



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

February 2009

## Florida Bar President Jay White to Address the Bar on March 3



Our very own Jay White of West Palm Beach, The Florida Bar's 61st president, will address the 6th annual joint luncheon of the Palm Beach and South Palm Beach County Bar Associations on March 3. The meeting will be held from 11:45 - 1:00 p.m. at the Marriott Boca Raton. Cost to attend the luncheon is \$35 for members of either organization if registered before February 24, after that date, the cost will be \$45; judges complimentary. Registration is available online at [www.palmbeachbar.org/register.php](http://www.palmbeachbar.org/register.php).

John G. "Jay" White, III, is a shareholder, director and partner at Richman Greer, P.A. His practice is primarily devoted to commercial and complex business litigation, personal injury, wrongful death, professional malpractice litigation, class actions and officer and director representation.

He earned both his bachelor and juris doctor degrees from the University of Florida and was admitted to The Florida Bar in 1984.

Jay served in every elected position of the Palm Beach County Bar Association, including the presidency of both the Association and the Young Lawyers Section.

As a member of The Florida Bar Board of Governors since 2000, White has served on the Executive, Budget, Program Evaluation, Strategic Planning and Access to the Legal System committees. He served as chair of the Investment Committee and of the Member Outreach Committee and as vice chair of the Disciplinary Procedure Committee and the Special Committee on Judicial Independence. He also served as co-chair of the Disciplinary Review Committee and as liaison to both the Judicial Nominating Procedures Committee and the Judicial Administration Selection and Tenure Committee. He has been a member of the Judicial Qualifications Screening Committee, which he chaired 2003-2006, and of the Judicial Nomination Screening Committee for the Florida Supreme Court and the Florida Board of Bar Examiners Joint Nominating Committee for Public Members.

## Mark your calendar for upcoming Membership Meetings

### 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 Harriet at City Place

### Law Day Luncheon

May 1, 2009

Location and Speaker TBA

### Leadership Seminar

May 8, 2009

### Annual Installation Banquet

June 20, 2009

The Breakers in Palm Beach

## Contributions sought for 2009 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 22, 2009. 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.

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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.



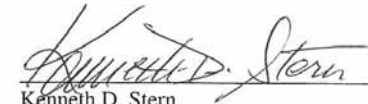
Send letters to:  
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**TO THE ATTORNEYS I HAVE BEEN PRIVILEGED  
TO HAVE APPEAR IN MY COURTROOM**

Effective Tuesday, January 20, 2009, many Judges will "rotate" into other Divisions. I will be going to the Family Division in the South County Courthouse in Delray Beach, for the final two years of my Judicial career, after which I hope to return to be reborn as a lawyer and mediator.

It has truly been a privilege to preside in Civil Division AE. Given the diversity of legal issues which are addressed in the Civil Division, I have unabashedly invoked the precept first uttered by Justice Brandeis, "[a] Judge can rarely do his job adequately unless the lawyers do their job adequately." To the many of you who have come in fully prepared and concisely addressed the key issues, my sincere gratitude. It's been stimulating and a challenge, which I've endeavored to meet capably.

Hope you've enjoyed appearing here. It's truly been a pleasure for me. I look forward to my new assignment, but will remember this one fondly, thanks to you. See you at bar functions.

  
Kenneth D. Stern  
Circuit Judge

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## Provocative Thought: Should Corporations Have The Same Rights As Citizens?

By Richard D. Schuler, President

A famous American once said:

*"I see in the near future a crisis*

*approaching that unnerves me and causes*

*me to tremble for the safety of my country... corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of people until all wealth is aggregated in a few hands and the Republic is destroyed."*

– Abraham Lincoln, 1864

Years ago, I became familiar with an organization called POCLAD. POCLAD is an acronym for "Program on Corporations, Law & Democracy". This is a small organization that invites people to engage in this thought: giant corporations actually govern this country. In the Constitution of the United States, they (corporations) are delegated no authority to make our laws and define our culture. In fact, they are not recognized at all. Corporations have no constitutions, no bills of rights. So when corporations govern, democracy flies out the door.

The quote from Lincoln seems as relevant today as it was 145 years ago – maybe more relevant.

Is there any question that Mega-corporations dominate global politics, our lives, our government, our work, our healthcare and our food supply? Media conglomerates set the limits of public discussion, commercialize our national consciousness, and manipulate mainstream public opinion to their own ends. Those of us who pick juries see the results of this manipulation every time we go to the Courthouse for voir dire. The disrespect for the Court and the judicial process didn't spring out of thin air. A

steady diet of this disrespect can be heard on major corporate "news" outlets almost every night. (Although I must admit, it is probably reinforced by some types of attorney advertising).

There is also the issue of ecology – the trendy phrase now is "global warming". POCLAD makes the argument that the earth's complex ecology is endangered by corporations since people are exhorted to consume more in the name of "growth" so big companies can get bigger. Ergo, the housing glut fostered by large real estate development corporations raping the land.

Banks that wanted to "expand" without proper limits on loans and investments, and investment corporations that redefined the term "speculation" with a secondary market for mortgage backed securities and "unregulated" insuring of securities' transactions in London and unrestricted mining and drilling all are contributing to a systemic alteration of the individuals' role (loss of power) versus the corporate role in the protection of our environment.

### Did you know that –

- Of the world's 10 largest economic entities, well over 50% are global corporations, the rest are countries.
- The richest 1% of Americans own over 40% of all U.S. assets.
- The corporate share of taxes paid has fallen from 33% in the 1940's to 15% in the 1990's. Individuals' share of taxes has risen from 44% to 73%.
- The World Trade Organization effectively grants corporations veto power over what is left of U.S. environmental and labor laws.
- Joint stock companies have been around since the 1400's, but in *Dartmouth College v. Woodward*, U.S. Supreme Court Chief Justice, Marshall declared the corporation (*Dartmouth College*) to be "an artificial being, invisible, intangible and existing only in contemplation of the law." (1819). In 1868 in *Paul v. Virginia*, 8 Wall 168, it was ruled that corporations are not citizens within the meaning of the Constitution's Article IV, Section 2; the term "citizens" as therein used applies only to natural persons, members of the body politic, owing allegiance to the state, not to artificial persons created by the legislature...

What happened, then, to elicit warnings about abuse of corporate power from persons as diverse as President Eisenhower (military industrial complex power must be guarded against) to FDR – "the liberty of a democracy is not safe if the people tolerate the growth of private power to a point where it becomes stronger than their democratic state...?"

## Board of Directors Meeting Attendance

July Aug Sept Oct Nov Dec  
Retreat

Guari	x	x	x	x	x	x
Howe	x	x	x	x		x
Martinez-Schwab	x	x	x	x	x	x
McCabe	x	x	x	x	x	x
Poulton	x	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
Weiss	x	x	x	x	Phone	Phone
Whittles	x	x	x	x	x	x

# *In Loving Memory*



## *Jordan Camino Evert McCracken*

*March 4, 1981-December 15, 2008*

*Our firm is saddened by the unexpected passing of our beloved attorney, Jordan Camino Evert McCracken. In just a short time, Jordan touched the lives of so many people. Her upbeat personality and beautiful smile could brighten any room. Jordan was an up and coming star in the legal community and will truly be missed. Our hearts go out to her family and friends during this difficult time.*

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## Intentional Tort Exception To Workers' Compensation Immunity

by Ted Babbitt

The Florida Workers' Compensation Act provides what are supposed to be immediate benefits to an injured employee in return for the employer receiving immunity from civil suit. That immunity is not without exception. Fla. Stat. §440.11 provides two exceptions to that immunity: one relating to criminal conduct and the other to conduct of an employer which has a virtual certainty of causing injury or death. In Pendergrass v. R.D. Michaels, Inc., 936 So. 2d 684 (Fla. 4th DCA 2006), the appellate court held that by the plain terms of the statute the criminal act exception did not apply to a corporate defendant. Since virtually all employers in the State of Florida are incorporated, that effectively eliminated one portion of the act in question.

The second portion of the act granting an exception to workers' compensation immunity is discussed in Cabrera v. T.J. Pavement Corp., 33 Fla. L. Weekly D2680 (Fla. 3rd DCA, Nov. 19, 2008). That appeal resulted when a summary judgment was entered against the estate of an employee who died as a result of the collapse of a trench which was eight feet deep, had vertical side walls, was dug in unstable layered soil and had a foot to a foot and a half of water accumulated in it. Experts for the plaintiff testified that under those circumstances there was approximately a 90% chance that the walls would collapse. The defendant, on the other hand, had evidence that 80% of the trenching had been done without incident, they had never had a prior incident of a trench collapse and Miami Dade inspectors were on site and never requested the trench boxes be used.

The issue before the Court was whether the evidence was sufficient to meet the test of the statute which required that the employer's conduct was "whether the employer either knew or should have known that its conduct was substantially certain to result in injury or death."

The Circuit Court relying upon Pendergrass, supra, entered a summary judgment but the Third District reversed agreeing with the Pendergrass Court that corporations cannot lose immunity based upon the criminal acts exception because the statute did not apply to corporate defendants but finding that the evidence was sufficient that the jury could conclude that the employer's conduct was substantially certain to result in injury.

Key to the Third District's finding was testimony provided by plaintiff's experts arriving at the conclusion that there was a substantial certainty under the facts of this case that injury or death would result. This testimony is contrasted to the Pendergrass facts where the expert for the plaintiff merely testified that the acts of the defendant employer were "negligent."

Subsequent to the injury and death suffered in this case,

the Florida Legislature amended Fla. Stat. §440.11 to provide "for a virtual certainty test to be applied to the intentional tort exception to workers' compensation immunity which must be established by clear and convincing evidence that 'the employer engaged in conduct that the employer knew, based on prior similar incidents or on explicit warnings specifically identifying a known danger, was virtually certain to result in injury or death to the employee.'" See Bakerman v. Bombay Co., 961 So. 2d 259 at 262 n. 3 (Fla. 2007).

The new statute has not yet been tested with respect to the objective standard that exists in determining whether the underlying facts of any particular case do or do not justify a jury determination of the employer's conduct as having a virtual certainty to cause injury or death but based upon the requirements of the Third District in Cabrera, supra, regarding expert opinion, it is entirely conceivable that the amended statute has not significantly increased the burden on the plaintiff to establish a virtual certainty exception to workers' compensation immunity.

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

##### For More Information Contact

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**Major D. Marks, CLU, ChFC**  
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# Join the Bar for our Annual Family Night Out



**Friday, March 13, 2009**

**Dinner:**

5:30 p.m.

JJ Muggs Stadium Grille  
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## When Can Trust Assets be Used to Pay Estate Expenses and Obligations

By David M. Garten, Esq.

The purpose of the article is to clarify when the expenses of the administration and obligations of the decedent's estate can be paid from the trust and the procedure for paying those expenses/obligations.

### RELEVANT STATUTES:

- Sec. 733.607(2), Fla. Stat. provides: "If, after providing for statutory entitlements and all devises other than residuary devises, the assets of the decedent's estate are insufficient to pay the expenses of the administration and obligations of the decedent's estate, the personal representative is entitled to payment from the trustee of a trust described in s. 733.707(3), in the amount the personal representative certifies in writing to be required to satisfy the insufficiency."
- Sec.733.805(4), Fla. Stat. provides: "In determining the contribution required under s.733.607(2), subsections (1)-(3) of this section and s.736.05053(2) shall be applied as if the beneficiaries of the estate and the beneficiaries of a trust described in s. 733.707(3), other than the estate or trust itself, were taking under a common instrument."
- Sec.736.05053(4), Fla. Stat. provides: "The trustee shall pay the expenses of trust administration, including compensation of trustees and attorneys of the trustees, before and in preference to the expenses of the administration and obligations of the settlor's estate."
- Sec.733.805, Fla. Stat. (estate/abatement)
- Sec.736.05053, Fla. Stat. (trust/abatement)

### DISCUSSION:

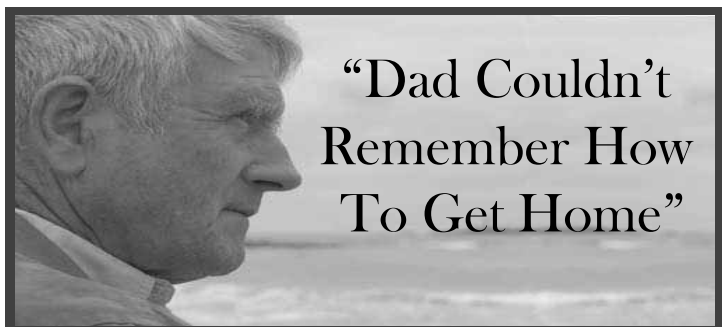
Under §733.805(4), the will and the trust are to be construed together as one plan to determine what are residuary and preresiduary devises. This statute protects preresiduary devises under both the will and the trust from being abated where there are other trust assets available to pay the expenses and obligations of the decedent's estate.

Consider the following examples: Dad provides a \$500,000 specific devise to his two children by his first marriage in his will. The second wife subsequently convinces dad to transfer his brokerage and bank accounts to his revocable trust. Pursuant to the trust, the second wife receives a specific bequest of \$500,000 and the residue is divided among three charities. At the time of death, the trust was valued at \$2,000,000 and the estate was valued at only \$10,000. The PR can certify the insufficiency to the trustee under §733.607(2) to pay the \$500,000 specific devises and the balance of the estate administration expenses from the residue of the trust.

Same example as above, except that the trust provides for \$2,000,000 in specific bequests. The PR can certify the insufficiency to the trustee under §733.607(2) to pay the estate administration expenses and a ratable share of the specific devises under the will.

## Request for Qualifications No. 2009-004 Legal Services

The City of Palm Beach Gardens invites firms to submit their qualifications for providing legal services as the City Attorney. The legal services are for general counsel, including, but not limited to, the areas of legislative local government issues, land use and zoning, code enforcement, and contract law, as well as monitoring the activities of other outside legal service providers. RFQ documents can be obtained at 10500 N. Military Trail, Palm Beach Gardens, FL, or by calling the City Clerk's Office at 561.799.4120. RFQ documents can be downloaded from the City's website at [www.pbgl.com](http://www.pbgl.com) under "Bids". The due date for submissions is 2 PM, March 13, 2009.



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## Lawyers Give the Gift of Reading

The Lawyers for Literacy committee recently donated hundreds of new books to the Wood Memorial Holiday Book Drive. The books were distributed locally to thousands of children in preschool through fifth grades through a partnership with the Palm Beach County Literacy Coalition. Many thanks to the following law firms for their support: Akerman Senterfitt; Antonia Hulme, esq.; City of Delray Beach; Cole, Scott & Kissane, P.A.; Edwards Angell Palmer & Dodge LLP; Gunster Yoakley & Stewart. Haile, Shaw & Pfaffenberger, P.A.; LaBovick & LaBovick; Pamela Guerrier; Powers, McNalis, Torres & Teebagy; Public Defender's office; South Florida Water Management District; Squire, Sanders & Dempsey, LLP, West Palm Beach Florida Attorney General's Office; The Lawyers for Literacy committee, chaired by Cindy Spall, participate in several literacy programs including the Great Grown Up Spelling Bee, Read Across Palm Beach County and Adult Literacy Day. If you'd like to get involved, call Cindy at 650-0563.



Front row left to right: Terrill Pyburn, Sheryl Wood, Pamela Guerrier, Cindy Spall and her daughter Brittany.

Back row: Susan Ruby, Georgina Jimenez-Orosa, Andrea Zigelsky, Melynda Melear, Tiffany Spall (Cindy's daughter) Toni Hume, Phil DiComo and Mark Greenberg

## Thomas Charitable Trust Awards Legal Aid \$20,000 to Protect Non-Citizen Victims of Domestic Violence



The William and Helen Thomas Charitable Foundation recently awarded Legal Aid's Non-Citizen Victims of Domestic Violence Project \$20,000 to provide services to immigrant victims of abuse in order to protect their physical safety and help them obtain appropriate legal status in the United States.

Legal Aid's Executive Director, Bob Bertisch explained "Abusers of undocumented immigrant women control and isolate their victim through intimidation, destruction of their identification cards or passports, withholding financial support, keeping them from their children and threatening to have them deported. Unfortunately many of these victims believe they have no legal recourse in the United States to protect themselves from abuse and possible deportation. Legal Aid protects these victims by obtaining an immediate restraining order against the perpetrator and by filing the necessary documents with the INS to help them achieve appropriate legal status in the United States.

Legal Aid greatly appreciates the support of the William and Helen Thomas Charitable Trust in helping us to protect these vulnerable members in our community.

*Pictured above are Robert Bertisch and Marilyn Moore Co-Trustee of the William and Helen Thomas Charitable Trust.*

## Circuit Court Report CIVIL DIVISIONS • November 2008

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	03/09	03/09	2/09	1458
B	05/09	05/09	02/09	1422
D	03/09	03/09	02/09	1692
E	04/09	03/09	04/09	1690
F	03/09	03/09	03/09	1487
G	05/09	05/09	03/09	1328
H	08/09	08/09	01/09	1534
I	04/09	02/09	01/09	1090
J	04/09	04/09	01/09	1520
N	05/09	05/09	02/09	1768
O	03/09	03/09	02/09	1577

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 12/2/08.

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## News from the North County Section

### Board seats open for North County Board of Directors

Elections for the North County Section's Board of Directors will take place next month. Petitions will be available beginning March 2 for four (4) director positions (for a two year term), plus president-elect.

The Board meets once a month from noon to 1:00 p.m. to plan various networking events for its 650 members.

To apply for a position, you must submit a completed nomination form to the Bar Office no later than 5:00 p.m. on Friday, March 27. If there is a contested election, voting will take place on line in April and the winners will be announced on line in the beginning of May.

The current Board includes President, Ryon McCabe; President-Elect, Debra Jenks; Secretary, Ron Ponzoli; and Immediate Past President Adam Doner.

Directors are Greg Yaffa, Marina Petillo, Jerry Beer, Scott Smith, Ken Johnson, Larry Buck, Preston Fields and Ned Reagan.



### North County to host Annual BBQ & Casino Night

Whether you gamble or simply enjoy a homemade dinner, join the North County Section for its annual BBQ & Casino event. This year's party will take place on Thursday, February 19 at the Bonnette Hunt Club in Palm Beach Gardens from 5:30 to 8:00.

The evening includes blackjack, roulette and craps tables, plus drinks, live music and prizes.

Please register on line for this event at [www.palmbeachbar.org](http://www.palmbeachbar.org).

Sponsors include Grand Bank & Trust of Florida; LexisNexis; Mellon; MetLife; Slawson Cunningham Whalen & Gaspari PL and Visual Evidence.

*(\*tables are for entertainment purposes only)*

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#### PBCBA Lawyer Referral Service

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Paula

#### Tickets at Work

Theme Park, Broadway/Las Vegas  
Shows & Other Entertainment Discounts  
(800) 331-6483  
[www.ticketsatwork.com](http://www.ticketsatwork.com)

In Memoriam

Jordan Camino Evert McCracken

1981 - 2008

## 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.*

**RAYANNE L. BABICH** – New York; Nova Southeastern University, 2008; Jupiter

**FRANK J. BLOTNEY, JR.** – Connecticut; University of Miami School of Law, 1987; Partner in Bull & Blotney, LLP, West Palm Beach

**GENNY A. CASTELLANOS** – Nova Southeastern University, 2008; Fourth District Court of Appeal, West Palm Beach

**APRIL L. CASTURO** – New York; University of Miami, 2008; The Law Offices of Vastola, Schultz, Harvey & Crane, North Palm Beach

**J. LEONARD FLEET** – University of Florida, 1960; Sole Practitioner, Vero Beach

**LINDSEY FRANCO** - Law Student Member; University of Florida, 2008, Boynton Beach

**DANIEL J. GLASSMAN** - University of Florida, 2007; Associated with Gunster Yoakley, West Palm Beach

**SCOTT R. HAFT** – Florida; Nova Southeastern University, 2008; Associate in Watterson & Zappolo, P.A., Palm Beach Gardens

**BAILIE L. HEIKKINEN** – Florida; South Texas College of Law, 2008; Associated with Coughlin Stoia, Boca Raton

**TERRENCE R. HOLIHEN** – Rhode Island; Syracuse University, 1997; Associated with Kitson & Partners, Palm Beach Gardens

**C. LAURA HOLLYWOOD** – Paralegal Member; McLaughlin & Stern, LLP, West Palm Beach

**ABIGAIL F. JORANDBY** – Florida; University of Florida, 2001; Associated with The Keane Law Firm, Chartered, Stuart

**LAUREN E. JORGENSEN** – Florida; Cornell University, 1987; Associated with U.S. Attorney's Office, West Palm Beach

**MEGHAN U. LEHNER** – New York; Indiana University, 2008; Associate in Buckingham Doolittle & Burroughs, West Palm Beach

**KATHRYN N. LEWIS** – New York; Stetson University College of Law, 2008; Associate with Gunster Yoakley, West Palm Beach

**BRIAN R. LINK** – Indiana; Florida International University, 2006; Brian R. Link, P.A., Delray Beach

**KELLY L. OWEN** – Florida; Barry University School of Law, 2008; Associate in Bobo, Ciotoli, Bocchino, Newman, Corsini, White & Buigas, P.A., North Palm Beach

**ROBERT C. SHERES** – Nova Southeastern University, 2008; Fourth District Court of Appeal, West Palm Beach

**MARINA TEPLITSKY** – University of Miami, 2008; Sole Practitioner in Delray Beach

**DONALD H. TILLER, III** – Ohio; University of Florida, 2007; Sole Practitioner in West Palm Beach

**AMY C. WHITE** – Paralegal Member; Rutherford Mulhall, P.A., West Palm Beach



## YLS provides party for foster care children

Members of the Palm Beach County Bar Association's Young Lawyers Section hosted a holiday party for children in foster care. The evening included gifts and dinner for close to 75. (Pictured from left to right): Noelle Page, Carolina Sznajderman, Rebecca Frieden, Melissa Devlin, Genny Castellanos, Monica Pigna, Alana Zorilla-Gaston, Lindsay Demmery, Liz Batres, Julia Ledis, Bill Lazarchick, Tim Stevens, Grey Tesh, Jennifer Kypreos, John Whittles, Theo Kypreos and Lily Chang.

Entertainment was also provided by Grey Tesh and John Whittles





# Top 7 Most Common Client Grievances and How to Avoid Them

*Presented by the North County Section*

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Friday, April 17, 2009

11:30 to 1:00 p.m.

Abacoa Golf Club

11:30: Lunch

11:45 to 1:00: Speaker

Alan A. Pascal

Florida Bar Counsel, Legal Division-Lawyer Regulation

Overview of The Florida Bar Disciplinary Procedures from initial  
Complaint thru Appellate Review

Top 7 Ethical Rules Violations and How to Avoid Them

Other Relevant Ethical Rules

Attorney Services provided by The Florida Bar to Assist  
members in their practice

Question and Answers

Cost: \$30.00 for NCS members who register before 4/15/09; \$35.00 for  
non-section members. After this date, the cost will be \$35.00 for NCS  
members and \$40.00 for non-section members.

RSVP: On line @ [www.palmbeachbar.org](http://www.palmbeachbar.org) (or) fill out the form below &  
mail it along with payment to the Palm Beach County Bar,  
1601 Belvedere Road, Suite 302 E, WPB 33406.

**This course is expected to receive 1.5 CLER credit from The Florida Bar.**

Name: \_\_\_\_\_ Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Amount enclosed: \_\_\_\_\_ Ck / AmEx / MC / Visa

Card Number \_\_\_\_\_ ex date: \_\_\_\_\_

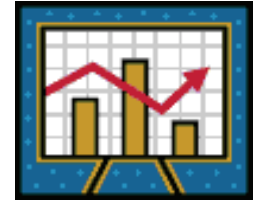


The Palm Beach County Bar Association's Family Law CLE Committee Presents:

# Practicing Divorce Law in Challenging Economic Times (An Interdisciplinary Approach to the Practice of Family Law)

Friday, February 27, 2009 8:50 a.m. – 4:45 p.m.  
Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL

**SPONSORED BY: Mellon Bank**



## Program Schedule

- 8:20am - 8:50am **Late Registration and Check in**
- 8:50am - 9:00am **Welcome & Opening Remarks** - *Matthew Jay Lane, Esq.,  
Matthew Lane & Associates, P.A., Committee Chair*
- 9:00am - 10:00am **Taxation Issues Facing the Domestic Relations Practitioner** -  
*Barry Mukamal, CPA, Rachlin LLP*
- 10:00am - 10:45am **Bankruptcy Cases and Statutes Affecting Divorce Litigation** -  
*Steven H. Friedman, Former Judge, United States Bankruptcy Court for the  
Southern District of Florida*
- 10:45am - 11:00am **BREAK**
- 11:00am - 11:45am **Real Estate Challenges and Solutions in Tough Economic Times** -  
*Steven L. Daniels, Esq., Arnstein & Lehr, and Deloris Moore, AmTrust Bank*
- 11:45am - 1:00pm **Lunch**
- 1:00pm - 1:45pm **Enforcement of Attorney's Fee Awards** –*Robert Shalhoub, Esq.,  
Board Certified Marital & Family Law, Robert M.W. Shalhoub, P.A.*
- 1:45pm - 2:45pm **Imputation of Income** - *Robert Galt, Vocational Expert, Carrier's Career Service, Inc.,  
and Kevin Lee McNamara, Esq., McNamara & McNamara, P.A.*
- 2:45pm - 3:00pm **BREAK**
- 3:00pm - 4:00pm **Strategies & Methods to Collect Equitable Distribution Awards** -  
*Erskine C. Rogers, III, Board Certified Marital & Family Law, Rutherford Mulhall, P.A.  
and John Michael Koenig, Jr., Adorno & Yoss, P.A.*
- 4:00pm - 4:45pm **Annual View from the Bench-** *Judges and Magistrates from the Fifteenth Judicial Circuit,  
Palm Beach County, FL*

**This course has been granted 7.0 CLER / 5.5 Marital & Family Law Certification credits from The Florida Bar.**

**The cost of the seminar is \$185 (includes lunch) for PBCBA members/paralegals;**

**\$225 for non-PBCBA members/paralegals if registered by 2/20/09; add \$25 to registration fee after that date.**

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>	<b>MAIL</b> the completed form w/check	<b>FAX</b> the completed form to 561/687-9007	<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (2/27/09 Family) Cost is the same as listed above.  
**Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800**



The Palm Beach County Bar Association's Labor and Employment Law Committee Presents:

# "Martinis and Migraines"

Changes, Trends, & Ethical Considerations in Employment Law

Friday, March 20, 2009 - 1:30pm—5:00pm

Bar Association office- 1601 Belvedere Rd., Suite 302 East West Palm Beach, FL



## Program Schedule

1:00 - 1:30pm - **Late registration check-in**

1:30 - 1:35pm - **Welcome & Opening Remarks** - *Cathleen A. Scott, Esq., Employment Law CLE Committee Chairperson, Cathleen Scott, P.A.*

1:35 - 2:20pm - **Florida Minimum Wage Act** an overview of the Florida Minimum Wage, exemptions and jurisdiction - *Paul Sopp, Esq., Law Office of Paul Sopp, P.A.*

2:20 - 3:10pm - **Americans with Disabilities Act.** A comprehensive review of legislative changes and case law update - *Daniel Levine, Esq., Shapiro Blasi Wasserman & Gora, P.A.*

3:10 - 3:20pm - **BREAK**

3:20 - 4:10pm - **Florida and 11<sup>th</sup> Circuit Case Law Update** - *Denise Bleau, Esq., Buckingham Doolittle & Burroughs, LLP*

4:10 - 5:00pm - **Listen and Learn . . . Judicial Round Table Discussion on Ethics:** *Honorable Judge Edward A. Garrison, Honorable Judge Daniel T. K. Hurley and Honorable Judge Robin L. Rosenberg*

5:00 p.m. **Happy Hour With the Judiciary** . Share a Martini with colleagues and the judges compliments of *Buckingham Doolittle & Burroughs, LLP*

**Sponsored By:**



*[Please drink responsibly]*

This course has been approved for **4.0 CLER including 1.0 Ethics / 1.0 Labor & Employment Certification credits** from The Florida Bar. Seminar cost is \$115 for PBCBA members/paralegals; \$155 for non-PBCBA members/paralegals if registered by 3/13/09; add \$25 after that date. If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>		<b>MAIL</b> the completed form w/check		<b>FAX</b> the completed form to 561/687-9007		<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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Amount to Charge: \$ \_\_\_\_\_ Signature: \_\_\_\_\_

\_\_\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (3/20/09 Employ) Cost is the same as listed above.

**Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406 Telephone: (561) 687-2800**



The Palm Beach County Bar Association's Elder Law Affairs Committee presents:

# "The 9th Annual View From The Bench"

Tuesday, March 24, 2009 6:00pm - 8:30pm  
The Colony Hotel, Palm Beach, 155 Hammon Avenue

## Program Schedule

6:00pm - 6:30pm Registration and Cash Bar

6:30pm - 8:30pm Dinner and Presentation:

- *Honorable Jack H. Cook*
- *Honorable Richard L. Oftedal*
- *Honorable John L. Phillips*



This course has been granted **2.5 CLER hours / 2.0 Elder Law Certification credits** from The Florida Bar. The cost of the seminar is \$55 for PBCBA members/paralegals; \$95 for non-PBCBA members/paralegals if registered by 3/17/09; add \$25 to registration fee after that date.

### Sponsored by:

*MetLife - Bob Greenberg, CLTC and Major Marks, CLU, ChFC*  
*Jo Ann Abrams, Attorney at Law*



*Probate & Investment Litigation*



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\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>		MAIL the completed form w/check		FAX the completed form to 561/687-9007		ON-LINE at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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***If you have an issue or question you would like the judges to address state here:***

\_\_\_\_\_

***Please select one:***

***Macadamia Crusted Snapper*** \_\_\_\_\_ ***Chicken Marsala*** \_\_\_\_\_ ***Wild Mushroom Ravioli*** \_\_\_\_\_

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\_\_\_ I will not be able to attend the seminar but would like to order the CD Rom. (cost same as listed above/please allow two weeks for delivery) (Elder Law 3/24/09)



The Palm Beach County Bar Association's  
Commercial and Business Litigation CLE Committee Presents:



**"Don't Worry, Be Happy: Down-Cycle Issues"**

**Friday, March 13, 2009 8:00 a.m. – 1:00 p.m.**

**Bar Association Offices 1601 Belvedere Road, #302E, WPB, FL**

**Program Schedule**

- 8:00 a.m. - 8:20 a.m. **Late Registration/Check In**
- 8:20 a.m. - 8:30 a.m. **Welcome & Opening Remarks** - *William J. Berger, Esq., Committee Chair, Rothstein Rosenfeldt Adler, Boca Raton & West Palm Beach*
- 8:30 a.m. - 9:00 a.m. **Condominium Sales Contract Litigation** - *Kenneth N. Johnson, Esq., Rutherford Mulhall, P.A., Palm Beach Gardens*
- 9:00 a.m. - 9:30 a.m. **What's In A Name - Litigating Against Business Entities** - *Scott W. Zappolo, Esq., Watterson & Zappolo, Palm Beach Gardens*
- 9:30 a.m. - 10:00 a.m. **Attorney Malpractice Cases & Ethics Issues** - *Warren R. Trazenfeld, Esq., Miami*
- 10:00 a.m. - 10:15 a.m. **BREAK**
- 10:15 a.m. - 10:45 a.m. **Accountant Malpractice Cases & Ethics Issues** - *Richard Pollack, C.P.A., Berkowitz Dick Pollack & Brant, Miami*
- 10:45 a.m. - 11:15 a.m. **Receiverships** - *Daniel J. Stermer, Esq., Lewis B. Freeman & Partners, Inc., Ft. Lauderdale*
- 11:15 a.m. - 11:45 a.m. **What To Do When The Feds Call & Ethics Issues** - *Marc Nurik, Esq., Rothstein Rosenfeldt Adler, Ft. Lauderdale*
- 11:45 a.m. - 12:00 p.m. **Lunch Buffet**
- 12:00 p.m. - 1:00 p.m. **Lunch With The Judiciary: Open Panel Discussion - Ethics Issues:**  
*Honorable Judges, Jack S. Cox, Donald W. Hafele, Glenn D. Kelley, 15th Judicial Circuit*

**SPONSORED BY:**



This course is expected to receive **5.0 CLER including 3.0 Ethics credits / Civil Trial & Bus. Litigation Certification credit is pending from The Florida Bar**. The cost of the seminar is **\$150 (includes lunch)** for PBCBA members/paralegals; **\$190** for non-PBCBA members/paralegals if registered by **3/6/09**; add \$25 to registration fee after that date.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>	<b>MAIL</b> the completed form w/check	<b>FAX</b> the completed form to 561/687-9007	<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (3/13/09 Com/Bus Lit.) Cost is the same as listed above.



The Palm Beach County Bar Association's  
Commercial and Business Litigation CLE Committee Presents:



**“Effective Settlement Strategies”**

**Friday, February 20, 2009 8:00 a.m. – 1:00 p.m.**

Bar Association Offices, 1601 Belvedere Road, #302E, WPB, FL

**Program Schedule**

- 8:00 a.m. - 8:20 a.m. **Late Registration/Check In**
- 8:20 a.m. - 8:30 a.m. **Welcome & Opening Remarks** - *William J. Berger, Esq., Committee Chair, Rothstein Rosenfeldt Adler*
- 8:30 a.m. - 9:10 a.m. **Bringing Home the Bacon: Effective Mediation Strategies** - *Mark Buckstein, Chairman, Professional Dispute Resolutions, Inc.*
- 9:10 a.m. - 9:50 a.m. **Up in Smoke: Undoing Mediated Settlements and Ethical Considerations** - *Jeffrey S. Grubman, Esq., Jeffrey S. Grubman, P.A.*
- 9:50 a.m. - 10:00 a.m. **Break**
- 10:00 a.m. - 10:40 a.m. **Making Offers of Judgment Stick** - *Irwin R. Gilbert, Esq., Gilbert, Eavenson & Kairalla PI*
- 10:40 a.m. - 11:20 a.m. **Getting and Avoiding Attorneys Fees and Ethical Considerations** - *Edward F. McHale, Esq., McHale & Slavin, P.A.*
- 11:20 a.m. - 12:00 p.m. **Where's the Beef: Effective Damages Presentations** - *Michael Kridel, C.P.A., Partner, Daszkal Bolton LLP*
- 12:00 p.m. - 12:15 p.m. **Lunch Buffet**
- 12:15 p.m. - 1:00 p.m. **Lunch with the Judiciary: Open Panel Discussion—Settling Cases and Ethical Considerations** - *Honorable Judges Thomas H. Barkdull, III, Edward H. Fine, David E. French, Edward A. Garrison, Timothy P. McCarthy and Robin L. Rosenberg*

**SPONSORED BY:**



This course has been granted **5.0 CLER including 2.5 Ethics credits / 4.0 Civil Trial Certification credits from The Florida Bar**. The cost of the seminar is **\$150** (includes lunch) for PBCBA members/paralegals; **\$190** for non-PBCBA members/paralegals, if registered by 2/13/09; add \$25 after that date.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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**IN NEED OF CLER CREDIT? WE CAN HELP!**  
 THIS IS A PARTIAL LISTING OF AVAILABLE CD'S. VISIT THE BAR'S WEBSITE FOR COMPLETE LIST

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audiotapes recorded at previously held live seminars of the Association. We also have copies of audiotapes of live seminars from the Orange County Bar Association (OCBA), Clearwater Bar Association (CBA), and the Dade County Bar Association (DCBA – **cassettes only from DCBA**). Members and non-members alike can benefit from this simple way of acquiring CLE and Ethics hours. To order, place an "x" next to the tapes you would like to order, complete this form and return to the Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406 or **fax to 561/687-9007**. **PLEASE WATCH EXPIRATION DATES**, we attempt to remove expired tapes but due to the distribution of this list occasionally courses will appear even though they have expired. **12.17.08.**

✓	Sponsor	Course Title	Credit General	Ethics Hours	PBCBA Member	Non Member	Expires
	PBCBA	Professional & Personal Development (YLS)	5.0	2.0	\$120	\$160	4/26/09
	PBCBA	Business of Law Meets Practice of Law (SOLO)	1.0		\$20	\$60	5/7/09
	PBCBA	Inside The Appellate Court (CD)+++	5.0	1.0	\$110	\$150	6/6/09
	PBCBA	"10 <sup>th</sup> Annual Elder Law Update" +++ (CD)	5.5	2.5	\$135	\$175	6/7/09
	PBCBA	Tips for Trial Practice In Criminal Court(Jud'l Lunch) +++(1.0 Crim Appellate/1.0 Crim Trial Cert credit (CD)	1.0		\$20	\$60	6/13/09
	PBCBA	The Business of Employ Law(CD)+++3.5 Labor Employ)	4.5	1.0	\$115	\$155	7/11/09
	PBCBA	Winter '08 R/E "Keeping Up in a Down Mkt"+++3.5 R/E Cert. Credits)	3.5	3.5	\$105	\$145	7/25/09
	PBCBA	How Not To Defend Condo Constr. Lit.+++3.5 R/E Cert. Credits)	8.0	1.5	\$175	\$215	8/1/09
	PBCBA	Conflicts of Interest (CD) (Prof Committee)	1.5	1.5	\$45	\$85	8/6/09
	PBCBA	ADR in 2008 (CD)	8.0	3.0	\$190	\$230	8/11/09
	CBA	2008 Probate Update+++3.5 Elder Law/3.5 Wills Trusts Estates Cert. Credits) (CD)	4.5	1.0	\$100	\$140	8/21/09
	PBCBA	Pitfalls Equitable Distribution +++ (CD) (6.0 Marital/Fam Law Cert. Credits)	8.0	2.5	\$180	\$220	8/29/09
	PBCBA	CD - Trial Superstars: Trying the Catastrophic Injury Case+++ 5.5 Civil Trial Cert. Credits	7.0		\$175	\$215	9/7/2009
	PBCBA	DVD - Trial Superstars: Trying the Catastrophic Injury Case +++ 5.5 Civil Trial Cert. Credits	7.0		\$175	\$215	9/7/2009
	CBA	Disaster Preparedness and Recovery for Lawyers & Law Offices (CD)	1.0	.5	\$30	\$75	10/22/09
	PBCBA	Art of Leadership (CD)	4.0	1.0	\$90	\$130	10/25/09
	PBCBA	25 <sup>th</sup> Annual Estate/Probate Seminar (CD) +++ 2.0 Civil/ 5.5 Wills, Trusts & Estates / .5 Real Est Cert.	7.5	1.5	\$165	\$205	11/14/09
	OCBA	DVD Criminal Law Seminar+++3.5 Criminal Appellate Cert/ 3.5 Criminal Trial Cert.	4.5	1.5	\$110	\$150	11/29/09
	PBCBA	19 <sup>th</sup> Annual Community Assn. Law Seminar(CD)+++3.5 R/E Cert.	3.5	3.5	\$105	\$145	12/06/09
	PBCBA	Food For Thought :Digesting Current Market Conditions (CD)+++2.5 R/E Cert.	3.5	3.5	\$105	\$145	12/13/09
	CBA	Prudent Practitioner(CD)+++ 1.0 Wills, Trusts, Estates	1.0	1.0	\$40	\$80	4/16/10
	PBCBA	What Every Non-Bankruptcy Lawyer Needs to Know About Bankruptcy Law(CD) +++5.0 Marital/Family; R/E Cert Credits	6.5		\$160	\$200	4/24/10

+++Indicates Certification credits available. Please contact the Palm Beach County Bar Association for more detailed information.  
 Please call Eva Gray at (561) 687-2800 with any questions or for additional information.

**PLEASE ALLOW SEVEN (7) BUSINESS DAYS PREPARATION TIME WHEN ORDERING TAPES. THERE WILL BE A \$25 FEE FOR RUSH ORDERS. NEW MEMBERS MAY JOIN THE PALM BEACH COUNTY BAR ASSOCIATION FOR \$100. APPLICATIONS FOR MEMBERSHIP CAN BE OBTAINED ON OUR WEBSITE AT [www.palmbeachbar.org](http://www.palmbeachbar.org) . RENEWAL OF DUES FOR PREVIOUS MEMBERS IS \$125.**

**ORDER INFORMATION: Orders can be faxed to (561) 687-9007**

Name: \_\_\_\_\_ Firm Name: \_\_\_\_\_  
 Street Address (no P.O.Boxes): \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  PBCBA Member  Non-PBCBA Member  
 Telephone: \_\_\_\_\_ Email Address: \_\_\_\_\_

Please call when order is ready to be picked up  Please mail (add \$10.00 for shipping and handling) (**payment must be received before items will be mailed**)  Add \$25 for rush fee (order processed w/in 3 business days)

**PAYMENT INFORMATION:**

Tape Order Subtotal: \$ \_\_\_\_\_ Payment Enclosed: Check # \_\_\_\_\_ Amount: \$ \_\_\_\_\_  
 Shipping/Handling: + \$10.00 Please bill my credit card:  MC  VISA  AMEX Amount: \$ \_\_\_\_\_  
 Rush Fee: + \$25.00 Credit Card #: \_\_\_\_\_  
 Total Due: \$ \_\_\_\_\_ Signature: \_\_\_\_\_  
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The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:

**"Planes, Trains, Trucks and Boats"**

**Trial Superstars on Navigating and Steering Complex Transportation Injury Cases**

Friday, March 27, 2009 8:00 a.m. – 5:00 p.m.

Crowne Plaza West Hotel, 1601 Belvedere Road, WPB, FL

**This Program is open to all Attorneys and Paralegals, Plaintiff and Defense**

**Program Schedule**

8:00 a.m. – 8:20 a.m.	<b>Late Registration/Check In</b>
8:20 a.m. – 8:30 a.m.	<b>Welcome &amp; Opening Remarks</b> - <i>Scott Smith, Esq., Law Office of Scott B. Smith, PL Committee Chair</i>
8:30 a.m. – 10:10 a.m.	<b>Aviation Injury Cases</b> <i>Plaintiff: Robert E. Banker, Esq, Banker Lopez Gassler, P.A.</i> <i>Defendant: Brian D. Hill, Esq., Hill &amp; Ponton, P.A.</i>
10:10 a.m. - 10:20 a.m.	<b>BREAK</b>
10:20 a.m. - 12:10 p.m.	<b>Train Accident Injury Cases</b> <i>Plaintiff: Christian D. Searcy, Esq., Board Certified Civil Trial Law, Searcy Denney Scarola Barnhart &amp; Shipley</i> <i>Defendant: James R. Holland, Esq., Wettermark Holland &amp; Keith</i>
12:10 p.m. - 1:30 p.m.	<b>LUNCH (with presentation by Wolf Technical - Accident Reconstruction 101)</b>
1:30 p.m. - 3:10 p.m.	<b>Commercial Motor Vehicle (Truck) Accidents</b> <i>Plaintiff: Ervin A. Gonzalez, Esq., Colson Hicks Eidson</i> <i>Defendant: David Knight, Esq., Kubicki Draper</i>
3:10 p.m. - 3:20 p.m.	<b>BREAK</b>
3:20 p.m. - 5:00 p.m.	<b>Admiralty/Maritime (Boating) Injury Cases</b> <i>Plaintiff: Ira Leesfield, Esq., Leesfield Leighton &amp; Partners P.A.</i> <i>Defendant: TBA</i>
5:00 p.m. - 5:05 p.m.	<b>Closing Remarks/Adjournment</b>

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This course is expected to receive **8.0 CLER / Civil Trial Certification credits are pending** from The Florida Bar.  
The cost of the seminar (including lunch) is **\$200** for PBCBA members/paralegals;  
**\$240** for non-PBCBA members/paralegals if registered by 3/20/09; add \$25 to registration fee after that date.

If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

\_\_\_ Please check here if you have a disability that may require special attention or services. To ensure availability of appropriate accommodations, attach a general description of your needs. We will contact you for further coordination.

<b>HOW TO REGISTER</b>		<b>MAIL</b> the completed form w/check		<b>FAX</b> the completed form to 561/687-9007		<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 4 weeks for delivery) (3/27/098 PI Wrongful Death) Cost is the same as listed above. Cost is the same as listed above.

At its December 12, 2008, meeting in Orlando, The Florida Bar Board of Governors:

- Approved 13 legislative positions for the 2008-10 biennium. Legislation Committee Chair Greg Coleman said all were renewals of positions the board had approved for the 2006-08 legislative sessions. The positions include maintaining the Supreme Court's authority over the court system and the legal profession, supporting adequate funding for the court system including public defenders and state attorneys, supporting the Supreme Court's certification of the need for new judges, supporting a substantial pay raise for federal judges, getting adequate funding for the Civil Legal Assistance Act, and opposing the indiscriminate shackling of juveniles in court proceedings.
- Heard a report from Coleman and Legislative Consultant Steve Metz on the Bar coordinating its efforts with the Supreme Court to get better funding for the court system in the state's current economic crisis. Metz noted that the court and others are looking at the more than \$300 million in fees and fines currently collected by court clerks and returned to the state's general revenue fund, of which less than \$14 million is earmarked for the courts. More of the effort will be detailed and worked out at the summit on state court funding January 16 at the Midyear Meeting in Miami.
- Heard a report from Investment Committee Chair Ian Comisky that while the stock market is down 35 to 45 percent, the Bar's investment portfolio is down only about 15 percent. He said the Investment Committee is continuing to monitor the funds. President-elect Jesse Diner added that the difficult economy and investments mean the Bar will be facing a tough time with its 2009-10 budget, but that he does not foresee an increase in Bar annual membership fees.
- Heard a report from President-elect Jesse Diner on the recent planning retreat. He said the Strategic Planning Committee reaffirmed the Bar's existing priorities, but that economic considerations were giving them a special urgency. The four top goals remain protecting the courts including

getting adequate funding, protecting the legal profession, protect access to the courts, and improving communications with Bar members and the public. On the latter, Diner said the Bar will be exploring using technology to improve communications and efficiency.

- Passed on final reading several rules, including one which allows for the emergency placing on the inactive list an attorney who has an incapacity not related to misconduct which affects that member's ability to competently practice law. The board also gave final approval to a new Standing Board Policy which provides guidelines for exempting some recipients of public reprimands from having to appear before the board under certain circumstances with the approval of the designated reviewer after discussion with staff counsel.
- Heard a report from Board Review Committee on Professional Ethics Chair David Prather that the committee

postponed action on a revision to Ethics Opinion 90-6, which addresses an attorney's duties when he or she discovers a criminal defense client is proceeding under a false name. Prather said the committee heard extensive debate on the matter at its December 11 meeting, and requested that staff draft alternatives for the BRC to consider on the revised opinion. He said the issue will come to the board at its January 30 meeting.

- Approved revisions of Supreme Court-approved residential eviction forms. The revisions reflect statutory changes and the revised forms will be filed with the Supreme Court.

*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.*

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# Holiday Party

Close to 400 members attended this year's Holiday Party and Silent Auction at Frenchman's Reserve in Palm Beach Gardens. Thanks to the Board of Directors of the North County and Young Lawyers Sections, \$11,000 was raised for charity during the auction. Kudos to the NCS auction co-chairs Ned Reagan and Greg Yaffa and to the YLS chair Alana Zorilla-Gaston.



Barry Byrd, Jennifer and Ryon McCabe and Curtis Shenkman



Bryan Poulton and Ron Ponzoli



Silent auction co-chair Ned Reagan with NCS Board member Larry Buck



Rod Steele and Joel Weissman



Alka Sharma and John Howe



Judge Richard Wennet, Jerry Beer and Judges James Martz, Amy Smith, Tim McCarthy and Ken Stern



Mitch Beers, Tana Sachs Copple, Ryan Copple, newly appointed 4th DCA Judge Cory Ciklin, Siobhan Shea and Tasha Dickinson



Elisabeth Reid, Ashley Dillman, Kathryn Lewis, Carolina Sznajderman and Genny Castellanos

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## Dismissal of Chapter 7 Bankruptcies Based Upon Totality of Circumstances

By: Marc P. Barmat

Section §707 of the bankruptcy code authorizes dismissal or conversion of a chapter 7 case under certain circumstances. Under section 707(a), dismissal is authorized only for cause, such as unreasonable delay by the debtor that is prejudicial to creditors or nonpayment of any fees or charges required under chapter 123 of title 28. Under section 707(b), the bankruptcy court is authorized to dismiss or convert a case filed by individual consumer debtors if the court finds that granting a discharge would be an abuse of chapter 7 of the bankruptcy code. Section 707(b) sets forth a complex formula to determine whether a chapter 7 case is presumed to be an abuse of the bankruptcy system and, therefore, subject to dismissal. However, even if there is no presumption of abuse, cases may still be subject to dismissal based upon one of two criteria set forth in Section 707(b)(3). This subsection allows a bankruptcy court to dismiss an individual consumer chapter 7 bankruptcy if the debtor filed the bankruptcy in bad faith or if the totality of the circumstances of the debtor's financial situation demonstrates abuse of chapter 7. This article focuses on two recent cases out of the Northern District of Ohio bankruptcy court which address dismissal of a chapter 7 bankruptcy based upon a totality of the circumstances analysis.

In In re Violanti, 2008WL5211006 (Bankr. N.D. Ohio), the court found the debtor's conduct abusive and dismissed her chapter 7 case based on the totality of circumstances of her financial condition. In Violanti, the debtor had an annual income in excess of \$100,000. Her financial difficulties were precipitated in large part by the purchase of an expensive home, less than one year prior to her bankruptcy filing, that required the commitment of more than 40% of her available net monthly income. The debtor also purchased a \$32,000 new vehicle in the

months immediately preceding the petition date. The court found that if the debtor tightened her belt, she would have had the ability to pay a significant amount of her unsecured debt out of her future income.

In In re Brennaman, 2008WL 5211019 (Bankr. N.D. Ohio), the court dismissed a chapter 7 bankruptcy based on the totality of circumstances of the debtors' financial condition. In Brennaman, the debtors' annual household income was in excess of \$125,000. The debtors' prepetition conduct included purchasing a new motor vehicle and entering into a lease for a second vehicle, at a monthly cost of \$654 and \$624.03 respectively. The court found that the debtors enjoyed significant disposable income to make payments on their debts after eliminating or reducing unnecessary or excessive expenditures.

In addition to considering a debtor's pre-bankruptcy circumstances, as the court did in In re Violanti and In re Brennaman, bankruptcy practitioners should be aware that a debtor's post petition circumstances are relevant as well. In In re Henebury, 361 B.R. 595 (Bankr. S.D. Fla. 2007) and In re Asdrubal Jose and Lourdes Josefa Parada, 07-15938-BKC-LMI, Chief Bankruptcy Judge Hyman and Bankruptcy Judge Isicoff held that a court may consider relevant post-petition events in analyzing the totality of the circumstances.

There is no bright line rule for bankruptcy practitioners to look to in determining if a potential consumer debtor's bankruptcy may be dismissed based upon the totality of the circumstances of their financial condition. However, areas of concern should include whether the consumer debtor has the ability to repay their debts out of future income and the impact of a debtor's voluntary increase in expenses when the debtor knows or should know that they are insolvent and/or are in need of bankruptcy protection.

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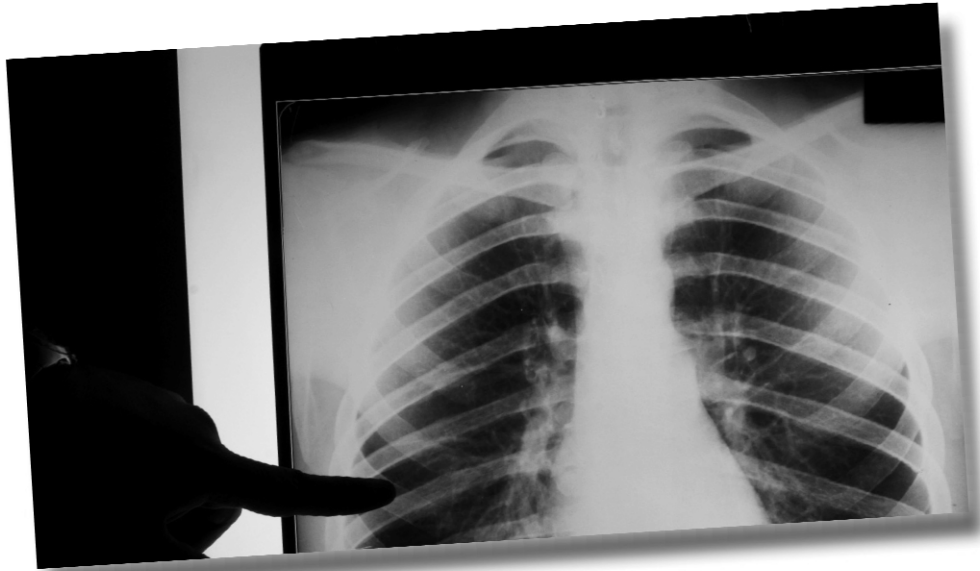


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## December Membership Luncheon Highlights



Palm Beach Post columnist Frank Cerabino (left) spoke at the December membership luncheon pictured here with PBCBA President Richard Schuler



Circuit Judge Jack Cox and South County Bar President Michael Mopsick



Eric Light, Mark Walters and Steven Heligas



JenniLynn Lawrence and Laurel Wiley donate books for the Bar's holiday book drive which will be distributed through the Lawyers for Literacy Committee.

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### HEARSAY

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The law firm of Ruden McClosky is pleased to announce that **Dori K. Stibolt** has joined the firm's Litigation Practice Group as an Associate.

**Francisco J. Gonzalez** and **Benjamin P. Shenkman** announce the formation of their new practice Gonzalez & Shenkman, P.L., with offices at 12008 South Shore Blvd., Suite 107, Wellington, FL 33414. The firm concentrates its practice in the areas of commercial and residential real estate, wills, trusts and estates, and business transactions.

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# CALENDAR

## February 2009

Tuesday, February 3,  
11:30am – 1:00pm

**Joint Luncheon with  
Forum Club of the Palm Beaches**  
**Speaker: Supreme Court Justice  
Antonin Scalia**  
The Cohen Pavilion  
at the Kravis Center

Wednesday, February 4,  
12:00pm – 1:00pm  
**NCS Board Meeting**

Thursday, February 5,  
8:40am – 4:45pm  
**The Florida Bar  
Videotaped Seminar  
“Basic Probate & Guardianship”**  
Bar Association Office

Friday, February 6,  
8:30am – 4:15pm  
**Construction Law CLE Seminar  
“The ABC’s of Florida  
Construction Law”**  
Bar Association Office

Monday, February 9,  
8:30am – 4:45pm  
**ADR Seminar  
“Mediation & Arbitration in  
2009 - Finding the Hidden  
Gems”**  
Bar Association Office

Tuesday, February 10,  
8:00am – 9:30am  
**Environmental & Land Use  
CLE Seminar**  
EcoPlex at Centrepark West,  
1641 Worthington Rd., WPB

Tuesday, February 10,  
Noon – 1:00pm  
**YLS Executive Board Meeting**  
Bar Association Office

Thursday, February 12,  
Noon – 1:00pm  
**SPBC FAWL Luncheon**  
Bogart’s Bar & Grill, Muvico  
Palace 20, Boca Raton

Friday, February 13,  
8:30am – 9:30am  
**ADR Committee Meeting**  
Bar Association Office

Monday, February 16  
**Court Holiday – President’s Day**  
Bar Office closed

Tuesday, February 17,  
Noon – 1:00pm  
**Independence of Judiciary  
Committee Meeting**  
Judicial Dining Room,  
Main Courthouse, WPB

Tuesday, February 17,  
5:30pm – 8:00pm  
**Inns of Court Meeting**  
Main Courthouse

Wednesday, February 18,  
Noon – 1:00pm  
**FAWL Luncheon**  
For info contact FAWL at  
fawl@comcast.net

Thursday, February 19,  
Noon – 1:00pm  
**Environmental & Land Use  
Committee Meeting**  
Bar Association Office

Thursday, February 19,  
5:30pm – 8:00pm  
**NCS BBQ & Casino Night**  
Bonnette Hunt Club

Friday, February 20,  
8:00am – 1:00pm  
**Commercial & Business  
Litigation Seminar**  
Bar Association Office

Friday, February 20,  
11:30am – 1:30pm  
**Cunningham Bar Association -  
8th Ann’l Wm. Holland  
Scholarship Luncheon**  
Palm Beach Convention Center

Tuesday, February 24,  
5:00pm – 6:00pm  
**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, February 25,  
Noon – 1:00pm  
**Judicial Relations  
Committee Meeting**  
Judicial Dining Room, Main  
Courthouse

Thursday, February 26,  
Noon – 1:00pm  
**Professionalism  
Committee Meeting**  
Bar Association Office

Thursday, February 26, 5:00pm  
**PBCBA Board of  
Directors Meeting**  
Bar Association Office

Friday, February 27,  
8:50am – 4:45pm  
**Family Law CLE Seminar  
“Practicing Divorce Law in  
Challenging Economic Times”**  
Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

1601 Belvedere Road, Suite 302 East, West Palm Beach, FL 33406

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