner, can use the program. Call the Bar office at 687-2800, if you need a Mentor.

Members of the North County Section recently got together for its annual BBQ and Casino Party. The event was held at the Bonnette Hunt Club in Palm Beach Gardens and included live music and prizes.



North County Section Officers Ned Reagan, President Elect; Debra Jenks, President; and Ryon McCabe, Immediate Past President



Richard Carey and Tim O'Neil



Adam Werner, Dante Weston and Matthew Konecky



Bill and Diana Boyes



Michael and Diane Slavin with Tammy and Carl Spagnuolo



Michael Napoleone, Michelle Suskauer and Wade Bowden



Ronda Campbell, Jenifyr Bedard and Cathy Downey were the lucky winners!

Judicial Profile: Judge Caroline Shepherd

By Leslie Kroeger, Leopold~Kivin

Judge Caroline Shepherd built a reputation as a no-nonsense prosecutor with a passion for getting it right in her search for justice. She is one of our newest Judges in Palm Beach County and when you meet her, you'll know why we are lucky to have her on the bench.

Caroline was born in Pasadena, California, but grew up a mid-west girl in Peoria, Illinois. California's weather drew her back for college, where she attended USC. In the height of the Cold War, she studied International Relations with an emphasis in Defense and Strategic Studies, studied Russian, and sought opportunities for experience with policy makers.

She moved to Washington, DC and worked for then-House Speaker Robert Michel in both his Congressional and House Leadership Offices on Capitol Hill. She went on to serve as the Director of Programs for the American Defense Institute founded by former Hanoi Hilton POW Capt. Eugene B. "Red" McDaniel, USN (Ret.). At ADI she furthered their agenda of promoting the value of freedom along with the responsibility for protecting it with a strong national defense. But national defense was only part of it, ADI and Caroline also worked with families and policy makers to continue efforts to return our Vietnam War POWs.

The next course in her life is one that came at her rather unexpectedly. While visiting a college friend from the US Virgin Islands, Hurricane Hugo hit and decimated St. Thomas. She stayed to help... and that short vacation trip turned into a five year stint working (without running water or electricity for the first several months) as a project manager for a small construction company to help rebuild the island.

Island fever set in and she knew it was time to leave the small, but beautiful confines of St. Thomas and venture out to start the next part of her life. She enrolled at the New England School of Law in Boston. She made the most of that time serving her student body as the President of the Student Bar Association.

She left Boston, missing the nice weather of the tropics, and entered the legal profession as an Assistant State Attorney (ASA) in Miami-Dade County – that's where I first met Judge Shepherd. In the courtroom everyday, she was diligent, hard-working, conscientious, and always the consummate professional. Little did I know that even then, her goal was to take the bench. Her commitment to public service and protecting those who weren't able to protect themselves served her well in Miami, and eventually led to a position as an Assistant United States Attorney in Washington D.C. Fortunately for the citizens of Palm Beach County, she returned to Florida. She came back to Florida as ASA in Palm Beach, and was recently appointed to serve us all as a County Court Judge.

It wasn't until I sat with Caroline to write this story that I learned her inspiration for the bench came during her second year of law school. While an intern in Boston, she had the opportunity to sit and watch a murder trial which was being conducted by a female judge. While she wasn't able to articulate specifically what brought about the revelation, she knew from that moment that she was meant to serve.

I asked what the most difficult and most rewarding parts of the job were so far. In listening to her responses, I realized that the skills she brings from that diverse personal and professional background is what makes her such a thoughtful judge. She recognizes that for many people, especially *pro se* litigants, she is perhaps their first and only encounter with legal system. She strives to let litigants be heard and to show them respect, even when the rule of law dictates a ruling against them. There are of course the challenges of keeping the docket moving, and reviewing all the motions and memos submitted.... Yes, she reads everything! But somehow she gets it all done.

She juggles this with a busy family life. Her husband, William N. Shepherd, is the Statewide Prosecutor for the state of Florida. Together they have two adorable young boys. Between homework, t-ball, and taking care of a one-year-old, she occasionally manages to fit in yoga, pilates, and sometimes even a little surfing. Yes, if you just did the math in your head, that's right, she had her interview with the JNC the week after her youngest arrived!

If you haven't met my friend, Judge Caroline Shepherd, I would encourage you to introduce yourself, you'll be glad you did.



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Bench Bar Success

The Bench Bar Conference was recently held at the Palm Beach County Convention Center for more than 1,100 local lawyers, judges, judicial assistants, court personnel, paralegals and legal secretaries. Many thanks to Robin Bresky and her hard working committee for making this event another great success.



Robin Bresky, Bench Bar Chair; Chief Judge Peter Blanc, keynote speaker; and Michelle Suskauer, President



Judy Goodman and Lorraine Ramunno

Additional pictures can be seen on the Bar's Facebook page.



Kara Rockenbach presented Jay White with the 12th Annual Professionalism Award



Brian Mangines, Andrea McMillan and Brian LaBovick



Fourth District Court of Appeal Judge Fred Hazouri; Florida Supreme Court Justice Barbara Pariente and Justus Reid



David Ackerman, Patricia Alexander and Joe Ianno



Jonathan Wald, Heather Greenhill and Michael Pike



Judges John Phillips, Debra Moses Stephens and Richard Oftedal

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Walton Lantaff Schroeder & Carson LLP
Zelev Huber Trial Attorneys, P.A.



And The Winners Are... 2009 Pro Bono Awards

Appellate Law Award

Terry Resk, Esq.
Haile, Shaw & Pfaffenberger, P.A.

Bankruptcy Law Award

Alan Crane, Esq.
Furr & Cohen, P.A.

Civil Litigation Award

Allen Tomlinson, Esq.
Jones Foster Johnston & Stubbs, P.A.

Corporate Counsel Award

Florida Power & Light
Charles Sieving, Esq.
Executive Vice President and General Counsel
Robert Sendler, Esq.
Vice President and Associate General Counsel
Ellen Malasky, Esq.
Senior Counsel

Emeritus Award

Michael Stern, Esq.

Family Law Award

C. Debra Welch, Esq.
Law Firm of C. Debra Welch, P.A.

Firm Award

Christine D. Hanley & Assoc.

Juvenile Law

Moria Rozenson, Esq.
Pickett, Marshall & Rozenson, P.A.

Non-Profit Award

Tammy Fields, Esq.
Palm Beach County Attorney's Office

Real Property Law Award

Gary W. Kovacs, Esq.
Proskauer Rose Goetz & Mendelsohn LLP

Special Services Award

Matthew Stohlman, CPA
Moore, Ellrich & Neal, P.A.

And Justice for All Award

Victoria Vilchez, Esq.
Vilchez and Associates, P.A.

Attorneys that Closed Pro Bono Cases in January 2010

The following attorneys closed their pro bono cases in January 2010:

Richard Abedon
William Cagney, III
Lora Howe
Georgina Jimenez-Orosa
Diane L. Karlik
John M. Koenig, Jr.
Kevin McNamara
Melynda Melear
Dean Merten
Lawrence Moncrief
Timothy J. Murphy
Maria J. Patullo
Kimberly Rommel-Enright
Michael Stern
Sheryl G. Wood

**Total number of cases: 41
Total number of hours: 582.25**



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 Deborah Baker, Esq.	 Thomas Schwartz, Esq.	 Stephen G. Fischer, Esq.	 Brendan Heneghan, Esq.	 John W. Gary III, Esq.	 David Horvath, Esq.	 John Henneberger, Esq.
 Michelle Berg, Esq.	 Louis Pfeffer, Esq.	 Steven Rubin, Esq.	 Edward B. Deutsch, Esq.	 Richard Meehan, Esq.	 Maura Curran, Esq.	 Frederick W. Ford, Esq.
 Kolleen Bylcw, Esq.	 Terry Watterson, Esq.	 Gary S. Costales, Esq.	 Micheal A. Edwards, Esq.	 Judith A. Ripps, Esq.	 Donna Melise, Esq.	
 Connie Kerwick, Esq.	 Lawrence Newman, Esq.	 Ryan Copple, Esq.	 Thomas Kingcade, Esq.			

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Young Lawyers Giving Back

Kudos to the Young Lawyers who recently took time out of their busy day to feed homeless men and women at Café Joshua at The Lord's Place. Our volunteers served meals, cleaned plates and at every table one of our members ate and provided companionship to the clients. After lunch, an informal program was presented by Grey Tesh and Martha Pardo who answered general legal questions.



Volunteers took a quick break from serving lunch to pose for a picture with the chef's. Front row: Lily Chang and Alana Zorrilla-Gaston, event co-chairs and Allison Kapner. Standing: James Zink, Bill Lazarchick, Tim Grice, Stephanie Eassa, Adam Langino, Grey Tesh and Theodore S. Kypreos

Grey Tesh made sure everyone at his assigned tables was served with a smile.



Tim Grice picks up a hot meal to serve.

Legal Aid Gift Gathering Party

On February 13th, over 100 friends and supporters of the Legal Aid Society of Palm Beach County enjoyed an evening of decadent desserts and delicious drinks at the home of Christine and Michael Hanley. All of the desserts were home baked by Christine, and the Valentine's Day-themed party benefited the 22nd Annual Pro Bono Recognition Evening's silent auction, to be held on Saturday evening, May 8, 2010, at the Palm Beach County Convention Center.

Students from the Dreyfoos School of the Arts entertained the crowd with selections from "Brigadoon," "Fiddler on the Roof," and "Jersey Boys."

Photos by Jamie Konrady



Event co-chairs Ken & Robin Bresky and Jamie & Scott Murray



Anatole & Lisa Small and Kristy & Grier Pressly

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NICA Notice

by Ted Babbitt

Since 1988, Florida has had a unique system of compensation available to children injured in the birthing process under the Florida Birth-Related Neurological Injury Compensation Plan commonly referred to as NICA. That plan provides very minimal benefits to an injured infant in return for which both a child and his parents are precluded from pursuing any civil remedy against any healthcare provider who negligently caused the injury. Because this plan eliminates both a child and parents' right to bring a civil suit, the statute requires that pre-delivery notice must be given to an obstetrical patient in advance of delivery ostensibly to give the patient the opportunity to choose alternate healthcare providers who are not participants in the NICA plan.

On an extremely theoretical basis, a woman about to deliver a child could, therefore, get in her car, while in labor, and go to a hospital that was not a participant in NICA utilizing a physician who also had not elected to participate in the plan. What makes this choice extremely theoretical is that all hospitals in Florida are members of NICA whether they chose to be or not since they are assessed a per bed assessment for every obstetrical bed in the hospital. Theoretically, of course, a physician might choose not to pay that physician's assessment and thus be eliminated from the benefits of NICA but realistically the vast majority of physicians chose to join NICA because of the benefit of eliminating suits in these high verdict cases.

The Second District Court of Appeals ruled in both All Children's Hospital, Inc. v. Department of Administrative Hearings, 989 So. 2d 2 (Fla. 2nd DCA 2008) and Bayfront Medical Center, Inc. v. Florida Birth-Related Neurological Injury Compensation Ass'n, 982 So. 2d 704 (Fla. 2nd DCA 2008) that even if a hospital fails to give the required notice under the NICA statute, the hospital is still immune from suit so long as the physician involved has given the required notice. That issue was certified to the Supreme Court in the case of Florida Birth-Related Neurological Injury Compensation Association v. Department of Administrative Hearings, 35 Fla. L. Weekly S40 (Fla. Jan. 14, 2010).

Both cases came to the Supreme Court as a result of rulings by Administrative Law Judges who concluded that when either a doctor or a hospital fails to give notice under NICA, the plaintiff has a right to sue either or both the physician and/or hospital even where either the hospital or doctor has given the required notice.

The Supreme Court was thus faced with a case of first impression on the question of whether the failure to give pre-delivery notice under NICA by either the physician or hospital eliminated the right to sue either or both. The Court concluded that both the Second District and the Administrative Law Judge were wrong and at S42 held:

In particular, the ALJ ruled in the Kocher case that if either the hospital or the participating physician fails to give notice, then the notice provision is not fulfilled, and the injured party can either elect to take NICA remedies or seek civil remedies against *either* party. *See Bayfront*, 982 So. 2d at 707. And the Second District has held that if one party gives notice, then the notice requirement is satisfied and NICA is the only available remedy. *See id.* at 708; *All Children's*, 989 So. 2d at 3. We disagree with both the ALJ and the Second District. Instead, we hold that the notice provision is severable with regard to defendant liability. Consequently, under our holding today, if either the participating physician or the hospital with participating physicians on its staff fails to give notice, then the claimant can either accept NICA remedies and forgo any civil suit against any other person or entity involved in the labor or delivery, or (2) pursue a civil suit only against the person or entity who failed to give notice and forgo any remedies under NICA.

Consistent with the plain meaning and the purpose of the statute, our holding (i) shields from civil liability those persons or entities that gave proper and timely notice, and (ii) allows a claimant who did not receive proper and timely notice to pursue civil remedies only against the person or entity who failed to provide such notice. (Emphasis by the Court.)

In addition to holding that the failure to give pre-delivery notice by a physician and hospital subjects the non-notice giving party to the potential for civil litigation, the Court also reversed the Second District's holding that a hospital is required to give notice only if the delivering physician is a plan participant and also an employee of the hospital as opposed to merely on the staff of the hospital. The Court held that the only way a hospital has no obligation to give notice is if it has no physicians participating in the NICA plan who have staff privileges at the hospital.

The elimination of all civil remedies is a drastic legislative decision. This is particularly true when the alternative remedy, as in the case of NICA, provides very limited benefits. This decision, while not eliminating those restrictions, at least gives credibility to the plain meaning of the statutory language creating NICA which requires both the hospital and doctor to give pre-delivery notice to an obstetrical patient.

While this minimal requirement does not apply to the vast majority of obstetrical patients whose children suffer catastrophic injuries, it at least does not give the benefit of immunity to a physician or hospital who fails to give the required notice.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE BY CALLING (561) 684-2500.

WORKERS' COMPENSATION IN FLORIDA IS NOT A PRETTY PICTURE



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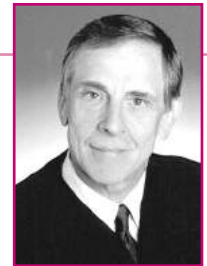
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Some Friendly, Random Advice On Motion Practice Advocacy

The Honorable Paul C. Huck, United States District Court
for the Southern District of Florida

General Advocacy (Section I of IV)

- Judges do not like surprises! Anticipate potential problems, issues or changes in circumstances, discuss them beforehand with opposing counsel in a good-faith attempt to resolve them, and if unable to do so, bring the matter to the court's attention as soon as reasonably practical. Give the judge sufficient time to carefully consider and resolve the matter. For example, do not wait until the hearing begins or the jury is filing into the courtroom to disclose that you have a new issue, a scheduling problem or an evidentiary issue that needs resolution before the proceeding can go forward.
- Learn about your judges, including her background, how she runs her courtroom. If possible, ask the judge's former law clerk or someone who has appeared before the judge about the judge's approach to your particular kind of motion and oral argument. Of course, the judge's prior written opinions will give you insight into the judge's approach and thinking.
- As with any effective advocacy, advise the judge right up front of the specific issues being raised, the general basis for granting the motion and the relief you seek. (Or, if opposing the motion, why it should not be granted.) That way the judge can put the statement of facts into proper perspective. It is frustrating to read through several pages or listen to a recitation of facts and background information without knowing why they are significant.
- Lead with your best point and argument.
- Do not raise every possible (though weak) argument imaginable. Otherwise, your strong arguments will be lost or diminished by a "throw everything on the wall and hope something sticks" approach.
- Concede points that you cannot win. Those concessions protect your credibility and make your arguments more persuasive. Also, be prepared to point out why the conceded point is either irrelevant or not dispositive of the issue.
- Don't ignore facts that aren't in your favor. Elicit, acknowledge and distinguish them. This way you stay in control of the facts and how they are cast. And, again, this strengthens your credibility with the judge (or jury) because you are being candid by telling the whole story, not just part of it.
- Similarly, don't misrepresent or exaggerate facts and don't overstate or spin cited cases. And if you speculate or assume in an answer to a question, always properly qualify your statement by explaining that you're speculating or assuming.
- Don't waste time or your reputation on personal attacks. And make sure your replies and responses are actually responsive to the relevant issues, rather than just attacking the other side.
- My law clerks, own sometime ago and unknown to me, created a "Worst Filing of the Month" contest. Typically, the filings that won that distinction were the ones that were the most hostile towards the opposing party. Those filings were too full of dramatic, exaggerated criticisms of the opponent's positions and actions to calmly and persuasively address the relevant legal issues.
- Adequately support your discussion of the important facts with specific, accurate record citations (including page and line numbers).

- Keep in mind that judges are persuaded to reasoned, logical analysis based on the law and facts, not appeals to their emotions.
- Do not pepper your arguments with emotionally charged, superfluous adjectives. They are generally distractions and seldom add to the persuasiveness of your argument.
- Pay close attention to the trier of fact, jury or judge. Don't get so focused on what you are doing that you miss telltale signals from the trier of facts.
- Do not use acronyms. A confusing alphabet soup hinders the judge in trying to follow your argument. (I was reluctant to admit that I wasn't smart enough to comprehend a litany of acronyms until I recently learned that acronyms are a pet peeve of Justice Scalia).
- When you or your opponents examine a witness, listen carefully to the testimony. In a hearing or trial, as in life, things don't always go as planned. (Actually, they never do in trial.) Be ready to deviate from your prepared "script" of questions as circumstances dictate and use rebuttal to effectively respond to previous testimony and resolve new questions or issues that arose in the course of testimony.
- Learn to be a good listener. It is not as easy as you may think.

Oral Advocacy (Section II of IV)

- Be prepared, including anticipating likely questions from the judge and being familiar with your opponent's likely arguments and all cases that were cited in the legal memoranda.
- Be respectful of the judge and your opponents, including being on time.
- Be flexible and ready to depart from what you may have intended to discuss in the hearing. It is likely that the judge has already identified specific issues or questions she wants addressed. Do not expect to simply regurgitate your legal memorandum.
- Listen carefully to what the judge is asking. Answer questions directly. Don't try to duck questions. It is seldom a good response to say that you'll get to that point later.
- Listen carefully to what your opponent is saying so that you can properly respond. Do not get so caught up with what you are going to do next that you miss an important point made by your opponent.
- Don't interrupt. In other words, don't let the beginning of your sentence interrupt the middle of the judge's or an opponent's sentence.
- Again, be prepared. This seems obvious, but if the judge has scheduled a hearing to discuss a certain statute and its effect on your case, read the statute and research it. Also, if coming to a hearing with case law not previously cited (which is generally not a good idea), you should advise the judge and opposing counsel beforehand, and bring copies of those cases for the judge and opposing counsel.

(Sections III and IV will appear in a later issue of the Bulletin).

Solo & Small Firm Practitioners Committee

Invites You to its next Lunch & Learn Series

Thursday, April 15, 2010

11:45 a.m. to 1:00 p.m.

Bar Office

Internet Marketing: presented by FindLaw
Beyond the Basics - Standing Out From the Crowd

Finding the Right Marketing Mix:
Traditional and non-traditional marketing options.

Search Engine Marketing:
An overview of marketing trends, best practices and research findings on how consumers search online.

Branding:
Understanding the importance of a unique brand, techniques for success, ongoing promotion and how to leverage your brand position to drive better qualified clients to your firm.

RSVP: online @ www.palmbeachbar.org
(register no later than 4/12/10 to avoid a \$5.00 late fee)

Cost: \$10.00 for PBCBA Members; \$15.00 for non-members.
Price includes lunch plus CLE credit from the Florida Bar.



The Workers' Comp Committee presented its Annual Kennie Edwards Memorial Award to both Lyle Platt and Michelle Leissle (presented by Michael Celeste) The award is presented to the workers' compensation attorney who best exemplifies those professional qualities admired in Kennie- honesty, integrity, cordiality, good humor, high ethical standards and advocacy tempered by a sense of humility. Past recipients of this award are Walter Beisler, Arthur Pumpian, Charles Williams, David Rigell, Michael Celeste, Randy Porcher, Honorable Shelley Puncy, Stanley Narkier, Alison Schefer and Lloyd Findler.



Re-Elect John R. Whittles To the Palm Beach County Bar Association Board of Directors

"Leadership and a History of Service to the Palm Beach County Bar"

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 - Chair, PBC Bar Finance Committee, 2009 – Present
 - Chair, PBC Bar Newsletter Committee, 2009 – Present
- President, Palm Beach County Bar Association Young Lawyers Section ("PBC YLS"), 2008 – 2009
- President-Elect, PBC YLS, 2007 – 2008
- Secretary, PBC YLS, 2006 – 2007
- Treasurer, PBC YLS, 2005 – 2006
- Executive Committee Member, PBC YLS, 2000 – Present
- Committee Chair, Various PBC YLS Projects, 2001 – 2008
- PBC BAR Liaison, Florida Bar Young Lawyers Division Affiliate Outreach Program, 2004, 2005, 2008, 2009
- Co-Chair, 2010 Bench Bar Conference Commercial Litigation Section
- Co-Chair, 2008 Bench Bar Conference Young Lawyers Section
- Member, PBC Bar Judicial Relations Committee, 2002 – 2003
- Member, Florida Bar Federal Practice Committee, 2008 - 2010



*Submitted by the
PBCBA's
ABA Delegate
Donnie Murrell*

I had to go to Orlando to attend the ABA Mid-Year meeting. I admit that wasn't as bad as going to Philadelphia or Chicago in February, but it was Super Bowl Sunday. I missed Joe Atterbury's Super Bowl Party (I wasn't invited to it, but I found out about it, so I could have gone.) *Super Bowl Party* and *ABA* just do not go together.

I should have known something was up when Ben Hill wasn't at the meeting. Ben Hill **never** misses these things. He can't, he's involved in everything the ABA does. I have written before about the incredible amounts of time Ben dedicates to ABA matters. The amount of work he does is enormous, and most of it is below the radar. But Ben wasn't in Orlando.

Promptly at 8:30 Monday morning the House of Delegates set about its business of efficiently passing resolutions. We passed resolutions on everything from criminal justice issues, to fair treatment for service animals to "the first sale doctrine" in Section 109(a) of the Copyright Act. Who can be against seeing eye dogs? In fact, no one was against anything being discussed all morning – until we came to nuclear proliferation. A resolution urging adoption of the Comprehensive Nuclear Test Ban Treaty *failed*. No one spoke in favor of nuclear proliferation, they argued lack of jurisdiction. (Whenever lawyers want to avoid discussing the merits, they discuss jurisdiction.) By a narrow vote the House decided nuclear proliferation was outside its purview. This was an odd vote given some of the resolutions produced in the past – service animals earlier that very morning and at another meeting a resolution opposing cancer in all forms. Maybe this is the beginning of an effort to get the House re-focused on *legal* issues. Who knows?

When President Carolyn Lamm gave her address to the House, things really started to get very un-ABAish. If the ABA leadership has one rule it is: Never let them see you sweat, never show fear, and always understate the problem. President Lamm began her address by saying when

she took over she was looking forward to getting the airplane up to altitude and setting it on autopilot. Unfortunately, she had not counted on hitting birds on take-off and losing power, but she was happy to report, the plane was safely in the river. By the time she had finished explaining that the new Executive Director had resigned in November (with a confidentiality clause) and that the CFO and the Comptroller had also both resigned, members of the House were looking around for their seat cushions. We could feel our feet getting wet. Somehow, images of Captain Sullenberger did not come immediately to mind. Fasten your seatbelt and make sure your tray table is in its locked and upright position. We are in for turbulence.

The Treasurer's report was even gloomier. It was so bad, the Treasurer

included power point inspirational messages to go along with it. Sprinkled among the red ink were things like, "A mighty oak is simply a little nut that managed to hang on" and "We cannot control the wind, but we can trim the sails". Oh boy. That explains the cash bar at the reception.

The bottom line is that the ABA, like everyone else, is going through some hard times. Things are rough, people are hurting, but everything will be alright. Search committees are working hard to fill the vacancies. A new Executive Director is expected to be in place well before the annual meeting this summer in San Francisco. Then we can get back to passing resolutions.

I'll keep you posted.

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The Elusive Definition Of Capacity

By David M. Garten, Esq.

How do you define capacity? The answer is: It depends on the situation. Is your client executing a Will or Trust? Is there a pending guardianship proceeding? Is your client incapable of making her own health care decisions? Is your client signing a contract or making a gift? The definition of capacity is different for each situation.

WILLS: Sec.732.501, Fla. Stat. reads that “[a]ny person who is of sound mind and who is either 18 or more years of age or an emancipated minor may make a will.” To be of “sound mind”, a testator must have the ability to mentally understand in a general way (1) the nature and extent of the property to be disposed of, (2) the testator’s relation to those who would naturally claim a substantial benefit from his will, and (3) a general understanding of the practical effect of the will as executed. A testator may still have testamentary capacity to execute a valid will even though he may frequently be intoxicated, use narcotics, have an enfeebled mind, failing memory, or vacillating judgment. Moreover, an insane individual or one who exhibits “queer conduct” may execute a valid will as long as it is done during a lucid interval. Indeed, it is only critical that the testator possess testamentary capacity at the time of the execution of the will. *See Raimi v. Furlong*, 702 So. 2d 1273 (Fla. 3rd DCA 1997); *Hendershaw v. Estate of Hendershaw*, 763 So. 2d 482 (Fla. 4th DCA 2000).

TRUSTS: Pursuant to §736.0402(1)(a), Fla. Stat., a trust is created only if the settlor has capacity to create a trust. “The capacity required to create, amend, revoke, or add property to a revocable trust, or to direct the actions of the trustee of a revocable trust, is the same as that required to make a will.” Refer to §736.0601, Fla. Stat.

GUARDIANSHIPS: Sec.744.102(12), Fla. Stat. reads: (12) “Incapacitated person” means a person who has been judicially determined to lack the capacity to manage at least some of the property or to meet at least some of the essential health and safety requirements of the person. (a) To “manage property” means to take those actions necessary to obtain, administer, and dispose of real and personal property, intangible property, business property, benefits, and income. (b) To “meet essential requirements for health or safety” means to take those actions necessary to provide the health care, food, shelter, clothing, personal hygiene, or other care without which serious and imminent physical injury or illness is more likely than not to occur.

ADVANCED DIRECTIVES (CAPACITY TO MAKE HEALTH CARE DECISIONS):

Pursuant to §765.204, Fla. Stat., a person is presumed to be capable of making health care decisions for herself unless she is determined to be incapacitated. If a person’s capacity to make health care decisions for herself or provide informed consent is in question, the attending physician shall evaluate her capacity.

The term “incapacity” or “incompetent” means the patient is physically or mentally unable to communicate a willful and knowing health care decision. Refer to §765.101(8), Fla. Stat. Additionally, the term “informed consent” means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures, and to make a knowing health care decision without coercion or undue influence. Refer to §765.101(9), Fla. Stat.

CONTRACTS/GIFTS: The standard to determine competency to execute a contract or to make a gift is whether the individual is able to comprehend the *nature and effect* of the transaction. *See Travis v. Travis*, 81 Fla. 309 (Fla.1921); *Saliba v. James*, 143 Fla. 404 (Fla. 1940); *Lane v. Talloni*, 626 So. 2d 316 (Fla. 5th DCA 1993); *Gracey v. Lawrence*, 442 So. 2d 305 (Fla. 5th DCA 1983).

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1. Adam Gumson
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3. Don Smith
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Welcome New Members!

The following represents each new member's name, hometown, law school, and date of admission to the Florida Bar and law firm association.

DANIEL J. BARSKY – Minnesota; University of Miami, 2006; Associate in Shutts & Bowen, LLP, West Palm Beach

EUGENE F. BANNIGAN – New York; Brooklyn Law School, 2009; Sole Practitioner, Jupiter

ANDREW M. CHANSEN – Sole Practitioner, Boca Raton

ROCHELLE B. CHIOCCA – Florida; Florida State University College of Law, 2000; Partner with Chiocca & Chiocca, P.A., West Palm Beach

BRIAN R. DEGAN – Michigan; Suffolk University; Associated with Steinger Iscoe & Greene, P.A., West Palm Beach

PATRICK B. FLANAGAN – Virginia; Florida State University, 1984; Partner with Flanagan, Maniotis & Berger, P.A., West Palm Beach

CHARLES S. HANNA III – New York; JD – Widener University School of Law; LLM Taxation from University of Florida School of Law, 1998; SunTrust Private Wealth Management, Palm Beach

YOLANDO ANN-MARIE HEWLING – Jamaica; Florida State University, 2002; Associate in Rosenthal, Levy & Simon, P.A., West Palm Beach

MATTHEW D. KOBLEGARD – Florida; University of Florida, 2008; Associate in Silver, Bass, & Brams, P.A., West Palm Beach

HAVA L. HOLZHAUER – Washington D.C.; University of Cincinnati School of Law, 2006; Office of the State Attorney, West Palm Beach

PAUL L. LUGER – Florida; Nova Southeastern, 1992; Partner in Rogner Miller Cox & Waranch PA, Fort Pierce

THOMAS P. MALNATI – Connecticut; University of Connecticut, 2001; Palm Beach Shores

MATTHEW D. MILLER – University of Wyoming, 1999; Associate in Hoffman & Morris, PL, Singer Island

MARCELLO U. MONTESINOS – New Jersey; Seton Hall Law School, 1997; Sole Practitioner, Montesinos Law Firm, Lake Worth

JAMIE L. PRINCIPE – New York; New York Law School, 2007; Sole Practitioner, West Palm Beach

ANDREW S. RISO – New Jersey; Seton Hall University School of Law, 2009; Sun City Center, FL

CHRISTINA RISO – New Jersey; Seton Hall University School of Law, 2009; Sun City Center, FL

MELINDA SHABKA – New Jersey; St. Thomas University, 2006; Associate in Rosenthal, Levy & Simon, P.A., West Palm Beach

CHRISTIAN D. WHITE – Florida; University of Florida, 2010; Associate in Downey & Downey, P.A., Palm Beach Gardens

MELISSA A. WHITE – Florida Registered Paralegal Member; Cao Law Group, LLC, West Palm Beach

BOYD H. WOLF – University of Florida, 1982; Agency Marketing Services, St. Petersburg, FL



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MARINA D. PETILLO: Completed all Parenting Coordinator requirements established by Florida Statue 61.125(4)(a)(2)(c) and is now available as a private Parenting Coordinator. Also available as a Family Law Mediator, and Guardian/Attorney Ad Litem. Reasonable rates for all services. 800 Village Square Crossing, Suite 105, Palm Beach Gardens, FL 33410. (561) 656-2015 or email mpetiloesq@gmail.com

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HEARSAY

The Law Offices of Randy Kaye Garvey, P.A. has moved its offices to 1851 W. Indiantown Rd. Suite 100, Jupiter, FL.

Tasha K. Dickinson was recently recognized as one of South Florida's Best & Brightest at the Inaugural "Best & Brightest" event hosted by The Lupus Foundation of America, Southeast Florida Chapter.



Butzel Long attorney **Guy E. Quattlebaum** has been re-elected Treasurer/Secretary of the Palm Beach County Sports Commission.

Lewis, Longman & Walker, P.A. has relocated to the Northbridge Centre located at 515 N. Flagler Drive in West Palm Beach.



Timothy P. Lewis was made Partner in the law firm of Milber Makris Plousadis & Seiden, LLP. Mr. Lewis resides in the firm's Boca Raton office.



Keri-Ann C. Baker, attorney at Lewis, Longman & Walker, P.A. recently received the "Star of the Quarter" award from the American Bar Association Young Lawyers Division.

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Florida Bar Board of Governors Report

At its January 29 meeting in Tallahassee, The Florida Bar Board of Governors:

- Approved a motion to support a petition filed at the Florida Supreme Court asking the court to establish an Innocence Commission to explore reasons for a large number of exonerations in first degree murder and other crimes in recent years. Former ABA President Sandy D'Alemberte made the request.
- Budget Committee Chair Jake Schickel said the Bar should also be in the black this year with its budget, despite initially expecting a small deficit. Incoming Budget Committee Chair Dan DeCubellis said initial expectations are the Bar's 2010-11 budget will also be in the black.
- Heard ABA President-elect Steve Zack ask the board for help on his top three priorities. Those include having an "Opening of the Legal Year" ceremony similar to those in England, France, Canada, and Australia which will promote the rule of law, improving civics education so citizens have a better understanding of how government works, and improving the legal response to disasters, both natural and man-made. Zack also said he plans to set up a Commission on Hispanic Civil Rights.
- Heard Chief Justice Peggy Quince talk about the court's priorities for the upcoming legislative session, including protecting the money in the state court trust fund and improving the mental health system. She also expressed support for the court electronic filing program and for the One pro bono campaign.
- Voted to revamp the Bar's Legal Publications office, including reducing the staff size and having Lexis/Nexis take over more of the production work of producing legal handbooks. The action also divides into separate operations the office's duties of producing legal publications and staffing procedural rules committees.
- Heard from the Board Review Committee on Professional Ethics that a special committee will be appointed to study rules and ethics issues involving using reverse contingency fees to hire lawyers to negotiate medical liens in personal injury cases. Bar President Jesse Diner said that board member Jay Cohen will chair the committee. The BRCPE also considered changes to Ethics Opinion 07-2 on outsourcing legal services, but decided not to make any alterations.
- Received on first reading several rule and policy changes relating to the Clients' Security Fund. Amendments include increasing from \$2,500 to \$5,000 the fee amount that can be repaid when an attorney provides no useful services and rewriting the rule defining what constitutes useful services. Board member Greg Coleman, chair of the Clients' Security Fund Review Committee II, said the committee is still studying ways to prevent losses from trust accounts, including random audits and/or requiring surety bonds.
- Received two items on first reading from the Disciplinary Procedure Committee. Standing Board Policy 15.92 on public reprimands will clarify when in-person public reprimands are necessary and provides that all in-person public reprimands must be before the Board of Governors. Proposed changes to Rule 3-5.2 will eliminate the need for a separate complaint to be filed by Bar counsel when there is a petition filed for emergency suspension or interim probation. The emergency motion will serve as the bar's formal complaint in those cases.

Should you have any questions, please contact one of the Circuit's four representatives: Greg Coleman, Scott Hawkins, Lisa Small or David Prather



PALM BEACH COUNTY BAR ASSOCIATION

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** FLORIDA BAR PRESIDENT
*** DECEASED, FLORIDA BAR PRESIDENT, SUPREME COURT JUSTICE
**** DECEASED, FLORIDA BAR PRESIDENT
***** DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE

CALENDAR
April 2010

Wednesday April 7, 5:30pm
PBACDL Annual Judicial Reception Honoring Judge Sheree Cunningham
Mortons, for more information contact Grey Tesh 561-686-6886

Thursday, April 8, Noon – 1:00pm
SPBC FAWL Luncheon
Bogart's

Thursday, April 8, 5:30pm – 7:30pm
YLS Happy Hour

Monday, April 12, 11:30am – 1:00pm
Solo Luncheon Seminar
Bar Association Office

Tuesday, April 13, 11:45am – 1:00pm
SPBCBA Membership Lunch
Boca Marriott

Tuesday, April 13, Noon – 1:00pm
YLS Board Meeting
Bar Association Office

Wednesday, April 14, Noon – 1:00pm
NCS Board Meeting

Thursday, April 15, 11:30am – 1:00pm
Solo Luncheon
Bar Association Office

Friday, April 16, 8:00am – Noon
PI/Wrongful Death CLE Committee Seminar
Bar Association Office

Friday, April 16, 8:30am – 9:30am
ADR Committee Meeting
Bar Association Office

Tuesday, April 20, Noon – 2:00pm
Bankruptcy Law CLE Lunch Seminar "View from the Panel – Local Trustees"
Bar Association Office

Tuesday, April 20, 5:30pm – 6:00pm
Legal Aid Board Meeting
Bar Association Office

Thursday, April 22, 8:50am – 1:15pm
Construction Law CLE Seminar
Bar Association Office

Thursday, April 22, 5 pm – 6:30pm
PBCBA Board of Directors Meeting
Bar Association Office

Friday, April 23, 11:30am – 1:00pm
NCS CLE Luncheon
Abacoa

Friday, April 23, 1:00pm
SPBCBA 2009 Annual Golf Event
Boca Green Country Club

Friday, April 23, 4:00pm
Robing of Judge Leonard Hanser
Courtroom 11A

Saturday, April 24, 8:00am – 11:30am
Law Week Softball Game
Okeeheelee

Tuesday, April 27, 11:45am – 1:00pm
Judicial Luncheon
Main Courthouse, North end of cafeteria

Tuesday, April 27, 6 – 8 p.m.
Christian Legal Society Women's Gathering
Panera Bread Café, 771 Village Boulevard, West Palm Beach

Wednesday, April 28, 9:20am – 12:35pm
Securities Law CLE Seminar
Bar Association Office

Wednesday, April 28, 6:00pm – 7:30pm
Federal Bar Cocktail Reception

Thursday, April 29, 6:00pm – 8:00pm
PBJA Meeting

Friday, April 30
Southern District of Florida Bench Bar Conference