

PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

December 2008

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NEW DATE & LOCATION
Wednesday, December 10
5:30 p.m. to 8:00 p.m.

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The Board of Directors and Bar Staff wish you and your families a Happy Holiday Season!

December 4 Meeting to Feature Frank Cerabino Members to vote on proposed bylaw change



The Palm Beach County Bar Association will host a membership luncheon on Thursday, December 4 from 11:45 – 1:00 at the Crowne Plaza Hotel in West Palm Beach. The guest speaker will be Palm Beach Post Columnist Frank Cerabino. In addition to hearing from Mr. Cerabino, members will be asked to vote on a proposed bylaw change which would add two more seats to the Bar's Board of Directors effective with the 2009-2010 Bar year. To view the proposed bylaw change go to the Bar's homepage www.palmbeachbar.org.

Frank Cerabino grew up on Long Island, N.Y., and graduated from the United States Naval Academy at Annapolis, Md., in 1977. He spent five years in the Navy, reaching the rank of lieutenant and serving as a public affairs officer aboard an aircraft carrier. After leaving the Navy, he received a master's degree in journalism at Northwestern University, in Evanston, Ill. He worked at the City News Bureau of Chicago for six months before leaving the wire service to take a job with The Miami Herald in 1984. For the next five years, Cerabino covered the police, government, legal and education beats for The Herald. He eventually became the newspaper's federal court reporter in Miami. He joined The Palm Beach Post in 1989. Be sure to register online for this luncheon at www.palmbeachbar.org. Sponsored by Leopold-Kuvin, PA.

Mark your calendar for upcoming Membership Meetings

Membership Luncheon

December 4, 11:45 – 1:00 p.m.
Guest Speaker: PB Post Columnist Frank Cerabino
Crowne Plaza Hotel, West Palm Beach

Annual Holiday Party

December 10, 5:30 p.m.
NEW DATE AND LOCATION:
FRENCHMAN'S RESERVE

Joint Luncheon with Forum Club

February 3, 2009, 11:30 – 1:00
Kravis Center
Speaker: U.S. Supreme Court Justice Antonin Scalia
This event will be restricted to members only

Joint Luncheon with South County Bar Association

March 3, 11:45 – 1:00 p.m.
Speaker: FL Bar President John G. "Jay" White III
Location: Boca Raton Marriott

Annual Law Week Judicial Reception

April 22, 2009
The Harriett at City Place

Law Day Luncheon

May 1, 2009
Location TBA

Nominating petitions available for Board of Directors

The annual election of officers and directors for the Palm Beach County Bar will take place in April. Persons seeking to run for a position on the Board of Directors will need to obtain a nominating petition and must be a member in good standing of the Palm Beach County Bar Association. The nominating petition must be signed by no fewer than 20 members in good standing of the Association. Petitions for President-elect will be available on December 15 and will be due back in the office by 5 p.m. on January 15. Petitions for director-at-large seats will be available on December 22 and will be due back in the Bar office by 5 p.m. on January 22. Petitions may be obtained by calling the Bar office at 687-2800 or by sending an e-mail requesting it at pburns@palmbeachbar.org. For any of the positions, it is the candidate's responsibility to verify ahead of time through the Bar office that the members that are signing their petitions are members in good standing, otherwise, the petition will be deemed invalid.

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THE
BULLETIN

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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
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Pictures from Western County

Members who live and or work in the western county area recently stopped by Gypsy's Horse in Wellington for a drink and something to eat before heading home.

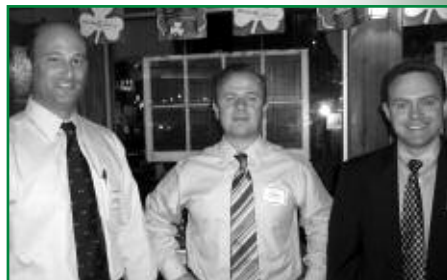
For the next Western County happy hour, be sure to check the Bar's website at www.palmbeachbar.org.



Stuart Karden, Mark Greenberg and Betty Dunkum



Devon Coughlan and Craig Stein



Benjamin Shenkman, Frank Gonzalez and Lonn Weissblum



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President's Message



Optimism v. Pessimism

By Richard D. Schuler, President

I read an article recently where some large law firms in Chicago and Washington, D.C., were laying off (firing) lawyers and support staff. One firm reportedly "asked" ten equity and non-equity partners to leave. The quote from the managing partner was: "we have to watch the bottom line".

These are scary economic times as we all know. There is always that tension between law as a profession and the "business" side of private practice.

For many of us, this is the life we have chosen. It is not a job but a "calling". As such, our PBCBA helps us to nurture our professionalism – but also helps with the business side by having CLE seminars on how to manage our practices professionally and how to improve our business efficiency by making mentors available and having training and

information available on systems (computers and otherwise) that may aid us to make our practices more efficient on the "business" side.

Ultimately, it "pays" to be optimistic with our clients, our peers, our opponents and even our competitors. They like it, it makes us feel good, it's more "professional" and it's good for business. Although pundit and columnist George Will has said: "the nice part about being a pessimist is that you are constantly being either proven right or pleasantly surprised", I prefer the middle ground position of humorist Gil Stern: "Both optimists and pessimists contribute to our society. The optimist invents the airplane and the pessimist the parachute."

When it comes to trial lawyers (although I think this is applicable to all of our specialties), Ed Ricci made a great point in a recent article for the PBCJA on "Why Juries Hate Trial Lawyers". Ed

noted a number of scandals where nationally prominent lawyers had been arrested and gone to jail noting that their "Achilles heel" was "the money". He then referred to the most famous trial lawyers – some real – some fictional – Clarence Darrow, Perry Mason, Atticus Finch and others and asked a rhetorical question about whether these iconic folks were revered for "the money" or because of their skill and devotion to justice. It's obvious that they were champions of justice.

Optimistically, I would like to think the stories of the above men are not lessons lost in the current business climate.

Board of Directors Meeting Attendance

	July	Aug	Sept	Oct
	Retreat			
Guari	x	x	x	x
Howe	x	x	x	x
Martinez-Schwab	x	x	x	x
McCabe	x	x	x	x
Poulton	x	x	x	x
Rabin	x	x	x	x
Sasser	x	x	x	x
Schuler	x	x	x	x
Suskauer	x	x	x	x
Weiss	x	x	x	x
Whittles	x	x	x	x

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– Steven Dell, Attorney's Dell & Schaefer, Chartered

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“You can do well by doing good.”

- Chesterfield Smith, Past President, The Florida Bar 1964.

The stated 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. Professionalism is defined by many people in many ways: demonstrating respect for the legal system and all of its participants, exemplary ethical conduct, maintaining the highest level of professional competence, courtesy and civility, and by simply treating others with the respect we want others to show to us. A simpler definition, and one that I favor is simply, that which brings honor to the profession. Recent bar polls consistently identify a lack of professionalism and ethics as the most important problems facing lawyers today.

The decline in professionalism can be attributed to many factors. Some of the decline comes simply from increased competition for business. Much comes from a loss of community. I would suggest to you that the professional discourse between lawyers in Live Oak, Florida differs greatly from what you will see in Miami and other “big cities”. Why is that? Lack of familiarity with your fellow lawyers is one aspect. Technology also plays a role. While computers are wonderful and few if any of us could practice law today without one, they have intensified the pace and stress of practicing law and have contributed to the decline in direct person-to-person contact. Why pick up the phone? With your blackberry, you are accessible 24 hours a day to clients and opposing counsel who expect immediate responses.

The impersonal nature of electronic communications contributes to the decline in civility. Many people will write something in an e-mail that they would never say aloud, and certainly not in the presence of a judge or a jury.

This article will not stop the erosion of professionalism; hundreds of articles far better than this have been written on the subject, yet the problem grows. I could suggest to you that you could lead a happier, more fulfilling life if you behaved more professionally with those you interact with everyday, but would you believe me?

Often we hear about only the negative actions of a few lawyers when we know that most lawyers do a lot of good throughout the community. The bar annually presents its Professionalism Award to an attorney or organization that demonstrates or promotes outstanding professionalism. However, an annual recognition of one or two “exemplars of professionalism” is not enough. The Professionalism Committee of the PBCBA has decided to identify and highlight on a monthly basis those who bring honor to the profession. Each monthly bar bulletin will contain a “Profile in Professionalism” recognizing an attorney or organization for the good works they do and the example they set for others. The first two profiles are to be published in the January Bulletin, fittingly about **Manny Farach** and the firm of **Gunster Yoakley & Stewart**, the 2008 recipients of the PBCBA’s Professionalism Award. I hope you will take the time to read their profiles and the ones to follow and recognize that you truly can do well by doing good.

- Michael J. Napoleone is a shareholder with Richman Greer, PA and the Chair of the PBCBA’s Professionalism Committee

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Minority Law Student Internship Program Seeks Law Firm Participants

By *Tanique Lee, Chair*

The Diversity and Gender Sensitivity Committee of the Palm Beach County Bar Association would like to thank the 15th Judicial Circuit, Romano Law Group, Holland & Knight, Richman Greer, P.A., and Lytal Reiter, et al for participating in the Palm Beach County Bar Association's Fall 2008 Minority Law Internship Program and providing internships to minority law students from South Florida law schools. Special thanks to the individual attorneys and coordinators at each firm and agency for devoting their time in making the students' internship a valuable experience. Specifically, Amy Borman, Esq., 15th Judicial Circuit; John Romano, Esq. and Maureen Martinez-Schwab, Romano Law Group; Michael Taylor, Esq. and Esther Rodriguez, Holland & Knight; Michael Napoleone, Esq., Richman Greer, P.A.; and David Prather, Esq., Lytal Reiter., et. al.

The goal of the Minority Law Internship Program is to encourage minority law students to consider practicing in Palm Beach County after passing The Florida Bar. Every summer and fall, the Diversity and Gender Sensitivity Committee contacts the dean or assistant dean at career planning and placement for the law schools of the University of Miami, Florida International University, St. Thomas University and Nova Southeastern University requesting the recruitment of students to apply to the

Minority Law Internship Program for the fall and spring semesters.

The requirements for the students to participate are that they must be a second or third year minority law student, top fifty percent of their class, demonstrate involvement and leadership in law school organizations, be willing to work ten hours per week and travel to Palm Beach County. The current pay scale paid by firms is between \$10.00 to \$20.00 per hour. The Palm Beach County Bar Association currently provides two stipends in the amount of \$1200.00 each for law students interning at a government agency.

This fall the program received nine law student applicants. Only five students were placed, two at the 15th Judicial Circuit and one each at Romano Law Group, Holland & Knight and Richman Greer, P.A.. Unfortunately the Program was unable to place the remaining four students due to lack of placement opportunities. However, the current students are enjoying their experience.

The Committee is seeking additional law firm or legal government agency participants for the upcoming spring semester. If your law firm or legal government agency is interested in participating in the Minority Law Internship Program for spring 2009 or thereafter, then please contact Tanique G. Lee, Esq. at (561) 655-6224 or email at taniquelee@hotmail.com or tglee@gelfandarpe.com



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Sanctions Due to Delay

by Ted Babbitt

Florida Statute 57.105(3) contains the following language:

“At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney’s fees, and other loss resulting from the improper delay.”

Federal Courts have Rule 11 as a corollary to the above Florida statute. Rule 11 gives a Federal Judge the power to punish both litigants and counsel for bringing frivolous actions or for unnecessarily or improperly delaying of an action. The recent case of Federal Deposit Ins. Corp. v. Maxxam, Inc., 523 F. 3d 566 (C.A. 5 (Tex.) 2008) provides a guideline to both State and Federal Courts as to the Court’s power to prevent unconscionable attempts at delay and harassment. In that case, the FDIC brought an action against an investor in a Federal savings and loan which went bankrupt during the 1983 thrift crisis when more than 1,000 such banks failed throughout the United States after being squeezed between their earnings on fixed rate long-term mortgages and rising market rates. The theory under which the FDIC sued Charles Hurwitz, a prominent Texas businessman and chairman and CEO of the bank in question, was at best tenuous. The District Court found that the real reason for the suit was the hope of forcing a settlement to require Mr. Hurwitz to deed over certain California redwood lands which environmental groups and several government agencies wanted to protect from logging. The suit commenced despite memoranda from the FDIC’s own lawyers recommending against suit based upon the improbability of prevailing. In addition, the Federal District Court found that throughout the litigation, the FDIC intentionally attempted to delay the District Court suit so as to gain an advantage in the companion administrative action.

On appeal, the Fifth Circuit found insufficient evidence to support the trial judge’s finding that the suit had been brought solely to force a settlement encompassing the sale of the redwoods but did find that the delay and harassment tactics utilized by the FDIC warranted million of dollars of fines imposed by the trial court. At Page 577, the Court explains how Federal Rule 11 parallels the language of Fla. Stat. sec. 57.105.

“Rule 11 gained bite in an expanded version, requiring that a party, when signing a pleading or any other paper before the court, certify four specific representations: that the party is not filing the paper ‘for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation’; its claims or defenses are plausible under existing or potential future law; the allegations are supported by evidence or likely to be supported with further investigation; and that any denials of allegations are so supported. . . .

[T]he rule reaches [those pleadings] which, although not without merit, constitute an abuse of legal purpose because brought for an improper purpose such as causing harassment, unnecessary delay or needless increase in the cost of litigation.” (Emphasis in original.)

In this case the appellate court focused on the way litigation was conducted rather than the reason for its inception. At Page 584, the Court held:

“Although the case had sufficient merit to surpass the bar of non-frivolous factual and legal pleading as well as a proper purpose for filing suit, the court recognized that as the case proceeded, the FDIC began to exert other pressures upon realizing that sheer exposure to liability might be insufficient to force negotiations. As we found in National Association of Government Employees v. National Federation of Federal Employees, 844 F. 2d 216, 224 (5th Cir. 1988), we do not hold that the filing of a paper for an improper purpose is immunized from Rule 11 sanctions simply because it is well grounded in fact and law. The case can be made, for example . . . that the filing of excessive motions, even if each is ‘well grounded,’ may under some circumstances constitute ‘harassment’ sanctionable under the Rule.

Litigation calculated to harass or increase costs warrants sanctions, the merits of the case notwithstanding.”

Neither Rule 11 nor Fla. Stat. 57.105 are used with any frequency. Nevertheless, their use is appropriate when actions are either brought for improper purposes or are conducted in such a manner as to constitute nothing more than harassment or delay. The Courts of Florida are undergoing a budgetary crisis. Litigation has not slowed down despite the lack of Courts and ancillary personnel to handle that litigation. As the complexity of litigation increases, the temptation to “stonewall” in discovery and interpose pleadings and motions for delay increases dramatically. Both Florida and Federal Courts have a means at their disposal to make the use of those tactics dangerous and unrewarding.

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.



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Rebutting the Presumption of Intentional Revocation of a Lost Will

By David M. Garten, Esq.

Evidence that a testator's will was in his possession prior to death and cannot be located subsequent to death gives rise to a rebuttable presumption that the testator destroyed the will with the intention of revoking it. What is the standard and the evidence necessary to rebut the presumption of intentional revocation of a lost will?

STANDARD: To avoid a finding of revocation, the proponent of the lost will bears the burden of coming forward with "competent substantial evidence" that would justify a finding that the will had not been revoked. See Balboni v. Larocque, 2008 Fla. App. LEXIS 15130 (Fla. 4th DCA 10/1/08), citing In re Estate of Baird, 343 So. 2d 41 (Fla. 4th DCA 1977) and In re Estate of Evers, 34 So. 2d 561 (Fla. 1948).

EVIDENCE: In Balboni, Judge Stevenson wrote: "Evidence that can serve to rebut the presumption of intentional revocation of a lost will consists of evidence that the will was either accidentally lost or destroyed, or willfully and fraudulently destroyed by an adverse party. [In re Estate of Evers, 34 So. 2d 561 (Fla. 1948)]. In several cases, Florida courts have found the presumption of intentional revocation to be rebutted by a showing of: 1) evidence that a person with an adverse interest, and the opportunity, may have destroyed the will, see In re Estate of Washington, 56 So. 2d at 547; Lonergan v. Estate of Budahazi, 669 So. 2d 1062 (Fla. 5th DCA 1996); Upton v. Estate of Carville, 369 So. 2d 113 (Fla. 1st DCA 1979); 2) evidence that the will was accidentally destroyed, see In re Estate of Carlton, 276 So. 2d at 833 (presumption was rebutted where decedent repeatedly spoke of his will and his intention to leave his estate to the petitioner, although the decedent's safe was found waterlogged and the papers inside turned to "mush"); 3) evidence that the original will had been seen among the decedent's papers after her death, see Silvers v. Estate of Silvers, 274 So. 2d 20 (Fla. 3d DCA 1973); and 4) evidence that the decedent was insane and thus did not have testamentary capacity to effectively revoke the will, see In re Estate of Niernsee, 147 Fla. 388, 2 So. 2d 737 (Fla. 1941)."

Additionally, competent substantial evidence could be found to exist under the following circumstances:

Evidence that an interested party had: (1) access to a testator's home; (2) an opportunity to destroy the will; and (3) a pecuniary interest in destroying the will. See Pierre v. Estate of Pierre, 928 So. 2d 1252 (Fla. 3d DCA 2006).

Evidence that: (1) after the decedent's death a conformed copy of the will and the original of the codicil were found together among the decedent's personal possessions; (2) after the execution of the will, the decedent showed continuing affection for the beneficiaries under the will; and (3) after the execution of the will, the decedent wrote a letter to one of the beneficiaries stating that property devised in the will would

someday be theirs. In re Estate of Kuszmaul, 491 So.2d 287 (Fla. 4th DCA 1986).

Evidence that: (1) the wife of an heir-at-law of the decedent had free access to her home, both before and after her death, and had the will in her possession; (2) two weeks before the decedent's death, the decedent stated that she wanted her will to remain in effect, and that an heir-at-law and the wife of another heir-at-law had urged her to sign some papers; and (3) during the last two weeks of her life, it is unlikely that the decedent would have had enough strength to tear up her will. In re Estate of Walton, 601 So.2d 1266 (Fla. 3rd DCA 1992).

Evidence that (1) the decedent's husband, who was excluded from the will and whose pecuniary interest was contrary to the will, had access to the resident to which the will had been mailed by the decedent's attorney; (2) the decedent and her husband experienced extreme marital discord in the months preceding the execution of the will; and (3) joint bank accounts owned by the decedent and her husband which the decedent changed into her name along at the time she executed the will excluding her husband were never returned to joint ownership by the decedent. In re Estate of Budahazi, 669 So.2d 1062 (Fla. 5th DCA 1996).

In contrast, facts that merely show that a person had the opportunity to destroy the testator's will and "might possibly have done so" are insufficient to rebut the presumption of revocation. See Daul v. Goff, 754 So. 2d 847 (Fla. 2d DCA 2000); Balboni (petitioners theorize that the will was accidentally lost or discarded due to increased traffic and paperwork in the home during decedent's illness, and that nurses and visitors, third parties who have no interest in the will, caused the will to be misplaced).

LOST WILL

Searching for original will made by
Julia V. Anger

a long-time resident of Boynton Beach, who died in Massachusetts on June 15, 2008.

We have a copy of a will prepared in Dayton, Ohio on July 11, 1972, which names Winters National Bank and Trust Company of Dayton as executor.

Please contact Katie Von Kohorn, Esq., Casner & Edwards, Boston, at 617.426.5900 or vonkohorn@casneredwards.com, with any information.

Pro Bono Attorneys That Have Closed Their Pro Bono Cases in October 2008

THANK YOU FOR ALL YOU DO

Richard Abedon	Robert R. Marschall
George W. Baldwin	Lawrence Moncrief
Freeman Barner, Jr.	Robert R. Morris
Abby Beebe	John B.T. Murray, Jr.
David R. Bennett	Kimberly Rommel-Enright
Warren B. Brams	Bruce S. Rosenwater
Courtney S. Brogan	Steven M. Stepper
Peggy L. Carry	Michael Stern
Georgina Jimenez-Orosa	David C. Tassell
Richard Kleid	Jim Van
Ryon M. McCabe	

TOTAL NUMBER OF CASES: 35
TOTAL NUMBER OF HOURS: 307.88

PLEASE RETURN YOUR CLOSING FORMS IN A TIMELY MANNER!

Nominations Sought for 2009 Pro Bono Night Awards

The 21st Annual Pro Bono Recognition Evening will be held on Saturday Evening May 9, 2009 at the Palm Beach County Convention Center.

This year's theme will be "College Craze: Capturing the Campus Spirit!"

Anyone wishing to nominate an attorney, support staff member, law firm, individual or group for a Pro Bono Award for exemplary pro bono work in 2008, please fill out the form below. Reasons for the nomination should accompany this form and client names are not necessary. Client names will not be used for any press releases or for the program the night of the event without the client's written consent.

National City Becomes Official Sponsor of the Legal Aid Society of Palm Beach County

The Legal Aid Society of Palm Beach County is proud to announce that National City made a three-year commitment to being an Official Sponsor of the agency. The bank's \$30,000 donation will help support the Legal Aid's mission to provide high-quality civil legal advice, representation and education to the economically disadvantaged residents of Palm Beach County to protect their personal safety, enhance their opportunities and living conditions, and promote self-sufficiency.

"National City's donation demonstrates a commitment to ensuring equal access to our judicial system for the disadvantaged



Legal Aid Executive Director Bob Bertisch and National City SE Florida President Jay Sherouse.

children, families, elders and individuals residing in our area," said Robert Bertisch, executive director of the Legal Aid Society of Palm Beach County.

"With nearly 50 branches in Palm Beach County, National City is invested in the area and to helping our friends and neighbors in the communities that we serve," said Jay Shearouse, market president of National City's Southeast Florida region. "The Legal Aid Society plays a significant role in responding to the needs of the residents, and we're pleased to support their efforts."

Circuit Court Report CIVIL DIVISIONS • September 2008

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	12/08	12/08	12/08	1484
B	03/09	01/09	11/08	1402
D	01/09	01/09	11/08	1694
E	03/09	01/09	12/08	1659
F	01/09	01/09	01/09	1481
G	03/09	03/09	10/08	1303
H	04/09	04/09	11/08	1525
I	02/09	11/08	11/08	1107
J	03/09	03/09	12/08	1515
N	03/09	03/09	11/08	1747
O	01/09	01/09	12/08	1567

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 10/2/08.

News from the North County Section



North County Plans Annual BBQ & Casino Night

The North County Section will host its Annual BBQ & Casino Night on Thursday, February 19 at the Bonnette Hunt Club in Palm Beach Gardens.

There will be tables for blackjack, roulette and craps, plus an all you can eat BBQ buffet.

Even if you don't gamble, come and enjoy dinner, drinks, live music, plus prizes.

The cost is \$40.00 for NCS members; non-section members and spouses are welcome for \$50 and judges are complimentary.

Your RSVP is needed no later than 2/16/09 @ www.palmbeachbar.org.

*(*tables are for entertainment purposes only)*

The North County Section recently held a complimentary cocktail reception for close to 100 members at Frenchman's Reserve in Palm Beach Gardens. Below are pictures from the evening:



Judge Jonathan Gerber along with North County Section President Ryon McCabe and NCS Board members Ron Ponzoli and Scott Zappolo



Doug Sanders and Bob Jaegers



NCS President Elect Debra Jenks, Robert Harvey and Marina Petillo



Jayne Regester Barkdull and Judge Thomas Barkdull



Michael Slavin, Diane Slavin, Bob Greenberg from MetLife, Larry Buck and Dolores Buck

North County Section Celebrates the New Year

On Thursday, January 8, The North County Section will host its annual dinner at The River House Restaurant in Palm Beach Gardens.

Celebrate the New Year and help us thank the North County Judges - Judge Colbath, Judge Ciklin and Judge Oftedal.

5:30 p.m. – Cocktails ❖ 6:30 p.m. – Dinner

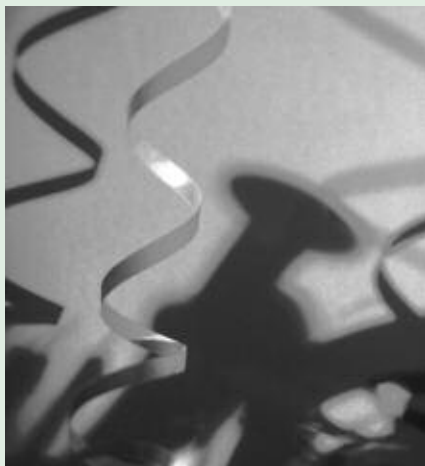
Due to limited seating, this event is only for NCS Members and the judiciary.

Space will be given on a first come first served basis.

The cost is \$65 for NCS Members; Judges complimentary

RSVP: www.palmbeachbar.org

Sponsored by: Citigroup Private Bank & Northwestern Mutual Financial Network



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.

JEFFREY J. BEGENS – New York; University of Dayton, 1988; Sole Practitioner, West Palm Beach

RICHARD L. BROWN – New York; University of South Carolina, 1993; Partner with Fowler White Burnett, P.A., West Palm Beach

JEFFREY R. BURNSIDE – Florida; NSU Law, 2006; Associate in Derrevere, Hawkes & Black, West Palm Beach

TINA L. CAMPBELL – Paralegal Member, Ackerman, Link & Sartory, P.A., West Palm Beach

DAWN M. CINQUINO – California; Florida State University College of Law, 2007; Sole Practitioner, The Cinquino Law Firm, Palm Beach Gardens

LUIS DELGADO, JR. – University of Florida, 2008; Palm Beach County State Attorney's Office, West Palm Beach

JASON P. DOLLARD – Rhode Island; Nova Southeastern University, 2003; Sole Practitioner, Law Offices of Jason P. Dollard, P.A., Delray Beach

MICHAEL J. DRAHOS – Connecticut; Nova Southeastern University, 2002; Associate in Fowler White Burnett, P.A.

REBECCA A. FRIEDEN – Nova Southeastern University, 2007; Associate in Stuart R. Manoff & Associates, P.A., West Palm Beach

JEFFREY HARRINGTON – California; University of San Diego School of Law, 2008; Sole Practitioner with Harrington Law Associates, West Palm Beach

ROBERT J. HARVEY – Illinois; Southern Illinois University; Associated with Kensington Capital Fund, LP, Palm Beach Gardens

SCOTT R. KERNER – St. Thomas University, 2008; Sole Practitioner, Scott Kerner, Esq., Atlantis

RALPH E. KING – Law Student Member; Nova Southeastern University, 2011; West Palm Beach

JESSICA T. LIFSHITZ – California; University of Pennsylvania, 2007; Associate in McDonald Hopkins, LLC, West Palm Beach

DAVID L. LOEVIN – Florida International University, 2005; Associate with Adams, Adams & Baca, West Palm Beach

PAULINE W. MARKEY – Canada; University of Florida Levin College of Law, 2006; Associate in Fox Rothschild, LLP, West Palm Beach

GRACE E. MURTADA – 2006; Associate with McConaughay, Duffy, Coonrod, Pope & Weaver, PA, Miami

CHAD P. PUGATCH – New Jersey; University of Florida, 1976; Partner in Rice Pugatch Robinson & Schiller, P.A., Ft. Lauderdale

KENNETH B. ROBINSON – New York; Columbia, 1986; Partner in Rice Pugatch Robinson & Schiller, P.A., Ft. Lauderdale

DANIEL J. SANTANIELLO – Massachusetts; Nova Southeastern University, 1990; Partner in Luks, Santaniello, Perez, Petrillo & Gold, Boca Raton

MATTHEW K. SCHWENCKE – Florida; Stetson University College of Law, 2008; Associate in Wicker Smith O'Hara McCoy Ford, PA, West Palm Beach

DOROTHY SELL – Paralegal Member; Hinman, Howard & Kattell, LLP, Boynton Beach

NICHOLAS S. SEAMSTER – Georgia; St. Thomas University School of Law, 2008; Associate in Wicker, Smith, O'Hara, McCoy & Ford, P.A., West Palm Beach

YANA V. SHAH – Azerbaijan (former USSR); Law Student Member; NSU Shepard Broad Law Center, 2010; Boca Raton

DINA H. SHEHATA-HUJBER – Rutgers, 2006; Partner in Hujber Law Group, P.A., Boynton Beach

SCOTT M. SOLKOFF – New York; Nova Southeastern University, 1994; Partner in Solkoff Legal PA, Delray Beach

ANTHONY M. STELLA – Nova Law, 2008; Fourth District Court of Appeal, West Palm Beach

MICHAEL B. STEVENS – Florida; Nova Southeastern University, 2008; Associate in Derrevere, Hawkes & Black, West Palm Beach

CHARLES D. STRAUB – Ohio; Shepard Broad Law, NSU, 2006; Associate in Derrevere, Hawkes & Black, West Palm Beach

MANDELL SUNDARSINGH – Trinidad and Tobago; Nova Southeastern University, 2008; Associate with Adorno & Yoss, West Palm Beach

DANIEL A. TERNER – Emory University, 1998; Partner in Solkoff Legal PA, Delray Beach

KARENE L. TYGENHOF – Florida; University of Miami, 2004; Associate with Ruden McClosky, West Palm Beach





Judge Dave Clark

By William E. Johnson

After 32 years on the bench, Judge Dave Clark still dispenses justice with a smile. Every morning before starting court, Judge Clark says a little prayer:

Dear Lord:

Please help me be nice, do the right thing, and get out of Court by 5 p.m.!!!

Judge Clark was born and raised in Bad Axe, Michigan where he played football on the high school team. After graduating from Central Michigan University, Judge Clark worked as a ticket agent for American Airlines. After realizing that there was no future in being a ticket agent, his father recommended that he go to law school and follow the footsteps of his uncle who was the Chief Judge of the Michigan Supreme Court. Judge Clark decided to attend Stetson Law School because it was close to Daytona Beach where he had fond memories of his college spring break days.

After graduating from Stetson Law School, Judge Clark initially worked as an Assistant U.S. Attorney for the Southern District, and would later go on to work for the County Solicitors Office in Orlando and in Palm Beach County under Marvin Mounts, County Solicitor and later Circuit Judge. Judge Clark then worked as an Assistant Public Defender under Wally Colbath, Public Defender and later Circuit Judge.

In the late 1960's, Judge Clark became active in politics and served on the Palm Beach Port Commission, City Council of North Palm Beach, and in the State House of Representatives. While serving in the legislature, he met and became good friends with Senator Tom Johnson who subsequently went on to become a Circuit Judge in Palm Beach County.

In 1976, Judge Clark ran unopposed for a County Court seat which had recently been created by the legislature. Judge Clark began his assignment in the North County Courthouse where he was the only judge and for several years handled all of the traffic infractions in the entire county. With the growth of the county, it now takes several magistrates and Judges to handle the county's numerous traffic infractions. Judge Clark later went on to serve in the South County Courthouse where he and Judge Howard Harrison were the "kings of South County" for many years.

Judge Clark explained that the County Court is known as the "people's court" because most of the people that appear before him are not represented by an attorney. When people appear in county court, it is generally their first visit to a courtroom and they are usually scared and anxious. As such, Judge Clark finds that common courtesy and a touch of humor from the judge goes a long way. Judge Clark has always been a "people person" and he enjoys doing the right thing. And if he can accomplish that by 5 pm, it is icing on the cake. Little did Judge Clark know that the customer service training that he received as a ticket agent for American Airlines would come to serve him so.

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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.



Modular Homes and the Personal Property Exemption

By: *Marc P. Barmat*

In previous editions of the Palm Beach County Bar Association Bulletin, I have written about the July 1, 2007, amendment to Florida Statute § 222.25 which increased a debtor's personal property exemption from \$1,000 to \$4,000 under certain circumstances. Specifically, Florida Statute §222.25(4) now states the following property is exempt:

A debtor's interest in personal property, not to exceed \$4,000.00, if the Debtor does not claim or receive the benefits of a homestead exemption under s. 4, Art. X of the State Constitution. This exemption does not apply to a debt owed for child support or spousal support.

Since the amendment to Florida Statute § 222.25(4), there have been over a dozen opinions interpreting various aspects of the personal property exemption. Recently, however, two opinions were issued that address the application of the amended personal property exemption to modular homes. *See, In re Heckman*, 2008 WL 4636185 (Bankr. N.D. Fla) and *In re Lisowski*, 2008 WL 4602314 (Bankr. M.D. Fla.).

Modular or mobile homes are afforded homestead exemption protection pursuant to Florida Statute §222.05. Florida Statute §222.05 states:

Any person owning and occupying any dwelling house, including a mobile home used as a residence, or modular home, on land not his or her own which he or she may lawfully possess, by lease or otherwise, and claiming such house, mobile home, or modular home as his or her homestead, shall be entitled to the exemption of such house, mobile home, or modular home from levy and sale as aforesaid.

In *Heckman* and *Lisowski*, the dispute arose over whether claiming a homestead exemption under Florida Statute § 222.05 is effectively the same thing as claiming a constitutional homestead exemption. In both cases the Debtors asserted that they were entitled to the expanded personal property exemption provided under § 222.25(4), because they did not "claim or receive the benefits of a homestead exemption under s. 4, Art. X" of Florida's Constitution. The Debtors asserted that § 222.05 "acts as its own source of protection for a debtor's home," similar to other exemption provisions contained in Chapter 222 of the Florida Statutes.

In both cases the bankruptcy courts concluded that Fla. Stat. § 222.05 is not an extension of Article X, section 4 of the Florida Constitution and therefore, when Debtors claim their home to be exempt under Fla. Stat. § 222.05, it is not the equivalent of claiming a constitutional homestead. Both courts also found that Article X., section 4 benefits apply only to landowners and that since the Debtors do not own the land on which the mobile homes were located, the Debtors did not benefit from the constitutional homestead. As such, in both cases the Debtors were allowed to claim as exempt personal property up to \$4,000 under the exemption provided under Fla. Stat. § 222.25(4).

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

Curtain Call ... The Bar's Got Talent!

Ok, we know you are out there! What's your hidden talent? We are looking for members that are singers, comedians, musicians, dancers or have any other talent. The Palm Beach County Bar will be hosting its inaugural variety show in the fall of 2009 and we are looking for talent! We would also be interested in displaying paintings, photography or sculptures from our members. Several Bar Associations around the country have successfully hosted talent shows, so we thought we'd give it a try. In one county they had an attorney who performed as a concert pianist for the U.S. Supreme Court; another who was a played piano at Magic Johnson's wedding and another who was a theatrical performer in Paris. So, what's YOUR talent? Please send an email to event chair Michelle Suskauer at suskauerlaw@aol.com to let her know of your special talent or if you are willing to assist in this event.

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Dr. Jonathan D. Rapp
Licensed Psychologist, PY7348

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Florida Bar Board of Governors Report

At its October 3, 2008 meeting in Boston, The Florida Bar Board of Governors:

- Heard on first reading a recommendation from the Rules Committee to create a new category in the disciplinary rules of permanent retirement without the possibility for reinstatement. It would apply to veteran Bar members who have their first – and minor – disciplinary problem at the end of their careers.
- Heard on first reading a recommendation from the Disciplinary Procedure Committee to amend Bar rules to allow emergency suspensions for incapacity not related to misconduct.
- Heard a discussion from DPC Chair Murray Silverstein on educating Bar members about a recent Florida Supreme Court ruling on liens against client funds held in trust accounts. Silverstein said the ruling requires lawyers to stop payment on a check that has been issued to clients if a garnishment is received before the check clears. The DPC decided that current Bar rules do not need to be changed to comply with that ruling, but the committee is concerned that Bar members aren't familiar with the decision.
- Heard a report from Florida Bar Foundation President-elect Adele Stone that more lawyers are needed for Florida Lawyers Saving Homes, which seeks to help homeowners having trouble paying their mortgages before foreclosure proceedings start. Stone said since the program opened in June, the Bar has received more than 10,000 calls plus more than another 1,000 applications made online. Around 670 lawyers have volunteered to represent homeowners. Of the calls and applications, so far

1,125 have been determined to meet the criteria of the program and around 600 have been referred to participating lawyers. But that means more than 500 cases are waiting for assignment, showing the need for more volunteers, she said. Bar members can volunteer and get more information about the program and education programs to help them with cases by going to www.floridaprobono.org.

- Heard that the Young Lawyers Division, at the request of FEMA, has activated its disaster hotline to assist people with legal problems resulting from Tropical Storm Fay. YLD President Jewel White Cole also said the program needs volunteer attorneys, especially those with experience in landlord-tenant matters, construction law, and fraud. Lawyers can get more information about the volunteer program by going to the division's website at www.flayld.org, and clicking on the link on the upper right hand side of the site, "Legal Help Needed for Florida Hurricane Victims." The toll free number for residents is (866) 550-2929.
- Heard Executive Director John F. Harkness report that the Bar is working on hiring a company to do a survey in connection with a request by the Supreme Court in its 2007 decision on new advertising rules that the Bar further look into lawyer advertising and marketing matters.

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

Discounted Movie Tickets Make Great Stocking Stuffers or Teacher Gifts

The PBCBA has discount movie tickets available for its members. Remember, these tickets make great gifts for family, babysitters, staff or clients. Savings are available for the following theaters:

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WPB: Office space available in civil litigation law firm. One or two large private window offices, with or without secretarial space. Reception area, conference room, kitchen and parking. Shuttle service to airport and other amenities available. For more information call (561) 687-8037 or email lawfirm89@yahoo.com.

EXECUTIVE SUITES/OFFICE

SPACE: WPB, Forum area, east of I-95, single offices available with or without secretarial area. Larger space could be available. Office set up with conference rooms, library, parking, full kitchen and reception area. Available immediately, no lease required. For more info call (561) 389-3468.

GREAT OFFICE SPACE: West Palm downtown, walk less than a block to the courthouse, some free parking, conference room, internet, copier available, furniture available (turn key operation), filing cabinets, secretarial area if needed, available immediately. Reasonable and negotiable. (561) 832-5999.

OFFICE SPACE AVAILABLE: 1803 Australian Ave. South in WPB. Close to courthouse. Amenities include receptionist, internet access, conference room and others. Please contact Steve at (561) 683-4075.

Bulletin Board

OFFICE SPACE: 250-2,700sf office space available. Beautiful ocean views or 1st floor space. Walk to courthouse. Elect/Janit included! Flexible lease terms & rates!! Mention this ad for free applic fee! Call Aimee (561) 655-1521 or amiller@davidassociates.com.

DELRAY/BOYNTON: Share space in recently renovated offices. Includes space for 1 assistant. Amenities include reception area, conference room, file room and kitchen. \$1,100 per month. Call Eric Luckman's office at (561) 737-3133 for more information or email EL@LuckmanLaw.com.

HEARSAY



Adam T. Rabin of McCabe Rabin, P.A. has been appointed to the Board of Directors for the Palm Beach County Film & Television Commission.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Larry B. Alexander, David E. Bowers, Margaret L. Cooper, H. Michael Easley, Scott G. Hawkins, Peter A. Sachs, Sidney A. Stubbs, John S. Trimper** and **H. Adams Weaver** have been named in Best Lawyers in America 2009.

Ronald L. Bornstein has joined Hodgson Russ LLP in the firm's Family & Marital Practice Group in the Boca Raton office.



Michael A. Weeks and **Nadine Castillo Macon** announce the formation of a new law firm Weeks & Macon, LLP. The firm is located in the historic Wagg Building at 215 S. Olive Ave. in downtown WPB.



The law firm of Ruden McClosky is pleased to announce that Partners **Marvin S. Rosen** and **E. Lee Worsham** were recently selected by their peers for inclusion in Best Lawyers in America 2009.

MISCELLANEOUS

JUPITER BEACH TOWNHOUSE FOR RENT: 2 bedroom/2.5 bath, immaculate, remodeled in "Key West" style, premium appliances, accordion hurricane shutters, community pool/tennis, walk to ocean/shops/dog beach/dog park. \$1,300 month, F/L/S. Available January 1, 2009, non-smokers only. Contact (561) 267-2626 or jcroghan@adelphia.net. Just move in and enjoy!

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CALENDAR

December 2008

Tuesday, December 2,
11:45am – 1:00pm
Judicial Luncheon
Main Courthouse, North end of
cafeteria

Wednesday, December 3,
12:00Noon
NCS Board Meeting

Wednesday, December 3,
6:00pm
**South County Bar Assn.
Holiday Party**
Ruth's Chris, Boca Raton
Contact Stephanie Ginsburg at
(561) 482-3838

Thursday, December 4,
11:45 – 1:00 p.m.
**Membership Luncheon with
Guest Speaker Frank
Cerabino**
Crowne Plaza Hotel,
West Palm Beach

Friday, December 5,
9:00am-10:00am
**Real Estate CLE Committee
Meeting**
Bar Association Office

Friday, December 5,
11:00am-2:00pm
Legal Aid Bookfest
Barnes & Noble @ City Place

Tuesday, December 9, 12Noon
**Unified Family Practice
Committee Meeting**

Tuesday, December 9, 12Noon
**YLS Executive Committee
Meeting**
Bar Association Office

Wednesday, December 10,
11:30am
**SOLO Luncheon:
"How to Survive in Hard
Economic Times"**
Bar Association Office

Wednesday, December 10,
7:00pm
Small Claims/Mediation Clinic
Hagan Ranch Library,
Delray Beach

Wednesday, December 10,
5:30pm 0 8:00pm
**PBCBA Holiday Party &
Charity Auction**
Frenchman's Reserve, Palm
Beach Gardens

Thursday, December 11,
12Noon
**Professionalism
Committee Meeting**
Bar Association Office

Friday, December 12,
8:25am – 1:20pm
Elder Law CLE Seminar
Bar Association Office

Monday, December 15, 5:00pm
**PBCBA Board of Directors
Meeting**

Thursday, December 18
TFB Video Replay Seminar,
"Basic Appellate Practice"
Bar Association Office

Thursday, December 18,
12 noon-1pm
**FAWL Holiday Party for
PACE School for Girls**

Friday, December 19, 8:30am
ADR Committee Meeting
Bar Association Office

December 24, 25 and 26
Christmas Holiday
Bar Office Closed

December 31, January 1 and 2
New Year's Holiday
Bar Office Closed



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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