



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

www.palmbeachbar.org

June 2008



**Richman Greer, P.A.,**  
 is pleased to invite you to attend  
 the installation of its partner  
**John G. White, III**  
 as  
**President of The Florida Bar**  
 at the Annual Convention on  
**Friday, June 20, 2008, at 10:00 a.m.,**  
 at the  
**Boca Raton Resort & Club**  
**501 East Camino Real, Boca Raton**  
 Additionally, in conjunction with the  
**Palm Beach County Bar Association**  
 and its  
**Young Lawyers Section,**  
 you are invited to attend a  
 cocktail reception that evening  
**from 5:00 p.m. to 7:00 p.m.**  
**in the Amalfi Room of the Boca Resort**



Board of Directors attending the opening reception for the historic courtroom are pictured above (front row): John Howe, Michelle Suskauer and Adam Rabin; (back row) are Bryan Poulton, Wade Bowden, Michael Napoleone, Jason Guari and Meenu Sasser. Not pictured: Richard Schuler, Adam Doner and Manny Farach.

## New Officers/Directors to be sworn in at banquet on June 7

Congratulations to our incoming Board members who will be sworn in by the Honorable Kenneth Marra at this year's installation banquet on June 7 at the Breakers Hotel:

- President .....Richard D. Schuler
- President-elect.....Michelle R. Suskauer
- Directors (2-yr terms).....Jason Guari  
 Maureen Martinez-Schwab  
 Jill Weiss
- Directors (1-yr term).....John Howe  
 Bryan Poulton  
 Adam Rabin

Also serving on the Board next year will be North County Section President Ryon McCabe, Young Lawyers Section President John Whittles and Meenu Sasser, Immediate Past President. Ex-officio members will be South County Bar President Michael Mopsick, and Board of Governors Members Greg Coleman, Scott Hawkins, Lisa Small and David Prather.

## Missing Bar Events? Be Sure to Read Your eNewsletters



Is your current email address on file with our office? If not, please be sure to send your current information to us. As postage rates continue to rise, the Bar is sending notices of all of its

functions – membership luncheons, free happy hours, judicial receptions and important court information – to its members via email. Don't be left out of the loop! Send your email address to us today and make sure your email provider accepts our emails. You can send your updated information to [pburns@palmbeachbar.org](mailto:pburns@palmbeachbar.org).

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THE  
**BULLETIN**

**PALM BEACH COUNTY  
BAR ASSOCIATION**

MEENU T. SASSER  
*President*

www.palmbeachbar.org

PATIENCE A. BURNS, CAE  
*Executive Director*

**Officers**

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Richard D. Schuler, *President-elect*

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John M. Howe  
Michael J. Napoleone  
Bryan Poulton  
Adam T. Rabin  
Michelle R. Suskauer

Manuel Farach, *Immediate Past President*  
Jason J. Guari, *Young Lawyers Section President*  
Adam S. Doner, *North County Section President*  
Howard S. Grossman, *Ex Officio, South County Bar President*

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David C. Prather  
Lisa S. Small

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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

Dear Meenu:

My thanks to you and the Palm Beach County Bar Association for recently hosting the exhibit unveiling at the Historic Courthouse. The event was outstanding and provided an all too rare opportunity for those of us involved in the legal community to mingle informally and reflect on the legal history of our community. By respecting and learning from our past, we all become better citizens, better people and better guardians of our children's futures. My thanks to you and the Bar for allowing me to share in this wonderful experience.

/s/ Judge Peter D. Blanc, Circuit Judge

Supreme Court of the United States  
Washington, D. C. 20543

3/24/08

CHAMBERS OF  
JUSTICE CLARENCE THOMAS

Dear Ms. Sasser -  
Thank you so much for your kind letter + for your hospitality during my visit to West Palm Beach. Please convey my best wishes to + deep appreciation to the Bar leaders, membership, + staff.

Sincerely,  
Clarence Thomas

**Congratulations, Michelle**, on your election as president-elect of the PBCBA. I know you will work as hard as president as you did on the campaign trail and that during your term our Bar will continue to grow and prosper. Congratulations also to **Jason, Jill and Maureen** on joining the board of directors.

**Thank you to all of you** who supported and voted for me in the election. I am grateful for your faith and confidence in my ability to lead our Bar; because of you, I truly enjoyed the campaign.

I look forward to continuing my service to our Bar, although there is this documentary on global warming I've been interested in putting together...

- Michael J. Napoleone

# President's Message



## "Bar Accomplishments, 2007 - 2008"

By Meenu Sasser, President

It has certainly been a remarkable year for the Palm Beach County Bar Association. As we launched our 85th Anniversary year, the Bar Association adopted the theme of "Tradition and Education." Listed below, are some of our accomplishments of this year:

### 1916 Historical Courtroom

1. Worked with Palm Beach County and Historical Society. Signed 10-year License Agreement with Palm Beach County.
2. Raised \$259,000.
3. Opening Reception and Ceremony to honor William Holland: April 22, 2008
4. Membership Tour and Reception: March 27, 2008.
5. School tours with Title I schools: May, 2008
6. Trained and recruited 75 attorneys and judges as docents.

### CLE

1. Worked to improve CLE quality with high-quality speakers.
2. Increased numbers of CLE programs and achieved record-breaking CLE attendance.
3. Sell out seminars: Appellate Practice Seminar and Trial Superstars

### Internal

1. Helped Board develop leadership.
2. Assigned Board members their own Board project.
3. Worked to add non-discrimination policy.
4. Added and clarified attendance and phone attendance policies.

### Court Relations Issues

1. Worked on court security access concerns.
2. Worked on court funding crisis.

### Inaugural Leadership Program – April 25, 2008

1. Held Leadership Program with: Justice Cantero, Dennis Archer, Nora Bergman and panel discussion.

### Bench-Bar

1. Substantially reworked and revised Bench Bar Conference.
2. Increased attendance: 1,060 attendees.
3. Considered "Best Ever" Bench Bar Conference.
4. Increased revenue from 2006 conference.

### Theme

1. Developed 85th Anniversary, Theme and new logo.
2. Widely used theme of "Tradition and Education" throughout the year
3. Commemorative Edition of the Bar Bulletin - December.
4. Special Edition of the Bar Bulletin in March in conjunction with opening of historical courtroom.

### Membership Luncheon Speakers – High Quality Speakers

1. Lauren Rikleen
2. U.S. Attorney Alex Acosta
3. Supreme Court Justice Clarence Thomas (over 700 attendees)
4. Attorney General Bill McCollum
5. Florida Bar President Frank Angones; and
6. Duke Lacrosse Attorney Jim Cooney (Law Day Speaker).

### Revised Standards of Professional Courtesy – Effective October, 2007

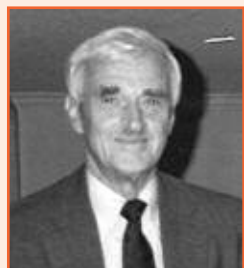
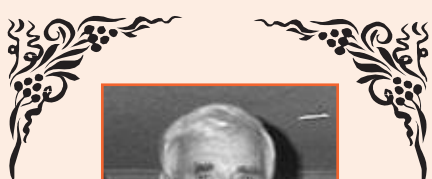
Expungement Program-Launched new program held as call-in program during Law Week

Foreclosure Project-Worked with 15th Circuit on proposed new Administrative Order and Summons

These accomplishments could not have been achieved without the help of many individuals. First, I would like to thank Patience Burns, Lynne Poirier and Skip Smith, without whom the 1916 Historic Courtroom project could not have been accomplished.

Second, I would like to thank our tremendous Board of Directors, each of which agreed to my concept of a "Board of Director Project" this year. Adam Rabin hit the ball out of the park with his tremendous "best ever" Bench Bar Conference and outstanding CLE Programs. Bryan Poulton worked to develop

*Continued on page 4*



In Memoriam  
John R. Day

1922 - 2008

Palm Beach County  
Bar Association  
President 1966



## Board of Directors

### Meeting Attendance

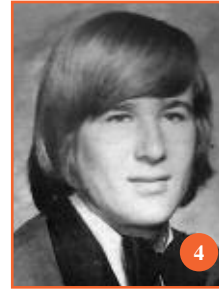
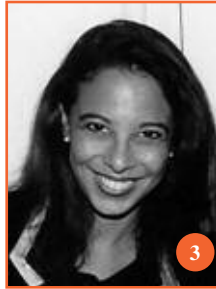
	July Retreat	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr
Bowden	X	Phone-in		X	X	X	Phone-in	X	X	X
Doner	McCabe	X	X	X	X	X	X	X		
Farach	X	X	X	Phone-in	X	X	X	X	Phone-in	X
Guari	X	X	X	X	X	X	X	X	X	X
Howe	X	X	X	X	Phone-in	X	X	X	X	X
Napoleone	X	X	X	Phone-in	X	X		X	X	X
Poulton	X	X		X	X	X	X	X	X	X
Rabin	X	X	X	X	X	X	X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

## 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 10



## Minutes of the Junior Bar Section of the Palm Beach County Bar Association June 5, 1964

The Junior Bar Section of the Palm Beach County Bar Association met on Friday, June 5, 1964 at the Town House Hotel; thirty-four members and guests were present. The president recognized the presence of Judges White, Knott, Hewitt and Downey.

Several loyal members left without eating when they noted that the buffet would not be served.

Angus Campbell gave a fifteen-minute speech on the injustice of Circuit Judges ruling against him. The program was salvaged from utter disaster by Judge Downey who gave an interesting and

informative talk on local practice and procedure. This was followed by a question and answer period.

There being no further business, the meeting was duly adjourned.

/s/ Angus J. Campbell, Secretary

## “Bar Accomplishments”

*Continued from page 3*

the Bar Policies and Procedures Manual. John Howe worked to plan and implement the school tours for the 1916 Historic Courtroom. Michele Suskauer worked to plan the opening reception for our sponsors for the Historic Courtroom. Michael Napoleone did a great job with the Inaugural Leadership Academy and Wade Bowden helped with the Courtroom fundraising efforts.

In addition to our Board members, I would like to thank our incoming President, Richard Schuler for his assistance, along with our past President, Manny Farach.

The ongoing work of the Bar is done through 36 active committees. Each of these committees were led very capably by committee chairs and vice-chairs who served the needs of the various committees and furthered the practice of law in Palm Beach County. Several of these committee members went above and beyond this year, including Scott Smith with the extremely successful Trial Superstars Seminar and Mark Greenberg with his new programs for the Client Relations Committee.

Serving as President this year has allowed me to grow in so many ways. My heartfelt thanks to our membership for allowing me to serve.

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# County Court Judge Reginald Corlew

Submitted by Carina M. Leeson on behalf of the Judicial Relations Committee

DIF scores, tax returns, notice of federal tax liens, revenue rulings, audits and briefs... not common terms used in our State's court system. Fast forward to misdemeanors, arraignments, plea bargains, and suppression hearings. Judge Corlew's unexpected legal career began as an attorney with the Office of Chief Counsel for the IRS where he litigated cases in the United States Tax Court and handled other matters that had national and international implications, including one case which resulted in a \$1.8 billion tax adjustment. This leaves one wondering about the path that led him to become a judge in Palm Beach County. Well, it's rather simple – his dedication and commitment to public service.

Judge Corlew was born in Detroit, Michigan and is the youngest of three children. Both of Judge Corlew's parents were civil service employees. At age 12, his family relocated to the Florida panhandle to the city of Niceville, Florida where he grew up and graduated from high school. His parents continue to reside in Niceville. Judge Corlew was a natural in sports and qualified every year to run in the high school State Championship track and field. As a result of his athletic talent, he was heavily recruited in football and was offered scholarships to play at many universities. He narrowed his choices to Notre Dame, Alabama, Northwestern, Vanderbilt and Florida. After long deliberation and looking for a strong athletic and academic environment, he accepted a scholarship with the University of Florida where he was a four year letterman and enjoyed a successful football career. He graduated in the spring of 1988 with a liberal arts degree.

Although Judge Corlew worked out for many NFL teams he did not believe his future was in professional football. He never considered going to law school until after graduating from UF. Shortly after graduation from UF he met, Jerilyn, his

future wife, notably at his best friend's wedding. Both happened to be in the wedding party. He claims that when he first saw her he knew he was going to marry her, it was just a matter of convincing her of the same. He graduated in 1992 from Southern University Law Center in Baton Rouge, Louisiana. Wanting to do something different, Judge Corlew continued with his legal education by obtaining an LL.M in Tax from Southern Methodist University Law School in 1993. This helped open the door with the United States Department of Treasury where he worked as a tax litigator representing the IRS for thirteen years. Judge Corlew was also an adjunct professor at Nova Law School where he taught Tax Procedure and Litigation.

Judge Corlew applied for and was appointed to a vacancy on the Palm Beach County Bench by Governor Jeb Bush on April 3, 2006. Judge Corlew believes judging is an art and a skill which is developed through personal experiences and thoughtful consideration of arguments about what legal principals mean and how they are applied. Judge Corlew strives to overcome

public skepticism of the criminal justice system by addressing each case before him with professionalism, dignity and fairness, particularly since life, liberty and property are usually at stake. There is no cookie cutter approach in his courtroom. Judge Corlew believes law reflects life, and life is complicated. Therefore, there are no simple answers to legal problems. You must decide them case by case.

In 1997, Judge Corlew married Jerilyn McCall, a labor relations consultant. They have three children together, Micaela, Matthew and Clark. You might find it interesting to learn that Judge Corlew's cooking may rival that of Emeril Lagasse. He is the designated chef at most family gatherings and, with the assistance of the Food Network, he mastered his self-taught culinary skills. From the sound of some of his specialties, Judge Corlew doesn't have a cookie cutter approach in his kitchen either.

In addition to his docket and current responsibilities, Judge Corlew is on the campaign trail for election to retain his position as County Court Judge this coming August, 2008.



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

- J.D. Stetson Univ. College of Law (1976)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2003)
- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)
- Florida Certified:
  - Circuit Civil Mediator (1991-Present)
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Pictures from our recent 1916 Historic Courtroom reception.



Jason Weisser, Michelle Suskauer and Darryl Kogan



Rafael Roca, Judge James Martz, Judge Laura Johnson and Jay White



The Bar Association honored the late William Holland and his family during a reception. Pictured is his widow, Margaret Holland, and his granddaughter who narrated a video on the school desegregation lawsuit led by her grandfather, and Bar President Meenu Sasser.



Richard Schuler, David Blutworth, Retired Judge I.C. Smith and Lewis Kapner



Maureen Martinez-Schwab and Jason Guari



Tom Sasser, Donald Sasser, Judge Mark Polen and Jorge Cestero

## Trial Superstars Seminar Now Available

*On DVD or CD*

The Bar recently sponsored a seminar with speakers Joe Reiter, Roy Watson, Jack Scarola, Ervin Gonzalez, Spencer Silverglate, John Romano, Ted Leopold, John Richards and David Knight

Some of the comments from this seminar:

*"Superb cast of presenters"*

*"The hands-on training perspective of the seminar"*

*"Format was innovative, smooth; outstanding speakers – mesmerizing!"*

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## Race Neutral Jury Selection

by Ted Babbitt

State v. Neil, 457 So. 2d 481 (1984) is the seminal case on race neutral selection of a jury in Florida. The procedure to be followed by both Court and counsel is set forth in King v. Byrd, 716 So. 2d 831 (Fla. 4th DCA 1998).

Lower court Federal decisions on any subject are not binding on Florida Courts. Raymond James Fin. Services v. Saldukas, 896 So. 2d 707, 710 (Fla. 2005). On the other hand, decisions of the United States Supreme Court are binding on all Courts including Florida state courts. Two recent decisions of the United States Supreme Court on the issue of race neutral jury selection must be considered by Florida Courts in making determinations on this question.

In 2005, the Supreme Court decided Miller-El v. Dretke, 545 U.S. 231, 125 S. Ct. 2317, 162 L. Ed. 2d 196 (2005) and recently the Court decided Snyder v. Louisiana, 128 S. Ct. 1203 (2008).

Both cases discuss the landmark case of Batson v. Kentucky, 476 U.S. 79, 106 S. Ct. 1712, 90 L. Ed.2d 69 (1986). That case set up a three step process for determining whether or not a peremptory challenge was impermissibly based on race. Under Batson, the moving party must make a prima facie case showing that the peremptory challenge was based upon race and if that is done, the party supporting the challenge must offer a race neutral reason for striking the juror. The trial judge must then make a determination as to whether there has been a sufficient showing of purposeful discrimination, in which case the challenge must be disallowed.

It is clear that the United States Constitution absolutely forbids striking even a single prospective juror on the basis of discrimination. The Snyder Court so held at Page 1208 basing its

conclusion upon numerous Federal circuit court cases. In the Miller-El v. Dretke case, supra, the Supreme Court held that when a trial court considers objections alleging lack of race neutrality, all of the circumstances surrounding the issue of racial animosity have to be considered by the trial court and subsequently by the appellate court. Every Court considering this question has held that the trial judge is in the best possible position to determine the credibility of the attorney seeking to support the challenge. In fact, credibility is the key issue as to whether the trial court accepts or rejects the race neutral reason offered by the challenger. In the Snyder case, the Supreme Court did not deviate from that position. Indeed the Court points out those factors such as the demeanor of the attorney exercising the challenge, and the demeanor of the juror all invoke subjective determinations making the trial court's first hand observations of tremendous importance.

Nevertheless, there must be some showing that the trial judge carefully considered the issue of the challenger's credibility in light of all of all the circumstances before a race neutral reason can be accepted.

In Snyder, supra, the juror in question was a student teacher, who like the defendant, was African American. In exercising the peremptory challenge, the prosecutor used as race neutral reasons, first that the juror appeared nervous and second that he was a student teacher who indicated he was worried about missing class by virtue of his participation in the trial. The trial judge failed to articulate any reasoning for its conclusion that the challenge would be allowed. The Supreme Court found that when the trial judge simply allowed the challenge without explanation, rather than making a finding on the record concerning the juror's demeanor, that there was insufficient evidence to support the proposition that the

juror was, in fact, nervous and thus, that alone, failed to establish a sufficient race neutral reason for accepting the challenge.

On the second issue as to the alleged concern of the juror about missing class, the Supreme Court pointed out that contact was made with the juror's dean who assured the Court that this would not interfere with the student's studies and the prosecutor never inquired further as to whether that relieved the juror's concern. The Court also pointed out that there were numerous white jurors who exercised a great deal more concern about the conflicts they faced if forced to serve on the jury, yet the prosecutor never exercised a peremptory challenge as to any of those white jurors. The Supreme Court thus concluded that neither explanation met the standard necessary in order to be considered reasonable reasons for exercising a peremptory challenge apart from that of race. The resulting first degree murder verdict and sentence of death were reversed by the Court.

Our jury system is at the heart of our constitutional government. Ensuring that a jury is both representative and free of bias is the single most important plank upon which that government is built. Racial discrimination should not be tolerated in any form but the Courts should be ever vigilant that it does not raise its ugly head to prevent a fair trial in any forum. The cited cases are intended to ensure that juries are picked without regard to race, color, creed or gender and are a reminder to our trial judges to be ever vigilant to enforce the mandate of our constitution.

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.

## Annual Summer Cocktail Reception set for August 28

Our 6th Annual Summer Spelling Bee and Cocktail Reception will be held on Thursday August 28 from 5:30 p.m. to 7:30 p.m. at the newly renovated Presidential Country Club in West Palm Beach. Please mark your calendar now to join us for drinks, dinner and networking.



If you would like to be a speller, please call the Bar Office at 687-2800 and talk to Lynne. Spellers will be limited to 20.

The top three winners will go on to represent the Palm Beach County Bar Association's Team in the Palm Beach County Literacy Coalition's Great Grown Up Spelling Bee, which will be held in September.

The cost to enter the contest is \$50.00 and includes your name and your firm's name on the Team Tee shirt. You will also be recognized in the Bar Association's Bulletin and in upcoming eNewsletters. The cost will be \$20.00 to attend the cocktail reception. (the entertainment is free!)

To register, log onto [www.palmbeachbar.org](http://www.palmbeachbar.org)

We always have great turnout for this event and look forward to seeing you there!

**Gregory T. Anderson  
Krista K. Mayfield  
Kera E. Hagan and  
Phillip W. Thron**

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## ALEXANDER "SANDY" MYERS, ESQUIRE

*Mediator/Arbitrator*



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- Florida Bar Board Certified Civil Trial Lawyer (1983-2007)
- Florida Bar Board Certified Emeritus Specialist Civil Trial Lawyer (2007-Present)

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## Which Exemptions Apply?

By: *Marc P. Barmat*

Which exemptions are available to a bankruptcy client who recently moved to Florida from another state? What if you are providing bankruptcy advice to a client who resides in Florida but is planning to move to another state? Do the Florida exemptions apply? What about the other state's exemptions? Maybe it is the federal exemptions? In these situations, the determination of which exemptions apply can be complicated. This article discusses the statutory changes set forth in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") as well as the cases attempting to resolve the question of which exemptions apply.

As a result of BAPCPA, a debtor may only claim the state law exemptions available in the debtor's state of residence if the debtor has lived in that state for 730 or more days as of the petition date. 11 U.S.C. §522(b)(3). However, the issue of which exemptions apply becomes more complicated when the debtor, within the 730 days before filing bankruptcy, moved from a state which requires the debtor to reside in that state in order to claim that state's exemptions. Pursuant to an unnumbered paragraph following 11 U.S.C. §522(b)(3), if a debtor is ineligible to claim any state's exemptions, the debtor may claim the federal exemptions. This precise issue has been addressed by various bankruptcy courts throughout the country. In each case, the court looked to the law of the state of the debtor's residence to determine whether that state's exemptions could apply to a non resident of that state.

In three published cases in which a debtor filed bankruptcy in Florida within 730 days after moving to Florida from another state, the court found that the claim of federal exemptions was appropriate. In *In re Crandall*, 349 B.R. 220 (Bankr. M.D. Fla. 2006), a Chapter 7 debtor was entitled to claim the federal exemptions where the debtor moved from New York to Florida within the 730 days preceding the filing of her bankruptcy petition, as the debtor was ineligible for the New York exemptions because she was not domiciled in New York on the petition date. In *In re West*, 352 B.R. 905 (Bankr. M.D. Fla. 2006),

a Debtor who had moved from Indiana to Florida within 730 days prior to the petition date was not entitled to Indiana state law exemptions as they were only available to residents of that state. Accordingly, the court held that the debtor, by default, was entitled to federal bankruptcy exemptions. In *In re Underwood*, 342 B.R. 358 (Bankr. N.D.Fla. 2006), a debtor who moved from Colorado to Florida 23 months prior to filing her Chapter 7 petition was barred by §522(b)(3) from claiming the Florida exemptions. The court found that Colorado exemptions were not available to non Colorado residents, and therefore found that the debtor was entitled to claim federal exemptions.

In the situation where a debtor moved from Florida to another state, the bankruptcy courts have held that Florida exemptions are not available to non Florida residents and therefore the claim of federal exemptions was appropriate. In *In re Adams*, 375 B.R. 532 (Bankr. W.D. Mo. 2007), the court held that debtors who

moved from Florida to Missouri could not claim Florida exemptions even though they lived in Florida the greater part of the 180-day period immediately preceding the 730-day period before filing as Florida's exemptions are not applicable to a homestead and property located outside of Florida. In *In re Battle*, 366 B.R.635 (Bankr. W.D. Tx. 2006) the court held that a debtor who moved from Florida to Texas was not a Florida resident on the bankruptcy filing date and therefore was not entitled to Florida exemptions, but was entitled to claim federal exemptions. It should be noted that the decisions cited herein were based upon specific language found in the relevant state's exemption laws which precluded a non resident from utilizing that state's exemption laws.

Florida bankruptcy practitioners should be aware of these exemption issues which arise when a potential bankruptcy debtor recently moved from another state or is planning on moving to another state.

*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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DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	06/08	06/08	05/08	1562
B	08/08	08/08	05/08	1333
D	07/08	07/08	06/08	1606
E	09/08	07/08	08/08	1605
F	06/08	06/08	06/08	1328
G	11/08	11/08	07/08	1180
H	10/08	10/08	05/08	1443
I	09/08	06/08	05/08	1306
J	09/08	09/08	06/08	1363
N	09/08	09/08	05/08	1662
O	10/08	07/08	07/08	1580

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 4/03/08.

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From Page 4

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2. George Supran
3. Michelle Suskauer
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**JENNIFER J. HUBER** – Stetson University College of Law, 1997, Sole Practitioner in Palm Beach Gardens

**BLAIR J. HYMAN** – Nova Southeastern University, 2007; Associate in Conroy, Simberg, Ganon, Krevans, Abel, Lurvey, Morrow & Schefer, P.A., West Palm Beach

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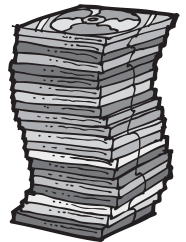


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## Young Professional Friends of Legal Aid Host 4th Annual Brooks Brothers Event

On April 2, 115 young professional friends of the Legal Aid Society of Palm Beach County mingled, partied and shopped at Brooks Brothers at the Gardens Mall. This was the event's 4th year and hosts for the evening included Edrick Barnes, Hampton Beebe, Flynn Bertisch, Jeffrey Devore, Joseph Galardi, Mariano Garcia, Jason Guari, Bradley Harper, John Howe, Hampton Keen, Ryon McCabe, Scott Murray, David Prather, Grier Pressly, Adam Rabin, Carter Randolph, Heath Randolph, Freddy Rhoads, Thomas Schmitt, Scott Suskauer, Matthew Triggs and Gregory Yaffa.

**The party raised over \$3,500 for Legal Aid's Children's Advocacy Projects.**

Photos by Tom Brodigan



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Rev. 11/9/07

At its March 28 meeting in Washington, D.C., The Florida Bar Board of Governors:

- Approved the Bar's 2008-09 budget, which projects revenues of almost \$38.5 million and expenses of \$38.4 million with a surplus of \$94,000.
- Discussed extensively proposed legislative budget cuts to the court system and the massive impact that could have on the court system. The board discussed various ways the Bar and Bar members could educate lawmakers about the impact of the proposed cuts, which would most likely cause long delays in non-criminal and non-domestic relations cases.
- Approved three nominees to be the next public member on the Board of Governors – Alvin V. Alsobrook of Gainesville, Judith O. Rosenkranz of Tampa, and Marni F. Stahlman of Winter Park – and forwarded them to the Supreme Court, which will make the final appointment.
- Heard a talk by Susan Eisenhower, who was specially invited to address the board and is the granddaughter of former President Dwight D. Eisenhower, which touched on current affairs, education, foreign relations, and history. She is chair emeritus of the Eisenhower Institute.
- Heard a report from Young Lawyers Division President Scott Attwood, which included that the YLD is working on a civics Web site that will be separate from the main YLD site and primarily for use by the public and is working to improve its Practicing with Professionalism program.
- Continued until its next meeting a discussion on creating an emeritus certification category for lawyers who have been

recertified at least twice but either no longer are practicing in that area, have retired, or are phasing out their practices and hence no longer meet the standards for certification.

- Endorsed a proposed rule change from the Family Law Rules Committee, pursuant to a request from the Supreme Court, clarifying the purpose of the rules as contained in Rule 12.010(b)(1).

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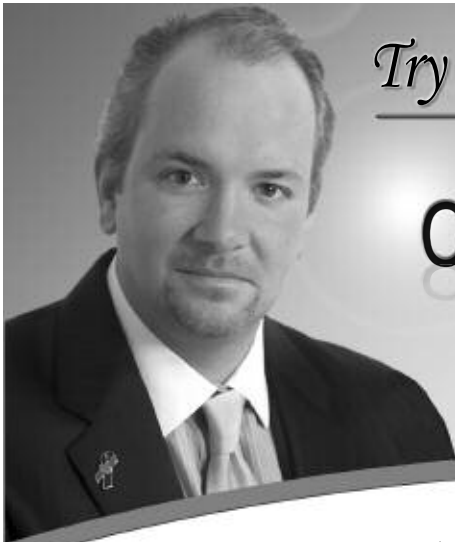
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## Who is an “Interested Person” in Probate?

By: *David M. Garten, Esq.*

Have you ever represented a client in a probate dispute? If so, then chances are you had to determine whether one or more parties to the dispute had standing. Only an “interested person” has standing to pursue any available probate remedies. The purpose of this article is to provide concrete examples of how case law and Florida Statutes define an “interested person” in probate and testamentary trust proceedings. Whether this term applies to non-testamentary Trusts is beyond the scope of this article.

### I. STATUTORY DEFINITION OF AN “INTERESTED PERSON”:

Sec. 731.201(23), Fla. Stat. defines the term “interested person” as:

[A]ny person who may reasonably be expected to be affected by the outcome of the particular proceeding involved. In any proceeding affecting the estate or the rights of a beneficiary in the estate, the personal representative of the estate shall be deemed to be an interested person. In any proceeding affecting the expenses of the administration and obligations of a decedent’s estate, or any claims described in s.733.702(1), the trustee of a trust described in s.733.707(3) is an interested person in the administration of the grantor’s estate. The term does not include a beneficiary who has received complete distribution. The meaning, as it relates to particular persons, may vary from time to time and must be determined according to the particular purpose of, and matter involved in, any proceedings.

### II. PROBATE REMEDIES:

Only an “interested person” has standing. A recent case with an extensive discussion of standing in probate courts is *Hayes v. Guardianship of Thompson*, 952 So. 2d 498 (Fla. 2006). Any interested person may objection to the validity of a will, the qualifications of the personal representative, venue or the jurisdiction of the court from which letters of administration were issued. See ‘733.212(3), Fla. Stat. Additionally, an interested person may pursue any probate remedy affecting the expenses of the administration and obligations of a decedent’s estate. For example, an interested person may object to the personal representative’s petition for discharge, final accounting, compensation, payments to employees, and proof of claim. See Florida Probate Rules 5.355 and 5.401(a) and ‘733.705(4), Fla. Stat.

### III. WHO IS AN INTERESTED PERSON?

The following are examples of how the case law and Florida Statutes define an “interested person” in probate and testamentary trust proceedings:

- The personal representative of the estate is an interested person. Sec.731.201(23), Fla. Stat.

- If a trustee is also a personal representative of the estate, the beneficiaries of the trust as defined in ‘737.303(4)(b), Fla. Stat. are interested persons. Sec.731.201(23), Fla. Stat.
- An assignee of an intestate heir steps into the shoes of the intestate heir and may appear as a party of interest in a probate proceeding. *Morse v. Clark*, 890 So. 2d 496 (Fla. 5th DCA 2004).
- A personal representative under an earlier will is an interested person with standing to contest a later will. *Engelberg v. Birnbaum*, 580 So. 2d 828 (Fla. 4th DCA 1991). But see *Onofrio v. Johnston & Sasser, P.A.*, 782 So. 2d 1019 (Fla. 5th DCA 2001) (the personal representative named in a will not yet admitted to probate, was not an interested person. The personal representative came into existence only when she received letters testamentary).
- Sec.731.201(23), Fla. Stat. does not require that the person be an heir or represent an heir but only that the person “may reasonably be expected to be affected by the outcome of the particular proceeding involved.” *Wheeler v. Powers*, 972 So. 2d 285 (Fla. 5th DCA 2008).
- An alternate personal representative under an earlier will was an interested person with standing to contest the later will which was executed six weeks before she was involuntarily hospitalized with late stage Alzheimer’s disease. *Wheeler v. Powers*, 972 So. 2d 285 (Fla. 5th DCA 2008). See also *Engelberg v. Birnbaum*, 580 So. 2d 828 (Fla. 4th DCA ) (a personal representative in an earlier will has standing to contest a later will).
- A personal representative has standing as an interested person to file a motion for appointment of a trustee of a residuary trust for which she was not a trustee because that trust was created under the decedent’s will and the funding for that trust must come from a portion of the assets of the estate. *Barley v. Barcus*, 877 So. 2d 42 (Fla. 5th DCA 2004).
- A potential class 8 creditor who had filed an independent action is an interested person even though the estate would have no assets to pay any judgment the claimant might obtain in the future. *Arzuman v. Estate of Prince Bander Bin Saud Bin*, 879 So. 2d 675 (Fla. 4th DCA 2004).
- The term “interested person” does not include a beneficiary who has received a complete distribution. Until the beneficiary actually receives his devise, he “may reasonably be expected to be affected by the outcome of the particular proceeding involved.” To “receive” means that the beneficiary has actually taken possession of the devise under the decedent’s will. The fact that the estate has sufficient funds to pay the devise in full is not the equivalent of receipt of the devise by the beneficiary. *Cason v. Hammock*, 908 So. 2d 512 (Fla. 5th DCA 2005).
- A contingent beneficiary/contingent remainder beneficiary under a testamentary trust is an interested person. *Richardson*

*Continued on page 21*

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## “Interested Person”

Continued from page 19

v. Richardson, 524 So. 2d 1126 (Fla. 5th DCA 1988); Barley v. Barcus, 877 So. 2d 42 (Fla. 5th DCA 2004); In re Estate of Watkins, 572 So. 2d 1014 (Fla. 4th DCA 1991).

### IV. WHO IS NOT AN INTERESTED PERSON?

The following are examples of how the case law and Florida Statutes define who is not an “interested person” in probate and testamentary trust proceedings:

- A beneficiary who takes under the will lacks the necessary adverse interest to contest the will. Sec.731.201(23), Fla. Stat.
- A petitioner may not be an interested person to contest the validity of a will if previous wills do not include the petitioner as a beneficiary of the estate. It is the burden of the petitioner seeking to revoke the present will to establish that the previous will, which also excludes the petitioner as a beneficiary, is invalid. Wehrheim v. Golden Pond Assisted Living Facility, 905 So. 2d 1002 (Fla. 5th DCA 2005); Newman v. Newman, 766 So. 2d 1091 (Fla. 5th DCA 2000)(A beneficiary who was bequeathed only a dollar is deemed to have been excluded under the will).
- A personal representative does not have standing to contest the will under which he has been appointed and where he has qualified to serve. In such a case the personal representative immediately disqualifies himself to continue to serve when the suit is filed contesting the will. In re Estate of Lewis, 411 So. 2d 368 (Fla. 4th DCA 1982).
- A former guardian for the decedent who submitted for probate the decedent’s second will did not have standing to petition to revoke the decedent’s first will. The guardian is merely an interloper because he did not have an interest in the outcome of the estate case. Suntrust Bank v. Nichols, 701 So. 2d 107 (Fla. 5th DCA 1997)
- A beneficiary of an estate does not have standing to pursue recovery of estate assets. Only the personal representative (or a curator/ad litem) has standing to pursue recovery of estate assets. Traub v. Zlatkiss, 559 So.2d 443 (Fla. 5th DCA 1990); Brake v. Murphy, 687 So.2d 842 (Fla. 3rd DCA 1996).

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## Bulletin Board

### **PALM BEACH GARDENS:**

Professional office, 1500 sq.ft., great location near PGA Blvd. & I-95. Reception, 2-3 offices, conference room, bathroom, kitchen, large open work area for staff. One-story building, assigned parking. Perfect for small law office or other professionals. Priced competitively. Call Lynn Focht, Watterson & Zappolo (561) 627-5000.

**WEST PALM BEACH:** Available sublet in Class A office building. Furnished offices with secretarial area. Use of conference room, kitchen, copier, fax, telephone, internet. Covered garage parking. Call (561) 712-4746.

### **WPB PROFESSIONAL OFFICES**

**AVAILABLE:** Attorney, accountant, other – receptionist, 3 conference rooms, reception room, plenty of parking, great views, various space arrangements available. Susan (561) 689-6660.

**PALM BEACH GARDENS:** Law office offers 1 private office with 1 secretarial work station = \$1,500/mo. (or with 2 stations = \$2,000/mo) furn/unfurn in prestigious bldg. Includes use of 2 conference rooms, scanner/copier, kitchen, free parking, DSL and phone system. Northlake close to I-95 and Turnpike. Call (561) 775-8019.

**BOCA RATON OFFICE SPACE:** One large private windowed office with ocean view – furnished or unfurnished. With or without secretarial station. Rent includes use of conference room, telephone system, kitchen and DSL service. Covered parking garage. Referrals possible. Call Robert (561) 392-6090.

**LUXURY OFFICE SPACE FOR RENT** in East Boca law office. Windowed office and secretarial station available. Common space with full service (receptionist service included). Access to large and small conference rooms along with the use of postage and copy machines. Please call (561) 447-0017.

**OFFICE SUITES FOR RENT** in Stuart, Florida. Single or multiple suites available. 1/4 mile from Martin County Courthouse. 1 block from Downtown Stuart. State of the art conference room. Receptionist available. Large on-site parking lot. Brand new building. Contact Gene Zweben at (772) 223-5454 or gzweben@szalaw.com.

### **EXECUTIVE SUITES/OFFICE**

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

### **HEARSAY**

**Jupiter Law Center** is celebrating its 20th Anniversary and expanding and relocating its offices to Jupiter Creek Professional Center as of May, 2008. 1102 W. Indiantown Rd. Suite 7, Jupiter, FL 33458-6813 (561) 744-4600.

The Romano Law Group is pleased to announce that **Maureen Martinez-Schwab** was elected to a two-year term on the Board of Directors of the Palm Beach County Bar Association.

Jones, Foster, Johnston & Stubbs, P.A. is pleased to announce that **Allen R. Tomlinson** and **Robert W. Wilkins** have been named Super Lawyers 2008. Margaret L. Cooper, Scott G. Hawkins, Peter A. Sachs, and Sidney A. Stubbs, Jr. have been listed in the Top Ten Florida Super Lawyers 2008.

Reid & Zobel, P.A. is pleased to announce that attorney **Timothy P. Lewis** has joined the firm as an associate. Mr. Lewis practices in the areas of Commercial Litigation, Employment Law and Civil Rights Violations.

Rutherford Mulhall, P.A. is pleased to announce that **Erskine C. Rogers, III** will be honored by the Legal Aid Society of Palm Beach County with their Guardianship Award. Also, the firm is pleased to announce that Kenneth N. Johnson has achieved his Board Certification in Business Litigation.

The law firm of Schuler, Halvorson & Weisser is pleased to announce that **William D. Zoeller** and **J. Freddy Rhoads** have become associates in the firm.



Nova Southeastern University has named **Eunie Baros** the 2008 Alumnus of the Year for her work in founding the Palm Beach Chapter of the NSU Law Center Alumni

Association.

### **MISCELLANEOUS**

**FOR SALE:** Lateral file cabinets. Steelcase, 5-drawer, 42" wide x 18" deep x 65" high, light gray, excellent condition. 3 available. \$350 each or best offer. (561) 615-6650 ext. 227.

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

**“Corporate and Partnership Divorce - Beginning With the End”**

**Friday, June 27, 2008 8:00 a.m. – 1:00 p.m.**

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



**Program Schedule**

8:00a.m. - 8:20a.m.	<b>Late Registration/Check In</b>
8:20a.m. - 8:30a.m.	<b>Welcome &amp; Opening Remarks</b> - <i>William C. Wright, Esq., The Law Offices of William C. Wright, P.A.</i>
8:30 a.m. - 9:00 a.m.	<b>Non-Competition, Non-Solicitation &amp; Confidentiality Agreements</b> - <i>Joseph Santoro, Esq., Gunster, Yoakley &amp; Stewart, P.A.</i>
9:00 a.m. - 9:30 a.m.	<b>Law Firm Divorce</b> - <i>David A. Rothstein, Esq., Dimond Kaplan &amp; Rothstein, P.A.</i>
9:30 a.m. – 10:00 a.m.	<b>When Healthcare Professionals Break Up</b> - <i>Cathleen Scott, Esq., Cathleen Scott, P.A.</i>
10:00 a.m. – 10:15 a.m.	<b>Break</b>
10:15 a.m. – 10:45 a.m.	<b>Legal and Equitable Remedies for Corporate Divorce</b> - <i>Adam T. Rabin, Esq., McCabe Rabin, P.A.</i>
10:45 a.m. – 11:15 a.m.	<b>Valuation of Closely Held Entities</b> - <i>Christopher Kammerer, Esq., Gunster, Yoakley &amp; Stewart, P.A.</i>
11:15 a.m. – 11:45 a.m.	<b>Dissolution and Receivership</b> - <i>Daniel J. Stermer, Esq., Lewis B. Freeman &amp; Partners, Inc.</i>
11:45 a.m. – 12:00 p.m.	<b>Open Discussion</b>
12:00 p.m. - 1:00 p.m.	<b>Lunch with the Judiciary: Case Management in Contentious Cases</b> - <i>Honorable Judges, Jonathan D. Gerber, Jeffrey A. Winikoff and Robin L. Rosenberg, 15th Judicial Circuit</i>

This course has been granted **5.0 CLER/ 4.0 Bus. Litigation; 4.0 Labor and Employment Certification credits** from The Florida Bar. The cost of the seminar is \$115 (includes lunch) for PBCBA members/paralegals; \$155 for non-PBCBA members/paralegals if registered by 6/20/08; add \$25 to registration fee after that date.

***This seminar is for attorneys only.***

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

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

<b>HOW TO REGISTER</b>	 <b>MAIL</b> the completed form w/check	 <b>FAX</b> the completed form to 561/687-9007	 <b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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\_\_\_ I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (6/27/08 Com/Bus Lit.) Cost is the same as listed above.

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

The Palm Beach County Bar Association's Real Estate CLE Committee presents:



## “Food For Thought: Digesting Current Market Conditions” Seminar

Friday, June 13, 2008 - 8:40 a. m. - 12:45 p.m.  
Bar Association Offices

### Program Schedule

- 8:40am - 9:00am Late Registration / Check in
- 9:00am - 9:10am Welcome and Opening Remarks - *Steven D. Rubin, Esq., Real Estate Committee Chair*
- 9:10am - 9:55am Crossroads: The Intersection of Real Property Law and Bankruptcy -  
Sales and Leases under the Code, and Ethical Considerations -  
*Eric A. Rosen, Esq., Eric A. Rosen, P.A.*
- 9:55am - 10:40am 2008 Legislative and Case Law Update and Ethical Considerations -  
*Michael J. Gelfand, Esq., Gelfand & Arpe, P.A.*
- 10:40am - 10:55am BREAK (Raffle - \$100 Gift Certificate to Local Restaurant)
- 10:55am - 11:40am The Mechanics of Short Sales and Other Creative (and Legal) Techniques to Sell  
Property in a Depressed Market, including Income Tax Consequences and  
Ethical Considerations - *Gregory R. Cohen, Esq., Cohen, Norris, Scherer,  
Weinberger and Wolmer*
- 11:40am - 12:45pm LUNCH
- 12:00pm - 12:45pm Title Potpourri - Can you answer these twenty title questions (including ethics) and  
eat lunch at the same time? - *Jalinda B. (“Jay”) Davis, Underwriting Counsel,  
Palm Beach Branch, Attorneys’ Title Insurance Fund, Inc.*

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This course has been granted **3.5 CLER hours including 3.5 Ethics credits /  
2.5 Real Estate Certification credits** from The Florida Bar.  
***This seminar is for attorneys only.***

The cost of the seminar (including lunch) is \$105 for PBCBA members/paralegals;  
\$145 for non-PBCBA members/paralegals if registered by 6/6/08; Add \$25 to registration fee after that date.

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

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

**HOW TO REGISTER**



MAIL the completed form w/check



FAX the completed form to 561/687-9007



ON-LINE at [www.palmbeachbar.org](http://www.palmbeachbar.org)

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\_\_\_ I will not be able to attend the seminar but would like to order the CD (cost same as listed above/please allow two weeks for delivery) (Real Estate Seminar 6/13/2008.)

**Palm Beach County Bar Association, 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406.**

# CALENDAR

## June 2008

Wednesday, June 4, 12:00 Noon

### Solo Luncheon

Bar Association Office

Thursday, June 5

### Florida Bar Video Replay Seminar

### The New Electronic Era in Public Records

Bar Association Office

Friday, June 6,

8:30 – 12:00 Noon

### The 19th Annual Community Assn. Law Seminar

Bar Association Office

Saturday, June 7, 7:00 pm

### PBCBA Installation Banquet

The Breakers Hotel, Palm Beach

Monday, June 9,

11:45am – 1:00pm

### Candidate's Forum

The Crowne Plaza West Hotel

Tuesday, June 10, 12:00 Noon

### YLS Board Meeting

Bar Association Office

Wednesday, June 11, 12:00 Noon

### FAWL Luncheon

Thursday, June 12, 12:00 Noon

### Bench Bar Conference Committee Meeting

Bar Association Office

Friday, June 13,

8:40am – 12:45pm

### Real Estate Seminar "Food for Thought"

Bar Association Office

Tuesday, June 17,

11:45am – 1:00pm

### Judicial Luncheon – "Jury Selection in Business Cases"

No. End of Cafeteria -

Main Courthouse

Tuesday, June 17, 12:00 Noon

### Historical Committee meeting

Bar Association Office

Wednesday, June 18 – 20

### TFB Annual Meeting

Boca Raton, FL

Friday, June 20,

8:30am – 9:30am

### Quality of Life Breakfast Series Seminar

Bar Association Office

Friday, June 20, 12:00 Noon

### Cunningham Bar Association Meeting

Law Library Conference Room

Tuesday, June 24, 5:00pm

### Legal Aid Board of Directors' Meeting

Bar Association Office

Thursday, June 26, 5:00pm

### PBCBA Board of Directors Meeting

Bar Association Office

Thursday, June 26, 6:00pm

### PBJA Dinner

Bear Lakes Country Club

Friday, June 27,

8:00am – 1:00pm

### Commercial/Business Litigation CLE Seminar "Corporate and Partnership Divorce"

Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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