



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

September 2006



Mark your calendar for upcoming Membership Meetings

Young Lawyers Section Happy Hour
September 7, 5:30 p.m., E.R. Bradley's

Young Lawyers Section "Lunch with the Legends" Featuring Chris Searcy
September 20, 12 noon
Bar Association Office

Young Lawyers Section "Lunch with the Legends" Featuring Sid Stubbs
October 19, 12 noon
Bar Association Office

Bench Bar Conference
October 27, 12 - 5:30 p.m.
PB County Convention Center

Annual Bar, NCS and YLS Holiday Party
December 7, 5:30 p.m.
BallenIsles Country Club

Membership Luncheon with guest speaker U.S. Supreme Court Justice Samuel Alito
January 26, 11:45 a.m.
Cohen Pavilion at the Kravis Center

Membership Luncheon with guest speaker U.S. Supreme Court Clerk William Suter
February 13, 11:45 a.m.
Crowne Plaza Hotel

Joint Membership Luncheon with South County Bar with guest speaker Florida Bar President Hank Cox
March 20, 11:45 a.m.
Delray Beach Country Club

Annual Law Week Judicial Reception
April 25, 5:30 p.m.
The Harriet at City Place

Annual Law Day Luncheon
May 4 (tentative date) 11:45 a.m.

Bench Bar Conference scheduled for October 27 at Convention Center

This year's Bench Bar Conference has been scheduled for **Friday, October 27** at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms will be mailed to all PBCBA members. Last year, over 800 people attended throughout the day, so be sure to sign up early! A morning session will be dedicated to legal assistants, judicial assistants and legal secretaries. This session has proven to be valuable to staff, so please be sure that you register them. A general luncheon will be held at 12 noon followed by the afternoon breakout session for attorneys and judges. Sponsorship opportunities are available to assist in the underwriting of this year's conference in the following amounts:

- \$175 for law firms with 1-2 attorneys
- \$250 for firms with 3-10 attorneys
- \$350 for firms with 11 or more attorneys.

Checks should be made payable to the PBCBA and mailed to: Patience Burns, 1601 Belvedere Road #302E, WPB, FL 33406.



Networking Happy Hour To Support National Adoption Day

The Special Needs of Children committee invites you to its annual Happy Hour on Thursday, October 12 from 5:00 to 7:00 at E.R. Bradley's in West Palm Beach. The cost is \$15 and includes one drink, plus food. Make plans now to attend the event and show your support for National Adoption Day. To register, log onto www.palmbeachbar.org.

Inside...

President's Message	3	The YLS Yarn	9
Historical Committee	4	Bankruptcy	11
Technology	5	New Members	14
Personal Injury Corner	7	Bulletin Board	21

THE
BULLETIN

**PALM BEACH COUNTY
BAR ASSOCIATION**

MANUEL FARACH
President

www.palmbeachbar.org

PATIENCE A. BURNS, CAE
Executive Director

Officers

Manuel Farach, *President*
Meenu Sasser, *President-elect*

Directors

C. Wade Bowden
Scott C. Murray
Michael J. Napoleone
Bryan Poulton
Richard D. Schuler
Michelle R. Suskauer

James G. Pressly III, *Young Lawyers Section President*
Andrew A. Pineiro, *North County Section President*
Denise Isaacs, *South County Bar President*
Theodore J. Leopold, *Immediate Past President*

FL Bar Board of Governors Representatives

Gregory W. Coleman
Scott G. Hawkins
Lisa S. Small
John G. White III

**FL Bar Young Lawyers Division
Board of Governors**

C. Wade Bowden
Ronald P. Ponzoli, Jr.
Elisha D. Roy

**1601 Belvedere Road, Suite 302E
West Palm Beach, FL 33406**

(561) 687-2800

FAX (561) 687-9007

e-mail info@palmbeachbar.org.

Advertising Information:

Shoshannah Spence • sspence@palmbeachbar.org

Views and conclusions expressed in articles and advertisements herein are those of the authors or advertisers and not necessarily those of the officers, directors, or staff of the Palm Beach County Bar Association. Further, the Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised. Copy deadline is the first of the month preceding publication.

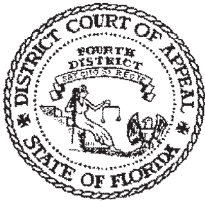
The mission of the PBCBA is to foster professionalism, serve its members, and enhance public access to the legal system through education and service.

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



IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT, P.O. BOX 3315
WEST PALM BEACH, FL 33402

ADMINISTRATIVE ORDER:

In re: Issuance of mandates in adoption, dependency and termination of parental rights cases.

In an effort to further expedite the finalization of adoption, dependency and termination of parental rights cases, it is hereby,

ORDERED that in adoption, dependency and termination of parental rights cases, if a timely motion for rehearing, clarification, or certification has been filed and denied, the clerk shall immediately issue a mandate or other process as may be ordered by the court.

DONE AND ORDERED at West Palm Beach, Florida, the 6th day of June, 2006.

/s/ Chief Judge W. Matthew Stevenson

Attest: Marilyn Beuttenmuller, Clerk



Dear Sir and Madam:

Thank you so very much for presenting me with the 2006 Judicial Professionalism Award. It is an honor that I cherish and will continue to attempt to merit.

I also thank those members of the judiciary from whom I learned so much about being a professional. Thank you Tom Sholts, Bill Owen, Jim Stewart, Edward Rodgers, Rosemary Barkett, Dan Hurley, Tim Poulton, Hugh Lindsey, Gary Vonhof, Roger Colton, Peter Blanc, the late Jim Downey, D. Culver Smith and Douglas Fulton, Sr. There are many more who should be named, but neither the limits of time, space nor memory permit.

Thank you again.

/s/ Ronald V. Alvarez

**Volunteer just one hour
for Literacy**

Join the Lawyers for Literacy Committee and participate in Adult Literacy Day on September 8, at the Adult Education Center in West Palm Beach. Help continue to make this a great event by talking to the students about your career, the legal system, and the importance of an education.

Many of the students are from another country and speak Spanish or Creole, so if you speak either of these languages, your help is especially needed. To volunteer, please call Cindy Spall at 650-0563 or Lynne Poirier at 687-2800.



President's Message



Civility

By Manuel Farach, President



Civility toward others in the profession and the lay public is one of the hallmarks of divinity, medicine and law - the three learned professions. But for law, civility is more than just a noble goal.

Our system of justice is one in which many moving parts must come together. In order for any case to proceed to trial, hearings have to be scheduled, discovery has to be exchanged, deadlines have to be met, and parties have to agree on the ground rules for the trial. Non-litigation matters are no different: investigations have to be conducted, advice has to be considered and acted upon, and closings have to occur. This need for

civility does not just arise out of the need for an efficiently operating system. As officers of the third branch of government, we hold positions where the public interest is served by our adherence to our code of civility, and dis-served by our lack of civility.

Many believe there is a crisis in the administration of justice due to lack of civility in our profession. Some point out that the "civility crisis" is nothing more than our profession mirroring the general decline of civility in our society. Others argue that loss of civility is due more to the growth of the numbers of lawyers in our community and the resulting loss of

collegiality in the Bar. Still others argue that civility is inherently at conflict with our duty to be zealous advocates. These excuses miss the point.

The point is that by our own conduct, the power to control this problem lies in each and every one of our hands. And civility not only begets more civility, it fulfills our constitutional function as officers of the court. Abraham Lincoln said that a lawyer's time and advice are his stock in trade. If so, then civility is the attorney's currency, without which our stock in trade cannot be exchanged.

Editorial Responses

The Board of Directors has a policy in place that if a judge has come under attack in a newspaper article or letter to the editor, they will send an editorial in response. Published below is a letter to the editor printed on July 26 and the Bar's response:

Judge callous in face of trailer residents' plight

I have a partial answer to the housing crisis ("90 percent of workers in Palm Beach County priced out of typical home," July 13): Leave the mobile home parks alone. The residents of Meadowbrook (on Drexel Road in suburban West Palm Beach) told Palm Beach County Circuit Judge David Crow that they would have no place to live, but he sided with the developers who are going to take more affordable housing away from the county.

The July 13 article also states that 70 percent of large companies cannot find those employees they need because of the lack of affordable housing. Mobile home parks can be an asset to the community. How could the judge be so shortsighted?

Continued on page 15

Phillips Point

West Palm Beach

mediation

certified circuit civil mediator

561-655-1556

info@panklaw.com

no charge for travel time, prep time, mediator's report

pankauski

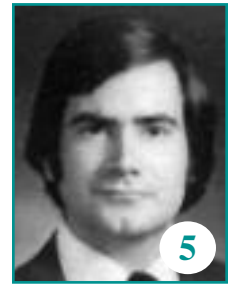
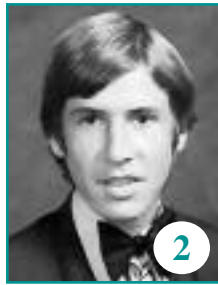
LAW FIRM
P. L. L. C.



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?

Answers on page 12



Minutes of the Junior Bar Section October 1963

Minutes of the 152nd regular meeting of the Junior Bar Section of the Palm Beach County Bar Association, held at the Town House Hotel on Friday, October 4, 1963, at 12:15 p.m. Fifty-four members and guests were present.

In the absence of the Secretary, the reading of the Minutes of the previous meeting was deferred.

The President, Gavin Letts, recognized Circuit Judges White, Smith, Hewitt and Downey. Marshall Criser introduced Fletcher Rush from Orlando, an announced candidate for President of the Florida Bar. Following Mr. Criser's introduction of Mr. Rush, Bill Pruitt warned Mr. Rush that Criser had supported Pruitt for the Legislature. Criser

announced that this time he had a real candidate. Pruitt lapsed into silence. Mr. Rush addressed the group briefly, stating his reasons for wanting to be President of the Florida Bar and his background in Florida Bar work. Harry Johnston II proposed Jon Moyle for membership and Tim Poulton proposed Don Adams. Both were accepted into membership in the organization subject to payment of dues.

The Vice President introduced the speakers for the day, Honorable James C. Downey, and Jack Paul, Chairman of the Fifteenth Circuit Grievance Committee, Group B. These gentlemen proceeded with an extremely enlightening and worth while discussion of legal ethics, the complaints most commonly brought to the attention of the Grievance Committee, common errors made by attorneys, and the best method of staying out of the jurisdiction of the Grievance Committee.

There being no further business to be held before the meeting, same was adjourned.

Respectfully submitted,

James S. Robinson
-for-
Edward D. Lewis

Confidential Copying

DocuSolutions

Complete Document Duplication and Imaging

WE PROVIDE A FULL RANGE OF DOCUMENT OUTSOURCING SOLUTIONS INCLUDING, BUT NOT LIMITED TO:

Litigation Copying • Imaging • Digital Printing • OCR Scanning
Trial Exhibits • Binding • Oversize Copying • Color Copying
Onsite Duplication • Audio & Video Duplication • Document Numbering
Bankruptcy Mailouts • Document Shredding

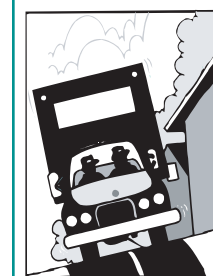
*Free Pick-Up & Delivery • Free Estimates
Free Cookies With Every Order!*

Available 24 - 7

With Two Locations To Serve You Better!

Boca Raton: 561.368.3676
West Palm Beach: 561.651.7676

www.docusolutions.net



MOVING?

Be sure to send your updated address, phone, fax and email information to the Bar at 561/687-9007.

Home Videos Grow Up – Sort Of

By Bard Rockenbach, Chairman, Technology Committee

Most people are familiar with the phrase “if you build it, he will come” from Kevin Costner’s movie Field of Dreams. That can be said about many things. For example, I’m sure that it applies to road construction. When we build a road to help traffic flow better, people see that there is a new road so they use it and developers build houses along it and, pretty soon, we need a bigger road. The same thing happens with Internet bandwidth. Over the past ten years we have been pouring money into optical cable to increase the amount of data that can flow across the Internet (bandwidth). Now that we have greater bandwidth (DSL, T1 and cable), people are looking for things to do with it.

Here’s an idea: Personal videos on the Internet. I was dubious at first, figuring that homemade videos would be tedious and meaningless. I was right. They also turned out to be very interesting. I should warn you, though; it is easy to waste hours looking at 1-3 minute clips of silliness.

The two main sites for personal videos are YouTube (www.youtube.com) and Googlevideo (www.video.google.com). Google’s effort is in its beta (testing) stage, and far from unique. It resembles YouTube in appearance, use and content. But because YouTube is more developed, and seems to be more popular, this discussion will concentrate on it instead of Googlevideo. Just remember that Google is doing the same thing.

YouTube allows people to upload videos they have created. Some are straight from the camera to the site, while others bear the scars of “professionalism.” They range from the mundane to the bizarre. This morning, I watched a video of a killer whale jumping onto a kayak (the kayaker just righted himself and kept going), one of a hammerhead shark attacking a tarpon, and of a man surfing what must have been a 50 foot wave. It was fascinating. Then there were the comedy skits, some of which were really funny while others should not have been classified as

comedy. For some reason, commercials from other countries are much funnier than ours. And if you ever miss a highlight from a sporting event, go to YouTube, the more obscure the sport the better. Skateboarding is big on YouTube, which is probably a reflection of the age group which dominates the site. Political speech is also rampant, most of which is very angry. And I don’t know why young children like to post videos of themselves dancing and talking about nothing, but they do it – a lot.

Of course, I ran into the inevitable tasteless humor and things I would have rather not seen. For example, there was a video of a man who had his friend whack him in the leg with a sledge hammer to, allegedly, avoid going to fight in Afghanistan. I couldn’t find the stop button fast enough. There is surprisingly little offensive language and, while some videos push the limit of

good taste, they are easily avoided. A password prevents little eyes from seeing inappropriate videos. I research every article I write, but this was the most fun I ever had doing it.

With YouTube, Googlevideo and other videoblogging sites, people are able to tell their story and express their ideas to the whole world while spending nothing to do it. Some people are using it to get careers in film or writing off the ground. Some use it to have fun. Others use it to tell a story. The videos from people in the Middle East war areas are sad, but they present a perspective is missed by the news outlets. I recently saw a news report that used YouTube videos in place of their own journalists.

Anything that happened in the world is available on YouTube. As my wife remarked to me after watching a few videos, there is nothing more dramatic than real life.

Email me if you see some interesting video.
bdr@flappellatelaw.com



First American Title Insurance Company

PARTNERING WITH OUR AGENTS



Kitty Stevens, Esq. and
*Plant Manager and
Underwriting Counsel*
kgstevens@firstam.com

Alice Meade
*Account Executive
Underwriter*
ameade@firstam.com

Proudly serving title and attorney agents from Monroe to St. Lucie Counties

701 Northpoint Parkway, Suite 100 • West Palm Beach, FL 33407

Tel: (561) 712-7808 Fax: (561) 640-0432

www.firstam.com

**KEEP
ART
WROBLE**
PALM BEACH COUNTY
CIRCUIT JUDGE, GROUP 13



Qualified

- Served in Circuit Court Civil Division (general trial jurisdiction) for 4 years and will have completed 2 years in Family Division (South County) upon completion of first term in 2006
- Diligent case management skills by significantly reducing volume of outstanding cases
- Sound judicial decision making of 87% of appealed decisions affirmed
- B.S.B.A., M.B.A. and J.D. degrees from the University of Florida
- Nominated for circuit judge by Judicial Nominating Committee
- Eagle Scout

Experienced

- 6 years on Circuit Court bench upon completion of first term
- Presided over more than 70 jury trials in 4 years
- Admitted to practice in all courts of Florida, U.S. Supreme Court, U.S. Court of Military Review and U.S. Court of Military Appeals
- U.S. Army Lawyer, Lieutenant Colonel, Retired Reserve

Dedicated

- Desert Storm Veteran
- Past Palm Beach County Bar President
- Board of Governors, The Florida Bar, 1985-1989
- Director, The Florida Bar Foundation, 1989-1993
- U.S. Service Academy Screening Committee, 2000 to date
- Legal Aid Society Board member for 19 years
- Civic benefactor, United Way, Kiwanis, Knights of Columbus, Leadership Palm Beach County, Girl and Boy Scouts and Chamber of Commerce

**Vote Judge Wroble
September 5, 2006
Group 13**

WE WANT TO KEEP JUDGE WROBLE A CIRCUIT JUDGE

Alan T. Dimond, Esq.
Dan O'Connell, Esq.
Greg Kissel
Hon. Phillip D. Lewis
John J. Sullivan
Norman Taplin, Esq.
Robert G. Merkel, Esq.
Tula Hudson-Miller
Alfred G. Morici, Esq.
James P. McDonald, Esq.
Robert G. Harris, Esq.
Brent K. Deviney
Doyle Rogers, Esq.
Hon. Joel T. Daves
Jay McCampbell
Malcolm McCampbell
Raymond W. Royce, Esq.
Sanford V. Howard, Jr., CPA
William Washington, CPA
Ana B. Wessel
Jerome L. Wolf, Esq.
Rome J. Hartman
Augustin J. Schwartz, III, MD
David McIntosh, CPA
Herbert C. Gibson, Esq.
Howard M. Rew, CPA
Keith F. Backer, Esq.
Patrick C. Massa, Esq.
Robert Montgomery, Esq.
Valentin Rodriguez, Esq.
Brian E. Thompson, Esq.
Jonathan D. Commander, Esq.
Ryan Anschuetz
Brooks Shackley
Frances C. Chapin
Hon. Malcolm K. Lewis
Jim Gallagher
Mark Elhilow, CPA
Rev. James Murtagh
Stephen W. Hall, Esq.
Bruce E. Loren, Esq.
Joseph J. Ward, Esq.
Scott Smith, Esq.
Basil J. Zaloom, CPA
Dennis P. Gallon, PhD
Hon. Carl Domino
James E. Waddell, DDS
Lewis Kapner, Esq.
Paul H. Bennett
Robert S. Jaegers, Esq.
W.M. Hamner, CPA
Carl A. Cascio, Esq.
Julian R. Frank, P.A.

Thomas M. Mettler, Esq.
Cathleen T. Burk, Esq.
Frederick M. Dahlmeier, Esq.
Hon. Mark Foley
Joel D. Kenwood, Esq.
Mary Catherine Madigan
Rev. Robert J. Collins
Thomas J. Barone, CPA
Charles H. Warwick III, Esq.
Melissa Alexis Rudman, Esq.
Ward Wagner, Jr., Esq.
Betty M. Fetty
Don W. Chester
Hon. Edward W. Bieluch
James G. Pressly, Jr. Esq.
Louis F. Robinson, III, Esq.
Rabbi Alan Sherman
Ronald Y. Schram, Esq.
William C. Davis
David H. Gold, Esq.
Patricia A. Leonard, Esq.
Cindy McHeran
G. William Fetty
Hon. Mark Mullinix
John A. Shipley, Esq.
Mr. & Mrs. Robert Sullivan
Richard A. Krause, CPA
Timothy M. Deckert, CPA
David R. Schwartz, Esq.
Richard C. David, MA, LMHC
Bob Banting, MIA
Douglas L. Starkey, DDS
Hon. Gary R. Nikolits
James L. Watt, Esq.
M. Lynwood Bishop, Jr.
Randy K. Johnson, Sr.
Russell A. Gornstein, DDS, MS
William King, Esq.
Deborah L. Graham, Esq.
Richard E. Philpott
Charles H. Damsel, Jr., Esq.
Chief Delsa Bush
Elizabeth Sullivan
Eugene W. Murphy, Jr., Esq.
H.F. Borders
Hon. Karen T. Marcus
Hon. Mary McCarty
Kirk Grantham, Esq.
Peter S. Sachs, Esq.
Greg Marion
Richard P. Zaresky, Esq.
Allen Geeseey, Esq.
Charles F. Schoech, Esq.

Cn. Howarth L. Lewis, Jr.
Daniel Hyndman, Esq.
Denis Murphy, MD
Frank M. Crittenden Jr., MD
Frank S. Palen, Esq.
Hon. Addie L. Greene
Hon. Jeff Koons
Hon. Samuel J. Ferreri
J. Andrew Fine, Esq.
J. Timothy Sheehan, Esq.
John A. Weig, Esq.
John Reis
Jorge Avellana
Kenneth Stone
Kenneth W. Edwards, Esq.
Kristin Lidinsky
L. Martin Flanagan, Esq.
Margaret L. Cooper, Esq.
Mary Pat Sheehan
Mary Rhoades
Paul A. Donatelli, DMD
Raymond Shepley
Richard E. Lopez
Sophia Ann Stansbury
Stephen P. Mc Dermott, CPA
Terry Krok
W.G. Beard, Esq.
William John Stansbury
Hugo Unruh
Robert Sullivan
Hon. Michael D. Brown
Hon. Reina Lowe
Hon. Richard A. Macheek
Ivo Moraguez, DMD
Robert C. Hackney, Esq.
Richard J. Meehan, Esq.
C. Glen Ged, Esq.
Martin Klein, Esq.
Thomas M. Karr, Esq.
Bishop Harold C. Ray
Charles Doll
Rev. Robert J. Collins
James Sheehan
Gilbert R. Panzer, Jr., P.A.
Kenneth A. Treadwell, Esq.
Robert Russo, Esq.
Edward A. Shipe, Esq., CPA
R. Donald Turlington, Esq.
Darla D. Trullington
Jim Pyle
Robert MacLeod
Chief Wes Smith
Alfonso Marino

Susan R. Cortes
Gerard A. Moretti, DMD
George Pyle
LeAnn Criello
Hon. William G. Graham
Hon. Beverly Smith
Denise W. Valz
Constance M. Pyle
Chuck Elderd
Hon. Blair J. Ciklin
Edward J. Manak
Gerald Blumberg
Alfred J. Malefatto, Esq.
Leo A. Fox, P.A.
Robert Sproul
Johanna Tenuta
Richard C. Mahoney, Esq.
John J. Sheehan
Margaret Sheehan
Denise L. Rice
Freeman W. Barner, Jr., Esq.
Jay A. Schwartz, Esq.
Mary R. Sposato
Kathy Adams
George R. Frost
E. Llwyl Ecclestone
Douglas C. Fulton, Esq.
Sally H. Massey
Howard N. Sarbarra, MD
Woody Woodward
Phillip H. Yorston, Esq.
Kim Burns-Donnell
Salesia V. Smith-Gordon, Esq.
James W. Beasley, Jr., Esq.
Tony Fransetta
Joseph E. Neduchal, Esq.
Barbara Tenuta
Ralph A. Hagans, Esq.
Richard K. Kramer, Esq.
Dewey H. Varner, Esq.
Frank Albear, Esq.
James M. Magee, Esq.
Sonia K. Cooper
Richard C. Hitchins, CPA, CFP
Warren E. O'Brien, Jr.
Robert L. Siemon
James W. Lea, MD
Hank W. Massey
"Catus Jack" Thomas, Jr.
Jack J. Eassa
Michael R. Harris, Esq.
Franck D. Massey
Gerald J. O'Connor, MD

Murray R. Kalish
Hon. Henry Crawford, Jr.
Charles W. Musgrove
Kenneth G. Spillias, Esq.
Michael Cooney, MD
Todd A. Baker
John Adair
Douglas B. Lawson, MAI
Reid Moore, Jr., Esq.
Hon. Ray Torres Sanchez
Steven A. Stinson, Esq.
Robert T. Bechtel
Judy Roulis
William M. Barnes
Mrs. Ulysses B. Kinsey
Hon. Paulette Burdick
Marvin Manning
Edith Manning
William Svec
Daniel Liftman
John C. Sansbury
Roderick C. Moe, CPA
Sheri Scarborough
Gail Skolnick
Stanley L. Krasulak
Robert Meyer
Rev. James E. Adams
Grant Skolnick
William P. Snow
John B. Halpern
Jay Weitz
Tyrone B. Monte
Patricia Emmert
Hon. Charles Shaw
Sandra Kaplan
Kurt Weiss
James P. Mitchell
J. Riley Fulmer, Jr.
Robin S. Bernstein
Richard S. Bernstein
C. Ray Dorsey, III
Thomas E. Sliney, Esq.
Elmer Klein
Natalie Klein
Lori Winer-Hausman, CPA
Stephen R. Alexander, Psy.D.
Roger B. Rukin, CPA
Michael S. Ziede, MD
Arnold L. Snyder

SEND CONTRIBUTIONS TO:

Roger B. Rukin, CPA, Treasurer

2328 10th Avenue North, Suite 403 • Lake Worth, FL 33461 • (561) 586-0100 • Fax (561) 586-0106 • www.keepjudgewroble.org

Non-partisan paid political advertisement. Art Wroble Campaign Fund, approved by Art Wroble

AS OF 7/24/06



Pretrial Disclosure

by Ted Babbitt

The Supreme Court of Florida set the standard for the requirements of pretrial disclosure in Binger v. King Pest Control, 401 So. 2d 1310 (Fla. 1981). There the Court gave the trial court an arsenal to deal with faulty pretrial disclosure. The essence of Binger was distilled by the Fourth District in Florida Marine Enterprises v. Bailey, 632 So. 2d 649 (Fla. 4th DCA 1994). In that case, the Fourth District approved the trial court's striking of four witnesses for blatant violations of the trial court's pretrial order. In discussing the limits of tolerance in Binger, the Fourth District in Florida Marine Enterprises at Page 652, stated:

"In exercising its discretion to strike witnesses not properly disclosed upon pretrial order, the trial court may consider such factors as: whether use of the undisclosed witness will prejudice the objecting party; the objecting party's ability to cure the prejudice or its independent knowledge of the witnesses' existence; the calling party's possible intentional noncompliance with the pretrial order; and the possible disruption of the orderly and efficient trial of the case.

Compliance with pretrial orders directing proper disclosure of witnesses eliminates surprise and prevents trial by 'ambush.' Binger, 401 So. 2d at 1314. Counsel who disobey a trial court order entered months earlier should not be rewarded for their conduct. Pipkin v. Hamer, 501 So. 2d 1365, 1370 (Fla. 4th DCA 1987)."

Trial by ambush has been discouraged since the 1954 adoption of our modern rules of procedure. Office Depot, Inc. v. Miller, 584 So. 2d 587, 590 (Fla. 4th DCA 1991) ("a party can hardly prepare for an opinion that it doesn't know about, much less one that is a complete reversal of the opinion it has been provided").

With the well settled law that gives a trial judge discretion to react to "sandbagging" extant, along came Wax v. Tenet Health System Hospitals, Inc., 31 Fla. L. Weekly D1385 (Fla. 4th DCA, May 17, 2006). That was a medical malpractice wrongful death case in which the trial court refused to permit two expert witnesses to testify because of her perception that the witnesses' testimony was not properly disclosed pretrial and that on rebuttal, the testimony was cumulative. In reversing the Fourth District at Page D1386 opined:

"We do not think that these designations of the substance of testimony in pretrial notices of experts should be subjected to literalistic, mechanical or crabbed readings. If a disclosed witness's trial testimony is even arguably within the designation, exclusion of the testimony by the witness should not be employed."

Read out of context, that statement seems to eviscerate Binger and all its progeny. An isolated reading of this quote would lead one to believe that the trial court is powerless to enforce its pretrial rulings. Read in context, the Wax opinion says nothing of the sort.

In Wax, plaintiff's theory of the case was that the defendant doctors were negligent in the manner in which they attempted resuscitation of the plaintiff's decedent who had an anesthetic accident during a hernia operation. The defendants introduced the theory that plaintiff's decedent's need for resuscitation arose out of the inadvertent stimulation of the vagus nerve during the operation. Plaintiff's expert disclosure was consistent with plaintiff's theory of negligence in the resuscitative efforts but failed to specifically refer to defendant's

Continued on page 16

Circuit Court Report

CIVIL DIVISIONS • May 2006

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	12/06	12/06	09/06	1257
B	12/06	09/06	08/06	1276
D	05/07	01/07	08/06	1485
E	10/06	08/06	09/06	1490
F	06/06	06/06	06/06	1186
G	04/07	04/07	08/06	1054
H	04/07	04/07	08/06	1330
I	11/06	11/06	09/06	1250
J	10/06	10/06	09/06	1393
N	12/06	12/06	11/06	1399
O	01/07	10/06	09/06	1518

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 07/01/06

Has Your Client Been Denied Social Security Disability??

Stephen M. Lewen, Esq.

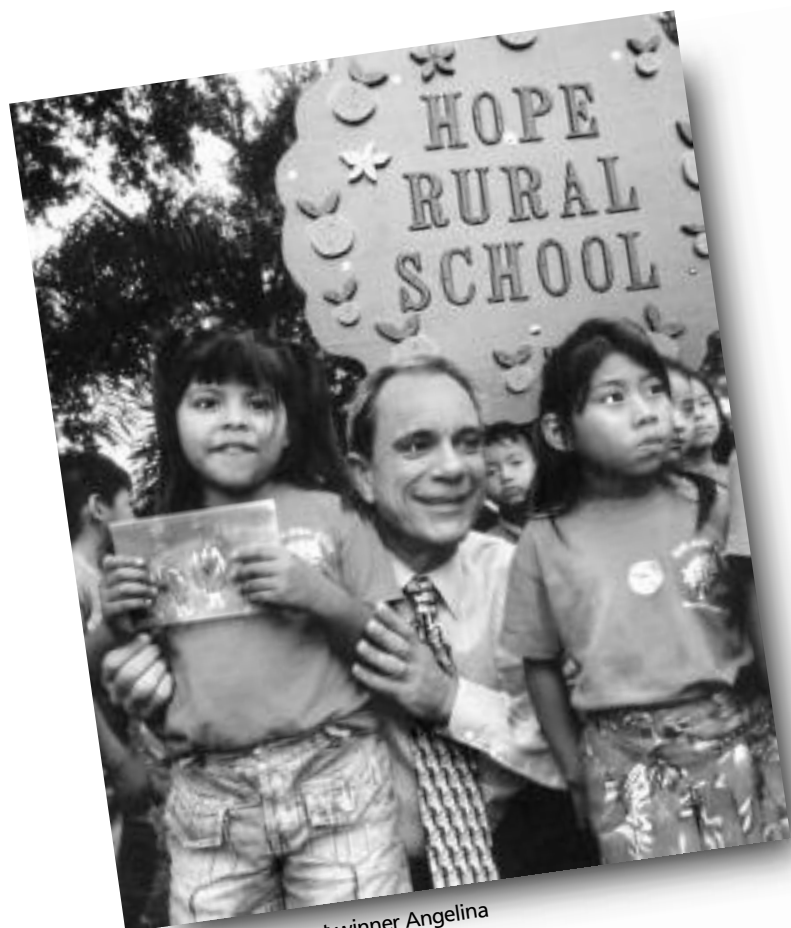
26 Years Representing the Injured and Disabled in Palm Beach, Martin, St. Lucie, Okeechobee and Indian River Counties

(772) 288-1300

(888) 784-6724

Certified Circuit Court Mediator

Now I have time for my *other* important job.



Ed Ricci with contest winner Angelina
Ricci-Leopold, P.A.
Palm Beach Gardens, FL

With FindLaw® on my side, I have:

- time to give back
- four new cases last month directly from our Web site
- time to judge a school-wide art contest
- received two referrals from one e-newsletter
- all of the above

“Our Web site has freed me to pursue my other passion – I helped start the Hope Rural School 25 years ago. Because our firm’s Web site has done so well – it gets 2,000 page views a month and helps position us as the preeminent leader for implanted heart device issues – I spend less time finding new business. And have more time to build Hope.” To see more of Ed Ricci’s story, or to learn how FindLaw can help you gain new clients, go to LawyerMarketing.com/CM/Clients/Ricci.asp, or call 1-866-44FINDLAW (1-866-443-4635).

© 2006 West, a Thomson business L-320711/2-06

FindLaw

THOMSON
★
FINDLAW



"The YLS Yarn"

Grier Pressly, YLS President

Your Young Lawyers Section is off to an active start for the 2006-2007 year.

July 20 saw a successful collaboration by the YLS and the Federal Bar Association at their first joint happy hour at McCarty's in Palm Beach. A great time was had by all!

On August 3, the YLS hosted its annual Summer Associates' happy hour at O'Shea's Irish Pub. A large turnout of attorneys and local summer associates resulted in an enjoyable evening for everyone. A special thank you goes out to happy hour chairman Heath Randolph for planning the event, and to YLS member/guitarist David Yarema who provided the (free) live music along with fellow attorney/vocalist Jamie Crowley!

On August 17, several YLS members showed up at Palm Beach Public School on the second day of the school year to distribute school supplies to over 300 needy students and 20 teachers as part of the YLS Adopt-A-School project. All supplies were funded by the YLS. The Adopt-A-School project, which has won several awards from the Florida Bar Association for its "adoption" of Palm

Beach Public (which has one of the most disadvantaged student populations in the entire school district), enters its fourth year of philanthropic activities that will also include a Career Day and a field trip sponsored and funded by the YLS.

Please calendar the following upcoming activities and plan on joining us:

September 7, 5:30-7:30 p.m.: YLS Happy Hour in support of the Adopt-A-School project at E.R. Bradley's Saloon.

September 20, Noon-1:00: Inaugural "Lunch with the Legends" featuring **Christian Searcy, Esq.** of Searcy, Denney, Scarola, Barnhart & Shipley, P.A. - Bar Association Office

October 19, Noon - 1:00: Second "Lunch with the Legends" featuring **Sidney L. Stubbs, Jr., Esq.** of Jones, Foster, Johnston & Stubbs, P.A. - Bar Association Office

Attendance to the "Lunch with the Legends" is limited to members of the YLS. Lunch will be provided. Cost to attend these will be \$10 per person.

Please contact the Bar Association office at 687-2800 to register or register online at www.palmbeachbar.org for any of the events listed above.

If you are not a member of the YLS, and wish to become one, please contact the Bar Association office at 687-2800. If you would like to become more involved with the YLS, or have questions about any of our events or projects, please contact me at 659-4040.

July YLS Happy Hour:



Matt Ramenda, Stephanie Eassa, Paige Hardy, Virginia Wells and John Whittles



Cindy Crawford, Tania Sigman, Jennifer Kypreos & Julie Ferguson



Ryon McCabe, Jason Lazarus (Federal Bar Association), Bob Bertisch and Grier Pressly

EXCLUSIVE REPRESENTATION OF THE DISABLED



From initial claims to Federal Court actions – we can help.

Chris R. Borgia, Esquire

561-683-0152

or for more information visit

www.SocialSecurityDisabilityLaw.net

Of all the banks in South Florida, only one has the distinction of being called "The Lawyers' Bank."

For over 25 years, we have concentrated on providing law firms, their partners, associates, staff, and clients with an uncommon level of attention and service. Which is why so many law firms in South Florida count on Mellon.

Whether it's business or personal banking, or wealth management, our goal is to make a measurable difference in its relationships through exceptional service, and we are constantly focused on delivering measurable results to our clients.

For more information, please call Bud Osborne, Executive Vice President, at (561) 750-0075.



Mellon

The difference is measurable.SM



Member FDIC

www.mellonunited.com

©2005 Mellon Financial Corporation



Dr. Wedler A. Alexandre
Chiropractic Physician



CITADEL CHIROPRACTIC

Don't Suffer in PAIN !!! See the most advanced Science and Technology

Auto Accidents
Wellness Care
Work Injury

**Call us immediately,
we can assist you**

RELIEF IS ONLY A PHONE CALL AWAY
561-752-5354 561-721-9282

660 W. Boynton Beach Blvd. Boynton Beach, FL 33426
Tel 561-752-5354 Fax 561-752-5868

1489 N. Military Trail Suite 202 West Palm Beach, FL 33409
Tel 561-721-9282 Fax 561-721-3880

BAPCPA: Changes that Impact the Family Law Practitioner

by Marc P. Barmat, Esquire

As you probably know by now, on October 17, 2005, the “Bankruptcy Abuse Prevention and Consumer Protection Act for 2005” (‘BAPCPA’) went into full effect. However, what you may not know, is how significant the changes were with regard to the treatment of domestic support obligations¹ (“DSO”). For the bankruptcy, as well as family law, practitioner, knowledge of these changes is essential. This article will highlight only some of the more significant changes.

Perhaps the most significant change is that a bankruptcy trustee can now liquidate **exempt** property for the benefit of DSO claimants. For example, if a debtor with a DSO creditor files bankruptcy, the bankruptcy trustee can now sell the debtor’s homestead² or other exempt assets in order to satisfy the outstanding DSO claim. Clearly, this new bankruptcy trustee power needs to be considered by counsel for a debtor with a DSO creditor before filing bankruptcy.

Another significant change is the increase in the priority status of DSO’s. Post-BAPCPA a DSO’s priority was raised from seventh place to first. This means that DSO claimants get paid before all other unsecured creditors. Now, only the trustee’s administrative expenses get paid before DSO creditors. Some now consider DSO’s to have a super-priority.

BAPCPA also includes several revisions which broaden the scope of the of the exceptions to the automatic stay for support related proceedings. Now, the exceptions to the automatic stay include the commencement or continuation of civil actions or proceedings to establish paternity, establishing or modifying a domestic support order, and any action or proceeding concerning child custody or visitation, dissolution of marriage, or domestic violence. BAPCPA also permits as an exception to the automatic stay the “withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order.” These changes could have a significant impact on child support collection practices.

BAPCPA has also made it easier to exclude domestic obligations from discharge. Pre-BAPCPA, domestic obligations for alimony, maintenance or support, were

excepted from discharge; however, a debtor maintained the ability to seek to discharge for non-support obligations and property distribution obligations, under certain circumstances. Post-BAPCPA, all marital and domestic relations obligations, whether in the nature of alimony, maintenance or support or property division, so long as they were incurred in the course of a divorce or separation or established in connection with a separation agreement, divorce decree, or other order of a court of record, are excluded from discharge.

As a whole, the changes brought about by BAPCPA basically aim to prevent debtors from using the bankruptcy system as a way to avoid support obligations, while at the same time attempting to ease the support creditor’s ability to obtain payments. Family law and bankruptcy practitioners should be aware that with the enactment of BAPCPA came additional significant changes not addressed in this article but which may impact how you represent your clients.

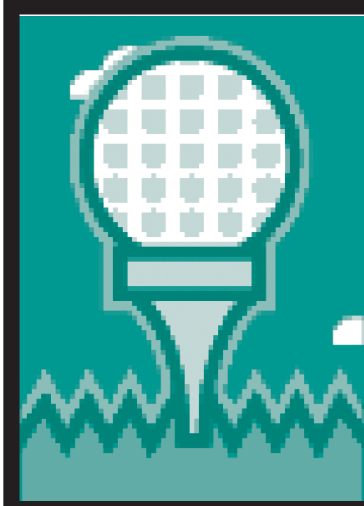
¹ The Bankruptcy Code defines a “domestic support obligation” as a debt that accrues before, on, or after the date of the order for relief, and which includes interest that accrues pursuant to applicable nonbankruptcy law. This definition broadens the scope of the obligations covered by the Bankruptcy Code, as it includes a debt owed to or recoverable by “(i) a spouse, former spouse, or child of the debtor, or such child’s parent, legal guardian or responsible relative; or (ii) a governmental unit.” To qualify as a “domestic support obligation,” the debt must be “in the nature of alimony, maintenance, or support of such spouse, former spouse, or child of the debtor or such child’s parent.” The full definition of a Domestic Support Obligation can be found at 11 U.S.C. ‘101(14A).

² Presumably, the homestead will still be protected if it is held as tenancy by the entireties.

Written by Marc P. Barmat, Esq., Furr and Cohen, P.A.; One Boca Place, Suite 337 West, 2255 Glades Road, Boca Raton, FL 33431; mbarmat@furrcohen.com



The Board of Directors, pictured to the left, recently held a strategic planning retreat. More information about the retreat will be in an upcoming issue of the Bar Bulletin.



Legal Aid Society
of Palm Beach County's
6th Annual
Cup of Justice Golf Classic
BallenIsles Country Club
October 9, 2006 Columbus Day
Benefiting the Educational Advocacy Project

Team Foursome \$1,000
Goody Bag Sponsor \$500
Sign Sponsor \$250
**Golfers enjoy buffet luncheon,
dinner reception, great goody
bag, raffle, trophies & prizes!**

Support children's education!
Register on line at
www.legalaidpbc.org

**Call 561.655.8944 x279
for more information.**



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.

Photo Answers:

From Page 4

1. Tom Gano
2. Paul Rampell
3. Rebecca Doane
4. Doyle Rogers
5. Burton Sharff

**Death • Divorce • Estate Planning
Guardianship • Bankruptcy • Taxation**

APPRAISALS

Residential & Commercial Real Estate
Home Furniture and Furnishings
Art, Antiques, Jewelry
Professional & Trade Fixtures
Business Machinery & Equipment

Allied Appraisal Services

929 SE First Street
Pompano Beach, FL 33060

"One Call Does It All"

**Tel. (800) 273-4623 • (954) 782-3130
Fax (954) 942-7678**



SETH HONOWITZ

**Mobile: (561) 262-0726
Office: (561) 627-5100
E-mail: Seth@Leibowitzrealty.com
www.leibowitzrealty.com**

**LEIBOWITZ
REALTY GROUP**

*Providing professional and personal service to
fellow members of the Palm Beach County Bar
in communities such as*
**Mirasol, Frenchman's Reserve, BallenIsles,
PGA National, Eastpointe Country Club,
Mirabella & other fine communities.**

817 Donald Ross Rd., Juno Beach, FL 33408
210 Brazilian Ave., Palm Beach, FL 33480

North County Section Scholarship

The North County Section established a college scholarship program two years ago to enhance scholarship opportunities for local students. The section is in the process of seeking additional financial support so it can continue to help students in need pursue their higher education. To date, the following law firms have contributed to the program:

Salutatorian Sponsors: (\$1,000)

Burlington & Rockenbach
Gordon & Doner
Kramer Ali Fleck Hughes & Bornstein
Rutherford Mullhall,

Benefactors: (\$500)

Ackerman Link & Sartory
McHale & Slavin
Watterson & Zappolo

Financial supporters will be recognized in upcoming issues of the Bar Bulletin, as well as on the permanent plaque, which is located in Bar Office. For additional information, please call Scott Zappolo at 627-5000. Or, you can call Lynne Poirier at the Bar Office.



In Memoriam

**Shannoya C. Robinson
1977-2006**



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



www.palmbeachbar.org

What can the right investigator do for you?

GET YOU PROOF!

A.S.G. is a full service licensed private detective agency, specializing in assisting attorneys. Our clients understand the advantage of knowing the facts before they send out interrogatories or take depositions and they can count on us to provide the proof.

- ✓ Video Surveillance
- ✓ Background Investigations
- ✓ Child Custody Investigations
- ✓ Recorded Statements
- ✓ Computer Forensics
- ✓ Locate Investigations
- ✓ Asset Investigations
- ✓ Residency Investigations



1515 N. Federal Hwy. Suite 300 Boca Raton, FL 33432

Florida Licensed Private Investigator # A-25002

(888) 677-9700

Christine A. Klepp, M.D.

Lake Worth Pain Center

(561) 642-1219



Pain Management

Pre-Operative and
Post Operative
Pain Management

Causation Analysis

Permanent Impairment

MMI

Future Medical Care

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.

ADAM BALKAN – Huntington, NY; Nova Southeastern, 1994; Partner in Balkan & Patterson, LLP in Boca Raton.

MARC D. BRODY – Philadelphia, PA; Nova Southeastern, 2005; Associate in Gunster Yoakley & Stewart, P.A. in West Palm Beach.

RODNEY WILSON BRYSON II – Miami; Nova Southeastern, 2005; Associate in Grossman, Roth, Olin, Meadow et al in Boca Raton.



MARKO CERENKO – Zagreb, Croatia; University of Miami, 2005; Associate in Fowler White Boggs Banker, P.A. in West Palm Beach.



LESLIE PETER CHONTOS – Peekskill, NY; New York Law School, 1977; Associated with Glantz & Glantz, P.A. in Plantation, FL.

AARON M. CLEMENS – Juneau, AK; Georgetown University Law Center, 2004; Associated with Public Defender's Office in West Palm Beach.

MARILYN EISLER – New York City; Nova Southeastern University, 1986; Associated with Nova Southeastern University in Fort Lauderdale.

PAMELA FORD – Bronxville, NY; Nova Southeastern University, 1991; Assistant State Attorney in West Palm Beach.

DARA J. GAREL – Miami, FL; University of Florida, 2005; Associate in Gunster Yoakley & Stewart, P.A. in West Palm Beach.



ERIC S. GLATTER – Columbus, OH; Capital University, 1988; Sole Practitioner in Boca Raton.

MICHAEL A. GREAN – Bronxville, NY; University of Pennsylvania, 1963; Sole Practitioner in Palm Beach Gardens.

ANDREW A. HARRIS – West Palm Beach, FL; George Washington University, 2002; Associate in Hilley & Wyant-Cortez, P.A. in North Palm Beach.

EVELYN T. HOPKINS – West Palm Beach, FL; Loyola University Chicago, 1998; Sole Practitioner in West Palm Beach.



JONATHAN E. JONES – Atlanta, GA; University of Denver College of Law, 2002; Partner in Hetz & Jones, LLC in West Palm Beach.

WILLIAM H. KARP – Boston, MA; University of Miami, 1988; Associated with Legal Search Solutions in Boca Raton.



CORY B. KRAVIT – Hollywood, FL; Stetson College of Law, 2005; Associate with Nason Yeager, Gerson, White & Lioce, P.A. in West Palm Beach.

JILL ALANA MAHLER – Princeton, NJ; University of Florida, 2005; Associate with Legal Aid Society in West Palm Beach.

WENDY C. MANSWELL – Trinidad & Tobago; Nova Southeastern University, 2004; Sole Practitioner in Lake Worth.

WILLIAM H. MINTON – Ft. Pierce; Stetson College of Law, 2004; Associated with Office of the State Attorney in West Palm Beach.

NICHOLAS WARD ROBBINS – New York City, NY, 1997; Associate in Gunster Yoakley & Stewart, P.A. in West Palm Beach.

DANIELLE K. CONN ROSENBERG – Affiliate Member; New York, NY; Nova Southeastern University, 2000; Associated with Michael P. Walsh, P.A. in West Palm Beach.

JEFFREY H. SKATOFF – Chicago, IL; Washington University, 1991; Partner with Clark Skatoff LLP in North Palm Beach.

CLAUDEL TRAJAN – Port-au-Prince, Haiti; University of Connecticut School of Law, 1999; Associated with State Attorney's Office in West Palm Beach.



THOMAS E. WARNER – Rochester, NY; University of Florida, 1973; Partner in Carlton Fields, P.A. in West Palm Beach.

AMY L. ZIPPER - Connecticut; New York University School of Law, 2001; Associate in Gunster Yoakley & Stewart, P.A. in West Palm Beach.

WELCOME



THAT'S WHAT WE DO, EVERY DAY.® With Special Counsel, your search is over - that's because we are the leading provider of legal staffing services nationwide. Whether you need attorneys, paralegals, or other legal staffing support, we can provide the most qualified professionals - from general workload management and litigation support to project management for e-discovery and document review projects. And with specialized services like medical document review, deposition digesting, and court reporting, all of your legal needs are just a phone call away.

SPECIAL COUNSEL

(954) 764-5474
(800) 737-3436
specialcounsel.com

Editorial Response

from page 3

Bar's Response

ATTACK ON JUDGE'S DECISION MISGUIDED

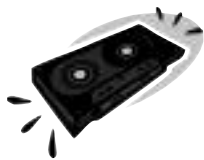
In response to the July 26 letter of Ann Lemos, I am certainly sympathetic to the plight of the residents of the Meadowbrook mobile home community as their mobile home park is sold to a developer. And I certainly understand this sale makes the affordable housing problem in Palm Beach County that much worse by forcing a number of families to try to find places to live in an over-priced housing market.

But it is wrong to blame Judge David Crow for the problem, especially when Judge Crow is not permitted to respond to Ms. Lemos' comments under the rules governing judges. Judge Crow's job is to take the laws written by the Florida Legislature regarding mobile home parks, in this case Florida Statutes Chapter 723, and apply the facts to the law. Judge Crow does not have the ability to change the law, only the legislature does. In a case such as this, Judge Crow is nothing more than a baseball umpire: he calls balls and strikes according to the strike zone set out by the Florida Legislature. Judge Crow does not have the ability to change the strike zone to help people. Both our Florida and United States Constitutions emphasize the separation of powers, and under our Constitutions, judges cannot make or change laws - only legislatures can.

Again, the points raised by Ms. Lemos of the need for affordable housing and the resulting workforce crisis due to lack of affordable housing are good points and significant problems facing Palm Beach County. But the solution lies in changing the laws, not in criticizing the person who did nothing more than fulfill his constitutional duty.

/s/ Manuel Farach, President

Need CLE Credit?



The Palm Beach County Bar Association has a large library of audiotapes 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.



Upchurch Watson White & Max MEDIATION GROUP

Give Your Clients
The Mediators They Deserve

— SERVING SOUTH FLORIDA —

RODNEY A. MAX
G. WILLIAM "BILL" BISSETT
STEPHEN G. FISCHER
J. LEONARD FLEET
OSCAR FRANCO
WAYNE T. GILL
HENRY A. SEIDEN

For scheduling / coordination of your mediation

❖ West Palm Beach: 561-533-7553

❖ Miami: 305-266-1224 ❖ Ft. Lauderdale: 954-423-8856

❖ Toll Free: 800-863-1462

www.uww-adr.com

Mediation ❖ Arbitration ❖ Private Trials

Daytona Beach ❖ Maitland/Orlando ❖ Miami ❖ West Palm Beach ❖ Birmingham

Sherry L. Hyman, Esquire

Arbitrator/Mediator



- J.D.-University of Florida College of Law (1975)
- Board Certified in Real Estate
- Certified Circuit Mediator
- Qualified Florida Arbitrator
- Member of Florida Academy of Professional Mediators, Inc.

Available for mediations/arbitrations
Special master hearings and private judging

THE LAW OFFICE OF SHERRY L. HYMAN, PLLC
3801 PGA Blvd., Suite 107 / Palm Beach Gardens, Florida 33410
561-744-7231 / 561-329-2990 / Fax: 561-744-3140 / slyhman@aol.com

Pretrial Disclosure

from page 7

theory of the case. The trial court refused to allow the disclosed witness to testify because of the absence of mention of the vagus nerve issue.

The procedure for disclosure of experts varies from trial judge to trial judge. Some require simultaneous disclosure by plaintiffs and defendants with an opportunity for rebuttal, while others require the plaintiffs to go first with the defendants being required to disclose only after some designated period of time. (The purpose behind this delayed disclosure has always alluded this writer.) No trial judge requires the defense to go first. Thus, it is not surprising that plaintiff's initial disclosure would not mention a theory that had not been disclosed by the defense prior to plaintiff's required disclosure of its expert's opinions.

The excluded expert was deposed but defense counsel chose not to inquire about that witness' opinions concerning the defendant's core defense. Whether that was done by design in the hopes of trapping the plaintiffs (as it turns out successfully) by having the trial court eliminate that

expert's testimony cannot be divined from this opinion. Surely defendants knew about their own defense when they took the deposition of this expert.

Given those circumstances, the Wax court held that the trial judge's exclusion of the witness was error. The Court relied, in part, on Klose v. Coastal Emergency Services of Ft. Lauderdale, 673 So. 2d 81, 83 (Fla. 4th DCA 1996) which held it to be error to exclude a party's only expert in a particular specialty absent prejudice to the opposing party when the witness had been questioned about that subject matter on deposition. In Wax, as in Klose, the witness in question was the only expert in that particular specialty and the Court found that the exclusion of the testimony was especially prejudicial because of that unique expertise.

"Klose holds that in the absence - as here - of any misconduct or impropriety by the party seeking to admit the testimony, this kind of prejudice impels the trial judge first to exhaust other measures less drastic than outright exclusion. A brief adjournment for a deposition of the witness on the vagus nerve issue was clearly the first remedy if the trial judge

thought the designation insufficient to apprise defendant of the vagus nerve issue." Wax, supra, at Page D1386.

In Wax, a second witness was excluded by the Court on rebuttal because the Court found that his testimony was cumulative. The Court reversed on that issue as well, relying upon Griever v. DiPietro, 708 So.2d 666 (Fla. 4th DCA 1998).

"[a] trial court clearly may exercise its discretion in imposing sanctions. In this case, however, the trial court, by excluding the foregoing testimony, engaged in judicial overkill... A trial court should only exclude witnesses under the most compelling of circumstances. This is particularly so when the exclusion would be of a party's most important witness.

* * *

'Although a trial court has broad discretion regarding the admissibility of rebuttal testimony, it abuses that discretion when it limits non-cumulative rebuttal that goes to the heart of the principal defense.' 708 So. 2d at 672; *see also* Castillo v. Bush, 902 So. 2d 317, 324 (Fla. 5th DCA 2005)." Griever, supra, at Page 671.

So where does all this leave a trial judge with respect to the parameters of the Court's ability to enforce pretrial orders? The answer lies in the admonitions of Binger. The Court must ask whether the nondisclosure prejudices the objecting party, whether there is a means of curing any prejudice either by virtue of the prior knowledge of the objecting party or by some means short of the ultimate sanction of not allowing the witness to testify. These questions must be answered in the context of the extent of culpability of the party accused of noncompliance and the effect of that noncompliance on the orderly trial of the case. There is no bright line rule to guide a trial judge. Application of the principals in Binger combined with a healthy helping of common sense allows a trial judge to insist upon compliance with pretrial orders while at the same time avoiding prejudice to either side.

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.

Phillips Point

West Palm Beach

probate litigation securities & investment losses

5 6 1 - 6 5 5 - 1 5 5 6

referral fees

pankauski

LAW FIRM
P. L. L. C.



*** Ad Rates ***

CLASSIFIED ADVERTISING RATES:
TO PLACE AN AD: 1) Please fax all ads to 561/687-9007 by the 1st of the month for the following month's publication. 2) Upon receipt you will be notified of cost. 3) Send payment by the 1st of the month. 4) Cost: 50 words or less \$50, 50-75 words \$65, up to 75 words \$75. 5) Members receive 3 months free advertising/year (excluding professional announcements). Ads will only be re-run by re-faxing ad to 561/687-9007. Web-site advertising is also available for a cost of \$40 for a two week run. Payment must be received prior to publication and renewable only upon receipt of next payment.

The Palm Beach County Bar Association, its officers, directors, and staff do not endorse any product or service advertised.

POSITIONS AVAILABLE:

PRIORITY STAFFING SOLUTIONS-

We provide Experienced Legal Secretaries, Paralegals & Receptionists for temporary and permanent placements. Owner, Legal Assistant with over 20 years exp. In WPB- qualified to fill your position with candidates experienced in your particular field of law. (561) 222-7717, fax (561) 746-5433
Prioritystaf@msn.com.

AV-RATED STUART FIRM seeks a qualified, motivated attorney with 1-2 years experience or equivalent education in real estate or business organizations and agreements. The candidate must have a strong academic background. We offer a competitive salary with an excellent benefit package. The firm is located in Martin County, which offers an excellent quality of life and Florida's best public school system. Please forward resume and law school transcripts to Maryellen Castellano, HR Director, at mcastellano@foxwackeen.com or fax to 772.220.1489.

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.

GREGORY TENDRICH, Esq.- Former Series 7 licensed Vice President & Asst. General Counsel to regional (JW Genesis Securities, Inc.) & national (First Union Securities, Inc. & Wachovia Securities, Inc.) NYSE/NASD brokerage firms, current NASD Arbitrator and Florida Supreme Court Certified County Court Mediator, is available to mediate all securities, investment-related, business and commercial disputes. Mr. Tendrich also accepts referrals and is available to co-counsel and/or provide trial consultation & assistance in securities & investment-related cases (stocks, bonds, annuities, mutual funds); prudent investor cases, as well as, state, federal and SRO regulatory enforcement matters. Please call 561-417-8777 or visit our website www.yourstocklawyer.com or email the firm at 10drich@bellsouth.net.

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: Criminal Defense Attorney. Over 50 jury trials. Former assistant public defender experience in felony, misdemeanors, juvenile, and appeals. Federal and State cases. Private investigator services included. Director, Palm Beach Association Criminal Defense Lawyers. Young Lawyers Section, PBCBA. 1610 Southern Blvd. WPB, FL 33406. www.wgtlaw.com (561-686-6886).

MICHAEL J. MCHALE: Board Certified Admiralty and Maritime Lawyer. All maritime and admiralty matters in State and Federal Court including personal injury, seizures of vessels, limitation of liability, purchase and sale of boats, cruise ships injuries, longshore claims, and BUIs. (561) 835-3660, admar1@earthlink.net and www.admiraltyatt.com.

KEVAN BOYLES: Contributing Fellow – National Network of Estate Planning Attorneys. Probate; Guardianship (Minors); Special Needs and Protective Trusts; Estate Planning (Financial Retirement, Business Succession, Charitable, Medical, Disability, Legacy and Gift); Estate and Gift Tax Returns. 350 Royal Palm Way, Ste. 405, Palm Beach, FL 33480; (561) 833-2472.

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 PGA Blvd., Ste. 970, Palm Beach Gardens, FL 33410, Telephone: (561) 622-9353 Email: nadelgrp@bellsouth.net.

RICHARD HUIJBER: Former Immigration Attorney-Advisor to the Miami Immigration Court and the Board of Immigration Appeals. Mr. Hujber has 10 years experience, exclusively in immigration law. He and his staff speak Spanish, Hungarian, and Portuguese fluently. The office accepts ALL types of immigration matters. 980 N. Federal Hwy. Suite 306, Boca Raton, Florida, 33432. Tel: (561) 417-VISA (8472); Fax: (561) 417-2575; Richardhujber@yahoo.com.

GUARDIANSHIPS: Establishment and maintenance of guardianships for property of minors as a result of personal injury settlements, including approval of settlements. Thomas R. Baker, III, 270 South Central Blvd., Suite 203, Jupiter, FL 33458; (561) 744-0802.

OFFICE SPACE:

LAW OFFICE SPACE CASE REFERRAL AVAILABLE- Centrepark Corporate Park off Australian Avenue. Law library, Conference room, Kitchen, Copy machine, Parking. Excellent location, close to airport, downtown West Palm Beach and Courthouse. Call (561) 471-4900.

LAW OFFICES- Space available for lease in prime Boca Raton location-receptionist, phones, Internet access, and conference room. Contact Ellyn at 561-392-5606.

Bulletin Board

OFFICE SPACE TO SHARE:

Immediate occupancy for solo attorney w/ secretarial, conference room, facsimile, copier, telephone, covered parking. In Forum. Call (561) 684-8900.

JUPITER BRANCH OFFICE: Need a North County presence? Share an office at Jupiter Gardens (South Central Blvd.). Copier, reception area, kitchen, conference room also available. Call Tom Baker (561) 744-0802.

BOCA RATON- 1 or 2 offices with secretarial space in Class A building on Glades Road next to/east of Turnpike. Receptionist, DSL internet access, conference rooms, etc. \$750 or \$1,000 a month, depending on office. Call Robin at Kogan & DiSalvo, P.A. (561) 477-9000.

OFFICE BUILDING for lease or sale. 3,600 sq. ft. plus 2 car garage with storage area above which can be converted to 3 offices or apartment. Fully furnished. Computer network wired, phone system, fax, copy machine. Move in and start practicing. Downtown close to courthouse. Call 659-7300 for more info.

HEARSAY

Jones, Foster, Johnston & Stubbs, P.A. announces the 2006 issue of Law & Politics Magazine Florida Super Lawyers named ten Jones Foster attorneys "Florida Super Lawyers" as follows: **Larry B. Alexander, David E. Bowers, Margaret L. Cooper, Scott G. Hawkins, Thornton M. Henry, Harry A. Johnston II, Peter A. Sachs, John S. Trimper, H. Adams Weaver. Sidney A. Stubbs, Jr.**, was in The Top 10 "Florida Super Lawyers," as the "3rd Point Getter."

James W. Beasley, Jr., the senior partner of the West Palm Beach law firm of Beasley Hauser Kramer Leonard & Galardi, P.A. was named in Florida Super Lawyers® 2006 listing as one of the top business litigation attorneys in the State of Florida. The firm also announces that Judy Hyman has joined as a member of the firm. Hyman concentrates her practice on complex commercial litigation and appeals in state and federal courts.

Robin Roshkind, of Robin Roshkind, P.A. announces the addition of two litigators to the downtown West Palm Beach divorce practice. **Tami Augen** and **Catherine Eaton** have become Associates of the Firm as Marital and Family Law Litigators. They join Senior Litigator Maria Patullo, who has been with the firm since 2002, and is the firm's expert on drafting pre-nuptial agreements.



W. JAY HUNSTON, JR. Mediator/Arbitrator

- J.D. Stetson Univ. College of Law (1976)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2003)
- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)

- Florida Certified:
Circuit Civil Mediator (1991-Present)
Family Mediator (1998-Present)
- NASD Approved Mediator
- Qualified Florida Arbitrator
- Admitted to Practice in Florida, Montana, Colorado, and Ohio
- Hourly and Per Diem Rates Available upon Request

Since 1/1/01, limiting his practice to all forms of effective dispute resolution, including pre-suit and Court-ordered mediation, arbitration, conciliation, special master proceedings, and private judging.

W. Jay Hunston, Jr., P.A.
P.O. Box 508, Stuart, FL 34995
(772) 223-5503; Fax: (772) 223-4092
(800) 771-7780; Fax: (866) 748-6786
Email: wjh@hunstonadr.com
website: <http://www.hunstonadr.com>



Movie tickets make great gifts for teachers, clients and staff!

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

*Muvico Theater - \$7.00 each
(\$8.50 at box office)

*Regal Theaters \$7.00 each
(\$8.50 at box office)

NEW Cobb Theatres \$6.50 each
(\$7.75 at the box office)

Come by the office and pick up your tickets today (**payment only by check or credit card**). Tickets will only be FedEx'd (not mailed) if member provides us with a FedEx number. **PRICES ARE SUBJECT TO CHANGE**


SCHWARZBERG
SPECTOR DUKE SCHULZ & ROGERS
ATTORNEYS AT LAW

Proudly welcomes the following attorneys to our firm:

Arlene K. Kline



Ms. Kline, formerly with Proskauer Rose, joins the firm's Employment Law Group as Of Counsel. She focuses her practice on litigation and

counseling in labor and employment matters and provisions of the ADA. For nearly a decade, she's handled both state and federal appeals, including a precedent-setting ADA matter in the U.S. Court of Appeals for the 11th Circuit, whose ruling was adopted by the U.S. Supreme Court. Ms. Kline also handles litigation regarding unfair competition and trade secrets. She is admitted to practice in Florida, before the U.S. District Courts for the Southern and Middle Districts of Florida, the 11th Circuit and the U.S. Supreme Court.

E-mail:
akline@schwarzberglaw.com

Kerry A. Raleigh



Ms. Raleigh, formerly with Sachs Sax Klein, joins the firm's Employment Law Group. She focuses her practice on employment law counseling

and litigation and complex commercial litigation. Over the last 8 years, her practice has included Title VII, ADA, the Age Discrimination in Employment Act, the Family and Medical Leave Act, the Florida Civil Rights Act, the Fair Labor Standards Act, covenants not to compete, severance agreements, and other workplace matters. She consults with a variety of corporate clients on employment-related issues. She is admitted to practice in Ohio and Florida, in the U.S. District Courts for the Southern and Middle Districts of Florida and Ohio.

E-mail:
kraleigh@schwarzberglaw.com

Venus A. Zilieris



Ms. Zilieris, formerly with Mager Law Group, focuses her practice on complex commercial litigation, insurance coverage disputes and

employment law. Her practice includes prosecuting and defending a wide variety of contract, corporate, real estate, health care and business tort actions. Ms. Zilieris formerly defended medical malpractice and long-term care claims, locally and nationally. She is a graduate Magna Cum Laude from Nova Southeastern University and was a certified intern with the Attorney General's Office, where she argued before the Third District Court of Appeal. She is admitted to practice in Florida.

E-mail:
vzilieris@schwarzberglaw.com

Joining our firm's other attorneys:

Steven L. Schwarzberg

David I. Spector
Christopher S. Duke

Timothy W. Schulz
Lorraine O. Rogers

Larry A. Strauss
Scott W. Atherton


SCHWARZBERG
SPECTOR DUKE SCHULZ & ROGERS
ATTORNEYS AT LAW

EXPERIENCED ■ INNOVATIVE ■ STRATEGIC

Esperanté Building
222 Lakeview Avenue, Suite 210
West Palm Beach, FL 33401
Phone: (561) 659-3300 Fax: (561) 659-1911
www.schwarzberglaw.com

CALENDAR

September 2006

Monday, September 4
Court Holiday – Labor Day

Wednesday, September 6,
12 noon
**North County Section
Board of Directors Meeting**
Offices of McHale
and Slavin

Thursday, September 7,
3:30 p.m.
**Appellate Practice
Committee**
Fourth DCA

Thursday, September 7,
5:30 p.m.
**Young Lawyers Section
Happy Hour**
ER Bradley's

**Register for Bar Events Online
at www.palmbeachbar.org**

Friday, September 8, 8:30 a.m.
**Alternative Dispute
Resolution Committee
Meeting**
Bar Association Office

Tuesday, September 12,
12 noon
**Young Lawyers Section
Board Meeting**
Bar Association Office

Wednesday, September 13,
12 noon
FAWL Luncheon
Contact Kim Daniel at
fawl@adelphia.net

Friday September 15,
12 noon
Cunningham Bar Meeting
(Law Library)

Tuesday, September 19,
12 noon
**Historical Committee
Meeting**
Bar Association Office

Wednesday, September 20,
12 noon
**YLS "Lunch with the
Legends" Featuring
Chris Searcey**
Bar Association Office

Wednesday, September 20,
12:15 p.m.
**Juvenile Practice
Committee Meeting**
Judicial Dining Room
PB County Courthouse

Wednesday, September 20,
5:00 p.m.
Legal Aid Board Meeting
Bar Association Office

Thursday, September 21,
11:30 a.m.
**Legal Aid Expulsion
Seminar**
Bar Association Office

Friday, September 22,
12 noon
**Federal Bar Association
Meeting**
The Colony Hotel

Thursday, September 21,
6:00 p.m.
Barrister Bartender Bash
Contact Susan Maynor at
(561) 999-9490

Thursday, September 28,
5:30 p.m.
Board of Directors Meeting
Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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

PRESORT STD
US POSTAGE
PAID
WEST PALM BCH FL
PERMIT NO. 66

PAST PRESIDENTS...

M.D. CARMICHAEL*
RICHARD P. ROBBINS*
L.R. BAKER*
HARRY A. JOHNSTON*
GEORGE W. COLEMAN*
H.C. FISHER****
MARSHALL B. WOOD*
E. HARRIS DREW***
B.F. PATY*
JOSEPH S. WHITE*
HENRY P. LILJENTHAL*
MANLEY P. CALDWELL*
WILBUR E. COOK*
W. MURRAY HAMNER*
RICHARD PRESCOTT*
RUSSELL MORROW*
CULVER SMITH*
RAYMOND ALLEY*

C.Y. BYRD*
WILLARD UTLEY*
C.H. ERNEST*
PAUL W. POTTER*
WAREING T. MILLER*
CHARLES B. FULTON*****
J. LEO CHAPMAN*
ELWYN L. MIDDLETON*
H. ELMO ROBINSON*
J. STOCKTON BRYAN, JR.
HAROLD G. MAASS
ROBERT F. CROMWELL
CHARLES H. WARWICK III
PHILLIP D. ANDERSON
FREDERICK C. PRIOR
JAMES C. DOWNEY*
WILLIAM A. FOSTER
ALAN F. BRACKETT*
ROBERT D. TYLANDER*
ROBERT MCK FOSTER*
JOHN M. FARRELL

H. LAURENCE COOPER, JR.
JOHN R. DAY
JOHN L. BURNS
HARRY JOHNSTON II
GAVIN LETTS*
JAMES S. ROBINSON
CHARLES H. DAMSEL, JR.
EDWARD LEWIS
RAYMOND ROYCE
PETER VAN ANDEL
LARRY KLEIN
THEODORE BABBITT
JOHN FLANIGAN
SIDNEY A. STUBBS, JR.
JOSEPH J. REITER**
JOHN B. MCCRACKEN
DAVID L. ROTH
D. CULVER SMITH III
TIMOTHY W. GASKILL
ARTHUR G. WROBLE
GUY C. HILL

PATRICK J. CASEY
JAMES G. PRESSLY, JR.
PATRICK C. MASSA
STEVEN A. STINSON
CARL M. MATHISON, JR.
ROBERT V. ROMANI*
MICHAEL P. WALSH
JULIEANN ALLISON
MICHAEL A. VISCOMI
CAROL McLEAN BREWER
JERALD S. BEER
JOHN G. WHITE III
MICHAEL T. KRANZ
EDWARD DOWNEY
SCOTT G. HAWKINS
AMY L. SMITH
GREGORY W. COLEMAN
LISA S. SMALL
STANLEY D. KLETT, JR.
THEODORE J. LEOPOLD

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