



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

November 2008



## Bar supports the Palm Beach County Literacy Coalition

The Palm Beach County Bar Association placed 9th out of 24 in the Great Grown Up Spelling Bee helping to raise more than \$45,000 for local literacy programs for adults, children and families throughout our county.

Scott Zappolo tries to persuade the word judge to go easy on the Bar Team, while Master of Ceremonies Steve Weagle from Channel 5 looks on. Despite the desperate attempt for help, the team successfully made it through 8 rounds getting stumped on the word kibe!



Many thanks to team players Scott Zappolo, Michelle Suskauer and Adam Myron. (Pictured with the Great Grown Up Spelling Bee Mascot, aka: Ken Montgomery)

## Mark your calendar for upcoming Membership Meetings

### Bench Bar Conference

November 7  
Palm Beach County Convention Center

### Western County Networking Event

November 12th, 5:30pm - 7:00pm  
Naylah Mediterranean Grille, Royal Palm Beach

### Young Lawyers Section Happy Hour

November 13, 5:30 - 7:00 p.m.  
Nick & Johnnie's, Palm Beach

### North County Section Happy Hour

November 18, 5:30 - 7:00 p.m.  
Aqua Marine @ Legacy Place  
Palm Beach Gardens

### Annual Holiday Party

December 11, 5:30 p.m.  
BallenIsles Country Club

### North County Section Dinner Meeting

January 8, 5:30 - 7:00 p.m.  
Riverhouse Restaurant, Palm Beach Gardens

### Joint Luncheon with Forum Club

February 3, 2009, 11:30 - 1:00  
Kravis Center  
Speaker: U.S. Supreme Court Justice Antonin Scalia

*This event will be restricted to members only*

### Joint Luncheon with South County Bar Association

March 3, 11:45 - 1:00 p.m.  
Speaker: FL Bar President John G. "Jay" White III  
Location: TBA

### Annual Law Week Judicial Reception

April 22, 2009  
The Harriett at City Place

### Law Day Luncheon

May 1, 2009  
Location TBA

## Holiday Party & Silent Auction set for December 11

Please join us for our Annual Holiday Party on Thursday, December 11 from 5:30 p.m. to 8:00 p.m. at BallenIsles Country Club in Palm Beach Gardens. The evening includes a great silent auction, heavy hors d'oeuvres, drinks and plenty of networking. Proceeds from the auction will benefit local charity programs sponsored by the Young Lawyers and North County Sections. The cost is \$30.00 for PBCBA members; judges are complimentary; and spouses are welcome for \$50.00. RSVP today @ www.palmbeachbar.org

Many thanks to our sponsors Braman Motorcars, Brooks Brothers, Buckingham Doolittle & Burroughs, Esquire Deposition Services, Grand Bank and Trust of Florida, Leopold ~Kuvin, P.A., LexisNexis. Mellon Bank, MetLife and Rock Legal Services & Investigations.

We need your help collecting items for this silent auction. You can help our efforts by making a donating to the auction. The committee is looking for items such as attraction and professional ballgame tickets, hotel packages, artwork, sporting goods, spa services, professional services such as interior decorating, teeth whitening, portrait sittings, etc. If you would like it, chances are someone else will too. To make a donation, please call one of our event chairs today! Ned Reagan, (NCS) 832-7443; Greg Yaffa, (NCS) 625-6260 or Alana Zorilla-Gaston, (YLS) 659-7070

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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

## The Judicial Relations Committee is hosting its sixth in a series of Judicial Luncheons

Christian D. Searcy Esq., will moderate the luncheon on  
**December 2, 2008, 11:45am - 1:00pm**  
in the north end of the cafeteria at the  
Main Courthouse, WPB.

The topic for the luncheon will be  
**"Jury Selection in Catastrophic Injury Cases"**.  
A Judicial Panel will address issues and discuss practice tips  
on matters such as jury selection, evidentiary issues,  
and opening and closing statements.

**Cost:** \$20 PBCBA Members, if registered by November 25th;  
add \$10 after that date.

Luncheon for PBCBA Members only.  
1 hour CLER has been applied for to The Florida Bar

Location: Main Courthouse, north end of cafeteria.

This event is limited; RSVP's are required. Please register online.  
Walk-ins cannot be accommodated.



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## President's Message

### Robert M. Montgomery, Jr., 1930-2008 "A Force of Nature"



By Richard D. Schuler, President

Like so many others, Bob Montgomery gave me my first job as a trial lawyer. (In characteristic fashion, he offered me more to start than I asked for!) The list of the attorneys he hired over time, from Jacksonville to Fort Lauderdale, West Palm Beach and St. Petersburg reads like a "Who's Who" of the trial lawyer elite. From most of the partners at Lytal and Reiter to most of the partners at Searcy, Denney – Roy Watson, Justus Reid, Edna Caruso, Lois Frankel, Wally McCall, George Mastics, Bettye King, Judge Moses Baker, Steve Billing, Mike Bragg, Jose Rodriguez, Mike Burman...I don't mean to leave anybody out but I could fill this whole space with just the names of the superb lawyers he trained.

Bob believed in training – both in the art of the trial practice and the business side. He was a superb cross-examiner whose aggressive style won many an "unwinnable" case. He also didn't hesitate to throw his young lawyers into "the deep end of the pool". I remember handling cases with seven figure potential 30 years ago. With Bob you had to be the best prepared, have the best experts and make the best arguments. He gave us all the confidence to go beyond being a "litigator" (a term he never used and associated with "silk stocking" firms). To be a trial lawyer, he knew his lawyers had to cut through all the legalisms and get to the common sense essence of the case. He used to call it "the heart of the coconut".

We spent money on preparing our cases ("you have to crack a few eggs to make an omelet"). We spent money on marketing to get cases ("you have to catch a rabbit before you can make rabbit stew").

For as many large verdicts and settlements that Bob got, he always believed in giving back to the community. Between the Palm Beach Opera, Kravis Center, Home Safe, Armory Arts Center, Sickel Cell Foundation, Anti-Defamation League and many others, I'm told that he and

his wife, Mary, will have given \$100,000,000.00 to various arts and charitable causes.

Bob's personality could only be described as a "Force of Nature". He did things with speed and intensity. I remember trying a wrongful death case in Martin County with him where he got so worked up, he accidentally ripped open the zipper on the front of his pants – had to ask the Judge for a recess to sew it up so he could continue.

On another occasion, his secretary, Mrs. Tucker, who never made a mistake, put down 3 "a.m." for a hearing time instead of 3 "p.m." When opposing counsel poked fun by sending a letter saying "I've heard about wearing down out-of-town counsel, but isn't this a bit ridiculous", Bob shot back a letter: "that was no mistake buddy, we knew you'd be boozing it up in these environs about that time so we knew you'd be available."



It is hard to appreciate now, but Bob was way ahead of his time in hiring minority attorneys, women, attorneys of color and others. He took a chance on this short, skinny (then) kid from New York with no trial skills.

A senior partner attorney in another firm once said to me many years ago: "How does Bob Montgomery find all these talented trial lawyers to come into his firm – what does he do to find them, what is his system?" After all these years, the answer is clear – he didn't find them – they found him. Those that wanted to be the best – wanted to learn from the best. Bob, you were the best. For all of us that you taught to be successful, thank you, and we'll miss you. You were exciting to be around. A real force of nature.

## MEDIATOR/ARBITRATOR JEFFREY GRUBMAN, ESQ.



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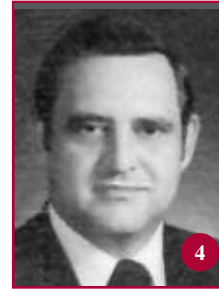
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## Who are they?

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

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

Answers on page 10



## Junior Bar Section Minutes - July 10, 1964

Minutes of the 161st regular meeting of the Junior Bar Section of the Palm Beach County Bar Association which was held at the Town House 12:15 P.M., Friday, July 10, 1964. There were 50 members and guests present.

The President recognized the presence of Circuit Court Judges White,

Morrow, Knott and Downey; Criminal Court Judge MacMillan and Small Claims Court Judges Currie and Sinclair.

Charlie Beall introduced Luke Taylor and proposed him for membership. Harry Johnston introduced and proposed Jim Morrison and David Faust. All were accepted subject to payment of dues.

Judge Downey introduced his guest, Truman Ropus.

The President reported that he had received a letter from John Potter, West Palm Beach City Prosecutor, requesting those interested in a position as prosecutors ad litem contact him. There are presently four vacancies.

Our guest speaker, Sherwood Spencer, gave a detailed and interesting report regarding the unauthorized practice of law in the state and throughout the country at the work of the various bar associations to solve the problem.

Angus Campbell attempted to give a treasurer's report concerning the cost of the annual party but was prevented from doing so by the President who remarked, "what they don't know won't hurt them."

There being no further business to come before the meeting, is adjourned.

Respectfully submitted,  
Angus J. Campbell  
Secretary

## probate litigation

(5 6 1)

5 1 4 - 0 9 0 6

referral fees

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# Young Lawyers Section News

The YLS has kicked off their year with some networking events; one was held in September at O'Shea's and the other in October at Brogue's in Lake Worth. The next scheduled event is Thursday, November 13 at Nick & Johnnie's in Palm Beach. Registration information can be found on the Bar's website at [www.palmbeachbar.org](http://www.palmbeachbar.org).



Jamie Guttman and Liz Batres



Peggy Woods, Lon Weissblum and Heath Randolph



Miles McGrane, Trish Duthiers and John Whittles



Jon Mann and Jose Rodriguez



Dori Stibolt and Allison Kapner



Marni Bryson and Alka Sharma



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## The Latest on the Impact Rule

by Ted Babbitt

Since 1893 Florida jurisprudence has required some physical touching in order to recover for emotional distress. In *Int'l Ocean Tele. Co. v. Saunders*, 32 Fla. 434, 454 (Fla. 1893), the rule was created, which came to be known as the "impact rule," and required not only a touching but a physical injury. Since that time, the Florida Supreme Court has steadily eroded, by either exceptions or interpretations, the restrictions of the impact rule. In *Willis v. Gami Golden Glades, LLC*, 967 So. 2d 846 (Fla. 2007), the Court held that a plaintiff could sustain an action for emotional injury without the presence of any actual physical injury so long as there was some physical contact. In that case, there was evidence that an assailant had made contact with the plaintiff's left temple with a gun and made other physical contact when he searched the plaintiff's body for money and other belongings. While the Court did not delineate the extent of physical contact necessary, it did indicate that the amount of touching in that case was "more than sufficient." The Court cited with approval *Eagle-Picher Industries, Inc. v. Cox*, 481 So. 2d 517, 527 (Fla. 3rd DCA 1985) which stated:

"The essence of impact, then, it seems, is that the outside force or substance, no matter how large or small, visible or invisible, and no matter that the effects are not immediately deleterious, touch or enter into the plaintiff's body."

In *Futch v. Wal-Mart Stores, Inc.*, 33 Fla. L. Weekly D1893 (Fla. 1st DCA, July 31, 2008), the appellate court was faced with a summary judgment granted by a trial court because of lack of physical injury under the impact rule. That case was a suit against Wal-Mart for an abduction which occurred to a Wal-Mart employee in the Wal-Mart parking lot which the plaintiff claimed was a result of inadequate security. There was conflicting evidence between the plaintiff's deposition and an affidavit filed in opposition to the motion for summary judgment as to the extent, if any, of any physical touching. In her deposition, the plaintiff denied recalling whether she had been touched but in her affidavit explained that she misunderstood the word "touch" in her deposition to mean assaulted or sexually touched and that, in fact, she had to have been touched because she sat between her two assailants in a vehicle and one of them climbed over her so that it would have been impossible for her not to have been touched, however briefly.

The appellate court reversed the summary judgment rejecting the strictures of *Ellison v. Anderson*, 74 So. 2d 680 (Fla. 1954) which precludes an affidavit in opposition to a motion for summary judgment which directly contradicts prior sworn testimony. The Court explained that *Cary v. Keene*

*Corp.*, 472 So. 2d 851, 853 (Fla. 1st DCA 1985) and *Croft v. York*, 244 So. 2d 161, 165 (Fla. 1st DCA 1971) exclude from the application of the *Ellison* rule affidavits which give a credible explanation for the discrepancy in testimony or which recall that which could not be recalled during the testimony. Citing *Willis*, supra, and *Eagle-Picher Industries*, the Court held that the summary judgment was improvidently entered in light of the touching, however slight, suffered by the plaintiff.

The impact rule is alive in Florida but barely on life support. Its constant erosion is premised on the supposition that juries are perfectly capable of determining whether emotional or psychological injury exists in the absence of a concurrent physical injury. The logic of requiring a mere touching eludes intellectual analysis. If the purpose of the impact rule to begin with was to prevent fraud, it is hard to imagine how someone being brushed by an assailant satisfies that purpose. That the impact rule exists at all has become a monument to tradition rather than logic.

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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- Long Term Care Insurance (Discount available)
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- Group Dental Insurance
- Long Term Disability Insurance
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– Steven Dell, Attorney's Dell & Schaefer, Chartered

#### For More Information Contact

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- DON MARQUIS



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### Is Your Client's Self-Proof Affidavit Valid?

By David M. Garten, Esq.

During the execution ceremony, your staff witnessed and notarized the testator's signature. The Will contains a self-proof affidavit. Is the self-proof affidavit valid?

What is a self-proof affidavit and why is it important? A self-proof affidavit is a statutory procedure to ensure the authenticity of the testator's signature and his Will. A valid self-proof affidavit allows for the admission of the Will to probate without further proof, i.e., without the witnesses testimony. Refer to §733.201(1), Fla. Stat.. Florida's self-proof statute reads in relevant part as follows:

#### § 732.503. Selfproof of will

(1) A will or codicil executed in conformity with s. 732.502 may be made self-proved at the time of its execution or at any subsequent date by the acknowledgment of it by the testator and the affidavits of the witnesses, made before an officer authorized to administer oaths and evidenced by the officer's certificate attached to or following the will, in substantially the following form:

STATE OF FLORIDA)  
COUNTY OF \_\_\_\_\_ )

I, \_\_\_\_\_, declare to the officer taking my acknowledgment of this instrument, and to the subscribing witnesses, that I signed this instrument as my will.

\_\_\_\_\_  
Testator

We, \_\_\_\_\_ and \_\_\_\_\_, have been sworn by the officer signing below, and declare to that officer on our oaths that the testator declared the instrument to be the testator's will and signed it in our presence and that we each signed the instrument as a witness in the presence of the testator and of each other.

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

Acknowledged and subscribed before me by the testator, (type or print testator's name), who is personally known to me or who has produced (state type of identification – see s. 117.05(5)(b)2.) as identification, and sworn to and subscribed before me by the witnesses, (type or print name of first witness) who is personally known to me or who has produced (state type of identification – see s. 117.05(5)(b)2.) as identification and (type or print name of second witness) who is personally known to me or who has

produced (state type of identification – see s. 117.05(5)(b)2.) as identification, and subscribed by me in the presence of the testator and the subscribing witnesses, all on (date).

(Signature of Officer)

The Florida Probate Code is modeled after the Uniform Probate Code. See *Teague v. Estate of Hoskins*, 709 So.2d 1373 (Fla. 1998) and the Uniform Probate Code §2-504. In construing a statute modeled after a uniform law, it is pertinent to resort to the holdings in other jurisdictions where the act is in force. *Teague, supra*. When a statute has its origin in a uniform law, it should receive a uniform interpretation in all adopted states if the beneficial purpose of uniformity is to be served. See *In re Estate of Swanson*, 397 So.2d. 465 (Fla. 2nd DCA 1981).

An affidavit attached to a Will that is in *substantial compliance* with the affidavit form set forth in §732.503, Fla. Stat. makes the Will self-proved. For this purpose, an affidavit that is subscribed and acknowledged by the testator and subscribed and *sworn to by the witnesses* would suffice as being in substantial compliance. See *Estate of Graham*, 69 S.W.3d 598 (Texas 13th Dist. 2001), and *Tex. Prob. Code §59(b)*.

The recommended procedure is for the notary to ask of the witnesses the following question prior to their signing the self-proof affidavit:

Q. "Do you swear (or affirm) that \_\_\_\_\_ (testator) declared the instrument to be his/her will and signed it in your presence and that each of you signed the instrument as a witness in the presence of \_\_\_\_\_ (testator) and of each other?"

Refer to §§732.503 and 90.605, Fla. Stat., and *The Notary View, Office of the Governor, Issue 1, at 1 (1997)*.

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## Pro Bono Corner

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

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TOTAL NUMBER OF CASES: 45  
TOTAL NUMBER OF HOURS: 672.30

PLEASE RETURN YOUR CLOSING FORMS IN A TIMELY MANNER!

## Circuit Court Report CIVIL DIVISIONS • August 2008

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	11/08	11/08	10/08	1493
B	01/09	01/09	11/08	1402
D	12/08	12/08	10/08	1689
E	03/09	01/09	12/08	1640
F	01/09	01/09	12/08	1475
G	03/09	03/09	10/08	1308
H	04/09	04/09	10/08	1529
I	02/09	10/08	09/08	1125
J	01/09	01/09	11/08	1499
N	03/09	03/09	11/08	1741
O	01/09	01/09	11/08	1560

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 9/4/08.



Who Are They?

From Page 4

1. Kevin Beuttenmuller
2. Kyle Caparosa
3. Ted Dehon
4. Judge John Dell
5. Cynthia Jackson

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## North County Section hosts Joint Happy Hour with Martin County Bar, November 18

Members of the North County and Martin County Bar Association's will gather for a Membership Happy Hour on Tuesday, November 18 from 5:30 pm to 7:00 pm at Aqua Marine Grill in Legacy Place. Due to limited space, this event is for members and judges only.

The cost is \$10.00 per person. Please RSVP no later than 11/14 @ [www.palmbeachbar.org](http://www.palmbeachbar.org). A special thank you to our evening sponsors: David Lerner & Associates, Grand Bank and Trust of Florida, MetLife and Leopold~Kuvin, P.A.

## NCS Candidate Luncheon a Great Success

It was standing room only at a recent North County Section luncheon where two races faced off in a debate for the Florida House of Representatives. The event was held for close to 100 people at the City Club in North Palm Beach and was sponsored by the Law Offices of Scott B. Smith, PL; Lawrence P. Buck, PA, and Preston J. Fields, PA.



Ryon McCabe, NCS President; Jim Sackett, WPTV News Channel 5 served as moderator; Scott Smith, event chair.



District 89: Incumbent Mary Brandenburg and challenger Jeffrey Auslander



District 83: Incumbent Carl Domino and challenger Bryan Miller



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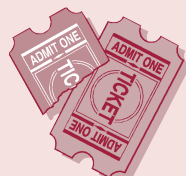
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## Welcome New Members!

*The following represents each new member's name, hometown, law school, and date of admission to the Florida Bar and law firm association.*

**KEVIN A. COPPIN** – England; Law Student Member, Nova Southeastern University; West Palm Beach

**MORGAN A. FAIRTHORNE** – Florida; University of Florida, 2008; Associated with Powers, McNalis, Torres & Teebagy, West Palm Beach

**PEGGY S. FELDMAN** – New York; St. John's University School of Law, 2008; Associate in Redgrave & Rosenthal, LLP, Boca Raton

**MATTHEW D. HORTON** – University of Florida, 2005; Partner, Horton and Robinson, P.A., West Palm Beach

**GARY JAFFE** – Pennsylvania; Widner University; Affiliate Member; Delray Beach

**DEBORAH E. JOHNSON** – Paralegal Member; Leopold~Kubin, P.A., Palm Beach Gardens

**BRIAN S. PITA** – New Jersey; Florida State University College of Law, 2007; Associate in Cole, Scott & Kissane, PA, West Palm Beach

**WILLIAM R. PONSOLDT** – University of Florida, 1993; Partner with Wright, Ponsoldt & Lozeau, Stuart

**DANA E. QUIGLEY** - Florida State University, 2004; Sole Practitioner, Dana E. Quigley, PA, Palm Beach Gardens

**TONI B. ROSS** – New York; Touro College of Law, 2002; Sole Practitioner, Toni B. Ross, Attorney at Law, Boca Raton

**REID P. SCOTT III** – Florida; Stetson University College of Law, 2006; Associated with Office of the State Attorney, West Palm Beach

**LINDA S. WELLS** – Paralegal Member; Hinman Howard & Kattell, LLP, Boynton Beach

**LAUREL R. WILEY** – Colorado; Nova Southeastern University, 2001; Associate with Katzman Garfinkel Rosenbaum, LLP, West Palm Beach



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If becoming a mentor for a foster child is something that interests you, please contact Carlton Smith, J.D., Project Supervisor, at 561.655.8944 ext. 239 or at [csmith@legalaidpbc.org](mailto:csmith@legalaidpbc.org). Through your commitment, you can help by directing a youth on the right path.



### Board of Directors Meeting Attendance

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Howe	x	x	x
Martinez-Schwab	x	x	x
McCabe	x	x	x
Poulton	x	x	x
Rabin	x	x	x
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## Are You a Debt Relief Agency

By: Marc P. Barmat

Have you provided “bankruptcy assistance”<sup>1</sup> to an “assisted person”<sup>2</sup> in return for the payment of money or other valuable consideration? If the answer is yes then, you might be a “debt relief agency.”<sup>3</sup>

Along with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) came the newly added term “debt relief agency.” Although you may not have known it, if you fall within the definition of a “debt relief agency,” BAPCPA restricts some of your actions and requires you to do others. For example, 11 U.S.C. § 526(a)(4) bars a debt relief agency from advising a client “to incur more debt in contemplation” of a bankruptcy filing, while 11 U.S.C. §§ 528(a)(4) and (b)(2) require debt relief agencies to include a disclosure in their bankruptcy related advertisements directed to the general public declaring: “We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.”

Until recently, the question of whether attorneys fall within the definition of a debt relief agency and, if so, whether the restrictions and requirements, as applied to attorneys, were constitutional had not been addressed by a Circuit Court of Appeals. In *Milavetz, Gallop & Milavetz, P.A. v. United States of America*, — F3d. —, 2008 WL 4068448 (8th Cir.), a bankruptcy law firm and two of the firm’s bankruptcy clients brought suit against the United States requesting a declaratory judgment that the attorneys did not fall within the definition of “debt relief agency” and alternatively, if the court determined that attorneys did fall within the definition of “debt relief agency”, then § 526(a)(4) and 528(a)(4) and (b)(2), are unconstitutional as applied to attorneys.

In addressing the initial issue of whether attorneys fall within the definition of “debt relief agency,” the *Milavetz* Court held that attorneys who provide “bankruptcy assistance” to “assisted persons” are “debt relief agencies.” The Court reasoned that because attorneys were not specifically excluded from the definition of “debt relief agencies,” interpreting the definition of “debt relief agency” to exclude attorneys would be contrary to Congress’s intent. *Id.* at 4.

Although the *Milavetz* Court concluded that attorneys can be “debt relief agencies,” the Court held that the restrictions set forth in 11 U.S.C. §526(a)(4) were substantially overbroad and unconstitutional as applied to attorneys. *Id.* at 5. The *Milavetz* Court found that the prohibition from advising any assisted person from incurring additional debt, contained in 11 U.S.C. §526(a)(4), unconstitutionally prohibits attorneys from giving prudent pre-bankruptcy planning advice. *Id.* The Court went on

to describe certain situations where it would likely be in the assisted person’s, and even the creditors’ best interest for the assisted person to incur additional debt in contemplation of bankruptcy. For example, it may be in the assisted person’s best interest to refinance a home mortgage in contemplation of bankruptcy to lower the mortgage payments in order to free up funds to pay off other debts and avoid the need for filing bankruptcy all together. *Id.* Further, it may be in the client’s best interest to incur additional debt to purchase a reliable automobile before filing for bankruptcy, so that the debtor will have dependable transportation to travel to and from work, which will likely be necessary to maintain the debtor’s payments in [a chapter 13] bankruptcy. *Id.* at 6.

With regard to the required disclosures set forth in 11 U.S.C. §§ 528(a)(4) and (b)(2), the *Milavetz* Court held them to be constitutional. The Court found that although less intrusive means may be conceivable to prevent deceptive advertising, § 528’s disclosure requirements are reasonably related to the government’s interest in protecting consumer debtors from deceptive advertising, and thus the section passes constitutional muster. *Id.*

In summary, if you are a bankruptcy attorney, you may be a “debt relief agency.” Accordingly, you should be aware of the restrictions and requirement set forth in BAPCPA as well as the case law interpreting same.

*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*

<sup>1</sup> The term “bankruptcy assistance” means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors’ meeting or appearing a case or proceeding on behalf of another or providing legal representation with respect to a case or proceeding under the title. 11 U.S.C. §101(4A)

<sup>2</sup> The term “assisted person” means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than \$150,000. 11 U.S.C. §101(3)

<sup>3</sup> The term “debt relief agency” means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—... 11 U.S.C. §101(12A)



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### Make the Most of Your Marketing During the Holidays

By Mark Powers and Shawn McNalis

Have you ever encountered a referral source who simply stopped sending business – for no apparent reason? It happens to good, hard-working attorneys all the time.

Unfortunately, if you are like these attorneys, you never quite know what prompted them to stop referring. Here's another troubling situation: a large percentage of the referral sources who do refer to you may be sending business to other attorneys as well. If this doesn't apply to you and your practice now, it may soon. The explosive growth of practicing attorneys means competition in the future will be tougher than ever.

Given this trend, it's critical to keep in touch with your referral sources. Cultivating them is important to keep the stream of business flowing and ongoing communication is important to keep the feedback flowing. Fortunately, the upcoming holidays offer you a great opportunity to do both. Even if you haven't been faithfully sending out thank you notes or acknowledging your referrers throughout the year, all is likely to be forgiven in the spirit of thankfulness and goodwill that begins with Thanksgiving and ends somewhere around New Year's Eve.

When an Atticus client in south Florida wanted to make sure his efforts to acknowledge his referral sources were memorable, he had his secretary discreetly inquire about where his colleagues liked to celebrate special occasions. He then directed his secretary to purchase gift certificates for the referrers and their families to dine in their favorite spot. This highly personalized approach won our client a great deal of good will – and he didn't even have to show up. For him, a couple hundred dollars spent on gift certificates is a worthwhile investment compared to the high value cases his referral sources send every year.

Which referral sources should you invest in for the future? Here's how you find out: make a list of the referral sources who've sent the most business in the last year. Add to this those referrers who have sent some business and are well positioned to send more. Then list clients who refer significant business or have a great deal of recurring work. Focus your efforts on the individuals on this list.

To get started, examine your list to see whom you'd like to get to know better. While giving gifts is a great form of acknowledgement for some referrers, there is no substitute for time spent face-to-face with those you'd like to get to know. We encourage you to invite these referral sources out to lunch or dinner and express your appreciation for the business they send.

When face-to-face with them, your acknowledgement can be brief and simple. You can say something like, "I've been reviewing my referrals for the last year and want to let you know I appreciate all the business you send." Or, "I really appreciate your continued faith and confidence in me. You've sent a lot of business this year and I appreciate it. I will always take good care of the clients you send." These simple acknowledgements can be

used in almost any setting. Our experience indicates that the best referral sources are usually those who become your friends. An expression of gratitude paired with good food in a nice atmosphere can go a long way to turn a referrer into a friend.

For those clients on the list whom you'd like to acknowledge with a gift, the possibilities are endless. Several of the attorneys we work with have thick Omaha steaks, or large stuffed turkeys delivered to their best referral sources, who eagerly await these treats every year. One creative soul dresses up like Santa and hand-delivers his wife's homemade cookies. To recognize referrals that come from staff members who work for their referral sources, many firms send baskets filled with chocolates, cheese or nuts. This is often much appreciated and helps to reinforce their desire to refer clients to you.

While gifts of food are very much appreciated, some attorneys take another approach and give sports-oriented gifts. Gift certificates for a few rounds on a favorite course are nice. Asking a client to play a round of golf is even better. One client we know treats his referral sources to a series of sessions with a golf pro. Another attorney we work with doesn't play golf, but loves football. He buys season tickets and generously shares them with referral sources who are fans. Sports memorabilia is another great gift for referrers who are fans and live away from their team's home base.

In fact, gifts related to any of your referrals sources' hobbies, passions or interests are a great way to say thanks. A book on photography given to an amateur photographer; a hand-held GPS unit given to a mountain climber; a bottle of fine scotch given to a single-malt scotch lover; a subscription to a top-notch wine-of-the-month club for a wine enthusiast; all are highly personalized ways to say thank you for remembering us and sending business.

Hopefully, by the time you read this, there will still be time for you to identify your best referral sources and plan gifts that will represent the appreciation you have for their continued business.

To help motivate you, consider this: the lifetime value of a referral source who faithfully sends business, year after year can add up to thousands, possibly tens of thousands of dollars worth of business over time. In some practices where the average case is worth thirty or forty thousand dollars, a referral source may send hundreds of thousands of dollars worth of business over their lifetime. Never underestimate the worth of your referral sources – they are literally putting money in your pocket and should be thought of as critical to the growth and survival of your practice. So, whether you take the face-to-face approach or send a gift that reflects their interests, just be sure you make the effort to do something nice. A little extra effort over the holidays can make up for any lack of gratitude you've shown in the past and set you up for a win in the coming year.

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

## Sticklers Unite! Abolish Capital Punishment! (Part 2)

by D. Culver “Skip” Smith III

The Seventh in a “When Space Permits” Series

Boy! Talk about stirring things up!

In the previous installment your author posited that no word in the following sentence (except the first) should be capitalized: *The board of directors is scheduled to meet next week, at which time the president of the corporation will address the board regarding the proposed amendments to the bylaws.* This sent several of you scurrying to your keyboards. But as the previous installment presaged, sticky issues lay ahead. Now for the waffling (which some might call “exceptions”):

1. *Insiders vs. outsiders.* If the author of the example above is referring to his or her own organization, capitalization of the actual names of the corporate units is acceptable: *The Board of Directors is scheduled to meet next week, at which time the President of the Corporation will address the Board regarding the proposed amendments* (in an internal company memo). An outsider, however, should eschew the capitalization.

2. *Short-form substitutes.* Some common-noun substitutes for full proper names (for example, *the company* in place of *Smith Publishing Company*) are capitalized when they are intended to carry the full significance of the complete proper name (personal title, organizational name, governmental name). Here, though, the danger of overcapitalization is great. Accordingly, do not capitalize unless special emphasis or distinction is called for, such as in bylaws, minutes, contracts, and other formal communications in which the short form is intended to invoke the full authority of the organization. *As a matter of policy, our company avoids political endorsements* (corporation’s letter to outsider). **But:** *The Board unanimously passed the resolution authorizing the President to accept the offer on behalf of the Corporation* (minutes of a meeting of the board of directors). In formal legal writing, the short form is often (and logically) used to refer to a high-ranking official or entity that previously has been referred to by its full name: *The Department of Justice has been focusing on white-collar crime; the Department seems especially interested in the roles that lawyers play. The Commissioner of Internal Revenue opposed the amendment; the Commissioner felt that it would cause*

*confusion.* **But:** *A future commissioner may disagree.*

3. *The Court (court) is in session.* An unsettling issue (among lawyers, not normal people) is whether and when to capitalize *court* when not part of a court’s full name. Here we are driven not only by considerations of proper grammar but also by the urge to flatter a jurist. When referring to a court other than the addressee, do not capitalize: *The district court of appeal held that the evidence was properly excluded* (in a writing not directed to that court). **But:** *This Court held that the evidence was properly excluded* (referring to the court to which the writing is addressed). Normal usage would not capitalize court in that last sentence, but in formal legal writing, the respect intended by capitalization is warranted. **Note:** *The Fourth District held that the evidence was properly excluded.* Here, *Fourth District* is capitalized because it is in the nature of a nickname. One other exception: when referring to the U.S. Supreme Court or the highest court in a particular jurisdiction, capitalize *court*. *The Court* (clearly referring to the jurisdiction’s highest court) *held that the evidence was properly excluded.* This exception arises from custom and the dictates of a group of Ivy League law students.

4. *I’m from the government, and I’m here to help.* Now for the part that risks unnerving a large segment of the bar: capitalize *federal* or *state* only when part of the full official name of a federal or state agency, act, or some other proper noun: *the Federal Reserve Board; the State of Florida Department of Transportation.* **But:** *the federal government; the federal courts; the state education budget; subject to federal law.* **Note:** *the state of Florida* (referring to the geographical unit, the full proper name of which is “Florida”) versus *the State of Florida* (referring to the governmental unit, the full proper name of which is “State of Florida”). *I live in the state of Florida. I pay taxes to the State of Florida.*

The next and final installment will address a potpourri of capitalization issues. Meanwhile, when in doubt, do not capitalize a common noun unless failing to do so will cause you to have a nervous breakdown.

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

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## Speed Networking

The Solo and Small Firm Practitioner's Committee recently hosted its Second Annual Speed Networking event. Members enjoyed lunch and made close to 40 new contacts all within 60 minutes.



Marc Dobin and Debbie Block exchange business cards. Debbie is the Solo & Small Firm Practitioner's Chairperson



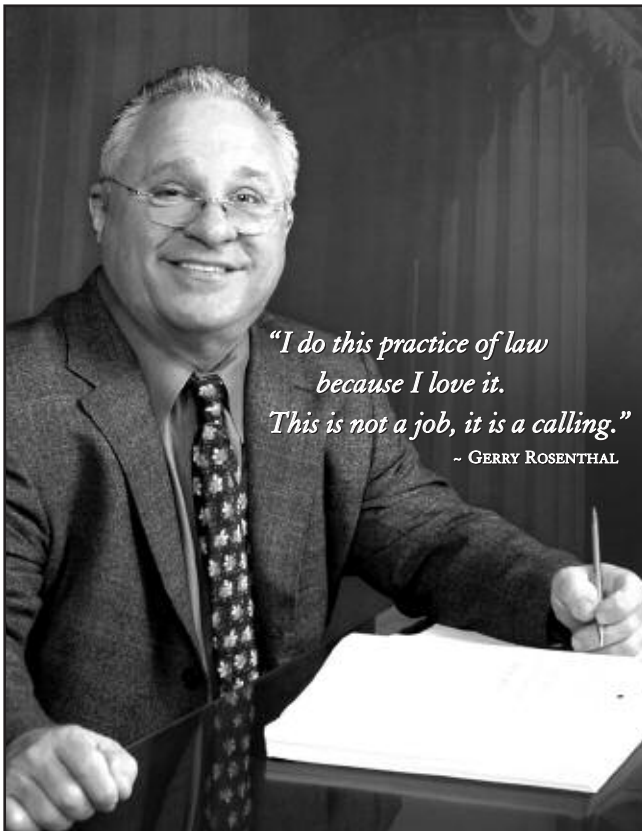
Lloyd Comiter and Ryon Copple met for the first time.



Serious networking was taking place at this table between Evan Ostfeld (left) and Lon Weissblum (right)



Leigh Cowden and Sidney Turner say goodbye after their 5 minutes were up.



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- GERRY ROSENTHAL*

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**AV-RATED FIRM:** Looking to hire an associate with 2 to 4 years experience concentrating in business, securities and white-collar criminal matters. Please send resume to beth@mccaberabin.com, McCabe Rabin, P.A., 1601 Forum Place, Suite 301, West Palm Beach, FL 33401.

**AV-RATED FOX, WACKEEN, DUNGEY** et. al. law firm seeks a motivated, self-starting associate with 2-4 years civil litigation experience, preferably in insurance defense or condo/HOA litigation. Strong academic credentials required. Career path opportunity in well-established firm. We offer a congenial work atmosphere, competitive salary and benefits package. Firm is located in Martin County offering an excellent quality of life and best-in-the-state school system. Forward resume and law school transcripts to Maryellen Castellano, mcastellano@foxwackeen.com or fax 772.220.1489.

**LITIGATION ASSOCIATE:** AV-Rated defense litigation firm seeking attorney for our NPB office. 0 to 2 years experience preferred. **MUST** be a member of the Florida Bar. Please email your resume to Pamela McBride with Bobo, Ciotoli, Bocchino, Newman & Corsini, P.A. mcbride@bobolaw.com.

**TEMPORARY LEGAL ASSISTANT** available for vacation fill-ins, or Part-Time Permanent; 30 years experience in Palm Beach County – Litigation and Family Law. M. Conte (561) 832-1237; West Palm Beach and vicinity only.

## PROFESSIONAL ANNOUNCEMENTS:

The following announce their availability for referral, assistance and consultation.

**SCOTT SUSKAUER:** Board Certified Criminal Trial Lawyer. Over 20 years of experience. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI, juvenile and traffic matters, 1601 Forum Place, Ste. 1200, WPB, FL 33401; 561-687-7866  
www.suskauerlaw.com.

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

**GREY TESH:** Board Certified Criminal Trial Lawyer, “Criminal Law is not Black & White, it’s Grey.” President-Elect, Florida Association of Criminal Defense Lawyers, Palm Beach Chapter. Federal and State. www.aaacriminaldefense.com (561) 686-6886.

**MICHAEL J. MCHALE:** Board Certified Admiralty and Maritime Lawyer. All maritime and admiralty matters in State and Federal Court including personal injury, seizures of vessels, limitation of liability, purchase and sale of boats, cruise ships injuries, longshore claims and BUIs. (561) 835-3660 admarr1@earthlink.net and www.admiraltyatty.com

**SCOTT B. SMITH:** “AV” rated trial attorney representing injured victims of tractor-trailer/commercial motor vehicle accidents. Member of AAJ Interstate Trucking Litigation Group and Association of Interstate Trucking Lawyers of America. Extensive experience in handling truck accident cases and with Federal Motor Carrier Safety Regulations. Admitted to Florida Bar and all U.S. District Courts within Florida. Law Office of Scott B. Smith, P.L., 5604 PGA Blvd., Suite 107, Palm Beach Gardens 33418 (561) 622-0622 www.smithinjurylaw.com.

## OFFICE SPACE:

**OFFICE SPACE:** WPB Downtown; close to Courthouse & Intracoastal; Turn-key ofc. sharing in chic-historical bldg. Includes large reception area, beautiful conf. rm, off-street park, cleaning, electricity, telephone, water, internet, scanning, facsimile, file space, copier, kitchen, some ofc. supplies, alarm monitoring, and much more. Secretarial or paralegal space available if needed. Avail. Immediately. Call (561) 659-4414.

**PALM BEACH GARDENS:** Law office offering suite to share. Space includes 1 private office, 1 or 2 secretarial stations, kitchen facilities and a large conference room. Also includes, phone systems, DSL line and copy machine services. Close to the Turnpike and I-95. For details call (561) 624-7718.

**WELLINGTON:** Prime professional office space sharing arrangement with attorneys. Includes private office, secretarial station, reception area, telephone, copier, fax, library, kitchen, etc. Great location. Call (561) 793-2400.

## Bulletin Board

**OFFICE SPACE:** Law office/office space – directly across from SLC courthouse, downtown Fort Pierce. Newly renovated buildings, suites contain large offices, conference room, reception area, etc. Spaces from a small office of 300 sq. ft. and up to 7000 sq. ft. Call Lloyd Properties (772) 466-6120 or email sue4343@comcast.net.

**PALM BEACH GARDENS:**

Professional office. 1100 sq. ft., Village Square Crossing Professional Plaza, Prosperity Farms Road and RCA Boulevard. Suite includes reception area, secretarial space, four offices, and bathroom. Competitively priced. Call Carroll Smith Properties (561) 478-2102.

**BEAUTIFUL OFFICE SPACE**

**AVAILABLE:** Mahogany, marble, etc. on Indiantown Road in Jupiter, Florida. Contact Mike Knecht at (561) 745-2110.

**WEST PALM BEACH CONDO:** 4

offices, conference room, kitchen, support area & parking. Palm Beach Lakes area. \$549,000. Call (561) 686-8686.

**PALM BEACH GARDENS OFFICE**

**SPACE:** Law office space available near PGA Blvd. and North County Courthouse. Executive suite includes secretarial space, kitchen, conference room, reception area and receptionist. Share space with other lawyers-reasonable rent. Call Lynne at (561) 691-2020 for further information.

**JUPITER OFFICE CONDO:** Upscale Class A in the heart of Abacoa, +/- 1,950 sq. ft. comprised of 5 offices, conference room, kitchenette, reception, work areas. \$579,000. Call (561) 799-9280.

**WEST PALM BEACH:** Multiple law offices with secretarial areas available in prestigious lakefront office building. Includes use of conference room, telephone system, DSL service, copier/scanner, kitchen facilities and garage parking available. Call (561) 659-6457.

**WEST PALM BEACH:** Multiple law offices with secretarial areas available in prestigious lakefront office building. Includes use of conference room, telephone system, DSL service, copier/scanner, kitchen facilities and garage parking available. Call (561) 659-6457.

### HEARSAY

**Michelle Diffenderfer**, Shareholder at Lewis, Longman & Walker, P.A., has been selected by the Palm Beach County Chamber of Commerce as this year's ATHENA Award recipient. Also in the firm, **James Charles** was selected to serve on the Board of Directors at The Lord's Place.

**Scott B. Smith** has achieved Board Certification in Civil Trial Law and been named to Florida's State Advisory Board for the Association of Interstate Trucking Lawyers of America. He specializes in personal injury and wrongful death matters with an emphasis on commercial motor vehicle (truck) accidents.



Rosenthal, Levy & Simon Associate **Veniese A. Wilkinson**, was elected Treasurer of the Caribbean Bar Association. Also in the firm, **Ethan F. Kominsky** was elected as a member of the Craig S. Bernard, American Inns of Court LIV.



**Ted Leopold**, partner in the law firm of Leopold-Kuvin, P.A., has again been selected to be included in the 2008-2009 edition of *The Best Lawyers in America*.



Also, **Gregory S. Weiss** has joined the firm. Mr. Weiss has an extensive military background, having been a Judge Advocate General's Corp (JAG) officer in the U.S. Army.



**Christopher B. Hopkins** has joined Butzel Long law firm. He is a shareholder based in the firm's Palm Beach, Fla. office. His practice includes professional malpractice, construction and probate litigation.



### Curtain Call ... The Bar's Got Talent!

Ok, we know you are out there! What's your hidden talent? We are looking for members that are singers, comedians, musicians, dancers or have any other talent. The Palm Beach County Bar will be hosting its inaugural variety show in the fall of 2009 and we are looking for talent! We would also be interested in displaying paintings, photography or sculptures from our members. Several Bar Associations around the country have successfully hosted talent shows, so we thought we'd give it a try. In one county they had an attorney who performed as a concert pianist for the U.S. Supreme Court; another who was a played piano at Magic Johnson's wedding and another who was a theatrical performer in Paris. So, what's YOUR talent? Please send an email to event chair Michelle Suskauer at suskauerlaw@aol.com to let her know of your special talent or if you are willing to assist in this event.

# CALENDAR

## November 2008

Wednesday, November 5, 12 Noon  
**NCS Board Meeting**

Friday, November 7  
**Bench Bar Conference**  
Palm Beach County Convention Center

Tuesday, November 11  
**Court Holiday / Office Closed**  
Veteran's Day

Tuesday, November 11  
**South County Bar Meeting**  
Marriott Boca Raton

Wednesday, November 12, 12 Noon  
**YLS Exec. Committee Meeting**  
Bar Association Office

Wednesday, November 12, 5:30pm  
**Western County Section Meeting**  
Naylah Mediterranean Grille

Thursday, November 13, 8:30am  
**TFB Video Replay Seminar "Basic Real Estate 2008"**  
Bar Association Office

Thursday, November 13, 12Noon  
**South Palm Beach Co. FAWL Luncheon**  
Bogart's Bar & Grill, Muvico Palace 20, Boca Raton

Thursday, November 13, 5:30 – 7:00 p.m.  
**Young Lawyers Section Happy Hour**  
Nick & Johnnie's, Palm Beach

Friday, November 14, 8:30am  
**ADR Committee Meeting**  
Bar Association Office

Friday, November 14, 12 noon  
**Judicial Relations Committee Meeting**  
Judicial Dining Room, Main Courthouse

Tuesday, November 18, 5:30pm  
**Inns of Court Meeting**  
Main Courthouse, WPB

Tuesday, November 18, 5:30pm  
**North County Section Happy Hour**  
Aqua Marine in Legacy Place in Palm Beach Gardens

Wednesday, November 19, 12 Noon  
**Lawyers for Literacy Committee Meeting**  
Bar Association Office

Wednesday, November 19, 12 Noon  
**FAWL Luncheon**  
West Palm Beach Marriott

Thursday, November 20, 5:00pm  
**PBCBA Board of Directors Meeting**  
Bar Association Office

Thursday, November 20, 7:00pm  
**Small Claims / Mediation Clinic**  
Wellington Branch Library, Wellington

Friday, November 21  
**Southern District Court Bench Bar Conference**  
Ft. Lauderdale

Friday, November 21, 4:00pm  
**Judge Jack Cox Investiture Ceremony**  
Palm Beach County Historic Courthouse Courtroom

Tuesday, November 25, 12Noon  
**Independence of Judiciary Committee Meeting**  
Judicial Dining Room

Tuesday, November 25, 5:00pm  
**Legal Aid Board Meeting**  
Bar Association Office

Thursday, Friday, November 27 – 28  
**Court Holiday / Office Closed**  
Thanksgiving



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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