

# PALM BEACH COUNTY BAR ASSOCIATION

# BULLE

www.palmbeachbar.org

July/August 2007

# End of the Summer Cocktail Reception -August 28



Please join the Bar for its 5th Annual Cocktail Reception & Spelling Bee

on Tuesday, August 28 from 5:30 p.m. to 7:30 p.m. at Bear Lakes Country Club in West Palm Beach. The cost is \$20.00 for members and complimentary for judges. One hundred percent of the proceeds will benefit local literacy programs, which are sponsored through our Lawyers for Literacy Committee. Please RSVP on line at www.palmbeachbar.org. We look forward to seeing you there!

## Mark your calendar for upcoming **Membership Meetings**

#### **Summer Membership Happy Hour**

Tuesday, August 28, 5:30 - 7:00 p.m. Bear Lakes Country Club, West Palm Beach

#### Joint Luncheon with FAWL

Wednesday, September 19, 12 - 1:00 p.m. Speaker: Author Lauren Rikleen National Croquet Center, West Palm Beach

#### Bench Bar Conference (New and Improved!) October 12

Palm Beach County Convention Center

#### **Annual Holiday Party with North County & Young Lawyers Section**

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

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

Wednesday, December 12, 12 noon The Cohen Pavilion at the Kravis Center

#### Joint Luncheon with **South County Bar Association**

Guest Speaker: FL Bar President Frank Angones Wednesday, March 5, 12 noon Delray Beach Golf Club

# Board sworn in during 85th Installation Banquet



# Meet your 2007-2008 Board of Directors

(Pictured Front Row left to right:) John Howe, Director; Michelle Suskauer, Director; Florida Supreme Court Justice Barbara Pariente administered the oath of office; Meenu Sasser, President; and Richard Schuler, President-Elect. (Back Row left to right:) Bryan Poulton, Director; Adam Doner, North County Section President; Adam Rabin, Director; Manuel Farach, Immediate Past President; Michael Napoleone, Director; Jason Guari, Young Lawyers Section President and Wade Bowden, Director.

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# BULLETIN

#### PALM BEACH COUNTY BAR ASSOCIATION

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

#### LETTERS TO THE EDITOR

The Palm Beach County Bar Association Bulletin welcomes your comments on topics relating to the law, the legal profession, the Palm Beach County

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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

# Letters to the Editor

June 1, 2007

Re: Professionalism

Dear Patience,

Irwin Gilbert's article in the June Bar Bulletin prompts me to share some thoughts on providing case law to the court and opposing counsel. As a trial judge, I am often presented with case law at the end of a contested hearing or non-jury trial and am always puzzled by such conduct. I often ask the attorneys in that situation what they think a court of appeal would say if they walked into an oral argument and presented case authority at such a late juncture. It doesn't take much imagination to answer the question. Why then do attorneys think that such actions are acceptable in the trial court? They must believe that some advantage is gained from such conduct at the trial level. I suggest just the opposite is true.

There may be some short term advantage in procuring an erroneous ruling from the trial judge, but in the long term the lawyer doing so will harm not only this client but perhaps others. It is likely that either opposing counsel or the judge will discover the error. If it is the judge, remember we recall two types of attorneys with clarity; those that give us the case contrary to their position and those that don't! You want to be remembered as the former.

As trial judges we are called upon to handle heavier dockets than our court of appeal colleagues with less help by way of law clerks. We must rule more quickly than a court of appeal, but accuracy is no less important. The trial bar can assist us in this task by presenting their authority in a more timely fashion. At 8:45 hearings highlighted case or statutory law should be presented at the beginning of the hearing and if possible, as Irwin suggested, shared with opposing counsel in advance. If the hearing has been specially set, my personal preference is that all law be highlighted and presented 48 hours in advance.

These simple procedures will allow all participants in the hearing to focus on the real issues involved and will result in more timely and accurate rulings and a better end product from your courts.

Sincerely, Judge Jack H. Cook

Dear Patience,

Please accept my thank you for the Bar's 2007 Judicial Professionalism Award. The clock is beautiful and I will treasure it.

While I am grateful for the award, I am also grateful for my colleagues on the bench and in the bar who strive daily to uphold the high standard of professionalism set by our predecessors such as Culver Smith, Jim Downey, Bob Hewitt and Jim Stewart. I had the honor of appearing in front of all of those judges and while



Professionalism Committee Chair Doug Duncan with Judge Cook

they each had their individual styles, they were all consistent in expecting the best in professionalism from both themselves and the attorneys appearing in their court. It has been a great pleasure to participate in that tradition.

Thanks again for the recognition.

Very truly yours, /s/ Jack H. Cook

# President's Message



By Meenu Sasser, President

In 2007, the Palm Beach County Bar Association is celebrating its 85th Anniversary. Since 1922, the Bar Association has served the legal community and residents of Palm Beach County. In the upcoming year, my goal as President is to expand and continue the tradition of excellence and service by the former presidents of this organization. At this time, I must thank our most recent President, Manny Farach.

Manny took the helm of the Bar last year and under his leadership and with the assistance of our Board, the Bar had a great year. My most sincere appreciation goes to Manny for all his dedication and service. Further, in working with Manny, I learned what it is to be a true leader and serve this organization.

During 2007 – 2008, my goals for the Bar are to expand programs, and continue service to our members and the community. The theme for the upcoming year is: **Tradition and Education**. Some of the highlights of the upcoming year include:

- New and improved Bench Bar Conference on October 12, 2007
- Work on the 1916 Historic Courtroom, including fundraising and development of exhibits on the legal history of Palm Beach County
- Speech by US Supreme Court Justice Clarence Thomas on December 12, 2007
- Expanded and improved CLE Programs, including a Trial Superstar CLE Program in March, 2008

It is with great energy and enthusiasm that I take on this role, and I look forward to continuing the tradition and excellence of this Bar Association.



Ansca Building 7593 Boynton Beach Blvd. Suite 280 Boynton Beach, FL 33437

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Mr. Goldenfarb is a frequent lecturer on behalf of the American Heart Association regarding issues of liability relating to AEDs. Referral fees paid in accordance with Florida Bar rules.

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### Who Are They?

Can anyone identify the attorneys in this picture? It was taken sometime during the 80's and was the 20th Anniversary of the Annual Blood & Gut Football Game. Send an email to pburns@palmbeachbar.org



### Thank you to 100% Club Members

The Palm Beach County Bar Association has created a "100 Club". The 100% Club is a special category of membership that demonstrates a commitment to the legal profession and our community from law firms, law departments and legal organizations with more than three attorneys who enroll 100% of their attorneys as members of the Palm Beach County Bar Association. The 100 Club listing will be published quarterly in the newsletter as well as posted on our website.

**Ackerman Link & Sartory** Adams, Coogler, Watson, Merkel, Barry & Kellner, P.A. Beasley Hauser Kramer Leonard & Galardi, P.A. Christine D. Hanley & Associates, P.A. Corbett and White, P.A. Devore & Devore, P.A. Fisher & Bendeck, P.A. Gaunt, Pratt, Radford & Methe, P.A. Gelfand & Arpe, P.A. Glen J. Torcivia and Associates, P.A. Glickman, Witters and Marell, P.A. Jones, Foster, Johnston & Stubbs Kirk Grantham, P.A. Mallory Law Group Page, Mrachek, Fitzgerald & Rose, P.A. Pressly & Pressly, P.A.

Ricci~Leopold, P.A. Richman Greer Weil Brumbaugh Mirabito & Christensen, P.A. Robin Roshkind, P.A. Romano Law Group Schuler, Halvorson & Weisser, P.A. Schwarzberg Spector Duke Schulz & Rogers Scott, Harris, Bryan, Barra & Jorgensen, P.A. Slawson Cunningham Whalen & Gaspari, P.L. Small & Small, P.A. Sorgini & Sorgini, P.A. Stuart R. Manoff & Associates, P.A. The Karp Law Firm Vastola, Schulz & Associates Watterson & Zappolo, P.A. William W. Price, P.A.

Show your firm's support in the Palm Beach County Bar by becoming a member of the 100% Club. It's easy! If you think your firm is eligible, fax a copy of your firm's letterhead and a contact name to (561) 687-9007, Attn: Nancy Reidler and we'll let you know!

# Support our Advertisers.

Mention that you saw their ad in the *Bulletin!* 

# Minutes of the Junior Bar Section of the Palm Beach County Bar Association — June 4, 1965

The 172nd meeting of the Junior Bar Section was held on June 4, 1965 at the Town House Hotel. Thirty members and guests were present. The president recognized the presence of Circuit Judges White, Knott and Hewitt.

Judge White spoke to the members in regard to securing the new District Court in Palm Beach County. He urged the organization to raise funds; secure information as to the needs of the Court; and inventory the Law Library facilities, which would be available to the Court. Judge White stated that the present Police Department and Courtroom Building in the City of West Palm Beach might be available by the fall and further stated that the County had tentatively agreed to expend up to \$10,000 to remodel and refurbish these facilities.

President Lewis requested a volunteer to obtain the floor plans and space requirements of the Court. Hank James indicated that he had lost a case and would be going to Lakeland in the next few days. President Lewis then called upon Palm Beach County Bar Association treasurer, Harry A. Johnston II, who asked for an approximate estimate of the funds required. President Lewis suggested a donation of \$1000 and Mr. Johnston made no further audible comment. After a long pause, President Lewis thanked Treasurer Johnston for his clear statement of policy.

The President announced that the membership would be notified by mail of the upcoming party and urged all members to leave his gratis cocktail party as early as possible and proceed to the main function.

In the absence of a Program Chairman, Angus Campbell, the Secretary presented a film of the 1963 National Football League Highlights.

Respectfully submitted, /s/ Raymond W. Royce, Secretary

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### Free Legal Information provided during Law Week

To all of our members who volunteered during Law Week – we would like to sincerely thank you for your time. Thanks to your support, the Palm Beach County Bar Association was able to provide a valuable community service for hundreds of people through our legal education seminars and programs.

Here are some highlights from the week:



Judge John Phillips presided over a mock trial for 3rd grade students at Palm Beach Gardens Elementary School. The trial was one of 35 programs held for elementary, middle and high school students this year.



Judges Ted Booras, Debra Moses Stephens and Laura Johnson enjoyed lunch together during our Law Day event at the Crowne Plaza Hotel.



Attorney John
Romano was one
of more than 50
members who
took the time to
provide free legal
information to
callers during our
Dial A Lawyer
program.



### **MOVING?**

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



This year's Law Day speaker was legal journalist and former court tv anchor Catherine Crier. Pictured with Crier is Judge Barry Cohen. More than 175 members joined us to hear Crier speak.



People lined up to talk to a lawyer during our "Ask A Lawyer" event at the Palm Beach Mall. Many thanks to Jessica Callow and Matt Thibaut for organizing the day. Pictured from left to right: Andrew Pelino, Maureen Martinez-Schwab, Matthew Thibaut and Kent Frazer.



#### **Need CLE Credit?**

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

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

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# 85th Anniversary Banquet



Jackie Caporino and Jay White



Charles & Angela Miller with Penny & Mitch Beers



John Burns, John Farrell and Bill Foster



Dr. Roger Duncan and Lisa Quarrie



Becky Basil, Jessica Callow and Patricia Christiansen Tom & Meenu Sasser with Patricia & Tim Leonard





Bob & Harreen Bertisch and Judge Peter Blanc



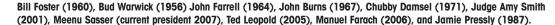
Ron & Rachel Ponzoli, Jennifer & Ryon McCabe and John Whittles



Judge Richard Wennet and Judge Amy Smith



A special cake cutting ceremony was held in honor of our Bar's 85th Anniversary. Past Presidents in attendance were: (pictured front row left to right)



(Back row left to right) Edward Downey (1999), Harry Johnston (1968), John McCracken (1980), Sid Stubbs (1978), Tim



**David Prather and Judge Tom Barkdull** 

For additional banquet pictures, log onto the **Bar's website** www.palmbeachbar.org

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Gaskill (1983), Jay White (1997), Jerry Beer (1996), Mike Kranz (1998), Steve Stinson (1989) and Skip Smith (1982).

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# Personal Injury Corner



# Substitution of a Party Upon Death

by Ted Babbitt

Fla. R. Civ. P. 1.260(a) provides: "If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion may be made by any party or by the successors or representatives from the deceased party. . . Unless the motion for substitution is made within 90 days after the death is suggested upon the record by service of a statement of the fact of the death in the manner provided for the service of the motion, the action shall be dismissed as to the deceased party." (Emphasis supplied.)

The rule seems pretty clear. When a party dies, there has to be some mechanism to make sure that the case doesn't die along with the party or, alternatively, that it just doesn't go on forever because there is no one to be the party to prosecute or defend the action depending upon which of the parties is no longer with us. The rule was not intended to provide a trap for the unwary or a mechanism by which Court can dismiss perfectly valid claims because of the untimely death of a party.

A recent case reminds the Courts of the purpose for the rule and warns counsel to be aware of the necessity for the filing of appropriate motions for substitution. In Metcalfe v. Lee, 952 So. 2d 624 (Fla. 4th DCA 2007), a medical malpractice case took an unexpected turn when the plaintiff died from causes unrelated to the malpractice. One of the defendant's counsel filed a notice of suggestion of death three days after the death. Plaintiff's counsel, well within the ninety-day period, filed a motion for substitution in accordance with the Rule. The motion asked that the decedent's son be the person substituted to pursue the action and advised the Court that proceedings

were underway to have the son appointed as the personal representative of the decedent's estate. A hearing was held pursuant to one of the defendant's motions to dismiss contending that because the ninety-day period referred to in the rule had expired and a party had not yet been substituted, the rule required dismissal.

The creation of a rule of procedure is an intense and laborious process. This writer has previously served on the Rules of Civil Procedure Committee for over 20 years and is very familiar with that process. The Court's have recognized that rules are supposed to be given their plain meaning. Reading the above rule, one would assume that the words "The motion for substitution may be made by any party or by the successors or representatives" means that in this case the plaintiff could make the motion. One would also assume that since the rule says "unless the motion for substitution is made within 90 days.... the action shall be dismissed...." that that requires only that the motion be made and not the actual substitution be accomplished within the ninety-day period. Nevertheless, the trial court reading that same rule concluded that it was necessary under the rule that not only must a personal representative be appointed by the Probate Court in order for the motion to be made but that the motion had to be heard, ruled upon and the party substituted within the 90 days in order to avoid dismissal.

The Fourth District in Metcalfe first discusses who may file the motion. The rule says "any party." The trial court concluded that didn't mean any party, it meant someone who had been appointed by the Probate Court. The District Court stated differently at Page 897:

The rule states, in pertinent part, that '[t]he motion for substitution may be made by any party or by the successors or representatives of the deceased party.' Fla. R. Civ. P. 1.260(a)(1) (emphasis added). The term 'any' means 'one... selected without restriction. MERRIAM-WEBSTER ONLINE, <a href="http://www.m-w.com/dictionary">http://www.m-w.com/dictionary</a>. A 'party' is 'a person... taking one side of a... dispute.' Id. Thus, 'any party' can be a person on one side of a dispute

selected without restriction."

This language seems self-evident. If the Rules Committee and the Supreme Court intended by the passage of Fla. R. Civ. P. 1.260(a) to mean that a personal representative had to be appointed before a motion could be made, they would hardly have used the term "any party." If they had meant such an appointment was necessary, it would have been a rather onerous requirement. When someone dies, it usually is not the first thing on their heirs or relatives' minds to hurry down to the Probate Court and obtain a hearing to get someone appointed to continue civil litigation. It would, in essence, put a ninety-day statute of limitations on the case that the rule clearly never intended.

Having found that the trial court engrafted language in the rule that was not there, the Court next turned to the question of what filing a motion within ninety-days means.

> At Page 628, the Court held: "Having determined that the plaintiff's attorney was authorized to serve and file the motion for substitution, we must now determine if it was timely. The rule has a clear due date: 'Unless the motion for substitution is made within 90 days after the death is suggested upon the record by service of a statement of the fact of the death in the manner provided for the service of the motion, the action shall be dismissed as to the deceased party.' Fla. R. Civ. P. 1.260(a)(1). A notice of hearing must accompany the motion. Id. We also note that the language of the rule does not require that the hearing be held within the aforementioned ninety-day period. A motion under this rule is deemed to be made when filed with the clerk along with the corresponding notice of hearing or when both documents are served within the ninety days. (Citing cases.)

Once again, the language in the rule seems pretty self-evident. Engrafting on the rule a requirement that the ninety-day period in the rule means not only that a motion has to be made but that the actual substitution has to be accomplished would

Continued from page 14

# Legal Aid Supporters Party at Woodstock

The 19th Annual Pro Bono Recognition Evening held on Saturday night, May 12th at the Palm Beach County Convention Center was attended by over 700 of Legal Aid's supporters and raised over \$225,000 to help provide free legal assistance to the disadvantaged children, families and elders in our community.

The annual event was co-chaired by Michelle and Scott Suskauer and Amy and Matt Triggs. A special thank you goes to our Director/ Choreographer, Garry Q. Lewis and the talented students from the Dreyfoos School of the Arts as well as our wonderful master of ceremonies. Our thanks to our generous sponsors and congratulations to all lof the deserving award winners and their families.



Ted and Roslyn Leopold and Ilene and Louis Silber



**Pro Bono Award Winners** 



Judges Barry Cohen and Karen Martin



Matt and Amy Triggs, Bob Bertisch, Michelle and Scott Suskauer



Judge Jeff and Mrs. Winikoff, Larry Bishins and Randee Schatz

### Bar seeking old photos?

The Bar Association's Historical Committee is seeking old photos – either of local attorneys, the old courthouse or anything relating to the history of the practice of law in Palm Beach County. If you or someone you know has some old photos that you could share with us, please send them to Patience Burns at the Bar Office (address on back cover). Please let us know if you need them returned and we will be happy to send it back.



### **Associate Attorney**

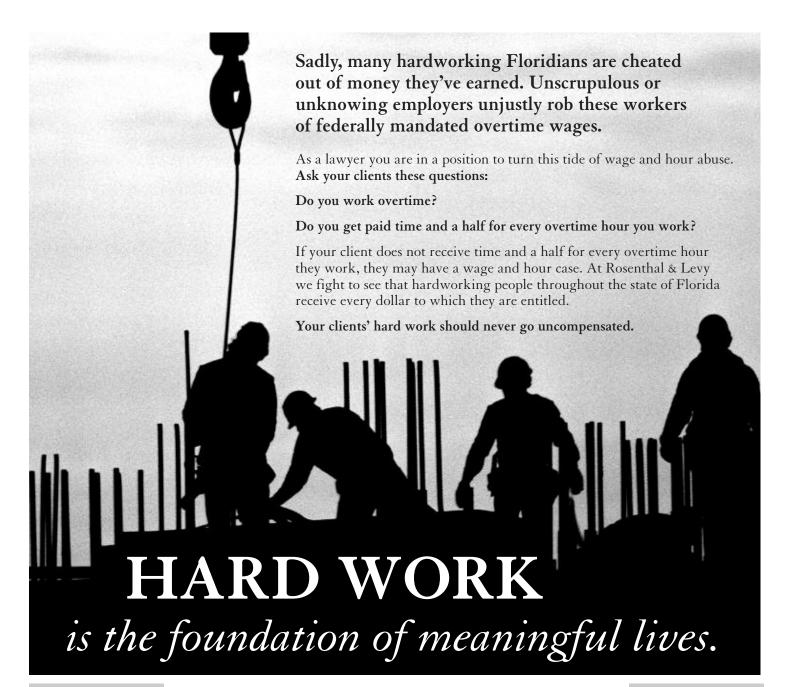
The South Florida Water Management District is currently recruiting for an entry level litigation attorney to directly litigate a variety of cases in Federal, State, and Administrative Courts. This position is also responsible for monitoring and managing cases filed by or against the District, conducting legal research; drafting and analyzing legal pleadings; and representing the District.

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## Young Lawyers Section Summer Happy Hours

The YLS recently held a happy hour in honor of immediate past president Wade Bowden at Island Palm in Palm Beach.



Brian Kennedy, Heath Randoph, Matt Ramenda & Claire Dumas







Grier Pressly presented a chair from Wade's Alma Mater, Georgetown University, as an outgoing president's gift

A happy hour was also recently held in conjunction with the Federal Bar Association at McCarty's in Palm Beach



Bob Gilbert, Tom Dye, Margaret Bichler and Sarah Cortvriend



Scott Murray, Jason Lazarus, Jason Guari and David Prather



The "oldies but goodies" Patience Burns, Bar Association

Executive Director and Bob Bertisch, Legal Aid Executive Director, both have been with their Associations over 26 years.

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Bulletin

## Lawyers v. Judges Softball Game

#### by Dennis Koehler

The LAWYERS' extra-base power- three inside-the-park homers, six triples and four doubles – proved too much for the JUDGES' softball team on April 28 as the LAWYERS' extended their winning streak over the JUDGES to four with a 23-5 win at John Prince Park. The team of distinguished local jurists, led by Judge Mark Eissey, was unable to overcome the absences of Judge Rich Wennet (shoulder injury) and Judge Rich Oftedal, whose extra-base power was sorely missed.

Judge Jon Gerber, who played college baseball at Princeton University, collected two hits and made a highlight reel catch at the left centerfield fence to rob the LAWYERS' Andrew Pelino of extra bases in the second inning. Judge Marty Colin also singled twice. Bailiff Roland Tatum was the JUDGES' hitting star, collecting four singles in five trips. LAWYERS' pitcher Dennis Koehler was able to keep the JUDGES off balance all morning with his wind-aided curve ball.

The LAWYERS' 27-hit attack was led by game MVP and former Palm Beach County Bar Association President Stan "Scott" Klett, who batting last, homered, tripled and singled twice in five at-bats, scoring three times and collecting two RBIs. Scott's young daughter, Scotty, cheered her dad on from the LAWYERS' bench; Scott's softball mates from the early nineties, Bill Pruitt and Tom Spall, were suitably impressed by the reckless abandon with which their old teammates circled the bases.

Leadoff man and Assistant County Attorney Phil Mugavero opened the fame with a line shot to left center field that sailed over Judge Gerber's glove for a game-opening home run. John Olea, filling in at short for the absent Thom Baird, tripled and doubled in five at-bats and sparkled in the field. Rugged Andrew Pelino, batting third, included a triple in his hits and drove in three runs. Dennis Koehler went three for five with a double, triple and two RBIs. Greg Schiller and Kirk Volker, both of the State Attorney's office, went three for five, Greg rifling a solo inside-the-park homer to center in the fifth inning. The veteran Bill Pruitt, returning to LAWYERS softball competition after a 14 year absence, clouted a two-run triple in the first, and RBI single in the third and a sacrifice fly in the fourth, for a team-leading four RBIs. Cleanup hitter Tom Spall tripled and singled in five trips, fielding flawlessly at first base. Left fielder Freddy Rhoades displayed his speed with several outstanding running catchers in left field. And catcher Sara Alijewicz of the Legal Aid Society, although hitless, collected an RBI in the LAWYERS' five-run third, scoring from first on MVP Klett's homer.

Judge Rich Wennet, on injured reserved, spent time on the LAWYERS' bench describing the recent skiing accident in Montana that kept him from displaying his hitting prowess in this annual contest. Members of both team's families cheered their players on, and then joined the LAWYERS and JUDGES immediately afterward at the annual picnic luncheon coordinated by Law Week Committee Member Sara Alijewicz. This annual softball game and the opportunity for camaraderie with our fellow attorneys and judges who enjoy competitive softball is always great fun for everyone involved. As the JUDGES were leaving the field immediately following the game, they were heard to mutter, "Wait 'til next year!"



Judicial team



Players enjoy lunch after the game



Federal Judge Kenneth Marra



Judge Richard Wennet presents the winning trophy to Sara Alijewicz, a member of the Law Week Committee who organized the game



# Pro Bono Corner

### **Pro Bono Attorneys Who Closed Cases** in May and June 2007

Clients met and/or served by the attorneys listed below...........69 Hours of pro bono services by these attorneys......285 Their dedication to the less fortunate in our community ... PRICELESS!

**Richard Abedon** Daniel Bachi **David Begley** Flynn Bertisch **Dennis Boyce** John Cleary **Brett Elam** Leo Fox **Richard Kleid** 

Jonathan Mann **Lawrence Moncrief** Jordan Rappaport **Kimberly Rommel-Enright Jeffrey Rosenthal Elliot Sokoloff Misty Taylor Antoinette Theodossakos** 

**Keith Williams** Jason Lazarus **Richard Willits** Deena McNamara



#### Legal Aid Society of Palm Beach County, Inc.

**423 Fern Street, Suite 200, West Palm Beach, FL 33401**Ph: (561) 655-8944 ● Fax: (561) 655-5269 ● 1-800-403-9353 (South & West County ONLY)

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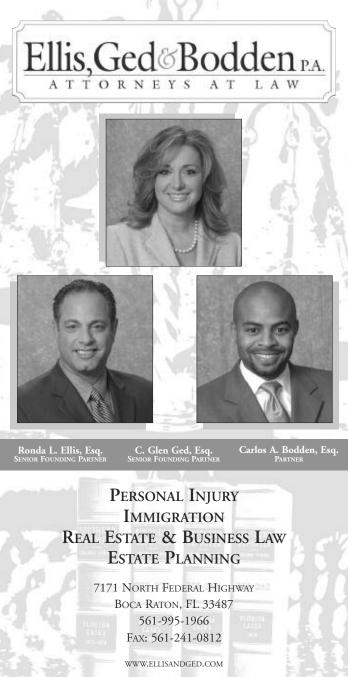


June 19, 2007

Dear Manny, Patience & Members of the Palm Beach County Bar Association:

Thank you so very much for honoring me at the Palm Beach County Bar Association's Annual Installation Banquet on June 16, 2007 with the Palm Beach County Bar Association's Inaugural Member of the Year Award. While all awards and recognitions are wonderful to receive this one is uniquely special as it comes from a group of individuals whom I respect and admire so much. I am truly proud to be part of a bar association that truly believes as Martin Luther King, Jr. stated, "Injustice anywhere is a threat to justice





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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.

Bulletin Page 12

# North County Section Announces Jurist of the Year



The North County Section recently honored Judge Barry Cohen with its 5th Annual Jurist of the Year Award. The award was presented during the section's end of the year dinner at Ruth's Chris Steak House in North Palm Beach.

Pictured with Judge Cohen is Judge Thomas Barkdull, last year's Jurist of the Year winner along with North County Section President Andrew Pineiro. The evening was sponsored by Braman Motorcars, Debra Duran & Associates, Gordon & Doner, Grand Bank & Trust, Ricci Leopold P.A., Thomson-West and Rutherford Mulhall, P.A.



Marty Perry and Manny Farach

# Circuit Court Report CIVIL DIVISIONS • April 2007

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	09/07	09/07	07/07	1382
В	09/07	08/07	06/07	1263
D	05/08	10/07	07/07	1662
$\mathbf{E}$	10/07	07/07	08/07	1669
$\mathbf{F}$	08/07	08/07	10/07	1357
G	12/07	12/07	05/07	1089
H	01/07	01/07	06/07	1433
I	09/07	09/07	07/07	1290
J	10/07	10/07	06/07	1475
N	12/07	12/07	06/07	1477
0	12/07	09/07	07/07	1534

All Civil Division Judges schedule their own Jury and Non-Jury Trials. Pending cases as of 04/09/07.



Judge Roger Colton and Ed Ricci



Judge Jonathan Gerber and Tracy Gerber



Judges Don Hafele and Lucy Brown

Stefanie Shelley with dinner sponsor Debra Duran from Debra Duran & Associates



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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.

LEWIS A. BERNS - Chicago, IL; John Marshall Law School, 1974; Associate with Peterson Bernard in West Palm Beach

NICOLE M. COTTON - Indianapolis; Nova University, 2007; Associate with Richard G. Lubin, P.A. in West Palm Beach

KENNETH A. GORDON - Miami, FL; University of Miami, 1997; Partner with Brinkley, Morgan, Solomon, Tatum, Stanley, Lunny & Crosby LLP in Ft. Lauderdale

**GERALD W. GRITER** - Grand Rapids, MI; University of Michigan, 1979; Associated with Redgrave & Rosenthal, LLP in Boca Raton

GEORGE E. HERBERT, JR. - Lake Charles, LA; New England School of Law, 2005; Associated with Vernis & Bowling in North Palm Beach

#### **LAURIE A. HENRIQUEZ -**

Abington, PA; University of Miami School of Law, 1992; Associate with Sellars, Marion & Bachi in West Palm Beach MARK G. KEEGAN - Boston, MA; University of Miami School of Law, 2001; Associated with Law Offices of Andy M. Custer, P.A. in Lake Worth

MICHAEL METZ - Manhasset; Associate with Richard G. Lubin, P.A in West Palm Beach.

**DANIEL A. NORTON** - Trenton, NJ; Rutgers University, 1992; Associate with Kogan & DiSalvo, P.A. in Boca Raton

**DEMETRIOS PAVLOU** - Seton Hall University, 1993; Associate with Mierzwa & Associates P.A. in Lake Worth

**SANDRA M. POWERY** - Palm Beach County, FL; Nova Southeastern- Shepard Broad Law, 2005; Associate with Cousins Law Firm, P.A.

#### S. JORDAN RAPPAPORT -

Philadelphia, PA; Nova Southeastern University, 2004; Associate with Schwarzberg Spector Duke & Rogers in West Palm Beach



MIREYA L. RIVERA -Honduras; Tulane University Law School, 2005 Cum Laude; Associate with Hodgdon Russ LLP **SCOTT SCHROEDER** - New York; Hofstra University, 1977; Sole Practitioner in Palm Beach Gardens

ROBERTA G. STANLEY - Pittsburgh, PA; Nova Southeastern University, 1983; Partner in Brinkley, Morgan, Solomon, Tatum, Stanley, Lunny & Crosby LLP in Ft. Lauderdale

JOHN C. STRICKROOT - Tripoli, Lybia; University of Miami, 1988; Partner in Shutts & Bowen, LLP in West Palm Beach

MICHAEL W. SWITZER - Grand Rapids, MI; University of Florida, 2003; Associate with Adams, Coogler, Watson, Merkel, Barry, Kellner, P.A in West Palm Beach

#### **CHARLES J. THOMPSON -**

Plantation, FL; University of Florida, 2005; Associate with the Cousins Law Firm, P.A. in West Palm Beach

MEGHAN A. WILSON - Plantation, FL; University of Florida, 2006; Associate with J. Mark Maynor, P.A. in West Palm Beach

MICHAEL E. ZAPIN - Brooklyn, NY; New York Law School, 1991; Sole Practitioner in Boca Raton

### Substitution of a Party Upon Death

#### Continued from page 7

have the bizarre effect of requiring the decedent's family to nominate a representative to continue the lawsuit, go to the Probate Court and obtain a hearing for the purpose of establishing an estate, comply with all notice provisions, have a personal representative appointed, then obtain a hearing time before the trial court and with or without the consent of the defendants convince the trial court that the nominee was the appropriate person to continue the litigation under the Rule. All this within ninety days. Not only would that engraft a ninety-day statute of limitation period on the rule that the rule clearly never intended but it would also make it very difficult, if not impossible, to comply with the rule.

In its opinion, the Fourth District quotes from *Eusepi v. Magruder Eye Inst.*, 937 So. 2d 795, 798 (Fla. 5th DCA 2006) to remind trial courts that rules are there to assist the parties and the Courts in the fair administration of justice, not to present traps and hurdles designed to unfairly penalize litigants in their pursuit of justice.

At Page 629, the Court quotes <u>Eusepi</u>: "the rule, 'is in its present form precisely so that the process of substitution of a new party for a party who dies while litigation is pending will not cause otherwise meritorious actions to

be lost. The rule is supposed to dispel rigidity, create flexibility and be given liberal effect.' *Id.* (citing *New Hampshire Ins. Co. v. Kimbrell*, 343 So. 2d 107 (Fla. 1st DCA 1977). We find this analysis to be persuasive especially in light of the rule's plain language as to when a trial court can dismiss an action-only when there is a failure to make a motion for substitution. Here, because the motion for substitution was timely made, the trial court erred in dismissing the action."

The admonition of the Fourth District was well deserved. Trial courts should not go out of their way to try to make the prosecution or the defense of claims more difficult than it needs to be. Rules are not there to provide obstructions and traps. They are there to facilitate litigation, not curtail it. This opinion should be a reminder to all Courts of that purpose and a caution to counsel that this Rule exists and must be complied with.

NOTE: BECAUSE A NUMBER OF PEOPLE HAVE REQUESTED COPIES OF PAST ARTICLES, A COMPILATION OF THESE ARTICLES IS NOW AVAILABLE TO MEMBERS OF THE PALM BEACH COUNTY BAR ASSOCIATION, FREE OF CHARGE, BY CALLING (561) 684-2500.

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Bulletin

# Bankruptcy

## **Enforcing Domestic Support Obligations in Bankruptcy Court**

By: Marc P. Barmat

In the September, 2006 edition of the Palm Beach County Bar Association Bulletin, I described some of the changes resulting from the October, 2005 enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") and their impact on the family law practitioner. One of the changes described in the article was the apparent authority of a Chapter 7 bankruptcy trustee to liquidate exempt property for the benefit of a domestic support obligation1 ("DSO") creditor. This apparent authority was created by the amendment to 11 U.S.C. § 522(c)(1). Following the September, 2006 publication, four bankruptcy courts have found that the bankruptcy trustee has no such authority.

The four bankruptcy courts which have spoken on the issue unanimously held that the existence of a DSO creditor does not provide for the disallowance of an exemption, rather, it provides that property exempted by the debtor is nonetheless liable for a DSO. Therefore, a trustee may not liquidate exempt property in order to pay a domestic support obligation. See, In re Covington, 2006 WL 2734253 (Bankr. E.D. Cal.); In re Ruppel, 2007 WL 108941 (Bankr. D. Or.); In re Vandeventer, 2007 WL 1175734 (Bankr. C.D. Ill.); In re Quezada, 2007 WL 438258 (Bankr. S.D. Fla.).

Notwithstanding the Chapter 7 bankruptcy trustee's inability to liquidate exempt property for the benefit of a DSO creditor, at least one bankruptcy judge has found that a DSO

creditor can enforce its claim against exempt property in the bankruptcy court. In Quezada, Judge Mark, from the Southern District of Florida, Miami Division, found that although a bankruptcy trustee cannot administer exempt property, the bankruptcy court is not deprived of jurisdiction under 28 U.S.C. §1334(b) if the DSO creditor seeks to enforce its claim against exempt property in the bankruptcy court. Quezada at 4.

Although the four bankruptcy court cases cited above consistently find that a bankruptcy trustee may not liquidate exempt assets in order to enforce a DSO, DSO creditors appear to have a new avenue in enforcing DSO claims by doing so in the bankruptcy court. For instance, a DSO creditor may now be able to force a sale of exempt assets, such as a homestead, in the bankruptcy court to satisfy a DSO rather than relying upon the traditional contempt powers available in state court.

1A domestic support obligation is defined at 11 U.S.C. §101(14A). A domestic support obligation essentially includes a debt in the nature of alimony, maintenance or support owed to or recoverable by a spouse, former spouse, child or governmental unit.

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

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July/August 2007

# For their generous donation of time and service in tabulating the 2007 Judicial Evaluation Results

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Page 16 Bulleti

## Sticklers Unite! Stamp Out Semicolonitis!

Sticklers unite! Insist on good grammar!

We resume our crusade for proper grammar by addressing a malady increasingly infecting our profession: semicolonitis. No, *semicolonitis* has nothing to do with an irritated intestine: it is defined (here) as "promiscuous use of the semicolon." I kid you not; I will explain; stay with me.

The semicolon, invented by the father of modern punctuation, Aldus Manutius the Elder (1449–1515) (look it up), seems to have become the fashionable tool of self-appointed elitist legal practitioners (i.e., show-offs), who inject it into otherwise flowing streams of related thoughts. One cannot deny it; the semicolon means "I'm not quite finished with what I'm trying to say." Often its second cousin, the colon, is called for instead: *One cannot deny it: the semicolon means "I'm not quite finished with what I'm trying to say.*" The semicolon demands a pause, perhaps accompanied by a yawn, whereas the colon says, "Attention! Explanation to follow."

Yes, the semicolon has legitimate uses. It divides independent clauses that are not linked by a coordinating conjunction (and, or, but, yet, so): I arrived home early; no one was there. It may be used to divide independent clauses connected by a conjunctive adverb (however, moreover, therefore, etc.): I arrived home early; however, no one was there. It acts as a "super comma," dividing individually punctuated items in a series: On my vacation I visited Springfield, Illinois; Elk Falls, Iowa; Seneca, Kansas; and St. Louis. (Hey, it's just an example.) Semicolonitis, on the other hand, produces sentences such as: The tort of legal negligence arises when there exists a duty of care arising out of a lawyerclient relationship or other legal basis; a breach of that duty by the failure to exercise reasonable care; and damage proximately resulting from that breach. Replace the semicolons with commas, and the sentence flows better. Better yet, trash the sentence entirely, and permit conciseness to trump verbosity: The tort of legal negligence arises when there exists a duty of care, a breach of that duty, and resulting damage.

Consider the nuances in the examples that follow. First: Judge

Cohen canceled his docket. The Yankees lost to Boston. This could refer to two unrelated events. It merely tells us that two things have happened. Next: Judge Cohen canceled his docket; the Yankees lost to Boston. This suggests that the two events occurred at the same time, although it's possible that Judge Cohen canceled his docket so that he could witness the Yankees-Bosox matchup. Finally: Judge Cohen canceled his docket: the Yankees lost to Boston. This tells us that Judge Cohen canceled his docket because the Yankees lost to the Sox (which, given his endless trumpeting of the Bronx Bombers' alleged virtuosity, would seem advisable).

The danger with the semicolon is its seductiveness: it's beautiful; a comma enhanced with a period; elegant; inviting. For the herd that thinks typing sideways smiley faces is cute, it's downright flirtatious. Semicolonitis strikes writers who feel compelled to demonstrate their sophistication. One cannot be satisfied with just getting to the point – one must wax eloquent. The principal problem with waxing eloquent (other than erroneously believing oneself capable of doing so) is the risk of detouring the reader to a road untraveled.

When tempted by the semicolon's siren song, first try a comma; a colon; a dash; or the unequivocal, efficient period. Let's try that again: *first try a comma, a colon, a dash, or the unequivocal, efficient period.* It says here that the latter more easily enters the reader's mind.

Yes, your author is afflicted with the ARTS virus (Anal-Retentive Twit Syndrome), which while not terminal can be deadly to one's social life. Still: the key to effective communication is to write with one's brain engaged (and, for that matter, ear attuned). Sticklers unite! Stamp out semicolonitis!

The author admiringly acknowledges as sources of information and inspiration for this article the Semicolon Abolition Consortium (yes, I'm kidding), Strunk and White's venerable The Elements of Style, Lynne Truss's wonderful Eats, Shoots and Leaves: The Zero Tolerance Approach to Punctuation, and various sources found simply by Googling "semicolon."



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At its June 1 meeting in Key West, The Florida Bar Board of Governors:

- Heard a report from Supreme Court Justice Raoul Cantero, who is chair of the Supreme Court Commission on Professionalism that the commission and Frank Angones are appointing a committee to explore having required mentoring for new Bar members. Cantero said the commission was impressed with a first-in-the-nation mentoring program created by the State Bar of Georgia.
- Approved the recommendations reported by Marc Jimenez, Chair of the Attorney-Client Task Force, including adopting a five-part five legislative position for The Florida Bar stemming from those recommendations. Those recommendations generally oppose any impingement on the attorney-client relationship or work product protections made by government attorneys as part of investigations.

- Heard board members express reservations about the state's new regional conflict counsel plan, including concerns of whether the program, which begins October 1, is adequately funded and will provide effective representation.
- Heard about final details for placing information about lawyers discipline history for the past 10 years on the Bar's Web site.
- Heard details about how lawyers can add information about themselves and their law firm to their bio page on the Bar's Web site, pursuant to a program put in place by the Communications Committee. The committee is also exploring the possibility of letting lawyers report their pro bono service through the Bar Web site, instead of only on the annual Bar dues statement.
- Approved a rule change to clarify that lawyers cannot belong to a private lawyer referral service unless that service follows all Bar rules. Also

- passed was a new standing board policy to keep judges informed when they make a complaint about a lawyer's conduct to the disciplinary system.
- Rejected a motion to reconsider the board's authorization for the Real Property, Probate and Trust Law Section to oppose changes to a Florida law that limits who can serve as a personal representative for an estate. Still pending at the Legislation Committee is a request from the Out-of-State Practitioners Division for the board to approve as a Bar-wide legislative position the division's position of seeking a change to the law to allow out-of-state Bar members to serve as personal representatives.

If you have any questions or comments, please contact one of your four local delegates to the Board of Governors: David Prather, Scott Hawkins, Greg Coleman or Lisa Small.

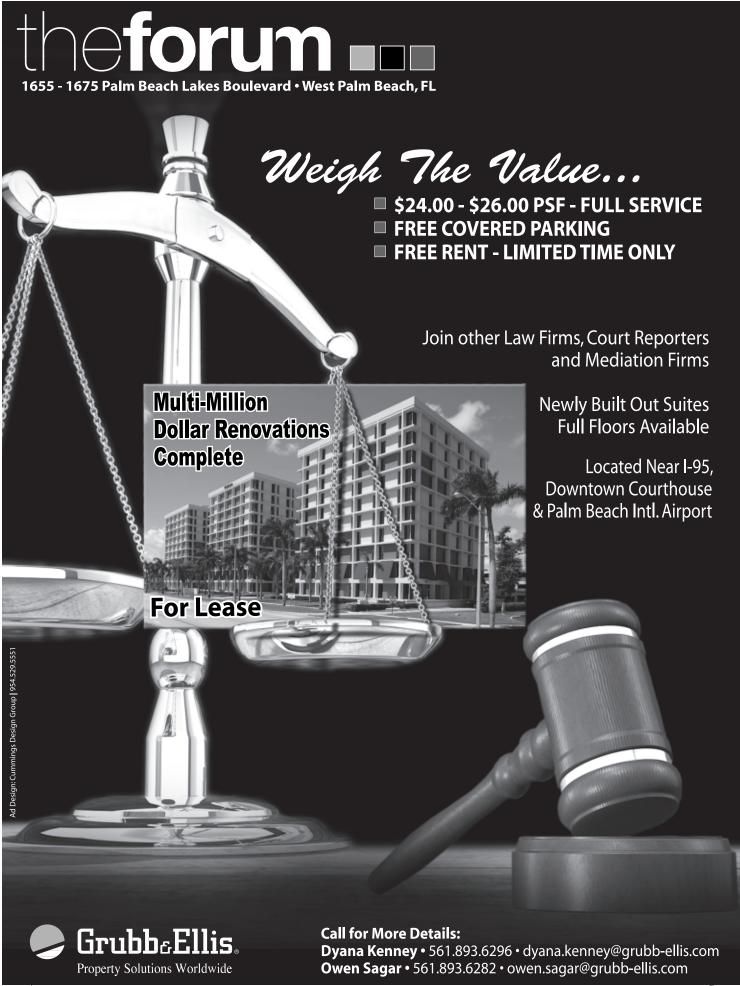
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CHRISTOPHER HOPKINS: Appellate counsel for appeals in state and federal courts. Mr. Hopkins focuses on state appeals, particularly personal injury and malpractice. Cole, Scott & Kissane, P.A., 1645 Palm Beach Lakes Blvd., 2nd Floor, WPB, FL 33401;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

RICHARD D. NADEL: Bankruptcy.
Twenty years experience in the Southern and Middle District. Florida Bar designated 1996. Address: 3300 P.G.A. Blvd., Suite 810, Palm Beach Gardens, FL 33410.
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RICHARD HUJBER: 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.

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## Bulletin Board

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FURNISHED OFFICE WITH OCEAN VIEW FOR RENT: Downtown, walk to the courthouse. Prestigious location. \$600.00 a month. Secretary space available if necessary for \$250.00 a month. Copier and fax rental also available if necessary. Please contact Kim at (561) 820-0010.

FOR SALE: Outstanding law office building with apartment. Featuring 11 parking spaces, large master office, lobby, reception, break room, conference room and 5 additional offices. Located 831 N. Dixie Hwy, Lake Worth – very convenient location. For further info, contact Michael Schelling, Broker/Associate – Wise Buy Realty & Investments. 561.547.6001 or visit wisebuyrealty.com.

#### **AUSTRALIAN AVENUE CLASS "A"**

full floor law office sublease. Immediately available. Luxury finishes with furniture included. Lease expires September 30, 2016. 12,483 SF with 40 covered parking spaces. 21 offices, 3 conference rooms, kitchen, work room, server room, and plenty of workstation open space. Negotiable rent. Please call Mark Pateman of Cushman & Wakefield at 227-2020.

ALL-INCLUSIVE OFFICE SPACE for rent \$850/month September 1, 2007. Free parking, fax, copier, DSL, conference room, cleaning, maintenance, etc. Has a separate secretarial space. All you need is a phone. Know your reasonably priced fixed cost each month. 1/2 mile west of I-95 off Southern Blvd. 1610 Southern Blvd. (561) 686-6886.

OFFICE SPACE AVAILABLE in new AAA office building on PGA Boulevard, with available signage. Includes reception area, copy room, conference room, two secretarial areas, and private offices for 2 attorneys. Adjacent to Gardens Mall. Call Debbie at (561) 832-5500.

#### HEARSAY

Roberts, Reynolds, Bedard & Tuzzio, P.A. announces the firm's Broward County branch office has moved to a new building located at 7501 Wiles Road, Suite 201, Coral Springs, FL 33067 – (954) 656-8388. Please visit our website www.rrbpa.com.



John S. Trimper, a shareholder with the law firm of Jones, Foster, Johnston and Stubbs, P.A., has been appointed Chairman of the Labor and Employment Law

Certification Committee for the Florida Bar.

Rutherford Mulhall, P.A. is pleased to announce that **John R. Banister** has been elected Chair of the Florida Realtor/Attorney Committee and re-elected to the FAR/Bar subcommittee. Also the firm is pleased to announce that **Robert E. Geisler** has joined the firm in the Boca Raton office.

## Bulletin Board

Searcy Denney Scarola Barnhart & Shipley, P.A. announces that senior partner Christian Searcy has been elected Dean of the prestigious 600-member International Academy of Trial Lawyers.



Partner Bruce Alexander of the law firm of Casey Ciklin Lubitz Martens & O'Connell was appointed Chair of the Construction Law Certification Committee for the Florida Bar.

The law firm of Romano, Eriksen & Cronin has changed its name to Romano Law Group. The firm consists of attorneys John F. Romano, Eric Romano, Todd Romano and Maureen Martinez-Schwab. Former partners Mike Eriksen and Dr. Joel Cronin are Of Counsel to the firm.

Meghan Wilson has joined the family law firm of J. Mark Maynor, P.A. as an associate. Wilson will practice in the areas of divorce, child custody and visitation, spousal support, modifications and prenuptial agreements.

John J. Fumero, a shareholder of Lewis, Longman & Walker, P.A., recently became a Board Member of the Forum Club of the Palm Beaches.

G. Mark Shalloway and his father C. Michael Shalloway, of Shalloway & Shalloway, have again been selected by Law & Politics magazine as Super Lawyers in their field for 2007. G. Mark Shalloway was also recognized by the State of Florida Long Term Care Ombudsman Council for his commitment to nursing homes and assisted living facilities.



Rosenthal & Levy, P.A. announces that partner Steven C. Simon has been certified as a member of The Million Dollar Advocates Forum.

Kogan & DiSalvo, P.A.

announces that Joshua A. Blacksten has joined the firm as a new associate. Mr. Blacksten has 5 years experience as a senior felony attorney. The firm also announces that founding partner Theodore L. DiSalvo has become Board Certified in Civil Trial by the Florida Bar.

Barry A. Postman, partner in the law firm of Cole, Scott & Kissane, P.A. has become a Board Certified Civil Trial Lawyer.



Guy C. Icangelo, Jr. has joined the Law Offices of Craig Goldenfarb, P.A. as a senior litigation attorney. Mr. Icangelo will be handling cases involving automobile accidents, medical

malpractice, and nursing home neglect/abuse.

The law firm of Pallo, Marks & Hernandez, P.A. is pleased to announce that Ara R. Gechijian has become a shareholder of the firm.



Philip M. DiComo has become a Shareholder of Haile, Shaw & Pfaffenberger, P.A.

#### **MISCELLANEOUS**

**EXECUTIVE DESK:** Huge unique threesided mahogany finished wooden desk. Original cost \$2,000. Excellent condition. Front is 8' 8" wide X 24" deep, left side is 5' 6" wide X 20" deep, and the right side is 6' wide and 42" deep in the circular part. Photo available via e-mail. Telephone (561) 267-3664



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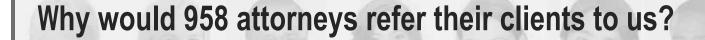
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# CALENDAR

# July/August 2007

Thursday, August 2 8 am - 4:15 pm TFB "Basic Real Estate" Seminar

Bar Association Office

Friday August 3, 11:00am-12:00am PBCBA Committee Chair Meeting Bar Association Office

Tuesday, August 7 – 10 **ABA Midyear Meeting** San Francisco, CA

Tuesday, August 14, 12 noon YLS Executive Committee Meeting
Bar Association Office

Tuesday, August 21, 5:30 pm **Legal Aid Board Meeting** Bar Association Office Wednesday, August 22, 11:00am Small Claims Committee Meeting Bar Association Office

Thursday, August 23, 5:00 pm

PBCBA Board of

Directors' Meeting

Bar Association Office

Thursday, August 23, 5:30 pm PBCTLA Barrister's Bash

Friday, August 24, 11:30 am
North County Section
Board Retreat
The Crab House, Jupiter

Tuesday, August 28, 5:30 pm – 7:30 pm Member Cocktail Reception & Spelling Bee Bear Lakes Country Club, West Palm Beach Thursday, August 30 8 am - 4:35 pm TFB "Basic Tort Litigation" Bar Association Office





### PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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