



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

September 2008



Mark your calendar for upcoming Membership Meetings

Western County Networking Event

September 16, 5:30 – 7:00 p.m.
The Players Club, Wellington

Joint Luncheon with FAWL

September 17, 11:45 – 1:00 p.m.
Marriott West Palm Beach

Speaker: Author Virginia G. Drachman
Enterprising Women: 250 Years of American Business

North County Section Candidate Debate

September 19, 11:30 – 1:00
for State Senate District 25 and Florida House of Representatives District 83
City Club, North Palm Beach

Western County Networking Event

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

Bench Bar Conference

November 7
Palm Beach County Convention Center

Western County Networking Event

November 12th, 5:30pm - 7:00pm
Naylah Mediterranean Grille, Royal Palm Beach

Annual Holiday Party

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

Joint Luncheon with Forum Club

February 3, 2009, 11:30 – 1:00
Kravis Center

Speaker: U.S. Supreme Court Justice Antonin Scalia

This event will be restricted to members only

Joint Luncheon with South County Bar

March 3, 2009, 11:45-1:00 p.m.
Location TBA

Speaker: FL Bar President John G. "Jay" White III

Annual Law Week Judicial Reception

April 22, 2009
The Harriett at City Place

Law Day Luncheon

May 1, 2009
Location TBA



Bar and FAWL to Host September 17 Luncheon

The PBCBA and FAWL will be co-sponsoring a membership luncheon to be held on **Wednesday, September 17** at 11:45 a.m. at the West Palm Beach Marriott. The guest speaker will be author and Virginia G. Drachman who wrote *Enterprising Women: 250 Years of American Business*, published in association with the Schlesinger Library, Radcliffe Institute for Advanced Study, Harvard University. This book, her fourth,

introduces you to Katharine Goddard, owner of a print shop and publisher of the first signed copy of the Declaration of Independence; Madam C. J. Walker, whose hair care products brought her from her slave parents' dilapidated cabin to her own Hudson River estate; and Katharine Graham, publisher of the Pentagon Papers and owner of the Washington Post Company. These are just three of the diverse women whose lives unfold in this engaging history of women entrepreneurs in America from the colonial era to the end of the twentieth century.

Since 2000, Drachman is an Arthur Jr. and Lenore Stern Professor of American History at Tufts University in Medford, Massachusetts. In 1988-90 she served as a Visiting Scholar at Harvard Law School. Cost to attend the luncheon is \$25 for members; \$30 for non-members and you can register at www.palmbeachbar.org.

Candidate Forum Set for September 19

The North County Section will host a luncheon and debate between candidates running for Florida House of Representatives, District 83. Participating candidates will be Incumbent Carl Domino and Rick Ford or Bryan Miller. (contingent upon Democratic primary winner, August 26).

The event will take place for members of the Bar and the public on Friday, September 19 from 11:30 a.m. to 1:00 p.m. at City Club in North Palm Beach.

The cost for lunch is just \$25.00. To RSVP, please register on line no later than 9/17 at www.palmbeachbar.org.

This event is sponsored by the Law Office of Scott B. Smith, P.L., Lawrence P. Buck, P.A., and Preston J. Fields, P.A.

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THE
BULLETIN

**PALM BEACH COUNTY
BAR ASSOCIATION**

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

LETTERS TO THE EDITOR

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

Bar Association or the Bar Bulletin. Letters must be signed, but names will be withheld upon request. The editor reserves right to condense.

Send letters to:
EDITOR Bar Bulletin
Palm Beach County Bar Association
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West Palm Beach, FL 33406



Correction:

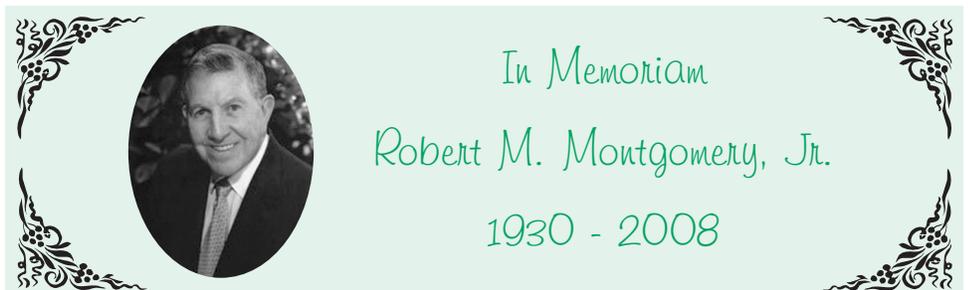
In last month's *Bulletin* article about the annual attorney vs. judges softball game, Jacob Noble was incorrectly identified as a bailiff rather than an attorney.

Bench Bar Conference Scheduled for November 7 at Convention Center

This year's Bench Bar Conference has been scheduled for Friday, November 7 at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms will be mailed to all PBCBA members. Last year, over 1,000 people attended throughout the day. Sponsorship opportunities are available to assist in the underwriting of this year's conference in the following amounts:

\$550 for law firms of 11 or more attorneys;
\$350 for law firms with 3-10 attorneys; and
\$225 for law firms with 1-2 attorneys.

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



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West Palm Beach

President's Message



Thank You, Judge Winikoff

By Richard D. Schuler, President

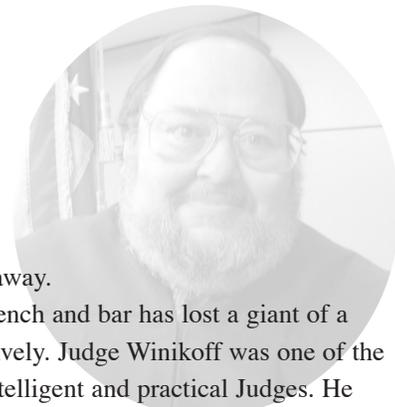
When I first met Judge Winikoff he was running for Judge. Frankly, I didn't think much of his chances – a securities lawyer from Boca with no 'trial' experience. So I told him a joke:

"Judge Winikoff, that has a nice ring to it, but do you know, truly, what the two most important requirements are to be a Judge?" "No" he said (with that mischievous smile that would become so familiar) "but I think you're going to tell me". "Well," I said, "the first requirement to be a Judge is to have a full head of gray hair – to look distinguished. The second requirement is to have hemorrhoids – to look concerned." He laughed as only Judge Winikoff could and then said, "do you know what the most important requirement will be to be a successful lawyer in my Court?" (The obligatory "no") – "don't tell the Court such stale

jokes!" We hit it off right away.

This past month the bench and bar has lost a giant of a man – literally and figuratively. Judge Winikoff was one of the most down-to-earth, yet intelligent and practical Judges. He was what a Judge should be: fair, impartial, humorous, diligent, quick to recognize the issues, and quick to brush aside spurious arguments that wasted the Court's time. He knew how to get to the heart of a matter and treated parties, attorneys, and jurors with the utmost respect.

I miss Judge Winikoff. I miss his sense of humor and his other attributes, but most of all, I miss that feeling of knowing, in his Courtroom, professionalism prevailed and my clients would always get a fair shake. Yes, and even in the most serious cases, we would all have some laughs along the way!



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to our West Palm Beach office

The law firm of Arnstein & Lehr welcomes Steven Newburgh to our firm. Steven brings more than 25 years of experience with him. His practice focuses on construction law, mechanic's lien litigation, complex commercial litigation, estate and probate litigation, intellectual property and entertainment law.

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At its July 25 meeting in Clearwater, The Florida Bar Board of Governors:

- Approved Proposed Advisory Opinion 07-02 on outsourcing of paralegal work to a foreign country. The opinion holds that such work can be sent overseas, although the attorney may need to take extra precautions to protect sensitive information and may need to inform the client. The board approved adding language suggested by the Board Review Committee on Professional Ethics which says the lawyer must also be sensitive to the possible disclosure of confidential information obtained from others, including an opposing party, and whether such disclosure may be regulated by applicable law, when outsourcing. Also, BRCPE Chair Steve Chaykin said the issue will be referred to another committee to comprehensively review use of third parties outside of a law firm to assist in the provision of legal services, whether inside or outside the U.S.
- Approved a motion directing the Bar's representatives to the ABA's House of Delegates to support a resolution to amend ABA Model Rule 1.10 (Imputation of Conflicts) to allow screening to handle conflicts when a lawyer from one firm is hired by another.
- Heard a report from Legislation Committee Chair Greg Coleman that Chief Justice Peggy Quince is setting up a special task force in cooperation with the Governors' office to work on funding for the court system, and that

Bar President Jay White will be a member. He encouraged board members to think about ways to get more money for funding of the courts and related agencies, and warned the courts, public defenders, and state attorneys may soon not have enough money to handle all criminal cases.

- Approved two rule changes on providing legal services following a disaster. One would allow out-of-state attorneys to provide pro bono services through a legal aid agency to Florida residents after a disaster and allow out-of-state attorneys to set up a temporary office in Florida to serve their clients when a Katrina-type disaster has hit their home state. The other amends the MJP rule to allow the activity.
- Approved amendments to Florida Supreme Court approved residential lease forms as simplified forms for use by nonlawyers. The amendments included reducing the number of forms from four to two.
- Endorsed the three-year cycle amendments for the Juvenile Procedure Rules, including a change that provides that children in delinquency proceedings will not be shackled unless there is a reason.
- Endorsed two out-of-cycle amendments for the Rules of Criminal Procedure, including one that requires that a defendant be represented and that a prosecutor attend all first appearance hearings. The second allows a successor judge to do the sentencing in a criminal case.

- Approved a motion to waive the Standing Board Policy that requires that all public reprimands be delivered by the Bar president before the Board of Governors. The Disciplinary Procedure Committee will revisit the issue, and committee Chair Murray Silverstein said the board could have as many as 14 to 18 reprimands at most meetings. The motion applies only to future court orders, not those already approved by the Supreme Court.
- Approved several new Members Benefits products, including ADP payroll services, Staples office supplies, BPC Financial for workers' compensation and pet insurance, and TheBillableHouse.com for law-related books, games, and gifts.
- Discussed, pursuant to inquiries from Bar members, lawyers' liability for clients' funds held in trust accounts if the bank holding the account collapses. Board members heard that the FDIC will guarantee each client's deposit in a trust account up to the \$100,000 maximum, reduced, however, by the amount of any other account a client has independently at that bank. Also, case law indicates lawyers are not liable for losses over the \$100,000 maximum. Board members and Bar staff are continuing to discuss the issue.

Should you have any questions, please contact one of the Circuit's four representatives: Greg Coleman, Scott Hawkins, Lisa Small or David Prather.



Committee Chairs recently met to discuss their committee's goals for the upcoming year. Pictured above front row are Lloyd Comiter (Small Claims Court), John Howe (Board Member), John Whittles, Young Lawyers Section President, Charles Hernicz (Construction Law CLE), Marianne Rantala (Independence of the Judiciary), Scott Smith (PI Wrongful Death CLE), Alan Kelman (on behalf of the Membership Committee) and Jason Guari (Board Member). Back Row: Michael Gelfand (Condo & Homeowner's Association Law CLE), Debra Block (Solo & Small Firm Practitioners), David Schwartz (Elder Law Affairs), Michael Napoleone (Professionalism), David Garten (Probate & Guardianship Practice), Richard Schuler (President), Don Boswell (on behalf of the Employment Law CLE), Michelle Suskauer (President-elect), Matthew Lane (Family Law CLE), Nadine White-Boyd (on behalf of the Bankruptcy CLE), Deborah Boyd (on behalf of Real Estate CLE), Tanique Lee (Diversity & Gender Sensitivity) and Travis Chapin (on behalf of Environment/Land Use).

Introducing Bankruptcy Judge Erik P. Kimball

By: Marc P. Barmat

On July 9, 2008, the Honorable Erik P. Kimball presided over his first day of hearings as the newest bankruptcy judge in the Southern District of Florida. Judge Kimball is seated in West Palm Beach along with Chief Bankruptcy Judge, Paul G. Hyman, Jr. Although new to the bench, Judge Kimball is surrounding himself with an experienced staff. His courtroom deputy, Cindy Klopp, was the courtroom deputy for former bankruptcy judge Steven H. Friedman. One of Judge Kimball's law clerks, Michelle Jaffee, formerly clerked for United States District Court Judge, Donald M. Middlebrooks. Information on Judge Kimball's law clerks and courtroom deputy can be found on the court's website (www.flsb.uscourts.gov). In general, Judge Kimball anticipates following the procedures set forth by Chief Bankruptcy Judge Paul G. Hyman, Jr.,

thereby keeping uniform procedures in the West Palm Beach Division.

Although in high spirits on his first day on the bench, Judge Kimball immediately felt as though his nerves were getting the best of him as he found himself unusually warm and flush. Fortunately, before too long, Judge Kimball realized it was not his nerves but instead the courtroom air conditioning was broken. The air conditioning has since been fixed.

Following Judge Kimball's graduation from Boston College Law School in 1990, he has worked mostly in bankruptcy and fields related to debt restructuring. Judge Kimball's experience includes representing corporate debtors, secured creditors, creditors' committees, and DIP lenders. Most recently, Judge Kimball was a partner at Akerman Senterfitt's Orlando office where he specialized in restructuring publicly traded debt. Upon his appointment, Judge Kimball moved from Orlando to Jupiter along with his wife and

five-year old son.

Judge Kimball's desire to become a judge arose out his interest in public service and appreciation for a job where the goal is to do the "right thing" and get the "right answer." Judge Kimball considers himself a "bankruptcy person" and appreciates the freedom he has as a judge to devote the time necessary to analyze bankruptcy issues without concern for whether he is spending too much time billing a particular client. Judge Kimball looks forward to addressing the wide variety of bankruptcy issues which will come before him.

On behalf of the local bankruptcy practitioners, we welcome Judge Kimball to the bench and look forward to appearing in his courtroom.

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

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Dr. Jonathan D. Rapp

Licensed Psychologist, PY7348

Save The Date

October 24, 2008

PBCBA Bankruptcy Seminar

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

Topics will include:

- **To File or Not to File: How you know when your client needs a bankruptcy lawyer** - Julianne Frank, Esq., Frank, White-Boyd, P.A., and Bradley Schraiberg, Esq., Kluger Peretz Kaplan & Berlin PL
- **What Every Real Estate Lawyer Needs to Know About Bankruptcy Law** - Nadine White-Boyd, Esq., Frank, White-Boyd, P.A.
- **The Intersection of Bankruptcy Courts and Other Forums** - Robert C. Furr, Esq., Furr & Cohen, P.A.
- **What Every Collection Lawyer Needs to Know About Bankruptcy Law**
- **What Every Marital Lawyer Needs to Know About Bankruptcy Law**
- **What Every Foreclosure Lawyer Needs to Know About Bankruptcy Law**
- **Special guest appearance by Bankruptcy judge! What you need to know if you are a rookie in the Bankruptcy Court!**

Young Lawyers serve lunch and provide free legal advice to the homeless

In an effort to help those in need, members of the Young Lawyers Section recently served lunch to more than 50 men, women and children who otherwise may not have had a hot meal. The lawyers participated in the food program at Cafe Joshua, a program of The Lord's Place in West Palm Beach.

"We served the food, cleared the tables and spent time talking with the patrons to help make them feel welcome," said John Whittles, president of the YLS. Whittles added, "giving back to our community is part of what we do as a group of lawyers and, as incredible a service as Cafe Joshua provides, it was our privilege to further their efforts in some small way."

After lunch, the lawyers presented a free legal seminar on family law, bankruptcy and criminal law.

Cafe Joshua is a program of The Lord's Place, a non-sectarian, non-profit organization dedicated to changing the lives of the homeless by providing innovative, compassionate and effective services to men, women and children in our community.



Jennifer Kypreos and John Whittles took orders, served food and cleared tables without spilling a thing!



Matt Ramenda and Lily Chang take a minute out of their wait staff duties to pose for a picture.



Brian Denney placed flowers on tables before lunch service began.

www.familylawwpb.com

Robin Roshkind, Esq.
Maria Patullo, Esq.
Catherine Eaton, Esq.

Are now accepting referrals in the following areas of law:

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Prenuptial Agreements	Alimony
Paternity	Marital Settlements
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Custody	Child Support

Contempt/Enforcement, Appeals, Mediation

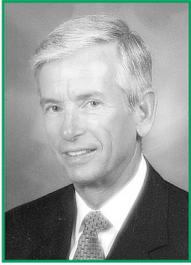
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The hiring of a lawyer is an important decision that should not be based upon advertisement alone. Before you decide, please ask us to send you information about our qualifications and experience.



MOVING?

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



Proposed Complex Litigation

by Ted Babbitt

For the last two years, the undersigned has been privileged to be a member of the Supreme Court Task Force on the Management of Cases Involving Complex Litigation. On April 30, 2008, the Task Force submitted to the Supreme Court a proposed rule on complex litigation. The Court has asked the Florida Bar to publish the proposed rule in the July 15, 2008, Bar News and has ordered that any comments must be filed with the Supreme Court on or before September 15, 2008, with responses due from the Task Force on or before October 15, 2008. Presumably following this procedure, the Court will consider the adoption of this rule as well as several implementing rules. Because of the importance of this rule in potentially changing the way complex litigation is handled in Florida, I have taken the liberty of utilizing my space in this Bulletin to publish the proposed rule in lieu of my monthly case comment. This rule is the product of two years of hard work by the Task Force which consisted of trial lawyers from all disciplines as well as Chief Judges from around the State as well as appellate judges.

Rule 1.201. COMPLEX LITIGATION

(a) Complex Litigation Defined. At any time after all defendants have been served, and an appearance has been entered in response to the complaint by each party, any party, or the court on its own motion, may move to declare a case complex. The court shall convene a hearing to determine whether the case requires the use of complex litigation procedures and enter an order within 10 days.

(1) A "complex case" is one that is likely to involve complicated legal or case management issues and that may require extensive judicial management to expedite the case, keep costs reasonable, or promote judicial efficiency.

(2) In deciding whether an action is a complex case, the court must consider whether the action is likely to involve:

(A) numerous pre-trial motions raising difficult or novel legal issues or legal issues that are inextricably intertwined that will be time-consuming to resolve;

(B) management of a large number of separately represented parties;

(C) coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court;

(D) pre-trial management of a large number of witnesses or a substantial amount of documentary evidence;

(E) substantial time required to complete the trial;

(F) management at trial of a large number of experts, witnesses, attorneys, or exhibits;

(G) substantial post-judgment judicial supervision; and

(H) any other analytical factors identified by the court or party that tend to complicate comparable cases and which are

likely to arise in the context of the instant case.

(b) Initial Case Management Report and Conference. The court shall hold an initial case management conference within sixty (60) days from the date of the order declaring the case complex.

(1) At least twenty (20) days prior to the date of the initial case management conference, attorneys for the parties shall meet and prepare a joint statement which shall be submitted to the court within 14 days of the conference outlining a discovery plan and stating:

(A) brief factual statement of the case, which includes the claims and defenses;

(B) a brief statement on the theory of damages by any party seeking affirmative relief;

(C) the likelihood of settlement;

(D) the likelihood of appearance in the action of additional parties or any non-parties to whom allocation of fault will be sought;

(E) the proposed limits on the time: (i) to join other parties and to amend the pleadings; (ii) to file and hear motions, (iii) to identify any non-parties whose identity is known, or otherwise describe as specifically as practicable any non-parties whose identity is not known, (iv) to disclose expert witnesses; and (v) to complete discovery;

(F) the names of the attorneys responsible for handling the case;

(G) the necessity for a protective order to facilitate discovery;

(H) proposals for the formulation and simplification of issues, including the elimination of frivolous claims or defenses, and the number and timing of motions for summary judgment or partial summary judgment;

(I) the possibility of obtaining admissions of fact and voluntary exchange of documents and electronically stored information, stipulations regarding authenticity of documents, electronically stored information, and the need for advance rulings from the court on admissibility of evidence;

(J) suggestions on the advisability and timing of referring matters to a magistrate, master, other neutral, and mediation;

(K) a preliminary estimate of the time required for trial;

(L) requested date or dates for conferences before trial, a final pretrial conference, and trial;

(M) a description of pertinent documents and a list of fact witnesses the parties believe to be relevant;

(N) number of experts and fields of expertise; and

(O) any other information that might be helpful to the court in setting further conferences and the trial date.

(2) Lead trial counsel and a client representative shall attend the initial case management conference.

(3) Notwithstanding Rule 1.440, Fla.R.Civ.P. at the initial case management conference, the court will set the trial date or dates no sooner than 6 months and no later than 24 months from the date of the conference unless good cause is shown for an earlier or later setting. The trial date shall be on a docket having sufficient time within which to try the case and, when

Continued on page 18

Proposed Complex Litigation

Continued from page 7

feasible, for a date or dates certain. The trial date shall be set after consultation with counsel. When the case is set to be tried before a jury, counsel shall provide to the court at the case management conference assurances that the trial date has been discussed with their clients. The court shall, no later than 2 months prior to the date scheduled for jury selection, arrange for a sufficient number of available jurors. Continuance of the trial of a complex case should rarely be granted and then only upon good cause shown.

(c) The Case Management Order. The case management order shall address each matter set forth under subdivision 1.200(a) Fla.R.Civ.P. and set the case for a pre-trial conference and trial. The case management order shall also specify the following:

(1) Dates by which all parties shall name their expert witnesses and provide the expert information required by subdivision 1.280(4) Fla.R.Civ.P. If a party has named an expert witness in a field in which any other parties have not identified experts, the other parties may name experts in that field within 30 days thereafter. No additional experts may be named unless good cause is shown.

(2) Not more than 10 days after the date set for naming experts, the parties shall meet and schedule dates for deposition of experts and all other witnesses not yet deposed. At the time of the meeting each party is responsible for having secured three confirmed dates for its expert witnesses. In the event the parties cannot agree on a discovery deposition schedule, the court, upon motion, shall set the schedule. Any party may file the completed discovery deposition schedule agreed upon or entered by the court. Once filed, the deposition dates in the schedule shall not be altered without consent of all parties or upon order of the court. Failure to comply with the discovery schedule may result in sanctions.

(3) The court shall schedule periodic case management conferences and hearings on lengthy motions at reasonable intervals based on the particular needs of the case. The attorneys for the parties shall

meet and confer no later than 15 days prior to each case management conference or hearing. They shall notify the court at least 10 days prior to any case management conference or hearing if the parties stipulate that a case management conference or hearing time is unnecessary. Failure to timely notify the court that a case management conference or hearing time is unnecessary may result in sanctions.

(4) The case management order may include a briefing schedule setting forth a time period within which to file briefs and or memoranda, responses and reply briefs or memoranda, prior to the court considering such matters.

(5) A deadline for conducting alternative dispute resolution.

(d) Final Case Management Conference. The court shall schedule a final case management conference not less than 90 days prior to the date the case is set for trial. At least 10 days prior to the final case management conference the parties shall meet to prepare a case status report. The status report shall contain in separately numbered paragraphs:

(1) A list of all pending motions requiring action by the court and the date those motions are set for hearing.

(2) Any change regarding the estimated trial time.

(3) The names of the attorneys who will try the case.

(4) A list of the names and addresses of all non-expert witnesses (impeachment, rebuttal or otherwise) intended to be called at trial.

(5) A list of all exhibits intended to be offered at trial.

(6) Certification that copies of witness and exhibit lists will be filed with the Clerk of the Court at least 48 hours prior to the date and time of the pretrial conference.

(7) A deadline for the filing of the final list of witness and exhibit list that will be used in the trial.

(8) Any other matters which could impact the timely and effective trial of the case.

The Court has directed that comments on the proposed rule must be filed in paper

format and an electronic copy provided to the Court in accordance with AOSC04-84. An original and nine copies must also be filed. I urge all interested lawyers and judges to review the rule and make comments to aid the Court and the Task Force in the implementation of what I believe will be a procedure that will streamline the handling of complex litigation. In the meantime, I ask that all Civil Circuit Judges consider utilizing this procedure with the variant that a case be “reserved” for trial rather than “set” for trial under sec. (b)(3) so as not to violate Rule 1.440 Fla. R. Civ. P. Such a preliminary use of the proposed rule may well give our trial judges an opportunity to provide comments on how well the proposed rule works in actual practice which would assist both the Court and the Task Force immeasurably.



Do You Need a Mentor?

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



The Palm Beach County Bar Association

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Full Day (over four hours) \$275

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Top 10 Ethical Minefields Involving Law Firm Staff Part 3

By Francine Shay, CP, FRP
on behalf of the Professionalism Committee
Paralegal Manager/Florida Registered Paralegal
Lewis, Longman & Walker, P.A.

In two previous issues of the Bar Bulletin, Parts 1 and 2 of this series of articles discussed the ethical duty of attorneys to ensure that nonattorney staff members do not practice law. Part 1 discussed attorneys' responsibilities to ensure that nonattorney staff always identify themselves as nonattorneys, do not sign attorneys' names to pleadings, and do not give legal advice nor discuss case assessment and representation agreements with clients. Part 2 discussed attorneys' responsibilities to avoid delegating away their active involvement in their clients' matters, including the need for attorneys to review all work product, and Florida Bar rules on real estate transactions, prohibitions of nonattorneys' taking depositions and negotiating settlements. This final article discusses additional ethical minefields involving nonattorney staff.

Minefield #8 – Attorneys must ensure that client confidences are maintained.

Have you ever been in an elevator or restaurant and overheard others talk about clients or legal matters they are handling at their law offices? I have. A long time ago, I worked in a law office in which the receptionist would chat with a client about his case in a reception area full of other clients. Attorneys are responsible to instruct their nonattorney staff that disclosure of client information and legal strategies are prohibited, even to family members. Fla. Bar Rules 4-1.6 and 4.5.3(b). A written policy and frequent reminders can go a long way toward avoiding the consequences of nonattorney disclosure of confidential information.

Attorneys also have the duty to admonish their departing nonattorney staff of the continuing obligation not to reveal client confidences and legal strategy to the nonattorney's subsequent employers. The attorneys who hire the new employees have a corresponding duty not to seek or permit disclosure of confidences and secrets. Fla. Bar Op. 86-5. Florida Bar Rule 4-1.10 (a), regarding imputation of all attorneys in a firm as to the determination of conflicts of interest, does not apply to nonattorney staff. If all parties agree to the hiring of a nonattorney despite potential conflicts of interest, the nonattorney must be appropriately screened from any personal participation in potentially conflicting matters. Fla. Bar Rule 4-1.10 Comment.

Minefield #9 – Attorneys should instruct their nonattorney staff on the rules and procedures involving direct communications with represented non-clients, current and former employees of opposing party organizations, and opposing parties' fact and expert witnesses.

Nonattorney staff members are normally the front line of communications with non-clients during the course of the

workday. The Florida Bar rules, opinions and case law regarding prohibitions on direct communications with opposing parties, their current and former employees, and their fact and expert witnesses, can be confusing. Attorneys should ensure that they and their staff understand Florida Bar Rule 4.4-2, Florida Ethics Opinions 87-2 (regarding government agencies) and 88-14 (regarding corporation employees), as well as the case law regarding contact with opposing party witnesses. *Devlin v. Rosman*, 205 So.2d 346, 347 (Fla. 3d DCA 1967) (regarding opposing party fact witnesses); Fla.R.Civ.P. 1280(b)(4) (regarding opposing party expert witnesses). Attorneys should also instruct their staff that if they are contacted directly by recently-served opposing parties, the first question to ask is: "Do you have an attorney representing you in this matter?" before continuing with any other discussion, and then they are to follow the procedures provided by their attorneys depending upon the response.

Minefield #10 – Attorneys are prohibited from sharing legal fees with nonattorneys through salaries and bonuses, and from compensating nonattorneys for client generation.

Attorneys are prohibited from compensating nonattorney staff based on their client generation activities. Fla. Bar Op. 89-4 (regarding marketing directors). Attorneys are also prohibited from paying bonuses to nonattorney staff based solely on the number of hours the nonattorney worked, or on the percentage of the firm's fees, or on the gross recovery in cases on which the nonattorney worked. However, nonattorneys may receive bonuses based on their extraordinary efforts on a particular case or over a specific period of time, and may include the number of hours worked on a particular matter or over a specified time period as one of several determinative factors. Fla. Bar Rule 4-5.4; Fla. Ethics Op. 2002-1. The Florida Bar does not prohibit nonattorney employees from being part of profit-sharing arrangements through qualified pension, profit-sharing, or retirement plans. Fla. Bar Rule 4-5.4. For an interesting recent appellate court opinion regarding an attorney's unsuccessful attempt to use Rule 4-5.4 to avoid a contractual compensation obligation to a paralegal which violates the Rule, see *Patterson v. Law Office of Lauri J. Goldstein*, 980 So.2d 1234 (Fla. 4th DCA, 2008).

Of course, there are far more ethical minefields involving nonattorney law firm staff than were covered in this series of articles. An excellent guide is Florida Ethics Guide for Paralegals and Attorneys Who Utilize Paralegals by Timothy P. Chinaris, a Florida Bar CLE publication. Also, there are numerous ethics CLEs and webinars, including my own "Ethics for Law Firm Staff" session presented to legal secretaries, paralegals and judicial assistants at the PBCBA Bench-Bar Conference. Although, Florida Registered Paralegals and paralegals who achieved the CLA/CP or RP through professional associations are required to attend ethics CLEs, prudent attorneys ensure that all their nonattorney staff are educated and supervised in legal ethics.

Pro Bono Corner

Attorneys That Have Closed Pro Bono Cases in July 2008

Number of attorneys closed cases26
 Number of cases handled by these attorneys:63
 Number of hours:.....427

THANK YOU FOR ALL YOU DO

Richard Abedon	Leslie S. Osborne
JoAnn Abrams	Henry L. Kaye
Samuel C. Aurilio	Hubert McGinley
Laura S. Blackman	Deena McNamara
Jerri M. Blaney	Lawrence Moncrief
W. Chester Brewer, Jr.	Richard J. Monescalchi
S. Brian Bull	Gregory J. Morse
Steven Cripps	Richard D. Nadal
Richard Dedell	Dave K. Roy
Ryan D. Doherty	Leonard I. Singer
Jeffrey Devore	Michael Stern
Ron Gache	Shelly Wald
Allan L. Hoffman	Ryan E. Willits

PLEASE RETURN YOUR CLOSING FORMS IN A TIMELY MANNER!



Attorney Responsibility to the Hearing Impaired Client

As a practicing attorney it is always helpful to be reminded of Federal Laws that impact our practice. We all know that federal law requires accommodations be given to the disabled. A subtle nuance of that law is an attorney's responsibility to the hearing impaired client. Title III of the

Americans with Disabilities Act provides people with disabilities the right to equal access to public accommodations. A public accommodation for the deaf and hard of hearing is the requirement to provide auxiliary aids and services to ensure effective communication. Lip reading and writing notes back and forth are seldom effective methods of communication. The ADA sets forth a list of auxiliary aids and services including qualified interpreters. Law offices are considered public accommodations under the ADA. In addition, the responsibility of a lawyer to provide effective communication with clients applies regardless of the fee arrangement with the client. In other words, whether you are handling the case for a flat fee, contingency or pro bono you must provide this accommodation, unless providing the accommodation creates an undue burden on the operation of the firm. Furthermore the Department of Justice does not permit an attorney to charge a person with a disability for the cost of the auxiliary aid provided. You may also want to consult with a tax professional regarding tax incentives for businesses incurring these expenses. It is clear that the ADA requires that important communications such as those between an attorney and client require the provision of a qualified sign language interpreter to ensure effective communication at no cost to the client. For more information please see the National Association of the Deaf at www.nad.org/legalservices.

Be an Advocate for a Child in Need!

The Legal Aid Society's Pro Bono Program and the School District of Palm Beach County are soliciting volunteer attorneys to participate in the Student Advocates Program to assist children recommended for expulsion from school. Attorneys who participate in this program will serve as advocates for students who are in need of advice and/or representation at a critical time in their young lives. A training has been scheduled for September 19, 2008 from Noon to 4:00 p.m. (Lunch is provided) at the Palm Beach County Bar Association offices. This training will orient the volunteer attorneys to the School District's expulsion process and procedures. The presenters at the training will be Iola Mosely, Esq. from the School Board's General Counsel's office and Barbara Briggs, Esq. from Legal Aid who practices exclusively in the area of education law. The training and CLE is provided free of charge if the attendee agrees to accept one expulsion case from Legal Aid during the upcoming year. For more information about this volunteer opportunity, please contact Kimberly Rommel-Enright at 655-8944 ext. 265.



www.palmbeachbar.org

Circuit Court Report

CIVIL DIVISIONS • June 2008

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	10/08	10/08	08/08	1531
B	10/08	10/08	09/08	1413
D	10/08	10/08	09/08	1771
E	01/09	12/08	11/08	1689
F	10/08	10/08	10/08	1463
G	02/09	02/09	08/08	1303
H	01/09	01/09	09/08	1535
I	01/09	10/08	08/08	1124
J	12/08	12/08	09/08	1487
N	12/08	12/08	09/08	1728
O	11/08	11/08	09/08	1651

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
 Pending cases as of 7/08/08.

Legal Aid Needs Your Help!

Are you feeling the squeeze of the economy? Would you like to grow your business and at the same time help people in need who don't qualify for Legal Aid? If so, you should consider being a part of Legal Aid Society's **REDUCED FEE PANEL**. All you have to do is agree to give clients that are referred to you by our office, a one-half hour consultation for free. Clients are advised that the consultation may be over the telephone. We ask attorneys to charge these clients a reduced fee if the client decides to retain your services. You are also required to do one pro bono case per year. We have a large staff that makes referrals to this list. If you would like more information please contact Kim Rommel-Enright, Supervising Attorney of the Pro Bono Department, 561-655-8944 extension 272 or 265. We especially need attorneys in the following areas: bankruptcy, family, probate and real property law. Your assistance would be very much appreciated and your business *will* grow.

Missing Bar Events? Be Sure to Read Your eNewsletters



Is your current email address on file with our office? If not, please be sure to send your current information to us. As postage rates continue to rise, the Bar is sending notices of all of its functions – membership luncheons, free happy hours, judicial receptions and important court information – to its members via email. Don't be left out of the loop! Send your email address to us today and make sure your email provider accepts our emails. You can send your updated information to pburns@palmbeachbar.org.

Trial Superstars Seminar Now Available

On DVD or CD

The Bar recently sponsored a seminar with speakers Joe Reiter, Roy Watson, Jack Scarola, Ervin Gonzalez, Spencer Silverglate, John Romano, Ted Leopold, John Richards and David Knight

Some of the comments from this seminar:

"Superb cast of presenters"

"The hands-on training perspective of the seminar"

"Format was innovative, smooth; outstanding speakers – mesmerizing!"

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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.

PAULA M. ALBRIGHT – Paralegal Member; Ruden McClosky, West Palm Beach

JESSICA C. ANDERSON – Florida; University of Florida, 2008; Associate in Cole, Scott & Kissane, P.A., West Palm Beach

THERON H. BASS, III – New York; Stetson University College of Law, 2005; Associate in Searcy Denney Scarola Barnhart & Shipley, P.A., West Palm Beach

JEANNE M. BATTLES, ACP, FRP – Paralegal Member; Rendina Companies, Palm Beach Gardens

CHRISTINA L. BLACKWELL – Paralegal Member; Slinkman & Slinkman, P.A., Jupiter

TAMMI A. BOSKE – Paralegal Member; Gunster, Yoakley & Stewart, P.A., West Palm Beach

LINDA S. BRASWELL – New Jersey; St. Thomas University, 1990; Sole Practitioner, Lisa S. Braswell, P.A., Wellington

MARNI A. BRYSON – Florida; Nova Southeastern Shepard Broad Law Center, 2001; Associated with Office of the Attorney General, West Palm Beach

DAVID G. BYLCIW – Connecticut; John Marshall Law School, 1998; Associated with Wachovia Wealth Management, Ft. Lauderdale

TRAVIS R. CHAPIN – Georgia; University of Florida Levin College of Law, 2007; Associate in Greenberg Traurig, West Palm Beach

LAURIE S. COHEN – Illinois; Nova Southeastern, 1995; Associated with Siegfried, Rivera, Lerner, DeLaTorre & Sobel, P.A., West Palm Beach

JONATHAN M. COX – New Jersey; University of Miami, 1998; Partner in Law Office of Kubricki Draper, West Palm Beach

MARY E. CRAMER-SCHARLATT – Paralegal Member; Gunster, Yoakley & Stewart, P.A., West Palm Beach

CHARLES M. CRAY – Florida; University of Florida, 2006; Associate with Joseph C. Kempe, P.A., Jupiter

EMILIO DIAMANTIS – Paralegal Member; Searcy Denney Scarola Barnhart & Shipley, P.A., West Palm Beach

LAURA DOYLE – Paralegal Member; Butzel Long, P.C., Boca Raton

KERA J. DRAETTA – Paralegal Member; Butzel Long, P.C., Boca Raton

SALLY B. FEAMAN – Paralegal Member; SBF Paralegals, Inc., Boynton Beach

MICHAEL S. FELDMAN – New York; University of Florida, 2002; Associate in Jay Steven Levine P.A., Palm Beach Gardens

JAY FLEISHER – New York; University of Florida, 1977; Sole Practitioner, Palm Beach Gardens

ROGER P. FOLEY – University of Miami, 2004; Sole Practitioner, Law Office of Roger P. Foley, P.A., Ft. Lauderdale

JILL S. GREENE – Paralegal Member; Beasley Hauser Kramer Leonard & Galardi, West Palm Beach

LYNN A. GROSS – Michigan; Case Western Reserve University, 2008; Associate in Buckingham, Doolittle & Burroughs, West Palm Beach

MALCOLM E. HARRISON – Florida; Harvard Law School, 2005; Sole Practitioner, Law Office of Malcolm E. Harrison, P.A., Wellington

JAMI L. HUBER – Georgia; University of Georgia, 1996; Associate in Miller & O'Neill PL, Boca Raton

KERRY L. HYDE – Paralegal Member; Beasley, Hauser, Kramer, Leonard & Galardi, West Palm Beach

JOHN M. KELLEY – New York; Cumberland School of Law of Samford University, 1977; Partner in Pyszka, Blackmon, Levy, Mowers & Kelley, Ft. Lauderdale

DAVID M. KERNER – Law Student Member; University of Florida; Atlantis, FL

VICKI A. KULIG – Paralegal Member; Certified Paralegal Services of Palm Beach, Inc., Royal Palm Beach

WILLIAM N. LAZARCHICK, JR. – Pennsylvania; Nova Southeastern University Shepard Broad Law Center, 2008; Associate in The Law Office of Stuart R. Manoff & Associates, P.A., West Palm Beach

JESSE H. LITTLE – New York; FSU College of Law, 2001; Associate in Alley Maass Rogers & Lindsay, P.A., Palm Beach

ROBERT I. MACLAREN – Florida; Loyola University, New Orleans, 2007; Associate in Hoffman & Morris, Singer Island, FL

A. CANDACE MARCUS – Massachusetts; University of Miami, 1992; Partner in McIntosh, Sawran, Peltz & Cartaya, P.A., West Palm Beach

ERIN A. MCFANN – Florida; University of Florida, 2008; Associated with Akerman Senterfitt, West Palm Beach

KATHERINE A. MIKEL – Washington, DC; University of Miami, 2008; Associated with Fourth District Court of Appeal, West Palm Beach

PATRICIA A. MILES – Paralegal Member; Beasley Hauser Kramer Leonard & Galardi, West Palm Beach

ARIN MILLER – Pennsylvania; University of Florida, 2001; Associated with Keiser University, West Palm Beach

BRIAN M. MOSKOWITZ – New York; Brooklyn Law School, 2008; Sole Practitioner, The Moskowitz Law Firm, Boynton Beach

CANDACE MOSS – Nova Southeastern University, 2004; Lake Park, FL

WENDY E. MURNAN – Paralegal Member; Complete Legal Investigations, Inc., Palm Beach Gardens

CHRISTINE M. MURRAY – Paralegal Member; Gunster Yoakley, West Palm Beach

MICHAEL A. NEGEI – New York; Touro Law School, 2006; Sole Practitioner, Coconut Creek, FL

LAURA BENNETT OLIVER – Alabama; Faulkner University, Thomas Goode Jones School of Law, 2008; Associate in Stephens Lynn Klein LaCava Hoffman & Puya, P.A., West Palm Beach

Welcome New Members!

LINDA M. OLSON-KRUPA – Paralegal Member; Law Office of Joseph D. Farish, Jr., LLC, West Palm Beach

BRENT F. OSGOOD – Ohio; SUNY at Buffalo, 2008; Associated with USAF JAG Corps, New York

HOLLY J. PARRA – Paralegal Member; Butzel Long, P.C., Boca Raton

JANICE C. PATTEN – Paralegal Member; Oxbow Corporation, West Palm Beach

SHAIB Y. RIOS – California; NSU, 2006; Associated with Fifteenth Judicial Circuit, West Palm Beach

DRU E. ROSCOE – Law Student Member; University of Florida; Gainesville

CHRISTIN M. RUSSELL – New York; Hofstra University School of Law, 2008; Associate with Christine D. Hanley & Associates, P.A., West Palm Beach

KAREN M. SAVIGNAC – Paralegal Member; The Wackenhut Corporation, Palm Beach Gardens

ALEC H. SCHULTZ – Florida; University of Chicago, 2007; Associate in Boies, Schiller & Flexner, Ft. Lauderdale

MICHAEL SCHWEBEL – Florida; University of Florida, 2008; Associate in Wicker, Smith, O'Hara, McCoy & Ford, P.A., West Palm Beach

FRANCINE SHAY – Paralegal Member; Lewis, Longman & Walker, P.A., West Palm Beach

JASON D. SIEGEL – Florida; University of Florida, 2007; Associated with Office of Regional Counsel, West Palm Beach



ROLANDO SILVA – Cuba; University of Miami, 2008; Associated with Palm Beach Sheriff's Office, West Palm Beach

STEPHEN A. SMITH – Massachusetts; University of Miami, 2001; Associate in Pallo, Marks & Hernandez, P.A., Palm Beach Gardens

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WALTER A. STEIN – Paralegal Member; Searcy Denney Scarola Barnhart & Shipley, West Palm Beach

MICHAEL B. STEINBAUM – Nova Southeastern University, 2008; Associated with Corbett and White, P.A., Lantana

AMY L. SUMACEWSKI – Japan; Nova Southeastern University, 2006; Associate in Lavallo Brown Ronan & Mullins, P.A., Boca Raton

JOSEPH L. VACCARO – Paralegal Member; Ricci-Leopold, P.A., Palm Beach Gardens

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LINDA T. WELLS – Paralegal Member; Searcy Denney Scarola Barnhart & Shipley, P.A., West Palm Beach

ROSEMARY F. WHEELER – Paralegal Member; Thompson & Thomas, P.A., Loxahatchee

LONN WEISSBLUM – New York; University of Florida, 2001; Sole Practitioner, Boca Raton

KIM WILES – Korea; University of Miami Law School, 1987; Associated with Rudolph & Associates, LLP, West Palm Beach

VENIESE A. WILKINSON – Jamaica; University of Florida, 2008; Associate with Rosenthal, Levy & Simon P.A., West Palm Beach

JAMES B. WILLIAMS, JR. – Florida; Mercer University, 2001; Associated with Office of Criminal Conflict and Civil Regional Counsel, West Palm Beach

WELCOME

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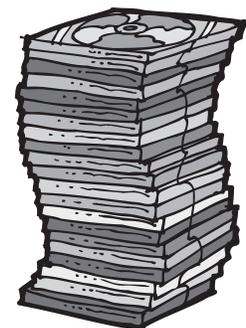
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Marketing Goals

By *Mark Powers and Shawn McNalis*

What is the one skill many of you would-be rainmakers are missing? The willingness and ability to set specific and measurable marketing goals on a regular basis. If you examined your marketing approach at the end of each year, to measure its effectiveness, you'd be surprised at the impact on your results. For one thing, you'd know which activities and behaviors worked and which didn't. You'd have the opportunity to refine what worked and eliminate everything else. While we agree with Yogi Berra when he said, "It's tough to make predictions, especially about the future," it isn't impossible to set meaningful goals and achieve something close to what you intended.

To do this you must first recognize that the legal landscape in which you live is not static. Referral sources dry up or move, you are joined by a new partner, legislation changes the services you provide, you take on a newsworthy case, or you decide to launch your own practice. These are just a few of the many changes that can occur over the course of a year in your career. Fortunately, changes like these are fodder for the creative marketer. Depending on what's happened in your year, you may need to adjust your marketing goals to compensate for a lack of referrals, to feature a change in the services you offer or to publicize a new firm.

Take the opportunity to retool your marketing efforts at least once a year. To point you in the right direction, read through the ideas listed below and extrapolate from them goals that are relevant to your practice.

Referral Sources

Once you determine who your primary or ideal clients are, identify those referral sources that are well-positioned to send you those clients. You'll have both a Top tier group – these are the people that send you your best business, and a second tier who send you lesser business. Every year you'll want to review who is on your list and plan to add people to both tiers. Eighty percent of your marketing activity should be focused on this effort.

Listed below are activities that will support you in building rapport and relationships with your referral base. Read through these suggestions and plan to:

- Spend more time with your referral sources to get to know them better
 - a. Sample Goal: Dedicate 3 lunches a week to cultivating referral sources
- Thank your sources for any referrals they send – whether or not the client engages you
 - b. Sample Goal: Put thank you cards out on my desk to ensure I'll use them
- Invite your referral sources to events they'd enjoy, or give them tickets
 - c. Sample Goal: Purchase season tickets and give them to different referral sources
- Introduce your referral sources to people they can network with
 - d. Sample Goal: Use my marketing lunches to introduce referral sources to one another (this is especially useful if you don't have a lot of business you can send to them – and only applies when referrers are not

competitors).

- Refer business to your referral sources, whenever possible
 - e. Sample Goal: Reward my referral sources with business whenever I can
- Conduct satisfaction interviews to see how well your sources think you're taking care of their referrals
 - f. Sample Goal: I'll use my marketing lunches to check-in with my referral sources on their perception of my service

Client Service

To inspire more client referrals, focus on increasing your level of client service.

- Make clients feel more welcomed and taken care of during each visit to your office
 - a. Sample Goal: Offer clients a selection of beverages when they arrive
- Enhance your level of communication with clients
 - a. Sample Goal: Each client receives a check-in call on a regular (weekly, monthly) basis
- Build more rapport with key clients
 - a. Sample goal: At the conclusion of each large case or matter, invite the client out to lunch to get to know them better and get feedback on your performance

Reputation

Take a look at how you and your firm are perceived by the larger community. Have you done anything lately to build your reputation?

- Increase your visibility by being quoted or mentioned in the papers your clients read
 - a. Sample Goal: Look at what you are doing that is noteworthy throughout the year and send press releases or write a column for a local newspaper or trade journal
- Increase your visibility on local or national television
 - a. Sample goal: Cultivate television reporters and/or news anchors in your area so they turn to you for comments on local and national events.

Activities and Events

The perceptions of you and your firm are often shaped by the events and activities you participate in. Try to:

- Hold a signature event every year
 - a. Sample Goal: Host a party to celebrate the firm's anniversary every year
- Begin a seminar or a series of speaking engagements
 - a. Sample Goal: Schedule one speaking engagement a quarter

Weekly lunches

Set goals to use your lunch hour for marketing. You can:

- Have lunch with people on your Top Twenty and Farm Team lists
 - a. Sample Goal: Meet influencers or potential referral sources for lunch two or three times per week

Energize Your Bar Participation

If you, like most attorneys, get much of your business from other attorneys, bar events are great places to:

Continued to page 16

Rainmaking

Continued from page 15

- Spend time with existing referral sources
 - a. Sample Goal: Use every event as a chance to invite another bar member out to lunch in the following week
- Sit next to new people at bar events to get to know them
 - a. Sample Goal: Meet one new person at every event who could be a potential referral source for you
- Participate or lead a committee
 - a. Sample Goal: Join a committee and use it as an opportunity to meet and cultivate fellow members

Join Your Clients' Organizations

If you aren't a member of organizations other than the bar, take a look at the kind of organizations that your clients join, both business and community related. Once you join, see if you can:

- Become a high-profile presence in the group
 - a. Sample Goal: Arrange to speak to or teach the group on a regular basis
- Become recognized as an expert
 - a. Sample Goal: Write an article or column for their newsletter or trade journal
- Become a contributing member
 - a. Sample Goal: Sponsor hospitality suites, golf games or dinners in conjunction with special events

Be A Sport

If you are a sports fan:

- Schedule a regular sports or hobby-related marketing event
 - a. Sample Goal: Calendar golf or tennis on Friday afternoons and invite different referral sources to participate

Marketing Assistant

If you aren't good at initiating marketing activities and events, recruit a paralegal or a secretary to act as your marketing assistant and can:

- Schedule your lunches and speaking events
- Coordinate your signature event
- Manage or coordinate updates to your web site

- Write or coordinate others to write a firm newsletter.

Schedule An Annual Marketing Retreat

To keep your marketing efforts headed in the right direction, you might want to devote a half-day at the beginning of each year to look at your marketing goals and discuss them with partners and staff. The measurements listed below are indicators you can track to monitor your progress:

- Track the number of inquiries generated by different sources, including print ads
- Track the amount of clients that inquire based on your web site
- Track the percentage of phone inquiries that convert to in-office consultations
- Track the percentage of consultations that convert to become clients.

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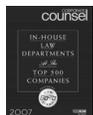
Grace joins our Employment Law Group on the heels of completing a clerkship with the Honorable Robert M. Gross at Florida's Fourth District Court of Appeal. After graduating from the University of Florida, she received her law degree from Nova Southeastern University, where she graduated magna cum laude and served on the Nova Law Review.

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Do I Have To File a Claim?

By: David M. Garten, Esq.

The purpose of this article is to provide concrete examples of when it is necessary to file a claim against an estate, and to clarify the “trust” exception to the claims statute.

I. “CLAIM” DEFINED:

Sec. 733.702, Fla. Stat. defines a “claim” as a demand against the decedent’s estate that arose before the death of the decedent, even if the claims are unmatured, contingent, or unliquidated. Therefore, if the demand or expense was incurred by your client post-death, it may not be necessary to file a claim.

II. WHEN IS IT NECESSARY TO FILE A CLAIM:

It is necessary to file a claim against an estate for the following:

- ✓ Funeral or burial expenses [§733.702(1)];
- ✓ Claimant’s personal property in the possession of the personal representative [§733.702(1)];
- ✓ Damages against the decedent, including, but not limited to, an action founded on fraud or another wrongful act or omission, whether or not an action is pending at the time of death [§733.702(1)]. Examples: (a) a claim for contribution against the decedent joint tortfeasor’s estate even though the injured party filed suit after the claim’s period expired [*Koschmeder v. Griffin*, 386 So. 2d 625 (Fla. 4th DCA 1980)]; and (b) a claim for contribution from the decedent’s estate on a jointly signed promissory note prior to a judgment on the note [*Simpson v. First Nat’l Bank & Trust Co.*, 318 So. 2d 209 (Fla. 4th DCA 1975)];
- ✓ A claim against the decedent for intentional interference with an expectancy [*Carlton v. Carlton*, 575 So. 2d 239 (Fla. 2d DCA 1991)];
- ✓ A contingent claim. A contingent claim is “one where the liability depends on some future event, which may or may not happen, which renders it uncertain whether there ever will be a liability” [*Spohr v. Berryman*, 589 So. 2d 225 (Fla. 1991)]. Example: a breach of contract to make a will that was not discovered by the claimant until after death. The court reasoned that while the claim did not come to fruition until the contents of the will were ascertained following death, the claim, itself, was based upon an agreement which was made many years before his death. Claims against an estate are not limited to obligations of the decedent that could have been enforced against him while living [*Spohr v. Berryman*];
- ✓ An action to enforce purchaser’s rights under the Pollution Control Act against the decedent seller’s estate after discovering environmental contamination on the property [*Jones v. SunBank/Miami, N.A.*, 609 So. 2d 98 (Fla. 3d DCA 1992)];
- ✓ Exercising an option agreement with the decedent to purchase shares of stock if certain events come to pass

[*Grossman v. Selewacz*, 417 So. 2d 728 (Fla. 4th DCA 1982)]; and exercising an option agreement with the decedent to purchase certain real estate in the event the claimant survived certain individuals including the decedent [*Kelley v. Burnsed*, 805 So. 2d 1101 (Fla. 1st DCA 2002)];

- ✓ An action to enforce claimant’s rights under the federal Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). The three-year statute of limitations under CERCLA does not preempt the shorter three-month Florida nonclaim statute [*U.S. Borax, Inc. v. Forster*, 764 So. 2d 24 (Fla. 4th DCA 1999)]; and
- ✓ A claim for quantum meruit or unjust enrichment for prepared-death services [*Aldebot v. Story*, 534 So.2d 1216 (Fla. 3rd DCA 1988)].

III. WHEN IS IT NOT NECESSARY TO FILE A CLAIM:

It is not necessary to file a claim against an estate for the following:

- ✓ A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent [733.702(4)];
- ✓ A claim for the limits of casualty insurance protection in a proceeding to establish liability that is protected by the casualty insurance [733.702(4)];
- ✓ The filing of a cross-claim or counter-claim against the estate in an action instituted by the estate; however, no recovery on a cross-claim or counterclaim shall exceed the estate’s recovery in that action [733.702(4)]; and
- ✓ Post-death claims. Post-death claims cannot be deemed a liability of the decedent because they arise after death. Examples: (a) reimbursement for mortgage payments made following death from credit life insurance policy proceeds issued to the estate. The plaintiff was not seeking the insurance proceeds that would have been paid to the mortgagee, but rather was seeking reimbursement of payments he was not required to make after the decedent’s death by virtue of the credit life insurance [*Swenszkowski v. Compton*, 662 So. 2d 722 (Fla. 1st DCA 1995)];(b) an insurance company’s claim for overpayment of benefits paid to a hospital for services rendered to the decedent that the hospital mistakenly refunded to the personal representative [*In re Estate of Kulow*, 439 So. 2d 280 (Fla. 2d DCA 1983)]; (c) a claim for attorney’s fees incurred post-death [*Thompson v. Hodson*, 825 So. 2d 941 (Fla. 1st DCA 2002)];(d) an interest in real estate that passed by operation of law upon death [*Coba v. Craig*, 881 So. 2d 733 (Fla. 3d DCA 2004)]; and (e) estate expenditures [*Langford v. Ferrara*, 823 So. 2d 795 (Fla. 1st DCA 2001)].

IV. THE “TRUST” EXCEPTION TO THE CLAIMS STATUTE:

The trust exception refers to a situation where at the time

Continued on page 20

File A Claim

Continued from page 19

of death the decedent held bare legal title to property, the equitable title or beneficial ownership having become vested in another who now claims the property adverse to the estate [*Estate of Peterson*, 433 So. 2d 1358 (Fla. 4th DCA 1983)]. In *Scott v. Reyes*, 913 So. 2d 13 (Fla. 2nd DCA 2005), the court found that the trust exception did not apply to the claim of a former co-tenant based on the joint ownership of two accounts that the decedent re-established in his sole name without the knowledge or consent of the co-tenant. The court reasoned:

[I]f a decedent asserted beneficial ownership of the property before his death, a claim to the property would be barred unless filed according to section 733.702. The reason being that the dispute as to ownership, creating the cause of action, arose before the decedent's death because the decedent, prior to his death, adversely claimed the property as his own. If, however, the decedent was merely in possession of the property but made no such assertion of ownership prior to his or her death, the assertion of ownership being made by the personal representative or heirs for the first time after the decedent's death would not require the filing of a claim.

It is not clear whether the trust exception applies to resulting trusts and constructive trusts. See *Scott*.

Important 4th DCA News

The public areas of the Fourth DCA including the Clerk's Office, Library and entrance to the building will be closed to the public each business day at 4:00 p.m. The Court will continue to open at 8:00 a.m. No filings will be accepted at the courthouse after 4:00 p.m. There will be no physical drop box, but any filing, other than one which is jurisdictional, brought to the Clerk's Office by 9 a.m. will be stamped as filed the previous business day. Additionally, the Court has closed its post office box and all mail should be directed to 1525 Palm Beach Lakes Blvd., West Palm Beach, FL 33401.



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

W. GREY TESH: “Criminal Law is not Black & White, it’s Grey” aaacriminaldefense.com. Over 60 jury trials. Former assistant public defender. Defended over 1,000 criminal cases, Federal and State. 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 admar1@earthlink.net and www.admiraltyatty.com

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

SCOTT B. SMITH: “AV” rated trial attorney representing injured victims of tractor-trailer/commercial motor vehicle accidents. Member of AAJ Interstate Trucking Litigation Group and Association of Interstate Trucking Lawyers of America. Extensive experience in handling truck accident cases and with Federal Motor Carrier Safety Regulations. Admitted to Florida Bar and all U.S. District Courts within Florida. Law Office of Scott B. Smith, P.L., 5604 PGA Blvd., Suite 107, Palm Beach Gardens 33418 (561) 622-0622 www.smithinjurylaw.com.

Bulletin Board

CLARK SMITH: Mediator- AV rated, practicing in WPB since 1977. Available to mediate Construction, Personal Injury, Medical Malpractice, Insurance Disputes (including appraisals) and Bad Faith. Onsite facilities available up to 25 people. Resume available at www.paxsmith.com. (561) 684-2121 cws@paxsmith.com.

OFFICE SPACE:

OFFICE SPACE: WPB Downtown; close to Courthouse & Intracoastal; Turn-key ofc. sharing in chic-historical bldg. Includes large reception area, beautiful conf. rm, off-street park, cleaning, electricity, telephone, water, internet, scanning, facsimile, file space, copier, kitchen, some ofc. supplies, alarm monitoring, and much more. Secretarial or paralegal space available if needed. Avail. Immediately. Call (561) 659-4414.

PALM BEACH GARDENS:

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

WPB PROFESSIONAL OFFICES

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

LUXURY OFFICE SPACE FOR RENT

in East Boca law office. Windowed office and secretarial station available. Common space with full service (receptionist service included). Access to large and small conference rooms along with the use of postage and copy machines. Please call (561) 447-0017.

EXECUTIVE SUITES/OFFICE

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

BOCA RATON: One private windowed office with separate secretarial area in 5 attorney prestigious office. Sanctuary Centre (Yamato Rd and Federal Hwy.). Class “A” office building, close to I-95. Includes covered garage parking, use of office facilities (conference room, kitchen, etc.). Contact Steve at (561) 367-7785 or sgmatty@aol.com.

WEST PALM BEACH: Office space located minutes from courthouse and close to I-95. Beautiful 10th floor office with great views and professional and tranquil décor. Own secretarial area and use of conference rooms, copier, fax and kitchen/break area. Great for solo professional. Opportunity for referral cases from other attorneys. Call (561) 491-1200 or e-mail craig@kelleylawoffice.com.

OFFICE SPACE- PGA & US1 Generous incentives to qualified tenants; Attractive building. Convenient parking, signage on US 1; (A) 1,040 sf – 3 offices, Conference, Reception (B) 1,250 sf – remodeling needed (C) 1,650 sf – 4 offices, Conference, Work Area, Kitchenette, Reception (D) 2,650 sf – 5 offices, 2 Conference, 2 Work Areas, Reception; Doug - Strategic Realty (561) 222-4696.

WEST PALM BEACH: Multiple law offices with secretarial areas available in prestigious lakefront office building. Includes use of conference room, telephone system, DSL service, copier/scanner, kitchen facilities and garage parking available. Call (561) 659-6457.

OFFICE SPACE AVAILABLE- 1803 Australian Ave. South in WPB. Close to courthouse. Amenities include receptionist, internet access, conference room and others. Please contact Steve at (561) 683-4075.

PALM BEACH GARDENS: Law office offering suite to share. Space includes 1 private office, 1 or 2 secretarial stations, kitchen facilities and a large conference room. Also includes, phone systems, DSL line and copy machine services. Close to the Turnpike and I-95. For details call (561) 624-7718.

EXECUTIVE SUITES/OFFICE

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

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

PALM BEACH GARDENS: Law office offers 1 private office with 1 secretarial work station = \$1,500/mo. (or with 2 stations = \$2,000/mo) furn/unfurn in prestigious bldg. Includes use of 2 conference rooms, scanner/copier, kitchen, free parking, DSL and phone system. Northlake close to I-95 and Turnpike. Call (561) 775-8019 or email to info@gardenslaw.com.

DELRAY/BOYNTON: Share space in recently renovated offices. Includes space for 1 assistant. Amenities include reception area, conference room, file room and kitchen. \$1,100 month. Call Eric Luckman's office at (561) 737-3133 for more information or email EL@LuckmanLaw.com.

HEARSAY



Stephen G. Fischer has joined ARC Mediation in Palm Beach County. Mr. Fischer is a Certified Civil Mediator who was formerly with Upchurch Watson White & Max Mediation Group. He mediates cases in Palm Beach County, statewide and nationally.



Sachs & Sax is pleased to announce that **Nicole R. Topper** and **Lysa M. Friedlieb** have joined the firm.

McCabe Rabin, P.A. announces their move to larger offices at Centurion Tower, 1601 Forum Way, Suite 301, West Palm Beach and its founding partners **Ryon McCabe** and **Adam Rabin** both have been named on Florida Trend's Legal Elite list.

Bulletin Board



Bruce E. Reinhart, a solo practitioner specializing in federal criminal defense, was recently awarded an AV Peer Review rating by LexisNexis Martindale

Hubbell.

Jones, Foster, Johnston & Stubbs, P.A. announces that **Tasha K. Dickinson** has joined the firm as Senior Counsel.



Grey Tesh is now a Board Certified Criminal Trial Specialist.

Scott, Harris, Bryan, Barra & Jorgensen, P.A. is pleased to announce that **S. Brian Bull** has become Board Certified in Business Litigation Law. Brian joined the firm in 2000 and became a Shareholder in 2007.



Morris Law Group recently announced that **Marianne Coulton** has been hired to specialize in estate planning, wealth preservation planning and business planning.



Rosenthal, Levy & Simon, P.A. is pleased to announce that **Ethan F. Kominsky** was recently elected Secretary of the Florida Justice Association's Young

Lawyers Section.

MISCELLANEOUS

CONFERENCE TABLE: 5' x 10' adjustable with one piece glass top. Exceptional condition. Seats ten comfortably. Five captain chairs available. West Palm Beach. \$2700 OBO. Champion Pools (561) 722-2838.



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W. JAY HUNSTON, JR. Mediator/Arbitrator

- J.D. Stetson Univ. College of Law (1976)
- Florida Bar Board Certified Civil Trial Lawyer (1983-2003)
- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)
- Florida Certified:
 - Circuit Civil Mediator (1991-Present)
 - Family Mediator (1998-Present)
- NASD Approved Mediator
- Qualified Florida Arbitrator
- Admitted to Practice in Florida, Montana, Colorado, and Ohio
- Hourly and Per Diem Rates Available upon Request

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

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(800) 771-7780; Fax: (866) 748-6786
Email: wjh@hunstonadr.com
website: <http://www.hunstonadr.com>

CALENDAR

September 2008

Monday, September 1
Labor Day - Office Closed

Wednesday, September 3, 12 noon
**North County Section
Board Meeting**

Wednesday, September 3, 12 noon
**Diversity & Gender Sensitivity
Committee Meeting**
Bar Association Office

Tuesday, September 9, 12 noon
**Young Lawyers Section
Board Meeting**
Bar Association Office

Tuesday, September 9, 12 noon
**South County Bar Association
Membership Meeting**
Contact (561) 482-3838 for
information

Wednesday, September 10,
11:45 – 1:00
**Solo & Small Firm
Practitioners Luncheon**
Bar Association Office

Thursday, September 11, 12 noon
**Bench Bar Conference
Committee Meeting**
Bar Association Office

September 11-13
**The Florida Bar General
Meetings Sections &
Committees, Tampa**

Friday, September 12, 12 noon
**Judicial Relations
Committee Meeting**
Judicial Dining Room, Courthouse

Sunday, ~~September 14~~, 9:00 a.m.
**Catholic Lawyers' Guild
Red Mass 10/12/08**
St. Edwards Catholic Church,
Palm Beach

Monday, September 15, 12 noon
**Foreclosure Committee
Meeting**
Bar Association Office

Tuesday, September 16,
5:30 – 7:00 p.m.
**Western County Networking
Happy Hour**
The Players Club in Wellington

Tuesday, September 16, 5:30 p.m.
Inns of Court Meeting
Palm Beach County Courthouse

Wednesday, September 17,
11:45 – 1:00 p.m.
**Joint Membership Luncheon
with FAWL**
The Marriott WPB

Wednesday, September 17,
5:00 p.m.
Board of Directors Meeting
Bar Association Office

Thursday, September 18, 12 noon
**Professionalism Committee
Meeting**
Bar Association Office

Friday, September 19,
11:30 – 1:00
**North County Section
Membership Lunch**
City Club in North Palm Beach

Wednesday, September 24,
5:30 p.m.
**Legal Aid Board of Directors
Meeting**
Bar Association Office

Thursday, September 25
**Palm Beach Justice
Association Meeting**
Contact 471-2807 for
information

Friday, September 26, 8:30 a.m.
**Alternative Dispute Resolution
Committee Meeting**
Bar Association Office

Tuesday, September 30
Rosh Hashanah – Office Closed



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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