



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

March 2009

Contributions sought for 2009 law week judicial reception

The Law Week Committee is beginning its efforts to request contributions from law firms to underwrite the cost of the annual judicial reception honoring the local judiciary to be held on April 22, 2009. Sponsors will be recognized on the invitation, in the Bar Bulletin and on a sign at the reception.

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



Members of the Palm Beach County Bar Association volunteered for International Literacy Day at the Adult Education Center in West Palm Beach (pictured with the principal of the school as well as the Executive Director for the Palm Beach County Literacy Coalition).

Mark your calendar for upcoming Membership Meetings

Joint Luncheon with South County Bar Association

March 3, 11:45 – 1:00 p.m.
Speaker: FL Bar President John G. “Jay” White III
Location: Boca Raton Marriott

Annual Law Week Judicial Reception

April 22, 5:30 – 7:00 p.m.
The Harriet at City Place

Law Day Luncheon

May 1, 11:45 – 1:00 p.m.
Guest Speaker: The Honorable James Martz

Leadership Seminar

May 8, 8:30 – 1:00
Bar Association Office

Annual Installation Banquet

June 20, 7:00 – 12 Midnight
The Breakers in Palm Beach

Joint Luncheon with FAWL and Cunningham Bar

September 24, 11:45 – 1:00
Guest Speaker: FL Supreme Court Justice Peggy Quince
Marriott West Palm Beach

Bench Bar Conference

February 19, 2010
Palm Beach County Convention Center

Bar elections will be online

This year’s election for the Board of Directors will once again be conducted electronically. An email will be sent to all members in good standing. **Please be sure to set your spam filters to preapprove anything from ballotboxonline.com** For those members that we do not have an email address, a paper ballot will be sent. Voting will take place beginning on April 17 and ending on April 27 at 5 p.m. Winners will be announced via e-mail and will be posted on the Bar’s website.

A contested election will take place for the position of director. There are eight members running for five seats: C. Wade Bowden, John Howe, Scott Haft, Greg Huber, Walter “Casey” Jones, Grier Pressly, Adam Rabin and John Whittles.

Join the North County Section for Cocktails & Hors d’oeuvres Thursday, March 19 Yard House

5:30 p.m. to 8:00 p.m.

Cost: \$10 for NCS members; \$20 for attorneys who are non-NCS members; and judges are complimentary.

This event is sponsored by Mellon Bank, MetLife and Leopold-Kuvin, P.A.

Kindly RSVP on line @ www.palmbeachbar.org

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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

Need CLE Credit? We've Got 'Em!

Please take a moment to review the schedule below of upcoming live CLE seminars. Thank you to the many attorneys who have volunteered to organize and speak at these seminars. All seminars will be held in the offices of the Bar Association unless otherwise noted.

Friday, March 6, 11:30 – 1:00 p.m.
Solo Practitioners Luncheon Seminar
“Marketing Yourself Every Way Possible”

Friday, March 13, 8:00 – 1:00 p.m.
Commercial/Business Litigation Seminar

Friday, March 20, 1:00 – 5:00 p.m.
Employment Law Seminar

Tuesday, March 24, 6:00 – 8:00
Elder Law Dinner
9th Annual View from the Bench

Friday, March 27, 8:00 – 5:00 p.m.
Personal Injury Law Seminar
Crowne Plaza Hotel

Friday, April 17, 11:30 – 1:30
NCS CLE Seminar
“Top 7 Common Client Grievances and
How to Avoid Them”
Abacoa Golf Club

Tuesday, April 21, 10:00 – 1:00
Technology Seminar for Solo
Practitioners

Friday, May 8, 8:30 – 1:00
Leadership Seminar

Wednesday, May 13, 8:00 – 5:00
Annual Estate & Probate Seminar
Crowne Plaza Hotel

Friday, May 15, 11:30 – 1:00
Solo Practitioners Luncheon Seminar

Friday, June 5, 8:00 – 12:00
Community Association Law Seminar

Friday, June 12, 8:00 – 1:00 p.m.
Real Estate Law Seminar



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President's Message



State Attorney – Looking for “A Few Good Men/Women”

By **Richard D. Schuler, President**

On March 20, 1779 in Boston, Captain William Jones, United States Marine Corps, advertised for “a few good men” to enlist in the Corps for naval duty. This term has survived for 230 years. It is synonymous with public service in the Marine Corps.

Today, our new State Attorney, Michael McAuliffe, needs our help. In the past 18 months, legislators have cut his office budget by nearly 13%. His office is “running on fumes” with not enough prosecutors to staff courtrooms and prosecute cases. To combat this, he has announced a bold new initiative, beginning February 1, 2009, to take applications from attorneys in private practice who are willing to work without state pay to prosecute misdemeanors, including crimes such as retail theft (shoplifting), simple marijuana possession and DUI.

Mr. McAuliffe envisions that applicants will be younger attorneys in law firms who want trial experience as volunteers for these positions. However, the program is open to all attorneys qualified and willing to serve the public. He is looking for 12 to start with. You (the volunteer) will be trained by his office. The commitment will be 2 days per week for a minimum of 3 months and it is anticipated that the first group will start on March 1, 2009.

In these difficult times, there can be no greater call to civilian service than to serve in the interest of public safety and

well-being. Besides, I have heard prosecutors (past and present) tell me informally that it is the best legal job they’ve ever had except for 2 days a month (payday)!

I would urge you, as a member of our Bar Association, to consider applying for this. Think of it this way - you’ll be learning a new skill for no monetary investment (that has great practical application to litigation of all sorts), you’ll be having fun doing it, you’ll be serving the highest interests of the public good and safety, and you’ll be contributing to the success of a first-of-a-kind program never before tried in our State. This is a program that, like Court ordered civil mediation started in Palm Beach County 25 years ago and now universally used statewide and nationally, will be recognized as ground-breaking and will itself spread if successful. Oh yes, and it will be a nice addition to your resume.

The term “gung ho” is often associated with the United States Marines but is actually Chinese (my Mandarin speaking son Eric tells me) and literally means “working together”. Let’s be “gung ho” for this unique and imaginative program and help our new State Attorney to make it a success and something to which we can point with pride. It certainly is in keeping with the purpose of our Palm Beach County Bar Association mission to serve the public as well as our profession.

Support our Advertisers.

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

Board of Directors Meeting Attendance

	July	Aug	Sept	Oct	Nov	Dec	Jan
	Retreat						
Guari	x	x	x	x	x	x	x
Howe	x	x	x	x		x	x
Martinez-Schwab	x	x	x	x	x	x	x
McCabe	x	x	x	x	x	x	Jenks
Poulton	x	x	x	x	x	x	x
Rabin	x	x	x	x	x	x	x
Sasser	x	x	x	x	x	x	x
Schuler	x	x	x	x	x	x	x
Suskauer	x	x	x	x	x	x	Phone
Weiss	x	x	x	x	Phone	Phone	x
Whittles	x	x	x	x	x	x	x

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Palm Beach County Bar Association LEADERSHIP FOR LAWYERS SEMINAR

Friday, May 8, 2009 - 8:00 a. m. - 1:15 p.m.

Palm Beach County Bar Association Office, 1601 Belvedere Road, Suite 302E, West Palm Beach

This program is designed to help attorneys develop the skills necessary to become leaders with respect to professional, ethical and community service issues with a goal of raising the overall professional standards of lawyers in the community.

Program Schedule

- 8:30am - 9:00am** **Late Registration**
- 9:00am - 9:10am** **Welcome and Opening Remarks - Michael J. Napoleone, Richman Greer, Chairperson**
- 9:10am - 11:15am** **Five Themes of Leadership: The Hard Science and Soft Skills You Need to be a Great Leader**
Great leaders know that leadership encompasses far more than mere technical or administrative expertise. And just like other skills, leadership skills must be constantly refined and improved to meet the challenges of a rapidly changing world. Great leadership involves communication and listening, coaching, giving feedback, team building, delegating, resolving conflict and self-management. You'll leave this presentation understanding what it takes to be a truly great leader.
Nora Riva Bergman, Practice Advisor, Atticus, Inc.
- 11:15am - 11:30am** **Break**
- 11:30am - 12:30pm** **Lead, don't follow: Panel Discussion about the importance of taking on a leadership role, the benefits of leadership and involvement, and building your reputation. - The Honorable Patricia A. Seitz, U.S. District Court—Southern District of Florida and past Florida Bar President; Senator David Aronberg; The Honorable Peter D. Blanc, 15th Judicial Circuit; Scott G. Hawkins, Florida Bar Board of Governors; and the Honorable Edward Rodgers, Retired, 15th Judicial Circuit**
- 12:30pm - 1:15pm** **Lunch and Dessert Reception**

This course is expected to receive 3.5 CLER and ethics credits pending from The Florida Bar.

The cost of the seminar is \$75 for PBCBA members; \$50 for Government Attorney Members; and \$100 for non-PBCBA members if registered by 5/5/09; Add \$25 to registration fee after that date.

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

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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) (Leadership Seminar 5/8/09.)

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For Palm Beach County Bar Association Board of Directors



Greg Huber is an associate of
Lytal, Reiter, Clark,
Fountain & Williams

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- Independence of the Judiciary Committee: Palm Beach County Bar Association
- Client Relations Committee: Palm Beach County Bar Association
- Professionalism Committee: Palm Beach County Bar Association
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An Impartial Jury

by Ted Babbitt

Nothing is more important in a case than a fair and impartial jury. That is guaranteed by the Sixth Amendment of the United States Constitution and Section 11 of the Florida Constitution.

As early as 1860 our Supreme Court has said:

“Juries should, if possible, be not only impartial, but beyond even the suspicion of partiality.” O’Connor v. State, 9 Fla. 215, 222 (1860).

Singer v. State, 109 So. 2d 7 (Fla. 1959) is the seminal case on this issue. There the Supreme Court of Florida held that if there is any reasonable doubt as to a juror’s impartiality, that juror should be excused. Singer, supra, at 24. If a juror vacillates between statements of partiality and impartiality, that as a matter of law, creates a reasonable doubt and the juror should be excused. Plair v. State, 453 So. 2d 917 (Fla. 1st DCA 1985). In Sydleman v. Benson, 463 So. 2d 533 (Fla. 4th DCA 1985), the Court cautioned that:

“Close cases should be resolved in favor of excusing the juror rather than leaving a doubt as to his or her impartiality.”

Attempts at rehabilitation of a juror once that juror has indicated a predilection for one side or the other are fraught with dangers. That kind of attempted rehabilitation is viewed by the Courts with skepticism. See Club West v. TropiGas of Florida, Inc., 514 So. 2d 426 (Fla. 3rd DCA 1987). The appellate courts have held that a Judge extracting from a potential juror the commitment that they will try to be fair or even will be fair does not eliminate the prejudice or the grounds for a challenge. Leon v. State, 396 So. 2d 203 (Fla. 3rd DCA 1981), Sikes v. Seaboard Coast Line Railroad Co., 487 So. 2d 1118 (Fla. 1st DCA 1986), and Robinson v. State, 506 So. 2d 1070 (Fla. 5th DCA 1987). The law has not changed since Singer, supra. In Van Povck v. Singletary, 715 So. 2d 930 (Fla. 1998), the Supreme Court held:

“If a reasonable doubt exists as to whether a juror can possess an impartial state of mind in the discharge of his or her duties, that juror is incompetent to serve and must be excused for cause.”

In Goldenberg v. Regional Import & Export Trucking Co., 674 So. 2d 761 (Fla. 4th DCA 1996), the Court held:

“Close cases involving challenges to the impartiality of potential jurors should be resolved in favor of excusing the juror rather than leaving doubt as to impartiality.”

In Rodriguez v. Lagomasino, 972 So. 2d 1050 (Fla. 3rd DCA 2008), the Third District was faced with an appeal by a plaintiff in a personal injury case involving a garden variety automobile case. Two of the jurors examined by plaintiff’s counsel made statements which cast doubt on their credibility. The case in question involved a rear end collision and one of the jurors had been involved as a driver in a similar accident. The juror felt that there had been little or no damage to the car that he had struck and when asked “would you be able to put aside what happened in your wife’s situation and listen to this testimony here in this case. Can you do this?” he responded: “I still feel a little bad about that car insurance company, but I don’t know.” When asked later if he could be fair and

impartial, he indicated that he would “be in the middle.” The second juror felt strongly about caps on damages and when asked whether that could influence what he did in this particular case he replied “well of course, honestly it would be because that’s part of my makeup. It all depends on the evidence presented.” When further asked “So you think, having said all that, that if you are selected as a juror, that these thoughts that you have would come into play in this particular case when you deliberate”

he responded that he doubted that they would be that it was a possibility.

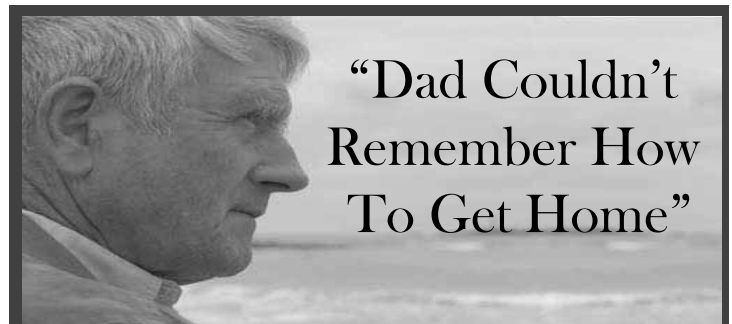
The trial court denied motions to strike both of these jurors for cause and the Third District reversed. At 1052, the Court stated:

“Plaintiff’s motion for new trial was denied because the trial court opined that based upon the responses given by Mr. Guterrez and Mr. Hillberry they were rehabilitated and that the challenges for cause were not appropriate.

We respectfully disagree that these jurors were rehabilitated and believe that both jurors should have been stricken for cause. ‘When any reasonable doubt exists as to whether a juror possess the state of mind necessary to render an impartial verdict based solely on the evidence submitted on the instructions on the law given to her by the court she should be excused. Nash v. Gen. Motors Corp., 734 So. 2d 437, 440 (Fla. 3d DCA 1999).

Sometimes trial judges get frustrated with the inability to pick a jury expediently. They must, however, never lose sight of the underlying purpose of voir dire examination and the importance to our system of justice that a completely fair and impartial jury be seated. Time spent because jurors have to be excused for cause when a doubt exists as to their impartiality is time well spent when compared with the necessity of retrying a case because a challenge for cause should have been granted.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE BY CALLING (561) 684-2500.



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



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

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

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

Program Schedule

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

SPONSORED BY:



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

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

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

HOW TO REGISTER	MAIL the completed form w/check	FAX the completed form to 561/687-9007	ON-LINE at www.palmbeachbar.org
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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
PALM BEACH COUNTY, FLORIDA.


CASE NO.: _____
CRIMINAL DIVISION: _____

**NOTICE OF COMMENCEMENT OF PROCEDURE TO BE FOLLOWED IN
FELONY CASES WHEN A REQUEST IS MADE FOR COMPETENCY
EVALUATIONS**

Please be advised that effective January 20, 2009, all motions for competency evaluations and exams must be filed, in writing, along with a good faith affidavit pursuant to Florida Rules of Criminal Procedure 3.210(b). No longer will oral motions be entertained in open court.

Additionally, any request for medical professionals to evaluate an individual for competency shall be transferred to Division T (Judge Marx) from divisions T, U, X, and W and to Division TD (Judge Brown) from divisions R, S, and V. Any hearing or order, once evaluations are complete, shall be handled in the TD division. The case will return to the assigned division for disposition only if the Defendant is found competent to proceed. Please refer to Administrative Order No. 4.502-12/08 for details.

DONE AND ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida this 14th day of January, 2009.


KRISTA MARX
Administrative Judge

cc:
Office of the State Attorney
401 North Dixie Highway
West Palm Beach, FL 33401

Office of the Public Defender
421 Third Street
West Palm Beach, FL 33401

Office of Criminal Conflict and Civil Regional Counsel
160 Australian Avenue, 3rd Floor
West Palm Beach, FL 33406



Participate in Read Across Palm Beach County

Join the Lawyers for Literacy Committee on Thursday, March 26 from 9:30 a.m. to 10:30 a.m. by participating in Read Across Palm Beach County Day. Attorneys will be asked to read to children in pre-school thru 3rd grade classes from Boca Raton to Jupiter. To volunteer, download the form from the Bar's homepage palmbeachbar.org.

Young Lawyers Happy Hour Set for March 11

The Young Lawyers Section will be hosting a happy hour on **Wednesday, March 11 at 5:30 p.m.** This event will be held at the Governor's Club on top of the Phillip's Point building at 777 South Flagler Drive in downtown West Palm Beach. Cost to attend the event is \$20 per person and will include hors d'oeuvres and one drink ticket. Reservations are required and can be made online at palmbeachbar.org

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Circuit Court Report CIVIL DIVISIONS • December 2008

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A KELLY	04/09	04/09	2/09	1481
B HAFELE	05/09	05/09	03/09	1443
D FRENCH	04/09	03/09	02/09	1682
E STERN	07/09	04/09	05/09	1681
F LEWIS	04/09	04/09	04/09	1507
G HOY	05/09	05/09	03/09	1352
H FINE	08/09	08/09	02/09	1547
I GARRISON	05/09	03/09	02/09	1098
J ROSENBERG	05/09	05/09	02/09	1532
N COX	05/09	05/09	03/09	1768
O BARKDULL	03/09	03/09	02/09	1598

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 01/2/09.



PR's Duty To Recover Pre-Death Transfers From Joint Accounts

By David M. Garten, Esq.

Does a Personal Representative have a duty to investigate and possibly recover joint assets improperly withdrawn by the

surviving joint owner prior to death?

Sec. 733.309, Fla. Stat. reads: "Any person taking, converting, or intermeddling with the property of a decedent shall be liable to the PR or curator, when appointed, for the value of all the property so taken or converted and for all damages to the estate caused by the wrongful action." Additionally, §733.607, Fla. Stat., reads: "The PR shall take all steps reasonably necessary for the management, protection, and preservation of the estate until distribution and may maintain an action to recover possession of property or to determine the title to it."

When the form of ownership of an account is joint tenancy with right of survivorship, an interest of one account holder continues in funds improperly withdrawn by the other owner, notwithstanding the right of either owner to withdraw from the account. Each person has the right, against the other, only to his individual interest in the account. Absent other provision, the shares in the joint account are presumed to be equal for purposes of alienation. Where a joint tenant withdraws more than his share, such a withdrawal is wrongful as between the parties and terminates the joint tenancy nature of the funds, in which case the withdrawing joint tenant is liable to the joint owner for that person's share of the withdrawn funds. See *Nationsbank, N.A. v. Coastal Utils., Inc.*, 814 So. 2d 122 (Fla. 4th DCA 2002).

In *Wiggins v. Parson*, 446 So. 2d 169 (Fla. 5th DCA 1984), the personal representative successfully recovered the decedent's share of the funds held in a joint account that were improperly withdrawn by a joint owner prior to the decedent's death. The Court reasoned that withdrawal of jointly-owned funds by a joint owner and placement of the funds in other persons' names, terminates the joint tenancy nature of the property and severs the right of survivorship as to the funds withdrawn. The withdrawing joint tenant is liable and accountable to the other joint owner for that person's share, but the intervening death of either does not alter

the outcome.

With regard to a jointly owned pooled checking account, each tenant has the right, against the other, only to his or her individual interest in the account during the lifetime of the joint tenants. Funds in the account belong to the parties in proportion to the net contributions by each to the sums on deposit. One joint tenant may bring a conversion action against another joint tenant who wrongfully appropriates more than his share of the money from a joint tenancy account. See *Joseph v. Chanin*, 940 So.2d 483 (Fla. 4th DCA 2006).

In *De Soto v. Guardianship of De Soto*, 664 So. 2d 66 (Fla. 3rd DCA 1995), the court held that one of three joint tenants in bank accounts was entitled to one-third of funds that had been transferred by the other two joint tenants' son into a trust account, absent any evidence sufficient to overcome the presumption that each party owned an equal share of the funds. In essence, when there is an account that is characterized as a joint tenancy with right of survivorship, each tenant has the right, against the other, only to his or her individual interest in the

account during the lifetime of the joint tenants and the funds in the account belong to the parties in proportion to the net contributions by each to the sums on deposit.

In *Varela v. Bernachea*, 917 So. 2d 295 (Fla. 3rd DCA 2005), Bernachea added his mistress, Varela as a joint tenant with a right of survivorship to his Merrill Lynch CMA account. On 10/18/02, Bernachea suffered a heart attack. On 10/25/02, Varela wrote a \$280,000.00 check on the CMA account and deposited it in her own name in a newly opened Merrill Lynch personal account. Two weeks after his release from the hospital, Bernachea demanded that Merrill Lynch return the \$280,000.00. Merrill Lynch complied and transferred the \$280,000.00 into the CMA account. Varela contested this transfer. The appellate court found that Varela was entitled to a one-half interest in the 10/25/02 CMA account balance. The court reasoned that when a joint bank account is established with the funds of one person, a gift of the funds is presumed; this presumption may be rebutted only by clear and convincing evidence to the contrary. The court found that Bernachea failed to rebut the presumption that he intended to give Varela an equal interest in their joint bank account.

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Murrays & Prathers to Co-Chair “College Craze” Fundraiser for Legal Aid

The Legal Aid Society is pleased to announce that Scott and Jamie Murray together with David and Glynetter Prather will be co-chairing the 21st Annual Pro Bono Recognition Evening.

The event will be held on Saturday evening, May 9, 2009 at the Palm Beach County Convention Center.

As in past years, the event will honor all the attorneys, law firms and other professionals in the community who provided pro bono services in 2008. Special recognition will be given to those firms and individuals whose volunteer services in 2008 went “above and beyond” all expectations.

The theme of the evening will be “College Craze: Capturing the Campus Spirit” and will include a silent auction, cocktail reception, dinner buffet, awards ceremony and entertainment

from the students at the Dreyfoos School of the Arts.

For information regarding how to participate in the recognition evening, call Harreen Bertisch, Director of Development at (561) 655-8944 x 247.



David & Glynetter Prather and Jamie & Scott Murray

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Saturday, March 14, 2009
from 6:00-8:00 p.m.
Sailfish Club of Florida, Palm Beach
Hosted by Jamie and Scott Murray

Saturday, March 21, 2009
from 6:00-8:00 p.m.
Hosted by Rita and Ted DiSalvo
at their home in Fieldbrook Estates,
Boca Raton

For invitations or additional
information,
contact Harreen Bertisch,
Development Director,
at (561) 655-8944 x 257.

North County Section seeks nominations for its 7th Annual Jurist of the Year Award

The North County Section is seeking nominations for its *Jurist of the Year Award*. If you're a North County Section member, please take a minute and send us a recommendation as to which local judge you feel deserves to be honored for his or her dedication to the Bench and our community. The letters of recommendations will be reviewed and discussed by the section's Board of Directors and a winner will be selected based upon the following criteria: The judge should be one with an excellent reputation for sound judicial decisions and an unblemished record of integrity as a lawyer and as a judge; is generally recognized by Bar members as highly qualified; and active in Bar related activities. He or she should be respectful of the law and understanding of cases. Who is eligible? Any judge who currently presides over cases in Palm Beach County will be eligible to win the award.

Send your nomination to the Bar Office no later than Friday, March 27 or, email your recommendation to lpoirier@palmbeachbar.org. The winner's name will be announced during the section's end-of-the-year dinner at Ruth's Chris Steak House in North Palm Beach on Thursday, May 21.

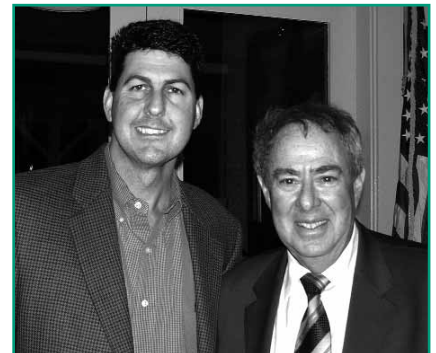
Previous *Jurist of the Year* winners are Judge Mary Lupo, Judge Roger Colton, Judge Peter Blanc, Judge Thomas Barkdull, Judge Barry Cohen and Judge Jonathan Gerber.



The North County Section recently held a dinner at the River House to honor our North County Judges. These pictures were taken during the cocktail hour.



NCS Board Member Ned Reagan, Nellie King and NCS President Ryon McCabe



NCS Past Presidents Andrew Pineiro and Mitch Beers



Maureen Martinez-Schwab and NCS Board member Greg Yaffa



North County Judges Jeff Colbath, Cory Ciklin and Richard Oftedal were recognized for their support in Palm Beach Gardens. Judge Ciklin was also congratulated for his recent appointment to the 4th DCA.



Jayne Barkdull and (retired) Judge Roger Colton



NCS Board members Scott Smith and Larry Buck



Adam Gumson, Jason Guari and Bill Bosso



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

"Martinis and Migraines"

Changes, Trends, & Ethical Considerations in Employment Law

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

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



Program Schedule

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

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

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

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

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

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

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

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

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

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

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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.

CHRISTOPHER R. BRUCE – Florida; Florida State University, 2008; Associate in Edwards Angell Palmer & Dodge LLP, West Palm Beach

CLAYTON B. BURTON, JR. – Washington DC; University of Florida, 1985; Sole Practitioner, Boca Raton

NINA CONTE – Florida; Florida International University's College of Law, 2008; Sole Practitioner, Wellington

CHRISTOPHER B. CORTEZ – Florida; University of Florida, 2008; Associate in Jones, Foster, Johnston, & Stubbs, P.A., West Palm Beach

MATTHEW B. CRISCUOLO – Florida; Nova Southeastern University, 2008; Associate in Edwards Angell Palmer & Dodge, LLP, West Palm Beach

BARBARA L. DAWICKE – Ohio; University of Florida, 1997; Fifteenth Judicial Circuit; West Palm Beach

STEPHANIE C. EASS – Florida; Southern Methodist University, 2008; Associate in Jones, Foster, Johnston & Stubbs, P.A., West Palm Beach

CONNI HAGER – Paralegal Member; Law Office Stephen G. Melcer, Boynton Beach

HENRY Q. JOHNSON – South Carolina; University of Florida, 1998; Sole Practitioner, Henry Quinn Johnson, P.A., West Palm Beach

CHELLE KONYK – Connecticut; University of Miami, 2007; Associate in St. John, Core & Lemme, P.A., West Palm Beach

DAWN MARSHALL – Indiana; University of Miami, 1988; Associate in McIntosh, Sawran, Peltz & Cartaya, Ft. Lauderdale

ADDISON J. MEYERS – Pennsylvania; University of Miami, 1978; Partner in Mintzer Sarowitz Zeris Ledva & Meyers, LLP, Coral Gables

PETER J. PORCARO – New Jersey; University of Pittsburg, 2006; Associate in Kogan & DiSalvo, Boca Raton

BRYAN M. RAYMOND – Florida; St. Thomas University, 1997; Partner in Gabriel, Gabriel & Raymond, LLC, Jupiter

NORA STAUM – New York; Rutgers-Newark, 1994; Partner in Staum & Ostfeld, Boca Raton

NEWIL TYGAR – New York; Hofstra University, 1991; Sole Practitioner, Neil Bryan Tygar, P.A., Delray Beach



Elect: C. Wade Bowden

Palm Beach County Bar Association
Board of Directors



Elect Proven Leadership . . .

- **Palm Beach County Bar Association Board of Directors 2005-2007**
 - 1916 Courthouse Fundraising Committee
 - Personally responsible for raising \$25,000
- **The Florida Bar Young Lawyers Division Board of Governors**
 - Governor for 15th Judicial Circuit 2001-07
 - Currently Ex-Officio, Sergeant at Arms
- **PBC Bar Association Young Lawyers Section, Past-President**
 - Member, Executive Committee 1998-2005
 - Past-Secretary, Past-Treasurer
 - Chair: Holidays in January Belle Glade event 2001-2006
- **Up and Comer, *South Florida Legal Guide*** (listed 2006, 2007, 2008)
- **Shareholder: Jones, Foster, Johnston & Stubbs, P.A.**

Florida Supreme Court Recognizes Local Attorneys for Pro Bono Work

Florida Supreme Court Chief Peggy A. Quince and the Florida Pro Bono Coordinators Association in collaboration with the Legal Aid Society of Palm Beach County and with the support of the Young Lawyer's Division of the Florida Bar are proud to recognize the efforts of local attorneys who provide pro bono service through a legal services organization. Attorneys to be recognized will receive a lapel pin designating their level of pro bono activity. Three levels will be recognized:

Bronze level - 20 to 49 hours

Silver level - 50 to 99 hours

Gold Level - 100 or more hours

All hours are based on cases closed in the year 2008. The pins, along with a letter of recognition from the Chief Justice of the Florida Supreme Court, will be distributed this spring through the Legal Aid Society. The attorneys will be recognized at the 21st Annual Pro Bono Recognition Evening, additional local recognition for these attorneys is anticipated. A list of the award recipients follows:

GOLD

Ronald L. Bornstein
 Ronald E. Crescenzo
 Ryan D. Doherty
 Lawrence Moncrief
 James A. Stuber
 Richard Abedon

SILVER

Thomas A. Berger
 David R. Bennett
 Courtney S. Brogan
 Lawrence Brownstein
 Kathleen Davis
 Richard Dedell
 Myron S. Dunay
 Thomas A. Dye
 Allan L. Hoffman
 Christopher R. Jette
 Dennis P. Koehler
 Adam Linkhorst
 Elisha Roy
 Justin M. Savioli
 Barry Weiss
 Gary A. Woodfield
 H. Phillip Yorston

BRONZE

Miriam Acosta-Castriz
 Keren Admoni-Sapan
 Patricia Alexander
 Richard G. Bartmon
 Abigail Beebe
 S. Bryan Bull

Jorge Cestero
 Lance C. Fuchs
 Georgina Jimenez-Orosa
 Lora Howe
 Diane L. Karlik
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 Paul A. Krasker
 Deena McNamara

Jason Maier
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 Robert B. Morris
 Victoria Morton
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Thank you for helping to make Law Week 2009 a great success!

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EVENT PREFERENCE: MOCK TRIAL SPEAKER'S BUREAU

SCHOOL PREFERENCE (if any): _____

SCHOOL LEVEL PREFERENCE: Elementary Middle High School

GEOGRAPHICAL PREFERENCE:

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Stand with us to re-elect John Howe to the Board of Directors of the Palm Beach County Bar Association because he has demonstrated Dedication, Proven Leadership, Commitment, Experience, and Broad-Based and Diverse Support from members of the Bar.



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*Florida Bar Board of Governors

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Legal Society of the Palm Beaches

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F. M. Cunningham Association

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 Member - Community Service Committee

Florida Association of Criminal Defense Lawyers

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 Board of Directors, Chapter Representative for Palm Beach Chapter - 5 years

Florida Justice Association

Member - 8 years
 Young Lawyers Section, At-Large Director: 2008 - Present

Palm Beach County Justice Association, Member National Bar Association, Member

Florida Association of Women Lawyers, Member National Association of Criminal Defense Lawyers, Member

RE-ELECT
JOHN M. HOWE
PALM BEACH COUNTY BAR ASSOCIATION BOARD OF DIRECTORS

State Attorney McAuliffe Swearing-In Ceremony



Newly elected State Attorney Michael McAuliffe takes his oath from wife Judge Robin Rosenberg as his daughters look on



A reception was held after the swearing-in at the Historic Courthouse. Attending were Seth Marmor, Lisa Small, Patricia Leonard, Steve Schwarzberg and Judges Sandra McSorley and Karen Miller



Assistant State Attorney
Jeanne Howard



Sheriff Ric Bradshaw presents State Attorney McAuliffe with his badge



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

"The 9th Annual View From The Bench"

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

Program Schedule

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

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

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



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

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Claims Trading and Equitable Subordination

Submitted By: *Marc P. Barmat*

Creditors in bankruptcy proceedings often have to wait years to receive a distribution of an unknown amount on their claim. To remove the uncertainty, some creditors elect to sell their claims to a third party in exchange for cash or something else of value. This is a practice known as claims trading and is authorized under the Federal Rules of Bankruptcy Procedure, Rule 3001(e). A creditor benefits from claims trading by opting out of the uncertainty of a future payment and assuring an immediate payment from the purchaser of the claim. In turn, the claim purchaser becomes an investor in the bankruptcy estate and bets that the future payout will eventually be more than the claim's purchase price.

Equitable subordination, which does not necessarily arise in the context of claims trading, allows the bankruptcy court to reprioritize a claim if it determines that the claimant is guilty of misconduct that injures other creditors or confers an unfair advantage on the claimant. *In re Lifschultz Fast Freight*, 132 F.3d 339 (7th Cir. 1997) (citing *Benjamin v. Diamond* (In re Mobile Steel Co.), 563 F.2d 692 (5th Cir. 1977)). Equitable subordination is authorized in the Bankruptcy Code at 11 U.S.C. §510(c). The usual result of equitable subordination is that the claimant receives less money than it otherwise would (or none at all), but that is not the goal. Equitable subordination is remedial, not punitive, and is meant to minimize the effect that the misconduct has on other creditors. *Mobile Steel*, 563 F.2d at 700-01.

Although claims trading and equitable subordination are two concepts which do not often interact, the interplay between them was recently addressed by the Seventh Circuit Court of Appeals in *In re Kreisler*, 546 F.3d 863 (7th Cir. 2008). In *Kreisler*, two Chapter 7 debtors, under joint administration, formed a corporation to purchase a secured claim against their own estates. The bankruptcy court viewed the debtors' actions as

misconduct and invoked the doctrine of equitable subordination. *Id.* at 865. The result was that their corporation's claim was given last priority, meaning it could be paid only after the claims of every unsecured creditor. Not surprisingly, there wasn't enough money to pay all the unsecured claims, so the corporation ended up with nothing. An appeal was taken to the district court, which affirmed. The corporation appealed to the circuit court, which reversed.

In reversing the district court, the circuit court determined that the only issue in the case was whether the bankruptcy judge properly applied equitable subordination. *Id.* at 866. The circuit court found that equitable subordination is generally appropriate only if a creditor is guilty of misconduct that causes injury to the interests of other creditors. *Id.* The circuit court found that the debtors' formation of a corporation to

purchase a secured claim against their own estates may have amounted to misconduct, but it did not harm the other creditors, who were in the same position whether the original creditor or the debtors' corporation owned the secured claim. *Id.* at 867.

Based upon the case law, it would therefore be permitted for an owner of a debtor company to buy a creditor's claim in his company's bankruptcy estate, so long as it did not harm the position of the other creditors. Bankruptcy practitioners should be aware of this as it can open up some very interesting tactics in dealing with debt in troubled companies.

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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for Palm Beach County Bar Association
2009-2010 Board of Directors



The Palm Beach County Bar Association's PI Wrongful Death CLE Committee Presents:

"Planes, Trains, Trucks and Boats"

Trial Superstars on Navigating and Steering Complex Transportation Injury Cases

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

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

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

Program Schedule

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

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The cost of the seminar (including lunch) is **\$200** for PBCBA members/paralegals;

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

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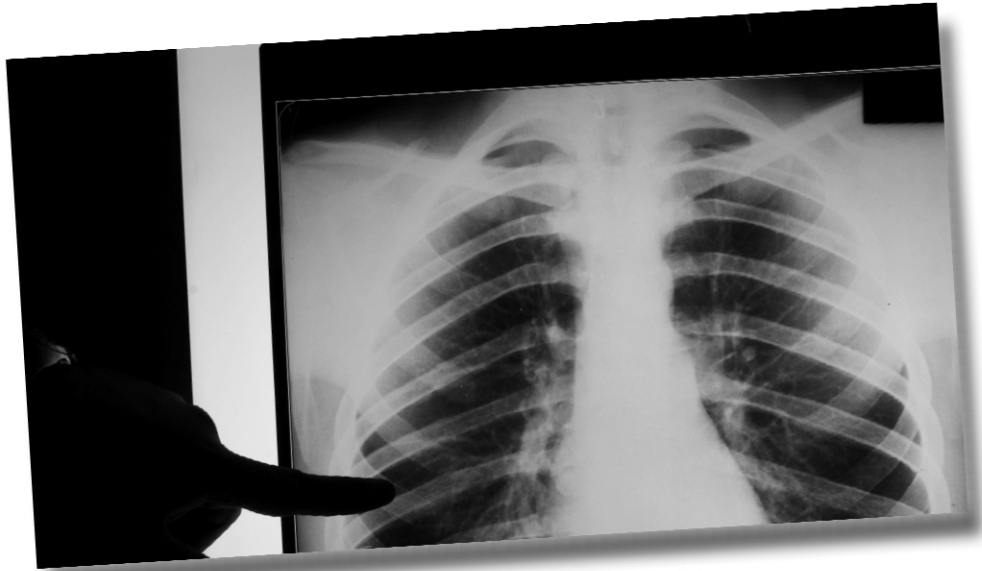
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Young Lawyers/CPA Mixers

The Young Lawyers Section and the local chapter of the FICPA recently hosted their second joint happy hour. Mark your calendar for future mixers: **May 13** and **October 28**



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Timothy Grice**



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Top 7 Most Common Client Grievances and How to Avoid Them

Presented by the North County Section

Friday, April 17, 2009

11:30 to 1:00 p.m.

Abacoa Golf Club

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11:30: Lunch

11:45 to 1:00: Speaker

Alan A. Pascal

Florida Bar Counsel, Legal Division-Lawyer Regulation

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Other Relevant Ethical Rules

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Cost: \$35.00 for NCS members who register before 4/15/09; \$40.00 for
non-section members. After this date, the cost will be \$40.00 for NCS
members and \$45.00 for non-section members.

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

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Bulletin Board

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CALENDAR

March 2009

Tuesday, March 3,
12 Noon – 1:00pm
**Joint Luncheon with
South County Bar Assn.**

**Guest Speaker:
FL Bar President Jay White**
Marriott Boca Raton

Wednesday, March 4,
12 Noon - 1:00pm
NCS Board Meeting

Thursday, March 5,
12 Noon – 1:00pm
**Lawyers for Literacy
Committee Meeting**
Bar Association Office

Friday, March 6, 11:30am – 1:00pm
**Solo Luncheon
“Marketing Yourself
Every Way Possible”**
Bar Association Office

Tuesday, March 10,
12 Noon – 1:00pm
YLS Executive Committee Meeting
Bar Association Office

Wednesday, March 11,
5:30pm – 7:00pm
YLS Happy Hour
Governors Club, Phillips Point

Wednesday, March 11,
7:00pm – 8:30pm
Small Claims Mediation Clinic
Jupiter Branch Library

Thursday, March 12,
8:15am – 4:30pm
**TFB Video Replay “Basic
Criminal Law Seminar”**
Bar Association Office

Thursday, March 12,
12 Noon – 1:00pm
**South County FAWL
Lunch Meeting**
Bogart’s Bar & Grill, Boca Raton

Friday, March 13, 8:00am – 1:00pm
**Commercial/Business Litigation
CLE Seminar**
Bar Association Office

Friday, March 13,
5:30pm – 6:30pm
Cardinals vs. Orioles
Roger Dean Stadium

Tuesday, March 17,
11:45am – 1:00pm
Judicial Luncheon
North end of Cafeteria,
Main Courthouse

Tuesday, March 17,
5:30pm – 8:00pm
Inns of Court Meeting
Contact Jill Weiss for more info
(561) 691-8111

Wednesday, March 18,
11:45am – 1:00pm
FAWL Membership Meeting
WPB Marriott, Okeechobee Blvd.
RSVP to fawl@comcast.net

Thursday, March 19,
5:30pm – 6:00pm
North County Section Happy Hour
Yard House, Palm Beach Gardens

Friday, March 20,
12 Noon – 1:00pm
**Joint Family Law Practice
Committee Meeting**
With South County Bar Association
Muvico in Boca Raton

Friday, March 20,
1:30pm – 5:00pm
Employment Law CLE Seminar
Bar Association Office

Tuesday, March 24,
5:30pm – 6:30pm
Legal Aid Board Meeting
Bar Association Office

Tuesday, March 24,
6:00pm – 8:30pm
Elder Law Dinner Seminar
The Colony Hotel, Palm Beach

Tuesday, March 24, 6-8 p.m.
PB Justice Association Meeting
Bear Lakes Country Club
Contact Kathy Baloga
(561) 471-2807

Thursday, March 26,
8:00am – 8:30am
Read Across Palm Beach County

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

Thursday, March 26,
5:00pm – 6:30pm
**PBCBA Board of Directors’
Meeting**
Bar Association Office

Friday, March 27, 8:00am – 5:00pm
PI/Wrongful Death CLE Seminar
Crowne Plaza Hotel, WPB



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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