



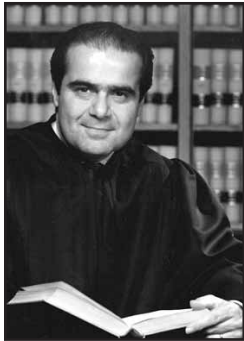
# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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

January 2009

The Board of Directors and Bar Staff wish you and your families a Happy New Year!



## February Membership Luncheon to Feature Justice Antonin Scalia

The Palm Beach County Bar Association together with the Forum Club of the Palm Beaches is pleased to announce that they will host U.S. Supreme Court Justice Antonin Scalia at a joint membership luncheon. The luncheon will be held on February 3 at the Cohen Pavilion at the Kravis Center. This luncheon is limited to members of either organization only (no guests or spouses) as we are limited to 350 tickets from each organization. Reservations can be made on the Bar's website at [www.palmbeachbar.org](http://www.palmbeachbar.org) and the deadline to register is January 28 (only prepaid reservations can be accepted for this luncheon).

Antonin Scalia was born on March 11, 1936, in Trenton, New Jersey, as the only child of Eugene and Catherine Scalia. He received his A.B. from Georgetown University and the University of Fribourg, Switzerland, and his LL.B. from Harvard Law School, and was a Sheldon Fellow of Harvard University from 1960–1961.

He was in private practice in Cleveland, Ohio from 1961–1967, a Professor of Law at the University of Virginia from 1967–1971, and a Professor of Law at the University of Chicago from 1977–1982, and a Visiting Professor of Law at Georgetown University and Stanford University. He was chairman of the American Bar Association's Section of Administrative Law, 1981–1982, and its Conference of Section Chairmen, 1982–1983. He served the federal government as General Counsel of the Office of Telecommunications Policy from 1971–1972, Chairman of the Administrative Conference of the United States from 1972–1974, and Assistant Attorney General for the Office of Legal Counsel from 1974–1977. He was appointed Judge of the United States Court of Appeals for the District of Columbia Circuit in 1982. President Reagan nominated him as an Associate Justice of the Supreme Court, and he took his seat September 26, 1986. He is married to Maureen McCarthy, and they have nine children.

## 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 Harriett at City Place

### Law Day Luncheon

May 1, 2009

Location TBA

### Annual Installation Banquet

June 20, 2008

The Breakers in Palm Beach

## Nominating petitions available for Board of Directors

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

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THE  
**BULLETIN**

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

**LETTERS TO THE EDITOR**

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



Send letters to:  
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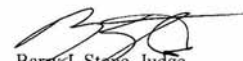
ATTENTION: Richard D. Schuler, President

Dear Mr. Schuler,

Thank you so much for the Palm Beach Bar Association reception recognizing the retiring judges of our court and your thoughtful donation to Autism Speaks.

It has been an honor to have had the opportunity to serve the Fourth District for the past twenty-two years.

Sincerely,

  
Barry J. Stone, Judge  
Fourth District Court of Appeal

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## Help Our Courts Maintain Our Freedom (It's a Small Price to Pay)

By **Richard D. Schuler, President**

Our Country's founders split our government into three parts to protect us from abuses of power. Yet our legislature (2nd branch) appropriates money to support our Courts (3rd branch).

The Executive branch appoints new judges and fills vacancies. Yet the Courts are supposed to be apolitical. The founders attempted to protect our courts from political influence so judges could protect our freedom. Courts consider the facts and the law, not politics or religion. As Alexander Hamilton said: "Laws are a dead letter without Courts to expound and define their true meaning and operations."

Presently, our Court system is under pressure as never before due to State budgetary cuts imposed by the Legislature. Is it too soon to call this a crisis? You need to be the judge of that. However, here are some facts that may be of interest:

The State of Florida's budget for fiscal year 08-09 is \$66,199,586,152. That's down from \$71 billion in 07-08.

The State Court Systems' Budget for 08-09 is \$438,269,619. That's 0.7% of the entire State budget.

The annual Trial Court Budget for Palm Beach County's 15th Judicial Circuit for 08-09 is \$21,689,144.

There are 54 Judges (35 Circuit/19 County) for a land area (Palm Beach County) of 2,500 square miles and a population of 1,300,000 – including operations at 5 Courthouses- West Palm Beach Downtown (Main Courthouse); West Palm Beach Gun Club (next to Jail); North County (PGA Boulevard); West County (Belle Glade) and South County (Delray).

Cuts already made in the State's appropriation for the Courts total \$44 million (10%) over the last two years and 280 jobs.

In addition to the above reductions, the Governor has ordered a 4% holdback of the cash release for 08-09. The Chief Justice (of Florida's Supreme Court) has ordered a similar holdback for the Judicial Branch but has reached an agreement with the Legislature to look for other alternatives to the Courts' salary budget to avoid significant additional immediate staff reductions. There are rumors of a Special Session to further cut the 08-09 Fiscal Year Budget.

To meet its mandatory budget reduction of \$766,697, the 15th Judicial Circuit was required to eliminate 16 full-time positions and return \$3,158 in operating funds this year.

Our Courts are a source of revenue to Palm Beach County and the State of Florida in many areas. In the Civil Traffic Infraction area alone in 07-08, traffic related fines and forfeitures remitted to Palm Beach County were \$7,009,964 and to the State of Florida were \$8,508,307 for a grand total of \$15,518,271 not including parking citation revenue (represents 72% of total operating budget!).

If further cuts in our Court Budgets are made, the Court System, as we know it, will cease to exist. The impact will look something like this:

Cases would have to be prioritized, with criminal cases and family cases that have mandated time frames being heard first.

Further layoffs will occur thus impairing Court operations, forcing citizens to wait substantially longer for Court action (justice delayed is justice denied).

Civil Traffic Hearing Officers will be eliminated; slowing disposition of cases (currently disposing of 12,000 of these cases per month).

With criminal and certain family cases getting priority, significant delays will be seen in many civil cases. Businesses across all sectors would be impacted.

Banks, title companies, real estate brokers and other related industries would see delays in foreclosures, guardianship cases, estate settlements, bank access to property determinations and real estate transactions.

Delays in business contract disputes.

Landlords seeking to evict tenants who don't pay their rent would have to wait longer to regain possession of their property.

Local jail overcrowding will increase. If trials cannot occur, forced release of those accused of crimes will happen.

Children will remain in foster care longer.

Don't you think it's worth getting the ear of your legislator, by telephone, email or any other route, and asking him/her to vote against any further cuts in the State Court System Budget? It's a small price to pay in time and effort to help maintain our freedom.

### Board of Directors Meeting Attendance

	July	Aug	Sept	Oct	Nov
<b>Retreat</b>					
Guari	x	x	x	x	x
Howe	x	x	x	x	
Martinez-Schwab	x	x	x	x	x
McCabe	x	x	x	x	x
Poulton	x	x	x	x	x
Rabin	x	x	x	x	x
Sasser	x	x	x	x	x
Schuler	x	x	x	x	x
Suskauer	x	x	x	x	x
Weiss	x	x	x	x	Phone
Whittles	x	x	x	x	x

Professionalism in practice begins with good mentoring. One of the core beliefs of the professionalism movement is that mentoring is a crucial part of a new lawyer's development. Without it, the lawyer cannot develop the good judgment and maturity to remain professional under difficult circumstances. Mentoring also allows a new lawyer to have a well rounded legal education, including scholarship in the law, real experience in the courtroom, and learning professionalism concepts as well as ethical rules.

The Annual Professionalism Award is an award voted on by the Palm Beach County Professionalism Committee members each year. For 2008, the firm award winner announced at the Bench Bar Conference was Gunster, Yoakley & Stewart, P.A.

Gunster Yoakley stands among the past professionalism firm/entity recipients as a beacon or representative for professionalism. The firm exemplifies standards by which other firms strive to emulate and particularly so in its mentoring program. If you search Gunster Yoakley's website, you will find that the "T" in Gunster stands for "Team Approach." The team approach is lived out in Gunster Yoakley's mentoring program where new lawyers are assigned a mentor. New lawyers are

taught that their character as lawyers is of vital importance. The practice of law is more than simply bottom line numbers or billable hours. The mentees learn that the client's position can be advocated vigorously and effectively while at the same time with the utmost courtesy, respect and dignity. Finally, mentors are encouraged to meet regularly with their mentees, at least once a week and to have lunch with a new lawyer at least once a month.

Starting out as a "small town" law firm in 1925, Gunster Yoakley quickly grew in the 1970s to a 15 lawyer firm, making it the largest firm in Palm Beach County. By the mid-80s, the firm grew to 55 lawyers. Combining with other firms in the 1990s, the firm grew to 115 lawyers throughout Florida by 1996. Today, the firm has 130 lawyers practicing in eight offices throughout Florida.

Despite the expansive growth, the West Palm Beach office of this statewide firm has remained a "small town" law firm by prioritizing mentoring. One of the firm's many website quotes sums up the source of its recognition for the mentoring program and approaching the practice of law in a "team" environment:



*The way a team plays as a whole together determines its success. You may have the greatest bunch of individual stars in the world, but if they don't play together, the club won't be worth a dime."*

– George Herman "Babe" Ruth

Accepting the award on behalf of the firm: Chairman of Gunster Yoakley & Stewart, George LeMieux; immediate past president Meenu Sasser; Professionalism Chair Michael Napoleone; Paul Turk and Don Beuttemuller.

## 2009 Court Holiday Schedule

New Years Day (observed)	.....Thursday, January 1st, 2009
Martin Luther King Jr. Birthday	..Monday, January 19th, 2009
President's Day	.....Monday, February 16th, 2009
Good Friday	.....Friday, April 10th, 2009
Memorial Day (observed)	.....Monday, May 25th, 2009
Independence Day	.....Friday, July 3rd, 2009
Labor Day	.....Monday, September 7th, 2009
Yom Kippur	.....Monday, September 28th, 2009
Veterans Day (observed)	.....Wednesday, November 11th, 2009
Thanksgiving Day	.....Thursday, November 26th, 2009
Friday after Thanksgiving Day	..Friday, November 27th, 2009
Floating Holiday	.....Thursday, December 24th, 2009
Christmas Day	.....Friday, December 25th, 2009

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Manuel Farach is proof that you can be a successful lawyer and leader without compromising professionalism. If you ask around about Manny, you will be hard pressed to find anyone with anything negative to say about him, which is a compliment in itself considering he has been a commercial litigator for over 20 years and has been involved in more adversarial proceedings than

he can genuinely recall. Through it all, Manny has exhibited professionalism in his conduct toward opposing counsel, his candor to the court, and his leadership in the community.

Not too long ago, it was fashionable to be a “Rambo litigator” or employ scorched-earth tactics in cases. That mindset began to change about 15 to 20 years ago when some attorneys refused to engage in those tactics and a wave of professionalism began to change perceptions of the best way to practice law. Manny was a leading proponent of that change and has continually demonstrated to others through his words and actions that one need not be unprofessional or discourteous to be an effective advocate. When asked what defines “professionalism” Manny will say it is respect for the court, the litigant and opposing counsel, and treating each with civility.

The manner in which he practices demonstrates you can be a strong and effective advocate without making the client’s dispute into a personal disagreement with opposing counsel.

Manny practices in West Palm Beach and is board certified in both Business Litigation and Real Estate Law. Manny’s leadership roles are too numerous to list here, but you should know that has proudly served as president of the Palm Beach County Bar Association, as president and a director of the Inns of Court, Craig S. Barnard Chapter, as president of the Hispanic Bar Association, and as an adjunct professor of business law at Palm Beach Atlantic College. Manny was privileged to serve as a law clerk to the Honorable Bobby Gunther at the Fourth District Court of Appeal, where he had a chance to work with other extraordinary jurists such as Harry Lee Anstead, Rosemary Barkett and Daniel Hurley. Manny also helped Judge Jack Cox and a group of Martin County lawyer form an Inns of Court chapter in Martin County. Manny lectures frequently and has authored several publications the most recent being a treatise on “Florida Real Estate Law”.

Born in Havana, Cuba, Manny presently resides in Martin County where he is “happily outnumbered” by his wife, Heidi, and three daughters, Allyn, Paige and Cassidy

This year’s Professionalism Award for an Individual was given to Manny Farach for his exemplary work and conduct within the legal field. He is pictured here with Professionalism Committee Chair Michael Napoleone



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**Florida Association for Women Lawyers Palm Beach County Chapter**

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# Judge Joe Marx - Our Very Own Ironman

By Adam Myron

Turns out we have a superhero on the bench of our criminal court, and I'm about to reveal his secret identity. That's right, in addition to being a distinguished jurist and double gator from the University of Florida (Bachelor of Arts, 1986; Juris Doctor, 1989), Judge Joe Marx is none other than... Iron Man.

But Judge Marx wasn't born a lean mean, crime fighting machine. In fact, it was only two years ago that he was dealt a difficult blow and diagnosed with Type 2 Diabetes. At that point, Judge Marx decided he needed to make some life changes, so in addition to eating healthier foods and getting regular exercise, Judge Marx hired an exercise coach and began training for the Iron Man Triathlon in Hawaii. Although the Judge never drank glasses of raw eggs *a la* Rocky Balboa, he did undergo eight months of grueling training that saw the Judge waking up at 5:30 in the morning during the work week to either begin



lifting weights, biking for two hours, or running 10 miles (the days that Judge Marx would begin with a morning run, he'd end with an evening run of another nine miles!). On Saturdays, the Judge would lift weights in the morning, follow that up with an hour and a half swim session, and then end his day with either another swim or a run. And on Sundays? Well the Judge would merely ride his bike for **100 miles** beginning at 5:30 in the morning. "I nearly was hit by several cars, and oftentimes I'd be chased by small animals" said Judge Marx, describing his intense bike rides up and down Palm Beach County. No one ever said being a superhero was easy.

All of the Judge's training paid off when he was one of 200 people selected from a lottery pool of 7,000 contestants to compete in the Iron Man Triathlon. So on the morning of October 11, 2008, Judge Marx awoke to take on the biggest physical challenge of his life. The competition began with a 2.4 mile swim in the Pacific Ocean – a dangerous endeavor that sees many Iron Man hopefuls immediately sidelined by broken jaws and dislocated shoulders. Once out of the water, these brave souls begin a 112 mile bike ride **up and down a mountain** during which they are pummeled by fierce winds and have to battle the thin mountain air. Finally, as if that weren't enough, the contestants hop off their bikes and run a full marathon (26.2 miles).



For Judge Marx, the competition was especially difficult due to the fact that he had suffered a hamstring injury while training for the Triathlon and experienced severe leg cramps 20 minutes into the initial swim. But the Judge kept pushing on, mentally reciting his personal mantra: "someday I may not be able to do this, and today is **not** that day." Finally, after 16 hours and two minutes, Judge Marx crossed the finish line where he was greeted by an official with the words he'd waited all day to hear: "Joe Marx... you are an Iron Man."

At 44 years old, Judge Joe Marx is now 30 pounds lighter, in the best shape of his life, and reveling in the knowledge that he can face any obstacle and persevere. Although this writer knows that superheroes prefer their anonymity, Judge Marx has nothing to fear because, really, who's going to mess with an Iron Man?

*This article was submitted by Adam Myron, an associate with Richman Greer, P.A. Mr. Myron practices in the areas of commercial litigation, professional malpractice liability, employment litigation, personal injury, association law, and both commercial and residential real estate transactions.*

## Bar to offer on-line traffic and parenting courses

The Palm Beach County Bar Association continues to look for non-dues sources of revenue to assist in keeping the cost of Bar dues down. Accordingly, we have begun offering online courses in Business & Personal Services and Traffic Safety such as: Basic Driver Improvement Course, First Time Driver Course, Mature Driver Course, Florida Notary Service and Florida Internet Parenting Course (approved course by the State of Florida). These are all approved courses through the American Safety Council. The Palm Beach County Bar Association will receive a small stipend for each course that is taken through a link on our website. Please help us by remembering to refer your clients to this link if they are in need of taking any of these courses. For more information, contact Patience Burns at (561) 687-2800 or [www.palmbeachbar.org/online\\_courses.php](http://www.palmbeachbar.org/online_courses.php).

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## Patient's Right To Know

by Ted Babbitt

The medical establishment took on the trial lawyers in an attempt to insulate themselves from liability by proposing a constitutional amendment which severely limited fees that could be earned in medical malpractice cases. The trial lawyers retaliated with an amendment to the Constitution requiring the production of peer review materials, despite existing statutes which prohibited such production. Both sides won but the trial lawyers were able to circumvent the medical establishment's constitutional amendment by asking clients to waive their constitutional rights. Doctors and hospitals, however, are living their worst nightmare because of the patient's right to know amendment which exposes disciplinary records of physicians in a hospital setting and facilitates suits against hospitals based on failure to properly credential a physician.

Physicians and hospitals successfully obtained legislation which essentially negated Article X, Section 25 by severely limiting those who could receive medical incident information. The Supreme Court found those statutes unconstitutional in Fla. Hosp. Waterman, Inc. v. Buster, 984 So. 2d 478 (Fla. 2008).

In Amisub North Ridge Hospital, Inc. v. Sonaglia, 33 Fla. L. Weekly D2477 (Fla. 4th DCA, Oct. 22, 2008), virtually all defenses to the production of these documents were obliterated. That case involved a suit between two doctors alleging that one defamed the other and tortiously interfered with her business relationship with the hospital in order to get her thrown off the hospital's medical staff and thus take patients from her. The plaintiff, in that suit, obtained an affidavit from a patient whom the plaintiff had treated stating that the patient had learned that the defendant had removed her as a patient of the plaintiff and instead listed her as one of his own patients and had fraudulently stated that he had examined her. She requested peer review materials regarding the defendant which were in the hands of the appellant hospital. The circuit court entered an order requiring production despite the claims of the defendant that this was not a "proper purpose" for the production of peer review materials under Amendment 7. The hospital joined in the objection alleging that the affiant was not a "proper patient representative" under the Amendment and was, thus, not entitled to records. The Fourth District rejected both arguments holding that there was no requirement of "standing" in Amendment 7 nor was there any basis to engraft a "proper purpose" requirement on to the Amendment.

Relying on Waterman, supra, the appellate court painted with a broad brush as to who had a right to request peer review materials and what materials had to be provided.

"As construed by Waterman, Amendment 7 removed any barrier to a patient's discovery of adverse medical incident information, including the peer

review protections provided by the statute. Waterman expressly found that the legislature's attempts in section 381.028, Florida Statutes (2005), to limit the applicability of Amendment 7 were unconstitutional, including those sections purporting to exclude 'existing privilege statutes' from the reach of the amendment. *Id.* at 492-93.

After Waterman's construction of Amendment 7, the hospital has no basis in this case to contest the production of peer review materials that relate to an adverse medical incident. Daley is a patient under Article X, Section 25(c)(2). the amendment does not limit the definition of a 'patient' to one seeking the information for any type of 'proper purpose.' The amendment does not require the information a patient seeks to be relevant to a pending medical malpractice action or to a medical care decision. See Morton Plant Hosp. Ass'n v. Shahbas, 960 So. 2d 820, 825 (Fla. 2d DCA 2007) (holding that Amendment 7 contains no requirement that records sought be relevant to any pending litigation).

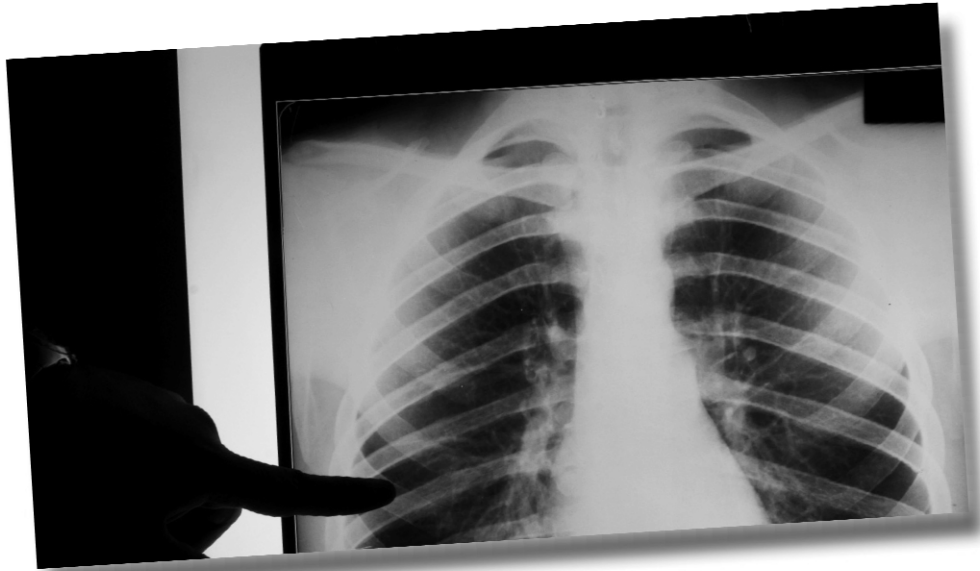
Statutes precluding production of peer review materials by establishing a privilege which prevented that production have been neutered, if not eliminated, by the passage of this constitutional amendment. This amendment created a sea change with respect to both a plaintiff and the public's right to know about the misdeeds of physicians and hospitals. The appellate court in this case makes it clear that virtually anyone can obtain those kinds of records and reveal their content to the press or to anyone else. At Page D2478, the Court held:

Amendment 7 does not limit the persons to whom a patient can reveal information once obtained. Thus, Daley's request to furnish the materials to Sonaglia's lawyer was not improper. Daley does not seek disclosure of materials that do not relate to an adverse medical incident. We recognize that there are sound policy reasons for limiting access to peer review materials; however, as the Supreme Court recognized in Waterman, Amendment 7 'heralds a change in the public policy of this state to lift the shroud of privilege and confidentiality in order to foster disclosure of information' in favor of patients.' 984 So. 2d at 494.

It has been said that "sunshine is the best antiseptic." The passage of Amendment 7 not only gave plaintiffs a leg up in malpractice suits but provided the vehicle that allows the public to investigate what kinds of problems exist about physicians who patients potentially employ to treat them. It does not take much imagination to predict that there will soon be a website which anyone can access to obtain information about every physician in the State of Florida. This case opens the door to that kind of public dissemination which may result in turning what was initially intended as a retaliatory amendment into the greatest public service that trial lawyers have ever performed.

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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## Attorney's Fees For Rendering Services To An Estate

By David M. Garten, Esq.

Sec. 733.106(3) provides: "Any attorney who has rendered services to an estate may be awarded reasonable compensation from the estate." This statute is not restricted to services that bring about an enhancement in value or an increase in the assets of the estate, but also includes services that are successful in effectuating the testamentary intention set forth in the will, that prevent the appointment of a personal representative, or that obtain the removal of a personal representative.

### I. ATTORNEY'S FEES ALLOWED:

When is an attorney entitled to an award of attorney's fees pursuant to §733.106(3)?

- ✓ *In re Estate of Lewis*, 442 So.2d 290 (Fla. 4th DCA 1983). In *Lewis*, a beneficiary whose devise was being contested by the personal representative on the basis of undue influence was entitled to an award of attorney's fees when the personal representative voluntarily dismissed his petition.
- ✓ *Duncombe v. Adderly*, 2008 Fla. App. LEXIS 15405 (Fla. 4th DCA 10/8/08). A beneficiary who prevents the appointment of a designated personal representative or that obtains the removal of a personal representative is entitled to an award of attorney's fees.
- ✓ *Menz v. Estate of Menz*, 381 So.2d 375 (Fla. 1st DCA 1980). In *Menz*, the surviving spouse was entitled to her recover attorney's fees necessitated by the personal representative's failure to satisfy his duty to file a petition to determine the amount of the elective share after a proper election had been made because the attorney's efforts on the widow's behalf resulted in a change in the distribution under the will.
- ✓ *Johnson v. Burlison*, 61 So.2d 170 (Fla. 1952). In *Johnson*, the surviving spouse was entitled to recover her attorney's fees where the legal services were necessary to require a personal representative to carry out the provisions of a will and give the surviving spouse the income as directed in the will.
- ✓ *In re Estate of Griffiths*, 366 So.2d 80 (Fla. 4th DCA 1978). In *Griffiths*, a beneficiary who successfully argued that decedent's destruction of two later codicils revived the provisions of the first codicil was entitled to recover his attorney's fees because the ultimate will was determined and the estate was benefitted because the beneficiaries whom the testator intended are the ones who receive their legacies and bequests
- ✓ *Baumer v. Howard*, 542 So.2d 400 (Fla. 1st DCA 1989). In *Baumer*, a beneficiary was entitled to recover attorney's fees by establishing that the widow unlawfully and intentionally killed the decedent because the interest of the decedent in the entireties property passed to his estate instead of to the surviving spouse. Additionally, the attorneys benefited the estate by ensuring that the estate property was divided and distributed according to the decedent's intent.

- ✓ *Tillman v. Smith*, 526 So. 2d 730 (Fla. 5th DCA 1988). A beneficiary may recover attorney's fees for those services which resulted in tax savings to the estate.

### II. ATTORNEY'S FEES NOT ALLOWED

When is an attorney not entitled to an award of attorney's fees pursuant to §733.106(3)?

- ✓ *In re Estate of Hand*, 475 So.2d 1337 (Fla. 3d DCA 1985) and *Onofrio v. Johnston & Sasser, P.A.*, 782 So.2d 1019 (Fla. 5th DCA 2001). A proponent of a will who is found to have procured it through undue influence is not entitled to be awarded attorneys' fees from the decedent's estate because the services rendered by the attorney are of no benefit to the estate. However, the proponent's attorney would be entitled to recover his fees for the services that benefit the estate, such as publishing notice to creditors, protecting assets, and considering and dealing with tax issues.
- ✓ *In re Estate of Simon*, 549 So.2d 210 (Fla. 3d DCA 1989) and *Dew v. Nerreter*, 664 So. 2d 1179 (Fla. 5th DCA 1995). Attorney's fees will not be awarded if a court determines that the attorney's actions were a detriment rather than a benefit to the estate, i.e., if the services tend to break down, subtract from, or dissipate the estate.
- ✓ *Samuels v. Estate of Ahern*, 436 So.2d 1096 (Fla. 4th DCA 1983). A party is not entitled to recover attorney's fees from an estate for successfully litigating entitlement to a bank account jointly held with the decedent because the bank account was not a probate asset and thus was not part of the estate.
- ✓ *Franklin v. Stettin*, 579 So.2d 245 (Fla. 3d DCA 1991). Services rendered by an attorney that are duplicative of the curator's efforts are not beneficial to the estate.
- ✓ *In re Estate of Freedman*, 340 So.2d 1275 (Fla. 3d DCA 1977). In *Freedman*, attorney's fees were denied for successfully pursuing an independent action to impress a constructive trust on legacies bequeathed by the deceased to her two half-sisters. The appellate court reasoned that because a constructive trust was placed on the funds by means of a separate action in the civil division, the estate was not benefited.
- ✓ *Tillman v. Smith*, 526 So. 2d 730 (Fla. 5th DCA 1988). In *Tillman*, attorney's fees were not allowed to the widow for successfully challenged the validity of an antenuptial agreement that was specifically referenced in the will. The appellate court reasoned that the litigation clearly thwarted the decedent's intention as expressed in his will; the decedent clearly intended the antenuptial agreement to control and for his widow to receive only a small interest in his estate. See also *Harding v. Rosoff*, 951 So.2d 912 (Fla. 4th DCA 2007)(litigation over the validity of the power of appointment thwarted the testator's intent as expressed in his will).

## Pro Bono Corner

### Pro Bono Attorneys That Have Closed Their Pro Bono Cases in November 2008

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Richard Abedon                      Lawrence Moncrief  
Georgina Jimenez-Orosa          Michael Stern  
Richard Kleid                        Barry Weiss

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### Circuit Court Report CIVIL DIVISIONS • October 2008

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

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 11/2/08.

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## Legal Aid's 8th Annual Cup of Justice Golf Classic Raises \$34,000

The Legal Aid Society of Palm Beach County's 8th Annual Cup of Justice Golf Classic raised \$34,000 to support its Educational Advocacy Project. The project's goal is to ensure positive educational outcomes for disabled children attending Palm Beach County Schools.

Attorney Robert Shalhoub chaired the October 26th tournament at Bear Lakes Country Club. The presenting sponsor of the event was CityPlace Tower, The Related Companies and Crocker Partners, LLC.

Additionally, Merrill Lynch was lunch sponsor and dinner sponsorship was shared by Caler, Donten, Levine, Drucker, Porter & Veil CPA's, P.A. and Akerman Senterfitt. Other major sponsors included: ABA Retirement Funds, Arnstein & Lehr, LLP, LexisNexis, Northwest Mutual, Schwed Cartwright, P.A., The Forum and National City, an Official Sponsor of Legal Aid. The golf tournament committee members included Harreen Bertisch; Rick Collier; Devin Krauss; Judith Hertan, Judi Rohlfing; David McClymont; Scott Murray, Esq.; Linda Norris; Grier Pressly, Esq.; Heath Randolph, Esq.; Michael Spillane; Vicky Vilchez, Esq.; Gary Woodfield, Esq.; and Bob Bertisch, Esq.

The Babbitt, Johnson, Osborne & LeClainche Team was awarded the "Cup of Justice" for the second year in a row. Other winners included Gonzalez, Porcher, Albear & Garcia (Flight A B 1st Place); Dex Imaging (Flight B B 1st Place); Arnstein & Lehr (Flight C B 1st Place); Gunster Yoakley (Flight A B 2nd Place) National City (Flight B B 2nd Place) and Wood Business (Flight C B 2nd Place).



Gary Woodfield and Peter Broberg

## Goodbye To All

As I will be leaving Palm Beach County in December, I want to say a goodbye to all of the attorneys that I have had the privilege of working with during my 25 years of employment at the Legal Aid Society of Palm Beach County, Inc. I have come to know so many of you personally and had the opportunity to work closely and see firsthand your true dedication and professionalism. Legal Aid is so lucky to have the vast array of lawyers that assist with the low-income individuals that come through our doors. I have been fortunate to be a small part of this office and the work that you all do.

Bonnie J. Silverstein,  
Legal Aid Society  
Pro Bono Dept.

## News from the North County Section

The North County Section, along with members from the Martin County Bar, enjoyed a cocktail reception at Aqua Marine Grill in Palm Beach Gardens. More than 100 members attended the sold out event.



North County President Ryon McCabe with Anika Hardmon, Martin County Bar Social Chair



Jay Hunston, Jayne Register Barkdull and Curtis Shenkman



Matthew Lane and Julianne Frank



Lane Matthews and Robin Scher



Brett Barner and his dad Freeman



Meredith Barrios, Robert Harvey, NCS President Elect Debra Jenks and Sara Weiss

## Western County Networking Event



Robin Rothman and Stephanie Luongo



Craig Stein, Devon Coughlan, Kevin Wilkinson, Andrew Goldberg and Benjamin Shenkman

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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.*

**LAURIE J. ADAMS** – West Virginia; University of Miami School of Law, 1994; Partner in Kubicki Draper, West Palm Beach

**JOURNEY L. BEARD** – Indiana; University of Memphis, 1998; Associated with Palm Beach County Criminal Justice Commission, West Palm Beach

**ANTHONY M. BARBUTO** – New Jersey; Oklahoma City University, 2007; Partner with Porath & Barbuto, P.A., Wellington

**ADAM M. BLANK** – New Jersey; University of Miami School of Law, 2008; Associate in Holland & Knight, West Palm Beach

**TIFFANY L. BARRY** – Idaho; Florida International University, 2008; Associate in David L. Gorman, P.A., North Palm Beach

**SHAWNTOYIA N. BERNARD** – California; Florida University, 2003; Associated with South Florida Water Management District, West Palm Beach

**JENNIFER A. CHAMAGUA** – New York; Villanova School of Law, 2008; Associated with Fifteenth Judicial Circuit, West Palm Beach

**JEFFREY L. COHEN** – Florida; Florida State University, 1987; Partner in Strawn, Monaghan & Cohen, P.A., Delray Beach

**BRENDA S. FULMER** – Indiana; Stetson, 1994; Partner in Searcy Denney Scarola Barnhart & Shipley, PA, West Palm Beach

**EDMUND GONZALEZ** – Florida Coastal School of Law, 2001; Partner in Gonzalez & Henley, P.L., West Palm Beach

**ALLISON L. HERTZ** – Florida; NSU Shepard Broad Law Center, 2007; Associated with Katzman Garfinkel Rosenbaum, West Palm Beach

**KRISTIN A. JOHNSON** – Jamaica; Fordham University, 2008; Associate in Carlton Fields, P.A., West Palm Beach

**IAN L. KOVEN** – Law Student Member; Valparaiso School of Law, 2010; Valparaiso, Indiana

**DARREN W. LEISER** – Florida; University of Miami, 2008; Associate in Lewis, Longman & Walker, West Palm Beach

**DANIEL LUSTIG** – Costa Rica; Franklin Pierce Law Center, 2008; Associate with Lesser Lesser Landy & Smith, PLLC, West Palm Beach

**VERONA LYN-MANNING** – Paralegal Member; Law Offices Patricia Garagozlo, West Palm Beach

**JONATHAN S. MORRIS** – New York; Nova Southeastern University, 2007; Associate in Jay Steven Levine, P.A., Boca Raton

**CHRISTINE PIERRE-LOUIS** – Haiti; Thomas M. Cooley Law School, 2007; Sole Practitioner, Law Office of Christine Pierre-Louis, Boynton Beach

**ADRIENNE RABINOWITZ** – University of Wisconsin-Madison, 1989; Associated with U.S. Attorney's Office, West Palm Beach

**CHRISTOPHER B. ROEMER** – Missouri; The George Washington University, 200; Associate in Linkhorst & Hockin, P.A., Jupiter

**PAYAL SALSBERG** – India; Nova Southeastern University, 2008; Associate in Proskauer Rose LLP, Boca Raton

**WESLEY D. SHERMAN** – Florida; Florida State University College of Law, 2008; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

**KARA A. SKORUPA** – Pennsylvania; University of Florida, 2004; Partner with Deratany, Skorupa & O'Hara, North Palm Beach



**KEITH E. SONDERLING** – New York; Nova Southeastern University, 2008; Associated with Gunster Yoakley, West Palm Beach

**CRAIG D. STEIN** – New York; NSU, 1994; Partner in Stein, Stein & Pinsky, P.A., Boca Raton

**VALENCIA Y. STUBBS** – Florida; Nova Southeastern University, Shepard Broad Law Center, 1999; Associate with Brown & Associates, P.A., Riviera Beach

**BUFFY D. THOMAS** – Georgia; Florida State University, 2002; Associate with Sauvola & Associates, P.A., West Palm Beach

**MEREDITH B. TRIM** – Texas; Harvard, 2004; Sole Practitioner, Palm Beach Gardens

**KAREN K. VINCI** – Florida; FAMU, 2006; Associated with State Attorney's Office, West Palm Beach

**NICHOLAS A. ZACHARIADES** – Zimbabwe; New England School of Law, 2008; Associate in Darby & Darby, Palm Beach Gardens



In Memoriam  
Michael John McHale  
1960-2008





### Create Your Own Micro-Climate To Make It Rain

By Mark Powers and Shawn McNalis

*Watching them operate probably etched a picture of what a rainmaker is in your mind and probably set a high standard of*

*what it takes to develop new business.*

You've seen them at bar events, parties or large charity functions: brimming with confidence, the stereotypical rainmaker navigates most social situations with ease and radiates such self-assurance that new clients are continually drawn to them. As you watched them operate, the picture of someone who is at their best in all social situations became your idea of the perfect rainmaker.

Unfortunately this level of social ease does not come naturally to everyone. In fact, you might be someone who is decidedly not at your best in unfamiliar social territory. When asked to market yourself you might experience apprehension because you don't believe you are a natural at client development. For you, marketing means you have to "fake it" and few things are more exhausting than having to fake your way through a marketing activity or event that holds no interest for you. After trying a couple of times, you may have decided you just don't have what it takes.

But if you're not a natural marketer, are you doomed to always work for those who can make it rain? Or to join the ranks of sole proprietors whose firms limp along and never fully realize their potential? This is of critical importance given that your ability to develop clients helps to shape your destiny.

At Atticus we believe everybody can develop clients even though they don't have the personality we normally associate with the stereotypical rainmaker. In our experience, there are as many different ways to market as there are attorneys.

The key is to identify and play to your own strengths.

For a clue to what your strengths are take a look at your hobbies, passions and interests, both inside and outside the practice of law. These hobbies, passions and interests tend to bring out the best in

your personality. When your marketing approach is tied to what you love, your effectiveness as a rainmaker blossoms. Incorporating your interests enables you to operate in an environment of your own choosing and minimizes the anxiety you may feel when forced to socialize in other ways. At a Rotary Club dinner, for example, you might feel bored and uninterested because their agenda doesn't authentically engage you. But, when involved in something you love, be it sports or gourmet food or lecturing on a favorite topic, your comfort level is higher, you have more fun and you're more fun to be around. Let the stereotypical rainmakers storm away; we say create your own micro-climate for marketing success.

Read through the examples below detailing ways other attorneys create their own marketing micro-climates and find out how you can use your less obvious talents to forward your marketing goals.

#### 1. The Expert/Writer

Quite a few of our attorney clients have narrowed their practice areas to a specific niche and are experts in their field. Quietly passionate about their subject matter, they excel at building their reputation through the written word. Writing columns, newsletters, articles and books is how they market themselves and it's a good fit for their less outgoing personalities. In addition, their approach to research can kill two birds with one stone: we suggest they use interviews and it provides them a great reason to initiate lunch meetings with clients and referral resources that contribute case studies and data. This is what we call a "knowledge-based" approach to marketing.

#### 2. The Expert/Speaker

Another knowledge-based approach is taken by attorneys who have developed ways to communicate their expertise clearly and are comfortable in front of groups. They focus on setting up seminars to educate potential referral sources and/or develop new clients. Like our other expert, this attorney can use lunches and meetings with influencers, potential influencers and clients to research their

workshops and seminars while deepening their relationships.

#### 3. The Sport

This attorney has a love of participating in, or watching, sports. Regardless if they are passionate about football, golf, sailing, skiing, or any other recreational activity, sports of all kinds provide the perfect platform for building rapport with referral sources – even if business is never discussed. Attorneys who take this activity-based approach can market themselves by inviting referral sources to play (golf, tennis, etc.), asking influencers to attend games with them, giving tickets out to games and setting up marathons or tournaments with a charity tie-in. The love of the game is a great excuse to connect and build relationships, both old and new.

#### 4. The Family-Focused Attorney

Usually a younger lawyer with children, this attorney spends a great deal of time focused on church and school activities. Their marketing approach should take advantage of the contacts they make in coaching youth sports, sponsoring activities or participating in parent/teacher organizations. The contacts they make with other up and coming professional parents will often be the source of their future referrals. This person's formal marketing plan will depend heavily on lunches and daytime activities as they will have less free time in the evenings due to family obligations, but their informal marketing plan can include much of their social life in the community.

#### 5. The Gourmet

To market themselves and share their passion, attorneys who love gourmet food, wine and spirits have many options: they can cook for small groups at home or take clients to restaurants they've discovered. They can host or attend wine tastings with friends and referral sources. They can start dinner clubs in which meals are hosted by its members or host parties that display their cooking talents or those of local chefs. The emphasis here will be on meals: lunches, dinners and other food and wine related events. They can share

*Continued on page 14*

## Micro-Climate

Continued from page 13

recipes, sources for hard to find items and give books that express their love of food and wine.

### 6. The Traveler

Traveling the world is often the passion of many different types of attorneys. To incorporate a love of travel into a marketing program, the attorney can send an e-mail journal to friends and referral sources, create a photo-journal of their trip to share with others, or create a post-vacation event that showcases the food and drink of their destination. Some of our clients have even taken trips with their referral sources to golf, snow ski or scuba dive – all of which provide great opportunities to bond and develop relationships.

### 7. The Reader

If a passion for reading is your thing, you'll be gratified to know you can turn this to your advantage in marketing. Many professionals belong to book study groups that take a business book and discuss it on a monthly basis. These groups can be comprised of other attorneys – especially if they are the group who sends your best

business, or other professionals in the community whom you've gotten to know because you have clients in common. If no group like this exists in your area, start one. If reading business books sounds too much like work, joining book clubs that focus on fiction and are made up of potential referrers is always an option.

The idea here is simple: don't make service club meetings your marketing focus if you aren't genuinely interested in their agendas. Instead of deciding you don't have the right personality to market yourself, create a focus for your marketing that inspires you and fits your personality. Never forget that the ability to market yourself gives you power. With power, you can direct your career the way you choose. Do what you enjoy, share it with other people, and the business will follow.

Mark Powers, President of Atticus, Inc., and Shawn McNalis co-authored, "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," and are featured writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit [www.atticusonline.com](http://www.atticusonline.com) or call 352-383-0490 or 888-644-0022.

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## Surcharging Exempt Assets... Update

By: Marc P. Barmat

In the February 2008 edition of the Palm Beach County Bar Association Bulletin, I addressed the issue of a Chapter

7 trustee's ability to surcharge exempt assets. Although there is still no Eleventh Circuit Court of Appeals case directly on point, two of the cases cited in my February 2008 article which held that a Chapter 7 trustee can surcharge exempt assets under certain circumstances have been reversed.

The United States District Court for the Middle District of Florida recently reversed that portion of Bankruptcy Judge Michael G. Williamson's opinion which granted a chapter 7 trustee's motion to impose a surcharge on the debtors' statutorily exempt property. *In re Mazon*, 395 B.R. 742 (M.D. Fla. 2008). In *In re Mazon*, 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. The District Court held that notwithstanding these facts, the Bankruptcy Code contains specific remedies for debtors' bankruptcy misconduct and imposition of a surcharge is not one of them. *Id.* at 748. The District Court further found that the bankruptcy courts' equitable powers under the Bankruptcy Code authorizing the courts to issue any order necessary or appropriate to carry out the provisions of title 11 do not allow them to override specific Code provisions or to grant any more or less than what the Code's clear language would mandate. *Id.*

In reversing Bankruptcy Judge Williamson, the District Court relied on the recent Tenth Circuit opinion *In re Scrivner*, 535 F.3d 1258 (10th Cir. 2008) which reversed the Tenth Circuit BAP. The *Scrivner* Court held that "because the surcharge of exempt property is inconsistent with the Code's provisions governing exemptions and debtor misconduct, it is beyond the scope of a bankruptcy court's equitable authority

under 11 U.S.C. §105(a)." *Id.* at 1265. The *Scrivner* Court further stated that "section 105(a) does not empower courts to create remedies and rights in derogation of the Bankruptcy Code and Rules." *Id.*

Although the more recent opinions hold that a chapter 7 trustee cannot surcharge exempt assets, be aware that other courts throughout the country have found that a chapter 7 trustee does have the ability 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 insure that a debtor does 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.

The conclusion from the February 2008 article remains that same, i.e., 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, there is a risk that a chapter 7 trustee could successfully seek a surcharge of exempt assets.

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

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## Small Claims Court Clinics Help Your Clients

By Lloyd A. Comiter, Chairperson Small Claims Court Clinics Committee

Close your eyes as I paint these pictures. You have just concluded your three-week jury trial and your client prevailed. While in the elevator your client tells you about a recent event that happened at the automobile repair shop. Your client believes his motor vehicle was improperly repaired. Your client paid the motor vehicle repair shop \$325.00.

You are at a lunch break with your client at a deposition your client is giving in a multi-million dollar lawsuit. Your client proceeds to tell you about a dispute she is having with her credit card company and proceeds to tell you she was recently served with a summons and Statement of Claim. The total amount sought is \$1,250.00.

You were just retained by an individual that was charged with a criminal offense but is now out on bail. During one of your meetings with your new client, the client tells you about a dispute he is having with his roofer. Although the client paid the roofer \$2,750.00 to patch and repair his roof, the roof still leaks and the roofer now refuses to return to the home.

The common thread in each of these scenarios is that the dispute brings the matter into small claims court. The problem is two-fold: either your firm does not handle small claims cases or you are too busy to take on a small claims court type case.

First though what is a small claims dispute? A small claim is any action at law of a civil nature in the county courts in which the demand or value of property involved does not exceed \$5,000 exclusive of costs, interest, and attorneys' fees. *Fla.Sm.Cl.R. 7.010(b)*.

For those of you that do not handle small claims cases the good news is that help is available for your clients. The Palm Beach County Bar Association sponsors monthly Small Claims Court Clinics throughout the county through the Small Claims Court Clinics Committee. The clinics are typically given at local libraries. The purpose of the clinics is to show people how to handle matters on their own without having to hire an attorney.

The Clinics are provided by volunteer attorneys weekdays after working hours.

They usually last one and a half hours and are open to the public free of charge.

While no two clinics are the same, and each volunteer attorney may make a different presentation, the general theme is the same. For example, during my particular clinics, I utilize a power-point presentation. The clinic begins with an overview of The Florida Bar, the Palm Beach County Bar Association, as well as the Lawyer Referral Service and Self Help Center. I then discuss the purpose of the clinic and ways to avoid a dispute including the County Court Small Claims Pre-Filing Mediation Program. I review some of the Small Claims Rules and some of the accompanying small claim forms. Discussion then carries over to making sure the dispute is supposed to be in small claims court, serving the correct party to the dispute and properly preparing the Statement of Claim.

Housekeeping topics are then discussed including where to file, what to

file, the filing fees and service of process. Almost all defendants will have a defense and I go over some typical defenses that a plaintiff may encounter. Next I discuss the pre-trial conference, mediation and trial. I move onto post-judgment proceedings that are typical in small claims court including appeals by the non-prevailing party, post-judgment collection proceedings, and what the parties can each expect post-judgment. Afterwards, I take questions of a general nature from those in the audience.

So, the next time you are in a situation as described above and have a client that either is contemplating filing a small claims court case, or has been sued in small claims court, refer them to the Palm Beach County Bar Association's Small Claims Court Clinics.

For further information, please contact Lynne Poirier at the Bar office at (561) 687-2800.



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- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)
- Florida Certified:
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# Bench Bar Conference

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



Maureen Martinez-Schwab, president-elect Michelle Suskauer, Bench Bar Chair Jill Weiss and Amy Borman



Robin Bresky, Robert Hauser, Patti Leonard, Liz Batres and Judge Jonathan Gerber



Federal Judges Daniel Hurley, Federico Moreno, Chief Judge; Palm Beach County Bar President Richard Schuler and Kenneth Marra



F. Malcom Cunningham, Ronald Gache, Judge Robert Gross and Judge Glenn Kelley



Sarah Cortvriend, Stuart Manoff, Carina Leeson, Jeff Pheterson and Howard Grossman



Judge Diana Lewis, Sia Baker-Barnes and Sandra Powery



Judge Peter Blanc donated canned goods during our Bench Bar food drive. Thanks to all of our members who contributed and made a difference to those in need this holiday season.

**The Palm Beach County Bar Association**  
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Page, Mrachek, Fitzgerald & Rose, P.A.

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## Sticklers Unite! Abolish Capital Punishment! (Part 3)

by D. Culver “Skip” Smith III  
The Eighth in a “When Space Permits” Series

Sticklers Unite! Insist on good grammar!

This is the last installment on capitalization. I promise. Indeed, your nonexpert author wonders why he undertook so risky a subject. The rules of capitalization lie in wait as does the highwayman for the traveler. Yet we lawyers simply cannot muddle through life clothed in grammar-proof vests.

Accordingly, for this last installment, a potpourri:

1. *Legislative enactments—the long and short of it.* We will agree, I presume, that the formal title of a law, act, or bill is capitalized: *the Americans With Disabilities Act*; *Senate Bill 180-07*; *the Internal Revenue Code*. The rub comes when a common-noun element of the title is used as a short-form substitute: *the act*; *the bill*; *the code*. Normal usage would call for no capitalization of the short form. In legal writing, however, it is customary (and useful) to capitalize the short form when the referenced enactment is a central focus of the writing: *the Act*; *the Bill*; *the Code*. Do this, however, only when the identity of the short-form reference is clear and unambiguous. This, incidentally, makes unnecessary—not to mention redundant and officious—the much overused parenthetical announcement of the short form following the full title: *The Americans With Disabilities Act (“the Act”) has empowered disabled Americans nationwide. The Act has significant implications for public facilities.* The reader does not need the parenthetical to understand the meaning of “Act” in the second sentence. The parenthetical serves no purpose other than suggesting that the writer considers the reader incapable of connecting dots without remedial training.

2. *Double the fun.* Some official names include *the*. For example, the full name of the organized bar of this state is “The Florida Bar.” In such cases, *the* should be capitalized in legal or formal contexts—but **not** when used as a modifier: *I am sending my application to the Florida Bar.* **Note:** *I am sending my application to The Florida Bar.* I should warn you: the employees of the Florida Bar will disagree, insisting that because *the* is part of the full name, it always should be capitalized. Just point out to the protester that if so, you would have to double up the *the*’s: *I will send my application to the The Florida Bar.*

3. *Two or more is a crowd.* The plural form of proper names seems susceptible to differing, presumably authoritative opinions. For example: *The District Court of Appeal of Florida, Third District, has jurisdiction of appeals from courts located in Miami-Dade and Monroe counties.* Should *counties* be capitalized? Clearly, if the reference had been to but one county (*Monroe County*), *county* would be capitalized, because it is a proper noun (part of the county’s official name). In the example, however, *counties* is a common noun, not part of an official name. It says here that *counties* should not be capitalized, but authoritative opinion can be found to the contrary.

4. *Compounding the problem.* In many compound nouns, the first element is a proper noun or a proper adjective, and the second element is a common noun: *a Rhodes scholar*. In such cases capitalize only the first element, because the compound as a whole is a common noun: *a Labrador retriever*; *a Dutch oven*; *Danish pastry*; *French doors*; *American eagle*. **But:** *American Indian*; *American Beauty* (each of which in its entirety is a proper noun). **Note:** *french fries* (in this context, *french* through usage over time has become a common noun).

So. This whole undertaking, which perhaps foolishly ventured into chartered but treacherous territory, originated in response to a single phenomenon that seems rampant among lawyers: the overcapitalization of common nouns, even those preceded by indefinite articles. Remember the example from the first installment: *Plaintiff moves for an Order compelling Defendant to produce its Policy Manuals.* Neither *order* nor *policy manuals* should be capitalized, because they are common nouns, referring to common things. One may as well write, “I wish to buy a Table for my Dining Room.”

Yes, your author is afflicted with the relationship-impairing ARTS virus (Anal-Retentive Twit Syndrome), but let’s face it: we lawyers rely on effective communication, and any grammatical misdirection or distraction undermines the message. If this series on capitalization convinces you, Fair Reader, to do nothing more than be wary of capitalizing common old common nouns, your author will enjoy a satisfied sleep.

*The author has sought reassurance from The Gregg Reference Manual: A Manual of Style, Usage, Grammar, and Formatting, by William A. Sabin (10th ed. 2005).*

## Students honored for Problem Solving Ideas

More than 100 posters were submitted for this year’s ADR Poster Contest. The committee honored six students for expressing their mediation skills through art and essays.

Cash prizes and certificates were awarded to first, second, and third place winners in both middle and high school categories. All of the participating art teachers were also given cash prizes for classroom supplies.



ADR Poster Chair Catherine Eaton with award winners from Boca Raton Middle School.



Winners from Jupiter High.



Judge Cox holds a photo of himself from high school



High school friends Greg Barnhart, Judge Cox and Sherry Hyman



Judge Cox and his wife Maryanne

### Is that a cow in Judge Blanc's Courtroom?

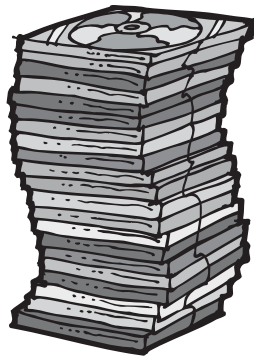


Forever families made possible on National Adoption Day

It's not often you see all smiles in a courthouse, but on Friday, November 14, people were happy in courtrooms, in the hallways, and in the hearts of local children, families, judges and volunteers. This was National Adoption Day, where more than 30 adoptions were finalized. After the court proceedings, families enjoyed an afternoon of food, clowns, games and gifts.

Thank you to the following law firms for their support:

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### 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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# Young Lawyers Past President Reception



Eric Deming, Timothy Grice and Leigh Cowden



Jaime Guttman, Nicole and Jason Guari and Judge David Crow

The Young Lawyers Section held a reception to honor immediate past president Jason Guari (left) pictured above left with current president John Whittles.



Ron Herman and Stephen Smith



Melissa Devlin, Monica Pigna and Allison Hertz



Kathleen Laub, Ethan Wayne and Sophy Letts



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### HEARSAY

**Joseph S. Karp** has been admitted to practice before the United States Court of Appeals for Veterans Claims. Also, associate attorneys **Genny Bernstein**, **Adele Small Harris** and **Karen Lewis** have all been accredited by the Veterans Administration to provide veterans and their families with advice about benefits.



The law firm of Watterson & Zappolo is pleased to announce that **Terence J. Watterson** has recently been certified by the Supreme Court of Florida as a Circuit Court Mediator.

**Michael A. Lampert** has been selected for inclusion in 2008 Florida Super Lawyers in Tax Law.

**Keith E. Sonderling** has joined the law firm of Gunster Yoakley as an associate in the West Palm Beach office. Mr. Sonderling concentrates his practice in employment litigation, business litigation and appellate practice.



### MISCELLANEOUS

West Palm law firm looking to buy one set of **Southern Second reporters** (Florida cases). If interested, please email gpressly@presslyandpressly.com.



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# CALENDAR

## January 2009

Thursday & Friday,  
January 1 - 2, 2009  
**Court Holiday – New Years Day**  
Bar Office Closed

Tuesday, January 6,  
12:00pm – 1:00pm  
**Independence of Judiciary  
Committee Meeting**  
Judicial Dining Room,  
Main Courthouse

Tuesday, January 6,  
6:00pm – 8:00 p.m.  
**Palm Beach Justice  
Association Dinner**  
Bear Lakes Country Club  
Call 561.471.2807

Wednesday, January 7,  
12:00pm – 1:00pm  
**North County Section  
Board Meeting**

Thursday, January 8,  
12:00pm – 1:00pm  
**SPBC FAWL Lunch Meeting**  
Bogart's Bar & Grill,  
Muvico Palace 20  
3200 Airport Rd., Boca Raton

Thursday, January 8,  
5:30pm – 8:00pm  
**North County Section Dinner**  
Riverhouse Restaurant,  
Palm Beach Gardens

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

Monday, January 12,  
12:00pm – 1:00pm  
**Law Week Committee Meeting**  
Bar Association Office

Tuesday, January 13,  
12:00pm – 1:00pm  
**YLS Executive  
Committee Meeting**  
Bar Association Office

Tuesday, January 13,  
12:00pm – 1:00pm  
**South County Bar Association  
Membership Luncheon**  
Boca Raton Marriott  
Call Stephanie Ginsburg  
(561) 482-3838

Wednesday – Friday,  
January 14-16  
**TFB Midyear Meeting**  
Miami, FL

Thursday, January 15,  
12:00pm- 1:00pm  
**Environmental & Land Use  
Committee Meeting**  
Bar Association Office

Friday, January 16,  
12:00pm- 1:00pm  
**Cunningham Bar  
Association Meeting**  
Law Library  
Contact Sandra Powery  
mspowery@aol.com

Monday, January 19  
**Court Holiday –  
Martin Luther King, Jr. Day**  
Bar Office Closed

Tuesday, January 20,  
5:30pm – 8:00pm  
**Inns of Court Meeting**  
Main Courthouse

Wednesday, January 21,  
11:30am – 1:00pm  
**Solo Luncheon**  
Bar Association Office

Thursday, January 22,  
12:00pm – 1:00pm  
**Professionalism  
Committee Meeting**  
Bar Association Office

Thursday, January 22, 5:00pm  
**PBCBA Board of  
Directors Meeting**  
Bar Association Office

Friday, January 23,  
8:00am – 12:00pm  
**Winter 2009  
Real Estate Seminar**  
Bar Association Office

Wednesday, January 28,  
5:30pm – 7:30pm  
**FAWL Judicial Reception**  
Norton Gallery of Art



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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