



PALM BEACH COUNTY BAR ASSOCIATION

BULLE^TIN

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October 2007



Members of the Young Lawyers Section recently spent a morning distributing school supplies to almost 300 students as well as teachers, at Palm Beach Public which is a Title I school (most of the children come from low-income families or are at risk of failing). Pictured to the left are Jason Guari, Andy Severson, Jeff Pepin, John Whittles, Allison Kapner, Eric Severson, Catherine Eaton, Brian Kennedy, Kristi L. Bergemann and Jennifer Kypreos. Many thanks to Allison Kapner for doing another great job in organizing this project.

Mark your calendar for upcoming Membership Meetings

Bench Bar Conference (New and Improved!)

Friday, October 12
Palm Beach County Convention Center

Special Needs of Children Membership Reception

Thursday, October 18, 5:30 - 7:30
Benefiting National Adoption Day
E.R. Bradley's in West Palm Beach

Young Lawyers Section Happy Hour

Thursday, November 8, 5:30 - 7:00

Annual Holiday Party with North County & Young Lawyers Section

Wednesday, November 28, 5:30 - 7:30 p.m.
BallenIsles Country Club, Palm Beach Gardens

Joint Luncheon with the Forum Club with Guest Speaker U.S. Supreme Court Justice Clarence Thomas

Wednesday, December 12, 12 noon
The Cohen Pavilion at the Kravis Center
This meeting will be limited to PBCBA members only!

Joint Luncheon with South County Bar Association Guest Speaker: FL Bar President Frank Angones

Wednesday, March 5, 2008, 12 noon
Delray Beach Golf Club

US Attorney Acosta to speak at Bench Bar Conference



R. Alexander Acosta, United States Attorney for the Southern District of Florida since May 2005, will be the keynote speaker at this year's Bench Bar Conference on October 12 at the Convention Center. Prior to this appointment, Mr. Acosta served as Assistant Attorney General for the Civil Rights Division of the US Department of Justice. Mr. Acosta was the first Hispanic to serve as an Assistant Attorney General at the Department of Justice. Mr. Acosta had also served as Principal Deputy Assistant Attorney General in the Civil Rights Division. Prior to his service as Assistant Attorney General, Mr. Acosta served as a member of the National Labor Relations Board.

A native of Miami, Mr. Acosta attended the Gulliver Schools in Miami. He earned his degrees from Harvard College and Harvard Law School. After graduation, he served as a law clerk to the Honorable Samuel A. Alito, Jr. on the U.S. Court of Appeals for the Third Circuit. He then worked at the Washington, D.C. office of the law firm Kirkland and Ellis, where he specialized in employment and labor issues. Mr. Acosta has also taught several classes on employment law, disability-based discrimination law, and civil rights law at the George Mason School of Law.

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THE
BULLETIN

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

LETTERS TO THE EDITOR

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



Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
1601 Belvedere Road, #302E
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The Palm Beach County Bar recently received the Spotlight Award from The Florida Bar's Voluntary Bar Liaison Committee. This award recognizes the PBCBA for its Minority Student Initiative Program which is designed to provide internship placements during the school year to minority second and third-year law students in area law firms and governmental agencies. One of the goals of the program is to introduce the students to Palm Beach County and provide them with exposure to the local legal community and mentoring opportunities. This is the third year that the program has been in place and this year the following firms are participating: Casey Ciklin Lubitz Martens & O'Connell; Gunster Yoakley; Ruden McCloskey; Walton Lantaff, Schroeder & Carson; 15th Judicial Circuit; State Attorney's Office; Lytal Reiter Fountain Williams & Clark; and Holland & Knight. For more information about the program or if your firm is interested in participating next semester, please contact program chair Tanique Lee at (561) 687-1772.



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Law Firms Go Green

By Meenu Sasser, President

In March, 2007, the American Bar Association (“ABA”), Section of Environment, Energy and Resources, in conjunction with the U.S. Environmental Protection Agency (“EPA”) launched the ABA-EPA Law Office Eco Challenge (“Eco-Challenge”). The Eco-Challenge is designed to encourage law firms to conserve resources and work towards reducing emissions of greenhouse gases which may cause global warming. The Eco-Challenge suggests that law firms have the ability to make an impact on our environment by reducing the amount of greenhouse gases. For example, one large Washington, DC firm buys approximately 100,000 copy pages per attorney per year, which amounts to

almost a ton of paper per year. The life cycle of a ton of paper, from production to disposal in a landfill, results in a generation of about 11 tons of carbon-dioxide (CO2) gases. Therefore, the firm has taken an initiative to reduce its greenhouse gas emissions by reducing the amount of paper used in the office. The specific steps the firm has taken include:

- Assuring that a significant percentage of all copier, printer, letterhead and bond paper has at least 30% post-consumer recycled content;
- Recycling at least 90% of discarded mixed office paper (which includes white copier printer paper, bond and letterhead paper, note paper or color paper and envelopes);
- Instituting a policy of using double-sided copying and printing for drafts and internal documents, which is

implemented by setting copiers and printers on double-sided as a default mode and making reasonable acquisitions to software needed to ensure double-sided is used; and

- Using technology for internal office memoranda in communication and sending documents via PDF form and email attachments.

By implementing some of these suggested policies through the Law Office Eco-Challenge, lawyers and law firms in Palm Beach County can take steps to make a difference in improving our environment for our children. For more information on the ABA’s Eco-Challenge, go to: www.abanet.org/envirom/climatechallenge/home.shtml.

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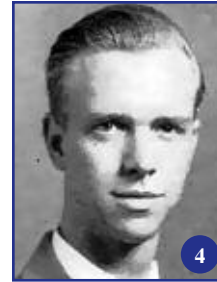
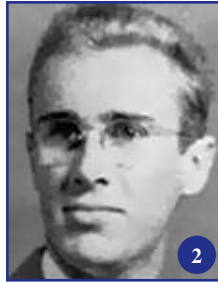


Who are they?

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

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

Answers on page 11



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Minutes of the Junior Bar Section November 1, 1963

Minutes of the 153rd regular meeting of the Junior Bar Section of the Palm Beach County Bar was held at the Town House Hotel on Friday, November 1, 1963. Fifty-six members and guest were present. Five members took advantage of the crowd and neglected to pay the treasurer thereby profiting from both the meal and the speech.

The President recognized the presence of Judge White and Judge Sinclair in the nick of time.

Despite requests to the contrary, the minutes of the previous meeting were read and as usual were left unapproved, which is perhaps a comment on their contents.

Ted Beacham proposed Bob Urban for membership which proposal was approved subject to the payment of dues. Jon Moyle introduced Ray Ferrero as his guest.

The group rose as a man and thanked Anita Blakeslee for her presence which thereby prevented Sy Burdick from telling a joke.

Al Cone was introduced by Jim Robinson. He addressed the membership on torts followed by Bill Pruitt with retorts.

There being no further business, the meeting was adjourned.

Respectfully submitted,
Ed Lewis, Secretary

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Judicial Profile of Judge Laura Johnson

By Marianne S. Rantala

When you walk into the courtroom and see Judge Laura Johnson on the bench, you see a cool, calm and collected member of the judiciary. She is very thoughtful about the cases before her and tries to do the right thing. Judge Johnson believes that the defendants appearing before her in county criminal court are “mostly good people who’ve made mistakes.” She is frustrated by the insufficient good mental health services available for those people, particularly the indigent defendants. Judge Johnson states that this is especially frustrating when young adult “kids” are admitting they have problems, are asking for help and the court is limited by these insufficient referral resources. Judge Johnson is very reflective and states, “and we wonder why people come back” to the courts time and time again.

Judge Johnson feels fortunate to be in the position of judge. She learns something new every day from the great people around her, including her staff and court personnel, as well as the lawyers appearing before her. Judge Johnson feels like her “job here is to serve the needs of everyone who is here” and always “appreciates constructive criticism and input from attorneys.”

Although Judge Johnson was born and lived in Atlanta until the tender age of two or three, she was essentially raised here in Palm Beach Gardens. She attended the Palm Beach County public school system, along with her brother and sister, and ultimately moved an entire eight miles north to Jupiter! Her parents still live in Palm Beach Gardens and recently celebrated their 50th wedding anniversary. Her sister, however, moved on to Atlanta and her brother to Seattle.

Judge Johnson is married to local personal injury attorney, Bill Johnson, to whom she has been married for 20 years. It sounds like they’re following the great example of her parents! The Johnsons have three teenagers: Robert (“Burr”), Julianne, and Caroline. Their oldest child, Burr, just started at Florida State University. Burr appears to be following in the footsteps of his parents, both of whom are Florida State University alumni. Two of Bill’s brothers are also attorneys. So was his father, who



had previously been the elected state attorney, as well as a circuit court judge. Maybe the Johnson children will follow along into the practice of law!

The Johnsons’ lives revolve around their kids and family. That includes attending football and soccer games, dance recitals, playing tennis, and constantly having a “houseful of rambunctious teenagers!” The family lives on the Loxahatchee River and they enjoy boating, fishing and snorkeling. They also travel quite a bit. When Judge Johnson gets a chance, she even sneaks in some yoga and working out at the gym.

The beginning of Judge Johnson’s legal career started even before she attended the law school of FSU, while she was still an undergrad majoring in finance. She acquired a job working with the clerk at the Florida State House of Representatives. There she met many house staff attorneys. That job led to another job with the Ways and Means Committee. Judge Johnson found it a great experience to be exposed to many lawyers at those jobs and found it so interesting that she continued working there even through law school. After graduation, Judge Johnson worked briefly at the Office of the Attorney General. Then she moved on to the State Attorney’s Office where she worked for 19 years. There she tried hundreds of cases and became chief of the domestic violence unit while overseeing numerous county court cases.

The Palm Beach County Court bench is lucky to have a judge with such a wealth of experience and we wish her well in the coming years!

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The Lawyers for Literacy Committee recently held its 5th Annual Spelling Bee & Cocktail Reception at Bear Lakes Country Club in West Palm Beach for more than 125 members. Proceeds from the evening will benefit local literacy programs for both children and adults.

This year's spellers included (front row) Bob Bertisch, Maureen Martinez-Schwab, Eddie Shipe, Angela Miller, Scott Zappolo and Word Mistress Chandra Bill from News Channel 5. (back row) Kyle Silverman, Andrew Pelino, Lawyers for Literacy Chairperson Cindy Spall, Adam Myron and Grier Pressly.



Grier Pressly and Mayor Lois Frankel find something funny about the words.



Many thanks to Carl Wald and Mark Greenberg from LaBovick & LaBovick for sponsoring the event. Other sponsors included Corporate Creations International, David Lerner Associates, Melanie Grout Realtime Reporting, Raindancer Restaurant, Lewis Longman & Walker and VisualBank.



Congratulations to our winners!

Cindy Spall and Chandra Bill are pictured with winners Maureen Martinez-Schwab, Eddie Shipe, Adam Myron and runner up Angela Miller. The team of three will compete against other corporate teams in the Palm Beach County Literacy Coalition's Great Grown Up Spelling Bee. Good luck, team!



Sherri Collins with Judges Ted Booras and Amy Smith.

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Tours will be available free of charge to students and the general public beginning April, 2008.



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Forum Non Conveniens

by *Ted Babbitt*

The landmark case on the procedure to be used when a motion to dismiss based upon forum non conveniens is heard is the case of Kinney System, Inc. v. Continental Ins Co., 674 So. 2d 86 (Fla. 1996). In that case, the Supreme Court established a four-step analysis.

In Kinney, the Supreme Court required that the trial judge first determine whether an adequate alternate forum exists which possesses jurisdiction over the entire case. If the answer to that question is yes, the trial court must then determine that the relevant factors of the private interests of the parties favor the alternate forum rather than Florida, taking into consideration the strong presumption giving the plaintiff the right to initially chose the forum. If a determination of the party's interests are nearly equal, the Court must then determine that there are public interest factors which tip the balance in favor of the alternate forum. If all of those questions are answered affirmatively, the trial court must then determine that the plaintiff can, in fact, reinstate the suit in the alternate forum without either undue inconvenience or prejudice. It is only when all of those tests have been met that a case may be dismissed based upon forum non conveniens.

In TMW Corp. v. D & D Enterprises, Inc., 932 So. 2d 494 (Fla. 4th DCA 2006), the Kinney test was applied to affirm a trial court's refusal to dismiss based upon forum non conveniens. In that case, the plaintiff, a Florida corporation, purchased parts for an airplane from the defendant, a California corporation. A contract was entered into that required the delivery

of the parts as well as documentation which would allow the plaintiff to resell the parts. The parts came without the necessary documentation. The contract provided that the parts would be shipped by "UPS-Orange FOB Origin." Defendant explained that the designation FOB stands for the term "free on board" and that under commercial law the title to the goods passed at the moment of shipping in the State of California. The defendant argued that under Pier Point Developers, L.L.C. v. Whitelaw, 912 So. 2d 18 (Fla. 4th DCA 2005), venue for an action for breach of contract was proper where the breach occurred. In this case the defendant argued that if there was a breach, it occurred at the moment of shipping and, in this case, that was in California.

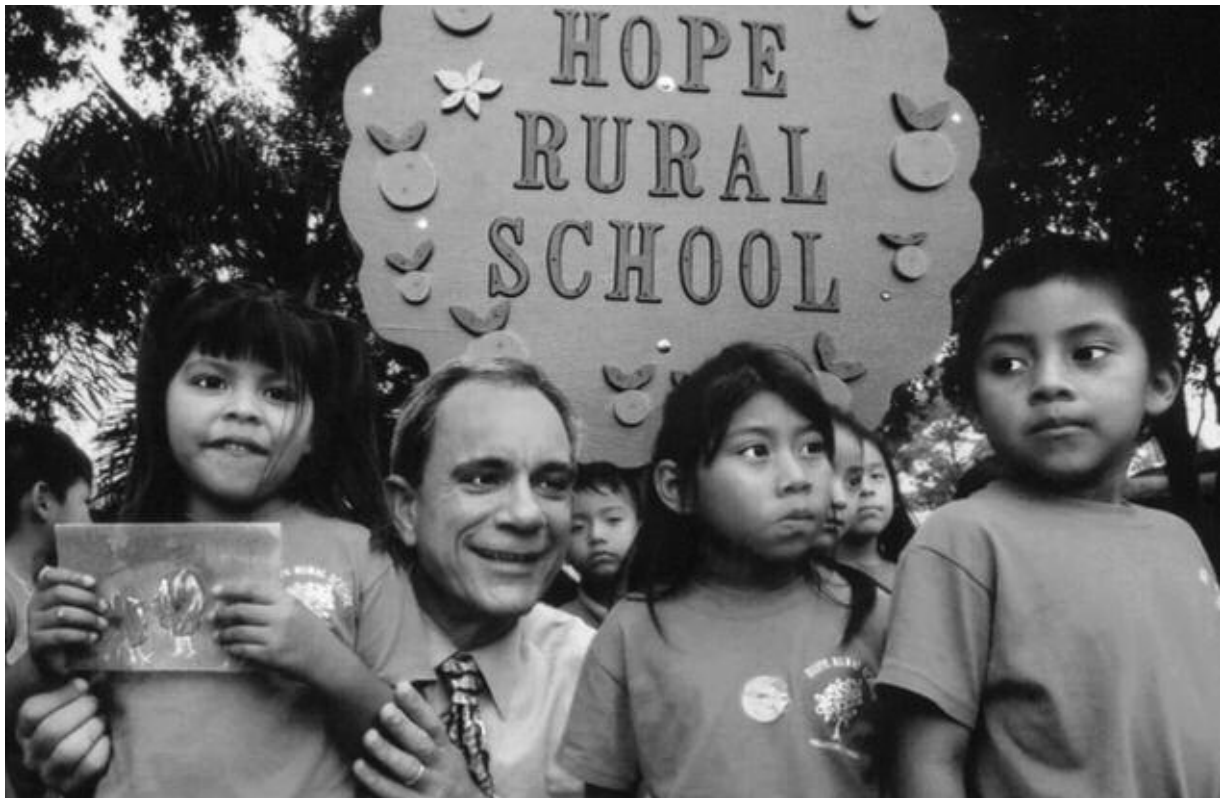
The trial court denied the motion to dismiss and the defendant appealed. The Fourth District reverted to Kinney and its four-step analysis. After making the assumption that California was an adequate alternate forum, the Court turned its attention to the second step in Kinney as to whether the private interests of the parties which include "adequate access to evidence and relevant sites, adequate access to witnesses, adequate enforcement of judgments and the practicalities and expenses associated with the litigation" were at or near equipoise. Inherent in making this determination, Kinney requires that the trial court take into consideration the strong presumption in favor of the plaintiffs' choice of an initial forum. The Fourth District pointed out that under the circumstances of this case, it would be just as inconvenient for the plaintiff to litigate in California as it would be for the defendant to litigate in Florida. Thus, the private interests of the parties were at or

near equality. That being the case, the strong presumption in favor of the plaintiff's initial choice of forum tipped the balance in favor of the plaintiff and requires denial of the motion.

The Kinney case and its companion rule, Fla. R. Civ. P. 1.061, set the ground rules for the determination of whether a case can be dismissed based upon forum non conveniens. In the Kinney case, the Supreme Court receded from its opinion in Houston v. Caldwell, 359 So. 2d 858 (Fla. 1978) and adopted the Federal doctrine of forum non conveniens first announced in Gulf Oil Corp. v. Gilbert, 330 U.S. 501, 67 S.Ct. 839, 91 L.Ed. 1055 (1946). The adoption of that doctrine was felt to be necessary to avoid the flood of litigation that was filed in Florida because of what appeared to be a more liberal interpretation of the forum non conveniens doctrine set forth in Houston as compared with the Federal version of that doctrine. Nevertheless, the Kinney tests are designed to ensure both that an adequate and available forum exists for litigation initiated in Florida and that dismissal for forum non conveniens is never granted absent a clear showing that all of the tests set forth in Kinney are met with due consideration to the strong presumption in favor of the plaintiff's right to chose an initial forum.

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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Bankruptcy Judge Friedman's Judicial Term Approaches Its End

By: Marc P. Barmat



On November 2, 2007, the Honorable Steven H. Friedman will complete his 14-year term of distinguished service on the bench of the United States Bankruptcy Court for the Southern District of Florida. Members of the Bankruptcy Bar will recall Judge Friedman's compassion for the pro se debtor and his patience in ensuring that all litigants who appeared before him, whether represented by counsel or not, left with the

feeling that the bankruptcy system treated them fairly. During Judge Friedman's tenure on the bench, he was especially fond of the Bankruptcy Bar's professionalism and the mutually beneficial relationship he developed with his law clerks.

For the 12 years prior to Judge Friedman's judicial appointment, attorney Friedman, among other things, represented debtors, creditors and bankruptcy trustees in the Southern District of Florida. In 1987, attorney Friedman was appointed as a Chapter 7 panel trustee and remained a panel trustee until his 1993 judicial appointment. Upon completing his service on the bench, Judge Friedman is looking forward to returning to the private practice of bankruptcy law.

According to Chief Bankruptcy Judge, Paul G. Hyman, the bankruptcy judges of the Southern District of Florida, as well as the District Court Judges for the Southern District of Florida have unanimously recommended to the Eleventh Circuit Court of Appeals that the vacancy created by Judge Friedman's departure be filled with a new bankruptcy judge. The Executive Committee of the Eleventh Circuit Court of Appeals will make the final determination.

According to the Bankruptcy Clerk's office, all cases pending before Judge Friedman will be transferred to Judge Hyman, unless there is a conflict. If there is a conflict, those cases will be transferred to one of the remaining bankruptcy judges in the Southern District. All new bankruptcy cases filed in West Palm Beach will be assigned to Chief Judge Paul G. Hyman, until the appointment of a new bankruptcy judge.

On behalf of the members of the Bankruptcy Bar who had the pleasure of practicing before Judge Friedman, good luck in your future endeavors.

Marc P. 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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Stephen, Andrew & Phil O'Connell, Sr.

The O'Connell family is one of the most influential families of lawyers in the history of Palm Beach County. Unfortunately limited copy space permits only a brush stroke of the family's significant contributions to our county's legal history.

The brothers O'Connell - Phil, Sr., Stephen (Steve) and Andrew (Jerry) - arrived in West Palm Beach in the 1920's from an Irish enclave in Macon, Georgia. Phil, Sr. was the oldest of the brothers. Before he could save up enough money to matriculate at the University of Florida, Phil, Sr. worked construction, rebuilding the Royal Palm bridge (Palm Beach) after its collapse in the '30's. Phil, Sr. also worked as a teller and head bookkeeper at the Central Bank on Clematis Street. While at college in Gainesville Phil, Sr. boxed as a student-athlete, ultimately becoming featherweight champion of the Southeastern Conference. Phil, Sr. later turned professional to help pay for law school, winning 59 of his 60 professional fights.

After graduating from UF law school, Phil, Sr. returned to West Palm Beach to practice law. Phil, Sr. was elected municipal judge at the precocious age of 23 before it was discovered that the minimum age to serve as judge was 25. The age requirement was ultimately repealed so that Phil, Sr. could serve. After serving as judge for two years Phil, Sr. was elected State Attorney for the 15th Circuit, which for much of his tenure included both Palm Beach and Broward counties. Phil, Sr. maintained an office in both counties until the legislature created two separate circuits for Palm Beach and Broward. Phil, Sr. served as

State Attorney for 28 years (winning each election without opposition) until "retiring" to private law practice. Phil, Sr. had a reputation of staying ahead of the trends in the law, even observing Miranda rights before there was such a thing, and he never had any of his convictions overturned on appeal. He was dedicated to his job, carrying a siren in his car so that he could be the first at the crime scene.

Phil, Sr. made a name for himself prosecuting the Chillingworth murder case in the late 1950's. The case turned when Phil, Sr. ran into Joe Kennedy on the Breakers golf course. One of the two hitmen (Bobby Lincoln) involved with the murder of Judge Chillingworth and his wife was being held in federal prison up North. At Phil, Sr.'s request, Joe Kennedy had his son, Bobby, send Lincoln down to West Palm Beach to be interviewed by Phil, Sr. Lincoln confessed to the crime, incriminating Joseph Peel (a fellow local judge who was going to be disbarred by Judge Chillingworth; the discipline of lawyers and judges in those days was handled at the circuit court level). Peel was convicted and sentenced to life in prison. It was a tough case for the prosecution. It was a dangerous case as well. Peel hatched an unsuccessful plot to murder Phil, Sr. using radium stolen from the radiology department at Good Sam Hospital. Joel Daves, who was County Solicitor at the time, is convinced that Peel and his collaborators would never have been caught and brought to justice if it had not been for the determination of Phil O'Connell.

Phil, Sr.'s public service extended to local charities as well. He was Grand Master of the Elks, helped start the Palm Beach County Blood Bank, and was active with the Rotary Club, the Knights of Columbus, the Boy Scouts, St. Mary's Hospital and the Catholic Church. Stationed in Europe with the Army during World War II, Phil, Sr. served his country as well.

Stephen O'Connell's first job as a teenager was with the West Palm Beach city plant department during the Depression. Because the city had such low cash reserves, Steve was paid in scrip that the local merchants accepted in lieu of cash. Like his older brother before him, Steve attended college at UF and won an

SEC boxing championship as a student-athlete. After graduating from UF law school in 1940, Steve opened his own law practice in Fort Lauderdale at a time when there were only 35 lawyers in all of Broward County.

Steve left his law practice to serve in the Pacific theater during World War II and then returned to his law practice after the war. In 1950 Steve served as the Broward County campaign manager for George Smathers in Smathers' Senatorial race against Claude Pepper that to this day is considered the most bitter political campaign in Florida history. When Governor LeRoy Collins initially offered Steve a seat on the Florida Supreme Court, Steve turned him down because he had a thriving private law practice and the Supreme Court only paid a \$13,000 annual salary. Governor Collins eventually persuaded Steve to join the Court where he served from 1955 through 1967. Steve served on the Court when Gideon v. Wainwright was decided, and for the following few years legions of prisoners filed writs of habeas corpus with the Court. In 1967, he was named Chief Justice but he left his post less than a year later when he was hired as President of the University of Florida. Steve shepherded the university through a challenging era - Vietnam and student civil rights protests - and he is considered one of the best presidents in the history of UF. The athletic complex on the UF campus housing the home court of the NCAA champions in basketball bears Steve's name. Steve was awarded the Great Floridian Award in retirement.

The youngest brother, Andrew, was also a boxer. He was a member of the University of Miami boxing team while attending college. Andrew served in the Navy during World War II. For nearly 40 years, he had a successful law practice in West Palm Beach, eventually partnering with Phil, Sr. Andrew's legal career has had a lasting impact on this county. In the late 1970's Andrew helped establish the comprehensive guardianship services run by the Catholic Charities' Elder Affairs Program. For 15 years Catholic Charities has presented the Andrew F. O'Connell Award to a deserving local individual or organization that has benefited the elderly of Palm Beach County.

Continued on page 18

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As of 9/7/07



Who Are They?

From Page 4

1. Jack Ackerman
2. Gil Brophy
3. Margaret Townsend
4. Larry Cooper
5. Judge Fred Hazouri

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Circuit Court Report CIVIL DIVISIONS • July 2007

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	09/07	09/07	07/07	1425
B	12/07	09/07	09/07	1275
D	12/07	12/07	10/07	1672
E	12/07	10/07	11/07	1688
F	10/07	10/07	11/07	1368
G	04/08	04/08	10/07	1109
H	04/08	04/08	09/07	1482
I	11/07	11/07	09/07	1301
J	01/08	01/08	10/07	1451
N	02/08	02/08	08/07	1553
O	02/08	12/07	10/07	1593

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When May Counsel Contact Putative Class Members Before Class Certification?

By: *Dana E. Foster, Esq., on behalf of the Professionalism Committee*

Communications between counsel and putative class members during the period between filing a class action lawsuit and class certification implicate the Model Rules of Professional Conduct, the Federal Rules of Civil Procedure and the First Amendment to the United States Constitution. Recently, on April 11, 2007, the American Bar Association issued Ethics Opinion 07-445,1 specifically addressing how the Model Rules apply to such communications.

It is easy to understand why, before a class action has been certified, both counsel for plaintiff and defense have an interest in contacting putative members of the class. For example, plaintiff's counsel may believe that it would strengthen her client's case to have the support of additional named-plaintiffs.

On the other hand, defense counsel may want to contact potential class members in order to develop facts that may help her evaluate the claims made by the plaintiff seeking class certification, or, even better, to learn of remedial measures a defendant might take to alleviate a harmful or dangerous condition that has led to the lawsuit.

Given these competing strategic goals, the ABA sought to determine whether putative class members are deemed to be represented by the lawyer seeking to certify a class. If potential class members are represented by counsel for the named plaintiff, Rule 4.2 would prohibit defense counsel from contacting them absent consent of plaintiff's counsel. If, on the other hand, potential class members are not represented by counsel for the named plaintiff, both plaintiff and defense counsel are governed by Rule 4.3 (which

addresses communicating with persons not represented by counsel). Plaintiff's counsel's right to contact putative class members is also subject to Rule 7.3 (which governs lawyers' direct contact with prospective clients).

The ABA was presented with well-reasoned argument on both sides of this issue: A principal argument in favor of considering putative class members as represented by counsel focuses on the potential for abuse of unrepresented potential class members by defense counsel. That risk is ameliorated if defense counsel is limited to communicating with potential plaintiffs through plaintiff's counsel. If plaintiff's counsel blocks these communications, the defense counsel could, under the provisions of Federal Rule 23, ask the court directly for an avenue of communication. The counter-argument

Continued to page 20

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Philadelphia; Nova Southeastern University, 2005; Associated with Holland & Knight LLP in West Palm Beach

DENISE J. BLEAU- Jacksonville; University of Florida, 1986; Partner in Buckingham, Doolittle & Burroughs LLP in Boca Raton

STEVEN R. BRATEN- Long Island; Nova Southeastern University, 1994; Partner in Shafritz & Braten, P.A. in Delray Beach

CINDY M. CAMPBELL- New Jersey; University of Dayton, 2001; Associate in Dunwody, White & Landon, P.A. in Palm Beach

LILY M. CHANG- Washington, D.C.; St. Thomas University, 2006; Associate with 15th Judicial Circuit (Law Clerk) in Palm Beach Gardens

DANIELLE N. CROKE- Plantation, FL; University of Miami, 2003; Associated with 15th Judicial Circuit's State Attorney's Office in West Palm Beach

EDWARD ETCHEVERRY- Coral Gables, FL; University of Miami, 1990; Partner in Etcheverry Harrison LLP in a Ft. Lauderdale



CHRISTOPHER FINLEY- Teoneck, NJ; Nova Southeastern University, 2005; Associate in Holland & Knight LLP in West Palm Beach

STEPHEN G. FISHER- New York, NY; University of Miami, 1973; Associated with Upchurch, Watson, White & Max Mediation Group in Jupiter

JONATHAN R GIDDENS- West Palm Beach, FL; Nova Southeastern University, 2004; Associate in Gelfand & Arpe, PA in West Palm Beach



ERIC N. KLEIN- Philadelphia, PA; Massachusetts School of Law at Andover, 1995; Sole Practitioner in Boca Raton

DEVON O. OMBRES- Stetson University, 2006; Associate with Fourth District Court of Appeals in West Palm Beach

STEVEN E ROBERTS- Pontiac, MI; University of Florida, 2006; Sole Practitioner in Boca Raton

SUSAN E. SHARP- Mansfield, OH; Stetson University, 2001; Sole Practitioner in Delray Beach

GWENDOLYN S. TUGGLE- Jacksonville; Howard University, 1987; Sole Practitioner in West Palm Beach

SIDNEY TURNER- Fordham University, 1975; Sole Practitioner in Boca Raton

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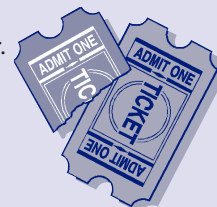
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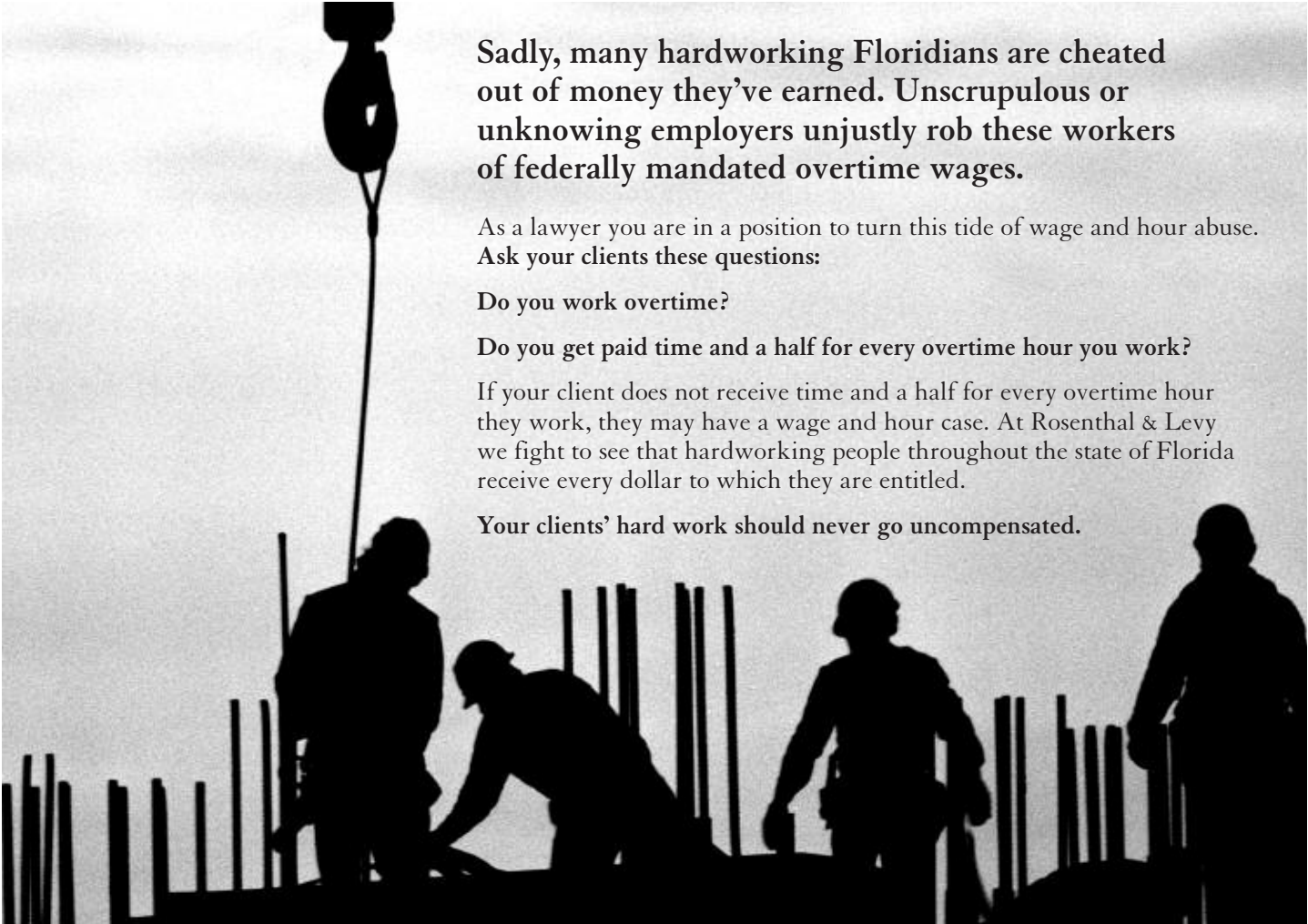
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Client Interview

by Mark Powers

In the last two columns we've discussed the use of strategic conversations, the "What To Say," part of a word-of-mouth marketing program. Specifically, we've focused on a simple technique for turning a normal conversation into a strategic conversation:

asking questions. Asking the right questions of the right group of people is a powerful tool to gather valuable information, build rapport and foster trust.

The rainmaking scenario we'll focus on today involves interviewing your clients. Interviewing clients can be surprisingly fruitful – not only for the valuable information you'll learn, but also for the depth of relationship you'll create. In client development, depth of relationship translates into increased "know, like and trust," which translates into a more satisfied client. More satisfied clients tend to talk about you to their friends and associates. This leads to more referrals.

Large retail and corporate institutions have long recognized the need to stay in touch with their clients and customers. Many large law firms have institutionalized feedback loops and do their best to stay in touch with their client base despite their size. This is where small and mid-size law firms have the advantage: they are small enough to deliver personalized service and can easily stay in touch with their clients. But a great many attorneys in small and mid-size firms don't make the extra effort required to get feedback from their clients on a regular basis. They rely instead on the number of complaints they hear to tell them how clients perceive their services. This is the ad hoc approach: when the number of complaints goes up – they move in to fix the problem. When they hear no complaints, they make the mistaken assumption that all is going well.

Don't assume all is well with your clients. Doing so ensures that you'll deliver an acceptable level of service to your clients when you should strive to exceed client expectations. We recommend that you regularly engage your clients in questions about your practice and their experience when dealing with you and your office. This is the best way to know how your services are being perceived.

Here's what we suggest to the attorneys we advise: do an inperson exit interview at the conclusion of substantial matters with significant clients. You can do this by taking the client out to lunch, or you can have the conversation in your office. If the client is someone who has recurring work that they can send you; is well-connected and has the ability to refer friends and associates; or is your main contact at an institution you represent and you want to increase the likelihood you'll get more work, take them out to lunch. If you've just gotten a good result for the client, you can create a celebratory mood at the lunch and this interview will be especially effective.

When talking with the client, choose the right time to bring up the interview questions, don't launch into them immediately. Chat casually about the matter that has just been completed, discuss what's next for them, and whatever else is relevant. When the time is right, open up the conversation by saying:

"Now that we've had a chance to work together, I'd like to ask for your feedback. I'm always trying to improve the level of service we provide and the best way to do that is to find out what we did right and what we could do better to serve our clients. Can I ask you a couple of questions about this?"

In all likelihood, the clients will respond positively to the request and may even be complimented that you think enough of them to ask their opinions. Continue the conversation with the following questions, keeping the tone light and fostering an open exchange.

"Is there is anything you would change about how we worked with you?"

"Were the attorneys and staff accessible to you?"

"Were they responsive to your needs?"

"Did you feel taken care of by our team?"

Take in the information given you by the client and refrain from becoming defensive about any remarks they make. For the most part, your clients will give you positive feedback, which is valuable, but press them to give you any constructive criticism they have. Let them know you'll use any information they give you to improve service overall.

At the end of the conversation, if you've received mostly positive feedback, mention again that you've enjoyed working with them. Also say you'd appreciate it if the client would think of you if they have additional work or any friends that need your services. Some attorneys find it comfortable, and complimentary to the client, to say, "My practice is built on referrals from great clients like you." This final step in the conversation is critical to ensure that the clients know your practice depends upon referrals. Be sure to plant this seed – don't count on clients to think of this on their own.

The interview in all its many forms is a very powerful strategic conversation. Adopt this tradition in your office and begin booking clients for these lunch interviews right away. You'll be pleasantly surprised by how much rapport you can build, by how much useful information you receive, and by how much the referrals pick up.

Mark Powers, President of Atticus, Inc., co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," is a featured marketing writer 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.atticisonline.com or call 352-383-0490 or 888-644-0022.

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The O'Connell Family

Continued from page 10

There are three lawyers among the next generation of O'Connell's. Phil, Jr. began his legal career practicing with his father. Phil, Jr. currently practices with Casey, Ciklin, Lubitz, Martens & O'Connell. In addition to practicing law, Phil, Jr. was very active with the revitalization of downtown West Palm Beach. He chaired the Downtown Development Authority for three years, and developed Via Jardin on Clematis St. Phil, Jr.'s brother, Dan, began as a lawyer before becoming a teacher. While practicing law, Dan was heavily involved in some of the early growth management legislation in Florida. Dan also served as attorney for Bob Graham when Graham was governor. Andrew's son, Brian, is one of the finest probate and guardianship lawyers in the county. Brian practices law with his cousin, Phil, Jr. at Casey, Ciklin.

The impact of the O'Connell family on our county reaches beyond the law. Phil, Sr.'s father-in-law, E. Benjamin Walton, developed the Seminole Building in downtown West Palm Beach, the Heart of Palm hotel on Palm Beach, and several neighborhoods in Palm Beach and West Palm Beach. He also built the Ann Norton home at Barcelona Road and Flagler Drive.

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Contact Putative Class Members

Continued from page 13

is that the theoretical potential for abuse by defense counsel does not justify limiting a channel of communication that is vital to efficient and fair class action litigation. The Model Rules of Professional Conduct would regulate the content of defense counsel's communications, and if those Rules are violated, plaintiff's counsel could seek more expansive over-sight by the court under Federal Rule 23.

Making matters more complicated was the fact that the only United States Supreme Court decision addressing contact with potential plaintiffs between the filing and certification of a class action rejected an all-or-nothing approach to communication by one side or the other as incompatible with the purposes of Federal Rule 23. See Gulf Oil Co. v. Bernard, 452 U.S. 89, 101-04 (1981). In Gulf Oil, the Supreme Court held that a district court abused its discretion by issuing an order prohibiting parties and their counsel from communicating with potential class members without court approval. The Supreme Court stated that such restrictions can only be imposed when the court has, on a case-by-case basis, made factual findings that justify such restrictions and, moreover, that such restrictions must be weighed against the need to inform potential class members of the existence of a lawsuit and

class representative's interest in obtaining information about the merits of the case.

Faced with this guidance from the Supreme Court and the reasoned arguments presented by both interests, the ABA concluded that, in the context of a class action, before the class has been certified by a court, the lawyer for plaintiff represents only the one or more persons with whom a client-lawyer relationship clearly has been established. More specifically, the ABA held that:

A client-lawyer relationship with a potential member of the class does not begin until the class has been certified and the time for opting out by a potential member of the class has expired. If the client has neither a consensual relationship with the lawyer nor a legal substitute for consent, there is no representation. Therefore, putative class members are not represented parties for purposes of the Model Rules prior to certification of the class and the expiration of the opt-out period.

This result is consistent with the well-established principle that the client-lawyer relationship is only established when a client manifests an intent that a lawyer provide legal services to the client and the lawyer accepts, or when there is a substitute for that assent given

by a court or by another person authorized to act for the client.

So, what does this mean for you? As plaintiff's counsel, you may be permitted to send letters to persons who are potential members of a class requesting that the potential class members furnish you with documentation or provide additional testimony. It may be a good idea to explain in these letters that you are not seeking to represent these additional potential plaintiffs, as such a solicitation of clients would be in violation of Rule 7.3. Similarly, as defense counsel, in compliance with Rule 4.3, you too may be permitted to contact unrepresented persons to develop factual information but must refrain from giving legal advice other than advice to engage counsel, if warranted. All in all, the lesson is this – tread carefully – contact with prospective clients always has the serious potential for overreaching and other abuse.

Dana E. Foster is an associate with the law firm of Ackerman, Link & Sartory, P.A.

¹ A full copy of ABA Ethics Opinion 07-445 is available at www.abanet.org/cpr/pubs/ethicopinions.html.

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**Register for
Bar Events
Online at...**



www.palmbeachbar.org



www.legalaidpbc.or

SAVE THE DATE

Legal Aid Society of Palm Beach County's
20th Annual Pro Bono Recognition Evening & Auction
Saturday, May 10, 2008 ~ PBC Convention Center

Please plan to join us in celebration for

The Roaring 20's

Event Chairs

Michelle and Scott Suskauer & Amy and Matt Triggs

You're Invited to Legal Aid's Fall 2007 Events

Annual 'Toast to Justice'

Amici, Palm Beach ~ Tuesday November 27th ~ 5:30 to 7:30 pm

Annual Holiday Bookfests

Boca Barnes & Noble ~ Thursday Evening, November 29th

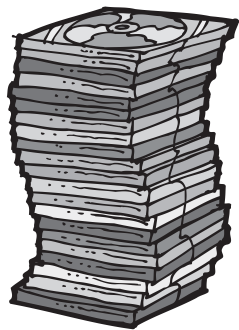
Sponsored by South Palm Beach County FAWL and South Palm Beach County Bar Association

CityPlace Barnes & Noble ~ Friday November 30th

Sponsored by Palm Beach County FAWL

Watch for your invitations.

Please call 655-8944 x279 for event information or to RSVP



Need CLE Credit?

The Palm Beach County Bar Association has a large library of CD's available if you are in need of some extra CLER credit hours.

Be sure to check the Bar's website at www.palmbeachbar.org/continuing.php to download the complete list of tapes available, see the insert in this issue, or call 687-2800 to have an order form faxed to you.

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*** Ad Rates ***

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POSITIONS AVAILABLE:

BOCA RATON: Real Estate Development & Community Associations Law. Minimum three years experience required. Portable business a plus. Fax resume to (561) 999-9958.

TEMPORARY: Secretary/Legal Assistant needed for A.V. rated W.P.B. Personal Injury Attorney from November 12th – December 21, 2007. Law firm hours: 8:30 – 5:30 Monday – Friday. Salary: (negotiable depending on experience). Fax resume to (561) 682-3834, call (561) 682-9060 or send e-mail to WilkersonAssist@yahoo.com.

LITIGATION PARALEGAL: For West Palm Beach family law firm with CLA or Paralegal Degree. Minimum 3 years experience required. Must be organized, capable of managing deadlines and professional. Nonsmoking office. Competitive salary and benefits. Please fax resume and salary requirements to (561) 820-9375.

PROFESSIONAL ANNOUNCEMENTS:

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

SCOTT SUSKAUER: Board Certified Criminal Trial Lawyer. All criminal matters in State and Federal Court including felonies, misdemeanors, DUI 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.

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

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

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

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

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 admar1@earthlink.net and www.admiraltyatty.com.

OFFICE SPACE:

JUPITER OFFICE: For sale or lease at Jupiter Gardens (South Central Blvd.). Room for 2 attorneys and 2 secretaries. Fully furnished. Phone system, reception area, kitchenette, conference room, and alarm system. Very close to I-95 and the Turnpike. Call Cam Baker at (561) 743-8131.

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HEARSAY

Jones, Foster, Johnston & Stubbs, P.A. announces that **Jane S. Hunston** has been installed on the Board of Directors of the Jupiter Tequesta Juno Beach Chamber of Commerce.



Gregor J. Schwinghammer, Jr., a shareholder at Gunster, Yoakley & Stewart, P.A. has become Board Certified in Business Litigation by the Florida Bar.



Judge Rand Hoch (retired) of the Law and Mediation Offices of Rand Hoch, P.A. has been elected Chair of the Central Community Advisory Committee for the Office of the Supervisor of Elections of Palm Beach County.

Bulletin Board

Rutherford Mulhall, P.A. is pleased to announce that **Stan Klett, John Banister** and **Manny Farach** have been named "Super Lawyers" by Super Lawyer Magazine. Also, the firm announces that Stan Klett was named MVP of the Annual Palm Beach County Lawyers-Judges softball game.



The law firm of Searcy Denney Scarola Barnhart & Shipley, P.A. is pleased to announce that **Earl L. Denney, Jr.**, a senior partner, has been elected to membership in the American Board of Trial Advocates (ABOTA) and the Palm Beach Chapter of ABOTA.



Wendy Sartory Link, managing partner of Ackerman, Link & Sartory, P.A. was appointed by Governor Charlie Crist to be a new member of the Palm Beach Community College Board of Trustees. Her term began August 17 and will run through May 2011.



Governor Charlie Crist has appointed **Greg Barnhart** and **Donald Beuttenmuller, Jr.** to the Judicial Nominating Committee for the 4th

District Court of Appeals. Mr. Barnhart is a senior partner with Searcy Denney Scarola Barnhart & Shipley, P.A. Mr. Beuttenmuller is managing partner of Gunster, Yoakley & Stewart.

MISCELLANEOUS

OFFICE EQUIPMENT FOR SALE-

Four fabric covered conference chairs, four secretarial chairs and one Xerox 5028 Copier. \$500.00. Please call (561) 471-4900.



Do You Need a Mentor?

The Palm Beach County Bar

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



The Florida Association For Women Lawyers, Palm Beach County Chapter announces Schwarzberg Spector Duke & Rogers will present at the October Luncheon.

"EMPLOYMENT LAW FOR LAW FIRMS"

Schwarzberg Spector Duke & Rogers will present at the FAWL luncheon on October 17, 2007, on Employment Law for Law Firms, covering a wide array of employment law issues affecting law firms and their managers, and addressing a variety of timely issues critical to law firms, including:

LAWYERS COME, LAWYERS GO

- Avoiding disqualifications
- "Chinese walls" and disqualifications
- When attorneys depart:
 - What notice must be given and work product may be taken?
 - Who gets the client and takes the file?

INTERNS, CLERKS, INDEPENDENT CONTRACTORS & PARALEGALS

- Can interns work for free?
- Are summer law clerks exempt?
- Can you have a full-time, independent contractor attorney?

When: October 17, 2007
11:45 a.m. - 1:00 p.m.

Where: West Palm Beach Marriott
1001 Okeechobee Boulevard

Admission: \$22 member
\$25 non-member

RSVP to: FAWL Palm Beach County Chapter
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- The hazards posed by the ADA, Workers Comp, FMLA & PTO

POLICIES & TRAINING

- Is your employee handbook updated?
- Is your firm in Employment Law Compliance?
- Has sexual harassment and diversity training been done?

CALENDAR

October 2007

Wednesday, October 3,
12 Noon
NCS Board Meeting
Office of Michael Slavin

Thursday, October 4, 5:30 pm
YLS Happy Hour

Friday, October 5
PBCTLA Golf Tournament
For more information, call
561-471.2807

Monday, October 8
**Court Holiday –
Columbus Day**
Bar Office Closed

Monday, October 8, 8:00 am
Legal Aid Golf Tournament
For more information, call
Harreen Bertisch at 655-8944

Monday, October 8, 11:00 am
New Attorney Swear-In
PBCC Eissey Campus Theatre,
Palm Beach Gardens

Wednesday, October 10, 6:30pm
**Small Claims &
Mediation Program**
Library on Summit Blvd., WPB

Friday, October 12, 8:00am
Bench Bar Conference
Palm Beach County
Convention Center

Monday – Friday,
October 15-19
Mediation Week

Tuesday, October 16,
12:00 Noon
**YLS Board of
Directors' Meeting**
Bar Association Office

Thursday, October 18, 5:00 pm
**Special Needs of Children
Happy Hour**
ER Bradleys, WPB

Friday, October 19,
12:00 Noon
**Cunningham Bar Assoc.
Meeting**
Law Library
Conference Room
For more information,
call 820-8902

Tuesday, October 23, 5:30pm
Legal Aid Board Meeting
Bar Association Office

Wednesday, October 24,
8:00 am
**TFB Video-replay
Seminar Probate Law &
Procedure Seminar**
Bar Association Office

Thursday, October 25, 5:00 pm
**PBCBA Board of
Directors' Meeting**
Bar Association Office

Friday, October 26, 12:30pm
YLS Mentoring Seminar
Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

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