



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

[www.palmbeachbar.org](http://www.palmbeachbar.org)

February 2007



## U.S. Supreme Court Clerk to Speak February 13

Major General William K. Suter, USA (Ret.), Clerk of the U.S. Supreme Court will be the Association's guest speaker on February 13. This meeting, being co-sponsored by the Federal Bar Association, will begin with a buffet lunch at 11:45 and will be held at the Crowne Plaza Hotel in West Palm Beach. Bill Suter has been the Clerk of the U.S. Supreme Court since 1991 and is the nineteenth person to hold that position. Previously he was a career Army Judge Advocate and retired as a Major General. He served in numerous positions of responsibility around the world, including Appellate Judge, Deputy Staff Judge Advocate of the U. S. Army Vietnam, Staff Judge Advocate of the 101st Airborne Division, Commandant of the JAG School, and the Assistant Judge Advocate General of the Army. His military awards include the Distinguished Service Medal, the Bronze Star Medal, and the Parachutist Badge.

He is a graduate of Trinity University in San Antonio, Texas, and the Tulane University School of Law in New Orleans, Louisiana. He attended Trinity on a basketball scholarship and Tulane on an academic scholarship. He was on the Tulane Law Review and was elected to the Order of the Coif. He is a graduate of the Judge Advocate General's School Graduate Course, the Command and General Staff College, and the Industrial College of the Armed Forces.

Reservations for this meeting are required and can be made on the Bar's website at [www.palmbeachbar.org/register.php](http://www.palmbeachbar.org/register.php). Cost to attend the luncheon will be \$20 per PBCBA/Federal Bar members; \$35 non-members; Judges Complimentary.

## Mark your calendar for upcoming Membership Meetings

### North County Section Dinner and Casino Night

February 8, 5:30 - 8:30 p.m., Bonnette Hunt Club

### Membership Luncheon with guest speaker U.S. Supreme Court Clerk William Suter

February 13, 11:45 a.m. - 1:00 p.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. - 1:00 p.m.  
Delray Beach Country Club

### Membership Luncheon with Guest Speaker Richard Lapchick, Human Rights Activist, Director, UCF's DeVos Sport Business Management Program

Co-Hosted with FAWL and Malcolm Cunningham Bar Association  
April 19, 11:45 - 1:00  
Marriott West Palm Beach

### 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. - 1:00 p.m.

### North County Section Annual Dinner

May 10, 5:30 p.m.  
Ruth's Chris in North Palm Beach

### Annual Installation Banquet at the Breakers

Saturday, June 16, 7:00 p.m.  
The Breakers Hotel in Palm Beach

## Contributions sought for 2007 law week judicial reception

The Law Week Committee is beginning its efforts to request contributions from law firms to underwrite the cost of the annual judicial reception honoring the local judiciary to be held on April 25, 2007. Sponsors will be recognized on the invitation, in the Bar Bulletin and on a sign at the reception.

Those interested in making contributions should send a check no later than March 1 to the Palm Beach County Bar Association, ATT: Patience Burns, 1601 Belvedere Road, Ste. 302E, WPB, FL 33406. Sponsorships have been set as follows: \$200 for firms with 1-2 attorneys; \$350 for firms with 3-10 attorneys; and \$500 for firms with 11 or more attorneys.

## Investiture Ceremonies Scheduled for New Judges

The investiture ceremonies scheduled to date for our newest judges have been scheduled as follows. All Bar members are cordially invited to attend:

Robin Rosenberg	February 2, 4:00 p.m.	Courtroom 11A
David French	February 16, 4:00 p.m.	Courtroom 11A
Ted Booras	February 21, 4:00 p.m.	Courtroom 11A
Frank Castor	March 2, 4:00 p.m.	Courtroom 11A

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# THE BULLETIN

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

## LETTERS TO THE EDITOR

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



Send letters to:  
EDITOR Bar Bulletin  
Palm Beach County Bar Association  
1601 Belvedere Road, #302E  
West Palm Beach, FL 33406

## The gift of books

It's normally children who get all excited over gifts, but when attorneys from our Lawyers for Literacy Committee donated brand new books to the West Jupiter Community Group, it was the teacher who could not sit still! The much needed books will help the children continue with their DEAR (Drop Everything And Read) program.



Children from the West Jupiter Community Group were all smiles over their new books, which were recently donated by our Lawyers for Literacy Committee.

Pictured from left to right: (Back Row)

Edna, Executive Director of the school; attorneys Ken Bonenberger, and Glory Ross. (Middle Row, Left to Right: )

Brooke DeChellis, Head Champs Teacher for the school; and Cindy Spall, Lawyers for Literacy Chairperson.

# Sherry L. Hyman, Esquire

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## President's Message



### Courage

*By Manuel Farach, President*

Courage often comes in large doses. Joseph Welch, counsel to the Army during the McCarthy hearings, almost singlehandedly launched the demise of McCarthyism when he publicly rebuked Sen. Joseph McCarthy. His admonishment of "Have you no sense of decency, sir? At long last, have you left no sense of decency?" was uttered at the risk of his own career and reputation. Those in the audience that day, and those watching on television, stood and cheered when Welch refused to allow McCarthy to wrongly destroy the life of yet another person. Joseph Welch's actions are typical; lawyers exhibit a tendency to stand up for what is right and against what is wrong. Our profession does not suffer from a lack of courage in large doses.

But courage also comes in small doses, and it is the small doses of which our profession is sometimes lacking. Courage comes in small doses by saying "no" to the client who is more concerned with revenge than resolving a dispute. Or by refusing to respond in kind when we are unprofessionally and improperly attacked. All of us know that doing the right thing comes at a cost, and that there is no applause from the gallery and no cameras to record our courage in these private situations. It may seem odd at first, but these small doses are the best examples of courage precisely because they go unnoticed. These actions are courageous because they are both right and uncelebrated.

Not all of us get the chance to demonstrate our mettle under fire to an entire nation. Instead we get something more significant, a chance to do a greater good by being courageous in small doses. Our clients probably do not recall Joseph Welch and the Army-McCarthy hearings and they may not appreciate one of the greatest examples of courageous lawyering in recent memory. But our conduct in private situations demonstrates to all our character, including whether we are truly courageous at all times, or just publicly. Small acts of courage, multiplied by the number of times all of us are faced with difficult choices, yield us a result that is no less impressive than that realized by Joseph Welch. And it is these small doses of courage that we should admire every bit as much as we admire the large doses.

## Board of Directors Meeting Attendance

	July Retreat	Aug	Sept	Oct	Nov	Dec
Farach	x	x	x	x	x	x
Sasser	x	x	x	x	x	x
Poulton	x	x	x	x	x	x
Suskauer	x		x	x	x	x
Murray	x	x	x	x	x	x
Bowden		x	x	x	x	x
Schuler	x	x			x	x
Napoleone	x	x	x	x	x	x
Pineiro	x	x		x	x	x
Pressly	x	x	x	x	x	x
Isaacs	x		x	x		x

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## YLS to Host Blood Drive

The Palm Beach County Bar Association's Young Lawyers Section will host a Blood Drive in honor of Nicole Guari. Nicole's husband Jason is the incoming president of the Young Lawyers Section and is organizing the event. The Blood Drive will be held at the Palm Beach County Bar Offices located at 1601 Belvedere Road at the Crowne Plaza Hotel in West Palm Beach on February 22, 2007, from 8:30 a.m. - 2:30 p.m. "Earlier last

year, Nicole was just two months pregnant with our second child. It wasn't until then – during routine blood work – that we learned she had Acute Promyelocytic Leukemia (APL). The news was just devastating," said Jason Guari.

The Young Lawyers Section has partnered up with Florida's Blood Centers and the Leukemia & Lymphoma Society to help raise awareness in the community of the importance of donating blood. Their

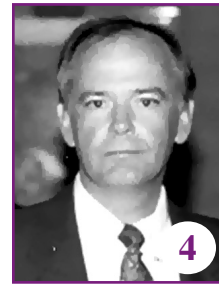
goal is to obtain 100 blood donors. The PBCBA office at 1601 Belvedere Road, Suite 302 will be open for refreshments for those donating during the drive. Come give the gift of life by donating blood. To make an appointment, call Lynne Poirier at the Bar office at 687-2800. Everyone who gives will be eligible for a raffle prize.



## 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 10



## Minutes of the Junior Bar Section July 6, 1962

Of the 139th regular meeting of the Junior Bar Section of the Palm Beach County Bar Association held on Friday, July 6, 1962 at 12:15 P.M. at the Town House Hotel, Vice President Gavin G.K. Letts presiding in the absence of the President, forty-four members and guests were present.

The Minutes of the previous meeting were read and approved.

Jack Dodd was introduced as the guest of Jack Call; Ed Rampell was introduced as the guest of Judge Paul Douglas; John Dell and Ray Kinney were the guests of Ward Wagner; and Al Zalla introduced his "sister Eileen".

Phil Smith was proposed for membership by Jim Stewart and he was accepted into membership in the Association.

A Motion was made and passed that the party committee be authorized to expend up to \$5.00 per person for the annual Summer Party.

Bob Tylander was introduced as the guest speaker. He spent considerable time explaining that the nature of his talk was not about blondes in red dresses, telephones and tables in restaurants, pneumatic message tubes, Paris, or the activities of Doyle Rogers in West Berlin. Having finished his explanation of what his talk would not be about, Bob proceeded to give an extremely interesting resume of his trip to Russia, the satellite countries, and his return to the protection of the American Flag at the Berlin border.

There being no further business, the meeting was duly adjourned.

Respectfully submitted,  
JAMES S. ROBINSON  
Secretary

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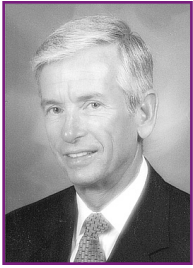
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### Limitation On Experts' Testimony

by Ted Babbitt

In Linn v. Fossum, 31 Fla. L. Weekly D741 (Nov. 3, 2006), the Supreme Court of Florida was faced with the issue as to the extent to which an expert can testify on direct examination that the expert relied on consultation with colleagues or other experts in forming the expert's opinion. The case came up for review as a result of a conflict between the underlying First District Court of Appeal's decision in Linn v. Fossum, 894 So. 2d 974 (Fla. 1st DCA 2004) and the case of Schwarz v. State, 695 So.2d 452 (Fla. 4th DCA 1997).

The Linn case arose out of a medical malpractice action brought on behalf of a plaintiff who alleged that her surgeon accidentally cut her ureter. The defense expert testified on direct examination that she believed the defendant doctor met the prevailing professional standard of care, because she had had a conference with several other urologists whom she regarded as representatives of the general urologic community who, when presented the facts, hypothetically agreed that the doctor had met the standard of care. She also testified that she had presented the same facts to physicians at the University of Missouri with the same result. The trial court permitted the testimony to go in over an objection that the testimony constituted hearsay and the use of the witness as a conduit for hearsay from other physicians.

After the resulting defense verdict, the trial court denied a motion for new trial and was affirmed by the First District.

In the Schwarz case, supra, a forensic pathologist testified on direct examination that he had consulted with several other physicians in forming his opinion about the cause of death of the decedent. The Fourth District reversed on the basis that such testimony impermissibly bolstered the expert's opinion.

Experts, unlike lay witnesses, can rely on "facts or data" that are not admissible in evidence to support their opinions under Fla. Stat. 90.704 so long

as the facts or data are of a type reasonably relied upon by experts to support their opinion.

In Linn, supra, at 743, the Supreme Court draws the line on what an expert may use as the basis for his or her opinion.

"Usually, experts can testify that they formed their opinions in reliance on sources that contain inadmissible information without also conveying the substance of the inadmissible information. However, when the sources are the expert witness's colleagues who have responded to a case-specific inquiry by the expert, source and substance are blended. Informing the jury that the expert formed his or her opinion from consultations of this nature indicates a group consensus based on hearsay that would not be conveyed by testimony that the expert relied on records, tests, or reports from the patient or other medical providers directly involved in the diagnosis or treatment of the patient.

Further, opinion testimony by consensus is essentially immune to challenge. The opposing party is unable to cross-examine the nontestifying experts who participated in the consultation. Moreover, there is no way for the trial court to assess whether the consulting expert, upon whom the testifying expert relied on in whole or in part, is herself qualified or had a proper foundation upon which to base an opinion. For example, did the testifying expert provide the expert or experts with all the pertinent facts and records? Also, there are no clear limits on how far consultations could extend. Would an expert be able to solicit opinions over the internet? Would the battle of the experts become a battle over how many other experts were consulted?"

The Supreme Court concluded that permitting an expert to testify about what other witnesses have said allows the

*Continued on page 10*

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## Fourth DCA Breakfast



The Appellate Practice Committee recently hosted a breakfast at the Fourth DCA. Pictured above are Judge Matthew Stevenson, Rick Ford, Committee Chair Kara Rockenbach, Judge Gary Farmer, Manny Farach and Terry Resk.



Robin Bresky, Marie Calla  
and Julia Luyster



Kara Rockenbach and Manny Farach recognized Debbie Picklesimer on her retirement from the Fourth DCA as Chief Deputy Clerk. Debbie graduated from high school on a Friday and started working the following Monday and stayed for 34 years.



Michael Winston, Judge George  
Shahood and Donna Krusbe



Rick Kupfer and  
Lynn Waxman



Jack Aiello,  
Kara Rockenbach  
and Judge  
Robert Gross

## Holiday Party Highlights

More than 300 members attended our annual holiday party at BallenIsles Country Club in Palm Beach Gardens. The evening included food, drinks, music and silent and live auction.



North County Section Board Members Tulio Suarez and Ryon McCabe. Ryon served as chairperson for the auction and was instrumental in securing so many of the gifts, including a week's vacation in North Carolina. Thank you Ryon for a job well done.

**Thank you to our sponsors:**  
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Marc Dobin, Jay and Jane Hunston



Judge Jeffrey Colbath and his wife Maryann



Jamie and Scott Murray



Marcia Albrecht shows the diamond palm tree necklace to Danet Figg



(Above:) Andrew Pineiro, North County Section President; Ryon McCabe, North County Section Secretary and BallenIsles Chairperson; Manny Farach, President. (not pictured: Grier Pressly, Young Lawyers President)

Thanks to our North County and Young Lawyers Sections, we were able to raise more than \$13,000 for local charities during our holiday party at BallenIsles Country Club.

The North County Section used some of their money to host a party for more than 125 abused and neglected children in the Guardian Ad Litem program. In addition, the section will provide five, \$1,000 college scholarships to students attending the North County campus of Palm Beach Community College this coming fall.

The Young Lawyers Section purchased gifts for children who were not part of the Toys for Tots Program. They also plan on sending several students from Palm Beach Public School to Washington, D.C. for their annual safety patrol trip.



Judges Martin Colin, Peter Blanc and Jorge Labarga



John Howe and Jody Barnett

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### Lawrence Moncrief Recognized As Pro Bono Attorney of the Month

The Fifteenth Circuit Pro Bono Committee is pleased to announce this month's Pro Bono Attorney of the Month, **LAWRENCE MONCRIEF**. Larry, practiced twenty-three years as a corporate attorney retiring in 1993 from H.K. Porter Company, Inc., as Vice President and General Counsel. Prior to his legal career Larry was a structural engineer for 20 years. Since late 2005 Larry has been an invaluable resource to the Legal Aid Society. He began coming in to the offices as a volunteer intake attorney. During this time the Legal Aid Society was experiencing an unprecedented increase in calls regarding Social Security denial of benefits. Many of the clients simply needed assistance in filling out paperwork; others needed representation at the appeals stage. The demand for services far outweighed what the Legal Aid Society could supply. Larry stepped forward and offered to learn about Social Security and assist with this crisis. Larry worked with Legal Aid staff and attorneys to learn this area of the law. Larry then began to meet exclusively with clients who had Social Security issues. He has assisted many clients in filling out forms and represented several at the appellate level. With the support of his wife of fifty-seven years Betty, Larry has provided over 100 hours of his time to assisting the needy in Palm Beach County. For his exceptional efforts, Larry is recognized as this month's Pro Bono Attorney of the Month.

### Pro Bono Attorneys Who Closed Cases in December 2006

Sara Alijewicz  
Michelle S. Bertolini  
Patricia L. Boychuk  
John L. Bryan, Jr.  
Maxine Cheesman  
Eric C. Cheshire  
Gabriel Estradella  
Tara A. Finnigan  
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Judith Ann Just  
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Lawrence Moncrief  
Colleen N. Nelson  
Andrea Reid  
Gerald F. Richman  
Cara Sansonia  
Jeff D. Vastola  
Gary Walk  
Richard H. Willits  
Thomas R. Woolsey

Total Number of Hours: 213.90

### Legal Aid's 4th Annual Holiday Bookfest

On December 1, the doors of Barnes and Noble at City Place opened to welcome over 75 members of the Palm Beach Chapter of the Florida Association of Women Lawyers and their friends who were busy gathering gifts for the Legal Aid Society of Palm Beach County's silent auction to be held on Saturday evening, May 12, 2006 as part of the 19th Annual Pro Bono Recognition Evening. Guests purchased and donated over 132 books and gifts for the Pro Bono Night Silent Auction and raised over \$1,000 for the event. The event was chaired by Michelle Suskauer and a wonderful continental breakfast and luncheon were provided courtesy of Richman, Greer, Weil, Brumbaugh, Mirabito & Christensen and the Palm Beach County Chapter of the Florida Association of Women Lawyers.



Jill Weiss and Samantha Feuer



### North County plans for Casino Night and BBQ

The North County Section will host its annual barbeque at the Bonnette Hunt Club in Palm Beach Gardens. Make plans to attend the dinner, which is planned from 5:30 p.m. to 8:30 p.m. on Thursday, February 8 and will include casino games and an all you can eat barbeque buffet dinner. The cost is just \$35.00 for NCS members and their spouses; \$40.00 for non-members and judges are welcome as our guests. You can register on line at [www.palmbeachbar.org](http://www.palmbeachbar.org).

Sponsors for the evening are: Hands on Healing; LexisNexis; MetLife; Rock Legal Services & Investigations; Wachovia Bank, and Visual Evidence.

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## Board of Governors Meeting Summary

At its December 8 meeting in Key Biscayne, The Florida Bar Board of Governors:

- Approved a Rules Committee recommendation to join the Supreme Court's Commission on Professionalism in asking the court to withdraw the commission's request for a Bar rule change that would allow judges to impose up to a \$500 fine and order attendance at a professionalism course for lawyers who show unprofessional conduct in court.
- Rejected a recommendation from the Special Committee on Website Advertising on how attorney Web sites would be regulated by Bar advertising rules. But board members appeared close to an agreement pending drafting an additional comment to the special committee's proposed rule and answers to some technical questions.
- Heard a report on the successful campaign to defeat the "J.A.I.L.4Judges" constitutional amendment initiative in South Dakota, which could have stripped immunity from judges – and other public officials as well as jurors – in some situations.

A similar initiative has been launched in Florida.

- Renewed several legislative positions from the 2004-06 biennium and adopted two new positions – opposing the indiscriminate shackling of juveniles when they appear in criminal cases and supporting a student loan repayment program for state government and legal aid attorneys.
- Heard a report from the Communications Committee that some Bar disciplinary records could be posted online by summer. A final report on how that will be accomplished could be ready by the Board's January 26 meeting.
- Appointed former Bar President Miles McGrane, who is completing the unexpired term of a member who resigned, and former Bar President Terry Russell to six-year terms on the Judicial Qualifications Commission.

*If you have any questions about this report or any other Florida Bar matter, please contact one of the four circuit representatives: Lisa Small, Scott Hawkins, Jay White or Greg Coleman.*

## Bar Seeks Nominees for Professionalism Awards

For the eighth year, the Palm Beach County Bar Association will be presenting the Annual Professionalism Awards to be given at the Professionalism Seminar which it sponsors every year. This year's Professionalism Seminar is presently scheduled for March 30, 2007 at the Crowne Plaza Hotel. While the Professionalism Awards will be given at that time the nomination process for these awards is now. There will be three awards this year: individual lawyer award; law firm award and Judicial award.

Past winners of the law firm award include: Craig S. Bernard, Inns of Court; Jones, Foster, Johnston & Stubbs; Law Week Committee; FAWL; Jani Mauer & Nova Law School; Carlton Fields; the Legal Aid Society of Palm Beach County and the State Attorneys Office. Past winners of the individual/judicial awards are: Jack Ackerman, Douglas Duncan, Judge Walter N. Colbath, Jr., D. Culver "Skip" Smith III, Judge Edward Rodgers, Judge Peter Blanc, Sidney A. Stubbs, Jr. David Ackerman.

Judicial Award Winners: Judge Lucy Chernow Brown and Judge Ronald Alvarez. Application forms can be found on the Bar's homepage, [www.palmbeachbar.org](http://www.palmbeachbar.org). Deadline to submit nominees is February 15.

## 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.

## Circuit Court Report CIVIL DIVISIONS • November 2006

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	04/07	04/07	03/07	1285
B	06/07	03/07	01/07	1232
D	09/07	06/07	02/07	1521
E	04/07	02/07	02/07	1588
F	02/07	02/07	03/07	1260
G	07/07	07/07	02/07	1084
H	08/07	08/07	01/07	1365
I	04/07	04/07	02/07	1270
J	04/07	04/07	02/07	1436
N	06/07	06/07	04/07	1508
O	07/07	04/07	02/07	1430

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 12/01/06.

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## Welcome New Members!

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

**HAL B. ANDERSON** – University of Florida, 1995; Associate in the Shavitz Law Group, P.A. in Boca Raton, Florida.

**ROBERT H. FRIEDMAN** – Brooklyn, NY; Harvard Law School, 1998; Associate in Gunster, Yoakley & Stewart, P.A. in West Palm Beach.

**LINDSAY KENNEY** – Nova Southeastern University, 2006; Associate in Timothy H. Kenney, P.A. in West Palm Beach.

**GREG LEFKOWITZ** – Hartford, CT; University of Florida; Associate in Akerman Senterfitt in West Palm Beach.

**LISA A. MCNELIS** – Pittsburgh, PA; Nova Southeastern, 1984; Partner in Roselli & McNelis, P.A. in Boca Raton.

**TERRI MEYERS** – New York; Nova Southeastern, 1990; Partner in Kluger, Peretz, Kaplan & Berlin PL in Boca Raton.

**WELCOME**

**BRAD MILHAUSER** – Great Neck, NY; St. Thomas University, 2006; Associate in Redgrave & Rosenthal in Boca Raton.



**KIM NGOC PHAN** – West Palm Beach; Florida State College of Law, 2006; Associate in Beasley Hauser Kramer Leonard & Galardi, PA in West Palm Beach.

**EDUARDO QUINONES** – Puerto Rico; University of Florida, 2006; Associate with Akerman Senterfitt in West Palm Beach.

**CHRISTINE N. SENNE** – Melbourne, FL; Florida State University, 2006; Associate with Edwards Angell Palmer & Dodge, LLP. in West Palm Beach.

**ALBERT VITTO** – Mission Viejo, CA; Nova Southeastern University, 2006; Associate with Saraga & Lipshy, P.A. in Delray Beach.



**ALANA ZORRILLA** – Hinsdale, IL; University of Georgia, 2006; Associate in Carlton Fields, P.A. in West Palm Beach.

## Common Law Bad Faith

*from page 5*

presentation of otherwise inadmissible hearsay merely because the expert claims to have relied upon it in forming his or her opinion. In addition, the admission of such evidence under Fla. Stat. 90.403 permits the introduction of testimony, the probative value of which is substantially outweighed by the danger of unfair prejudice.

At Page 743, the Court concludes as follows:

“We conclude that referring to consultations with other experts creates the danger of bolstering the credibility of the testifying expert’s opinion without providing the opposing party the ability to effectively cross-examine the expert as to the basis for the opinion. Allowing the expert to testify on direct examination that he or she relied on consultations with other experts creates ‘too much of a possibility of an inference being drawn that these experts agreed’ with the testifying expert. *Schwarz*, 695 So. 2d at 455. We therefore hold as a matter of law that under the Florida Evidence Code an expert is not permitted to testify on direct examination that the expert relied on consultations with colleagues or other experts in reaching his or her opinion.”

This opinion breaks the tie between the First and Fourth District on this subject and makes it clear that no expert can testify as to inadmissible hearsay with respect to others’ opinions as part of the testifying expert’s direct examination.

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## Photo Answers:

*From Page 4*

1. Michael Brown
2. Diane Kirigin
3. Bill Bone
4. Terry Watterson
5. Ted Leopold

## Is There A Good Faith Requirement for the Filing of a Non-Consumer Chapter 7 Bankruptcy?

By: Alan R. Crane, Furr & Cohen, P.A.

Two recent opinions rendered by the United States District Court for the Southern District of Florida have held that a good faith standard does not exist for Chapter 7 bankruptcy debtors whose debts are primarily non-consumer ("non-consumer debtors"). Although the Eleventh Circuit Court of Appeals has not issued an opinion on this issue, various circuit courts from around the country have come to different results on the issue of whether there is a good faith standard for a Chapter 7 bankruptcy filing. It is important to note that as a result of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), these recent opinions only apply to non-consumer Chapter 7 bankruptcies. Under BAPCPA, Congress amended the bankruptcy laws to require the court to consider whether a debtor filed a petition in bad faith when determining whether a Chapter 7 consumer case should be dismissed for abuse of the bankruptcy system.

Section 707 of the Bankruptcy Code authorizes the filing of a motion to dismiss a bankruptcy. Section 707 is divided into two basic sections. Section 707(a) applies in all Chapter 7 bankruptcies and allows for dismissal based upon cause. Although "cause" is not a defined term, the section lists several non exclusive examples of cause, e.g., failing to remit the filing fee. Several circuit courts have found that the term "cause" implicitly includes a good faith requirement for the filing of any bankruptcy. Section 707(b) of the Bankruptcy Code only applies to consumer debtors. Pursuant to Section 707(b), a bankruptcy can be dismissed if the bankruptcy filing is an abuse of the bankruptcy system, including that the bankruptcy was filed in bad faith.

In three pre-BAPCPA cases, Judge Steven H. Friedman held that a non-consumer debtor could seek protection under chapter 7 of the bankruptcy code regardless of whether the bankruptcy was filed in good faith. Since these were all non-consumer cases, the creditors filed their motions to dismiss pursuant to 11 U.S.C. §707(a) and alleged that the term "cause" implicitly included a good faith requirement. See, *In re RIS Investment Group, Inc.*, 298 B.R. 848 (Bankr.S.D.Fla. 2003)(Corporate debtor); *In re Farkas*, 343 B.R. 336 (Bankr. S.D. Fla.

2006)(Individual non-consumer debtor); and *In re Isham*, 2006 WL 1431401 (Bankr. S.D. Fla. 2006) (Individual non-consumer debtor). In each of these cases, Judge Friedman rejected the creditors arguments and concluded that non-consumer debtors who are willing to surrender their nonexempt assets are entitled to file for Chapter 7 protection, regardless of the motive for the filing. Judge Friedman was recently affirmed by United States District Court Judge Alberto Jordan in *In re Farkas*, Case #06-80544-CIV-JORDAN and *In re Isham*, Case #06-80433-CIV-JORDAN & 06-80434-CIV-JORDAN (CONSOLIDATED).

In Judge Jordan's affirming opinions, Judge Jordan questioned whether his decisions would give bankruptcy courts any guidance on similar motions in cases filed post-BAPCPA. However, Judge Jordan's opinion should be persuasive and applicable in post-BAPCPA non-consumer cases. In fact, there is now a stronger argument that the "cause" requirement

under the post-BAPCPA section 707(a) does not include a good faith analysis, because if Congress wanted there to be a good faith analysis they could have specifically said so just like they did for consumer cases under Section 707(b). Said another way, if Congress wanted to require all cases to have a good faith requirement, Congress could have easily added the new requirement to 707(a) rather than just 707(b). Accordingly, in post-BAPCPA non-consumer cases, there continues to be a strong argument that there is not a good faith requirement.

The term "consumer debt" is defined as debt incurred by an individual primarily for a personal, family, or household purpose.

In pre-BAPCPA bankruptcies, Section 707(b) only allowed for dismissal upon the showing that the bankruptcy was a substantial abuse of the bankruptcy system. Post-BAPCPA, the term "substantial" was eliminated and the bad faith basis constituting grounds for dismissal was added.

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by Mark Powers

## Lesson Three

In an ideal world all referral sources would be created equal. They would send you nothing but the best and brightest clients and cases – a steady stream of high quality work and loyal clients.

Wouldn't life be grand? Unfortunately, in the real world, there is a great deal of difference in the quality of your referral sources and the sooner that you realize the difference, the better. Your existing group of referral sources is far from equal in terms of the amount and quality of work that they refer to you. In this lesson we are going to help you tell the difference by introducing the concept of your "Top Twenty" influencers.

### Your Top 20 Influencers

Your Top Twenty Influencers are those referral sources that send you your highest quality business. They send you the kind of matters you specialize in, and the kind of clients you most enjoy. These are the influencers who consistently send quality "A" client referrals your way.

Most attorneys who have practiced for five or more years will have a small group of referrers that fit into this category – even if they don't yet have twenty of them.

This is an extremely important group of names to identify for yourself. These referral sources have probably kept you in business over the years because their good referrals have resulted in money in your pocket. Often, very substantial money. Calculated, or uncalculated, you have done something to impress this group and they demonstrate their trust and confidence in your abilities by continually sending you new clients.

### Why Do They Refer To You?

As you work through the attached Top Twenty exercise think about what you have done to cultivate the relationship you have with each referral source. Do they like you because you have a lot in common as people? Do they send you work because of your quick turn-around time? Do you possess a certain expertise that they have come to rely upon? Does your work make them look good to their superiors, their clients or end-users?

This group of referral sources often has the potential to send you even more business than they send you now. As you start studying them and paying attention to their referral habits, it may become clear that they have more work to give out. They could be spreading it around to other attorneys.

### Acknowledgment

Never let this group of people, whether they are business professionals, fellow attorneys or your next door neighbor, wonder whether or not their referrals came to you. Always express your appreciation as quickly as you can – even if the client did not ultimately engage your services. You want to continually reinforce the fact that they thought of you so that the next time they have an opportunity to refer someone – your name is the first one on their mind. Immediately let them know that you appreciate their ongoing faith in you. Send them thank you notes and take them out to lunch every so often to thank them for their "trust and confidence" in you. Their referrals have added substantially to your income. Never take them for granted.

## Cultivation

Invite them to join you in non-work related activities to further the bonds between you. Have fun with them if it is appropriate for the relationship. Include them in important practice changes and decisions – solicit their feedback. Keep them up-to-date on any new directions or services you incorporate.

### The Next Step

Make a list of your Top 20 Influencers in the left-hand column under "Name." Next, list the type of influencer that the person is, such as "attorney" or "CPA" under "type." Then, in the columns marked "high rapport" and "low rapport," put a checkmark in the appropriate box. In the far right column, list the amount of money that their referrals amount to on a yearly basis. When this is complete you will have a matrix that clearly illustrates your most valuable relationships. Upon further study you might notice you have the basis for a marketing plan. Here's why: those influencers with whom you have high rapport should be put into a maintenance rotation – that is, you should contact them at a comfortable rate for the relationship. For some relationships, this will be two or three times a month, for others, once or twice a quarter. For those relationships marked "low rapport," cultivate them a little more aggressively, based on their receptivity, their availability and their ability to send you more work. Use this matrix to plan your marketing activities, follow your plan faithfully, and you should see a surge of new business.

### Top 20 Influencers

Name	Type	High Rapport	Low Rapport	Annual \$ Worth (to your practice)

## In Lesson 4

The first three issues of this course have focused on who to talk to in your word-of-mouth marketing campaign. In the next issue we'll discuss strategic conversations – what to say when you are face-to-face with them.

Mark Powers is the President of Atticus, Inc. and a regular contributor to the Bulletin. Mark co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and founded Rainmakers™ An Ethical Approach to Marketing for Solo and Small Firm Practitioners™ and founded Rainmakers™, a simple process for attorneys at all levels to stay focused on marketing, creating fresh ideas, and on-going accountability to marketing. To learn more about Atticus or Rainmakers™, please visit the Atticus website at [www.atticusonline.com](http://www.atticusonline.com) or contact the Atticus office at 352-383-0490.

## Bulletin Board

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### PROFESSIONAL ANNOUNCEMENTS:

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

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

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

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

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

**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, admarl@earthlink.net and www.admiraltyatty.com.

**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.

**RANDY ZELDIN, Esq.,** is pleased to accept referrals of Fair Labor Standard Act (overtime wage) cases. Mr. Zeldin also continues to practice workers' compensation and Social Security Disability. Co-counsel arrangements. Telephone WPB 732-8004; Boca 613-0101.

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

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## Bulletin Board

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### HEARSAY

Fowler White Boggs Banker is pleased to announce that **Francis Geary, Jr.** and **Robert Geisler** have been named as *Top Lawyers* in the 2007 Annual Edition of *The South Florida Legal Guide*.

**Eric Romano** received his board certification from the Florida Bar in Criminal Trial Law. Mr. Romano is an associate in the law firm of Romano, Eriksen & Cronin.



Rosenthal & Levy announced that partner **Steven Simon**, has been named to the United for Families Board of Directors.

The Shavitz Law Group, P.A. is pleased to announce that attorney **Hal Anderson** has joined the firm to further its extensive practice in handling claims and collective actions related to unpaid overtime, unpaid minimum wages, and related employment litigation.

**Alan Ciklin** and **Bruce Alexander** in the law firm of Casey Ciklin Lubitz Martens & O'Connell have been selected for inclusion in the 2007 edition of *The Best Lawyers in America*.

**Michael Lampert, Esq.** of the Law Offices of Michael Lampert, P.A. has been selected as a *Florida Super Lawyer* in the Tax Field. Mr. Lampert is also listed in the Florida edition of *Who's Who in American Law* and the Florida edition of *Law and Leading Attorneys*.

Akerman Senterfitt is pleased to announce that **Eric A. Gordon** has become a Shareholder of the Firm. Mr. Gordon will continue to specialize in labor and employment law representing employers in both litigation and litigation prevention.

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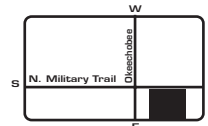
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# CALENDAR

## February 2007

Friday, February 2, 8:00 - noon

### **PBCBA Construction Law Seminar**

Bar Association Office

Friday, February 2, 4:00 p.m.

### **Investiture Ceremony for Judge Robin Rosenberg**

Courtroom 11A, Palm Beach County Courthouse

Tuesday, February 6, 12 noon

### **South County Bar Meeting**

Muvico Theatre

Call (561) 482-3838

Tuesday, February 6, 5:30 - 7:30 p.m.

### **FAWL Judicial Reception**

Norton Gallery of Art

\$55 Members;

\$65 non-FAWL Members

RSVP to FAWL@adelphia.net

Wednesday, February 7, 12 noon

### **North County Section**

### **Board Meeting**

Thursday, February 8, 5:30 p.m.

### **North County Section**

### **BBQ Casino Night**

Bonnette Hunt Club

Friday, February 9, 8:30 a.m.

### **ADR Committee Meeting**

Bar Association Office

Monday, February 12, 8 - 5

### **PBCBA ADR Seminar**

Bar Association Office

Tuesday, February 13, 11:45 - 1:00

### **Membership Luncheon**

**Speaker: US Supreme Court**

**Clerk William Suter**

Crowne Plaza Hotel

Wednesday, February 14, 12 noon

### **Young Lawyers Section**

### **Executive Committee Meeting**

Bar Association Office

Thursday, February 15, 12 noon

### **Membership Committee Meeting**

Bar Association Office

Friday, February 16, 12:00 noon

### **Cunningham Bar Association**

### **Annual Scholarship Luncheon**

Palm Beach County

Convention Center

Friday, February 16, 4:00 pm.

### **Investiture Ceremony for**

**Judge David French**

Courtroom 11A, Palm Beach

County Courthouse

Monday, February 19

### **Court Holiday - President's Day**

Tuesday, February 20, 12 noon

### **Family Law Practice**

### **Committee Meeting**

Law Library, PB Cty Courthouse

Tuesday, February 20, 12 noon

### **Historical Committee Meeting**

Bar Association Office

Tuesday, February 20, 5:00 p.m.

### **Legal Aid Board Meeting**

Bar Association Office

Wednesday, February 21, 12 noon

### **FAWL Luncheon**

RSVP to FAWL@adelphia.net

Wednesday, February 21, 4:00 p.m.

### **Investiture Ceremony for**

**Judge Ted Booras**

Courtroom 11A, Palm Beach

County Courthouse

Thursday, February 22,

8:30 a.m.- 2:30 p.m.

### **YLS Blood Drive**

Bar Association Office

Thursday, February 22, 12 noon

### **Lawyers for Literacy**

### **Committee Meeting**

Bar Association Office

Thursday, February 22, 5:00 p.m.

### **Board of Directors Meeting**

Bar Association Office

Thursday, February 22, 6:00 p.m.

### **Palm Beach County Trial**

### **Lawyers Meeting**

Contact Kathy Baloga 471-2807

Friday, February 23, 8 - 5

### **PBCBA Bankruptcy**

### **Law Seminar**

Bar Association Office

Monday, February 26,

11:30 - 2:30 p.m.

### **PBCBA "Ethics in Family Law**

### **Litigation" Seminar**

Bar Association Office

Tuesday, February 27, 12 noon

### **Professionalism**

### **Committee Meeting**

Bar Association Office

Wednesday, February 28,

11:15 - 5:00

### **Solo Practitioners Luncheon**

### **and Seminar**

Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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