



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

June 2007

Mark your calendar for upcoming Membership Meetings

Annual Installation Banquet at the Breakers
Saturday, June 16, 7:00 p.m.
The Breakers Hotel in Palm Beach

Bench Bar Conference (New and Improved!)
October 12
Palm Beach County Convention Center

Joint Luncheon with the Forum Club with Guest Speaker U.S. Supreme Court Justice Clarence Thomas
Wednesday, December 12, 12 noon
The Cohen Pavilion at the Kravis Center

New Officers/Directors to be sworn in at banquet on June 16

Congratulations to our incoming Board members who will be sworn in by the Honorable Barbara Pariente at this year's installation banquet on June 16 at the Breakers Hotel:

- PresidentMeenu Sasser
- President-electRichard D. Schuler
- DirectorsJohn Howe
- Bryan Poulton
- Adam Rabin
- C. Wade Bowden
- Michael J. Napoleone
- Michelle R. Suskauer

Also serving on the Board next year will be North County Section President Adam Doner, Young Lawyers Section President Jason Guari and Manuel Farach, Immediate Past President. Ex-officio members will be South County Bar President Howard Grossman, and Board of Governors Members Greg Coleman, Scott Hawkins, Lisa Small and David Prather.



The Young Lawyers Section recently distributed toys and candy during Easter/Passover to children at The Nicklaus Children's Hospital at St. Mary's Medical Center. Pictured above are Matt Ferguson, Jason Lazarus, Theo Kypreos, Heath Randolph, Matt "Easter Bunny" Ramenda and John Whittles.

Dues are due

Annual membership dues statements were mailed to all PBCBA members in April for fiscal year 2007-08, which begins July 1. If you did not receive a bill, please contact Shoshanah Spence at the Bar Office (687-2800). Don't miss the benefits of being a member, renew your dues by July 1.

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THE
BULLETIN

**PALM BEACH COUNTY
BAR ASSOCIATION**

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

LETTERS TO THE EDITOR

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



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

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. . . to renew your Palm Beach County Bar Association Membership Dues. Statements were mailed in early April. Only members can take advantage of these:

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- Mentor Program
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- Weekly eNewsletters
- Monthly Bar Bulletin newsletter
- Lawyer Referral Service
- North County Section
- Young Lawyers Section

**Renew your Bar Association
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It pays to be a member!
renew online at www.palmbeachbar.org

Bar seeking old photos?

The Bar Association's Historical Committee is seeking old photos – either of local attorneys, the old courthouse or anything relating to the history of the practice of law in Palm Beach County. If you or someone you know has some old photos that you could share with us, please send them to Patience Burns at the Bar Office (address on back cover). Please let us know if you need them returned and we will be happy to send it back.

Sherry L. Hyman, Esquire
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President's Message



Thank You

By Manuel Farach, President

A group from the University of Chicago recently analyzed which job category had the highest degree of workers happy with their jobs. The conclusion: the clergy. The reason: jobs where the focus is on caring and protecting others, i.e., giving back to others, gives workers the most satisfaction. And of course, giving back to others is primary job of the clergy.

From my admittedly unscientific analysis of the people I've met this year, the same seems to be true for lawyers. Fulfillment as a lawyer comes not only from practicing principles that sustain good lawyers, but also from recognizing that all of us have been given much and are expected to give back. I myself have been given an extraordinary opportunity to give back this year, and have come to recognize an interesting little paradox: a person needs the help of others in order to give back. I have been helped tremendously in the past year, and would be remiss if I did not take this opportunity to thank those who helped me.

First, our Board of Directors. Our Bar has been blessed with great Boards in the past, but our Board this year has been truly extraordinary. Bryan Poulton, Dick Schuler, Scott Murray, Michael Napoleone, Wade Bowden, Michelle Suskauer, Grier Pressly, Andrew Pineiro and Denise Isaacs have all done fantastic jobs, especially with the tasks they were assigned under our recently adopted Strategic Plan. Most of all, I owe huge thanks to our President-Elect Meenu Sasser and our

To whom much is given, much will be required.

– John F. Kennedy

Executive Director Patience Burns; two people who have supported me wonderfully not only as co-workers but also as sounding boards on numerous occasions. And of course, Patience is blessed with a fantastic staff herself – a great many thanks to Lynne Poirier, Shoshannah Spence, Nancy Reidler, Silvia Vighetto and Paula Newman-Rocker. As many of you know, the majority of the Bar's work is done through its 39 committees. Space limits me from thanking the over 500 members of those committees, but they do deserve a big round of applause. Kudos also goes to our Board of Governors representatives: Jay White, Scott Hawkins, Greg Coleman and Lisa Small; their advice and counsel throughout the year has been invaluable. Finally, an enormous thanks to my family and the members of my law firm; we would not have been able to accomplish anything without their support this past year.

We began this year speaking of the learned professions – medicine, clergy and law – and what it means to be a professional and a lawyer. If there is a common thread between these three very different professions, that commonality is that each one is at its best when it is giving back. This is our task going forward: giving back. Doing so is nothing less than what is expected of us as professionals; doing so is nothing less than what is expected of us as lawyers.

Mr. Farach's e-mail address is mfarach@rmlawyer.com

Board of Directors Meeting Attendance

	July Retreat	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	April
Farach	x	x	x	x	x	x	x	x	x	x
Sasser	x	x	x	x	x	x	x	x	x	x
Poulton	x	x	x	x	x	x	x	x	x	x
Suskauer	x		x	x	x	x	x	x	x	x
Murray	x	x	x	x	x	x	x	x	x	x
Bowden		x	x	x	x	x	x	x	x	x
Schuler	x	x			x	x	x	x	x	x
Napoleone	x	x	x	x	x	x	x	x	x	x
Pineiro	x	x		x	x	x		x	x	x
Pressly	x	x	x	x	x	x	x	x	x	x
Isaacs	x		x	x		x	x	x	x	x

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

Movie tickets make great gifts for teachers, clients and staff!

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

*Muvico Theater - \$7.00 each (\$9.25 at box office)

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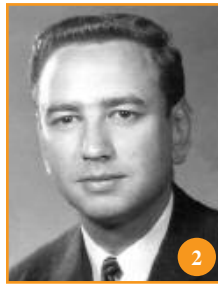


Who are they?

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

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

Answers on page 11



Minutes

Of the 249th meeting of the Young Lawyers' Section of the Palm Beach County Bar Association held on Friday, October 1, 1971, at Stouffer's Restaurant.

Following the humorous banter and subtle wit to which we have become accustomed during his administration, President Tom Yeager confirmed that there would be an annual Dinner Dance. Then, after a few unkind words from the membership, he further announced that he would host the traditional cocktail party at his home prior to the dance.

A conspiracy by Ted Babbitt and other assorted villains to unseat secretary Marty Perry from his office was overwhelmingly defeated.

The premiere showing of Danny O'Connell's new film "Romancing Fees into the 20th Century" played to a packed audience. This film, which revealed statistics regarding the economics of law practice and provided views as to how to make your practice more lucrative, proved to be so successful in practice that after three weeks of following its recommendations Danny O'Connell announced his retirement from the practice of law. Rumor has it that Danny had viewed the film nightly for two weeks before divulging it to the other members of the bar.

Following the film, the meeting was adjourned by President Yeager.

Respectfully submitted,
Marty Perry

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Be sure to check the Bar's website at 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.

The HDTV Bottleneck

By Bard D. Rockenbach, Chairman, Technology Committee

Way back when I was studying economics, I learned about the concept of a constraining factor. A constraining factor is the element of a product or service which limits the amount of the product or service you can produce. For example, if you have enough steel, aluminum and plastic to make 100 cars, but only enough electrical wiring for 85 cars, then electrical wiring is the constraining factor. It does no good to buy more steel because no matter how much steel you have you can only produce 85 cars. I tend to apply the concept to everything because it is a useful analysis. If you can identify the constraining factor in any endeavor, then you can work on increasing the supply of that element and, eventually, more product.

In the world of HDTV, the constraining factor used to be the number of HD capable television sets which had been purchased. So few people had HDTVs that it was difficult for broadcasters to justify increasing the available HD programming. On the other hand, there was so little HD programming that it was difficult for people to justify spending thousands of dollars to buy an HD television. Eventually, prices of HD televisions came down and people were willing to purchase them hoping for more HD programming in the future. The amount of programming has been increasing, but it has been slow. So here we are with televisions – waiting.

The Bandwidth Bottleneck

We have now reached a new constraining factor: bandwidth. The term bandwidth refers to the capacity for data transmission over a particular medium. The problem is that cable and satellite systems were designed to handle channels broadcast in 420i, which only requires 25% of the bandwidth of 720p HD signal. In other words, one HD channel takes the broadcast space of four “normal” channels. If a cable system was designed to broadcast 200 channels originally, it can only handle 50 channels in HD.

Getting more HD channels means replacing all of the wires with new wires (optical wiring) which can handle more data. The satellite providers have the same problem. A satellite can only broadcast a set amount of data and when it is used up they need to launch another satellite. That is why no one broadcasts in 1080p (the highest HD resolution). No one can afford to sacrifice the bandwidth for it. Over-the-air HDTV broadcasts, such as local channels you pick up with an antenna, do not have this same problem because air has no bandwidth constraints.

The net effect is that at this time we are limited in the number of HD channels which can be broadcast. There can be some small additions, but the tsunami of HD programming cannot travel over a small river. It needs an ocean.

When Bandwidth Is Scarce, People Use Lawyers

Of course, no tale of limited resources would be complete without a few lawsuits. Earlier this year, Time Warner filed a lawsuit in New York asking for, and getting, an injunction preventing DirecTV from airing commercials claiming that “if you want 150 HD channels, you need to get DirecTV.” Time Warner, which operates cable systems, said that DirecTV can’t actually deliver on that promise, to which DirecTV countered that it will be a true statement as soon as DirecTV gets a few new satellites launched. There is apparently no dispute that DirecTV does not have the present capacity to deliver on that promise.

Continued on Page 14

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Law Week Committee hosts annual Judicial Reception

As a way to recognize and thank our local judiciary, the Bar Association recently hosted its annual Judicial Reception at The Harriet in West Palm Beach. More than 300 members and judges attended the event.



We would like to thank Maureen Martinez-Schwab for her outstanding leadership as chairperson for this year's Law Week program. Pictured with Maureen is Judge James Martz



Vickey Vilchez and Anne O'Berry



Judge Glenn Kelley and Denise Nieman



Bob Bertisch and Jack Scarola



Judge Martin Colin and Jo Ann Barone



Bryan Poulton, Jayne Barkdull and Judge Thomas Barkdull



Katy Oleksy, Judge Barry Cohen and Bonnie Cohen



Chris Searcy with Judges Fred Hazouri and Peter Blanc



Lisa Quarrie and John Howe

We sincerely thank the following for sponsoring our annual Judicial Reception

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Juror Misconduct Revisited

by Ted Babbitt

The Supreme Court of Florida in Roberts v. Tejada, 814 So. 2d 334 (Fla. 2002) laid down the test necessary to overturn a jury verdict based upon alleged misconduct of a juror in failing to disclose relevant information. This author wrote a prior article in this Bulletin on November, 2005, analyzing that case and others. In Roberts, the Court set forth a three-part test for establishing when a verdict should be overturned on the basis of juror misconduct. That test requires that the party complaining of the misconduct show that the concealed information was relevant to the juror's service, that it was concealed by the juror and that the complaining party acted with appropriate diligence in attempting to uncover the concealed information during voir dire.

Notwithstanding Roberts, it remains popular to attempt to overturn an adverse verdict by conducting an investigation post-trial to uncover concealed facts that would justify the granting of a new trial based upon juror misconduct. A recent advance sheet contained two cases with diametrically opposed results concerning this issue.

In Pereda v. Parajon, 32 Fla. L. Weekly D812 (Fla. 3rd DCA, March 28, 2007) a not guilty verdict for a defendant in a civil case was the subject of an appeal by the co-defendant and the plaintiff on the basis that a juror had failed to reveal that she had been involved in prior personal injury litigation. Post-trial it was discovered that the juror, who was a lawyer, had not only been involved in a prior automobile accident but had claimed an injury and had hired a lawyer to pursue the claim which ended in a settlement with the adverse party's insurance carrier. The trial court denied a motion for new trial and the Third District reversed.

Reviewing the three prong test of Roberts, the District Court found that having a prior personal injury claim was clearly relevant and material to juror inquiry in a case which itself

involved an alleged personal injury. The Court further found that in light of the fact that the juror was, herself, a lawyer and that questions were clearly put to her which required her to reveal her litigation history that the second prong of the Roberts test was also satisfied. The Court was careful to point out at Page 813 that:

"We need not, however, make a credibility determination because whether or not her concealment was intentional is of no import, since the courts have emphasized numerous times that, 'a juror's nondisclosure need not be intentional to constitute concealment,' because the impact remains the same, the counsel is prevented from making an informed judgment regarding the composition of the jury and the utilization of his or her peremptory challenges.' Taylor v. Magana, 911 So. 2d 1263, 1268 (Fla. 4th DCA 2005) (quoting Roberts, 814 So. 2d at 343 – 344); see also Wilson, 944 So. 2d at 430.

On the third prong of the Roberts test, the Court found that counsel had done what was required in asking voir dire questions in such a way that the relevant information was clearly asked for and should have been disclosed.

In Companioni v. City of Tampa, 32 Fla. L. Weekly D840 (Fla. 2nd DCA, March 30, 2007), the trial court granted a new trial to the defendant in a personal injury action when it was revealed post-verdict that two members of the jury were not qualified to serve because they had previously been convicted of felonies and had not had their civil rights restored. The trial judge had, himself, qualified the jurors and in his order specifically found, as a matter of fact, that the jurors had been asked whether they had been convicted of a felony and had answered the question in the negative. The Second District reviewed a number of cases on the issue of whether prejudice was necessary in order to warrant a new trial where a juror fails to reveal lack of qualifications to serve on a jury. The Court relied on State v. Rodgers, 347 So. 2d 610 (Fla. 1977), in which an underage juror lied about her age and the Fourth District, in Rodgers v. State, 338 So. 2d 1121, 1122 (Fla. 4th DCA 1976) found as a matter of law that that was sufficient to justify a new trial without a finding of prejudice. The Supreme Court reversed the

Fourth District finding:

"We are of the opinion that the seating of an unqualified or disqualified juror will not result in a reversal of a guilty verdict in the absence of a showing that such qualification deficiency affected the verdict or prevented a fair trial." Rodgers, supra, at Page 611.

The District Court in Companioni, supra, concluded that while it might be argued that jurors convicted of a felony had an inherent bias in a criminal case, that argument fails with reference to a civil case. The Court cited Ex parte Sullivan, 19 So. 2d 611 (Fla. 1944) in which a deputy sheriff was seated despite his lack of qualifications for being in such an employment and Leach v. State, 132 So. 2d 329 (Fla. 1961) in which a non-registered voter was permitted to be seated. In both cases, the jurors' lack of qualification did not justify a new trial without some showing of prejudice.

It is possible to reconcile these seemingly contradictory opinions. The heart of the inquiry on juror misconduct is whether a party has been denied the ability to have a fair trial. A mere lack of statutory qualification to sit as a juror does not equate to presumed bias or inherent prejudice. On the other hand, failing to disclose a history of litigation similar to the facts of the case being tried leads to the inevitable conclusion that there was likely a motive, conscious or unconscious, on the part of the juror to want to serve on a jury to result in a verdict for or against one of the parties. The lesson to be learned by these two cases is that the existence of juror misconduct alone is clearly not sufficient to automatically result in the overturning of a verdict and the granting of a new trial. The Roberts test must be utilized to determine the extent of likely prejudice and the existence of prejudice must be established to overturn a verdict on the basis of a juror's lack of initial qualifications to serve.

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.

Pro Bono Corner

Pro Bono Attorneys Who Closed Cases in April 2007

We salute the following attorneys that closed their pro bono cases:

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Laura S. Blackman
Gilbert T. Brophy
Mark R. Brown
Kai Li Aloe Fouts
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M. Thomas Lobasz
Jonathan Mann
Lawrence Moncrief
Thomas Montgomery
Kimberly Rommel-Enright
William Shofstall, Jr.
Edward J. Welch
Peggy Wood

Total Number of Hours: 126

Legal Aid Honors Volunteer Lawyers



The Legal Aid Society recently honored its Pro Bono Project's Volunteer In-take Attorneys at a luncheon held at the Governor's Club. Those honored included retired or government attorneys who devote over ten (10) hours each month screening and interviewing clients for legal assistance through Legal Aid's Pro Bono Project. The volunteers honored have been involved in this important program for over six (6) years. They provide services to disadvantaged individuals in our community facing bankruptcy, consumer fraud, landlord-tenant, mortgage foreclosure, social security child custody and support issues. Pictured: (left to right back row) Kim Rommel-Enright, Johathan Mann, Richard Kleid, Richard Abedon; (Left to right front row) Joy Mattingly, Bonnie Silverstein, Georgina Jimenez-Orosa and Lawrence Moncrief.

Do You Need a Mentor?

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

Law Week's First Oratorical Contest

If you want to feel good about our youth and local education, you should have heard what nine local high school students had to say about "Liberty Under Law: Empowering Youth, Assuring Democracy." This was the theme for Law Week and the subject the students were asked to discuss during their six-minute speech, which was recently held at The Fountains Plaza at CityPlace. The students were all presented with a Certificate of Appreciation, plus a cash prize. The program was co-sponsored by the Palm Beach County Bar Association's Law Week Committee and the law firm of Romano, Eriksen and Cronin.



Front row left to right: Zoe Friedland, Alexander W. Dreyfoos School of the Arts; Ashley Rosa, Royal Palm Beach High School; Alexandre Pouille, (second place) Alexander W. Dreyfoos Jr. School of the Arts; Andres Ramirez, Palm Beach Central; Christy Hernandez, Palm Beach Gardens High School; Chris Herron, (third place) Palm Beach Central; Rebecca Merola, William T. Dwyer High; Kristin Miller, William T. Dwyer High and Erica Kramer, (first place) Park Vista Community High School.

Attorneys who served as judges for the contest were: Maureen Martinez-Schwab, Romano Eriksen & Cronin; Manuel Farach, Rutherford Mulhall, P.A.; Shirley DeLuna, Wicker, Smith, O'Hara, McCoy, Graham & Ford, P.A. and David Prather, Lytal Reiter, Clark, Fountain & Williams.

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Cunninghams Host Cocktail Party for Legal Aid

On March 31, Fred and Robin Cunningham hosted a Gift Gathering Gala at their beautiful home in North Palm Beach to benefit the 19th Annual Pro Bono Recognition Evening. The party was sponsored by the law firm of Slawson, Cunningham, Whalen and Gaspari. Over 150 guests enjoyed the evening and donated more than 75 gifts to be auctioned at this year's festivities. The recognition evening honors outstanding pro bono attorneys and raises much needed funds to benefit Legal Aid's 16 projects. In addition to outstanding food and drinks, guests were entertained by students from the Dreyfoos School for the Arts.



Fred and Robin Cunningham



Dick Slawson, Jeanmarie Whalen and Bob Bertisch



The Estate and Probate CLE Committee recently honored retired Judge Gary Vonhof for his years of service in probate court. Picture above are Judge Richard Oftedal, Judge Gary Vonhof, Committee Chair Brian O'Connell and Judge John Phillips.



In Memoriam
Thomas J. Yeager
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Who Are They?

From Page 4

1. Bob Oglesby
2. Leonard Singer
3. Marjorie Gadarian Graham
4. Rafael Roca
5. Al Malefatto

The Palm Beach County Bar Association, along with the Florida Association of Women Lawyers and the F. Malcolm Cunningham Sr. Bar, recently hosted a joint luncheon featuring Dr. Richard Lapchick as our guest speaker. Dr. Lapchick is a human rights activist and a pioneer for racial equality. Below are pictures from the luncheon.



Dr. Richard Lapchick (far right) poses for a picture with Bradley Harper, president, F. Malcolm Cunningham, Sr. Bar Association; Manny Farach, president, Palm Beach County Bar Association; and Kim Rommel-Enright, secretary, Florida Association of Women Lawyers.



Adam Rabin and Scott Smith



Wade Bowden and Dick Schuler



Siobhan Shea, Kate Leber, Margaret Wood and Jessica Callow



Nadine V. White-Boyd, Judge Matthew Stevenson and Judge Jonathan Gerber



Tracy Mitchell and Paul Sopp

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I HEARD IT IN THE COURTHOUSE... True Stories from Palm Beach

by Irwin Gilbert for the Professionalism Committee

Sorry I heard this:

Recently I appeared in Circuit Court to argue a complex motion in a very contentious case. My opponent would describe himself as a pillar of the Bar. Although he has practiced for several decades and has been active in the Bar, my adversary has a propensity to audibly groan, sigh and make a phfff sound as I argue the law and the facts to the Court. He shakes his head, looks around the room in shock and disgust and makes that tut, tut, tut sound Sister Mary Margaret made before writing "F" on your paper, or whacking you with a ruler. It borders on Tourette's Syndrome.

Sound effects have no place in a Courtroom. Nor does exaggerated body language. Judges can pretty much divine that the lawyers appearing before them disagree on the facts and law. Otherwise, why would you be there? The correctness of my argument was not going to be measured by the quantity or variety of sound effects my adversary could come up with. The Judge in my case was gracious, as always, and made no comment about my colleague's behavior. I think he should have.

An attorney should conduct himself in an adult and professional manner. Of course we are not potted plants. We are human and can be forgiven an occasional slip. It might be reasonable to show a little surprise, if it is genuine. However, we are not supposed to act like young children on the edge of a tantrum. I would venture a guess and say there has not been a single Judge that has ruled on a single motion on the basis of one lawyer making the sound of a deflating couch cushion. On the other hand, I would safely assume that any witness to such behavior would walk away thinking less of the lawyer.

Glad I heard this:

While standing in the hallway on the 10th Floor, I listened to this exchange between two lawyers:

Lawyer #1 I appreciate your faxing your cases to me yesterday. I should warn you that one of your cases has been reversed and one has been distinguished. I printed out the history for you and have the later case decisions.

Lawyer #2 I thought we Shepardized those cases correctly and these were good law.

Lawyer #1 I used Keycite and may have gotten a different result. I did not want you to be caught by surprise when we go before the Judge.

Some lawyers might relish the chance to ambush an adversary in front of the Judge. Nothing punches a gaping hole in an argument like citing bad law. On the other hand, justice is better served by a full and frank discussion of applicable case law. I do not believe that justice is served by making an opponent look bad. All of us lose respect in the public eye if any of us look foolish.

In many States Local Rules require that parties serve motions a certain number of days in advance of the hearing and respondents must file answering papers in advance as well.¹ This avoids ambush, permits a fuller exchange on the law and facts in writing and makes for better preparation. In Florida, parties responding to a motion at UMC rarely provide anything to opposing counsel in advance of the hearing. Surprise is the rule.

Some years ago, I was ambushed by an adversary who claimed an important case I was citing had been reversed on appeal. I asked the Judge for an opportunity to review the case and subsequent history and respond in writing. The Judge declined and ruled against me. I returned to my office with the intention of strangling the associate who prepared my memorandum of law. However, a careful examination revealed that the case I cited had not been reversed at all. Another decision in the same case had been appealed, resulting in reversal. Had my adversary made an innocent mistake or was his plan to ambush me in front of the Judge? Who can say.

It might strike some lawyers as a strange notion, that adversaries in a case should help each other. In fact, we all win when we insure a full and frank exchange before the Court. Both sides are then better prepared and can make better arguments. The Judge is placed in the best position to make a fair ruling. Moreover, we not only look more professional, we are.

¹ See, e.g.: New York Civil Practice Law and Rules (NYCPLR) Rule 2214(b).

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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.

MICHELLE M. CANADAY – Nova Southeastern, 2002; Attorney for DCF in West Palm Beach.

ASHLEY CROSS-RAPPAPORT – Hollywood, FL; University of Florida, 2005; Associated with 15th Judicial Circuit Trial Court in West Palm Beach.

GABRIEL ESTADELLA – New York; University of Michigan, 2006; Associate with Fourth District Court of Appeal in West Palm Beach.

ANDREW GAROFALO – New York; Nova Southeastern University, 2001; Associate with Shutts & Bowen LLP in West Palm Beach.

JONATHAN S. GILBERT – Tampa; University of Florida, 1994; Partner with Gunster Yoakley & Stewart in West Palm Beach.

ANDREW S. GOLDWYN – New York City; Nova Southeastern University, 1994; Sole Practitioner in Boca Raton.

MARGERY E. GOLANT – Philadelphia; Suffolk University Law School, 1996; Associated with Palm Beach County Clerk & Comptroller.



JEFFREY S. GRUBMAN – New York; University of Southern California, 1989; Sole Practitioner in Boca Raton.

CHAD CHRISTOPHER HASTINGS – Teaneck, NJ; Mercer University, 2001; Associate with Lesser, Lesser, Landy & Smith LLC in Palm Beach.



STANLEY A. KIM, PH.D. – Montgomery, WV; Suffolk University Law School, 1998; Partner in Ruden, McClosky, Smith, Schuster & Russell, P.A.

JULIE R. MANDEL – Philadelphia; Rutgers University, 2002; Associate with Sonneborn, Rutter, Cooney & Klingensmith, P.A.

JONATHAN T. MANN – Ann Arbor, MI; Wayne State University Law School; Associate with Fourth DCA in West Palm Beach.

UBALDO J. PEREZ, JR. – Cardenas, Cuba; University of Miami Law School, 1987; Partner in DuBosar & Dolnick, P.A.

ASHLEY F. PINNOCK – University of Florida, 2000; Associated with FPL in Juno Beach.

RITA PITASSI – Buffalo, NY; Nova Southeastern University, 2003; Associated with Cole, Scott & Kissane in West Palm Beach.

VICKI A. TUCCI – New Jersey; Nova Southeastern, 2004; Associate with Legal Aid in Palm Beach County, Inc.

CARRIE E. VAUGHN – University of Alabama, 2005; Associate with Legal Aid Society in Palm Beach County, Inc.

PHILIP WISEBERG – Fairfax, VA; Nova Southeastern, 2006; Associated with Office of State Attorney in West Palm Beach.

BRYAN J. YARNELL – LA; Harvard Law School, 1996; Associate in Watterson & Zappolo, P.A.



HDTV

Continued from page 5

DirecTV's plan to increase capacity may have been stalled by the problems encountered by Boeing's Sea Launch rocket launching operation. A rocket carrying a telecommunications satellite exploded on January 30th as it was launched, which damaged the launch pad ship and put on hold the other 6 satellite launches planned for 2007. DirecTV was to use one of those launches for a new satellite. Time Warner says the delay will set back the planned expansion of DirecTV's HD programming, although DirecTV claims that it is "moving forward" with the plan. There is no indication of how they plan to do so if they can't launch the rocket, and Home Depot doesn't sell a ladder long enough.

Time Warner also claims that it will be able to offer 200 HD channels soon over their current network through the use of better compression and several other technologies. Unfortunately, better compression degrades the resolution because something is always lost in the translation. They may be able to broadcast 200 HD channels over the current wiring, but will it be good enough to call itself HD?

This fight apparently comes down to who can promise more in an effort to get customers. In a common product parade, we are first given a promise which is, hopefully, followed by reality. The

problem is that the reality never lives up to the promise, as those of us who have purchased HDTV technology have discovered. Although we are all anxiously expecting more HD programs, the reality is that the cable and satellite broadcasters do not have the capacity to deliver right now. It is only a small bump in the road, I am sure. Perhaps we can borrow a slogan from MTV in the 1980s, "I want more HDTV!"



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Bare Legal Title and Resulting Trusts

By Marc P. Barmat

Bankruptcy attorneys are often faced with clients who “own” real property jointly with a parent. Often times the client contributed no money towards the purchase or upkeep of the real property and the sole reason the client’s name was put on the title to the property was for estate planning purposes for the parent. In this situation, if the client files a Chapter 7 bankruptcy, an issue arises as to whether the client-debtor’s interest in the property will become property of the bankruptcy estate. A further issue arises if before filing bankruptcy the client transfers their interest back to their parent. Is that a fraudulent transfer? The analysis of these issues involves the legal concepts of bare legal title and resulting trusts. A Florida bankruptcy court recently issued an opinion which addresses these legal concepts.

In *In re Moodie*, 2007 WL 738435 (Bankr.S.D.Fla. 2007), a debtor made a prepetition transfer of her joint interest in a parcel of real property to her mother for no consideration. Prior to that transfer, the debtor’s mother purchased the real property along with the debtor as joint tenants with rights of survivorship. Despite being listed on the deed, the debtor paid no consideration for the property and in fact, the debtor’s mother purchased the property in their joint names solely as an estate planning measure. The Chapter 7 bankruptcy trustee brought an adversary proceeding seeking to avoid as fraudulent the prepetition transfer of the property to the debtor’s mother.

In analyzing these facts, the bankruptcy court determined that there was a resulting trust in favor of the debtor’s mother and that the debtor held a bare legal interest in the property. The bankruptcy court found that a resulting trust arose presumptively when the property was purchased by the mother and then transferred to the debtor under circumstances which raised an inference that the mother did not intend that the debtor should have the beneficial interest in the property. Based upon these

facts, the Court found that the transfer of bare legal title without consideration was not for less than reasonably equivalent value because bare legal title is economically valueless to the debtor. Consequently, the transfer of the property to the debtor’s mother for nothing in return did not constitute less than reasonably equivalent value. Accordingly, the Court found that the trustee was not able to prove one of the elements of a fraudulent transfer under 11 U.S.C. §548(a)(1)(B).

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

Circuit Court Report CIVIL DIVISIONS • March 2007

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	07/07	07/07	06/07	1339
B	08/07	06/07	06/07	1239
D	03/08	09/07	04/07	1603
E	07/07	06/07	07/07	1649
F	08/07	08/07	08/07	1324
G	12/07	12/07	05/07	1081
H	10/07	10/07	04/07	1403
I	07/07	07/07	05/07	1292
J	08/07	06/07	06/07	1474
N	09/07	09/07	04/07	1581
O	09/07	07/07	06/07	1485

All Civil Division Judges schedule their own Jury and Non-Jury Trials. Pending cases as of 03/07/07.



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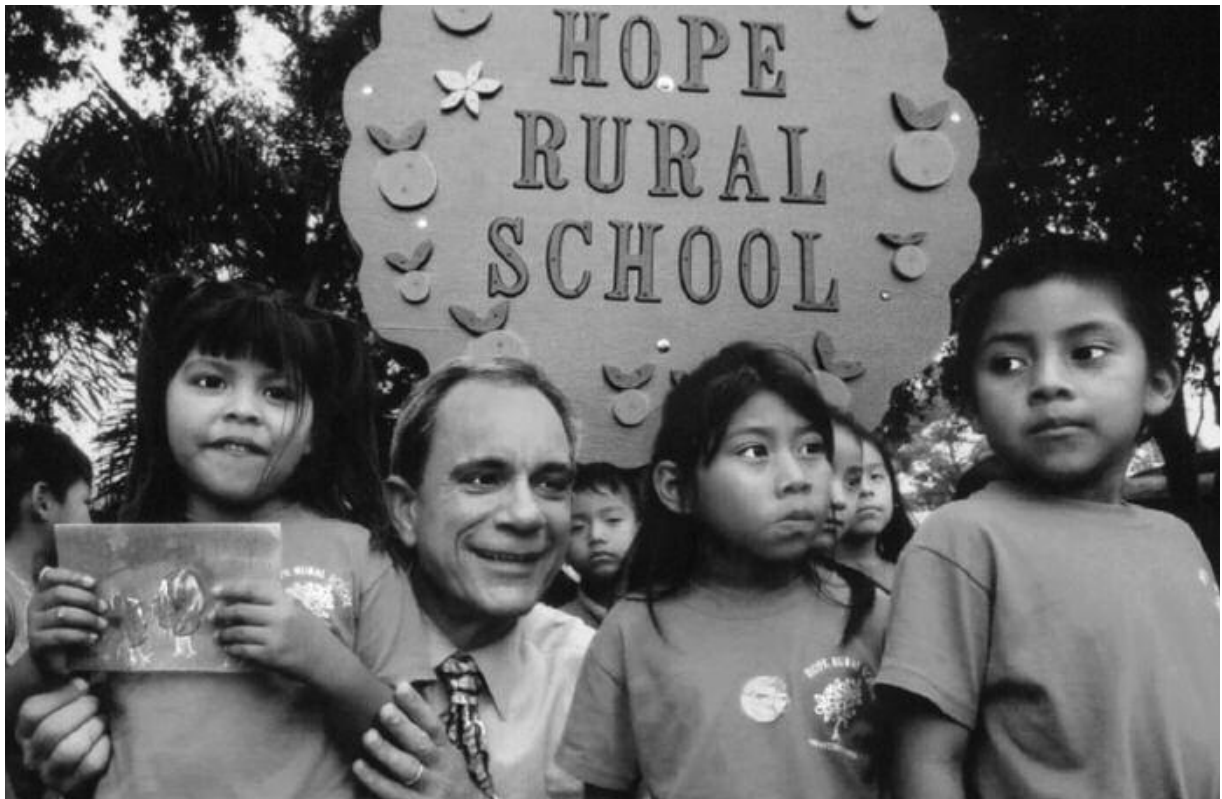
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by Mark Powers

Lesson Six — Potential Referral Source Interviews

“What frustrates you about dealing with attorneys?” Imagine asking this question of a potential referral source. Perhaps this is someone you met over the holidays at a party. First, he’ll grin – look to see if you are serious – and then he’ll tell you everything he doesn’t like about dealing with attorneys (even if he himself is an attorney). If you think this is a bad way to direct a conversation, read on. This type of interview question is one of the most powerful and strategic ways to cultivate a new business relationship and open the door to new referrals.

Keep in mind that second only to talking about ourselves; we humans love to give our opinions. Most individuals that you ask questions will be flattered that you asked. To test this for yourself, go out and interview three to five people who fall into this category. Most of us know approximately 150 people by name in our community. If you are well networked, or have lived in your area a long time, you might know more than 500. So look at the people with whom you are already acquainted. They may serve on the same boards as you. They may coach your daughter’s soccer team. They may go to church with you or play tennis with you on weekends.

Once you’ve identified them, think about what these people do for a living and ask yourself if they are in a position to refer you clients. If they are, try saying something like: “Gary, I’ve sat next to you on this board for a year now and I don’t really know what you do – why don’t we get together for lunch sometime?”

Or, perhaps you are at a service club meeting with someone whom you know casually, and admire the way she handles club business. In this case the conversation might start something like this. “Joan, I’ve watched how you’ve handled your committee – you obviously have pretty good business judgment. I’m always in the process of enhancing my practice and would appreciate your opinion. Could I buy you lunch and pick your brain?” These are just two examples: the idea is to create an opportunity to meet someone one-on-one and get to know them better.

A one-on-one lunch, or even breakfast date, gives you that chance. The interview is not to be done when the relationship is still “cold,” meaning that you have to know the person you are talking to a lot better before launching into it. Only when the right degree of warmth is reached will you feel comfortable launching into the interview. So spend time learning about the potential referral source, their family, their history, and most importantly, their business. When the time is right, try to make the interview questions sound spontaneous and like a natural outgrowth of the conversation.

To lead into the interview, you might ask a question such as, “Have you worked with many attorneys?” or an observation such as, “I imagine you’ve worked with many attorneys over the years.” (You do not want to start the person on a long, detailed recital of whom they have used and what they do or don’t like about them. You aren’t looking for negative gossip about your colleagues and should avoid this perception by not letting them name people). To make it sound natural, use your own words when you ask the following questions:

1. What are your frustrations when dealing with lawyers, in general?
2. Why do these things frustrate you?
3. Tell me what lawyers have done in the past that made you decide never to go back to them – or refer people to them. (Again, no names.)
4. If you were to get outstanding service from a lawyer, how would you describe it?

If you listen, your potential referral source will tell you what type of lawyer they enjoy working with and what type they do not. In this conversation, they will reveal the expectations they have of working with an attorney. And when they open up to you in this process they will start seeing you as an ally. Someone who understands. They will tell you things they are not revealing to any other attorney. Why? Because no other attorney in your community is asking these questions.

At the appropriate moment, mention to your lunch companion that you’d be interested in “building a business relationship with them in the future” and see what they say. Quite often, their response to this will be positive. If it is, pursue the idea. In most cases, if they are in a position to send clients to you, you are in a position to reciprocate. Mention that you will be on the lookout for referrals for them. In fact, there is nothing like sending a client to a new potential referral source to get the business relationship off to a strong start.

Take the time now to figure out who in your universe might have great potential to send clients. We’ve outlined a process you can use to begin cultivating a relationship with potential referral sources that is road-tested and very powerful. But don’t take our word for it. Try it for yourself. We think you’ll be delighted at the results.

Mark Powers is the President of Atticus, Inc., co-authored “The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners” and is a featured marketing writer for Lawyers, USA. Mark founded Rainmakers™, a simple process for attorneys at all levels to stay focused on marketing, creating fresh ideas, and on-going accountability to marketing. To learn more about Atticus or Rainmakers™, please visit the Atticus website at www.atticusonline.com or contact the Atticus office at 352-383-0490.

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Five Practical Tips for a Successful Mediation

By Steven A. Mayans

“The difference between ‘involvement’ and ‘commitment’ is like an eggs-and-ham breakfast: the chicken was ‘involved’ - the pig was ‘committed.’”
– anonymous

Look, you have to do it anyway, right? It is, after all, court-ordered. And we all know how judges can get. So, why not mediate sooner, rather than later (when it has a better chance to resolve); and why not approach it enthusiastically, rather than grudgingly (since it may be your best opportunity to get favorable results for the client). Even when mediation fails, you should gain a fuller understanding of your opponent’s case, and your client should have a better assessment of the risks of trial.

Both sides need to commit to the mediation process – fully, openly, and with the right “problem-solving” attitude. Here are five practical tips that will increase the chances for settlement:

1. Better pre-mediation preparation

If you start with the proposition that your lawsuit has a better than even chance of settling in mediation (which, statistically, has been the experience in the Fifteenth Judicial Circuit), you should approach mediation in the same way you would any other potentially dispositive proceeding. With preparation. Start with assessing your case honestly – its weaknesses and strengths, the likelihood of success; the damages at issue; the exposure of fees and costs; the time expected for final disposition (including appeal); and the costs of litigation to your client (stress, time, and money).

Contact your opponent (yes, it is allowed), and make an initial effort at settlement. For one thing, you may be surprised how close your positions are. More likely, you will emerge with a more informed view of the gap that will need to be covered at mediation. Any progress you make beforehand is that much less that will have to be tackled at mediation.

Contact your client (yes, it is encouraged), and start preparing expectations as to what is realistic in settlement. Help your client prioritize objectives and give consideration to non-

monetary or extra-judicial options that can be explored as part of a negotiated settlement.

2. Share your mediation statement

Not preparing a mediation statement is a missed opportunity to persuade the other side. Mediation statements too frequently say so little – that your position is right; that their position is wrong; and that for God’s sake do not share this confidential information with the other side! How is this private writing different in any way from your public pleadings? What is the harm then in showing it to the other side? And, if you are going to share it, why not write it specifically for them? This may be your only opportunity to address the other party (knowing, as you do, that it will all but certainly be forwarded by opposing counsel). What would you most want to tell them given this chance for an uninterrupted communication? Why not put your persuasive skills to maximum benefit?

3. Direct your presentation to the other party

While it is certainly appropriate for you to direct your presentation to the mediator, consider whether it may be more effectively focused on the other side. In a federal sexual harassment case I mediated, the defense attorney maintained eye contact with the plaintiff during her presentation; apologized repeatedly for what had occurred; reassured the plaintiff that the company had a zero tolerance for such conduct; and then explained why there was no legal liability because of the prompt remedial action taken by the employer. In private caucus with the plaintiff, it became clear that this sincere apology – something that had never been extended before – meant a great deal. It set the right tone and created the right environment to allow the case to settle.

4. Be open to creative resolutions

Solutions need not be monetary only. In a recent construction defect case I mediated, the plaintiff alleged a number

of workmanship defects, but distrusted the defendant to repair them. The builder, while standing behind the work, claimed that the complaints were exaggerated and doubted the defendant’s objectivity in assessing any corrective work that it might perform. A monetary solution was not possible.

The settlement? The parties agreed to employ an independent builder, who would determine which defects needed to be addressed and which ones met industry standards. He would also confirm when the defendant’s corrective work was satisfactorily completed. It was a principled settlement for all. The buyer knew that an experienced professional whom he trusted would examine the construction, confirm the defects, and certify the remediation. The defendant knew that someone from the industry would decide what work needed to be done, and that it would be the impartial professional, not the dissatisfied buyer, who would decide when the repairs were satisfactorily completed. Best of all, the parties would never have to deal with each other again. An agreement was drawn up at mediation, and the case ended, with the Court retaining jurisdiction to enforce the terms of the settlement.

5. Continue efforts post-mediation

Just because a resolution was not reached at mediation does not mean all settlement efforts should stop. On the contrary, if the parties and the mediator stay engaged, new ideas, new assessments, new proposals can be explored by telephone, e-mail, and where warranted, a reconvened mediation.

Not every case can be settled. Too many that can, however, are still decided in court. If you are committed to the process, not just involved, you can improve the chances that yours will not be one of them.

Steven A. Mayans, a partner of FitzGerald Mayans & Cook, P.A., is a federal and state certified court mediator and a member of the commercial mediation panel of the American Arbitration Association’s National Roster of Neutrals.

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

W. GREY TESH: aaacriminaldefense.com, Criminal Defense Attorney. Over 50 jury trials. Former assistant public defender experience in felony, misdemeanors, juvenile, and appeals. Federal and State cases. Past Director, Palm Beach Association Criminal Defense Lawyers, 1610 Southern Blvd. WPB, FL 33406. greytesh@aaacriminaldefense.com (561) 686-6886.

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

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

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

RICHARD HUIJBER: Former Immigration Attorney-Advisor to the Miami Immigration Court and the Board of Immigration Appeals. Mr. Hujber has 10 years experience, exclusively in immigration law. He and his staff speak Spanish, Hungarian, and Portuguese fluently. The office accepts ALL types of immigration matters. 980 N. Federal Hwy. Suite 306, Boca Raton, Florida, 33432. Tel: (561) 417-VISA (8472); Fax: (561) 417-2575; Richardhujber@yahoo.com.

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HEARSAY



G. Mark Shalloway, of Shalloway & Shalloway has been elected a Fellow of the National Academy of Elder Law Attorneys (NAELA) by his peers for his years of

distinguished work on behalf of the elderly. Mr. Shalloway practices with his father, C. Michael Shalloway, and is President-Elect of NAELA.



Patricia E. Lowry, a litigation partner with global law firm Squire, Sanders & Dempsey L.L.P., has been inducted as a Fellow in the American

College of Trial Lawyers. The invitation-only fellowship honors lawyers who have mastered the art of advocacy and demonstrated high standards of ethical conduct.



Searcy Denney Scarola Barnhart & Shipley, P.A. announced that senior partner **John (Jack) Scarola** has been selected to join the prestigious 600-

member International Academy of Trial Lawyers. Christian (Chris) Searcy, president of the firm, has been a fellow since 1987.

Rosenthal & Levy, P.A. announced the firm's Port St. Lucie office has relocated to a brand new building at 1660 NW St. Lucie West Boulevard, Suite 300. For more information visit www.rosenthallevy.com.



Dr. Stanley Pierce has been elected to serve as Chairman of the Health Care District. The District provides a safety net of health care services that

thousands of residents rely on for themselves and their families.

Harry A. Shevin has become a shareholder of Searcy Denney Scarola Barnhart & Shipley, P.A. Mr. Shevin was recently named President-Elect of the Palm Beach County Justice Association.

MISCELLANEOUS

ANNOUNCEMENT: This is to advise you that Judge Richard I. Wennet is NOT retiring his Circuit Court seat at the end of his term and will be seeking re-election.

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CALENDAR

June 2007

Friday, June 1, 8:00 am
PBCBA Real Estate Seminar
 Bar Association Office

Wednesday, June 6, 8:15 am
TFB "Basic Probate & Guardianship 2007"
 Bar Association Office

Thursday, June 7, 8:00 am
TFB "Basic Tort Litigation"
 Bar Association Office

Thursday, June 7, 5:30 pm
YLS Past President Happy Hour
 Island Palm in Palm Beach

Friday, June 8, 12:00 Noon
Quality of Life Committee Meeting
 Location TBA

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

Thursday, June 14, 5:30 pm
YLS Happy Hour w/Federal Bar
 McCarty's in Palm Beach

Friday, June 15, 8:30 am
"18th Annual Community Assn. Law Seminar"
 Bar Association Office

Friday, June 15, 12:00 Noon
Cunningham Bar Association Meeting
 Law Library

Saturday, June 16, 7:00 pm
PBCBA Annual Installation Banquet
 The Breakers Hotel
 Palm Beach

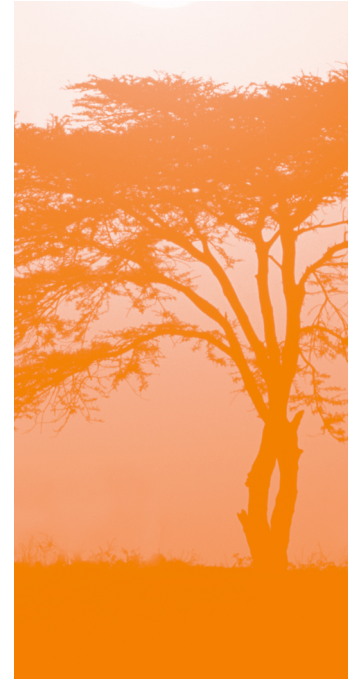
Tuesday, June 19, 5:30 pm
Legal Aid Board Meeting
 Bar Association Office

Thursday, June 21, 5:30 pm
PBCTLA Meeting
 Call 561- 471-2807
 for more information

Friday, June 22, 12:00 Noon
FAWL Annual Awards Luncheon
 National Croquet Center 700
 Florida Mango Rd. WPB
 RSVP: Kim Daniel, 547-7800 mailbox 3 or
 fawl@comcast.net

Friday, June 22, 12:00 Noon
Small Firm & Solo Luncheon
 Bar Association Office

Wednesday, June 27 – June 30
TFB Annual Meeting
 Orlando, FL



PALM BEACH COUNTY BAR ASSOCIATION

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