



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

February 2008

## Contributions sought for 2008 Law Week Judicial Reception

The Law Week Committee is beginning its efforts to request contributions from law firms to underwrite the cost of the annual judicial reception honoring the local judiciary to be held on April 29, 2008. Sponsors will be recognized on the invitation, in the Bar Bulletin and on a sign at the reception.

Those interested in making contributions should send a check no later than March 1 to the Palm Beach County Bar Association, ATT: Patience Burns, 1601 Belvedere Road, Ste. 302E, WPB, FL 33406. Sponsorships have been set as follows: \$225 for firms with 1-2 attorneys; \$350 for firms with 3-10 attorneys; and \$550 for firms with 11 or more attorneys.

## Mark your calendar for upcoming Membership Meetings

### Membership Luncheon

**Guest Speaker: FL Attorney General Bill McCollum**

February 27, 2008, 11:45 – 1:00 p.m.

Marriott at City Place, West Palm Beach

### Joint Luncheon with

**South County Bar Association**

Guest Speaker: FL Bar President Frank Angones

Wednesday, March 5, 2008, 12 noon

Delray Beach Golf Club

### Trial Superstars Seminar:

**Trying the Catastrophic Injury Case**

March 7, 8 am - 5 pm (see insert inside this issue)

Speakers to include Ted Leopold, John H. Richards, Ted Babbitt, Spencer Silverglate, Ervin Gonzalez, David Knight, Joe Reiter, Roy Watson, Chris Searcy and Eric Peterson

### Leadership Seminar

April 25, 8:30 - 1:00

Speakers to include Former ABA President Dennis Archer, FL Supreme Court Justice Raoul Cantero; FL Bar President-elect Jay White; and Nora Bergman, Atticus Practice Advisor

### Annual Law Week Judicial Reception

Thursday, April 29, 2008 5:30 p.m.

The Harriett at City Place

### Annual Installation Banquet

Saturday, June 7, 2008, 7 p.m.

The Breakers Hotel, Palm Beach



## FL Attorney General to Speak February 27

Bill McCollum, the 36th Attorney General of Florida, will be the Association's guest speaker on Wednesday, February 27. This meeting will take place from 11:45 - 1:00 at the Marriott West Palm Beach. Since taking office, McCollum has positioned Florida as a national leader in the fight against child pornography and internet child predators. At his request, the Florida Legislature provided the resources to greatly expand the Attorney General's Child Predator CyberCrime Unit and passed laws giving law enforcement new tools and greater punishments for those who prey on children over the internet. Additionally, his office has prepared a cybersafety program to present in all of Florida's middle schools and high schools.

His other priorities include developing a statewide strategy to address gangs, violent crime and drugs; consumer protection; combating Medicaid fraud; improving the state's security against terrorist threats, and fighting crimes against the elderly, especially identity theft.

Bill McCollum is a native Floridian, born in Brooksville. He earned his bachelor's and law degrees from the University of Florida. After graduating from law school, he served on active duty in the U.S. Navy from 1969-1972. In 1992, he retired from the Naval Reserve as a Commander, having served 23 years as an officer in the Judge Advocate General's Corps (JAG).

From 1981 to 2001, he served as a U.S. Representative. He founded the U.S. House Task force on Terrorism and Unconventional Warfare and was recognized as an expert on terrorism. He also served on the Judiciary Committee, where he chaired the Subcommittee on Crime, as well as the Intelligence and Banking committees. Upon retiring from the House of Representatives in 2001, he was a partner with Baker and Hostetler, LLP, until he was elected as the Attorney General. He has been married to Ingrid Seebomh McCollum for 36 years. They have three sons, a daughter-in-law and two grandsons.

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THE  
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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:  
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**North County hosts Annual  
BBQ & Casino Night**

Join the North County Section for its Annual BBQ & Casino Night at the Bonnette Hunt Club in Palm Beach Gardens on Thursday, February 7 from 5:30 p.m. to 8:30 p.m.

Come play blackjack, roulette and craps, plus enjoy an all you can eat BBQ buffet. Drinks, live music and prizes will also be included in your membership price of just \$40. (non-section members and spouses are welcome to attend for \$50. Judges are complimentary)

Please let us know you will be attending by registering on line at [www.palmbeachbar.org](http://www.palmbeachbar.org).

Sponsors for the evening include LexisNexis, Mellon Bank, MetLife, Rock Legal Services & Investigations, Stuart R. Manoff & Associates, The Huntington Private Financial Group and Visual Evidence.

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## President's Message



### "Be the Best You Can Be... All Obstacles Can Be Overcome"

By Meenu Sasser, President

On December 12, 2007, the Bar Association, in conjunction with the Forum Club of Palm Beach, hosted United States Supreme Court Justice Clarence Thomas.

While some may disagree with Justice Thomas' opinions or his rulings in certain cases, the message that Justice Thomas delivered during the luncheon is universal. He spoke of growing up poor in Southern Georgia, watching the cars that traveled from far flung places down to Florida, and believing in a better opportunity. Through hard work and determination, Justice Thomas successfully overcame a less than auspicious beginning. He impressed upon everyone in the audience that day that obstacles can be overcome through hard work and determination. His message was "though it may start off bad, it doesn't have to end that way."

In all of our lives, we may each have our very own obstacles and struggles. These obstacles may be in our personal life, professional life, or both. Through hard work and perseverance, and determination and support of others, we can work to overcome these obstacles. As we begin 2008, we should all be reminded that obstacles can be overcome. No matter the challenge, someone else has faced it.

*"Obstacles are those frightful things we see when we take our eyes off our goal."* — Henry Ford

## Board of Directors

### Meeting Attendance

	July Retreat	Aug	Sept	Oct	Nov	Dec
Bowden	X	Phone-in		X	X	X
Doner	McCabe	X	X	X	X	X
Farach	X	X	X	Phone-in	X	X
Guari	X	X	X	X	X	X
Howe	X	X	X	X	Phone-in	X
Napoleone	X	X	X	Phone-in	X	X
Poulton	X	X		X	X	X
Rabin	X	X	X	X	X	X
Sasser	X	X	X	X	X	X
Schuler	X	X	X	X	X	X
Suskauer	X	X	X	X	X	X

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## 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.

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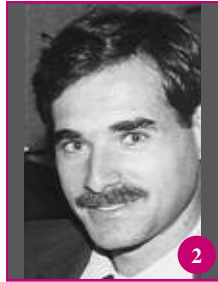
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## Who are they?

In continuing with a project started by the Historical Committee, we will continue to run old photos of some of our members. Can you guess who they are?

Do you have old pictures of yourself or your associate? If so, send them to Patience Burns at the Bar office for use in future issues.

Answers on page 12



## Minutes of the 179th Regular Meeting of the Junior Bar Section of the Palm Beach County Bar Association January 7, 1966

Fifty members and guests were present. President Lewis presided and recognized the presence of Judges White, Smith, Hewitt and MacMillan, and ex-regent Marshall Criser. The minutes of the previous meeting were read.

Larry Cooper introduced Lt. Dan O'Connell and Bob Levy introduced Bruce Daniels and his brother, Irwin Levy.

Larry Klein reported on the activities of the mock trial committee for John Dell and stated that outstanding trial counsel would present a mock trial the following Friday.

President Lewis announced that the local JayCees had requested our nominations for man of the year. He suggested that Harry A. Johnston II be named as handball player of the year.

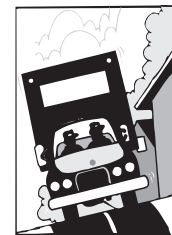
It was brought to the president's attention that he had failed to recognize Judge Downey, whereupon the Judge inquired "what's wrong with me?" In the interest of time, the president declined to answer the question.

Jon Moyle, chair of the Legal Finance Committee, was called upon for a report. After a few words, it became evident that he had not done anything.

Vice president Campbell introduced the speaker, Senior Circuit Judge Joseph S. White. Judge White announced that he would not run for re-election, as Judge MacMillan beamed confidently.

As there being no further business, the meeting was adjourned.

Respectfully submitted,  
/s/ Raymond W. Royce, Secretary



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## Judicial Profile: Judge Frank Castor

By Sherri L. Renner

“As a judge, it is important to treat the people who come before you with respect.” Judge Frank Castor’s greatest strength as a judge is to do just that. As a judge in the County Civil Division, he interacts with pro se litigants as well as attorneys, and understands the importance of listening to their concerns and issues.

Judge Castor graduated from Wake Forest University in 1992, with a major in political science. After working for a year for an insurance agency in Daytona Beach, he went on to attend law school at the Shepard Broad Law Center at Nova Southeastern University in Davie.

Upon graduating from Nova law in 1996, Judge Castor went to work for the State Attorney’s Office in Palm Beach County, where he worked until his election to the bench in 2006. As is typical with the State Attorney’s Office, Judge Castor worked in several different divisions. He most enjoyed the last division in which he worked, Economic Crimes and Crimes Against the Elderly, eventually becoming Deputy Chief of that division. He especially enjoyed working with elderly people, and assisting them through the criminal justice system. Judge Castor believes that working with the elderly population, as well as handling a variety of economic fraud cases, proved to be excellent preparation for his judgeship.

Judge Castor has come from solid legal stock. He counts seven family members who work as attorneys, and his father, Don Castor, worked as a county court judge in Hillsborough County (Tampa) for twenty years. Judge Frank Castor has enjoyed hearing compliments about his father from attorneys who practice statewide, even though his father retired from the bench eleven years ago.

Public service runs in the family. Judge Castor’s grandfather, after whom he is named, traveled the state of Florida as a narcotics officer in the 1950s making drug busts, and later became chief of the State Bureau of Narcotics. His mother has held many high profile public service positions, and currently is the executive director of the Patel Center for Global Solutions at the University of South Florida.

But Judge Castor is most proud of the work of his wife, Rita, who has dedicated her career to helping the developmentally disabled. Rita Castor currently is the District Behavior Analyst at the Florida Department of Developmental Disabilities. Judge Castor and his wife met in Daytona Beach in 1992, and married while he was in law school in 1995. They have two daughters, Kerry (age 10) and Katie (age 6). Much of their life outside of work revolves around their daughters and their activities.

Judge Castor and his family escape every summer to Blowing Rock, North Carolina. They enjoy hiking in the mountains, and vacationing at the beach. Judge Castor admitted that he and his family have visited Disney World more times that normal people should.

In adjudicating the cases that come before him, Judge Castor naturally draws on his years of public service. To many people (including some lawyers), disputes involving small sums of money or spats with one’s landlord do not warrant the same measure of dignity and attention as other types of cases. However, Judge Castor knows that the cases that may seem insignificant to the casual observer are anything but insignificant to the people who come before him. He not only treats litigants with respect, but understands that each case is a “big” case to those involved.

How do his litigants regard him? Judge Castor recently presided over a lawsuit brought by a retired gentleman against his homeowners’ association. The dispute involved damage to his golf cart. In describing the subject golf cart to Judge Castor, the gentleman explained, “You know, it was the kind that Jackie Gleason used to ride around in.” This gentleman clearly had so much respect for Judge Castor, that he ascribed to him wisdom far beyond the judge’s years.

Prior to running for a county court judgeship, Judge Castor did his homework. He spoke with several county judges about their experiences, all of whom wholeheartedly recommended the vocation. He also recalled how much his father enjoyed his job being a judge, including his father’s common refrain, “Let me tell you about an interesting case I had today ...” Judge Castor has no regrets about seeking a judgeship. He appreciates the law, and the variety of people and cases that come before him.

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## When Does Frye Apply?

by Ted Babbitt

Frye v. United States, 293 F. 1013 (D.C. Cir. 1923) and its progeny Daubert v. Merrell Dow Pharms., 509 U.S. 579, 587 (1993), General Electric Co. v. Joiner, 522 U.S. 136 (1997) and Kumho Tire Co. v. Carmichael, 526 U.S. 137 (1999) have resulted in more pretrial hearings than virtually any other line of cases. Florida adopted Frye, supra, in Bundy v. State, 471 So. 2d 9, 18 (Fla. 1985), and Stokes v. State, 548 So. 2d 188, 195 (Fla. 1989). It has not adopted Daubert or the cases which follow it. There is a continuing argument among scholars as to whether Frye or Daubert is stricter in the test to be applied as to the admissibility of expert testimony. The recent Florida Supreme Court case of Marsh v. Valyou, 32 Fla. L. Weekly S750 (Fla. Nov. 21, 2007) clarifies when and how Frye should apply.

Ms. Marsh filed a lawsuit against four defendants as a result of four separate automobile accidents in which she claimed injuries. The basis for her claim was that the multiple traumas that she received caused fibromyalgia and myofascial pain syndrome. One of the defendants set a Frye hearing and the trial court excluded the testimony of the plaintiff's expert witnesses. The Fifth District affirmed in Marsh v. Valyou, 917 So. 2d 313 (Fla. 5th DCA 2005).

In an almost identical case, the Second District in State Farm Mutual Automobile Insurance Co. v. Johnson, 880 So. 2d 721 (Fla. 2d DCA 2004) allowed expert testimony causally linking trauma to fibromyalgia. Conflict was certified and the Supreme Court used the opportunity to clarify its holdings with respect to the Frye test. The Court concluded that Frye did not apply and, even if it did, plaintiff's proffered expert testimony was sufficient to permit the admissibility of the testimony under Frye.

At a Frye hearing, the party seeking admissibility of the testimony bears the burden of establishing by a preponderance of evidence that the scientific principles and methodology utilized by the expert have been generally accepted. Castillo v. E.I. Du Pont De

Nemours & Co., Inc., 854 So. 2d 1264, 1268 (Fla. 2003). In Marsh, at Page 751, the Supreme Court makes it clear that the first test to determine whether Frye applies at all is whether the expert's testimony is based upon "new or novel scientific techniques." If it is not, there is no necessity for testing the expert's testimony against the Frye doctrine. Since medical causation is at the heart of almost all issues on which Frye is attempted to be imposed, it is the rare case where Frye applies at all. At Page 751, the Florida Supreme Court holds:

"We review Frye issues de novo, with general acceptance considered as of the time of the appeal. *Id.* 'By definition, the Frye standard only applies when an expert attempts to render an opinion that is based upon new or novel scientific techniques.' U.S. Sugar Corp. v. Henson, 823 So. 2d 104, 109 (Fla. 2002) (emphasis added). Therefore, we have recognized that Frye is inapplicable in the 'vast majority' of cases. *Id.*; see also Rickgauer v. Sarkar, 804 So. 2d 502, 504 (Fla. 5th DCA 2001) ('Most expert testimony is not subject to the Frye test.')

\* \* \*

See, e.g. Cordoba v. Rodriguez, 939 So. 2d 319, 322 (Fla. 4th DCA 2005) ('Medical expert testimony concerning the causation of a medical condition will be considered pure opinion testimony and admissible when it is based solely on the expert's training and experience.') Gelsthorpe v. Weinstein, 897 So. 2d 504, 510 (Fla. 2d DCA 2005) ('[M]edical expert testimony concerning the causation of a medical condition will be considered pure opinion testimony – and thus not subject to Frye analysis – when it is based solely on the expert's training and experience.');

Fla. Power & Light Co. v. Tursi, 729 So. 2d 995, 996 (Fla. 4th DCA 1999).

\* \* \*

See Gelsthorpe, 897 So. 2d at 511 (recognizing that 'a typical opinion on medical causation' should not be treated as a 'new principle, subject to Frye analysis, simply because some other experts disagree with it and because the challenged expert does not rely on any specific authority to support his particular opinion')."

The Florida Supreme Court has admonished trial courts and district courts that pure opinion testimony does not justify utilizing Frye at all but the trial courts of Florida seemingly just don't get it. At Page 751, the Court holds:

"It is well-established that Frye is inapplicable to 'pure opinion' testimony:

[P]ure opinion testimony, such as an expert's opinion that a defendant is incompetent, does not have to meet Frye, because this type of testimony is based on the expert's personal experience and training. While cloaked with the credibility of the expert, this testimony is analyzed by the jury as it analyzes any other personal opinion or factual testimony by a witness.

Flanagan, 625 So. 2d at 828; see also Hadden, 690 So.2d at 579-80 (same); Herlihy v. State, 927 So. 2d 146, 148 (Fla. 1st DCA 2006) ('[A] diagnosis based on an expert's opinion and experience, versus a specific scientific test, would not be subject to a Frye hearing.');

Gelsthorpe, 897 So. 2d at 510-11 (finding Frye inapplicable to 'pure opinion testimony based upon clinical experience' where the 'testimony did not rely on any study, test, procedure, or methodology that constituted new or novel scientific evidence,' but instead was based on an analysis of medical records and differential diagnosis). Because testimony causally linking trauma to fibromyalgia is based on the experts' experience and training, it is 'pure opinion' admissible without having to satisfy Frye. See Johnson, 880 So. 2d 723."

Quoting from U.S. Sugar Corp. v. Henson, 787 So. 2d 3, 14 n. 10 (Fla. 1st

Continued on page 16

## Appellate Seminar

The Palm Beach, Broward and South Palm Beach County Bar Associations recently hosted its bi-annual appellate seminar in Boca Raton. Over 130 attorneys attended the seminar.



4th DCA Judge Matthew Stevenson and Arthur England



Michael Winston, 4th DCA Judge Robert Gross, John Boykin and Dean Morande



Our sincere thanks to Appellate Practice Committee co-chairs Robin Bresky and Kara Rockenbach pictured here, with Judge Elizabeth Maass and Jack Aiello for organizing a successful seminar.

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## Surcharging Exempt Assets

By Mark P. Barmat

Not all exempt assets can be kept from the hands of the chapter 7 bankruptcy trustee. Although there is no Eleventh Circuit Court of Appeals case on point, courts around the country, including a Middle District of Florida Bankruptcy Court, have considered whether a trustee should be permitted to surcharge exempt assets.

In *In re Mazon*, 368 B.R. 906 (Bankr. M.D. Fla. 2007), the debtors failed to disclose in their bankruptcy schedules non exempt assets valued at approximately \$615,000.00. Further, after filing bankruptcy, the debtors dissipated those assets, therefore keeping them out of the trustee's reach. Upon learning of the debtors' misconduct, the chapter 7 trustee filed a motion to surcharge the debtors' exempt assets, including their homestead property. The court agreed with the trustee that the debtors' failed to schedule and turnover estate assets and therefore the trustee could equitably surcharge the debtors' statutorily exempt property. The court, however, would not allow the surcharge to extend to the debtors' constitutionally protected homestead property.

The *Mazon* court did not surcharge the homestead property because none of the dissipated estate assets could be traced into the debtor's homestead. The court found that in Florida, courts must separately consider whether a trustee is entitled to surcharge a debtor's homestead exempt property, as opposed to statutorily exempt property, as a debtor's homestead exemption enjoys a special place in the hierarchy of rights given to Florida citizens. *Id.* at 911, citing *Havoco of America, Ltd. vs. Hill*, 790 So.2d 1018 (Fla. 2001). The court further pointed to the case of *In re Chauncey*, 454 F.3d 1292 (11th Cir. 2006) which reaffirmed that an equitable lien may only be imposed under Florida Law when money used to obtain an interest in the homestead property is obtained by fraud or egregious conduct.

*Id.* at 912. In *Mazon*, the debtors lawfully obtained the money and property they failed to disclose and turnover.

Other cases throughout the country have addressed the ability of a chapter 7 trustee to surcharge exempt assets. For example, in *Latman vs. Burdette*, 366 F.3d 774 (9th Cir. 2004), just days before the filing of their bankruptcy petition, the debtors sold a car and a boat for \$8,500.00. However, the debtors only scheduled cash on hand in the amount of \$1,500.00 and were unable to account for the \$7,000.00 balance. Accordingly, the trustee moved to surcharge the debtors' exempt assets. The Ninth Circuit Court of Appeals upheld the trustee's ability to equitably surcharge exempt assets because it was reasonably necessary to protect the integrity of the bankruptcy process and insured that a debtor did not exempt an amount greater than permitted by the Bankruptcy Code. *Id.* at 786. The *Latman* court stated that a surcharge of exempt assets does not hinge on a concealment of assets. It requires misconduct that would cause "fraud on the bankruptcy court and the debtor's creditors." *Id.* at 785.

In another Ninth Circuit Court of Appeals case, *Onubah v. Zamora*, 375 B.R. 549 (9th Cir. BAP 2007), the appellate court upheld the bankruptcy court's decision to allow a chapter 7 trustee to surcharge a debtor's exempt assets. In *Onubah*, the debtor did not conceal any assets. However, the debtor frustrated the trustee's attempts to administer non-exempt proceeds generated upon the sale of the debtor's residence by refusing to give up possession of the residence and by converting his case to a chapter 11, even though he had no ability to fund a plan. *Id.* The court found that the surcharge was necessary to compensate the estate for the actual damage inflicted by Onubah's misconduct. *Id.* at 556.

Other courts have held likewise. See for example, *Scrivener*

*Continued on page 19*

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## Membership Luncheon Features Justice Clarence Thomas

United States Supreme Court Justice Clarence Thomas recently spoke to members of the Palm Beach County Bar Association and the Forum Club during a joint membership luncheon at the Kravis Center in West Palm Beach. More than 700 members attended the event to hear him speak about his life which he describes as ordinary to whom extraordinary things have happened. Justice Thomas was in West Palm Beach to promote his memoir, *My Grandfather's Son*.

Justice Thomas took a break from signing 300 books to pose for a picture with our Board of Directors.



(Front row left to right) Richard Schuler, president elect; Michelle Suskauer, director; Adam Rabin, director; Supreme Court Justice Clarence Thomas, Meenu Sasser, president; Lisa Small, Florida Bar Board of Governors; and Michael Napoleone, director.  
(Back row left to right:) Bryan Poulton, director; Adam Doner, North County Section president; David Prather, Florida Bar Board of Governors; and Wade Bowden, director.



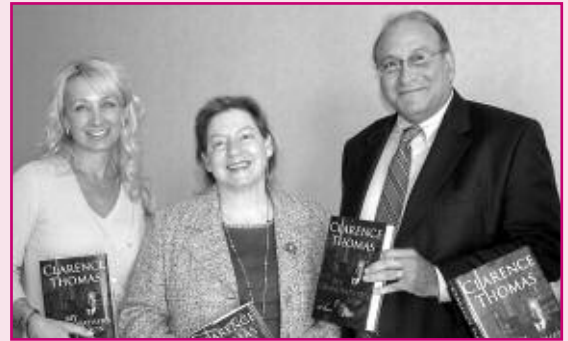
Lisa Small, Patty Leonard and JenniLynn Lawrence



Judges Laura Johnson and Ted Booras



Stan Klett gets his book signed and a handshake from the Justice



Denise Nieman, Sheryl Wood and Judge William Berger wait in line to have their books signed.



### W. JAY HUNSTON, JR. Mediator/Arbitrator

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## North County Section News

It doesn't get any better than this! The North County Section's Board of Directors recently had a luncheon at Mar-A-Lago in Palm Beach to discuss their upcoming events and celebrate the New Year. Members were guests of Adam Doner.



Pictured from left to right: Ryon McCabe, President-Elect; Ned Reagan, Preston Fields, Ron Ponzoli, Andrew Pineiro, Immediate Past President; Mitch Beers, Donna Adams, Lynne Poirier, Communications Director; Adam Doner, President; Scott Zappolo, Patience Burns, Executive Director; Ken Johnson, Stan Klett, Jerry Beer, Scott Fischer, David Spicer, Debra Jenks, Secretary; Colleen Nelson and Marina Petillo.

## Young Lawyers Provide Holiday Gifts for Foster Children

It took six full shopping carts, more than 2 hours and \$4,500.00, but members of the Young Lawyers' Section made holiday wishes come true for children in the Foster/Adoptive Parents Association.

The money was recently raised from our auction held at BallenIsles Country Club just before the holidays.



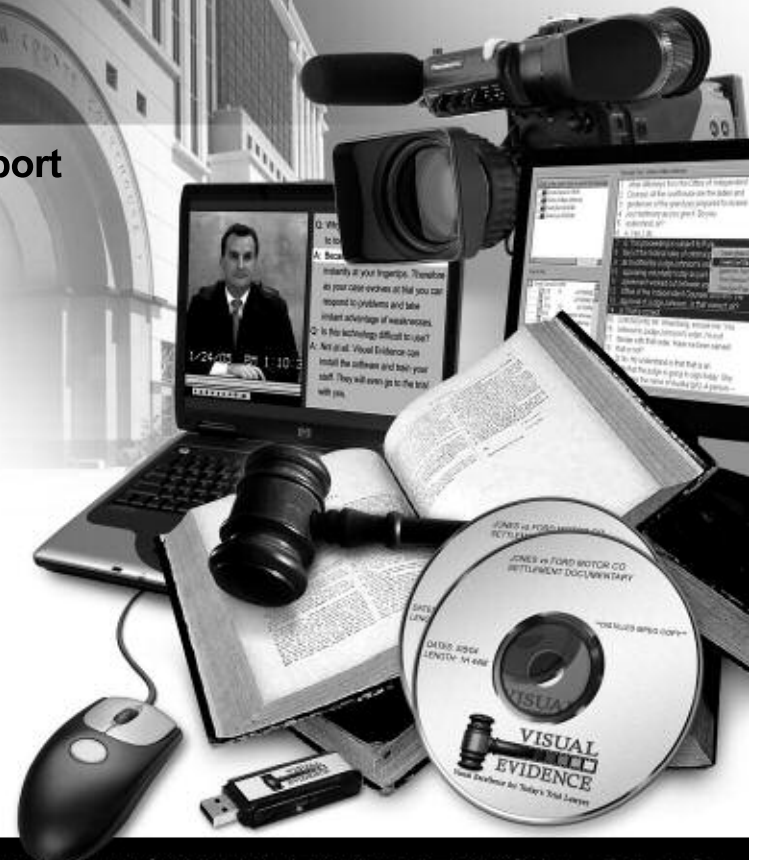
(Pictured from left to right) YLS holiday elves are Brett Barner, Tim Stevens, Lee McElroy, Jeff Pepin, Jason Guari, Young Lawyers Section President; and Alana Zorrilla-Gaston.

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## Pro Bono Corner

### Pro Bono Attorneys Who Closed Cases in December 2007

Clients met and/or served by the attorneys listed below.....60  
 Hours of pro bono services by these attorneys .....405.85  
 Their dedication to the less fortunate in our community ...PRICELESS!

Richard Abedon	Kimberly Rommel-Enright
John L. Bryan, Jr.	Jerome Rotenberg
Gregory Burdick	M. Richard Sapir
Conrad Damon	Nicole Sauvola
Frederick W. Ford	Adam Seligman
Alvin S. Goldstein	G. Mark Shalloway
Stuart M. Gottlieb	Robert Shupack
Richard Kleid	Elliot K. Sokoloff
Lawrence Moncrief	Steven Stepper
C. Annelies Mouring	Stephanie Traband
David Norris	Barry Weiss
Ron Ponzoli, Jr.	Joshua White
Jordan Rappaport	John A. Willis
Kara B. Rockenbach	

### Circuit Court Report CIVIL DIVISIONS • November 2007

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	02/08	02/08	01/08	1512
B	06/08	02/08	02/08	1284
D	03/08	03/08	01/08	1680
E	04/08	02/08	04/08	1706
F	01/08	01/08	03/08	1427
G	07/08	07/08	01/08	1128
H	08/08	08/08	01/08	1425
I	03/08	03/08	01/08	1298
J	05/08	05/08	02/08	1363
N	06/08	06/08	01/08	1625
O	05/08	05/08	02/08	1653

All Civil Division Judges schedule their own Jury and Non-Jury Trials. Pending cases as of 12/04/07.



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Who Are They?  
 From Page 4

1. Brian O'Connell
2. Alan Zangen
3. John Severson
4. Lawrence Greenberg
5. Paul Turk

## A TOAST TO JUSTICE

### Amici's Hosts Fundraiser for Supporters of Legal Aid

Over 100 lawyers and friends of the Legal Aid Society of Palm Beach County attended a celebrity bartending evening on November 27th as a kick off to Legal Aid's 20th Annual Pro Bono Recognition Event to be held on May 10, 2008. The Amici's gathering was the first in a series of celebrations planned leading up to the 20th Annual Fundraiser.

Celebrity bartenders included Town Council President and Legal Aid Volunteer, Richard Kleid, Palm Beach Attorney, Grier Pressly (who celebrated his birthday that night), Pro Bono Evening Co-Chairwomen, Michelle Suskauer and Amy Triggs and Legal Aid Executive Director, Bob Bertisch.



Pictured above are Grier Pressly and Alexandra and Gary Woodfield

### Legal Aid Society's Foster Children's Project is Honored

The Foster Children's Project of The Legal Aid Society of Palm Beach County was the recipient of an award on November 17, 2007, at Palm Beach County's National Adoption Day, in recognition of its advocacy for permanence for the dependent children of Palm Beach County.

The project, in its sixth year, is funded through the Children's Service Council of Palm Beach County, and represents children in the Fifteenth Judicial Circuit, ages zero to twelve and their siblings, who are placed in foster care. Since its inception, the project has represented more than 900 foster children who have been placed in permanent homes. Last year, almost 70 of its child/clients were adopted. More than 80 percent of them were adopted in less than a year and one-half; most in less than one year.

### Don't Miss!

Legal Aid Society of  
Palm Beach County, Inc.'s

***Gift Gathering Galas***  
**Saturday, March 1st, 2008,**  
**7 PM**

at the home of  
**Amy & Jeff Devore**  
Palm Beach Gardens

**Saturday, March 8th, 2008,**  
**7-10 PM**

at the home of  
**Denise & Dr. Samuel Isaacs**  
Boca Raton

If you haven't already received  
your invitation,  
Contact Harreen Bertisch at the  
Legal Aid Society  
**655-8944 x 257**

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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.*

**CAROLYN BELL** – New York; U.S. Berkeley, 2007; Associated with U.S. Attorney's Office in West Palm Beach

**SANJAY K. BISWAS** – Affiliate Member, England, Huddersfield; Tulane University, 1997; Associate in Devore & Devore, P.A. in Palm Beach Gardens

**ERIC W. DEMING** – Michigan; Florida State University, 2007; Associate in Roberts Reynolds Bedard and Tuzzio in West Palm Beach

**BRIAN L. FERNANDES** – Florida; Florida State University, 1999; Associated with the Office of Statewide Prosecution in West Palm Beach

**LORRI M. KENNEDY** – Albany Law School, 1984; Associate in Celeste and Associates, P.A. in West Palm Beach

**JOHN N. LAMBROS** – Michigan; Suffolk University, 2000; Partner in Brinkley Morgan in Ft. Lauderdale

**GREGG W. McCLOSKEY** – South Texas College of Law, 1982; Partner in McClosky, D'Anna & Dieterle, LLP in Boca Raton

**LAURENCE R. MILSTEIN** – New York; Hofstra Law School, 1999; Associated with Anti-Defamation League in Boca Raton

**NOELLE M. PAGE** – Florida; Stetson University College of Law, 2007; Associate in Akerman Senterfitt in West Palm Beach

**ANILA S. RASUL** – Trinidad; Nova Southeastern University; Associate in Kanner & Pinaluga, P.A. in Hollywood

**ROBIN B. ROTHMAN** – New York; St. Johns University School of Law, 1987; Partner in Powers, McNalis, Torres & Teebag in West Palm Beach

**KEVIN S. SOBEL** – Florida; University of Florida, 2007; Associate in Kanner and Pinaluga, PA in Hollywood

**TODD A. WEICHOLZ** – New York; Nova Southeastern University, 2001; Associate with Attorney General's Office of Statewide Prosecution in West Palm Beach

**VIRGINIA E. WELLS** – Florida; Florida State University, 2007; Associate in Jones, Foster, Johnston & Stubbs in West Palm Beach

# CHRISTOPHER B. HOPKINS

## Cast Your Vote in April 2008 for Palm Beach Bar Association Board of Directors

- *Florida Trend Legal Elite (2005-2007)*
- *AV-rated civil trial/appellate lawyer*
- *Long-standing member of PBCBA and frequent sponsor*
- *Seminary graduate*
- *Arbitrator / Mediator*

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# MICHELLE R. SUSKAUER

## FOR PRESIDENT-ELECT

Join us in supporting and endorsing **Michelle R. Suskauer** because she has the **Experience, Commitment, Dedication, Proven Leadership** and **Broad Based Support** to be a strong and effective leader of our Bar.



### Palm Beach County Bar Association

Member- 15 years  
Board of Directors- 4 years  
Past Chair- Bench Bar Conference  
Past Chair- Criminal Practice Committee

### Florida Association for Women Lawyers

Member- 15 years  
Past President- 2002-2003  
Created Breakfast and Books, statewide mentoring for juvenile offenders

### Legal Aid Society

Board of Directors- 2 years  
Co-Chair Pro Bono Recognition 2007  
Co-Chair Pro Bono Recognition 2008

### Florida Bar

Criminal Law Certification Committee

### American Inns of Court

Member- 12 years  
Past Chair Programming

### Media Experience

Legal Analyst- National T.V.  
Legal Analyst- WPTV Channel 5  
Legal Analyst- WJNO 1290 AM

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Laurie Adams William C. Carroll  
Miriam Acosta-Castriz (7) Arthur Cavaturo  
Linda Agnant Michael Celeste  
Jack Aiello Jonathan C. Chane  
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Endorsement list as of December 18, 2007

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**When Does Frye Apply?**

*Continued from page 7*

DCA 2000), approved 823 So. 2d 104 (Fla. 2002), the Court explained that a trial court at a *Frye* hearing needs to look only at the general acceptance of the scientific principles and methodologies which the expert relies upon in rendering the opinion. If the opinion were tested by the Court as well, the trial judge would become a finder of fact and that is the exclusive providence of the jury. Experts are not required to simply recite scientific principles from a book but are entitled to render their own opinion as to the applicability of those principles to the facts of the case. It is up to the jury to decide whether to accept that conclusion or not. At Page 752, the Supreme Court holds:

“Trial Courts must resist the temptation to usurp the jury’s role in evaluating the credibility of experts and choosing between legitimate but conflicting scientific views. *See Castillo*, 854 So. 2d at 1275 (‘[I]t is important to emphasize that the weight to be given to stated scientific theories, and the resolution of legitimate but competing scientific views, are matters appropriately entrusted to the trier of fact.’) (quoting *Berry*, 709 So. 2d at 569 N. 14); *Rodriguez v. Feinstein*, 793 So. 2d 1057, 1060 (Fla. 3d DCA 2001) (same). A challenge to the conclusions of Marsh’s experts as to causation, rather than the methods used to reach those conclusions, is a proper issue for the trier of fact. *See U.S. Sugar*, 823 So. 2d at 110; *Castillo*, 854 So. 2d at 1270, 1272, 1276; *Rodriguez*, 793 So. 2d at 1060 (recognizing that ‘to involve judges in an evaluation of the acceptability of an expert’s opinions and conclusions would convert judges into fact-finders to an extent not contemplated by Florida’s *Frye* jurisprudence.’)

*Frye* is being overused by trial courts and counsel. Since it is rare that new or novel scientific principles are applicable to most expert testimony, it is rare that *Frye* applies at all. When it does, it does not apply to the opinion of experts but rather to the underlying principles, which form those opinions. This case seeks to clarify the settled jurisprudence in that area.

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.



# MICHAEL J. NAPOLEONE

for **PRESIDENT-ELECT** of the

**PALM BEACH COUNTY BAR ASSOCIATION**

AV-RATED shareholder at **RICHMAN GREER, P.A.**



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- › Chair of the PBCBA's first Leadership Academy
- › Past Chair of the PBCBA's Committee for Diversity and Gender Sensitivity
- › Past Chair of the PBCBA's Minority Internship Initiative program  
2007 winner of the Florida Bar Young Lawyers Division Diversity Award
- › Five year member of the Florida Bar's Standing Committee on Professionalism
- › Chair of the 2008 Masters Seminar on Professionalism presented at the annual meeting of the Florida Bar
- › Five year member of the Executive Board of the PBCBA Young Lawyers' Section
- › Past Chair of the YLS Adopt-a-School Career Day, Holidays-in-January and Judicial Breakfast committees
- › Served on PBCBA's Judicial Relations, Circuit Civil Practice and Appellate Practice committee

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    - Personally responsible for raising \$25,000
- **The Florida Bar Young Lawyers Division Board of Governors**
  - Governor for 15<sup>th</sup> Judicial Circuit 2001-07
  - Currently Ex-Officio, Sergeant at Arms
- **PBC Bar Association Young Lawyers Section, Past-President**
  - Member, Executive Committee 1998-2005
  - Past-Secretary, Past-Treasurer
  - Chair: Holidays in January Belle Glade event 2001-2006
- **Up and Comer, *South Florida Legal Guide*** (listed 2006, 2007, 2008)
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## Surcharging Exempt Assets

Continued from page 9

vs. Mashburn, 370 B.R. 346 (10th Cir. BAP 2007) wherein the bankruptcy court allowed a surcharge on exempt assets based upon the debtor's failure to turnover non-exempt royalties that were property of the estate; and In re Karl, 313 B.R. 827 (Bankr. W.D. Mo. 2004) in which the bankruptcy court surcharged an exempt asset because of the debtor's failure to turn over to the estate a non-exempt truck.

In summary, honest and straightforward debtors should not fear that their exempt assets will be surcharged. However, if debtors conceal and dissipate assets or participate in misconduct which damages the estate, they are putting their exempt assets at risk as a result of the chapter 7 trustee's ability to surcharge exempt assets.

Marc Barmat is with Furr and Cohen, P.A., One Boca Place, Suite 337 West, 2255 Glades Road, Boca Raton, FL 33431; mbarmat@furrcohen.com

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**PRIORITY STAFFING SOLUTIONS, INC.** Do you need help in filling a position at your law firm? Priority Staffing has been providing qualified attorneys, paralegals, legal secretaries, filing clerks, receptionists and data entry clerks to Palm Beach County Law firms since 2000. We provide Perm/Temp & Temp/to/Perm personnel. Call Becky Miles (561) 222-7717.

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**ASSISTANT REGIONAL COUNSEL:** Attorneys needed for criminal, juvenile dependency, juvenile delinquency and mental health. Florida Bar required. Compensation based upon experience. State of Florida benefits. Send resume, cover letter, references to Philip J. Massa, Regional Counsel, Fourth Region, c/o Justice Administration Commission, P.O. Box 1654 Tallahassee, Florida 32302.

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## PROFESSIONAL ANNOUNCEMENTS:

The following announce their availability for referral, assistance and consultation.

**SCOTT SUSKAUER:** Board Certified Criminal Trial Lawyer. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; 561-687-7866 www.suskauerlaw.com.

**GREGORY TENDRICH, Esq:** Former Series 7 licensed VP & Asst. General Counsel to local & national (First Union & Wachovia) NYSE/NASD brokerage firms, and current NASD Arbitrator and Florida Supreme Court Certified County Court Mediator, is available to mediate investment-related matters, including prudent-investor and commercial disputes. Mr. Tendrich also accepts referrals and is available to co-counsel or consult in investment-related matters, SEC, NASD, NYSE and other regulatory enforcement matters. Please call 561-417-8777 or visit our website www.yourstocklawyer.com.

**MARK R. HANSON:** All admiralty and maritime matters, including personal injury actions, boating accidents, cruise line injuries and insurance claims. 240 Tenth Street, West Palm Beach, FL 33401, (561) 833-7828 Mhanson@PalmBeachInjuryLawyer.com.

**W. GREY TESH:** "Criminal Law is not Black & White, it's Grey" aaacriminaldefense.com. Over 60 jury trials. Former assistant public defender. Defended over 1,000 criminal cases, Federal and State. Past Director, Palm Beach Association Criminal Defense Lawyers. 1610 Southern Blvd. WPB, FL 33406. greytesh@aaacriminaldefense.com. (561) 686-6886.

**CHRISTOPHER HOPKINS:** Appellate counsel for appeals in state and federal courts. Mr. Hopkins focuses on state appeals, particularly personal injury and malpractice. Cole, Scott & Kissane, P.A., 1645 Palm Beach Lakes Blvd., 2nd Floor, WPB, FL 33401; Email: Hopkins@csklegal.com.

**RICHARD D. NADEL:** Bankruptcy. Twenty years experience in the Southern and Middle District. Florida Bar designated 1996. Address: 3300 P.G.A. Blvd., Suite 810, Palm Beach Gardens, FL 33410. Telephone: (561) 622-9353 Email: nadelgrp@bellsouth.net.

**MICHAEL J. MCHALE:** Board Certified Admiralty and Maritime Lawyer. All maritime and admiralty matters in State and Federal Court including personal injury, seizures of vessels, limitation of liability, purchase and sale of boats, cruise ships injuries, longshore claims and BUIs. (561) 835-3660 admarr1@earthlink.net and www.admiraltyatty.com

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**Elect Maureen Martinez-Schwab**  
*Palm Beach County Bar Association Board of Directors*

Maureen Martinez-Schwab is a partner at Romano Law Group (formerly Romano, Eriksen & Cronin), where she maintains a successful trial practice in the areas of Criminal Defense, Personal Injury and Construction Defects. She began her career as an Assistant State Attorney at the Office of the State Attorney for the 15th Judicial Circuit, Florida. She is also an invited lecturer to legal groups throughout the country.



**Maureen is actively involved in the legal community and participates in the following organizations:**

- Palm Beach County Bar Association, Young Lawyers Section 1997–Present
- Palm Beach County Bar Association, Law Week Chair, 2007 & 2008
- Palm Beach County Justice Association, Board of Directors 2004–2007
- Belli Society, Board of Directors 2005–present
- Florida Justice Association, Young Lawyers Section Board of Directors, 2005–present
- The Palm Beach County Association of Criminal Defense Lawyers
- Florida Justice Association/Research & Education Foundation, Hon. E. Earle Zehmer Law School Mock Trial Competition, Chair 2005, 2006 and 2007
- The American Association for Justice
- Craig S. Bernard American Inns of Court LIV, Secretary
- The Florida Bar, Criminal Justice and Young Lawyers Sections
- Florida Association of Criminal Defense Lawyers
- Hispanic National Bar Association, 1996-1998
- Nova Southeastern University - Shepard Broad Law Center, Student Government Association President 1996

# Bulletin Board

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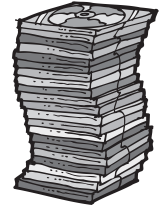
## HEARSAY

**Guy E. Quattlebaum** was recently appointed to the 2008 Board of Directors of the Palm Beach County Sports Commission.

**William T. Hennessey**, shareholder at Gunster, Yoakley & Stewart, has been elected a Fellow of the prestigious American College of Trust and Estate Counsel (ACTEC). He is one of approximately 138 lawyers in Florida and 2,700 nationwide to earn this distinction.

**Christine D. Hanley** was selected for inclusion in the 25th Anniversary edition of The Best Lawyers in America in the specialty of Labor & Employment Law.

## Need CLE Credit?



The Palm Beach County Bar Association has a large library of CD's available if you are in need of some extra CLER credit hours.

Be sure to check the Bar's website at [www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php) to download the complete list of tapes available, see the insert in this issue, or call 687-2800 to have an order form faxed to you.

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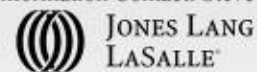


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# CALENDAR

## February 2008

Tuesday, February 5,  
12:00 Noon  
**Independence of Judiciary  
Committee Meeting**  
Bar Association Office

Tuesday, February 5,  
6:30 pm – 8:00 pm  
**Small Claims/Mediation Clinic**  
Southwest Co. Regional Library

Wednesday, February 6,  
12:00 Noon  
**NCS Board Meeting**  
Office of Michael Slavin

Wednesday, February 6,  
12:00 Noon  
**Professionalism Lunch  
Seminar – “Conflicts of  
Interest”**  
D. Culver Smith III, Esq.,  
moderator  
Bar Association Office

Thursday, February 7, 5:30 pm  
**NCS BBQ & Casino Night**  
Bonnette Hunt Club, PBG

Friday, February 8, 8:30 am  
**ADR Committee Meeting**  
Bar Association Office

Monday, February 11,  
8:00 am – 5:00 pm  
**ADR Committee CLE Seminar**  
Bar Association Office

Tuesday, February 12,  
12:00 Noon  
**YLS Board Meeting**  
Bar Association Office

Wednesday, February 13,  
8:15 am – 4:30 pm  
**Florida Bar Video  
Replay Seminar  
“Basic Criminal Law 2008”**  
Bar Association Office

Thursday, February 14,  
11:30 am – 1:00 pm  
**Judicial Lunch: Topic  
“Good Courtroom Practice”  
Featuring Judges Jeffrey Winikoff,  
Jonathan Gerber, Edward Fine  
and Robin Rosenberg.**  
Judicial Dining Room,  
Main Courthouse

Monday, February 18  
**Court Holiday -  
President’s Day**  
Bar Office Closed

Tuesday, February 19,  
12:00 Noon  
**Historical Committee Meeting**  
Bar Association Office

Wednesday, February 20,  
5:30 p.m.  
**YLS Happy Hour**  
Jumby Bay, Abacoa in Jupiter

Thursday, February 21,  
12:00 Noon  
**Membership  
Committee Meeting**  
Bar Association Office

Thursday, February 21, 6:00 pm  
**PBJA Reception at Testa’s**  
Contact Kathy Baloga at  
(561) 471-2807

Tuesday, February 26, 5:00 pm  
**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, February 27,  
8:30 am – 4:00 pm  
**Florida Bar Video  
Replay Seminar  
“Trust & Estate Symposium”**  
Bar Association Office

Friday, February 27, 12:00  
**Membership Luncheon  
with speaker Attorney General  
Bill McCollum**  
Marriott Hotel,  
West Palm Beach

Thursday, February 28, 5:00 pm  
**PBCBA Board Meeting**  
Bar Association Office

Friday, February 29,  
8:00 am – 4:00 pm  
**Family Law CLE Seminar  
“The Pitfalls of  
Equitable Distribution”**  
Bar Association Office



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