



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE<sup>T</sup>IN

www.palmbeachbar.org

October 2008



## George LeMieux to speak at Bench Bar Conference

George LeMieux, former Chief of Staff to Governor Charlie Crist and former Deputy Attorney General for the State of Florida, will be the guest speaker at this year's Bench Bar Conference scheduled for Friday, November 7 at the Palm Beach County Convention Center. LeMieux has recently been named as Chairman of Gunster Yoakley. LeMieux, who practiced in Gunster Yoakley's Fort Lauderdale office from 1994 to 2002, rejoined the firm in January. As Chief of Staff, LeMieux was responsible for overseeing all aspects of the Executive Office of the Governor including the Governor's legislative agenda, policy initiatives and the management of all aspects of state business. He is an AV-rated attorney, and is board certified in business litigation. He earned his J.D. cum laude from Georgetown University Law Center and graduated magna cum laude, phi beta kappa from Emory University with a B.A. in political science. He is married and the father of three children.

## Mark your calendar for upcoming Membership Meetings

### Western County Networking Event

October 14th, 5:30 - 7:00 p.m.  
Gypsy's Horse, Wellington

### 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

### Annual Holiday Party

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

### 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

## The 2008 Bench Bar Conference - November 7, 2008

By Jill G. Weiss, BBC Chair

Continuing to build upon last year's success, the 2008 Bench Bar Conference will include new formats in the family law and criminal practice sessions, make additional improvements to the civil, appellate, and Young Lawyers Section (YLS) sessions and again hold sessions in federal practice, workers compensation and county civil practice.

Shortly after the 2007 Bench Bar Conference, the Bench Bar Committee reviewed and evaluated the feedback received from the judiciary and the bar. While the improvements made to last year's conference, most significantly, the revamping of the civil sessions to include separate sessions for commercial litigation and personal injury, trial advocacy for civil litigators, a federal practice session and the addition of the YLS's "Making a Good Name for Yourself as a Lawyer" session were highly successful, other comments suggested that certain practice sessions could still be improved to focus on the level of practice and professionalism.

Our review of these comments indicated that the sessions had either become too large and impersonal, the forum served merely as a session for airing complaints and the topics had become stale. Following the success from last year's changes to the civil sessions, the 2008 Bench Bar Committee will implement a number of exciting changes for this year's conference.

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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



**Items Needed for Charity Auction...  
Can You Help?**

Mark your calendar to attend this year's Holiday Party and Silent Auction on Thursday, December 11 from 5:30 p.m. to 8:00 p.m. at BallenIsles Country Club in Palm Beach Gardens.

The Board of Directors for the Young Lawyers and North County Sections are working tirelessly to gather gifts for the auction, but could use your help.

We are always looking for new and exciting items to include in the gift line up, such as electronics, ski condos, hotel accommodations, etc.

One hundred percent of the money raised will be given to charity. If you're willing to donate a unique gift for a good cause, please call Lynne at the Bar Office at 687-2800.



7-30-2008

Dear Atty Sasser:

Thank you from the bottom of my heart for honoring my father, F. Malcolm Cunningham, Sr. Further, I am grateful for being included in the ceremony of June 7, 2008 at the Breakers Hotel.

The fellowship was superb as I was able to see Judge J.C. Smith, whom I referred to (him) as Santa Clause in my youth.<sup>6</sup>

My prayer is for you to experience GOOD Success in achieving your goals in life.

Sincerely,  
Karran Cunningham  
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## Opportunity Knocks! (or arrives in your email)

By Richard D. Schuler, President

In three years, Clerk and Comptroller Sharon Bock, will be installing new computer programs to handle operations and reorganize the Clerk's office and Web site. Her office has invited our Bar Association to provide input into this process. Accordingly, we will be sending out a questionnaire asking for your ideas as to what you would like to see on this Web site and what information and functions you would like to use and obtain through the Clerk and Comptroller's office.

This survey will be done electronically, i.e., sent to your email. It represents a golden opportunity for us, as lawyers, to make our voices heard and to have input into this most important source of local government information. Whether it's being able to access pleadings in a Civil or Criminal matter or E-filing of pleadings, or other functions, please let us know what you would like to access to assist you in your specific practice specialty. The suggestions that you make will be prioritized and the results of the survey will be reported to the Clerk's office and to our Association.

The timeline for responding to this survey will be short. We ask that you respond to this survey electronically within fourteen (14) days of receipt.

Of course, there is no guarantee that all of our suggestions will be able to be incorporated immediately upon the launch of this new software. Bear in mind that any E-filing and access to scanned pleadings is controlled by the Florida Supreme Court through the Florida Courts Technology Commission which has to approve any proposals. However, I can think of no greater opportunity for us, as lawyers, to have a significant impact on a major source of government information that relates to all of our practices.

I want to thank, in advance, our Clerk and Comptroller, Sharon Bock and those heading up our Bar Technology Committee – Casey Jones, Chuck Hernicz, Bryan Poulton from the State Attorney's Office, Mark Osherow from the South County Bar, Bard Rockenbach and, of course, Patience Burns for participating in this important project.

We look forward, with anticipation, to your responses!



### Board of Directors Meeting Attendance

	July Retreat	Aug
Guari	x	x
Howe	x	x
Martinez-Schwab	x	x
McCabe	x	x
Poulton	x	x
Rabin	x	x
Sasser	x	x
Schuler	x	x
Suskauer	x	x
Weiss	x	x
Whittles	x	x

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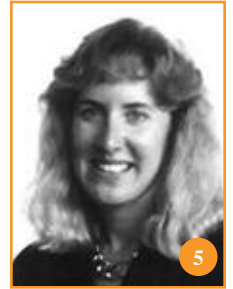
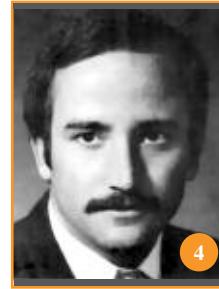
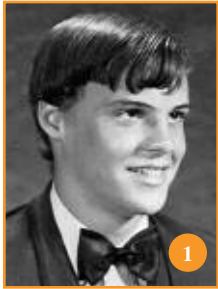
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## Who are they?

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 11



## Young Lawyers Section Minutes - April 3, 1964

Minutes of the 158th regular meeting of the Junior Bar Section of the Palm Beach County Bar Association, held at the Town House Hotel on Friday, April 3, 1964 at 12:15 p.m. There were 56 members and guest in attendance.

The President recognized the absence of the Vice-president which has

heretofore gone unnoticed.

The President noted the presence of Circuit Judges White and Hewitt and Small Claims Court Judge Sinclair.

The President, noted the presence of nearly all of the Court Reporters, thereby making their membership somewhat short handed.

Bob Foley, introduced and proposed for membership Al Fryer who is a New Assistant County Solicitor.

The President neglected to recognize the presence of Marvin U. Mounts, Jr., Assistant County Solicitor.

The President gave an impassioned appeal for the creation of and membership in the Lawyers Referral Service. He explained that membership would cost from \$10 to \$20 and that names of those who desired to participate in this program should be given to the President.

The President noted that the annual elections were to take place at the next meeting.

The President carefully introduced the speaker, Circuit Judge Robert S. Hewitt. Judge Hewitt gave an interesting, enlightening, delightful, exciting, wonderful, concise, complete, splendid and great talk on the trial record.

Respectfully submitted,  
Edward D. Lewis, Secretary

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## Attorney Input Crucial To Court Computer System's Future

By: Sharon R. Bock, Esq., Clerk & Comptroller, Palm Beach County

For more than a dozen years, you've seen newspaper headlines about Palm Beach County's Criminal Justice Information System (CJIS) – "2 Members Push to Disband Board Governing Computers" (South Florida Sun-Sentinel, 1996), "Computer Software Snafus Continue to Plague Palm Beach County Courts" (Daily Business Review, 2000), and "Court Officials Vote to Hire Computer Analyst" (Palm Beach Post, 2007) to name a few. Each headline has held both great promise and consequence for the local legal community. Most recently, articles reflect the Justice Information System Policy Board's (JIS Policy Board) conclusion that the current court system needs to change.

On July 10, 2008, members of the JIS Policy Board voted to replace the 10-year old criminal and civil case management system. Simultaneously, they named the Clerk & Comptroller as the project manager and administrator, accountable for the new system. The Policy Board's decision followed the June 2008 release of an extensive evaluation by the National Center for State Courts (Center). After months of research and interviews with 50 people from eight different organizations, the Center concluded that CJIS does not meet the needs of Palm Beach County, and regardless of upgrades, "is not likely to." The Center's report also noted that a majority of the Policy Board members "recommended that Palm Beach County begin the process of finding a case management system that can meet their needs, and stop trying to

patch the current Banner system." While the purchase of a new system requires a large up front investment, possibly as much as \$10 million, it would eliminate costly system upgrades as well as reduce current recurring maintenance, staffing and system deficiency costs by at least \$2 million annually.

As project manager, we have been charged with selecting, installing, funding and, ultimately, operating the new system. However, before a new system is selected, substantive analysis and planning will take place. I know that input from stakeholders like you is crucial to the success of this project. The new system must be effective and cost-efficient – not just for Palm Beach County's government users, but for you – attorneys who will use the system's information in the course of your day-to-day business. PBC Bar Association President Richard Schuler has committed to increasing law office efficiencies through the use of technology, thus allowing the Bar Association to assume a strategic partnership with the Clerk & Comptroller's office.

The Palm Beach County Bar Association will be shortly issuing an online survey seeking your input. Your needs will help drive the requirements of this new system. I welcome and strongly encourage your participation in answering this short survey, as it will help ensure a successful outcome.

For more information about CJIS, please visit [www.mypalmbeachclerk.com](http://www.mypalmbeachclerk.com) and click on "Get the Facts."

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The Lawyers for Literacy Committee recently held its **6th Annual Spelling Bee & Cocktail Reception** at Bear Lakes Country Club in West Palm Beach. Proceeds from the event will benefit local literacy programs. Congratulations to runner up Richard Schuler and winners Adam Myron, Bob Bertisch and Scott Zappolo.



**Participating Spellers:**  
**Front row left to right: David Prather, Michelle Suskauer, Angela Miller and Richard Schuler.**  
**Middle Row: Bob Bertisch, Kara Baxter, Maureen Martinez-Schwab, Adam Myron, Lesley Hogan and Leigh Cowden.**  
**Back Row: Scott Zappolo, Art Pumpian (Word Master), and Cindy Spall (Lawyers for Literacy Chair)**



Claire Dumas and Brian Kennedy



**Winners:**  
**Left to right:**  
**Congratulations to runner up Richard Schuler and winners Adam Myron, Bob Bertisch, Scott Zappolo, Cindy Spall (Lawyers for Literacy Chair) and Art Pumpian (Word Master)**



Mark Greenberg and Carl Wald



Pete Diaz and Amy Cosentino



Angela Miller, Michelle Suskauer and David Prather



Miles McGrane, Julia Ledis, Issac Wannos and Karly Spira

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|--|--|



## Relation Back

by *Ted Babbitt*

When a complaint is amended subsequent to the passage of the statute of limitations, an issue may arise as to whether the amended complaint relates back to the original complaint for the purpose of calculating the statute of limitations period. Fla. R. Civ. P. 1.190(c) provides

“(c) Relation Back of Amendments. When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.”

The rule of law in Florida is that the language set forth in this rule must be liberally applied by the Courts. See *Ron’s Quality Towing, Inc. v. Southeastern Bank of Florida*, 765 So. 2d 134 (Fla. 1st DCA 2000).

In the recent case of *C.H. v. Whitney*, 33 Fla. L. Weekly D1418 (Fla. 5th DCA, May 30, 2008), the extent of that liberal construction was tested. That case concerned a mother who had gone to a center for the purpose of having an abortion. During the attempted abortion procedure, a doctor was never called and medication was applied for 12 hours in an attempt to still the heart of the fetus. After that did not occur, the mother was required to leave while still in labor and a few hours later gave birth to a premature infant suffering significant physical and mental disabilities.

The initial complaint sounded in medical malpractice but was inappropriately brought by the guardian of the property of the infant seeking damages for his mental and physical pain and suffering and bodily injury, a classic “wrongful life” cause of action. An amended complaint was filed by the court appointed guardian of the infant seeking the same damages. A motion for summary judgment ensued based upon the improper attempt to recover for wrongful life. The motion pointed out that Florida does recognize a cause of action for “wrongful birth” but that action must be brought on behalf of the parents of the child rather than the child himself and at no time were those parents made a party to the action in either of the complaints filed.

The trial court gave the plaintiff leave to amend and a third complaint was filed, this time brought by the appropriate party plaintiff and alleging an action for wrongful birth. In between the filing of the initial complaint and the filing of the third complaint, the statute of limitations ran. The trial court held that the last complaint had to be dismissed on statute of

limitations grounds because it did not relate back to the original pleading since it involved a new and distinct cause of action for wrongful birth which was not originally pled as well as completely new party plaintiffs.

The Fifth District reversed, pointing out that under the above-cited rule all the complaints arose out of the same facts and were claims for medical malpractice. At D1419, the Court held:

“Each of C.H.’s complaints arose out of the same ‘conduct, transaction, or occurrence,’ and included requests for damages for hospitalization and medical expenses. None of the complaints referred to a cause of action for either ‘wrongful life’ or ‘wrongful birth’ or even mentioned those words. Instead, C.H.’s complaints indicated that the cause of action was for medical malpractice. As such, once C.H. amended her complaint to eliminate the damages disallowed under the legal theory of wrongful life, the trial court should have allowed her cause of action for medical malpractice under the legal theory of wrongful birth to proceed.”

On the issue of the substitution of party plaintiffs, the appellate court cited the numerous Florida cases which have held that when a new party is sufficiently related to the original party named in the original complaint so that the addition of the new party does not prejudice the opponent, the relation back doctrine applies to the amended complaint for the purposes of determining the statute of limitations date. See *Darden v. Beverly Health & Rehabilitation*, 763 So. 2d 542 (Fla. 5th DCA 2000); *Griffin v. Workman*, 73 So. 2d 844 (Fla. 1954); *Ron’s Quality Towing, Inc. v. Southeastern Bank of Florida*, 765 So. 2d 134 (Fla. 1st DCA 2000); *Kozich v. Shahady*, 702 So. 2d 1289 (Fla. 4th DCA 1997); *City of Miami v. Cisneros*, 662 So. 2d 1272 (Fla. 3d DCA 1995); and *Roger Dean Chevrolet, Inc. v. Lashley*, 580 So. 2d 171 (Fla. 4th DCA 1991).

The purpose of the relation back doctrine as codified in Rule 1.190(c) is to prevent the premature elimination of litigation based upon a technicality which does not prejudice the defendant. Where, as here, the original cause of action is based upon essentially the same facts as those contained within the amended pleadings, the Court is required to liberally construe the rule to allow the amended pleading to relate back to the initial pleading to avoid dismissal on statute of limitations grounds.

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.



The Palm Beach County Bar Association's  
Bankruptcy Continuing Legal Education Committee Presents:

# "What Every Non Bankruptcy Lawyer Needs to Know About Bankruptcy Law"

## Friday, October 24, 2008

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



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### Program Schedule

- 8:15a.m. - 8:45a.m. **Late Registration/Check In**
- 8:45a.m. - 8:50a.m. **Welcome & Opening Remarks** - *Julianne R. Frank, Esq., Committee Chair, Frank, White-Boyd, P.A.*
- 8:50a.m. - 9:35a.m. **To File or Not to File: How You Know When Your Client Needs a Bankruptcy Lawyer** - *Julianne Frank, Esq., Frank, White-Boyd, P.A., and Bradley Shraiberg, Esq., Kluger Peretz Kaplan & Berlin PL*
- 9:35a.m. - 10:20a.m. **What Every Real Estate Lawyer Needs to Know About Bankruptcy Law** - *Nadine White-Boyd, Esq., Frank, White-Boyd, P.A.*
- 10:20a.m. - 10:35a.m. **BREAK**
- 10:35a.m. - 11:20a.m. **The Intersection of Bankruptcy Courts and Other Forums** - *Robert C. Furr, Esq., Furr & Cohen, P.A.*
- 11:20a.m. - 12:05p.m. **What Every Collection Lawyer Needs to Know About Bankruptcy Law** - *Eric A. Rosen, Esq., Eric A. Rosen, P.A.*
- 12:05p.m. - 12:15p.m. **What Every Lawyer Needs to Know About the State of Foreclosure Relief - A Legislative Update** - *Norman L. Schroeder, Esq.*
- 12:15p.m. - 12:30p.m. **LUNCH** - **Sponsored by Frank, White-Boyd, P.A.**
- 12:30p.m. - 1:15p.m. **"What every lawyer-bankruptcy or otherwise--needs to know about practice in my courtroom"** - *Honorable Erik P. Kimball, U.S. Bankruptcy Court*
- 1:15p.m. - 2:00p.m. **What Every Marital Lawyer Needs to Know About Bankruptcy Law** - *Stuart A. Young, Esq. Young Brooks & Pefka, P.A.*
- 2:00p.m. - 2:45p.m. **What Every Foreclosure Lawyer Needs to Know About Bankruptcy Law** - *Julianne R. Frank, Esq., and Nadine White-Boyd, Esq., Frank, White-Boyd, P.A.*

This course has been approved for **6.5 CLER / 5.0 Marital; 5.0 R/E Certification Credits** from The Florida Bar. The cost of the seminar (including lunch) is \$160 for PBCBA members/paralegals; \$200 for non-PBCBA members/paralegals if registered by 10/17/08; add \$25 to registration fee after that date. If a phone reservation is made and we do not receive payment and you do not attend, you will be charged \$25. All refund requests must be made no later than 48 hours prior to the date of the seminar.

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

<b>HOW TO REGISTER</b>	<b>MAIL</b> the completed form w/check	<b>FAX</b> the completed form to 561/687-9007	<b>ON-LINE</b> at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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     I will not be able to attend the seminar but would like to order the CD (allow 2 weeks for delivery) (10/24/08Bankruptcy) Cost is the same as listed above.  
**Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406. Telephone: (561) 687-2800**





## Support National Adoption Day Friday, November 14

Your gift of \$250.00 will provide a family with a special day that they will always remember. Plus, your firm will be recognized in the Bar Bulletin, in the program, on the sponsor sign and in all press releases.

To make a donation, send your check to the PBCBA no later than October 22.

This event is held in conjunction with the Foster Children's Project of the Legal Aid Society, Child and Family Connections, Trial Court Administration, Clerk of the Court, Guardian ad Litem program, Children's Home Society and the Palm Beach County Bar Association.

### Did you know?

We are interested in starting a new column where we will publish interesting facts about our members. For example, did you know that Richard Schuler was a clam digger that helped him pay his way through college? Did you know that Michelle Suskauer was an advice columnist for her college newspaper? Tell us what unusual occupation you had or something interesting that we can share with the members. Send your tidbits to [pburns@palmbeachbar.org](mailto:pburns@palmbeachbar.org).

### 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](mailto:suskauerlaw@aol.com) to let her know of your special talent or if you are willing to assist in this event.

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## When Will the Court Save a Client from His Own Counsel's "Apparent Incompetence?"

By: *Dana E. Foster, Esq.*

*On behalf of the Professionalism Committee*

When will the Court save a client from his own counsel's incompetence? Before it's too late, I am happy to report. This issue was recently addressed by the Fifth District Court of Appeal in *Olesh v. Greenberg*, 978 So.2d 238 (Fla. 5th DCA 2008).

The case involved a couple who, although not married, purchased property together and shared other investments. When they parted ways, one sued the other to partition the real property and impose a constructive trust on the investments, among other remedies.

The procedural background is where we, and the Fifth District Court of Appeal, focus our attention: Plaintiff hired an attorney who filed a poorly drafted complaint on his behalf. After Defendant's counsel answered, her attorney sent Plaintiff interrogatories, a request for production, and several requests for admissions. Plaintiff's attorney never served a response to any of these requests and failed to answer the interrogatories. There were no attempts at discovery by Plaintiff's attorney other than scheduling Defendant's deposition which was, for reasons unknown, later cancelled. A year after the complaint was filed, Defendant, with new counsel of her own, filed a motion for summary judgment with attachments. Remarkably, Plaintiff's attorney did not file an affidavit in opposition to the motion or any other response.

At the summary judgment hearing, Plaintiff's attorney made an "extraordinarily feeble attempt" to rebut Defendant's evidence so as to raise an issue of material fact. (The hearing transcript, detailing counsel's "level of incompetence," is quoted in the Fifth District Court of Appeal's opinion.) Defendant's attorney denied ever receiving a copy of the evidence referred to and objected to its introduction. The trial court sustained the objection. Plaintiff's attorney then requested an opportunity to amend the complaint. The trial court denied this request and granted summary judgment in favor of Defendant. After the hearing, Plaintiff (wisely) retained another attorney, who filed a Motion for Reconsideration and Rehearing. Attached to the Motion for Reconsideration and Rehearing were the affidavit of Plaintiff and a copy of the above-referenced evidence. Without ruling on the Motion for Reconsideration and Rehearing, the trial court rendered the summary final judgment.

Plaintiff then filed a Motion for Leave to File Amended Complaint on the grounds that his prior counsel had rendered ineffective assistance. The trial court denied the Motion for Reconsideration and Rehearing, and Plaintiff appealed.

The Fifth District Court of Appeal held, based on these unique facts and circumstances, that the "trial court abused its discretion in refusing to rescue [Plaintiff] from the apparent incompetence of [his] lawyer."

The Fifth District Court of Appeal relied on the factually similar case of *Fernandes v. Boisvert*, 659 So. 2d 412 (Fla. 2d DCA 1995), in which the appellant's attorney failed to file an affidavit in response to a summary judgment motion and further failed to seek additional time to obtain such an affidavit or move for a continuance of the summary judgment hearing. After the trial court granted summary judgment against the appellant, the appellant's attorney then filed a "vague and rambling" document that was treated by the trial court as a motion for rehearing. In support of the motion, the attorney did attach an affidavit which, had it been filed and served before the summary judgment hearing, would have precluded summary judgment because it did raise material fact issues in the case. However, the trial court refused to consider this belated affidavit and denied rehearing. The appellate court held that under those circumstances, the trial court had abused its broad discretion in refusing to consider appellant's affidavit on rehearing.

Another case relied on by the Fifth District Court of Appeal was *Fatherly v. California Federal Bank, FSB*, 703 So. 2d 1101 (Fla. 2d DCA 1997), in which the same appellate court again reversed a summary judgment where, although the opponent of the summary judgment motion failed to file anything in opposition to the motion, the opponent hired new counsel after suffering the summary judgment and that counsel filed a timely motion for rehearing with attached evidence supporting her claim that summary judgment was improper. After the trial court denied rehearing, the Fifth District Court of Appeal reversed, concluding that the circuit court abused its discretion in refusing to consider the sworn allegations on rehearing.

Based on both *Fernandes* and *Fatherly*, the Fifth District Court of Appeal reversed the summary judgment order, noted that the record "clearly reflect[ed]" that Plaintiff's original attorney rendered "substandard legal representation," and held that the trial court abused its discretion in refusing to rescue Plaintiff.

**The Lesson:** Even when an adverse summary judgment has been entered against a party, due entirely to the incompetence of their counsel, all hope is not lost – the trial court has the discretion to rescue the client and see that justice prevails.

*Dana E. Foster is an associate with the law firm of Ackerman, Link & Sartory, P.A. in West Palm Beach.*



## IN NEED OF CLER CREDIT? WE CAN HELP!

The Palm Beach County Bar Association (PBCBA) offers CLE hours from the sale of audiotapes recorded at previously held live seminars of the Association. **THIS IS A PARTIAL LIST ONLY OF AVAILABLE CD'S.** For a complete listing go to [www.palmbeachbar.org/continuing.php](http://www.palmbeachbar.org/continuing.php). To order, place an "x" next to the tapes you would like to order, complete this form and return to the Palm Beach County Bar Association, 1601 Belvedere Road, Suite 302E, West Palm Beach, FL 33406 or **fax to 561/687-9007**. **9/25/08.**

✓	Sponsor	Course Title	Credit General	Ethics Hours	PBCBA Member	Non Member	Expires
	PBCBA	Ethics & Florida Bar Grievance (CD) (No manual) (NCS)	2.0	2.0	\$60	\$100	10/20/08
	PBCBA	24 <sup>th</sup> Estate & Probate+++ (CD) (Elder / Wills, Trusts & Estates / Tax Cert.)	7.5	1.0	\$160	\$200	11/09/08
	PBCBA	Payment & Performance Bonds+++ (Constr.) (CD)	4.0	1.0	\$90	\$130	11/18/08
	PBCBA	Ethics in Criminal Law Litigation (CD)+++ Crim. App/Crim Trial	3.5	3.5	\$105	\$145	11/18/08
	PBCBA	Will This Deal Ever Close+++ (R/E) (CD)	3.5	3.5	\$105	\$145	12/1/08
	PBCBA	18 <sup>th</sup> Annual Community Assn. Law+++ (Real Est Cert.) (CD)	3.5	3.0	\$100	\$140	12/15/08
	PBCBA	Professional & Personal Development (YLS)	5.0	2.0	\$120	\$160	4/26/09
	PBCBA	Business of Law Meets Practice of Law (SOLO)	1.0		\$20	\$60	5/7/09
	PBCBA	Inside The Appellate Court (CD)+++	5.0	1.0	\$110	\$150	6/6/09
	PBCBA	10 <sup>th</sup> Annual Elder Law Update"+++ (CD)	5.5	2.5	\$135	\$175	6/7/09
	PBCBA	The Business of Employment Law+++ (3.5 Labor & Employ Cert. (CD)	4.5	1.0	\$115	\$155	7/11/09
	PBCBA	Winter '08 R/E "Keeping Up in a Down Mkt"+++ (CD) (2.5 R/E Cert. Credits)	3.5	3.5	\$105	\$145	7/25/09
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	PBCBA	25 <sup>th</sup> Annual Estate/Probate Seminar (CD)+++ 2.0 Civil/ 5.5 Wills, Trusts & Estates / .5 Real Est Cert.	7.5	1.5	\$165	\$205	11/14/09
	PBCBA	19 <sup>th</sup> Annual Community Assn. Law Seminar (CD)+++ 3.5 R/E Cert.	3.5	3.5	\$105	\$145	12/06/09
	PBCBA	Food For Thought :Digesting Current Market Conditions (CD)+++ 2.5 R/E Cert.	3.5	3.5	\$105	\$145	12/13/09

+++Indicates Certification credits available. Please contact the Palm Beach County Bar Association for more detailed information.  
**Please call Eva Gray at (561) 687-2800 with any questions or for additional information.**

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**Pro Bono Attorneys That Have Earned Their Wings By Closing Their Pro Bono Cases in August 2008**

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 Number of cases handled by these attorneys: .....41  
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**PLEASE RETURN YOUR CLOSING FORMS IN A TIMELY MANNER!**

**Pro Bono Attorneys Needed for Teens & Youth!**

Following Chief Justice Peggy Quince’s lead urging lawyers to volunteer as Guardian ad Litem attorneys for teens, the 15th Judicial Circuit Guardian ad Litem (GAL) Program is seeking Pro Bono Attorneys to represent the best interests of teens through their new Fostering Independence Project. Attorneys can volunteer to help teens who are transitioning into adulthood from foster care by simply submitting an application and taking a free 8 hour on-line CLE-approved course. Thanks to a new collaboration between the GAL Program and the Legal Aid Society of Palm Beach County, attorneys will receive support from the GAL Program and any work done will receive pro bono credit through Legal Aid.

Additionally, the Legal Aid Society of Palm Beach continues to provide pro bono opportunities for attorneys interested in serving as Attorneys ad Litem to advocate for children of all ages in the dependency system overall. Attorneys can volunteer by contacting the Pro Bono Project at the Legal Aid Society directly at 561-655-8944 ext. 265 or 272. Any work done will receive pro bono credit through Legal Aid.

Please contact Amy Bierer at 561-355-6223 for more information on the GAL Program opportunities or Kimberly Rommel-Enright for more information on Legal Aid volunteer opportunities.

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**Members of the NCS and the Judiciary  
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**Thursday, October 16, 2008  
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Weather permitting, the reception will take  
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[www.palmbeachbar.org](http://www.palmbeachbar.org).



The North County Section's Board of Directors recently donated \$5,000 to the Loggerhead Marinelife Center in Juno Beach. The money will be used for the Center's Passport Program which will enable 1,600 students from Palm Beach County Title 1 schools to attend educational field trips to the Center. Pictured from left to right: Ron Ponzoli, Ned Reagan, Andrew Pineiro, Adam Doner, Ken Johnson, Greg Yaffa, Ryon McCabe and Scott Zappolo. (standing) Mitch Beers, Michael Slavin, Debra Jenks, Larry Buck and Scott Smith.



**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.



**Who Are They?**

From Page 4

1. Bill Pruitt
2. Judge Kathleen Kroll
3. Judge Jorge Labarga
4. Judge Jack Cox
5. Ellen Malasky

**Circuit Court Report**

**CIVIL DIVISIONS • June 2008**

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	11/08	11/08	09/08	1516
B	01/09	01/09	10/08	1401
D	10/08	10/08	09/08	1767
E	01/09	12/08	12/08	1647
F	01/09	01/09	10/08	1476
G	03/09	03/09	10/08	1303
H	01/09	01/09	09/08	1558
I	02/09	10/08	08/08	1139
J	01/09	01/09	10/08	1488
N	12/08	12/08	10/08	1739
O	12/08	12/08	11/08	1583

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 8/11/08.



The Elder Law Affairs Committee of the Palm Beach County Bar Association presents:

# "11th Annual Elder Law Update"

Friday, December 12, 2008 8:25a.m.—1:20p.m.  
Bar Offices — 1601 Belvedere Rd., Suite 302E, WPB



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## Program Schedule

- 8:00am - 8:25am Late Registration - Check In
- 8:25am - 8:30am Welcome - Opening Remarks - *David R. Schwartz, Esq., Chair PBCBA Elder Law Affairs Committee*
- 8:30am - 9:20am The Law of Durable Power of Attorney, Financial Abuse & Misdeeds, and Ethical Considerations - *John J. Pankauski, Esq., Pankauski Law Firm*
- 9:20am - 10:10am Medicaid Update - *Ellen S. Morris, Esq., Elder Law Associates*
- 10:10am - 10:20am Break
- 10:20am - 10:40am An Overview of the Palm Beach County Elder Justice Center - *Charles Trotta, Manager Court Services, Palm Beach County Pretrial Services Program*
- 10:40am - 11:30am VA Aid & Attendance Benefits for ALF's - *Alice Reiter Feld, Esq., Florida Bar Board Certified Elder Law Attorney*
- 11:30am - 12:20pm Medicaid Waiver and Diversion Programs - *Nancy Partin, Program Operations Administrator, CARES Unit, Department of Elder Affairs*
- 12:20pm - 12:30pm Lunch - sponsored by Pankauski Law Firm
- 12:30pm - 1:20pm Tax Law Update - *Michael A. Lampert, Esq., Michael A. Lampert, P.A., Florida Bar Board Certified Tax Attorney*

**This course has been approved for 5.5 CLER including 1.0 Ethics credit; 4.0 Elder Law /4.0 Wills, Trusts & Estates /1.0 Tax Law & 4.0 Civil Trial Law Certification credits from The Florida Bar.**

The cost of the seminar, **including lunch**, is \$145 for PBCBA members/legal assistants, \$185 for non-PBCBA members/legal assistants, if registered by 12/5/08. **Add \$25 to registration fee after that date.**

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

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

<b>HOW TO REGISTER</b>		MAIL the completed form w/check		FAX the completed form to 561/687-9007		ON-LINE at <a href="http://www.palmbeachbar.org">www.palmbeachbar.org</a>
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**Please register me for the December 12, 2008 Elder Law Seminar:**

Name: \_\_\_\_\_ Telephone: \_\_\_\_\_

Address: \_\_\_\_\_ City/Zip \_\_\_\_\_

Name on Credit Card: \_\_\_\_\_ Signature: \_\_\_\_\_

Credit Card #: \_\_\_\_\_ Visa \_\_\_ Amex \_\_\_ MC \_\_\_ Exp: \_\_\_\_\_ Amount \$ \_\_\_\_\_

\_\_\_ I will not be able to attend the seminar but would like to order the CD Rom. (cost same as listed above/please allow two weeks for delivery) (Elder Law 12/12/08) Palm Beach County Bar Assn., 1601 Belvedere Rd. #302E, West Palm Beach, FL 33406. (561) 687-2800

## 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.*

**DEBERA T. AMEDEE** – Paralegal Member; Sasser Cestero & Sasser, P.A., West Palm Beach

**ADAM C. BRANDON** – Connecticut; University of Miami, 2005; Associate in Walton Lantaff Schroeder & Carson, West Palm Beach

**PATRICIA J. CAMPBELL** – Paralegal Member; Sasser, Cestero & Sasser, P.A., West Palm Beach

**DAVID A. CASALS** – California; Nova Southeastern University, 2000; Sole Practitioner, David Casals, P.A., West Palm Beach

**DONNA L. CLAYTON** – St. Louis University, 2004; Sole Practitioner, Donna L. Clayton, P.A., Tequesta

**PATRICIA C. DERAMUS** – Paralegal Member; Leopold-Kuvin, P.A., Palm Beach Gardens

**JOYCE E. DILLARD** – Paralegal Member; Carlton Fields, P.A., West Palm Beach

**DAVID B. ESAU** – New York; The Catholic University, Columbus School of Law, 2003; Carlton Fields, P.A., West Palm Beach

**ANTHONY E. FORTE** – Florida; St. Thomas University, 2004; Associate in Walton Lantaff Schroeder & Carson LLP, West Palm Beach

**OVIDIO J. HIDALGO-GATO** – Cuba; Southwestern University, 1988; Partner with Abruzzo & Hidalgo-Gato, LLP

**RICIA N. JASTROW** – Paralegal Member; Gunster Yoakley & Stewart, P.A., West Palm Beach

**ADAM KARRON** – New York Law School, 1996; Associated with National City Private Client Group, West Palm Beach

**JENNIFER L. MILLER** – Thomas Jefferson School of Law, 2004; Associated with Gary Singer, Delray Beach

**SHANNON A. PEREZ** – Florida; Nova Southeastern University, 2007; Associated with State Attorney's Office, West Palm Beach

**ELISABETH PORTER** – New York; University of Miami School of Law, 2003; Office of the Public Defender, West Palm Beach

**NICHOLAS J. PURVIS** – Texas; University of Florida, 2008; Associate in Casey Ciklin Lubitz Martens & O'Connell, West Palm Beach

**BEAU R. RAICH** – Florida; Florida International University, 2008; Associate in Nason Yeager Gerson White & Lioce, West Palm Beach

**MARIA SACHS** – Maria Sachs, P.A., Delray Beach

**KEITH R. SANTILLO** – New York; Affiliate Member; Benjamin N. Cardozo School of Law, 1993; Keith R. Santillo, Attorney at Law, Boynton Beach

**SANDRA SEDER** – St. Thomas University, 2004; Associate in Walton Lantaff Schroeder & Carson, LLP, West Palm Beach

**CAROLINA Y. SZNAJDERMAN** – Argentina; Nova Southeastern University, 2007; Fourth District Court of Appeal, West Palm Beach

**VIRAVUTH UN** – Cambodia; University of Louisville, 2003; Office of State Attorney, West Palm Beach



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**Dr. Jonathan D. Rapp**

Licensed Psychologist, PY7348

## Meet your Board... we would like to introduce you to some of our newer board members:



**Maureen Martinez-Schwab**  
*Romano Law Group*  
**Years in Practice: 11**  
**Specialty:** *Personal Injury & Criminal Defense*  
**Law School:** *Nova Southeastern*

### University

### Personal Data:

I am a first generation American. My parents and brother were born in Cuba. My mother was pregnant with my sister when they arrived in the United States (Los Angeles, California). Some of my mother's family lived in Florida, so after a short time in California, my parents made the trip to Florida to live near her family in Palm Beach County, where I was born (West Palm Beach).

I am not sure how I was given an Irish first name, but can tell you that growing up, it was not pronounced the "Irish" way. You will have to ask John Romano to pronounce it for you, as he gets a kick out of trying to do so (but he cannot).

I live 10 houses from my brother and a few blocks from my sister (in the same neighborhood), with my husband Scott and our dog, Cody.

### Something interesting about you that most might not know:

English is my second language. I learned to speak English at approximately 4 years of age. My brother tells the funniest story of me arguing with a childhood friend in the backyard through the fence, over a toy. He describes me becoming increasingly frustrated because she was not doing as I asked (giving me the toy) – it was because I was having the discussion in Spanish and she had no idea what I was saying.

I often tell people, when I say something backwards (grammatically), it is because I usually think in Spanish while speaking English.

I love to paint/draw and dabble in oil painting but do much better when working with charcoal or pencil. As long as I have a pen or pencil and a sheet of paper, you can catch me drawing caricatures of those around me.

### Personal Creed/Quote:

*Why wait for tomorrow, what you can do today.*



**Ryon McCabe**  
*McCabe Rabin, P.A.*  
**Years in Practice: 14**  
**Specialty:** *Business & Securities Litigation, White-collar criminal defense*  
**Law School:** *Florida State University*

I am married to Jennifer and we have three children: John (7), Tommy (6) and Katherine (3) and we live in Jupiter. I am currently the President of the Bar's North County Section.

**Something interesting about you that most might not know:** I told my wife I would marry her on our first date!

### Personal Creed/Quote:

*"It is not the critic who counts . . . The credit belongs to the man who is actually in the arena..."*

Theodore Roosevelt, 1910

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## Movie tickets make great gifts for clients and staff!

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

\*Muvico Theater - \$7.50 each  
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(\$9.50 at box office)

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## Revocation of a Bankruptcy Discharge

By: Marc P. Barmat

The primary goal of filing an individual bankruptcy is to be granted a discharge. The discharge is essential to the “fresh start” which all debtors hope to obtain. Equally important to obtaining a bankruptcy discharge is not having it revoked. Pursuant to 11 U.S.C. § 727(d), the grounds for revocation of a discharge are if:

- (1) such discharge was obtained through the fraud of the debtor, and the requesting party did not know of such fraud until after the granting of such discharge;
- (2) the debtor acquired property that is property of the estate, or became entitled to acquire property that would be property of the estate, and knowingly and fraudulently failed to report the acquisition of or entitlement to such property, or to deliver or surrender such property to the trustee;
- (3) the debtor committed an act specified in subsection (a)(6) of this section; or
- (4) the debtor has failed to explain satisfactorily –
  - (A) a material misstatement in an audit referred to in section 586(f) of title 28; or
  - (B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.

In a recent opinion, the Eleventh Circuit addressed and clarified revocation of discharge as it relates to sections 727(d)(3) and (a)(6)(A) which provide for revocation of a discharge where “the debtor has refused, in the case-(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify...” In re Matos, 2008 WL 596744 (11th Cir. 2008).

In In re Matos, after the debtor received his Chapter 7 discharge, a creditor sought revocation based upon, among other grounds, the debtor’s failure to obey a court order

directing production of documents within a certain deadline. The debtor produced 694 documents prior to the deadline, and another 5,300 after the deadline. On appeal, the Eleventh Circuit affirmed the Bankruptcy Court’s denial of the discharge revocation and found that late production of documents alone was insufficient to show the requisite willful or intentional refusal to obey an order, or that the order was ignored. The Eleventh Circuit Court also noted that the Bankruptcy Court’s analysis had fully comported with the relevant factors set out in In re Jones, 490 F.2d 452 (5th Cir. 1974). The factors to be considered in Jones are: (1) the detriment to the proceedings and the dignity of the court versus the potential harm to the debtor if discharge is denied; (2) whether the Debtor’s acts were willful, or was there a justifiable excuse; (3) whether there was injury to creditors; and (4) whether there was some way the debtor could make amends for the conduct.

In another revocation of discharge case, In re Eckert, 375 B.R. 474 (Bankr. N.D. Ill. 2007), the court joined the majority view that the plaintiffs, in a revocation of discharge action, had to establish that the debtor willfully and intentionally refused to obey a court order and not just failed to obey the order as a result of inadvertence, mistake or inability to comply.

As a result of the Eleventh Circuit’s recent opinion, trustees and creditors should be mindful of the high standard of proof required in order to successfully seek revocation of a debtor’s discharge pursuant to sections 727(d)(3) and (a)(6)(A) of the Bankruptcy Code.

*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*

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



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### The Marketing Assistant — What Do Great Marketers Know That You Don't?

By Mark Powers and Shawn McNalis

As a marketing advisor and coach, one question I constantly grapple with is this: how can *good lawyers* become *great marketers*?

Driven to distraction by constant interruptions, difficult staffing issues and demanding clients most attorneys don't take the time — to do what it takes.

Yet, many of our attorney clients are very good at marketing when placed in the right situations. It's getting them there that's the problem. Making phone calls with contacts often involves a lot of phone tag, calendaring client development events takes time, planning the basic logistics of marketing is distracting. As a rule, attorneys aren't very good at the *initiation* phase of marketing.

At Atticus, we believe this phase is essential — without someone to initiate and organize these steps, most marketing efforts will never get off the ground.

"If you aren't successful in setting up lunches, dinners and meetings with referral sources, your client development efforts aren't going to be very strategic," Shawn McNalis, one of our practice advisors, says. "If you're not meeting with the right people, then you're relying on nothing more than happenstance to promote your practice. Happenstance will take you only so far. We advise our clients to take a more proactive approach."

Large firms can rely upon marketing directors to deal with client development. But what does the small firm practitioner do?

Enter the Marketing Assistant. When Atticus' client Mark Chinn, an attorney from Jackson, Miss., had difficulty marketing himself, he sought change. That change came to him in the form of a young college student, studying marketing at a local junior college.

For a number of months Chinn had been listening to me promote the idea of leveraging himself by hiring a marketing assistant. Though his new assistant had little experience, Chinn immediately noticed the difference hiring a marketing assistant made to his practice. Every morning, armed with a list of contacts, she and Chinn would have a short meeting to strategize, set up lunches and plan client development events. They also focused on placing articles about his firm in both local and statewide newspapers.

To accomplish this last task, they compiled a list of publications and set up the list as an e-mail group in their database system. Consequently, whenever something newsworthy happened in Chinn's office — a new promotion, a new award — his marketing assistant could automatically distribute the news to the state or local press.

"She was so ambitious and proficient. Any assignment I gave her came back to me ten fold," Chinn explained.

Rick Law, an estate-planning attorney in Aurora, Illinois, also found it time consuming to market his practice to prospective referral sources. To overcome this obstacle, he hired a marketing assistant, Jonathan Johnson, who instantly impressed Law with his initiative and drive. Formerly a manager at a title-insurance company, Johnson used his background in sales to assist Law in

his marketing efforts.

Since hiring Johnson, Law's marketing efforts have been revitalized. "Attorneys can tend to be a little...prickly or porcupine in our attitudes," Law admits. "With my marketing assistant, there was a complete lack of that. It was very refreshing to me to see this outsider help implement some of my ideas, but also bring fresh new ideas for marketing my practice."

Recently, inspired by one of the other Atticus Rainmaker participants, Johnson created an event for Rick Law's top referral sources. Similar to a Spanish tapas dinner the evening's menu featured many small dishes instead of one main course. "It was different, but the idea was received quite well. We limited it to our top referral sources, which fit perfectly with our clientele — mostly caregivers and nursing home professionals. Without my marketing assistant, this event would never have gotten off the ground," Law said.

To leverage your marketing efforts by working with a marketing assistant, consider delegating a number of different client development activities:

- Schedule lunch/breakfast marketing meetings
- Manage your database of clients and referral sources
- Plan and manage parties, seminars and other group events
- Build and manage TOMA program — newsletter, email, birthday list
- Assist in preparation for speaking engagements
- Prompt you to write thank you notes
- Deliver gifts and buy tickets for your referral sources
- Prompt you into action when you stop marketing

There are several different ways for small firms to employ a marketing assistant. For \$8 to \$15 per hour, depending on your location, you can hire someone to work for you part time, such as Mark Chinn's college student. If you require more support, hire someone full-time, as Rick Law did, or draft one of your existing staff members to help.

This last option is the most popular among my clients, but I'm particularly fond of contracting with *virtual* marketing assistants. Consider this option if you have limited office space or are not interested in hiring another employee. Since virtual marketing assistants work from their homes or remote office locations, a law firm doesn't have to free up office space or include them on the payroll. The firm can specify how much time they need on a weekly, monthly, or per project basis. Virtual marketing assistants are paid \$30 - \$45 per hour, depending on their qualifications. I currently work with several virtual assistants who will work as little as 10 hours, or upwards of 80 hours per month, depending on my need for their services.

No matter how you set it up, this is an idea that works. We have identified the 21 most important Marketing Assets that a rainmaker must acquire to be successful, and I rate having a marketing assistant third overall in effectiveness.

In the words of Rick Law, "If you work with your marketing assistant to plan two or three marketing contacts a week, by the end of a year you'll have made a hundred to a hundred and fifty marketing contacts. If that many marketing contacts a year won't stimulate new business, nothing will!" I couldn't agree more. If

*Continued to page 16*

## Rainmaking

Continued from page 15

you are too busy to initiate client development activities, don't despair – delegate.

### Quick Tips:

- Hire a young intern – preferably a college student with some experience in marketing – to rejuvenate your practice.
- Meet with your new assistant frequently with several projects – it will be their job to “lighten your load” and help you market your practice.
- “Newspapers are the single greatest source of public relations.” Study the content filling the pages of your local newspaper. Make contacts with the staff of the local paper, and regularly submit newsworthy articles to them.
- Have your marketing assistant organize an event for your top referral sources. Determine your top referral sources by listing all of your files ranked by fees – from highest to lowest – for the last year. Read through the list and attribute each case to a referral source. This exercise will point you to your top referrers.

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.” To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit [www.atticisonline.com](http://www.atticisonline.com) or call 352-383-0490 or 888-644-0022.



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**By Donnie Murrell, Palm Beach County Bar Association's ABA Delegate**

This year's annual meeting was in New York City. It happened to coincide with Dominican Republic Day, celebrated with a huge parade through downtown Manhattan. There were thousands of waving flags, cheering people and the Salsa Congress dancing in the streets. The button-downed

lawyers of the ABA stood out like sore thumbs.

I have always said that the quality of debate in the House of Delegates is second to none. Unfortunately, over the years the debates have become fewer and fewer. Proponents of resolutions have become very sophisticated at vetting their resolutions through the various committees and interest groups and fine tuning them to avoid controversy. As a result, more and more resolutions pass with little or no real opposition. Good for the proponents, bad for those of us who sit and vote with no real entertainment.

This year there were only two matters that generated any real debate. The first was Resolution 121 sponsored by the Long Range Planning Committee. Resolution 121 adopted a new mission statement for the ABA. It essentially reduced the twelve or thirteen stated goals of the older statement to four: Service to members, Improvement of the legal profession, Eliminate Bias and enhance diversity and Advance the rule of law. The resolution specifically stated that the four goals were not listed in order of importance, that they were all equal. Despite that disclaimer, the House of Delegates engaged in a forty-five minute debate over an amendment to list Rule of Law first – and the debate was good. Ultimately, the amendment failed by thirteen votes.

The real fight was over Resolution 114. The summary described 114 as an amendment to Model Rule of Professional Conduct 1.10 "to permit screening within a law firm to allow other lawyers to undertake representation that would be prohibited to another lawyer in the firm because of a conflict of interest from a prior employment." In other words, Firm A represents client in

litigation against Firm B. Firm B hires lawyer from Firm A. Is Firm B disqualified from further involvement? Under the current Model Rule, the answer is yes. Resolution 114 would change that. It was affectionately dubbed "the side switching lawyer" amendment.

To say that there is contention over this resolution is a major understatement. Prior to the meeting Delegates were deluged with emails both for and against it.

Proponents argue that the amendment merely recognizes the realities of modern lawyer mobility. They cite the extreme example of an associate who drafts a memo on one small aspect of a case, without being involved in any major way with the rest of the case, and is then hired by the other firm. Should the hiring firm be disqualified from major litigation because it hired someone like that? They also argue that lawyers obey the rules, and if the rules require screening, lawyers will comply.

Oponents of the resolution argue that it strikes at the very heart of the legal profession – the lawyer/client privilege. They say the amendment takes control away from the client and places it with the lawyer. They also point out that lawyers violate the Code of Professional Responsibility everyday.

None of this debate happened in the House – this was all on-line before and after the meeting. The House voted to postpone consideration of the resolution because last minute amendments were still being offered as the matter came up for consideration. It will be taken up again in Boston in February.

This is an important issue that lawyers should be informed on. There is an article in the August 15 edition of the Florida Bar News (on page six) discussing the Florida Board of Governors debate on the matter. I was surprised to read the article after having heard the Florida Delegation discuss the matter in New York. The BOG position did not seem as clear to the House Delegates as the article implied. The News also reported that 21 jurisdictions already allow screening. Materials I have read seriously challenge that claim. Boston should be an interesting meeting.

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## Abolish Capital Punishment (Part I)

by D. Culver "Skip" Smith III

The Sixth in a "When Space Permits" Series

Sticklers unite! Insist on good grammar!

We continue our crusade for proper use of the language by addressing what appears to be an increasingly rampant practice among members of the bar: hypercapitalization. I refer not to the abominable, all-caps style of email: "PLEASE LET ME KNOW WHETHER YOU CAN ATTEND" (to which one can only reply, "There's no need to shout."). I refer instead to the improper capitalization of common nouns. For example: "Plaintiff moves for an Order compelling Defendant to produce its Policy Manuals." Neither *order* nor *policy manuals* should be capitalized: they refer to common things. One may as well write, "I wish to buy a Table for my Dining Room." (As an aside, the offending example is better written, "Plaintiff moves to compel Defendant to produce its policy manuals." Moving "for an order" is redundant.)

Purporting to write even an informal piece about capitalization is risky business, especially for a nonexpert like your author. The rules of capitalization are complex and frustratingly fragmented. If one counts subparts and exceptions separately, there are at least sixty discrete rules of capitalization. To complicate matters further, they perhaps more than any other rules of grammar are subject to widely varying respectable opinions. They also are subject to the demands of the audience or circumstances. And they change with time. Documents written in the eighteenth century – such as the U.S. Constitution – seem by today's standards to suffer from capitalization overload. Still, as you may have noticed, lack of expertise rarely deters your author from favoring others with his opinions, so here goes.

Capitalization imports distinction, importance, or emphasis to a word. The first word of a sentence is capitalized to indicate distinctly and emphatically that a new sentence has begun. Proper nouns (*Martha, Tallahassee, General Motors Corporation, Fifth Amendment, Due Process Clause, September, Friday*) are capitalized to signify their special importance as the official names of persons, places, or things. This includes imaginative names for particular persons, places, and things (*the Stars and Stripes, the Establishment, Mother Nature,*

*Mr. Nice Guy, the Big Enchilada*). Common nouns, however (*table, book, company, pleading, motion, order, court, amendment*), are not capitalized unless another rule requires it – e.g., the first word in a sentence or part of a name or title (*the Book of Job, the Supreme Court of Florida, the Order Compelling Production of Policy Manuals* [when referring to the full title of the order]). A common noun names a general class of things (*books, orders*), or it may refer indefinitely to one or more things in that class (*a book, an order*), usually preceded an indefinite modifier (*a, an, any, every, some*). A common noun also may refer to a particular person, place, or thing (*these books, the order*), often preceded by a definite modifier (*the, this, these, that, those*) or a possessive modifier (*my, our, her, its, their, the company's, the court's*). Even then, it still should not be capitalized under normal circumstances:

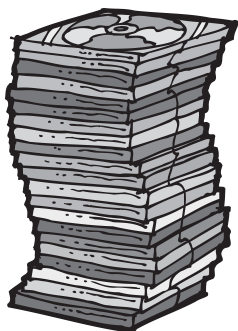
*The court entered its order at the conclusion of the hearing.* **Not:** *The Court entered its Order at the conclusion of the Hearing.*

*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.* **Not:** *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.* (I can hear the chorus of "What?!" Trust me on this.)

In short, unless a separate rule requires otherwise, do not capitalize a common noun when used to refer indefinitely to a class of persons, places, or things (*motions, orders, amendments*), when used to refer indefinitely to one or more members of that class (*a motion, an order, an amendment*), or even when used to refer to a particular class of persons, places, or things (*the motions, the orders, the amendments*). The issue becomes sticky when a common noun is used as a shorthand substitute for a proper noun that refers to a particular person, place, or thing. This will be addressed in the next installment (when space permits).

*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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## The 2008 Bench Bar Conference

*Continued from front cover*

The first major change we are making this year is to the family law sessions. Rather than a single afternoon session, the family law program will consist of two consecutive sessions. One session will provide information regarding newly enacted statutes, administrative orders, and focus on the courtroom practices of the family division. The second session will focus on professionalism and trial advocacy. Both sessions will have, in addition to the panel of judges, an attorney panel consisting of distinguished practitioners who are recognized in this area.

The second major change we are making is revamping the criminal practice sessions. The first session after lunch will focus on jail issues, court technology and drug court. Featured speakers include Sheriff Ric Bradshaw and attorneys Bard Rockenbach and Martin Epstein. The second criminal practice session will feature breakouts for county and circuit courts focusing on trial skills. These sessions will feature a panel of judges,

state attorneys, public defenders, and criminal defense attorneys.

We also will continue to build on the success of last year's reformed civil practice sessions. In addition to separate sessions for personal injury and commercial litigation focusing on pretrial practice, this year there also will be separate trial advocacy sessions for both commercial litigation and personal injury.

The criminal practice sessions also will feature a breakout session in a speedy roundtable format with the Fourth DCA judges focused solely on appellate criminal practice.

Finally, due to the overwhelming attendance at last year's YLS "Making a Good Name for Yourself as a Lawyer" program, this year we will feature two, simultaneous morning sessions that will improve the judge-to-lawyer ratios in the rooms. The featured panelists for these sessions include Judge Peter Blanc, Gregory Coleman, Esq., Patricia Leonard, Esq., David Prather, Esq., Gerald

Richman Esq., Meenu Sasser, Esq., and D. Culver "Skip" Smith III, Esq.

During the Bench Bar Conference lunch program, we also look forward to presenting our keynote speaker, George LeMieux, Esq., who will speak on community leadership. Mr. LeMieux is the former Chief of Staff to Governor Charlie Crist, former Deputy Attorney General for the State of Florida, the 2006 Campaign Manager for Governor Crist, and Chairman of the Board of Directors for Gunster Yoakley & Stewart.

Our committee believes that these improvements to the 2008 Bench Bar Conference will continue the momentum started last year in making the conference an exciting and valuable event that no local practitioner or staff member should miss.

*Jill G. Weiss is the Chair for the 2008 Bench Bar Conference and is a member of the PBCBA Board of Directors. She practices in the areas of complex commercial litigation, business litigation and family law.*



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**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.

**JUPITER-TEQUESTA DRIVE FOR SALE:** Free standing 12,600 sq. ft. building. Great signage & visibility! Extras include sound studio-auditorium seating-kitchen area. Close to Jupiter Island. Possible owner financing. REBEL COOK real estate (561) 622-9920.  
www.rebelcook.com

# Bulletin Board

## **PALM BEACH GARDENS:**

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

## **WPB PROFESSIONAL OFFICES AVAILABLE:**

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

## **EXECUTIVE SUITES/OFFICE SPACE:**

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

**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.

## **PALM BEACH GARDENS FOR SALE:**

Penthouse office condo 2775 sq. ft. First class office build out for law office. Nestled in Oak Park. Priced to sell at \$299 sq. ft. Cannot replace at this price. REBEL COOK real estate (561) 622-9920 www.rebelcook.com

**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.

**WPB-** Upscale legal office to sublet / Trump Plaza / with all amenities- receptionist, parking, kitchen, conference rooms; secretarial station, fax, copier available. (561) 659-4020.

**BOCA RATON-** 1 or 2 window offices available in law office. Class “A” building, I-95/Glades Rd. area. Includes: Admin. space, reception area and use of two conference rooms. Please contact Steve @ (561) 394-0088.

**WEST PALM BEACH CONDO:** 4 offices, conference room, kitchen, support area & parking. \$549,000. Call (561) 686-8686.

**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.

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

## **JUPITER OFFICES FOR RENT:**

1500 to 3100 sq. ft. Indiantown Rd. New construction. First class build out! Kitchen area plus some covered parking. REBEL COOK real estate (561) 622-9920. www.rebelcook.com

## **PRIME OFFICE SPACE FOR RENT:**

2500 sq. ft. on first floor. 311 South 2nd Street, Ft. Pierce, Florida. Ample parking. Available October 1, 2008. Located across from St. Lucie Courthouse and 2 blocks from Federal Courthouse. To be constructed beginning October, 2008. Please contact (772) 464-8200.

## **HEARSAY**



**Michael A. Lampert** has been elected Chairman of the Board of the Greater Palm Beach Area Chapter of the American Red Cross.

The law firm of Sasser, Cestero & Sasser, P.A. is pleased to announce that **Julia W. Ledis** has become associated with the firm.



**McCabe Rabin, P.A.** announces their move to larger offices at Centurion

Tower, 1601 Forum Place, Suite 301, West Palm Beach and its founding partners **Ryon McCabe** and **Adam Rabin** both have been named on Florida Trend's Legal Elite list.



**Gregory M. Yaffa** of the law firm Slawson Cunningham Whalen & Gaspari has been re-elected to the Board of Directors of the Young

Lawyers Section of the Florida Justice Association.

The law firm of Goldstein & Jette, P.A. is pleased to announce that partner and shareholder **Ian J. Goldstein** is now a Board Certified Criminal Trial Lawyer.

**Ellen S. Morris** has been named The Florida Bar Elder Law Section's "Member of the Year." She shared this honorable distinction with Representative Elaine Schwartz.



The law firm of Sachs Sax Caplan announces its new name, recognizing the contributions of partner **Lou Caplan**. Mr. Caplan joined the firm in 2000 as

a partner.



**Morris G. "Skip" Miller**, an attorney of the Ruden McClosky law firm, has been elected Chairman of The Housing Leadership Council of Palm Beach

County Inc.

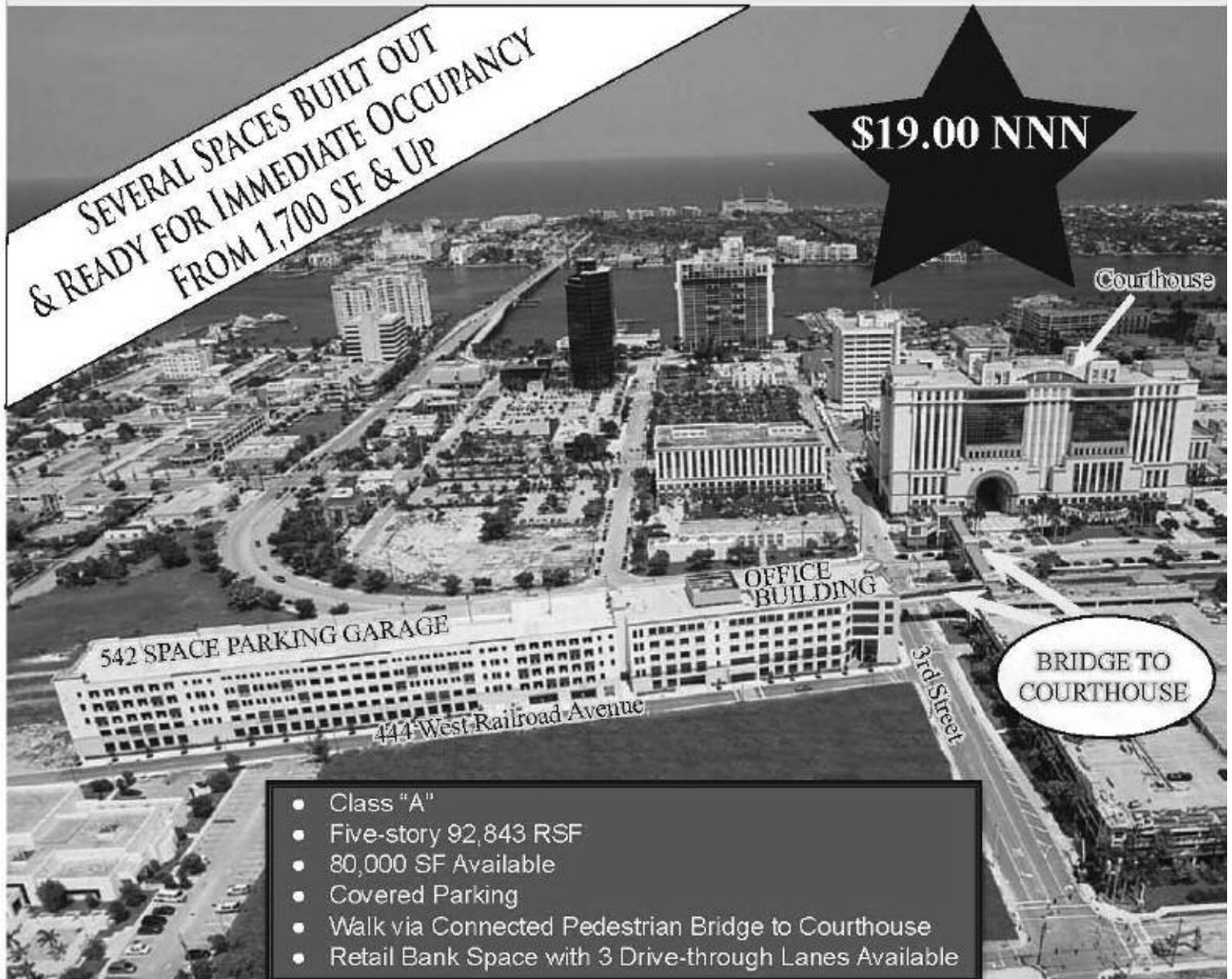
Murphy Reid, LLP would like to announce the retirement of **Eugene W. Murphy, Jr.** after a long and rewarding career. **John Harrison Hough** and **Lenora J. Fowler** will be joining **Frank T. Pilotte** and **George P. Ord** as Partners. Murphy Reid, Pilotte & Ord, LLP is now Murphy Reid, LLP.

# OFFICE SPACE

## FOR LEASE

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& READY FOR IMMEDIATE OCCUPANCY  
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- Covered Parking
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# CALENDAR

## October 2008

Wednesday, October 1, 12 Noon  
**NCS Board Meeting**

Thursday, October 2  
**Florida Bar "Practicing with Professionalism"**  
Marriott West Palm Beach

Thursday, October 2, 8:00 am  
**Florida Bar Video Replay "Basic Criminal Law"**  
Bar Association Office

Thursday, October 2, 12 Noon  
**PI/Wrongful Death Committee Meeting**  
Bar Association Office

Friday, October 3  
**PBJA Golf Tournament**  
Bear Lakes Country Club  
Contact (561) 471-2807

Tuesday, October 7, 12 Noon  
**Unified Family Practice Committee Meeting**  
Law Library

Tuesday, October 7, 12 Noon  
**YLS Executive Committee Meeting**  
Bar Association Office

Tuesday, October 7, 7:00 pm  
**Small Claims & Mediation Clinic**  
Palm Beach Co. Library, WPB

Thursday, October 9  
**Court Holiday - Yom Kippur**

Friday, October 10, 4:00 pm  
**Judge Jack Cox Investiture**  
Historic Courthouse

Sunday, October 12, 9:00 a.m.  
**Catholic Lawyers' Guild Red Mass**  
St. Edwards Catholic Church,  
Palm Beach

Monday, October 13  
**Legal Aid Golf Tournament**  
Contact Hareen Bertisch  
(561) 655-8944

Monday, October 13  
**Court Holiday - Columbus Day**

Tuesday, October 14, 9:00 am  
**Elder Law Committee Meeting**  
Bar Association Office

Tuesday, October 14, 12 Noon  
**FAWL Meeting**  
Marriott West Palm Beach  
Contact fawl@comcast.net

Tuesday, October 14, 5:30 pm  
**Western Co. Happy Hour**  
Gypsy's Horse, Wellington

Wednesday, October 15, 12 Noon  
**BBC Committee meeting**  
Bar Association Office

Thursday, October 16, 5:30 pm  
**NCS Happy Hour**  
Frenchman's Reserve

Friday, October 17, 11:4 am  
**South County Bar Meeting**  
Marriott Boca Raton,  
5150 Town Center Circle in Boca  
Contact (561) 482-3838

Tuesday, October 21, 5:30 pm  
**Inns of Court Meeting**  
Palm Beach County Main  
Courthouse

Wednesday, October 22, 11:30 am  
**Solo & Small Firm Practitioner's Luncheon**  
Bar Association Office

Thursday, October 23, 5:00 pm  
**PBCBA Board of Directors Meeting**  
Bar Association Office

Friday, October 24, 8:00 am  
**Bankruptcy CLE Seminar "What Every Non Bankruptcy Lawyer Needs to Know about Bankruptcy Law"**  
Bar Association Office

Tuesday, October 28, 5:00 pm  
**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, October 29, 12 Noon  
**Law Week Committee Meeting**  
Bar Association Office

Thursday, October 30, 12 Noon  
**Professionalism Committee Meeting**  
Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

1601 Belvedere Road, Suite 302 East, West Palm Beach, FL 33406

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\* DECEASED  
\*\* FLORIDA BAR PRESIDENT  
\*\*\* DECEASED, FLORIDA BAR PRESIDENT, SUPREME COURT JUSTICE  
\*\*\*\* DECEASED, FLORIDA BAR PRESIDENT  
\*\*\*\*\* DECEASED, FLORIDA BAR PRESIDENT, FEDERAL COURT JUDGE