



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

February 2005

Third Annual Outstanding Jurist of the Year Award

sponsored by the North County Section

Judge Lupo was honored in 2003. Judge Colton received the award in 2004. Who will win the North County Section's Third Annual Outstanding Jurist of the Year Award for 2005?

Please let us know in writing who you think deserves to be honored for their contribution to our community. Letters of recommendation should be sent to the Bar Office no later than April 1. Or, email your nomination to lpoirier@palmbeachbar.org.

The winner will be announced during the section's annual dinner at Ruth's Chris Steak House in May.

Judges should meet the following criteria: The judge should be one with an excellent reputation for sound judicial decisions and an unblemished record of integrity as a lawyer and judge; is generally recognized by Bar members as highly qualified; and is active in Bar related activities. He or she should be respectful of the law and understanding of cases. Who is eligible? Any judge who currently presides over cases in Palm Beach County will be eligible to win the award.



For the second year, members of the YLS Executive Committee went holiday caroling at a local nursing home. Pictured above (l-r) are Stefanie Shelley, Elisha Roy, Mark and Carrie Pateman, Mike Dixon, Grier Pressly, Heath Randolph and our guitarists John Whittles and Grey Tesh.

Contributions sought for 2005 law week judicial reception

The Law Week Committee is beginning its efforts to raise contributions from law firms to underwrite the cost of the annual judicial reception honoring the local judiciary to be held on April 20, 2005. Sponsors will be recognized on the invitation, in the Bar Bulletin and on a sign at the reception.

Those interested in making contributions should send a check no later than March 1 to the Palm Beach County Bar Association, ATT: Patience Burns, 1601 Belvedere Road, Ste. 302E, WPB, FL 33406. Sponsorships have been set as follows: \$200 for firms with 1-2 attorneys; \$300 for firms with 3-10 attorneys; and \$500 for firms with 11 or more attorneys.

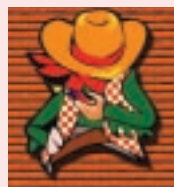
Investiture Ceremonies Scheduled for New Judges

Robing ceremonies for new judges are listed below with each one being conducted in Courtroom 11A of the main courthouse beginning at 4:00 p.m. All Bar members are cordially invited to attend:

Amy Smith February 4
Mark Eissey February 18
Sandra Bosso-Pardo March 4

Also, there will be a swearing-in ceremony for newly-elected Clerk of the Court Sharon Bock on February 11 at 4:00 p.m. in the County Commission Chambers on the 6th Floor of the Governmental Center.

Don't miss the North County Section's "Hoe-Down" comin' to town February 25th!



The North County Section will host its Second Annual Hoe-Down on Friday, February 25 at the Bonnette Hunt Club in Palm Beach Gardens. Don't miss the live country music, great food, door prizes and plenty of fun! Western attire appropriate.

The cost will be \$35 for members/spouses; \$45 for non-members; judges are complimentary. For your convenience, you can register online at www.palmbeachbar.org.

Sponsors for the evening are: Comerica Private Bank, First American Title Insurance Company and LexisNexis.

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President's Message



New Year's Resolutions

By Stanley D. Klett, Jr.

In late December of each year, I sit down and evaluate the previous year. I think about accomplishments of the previous year and what I achieved. I also think about areas of improvement and about the things that I could do better. For the most part, I feel the process is positive and I am satisfied with any progress. I even write down my resolutions and try ("try" being the operative word) to place these resolutions somewhere that I can find them at the end of the year. It seems that the same goals show up every year. I often wondered how many people go through the same self analysis.

I have broad goals and I have some more mundane items. The broader goals I usually can adhere to fairly well. The smaller items are ones that I have probably violated or given up by the time this message gets published (30 minutes of exercise or 100 sit ups every day never seems to make it to February). I thought this year I would share my top 5 goals and ponderings and see what kind of feedback, response or action they would engender.

1) Family – Strive to keep in touch with family. In the end, for most of us, that is all we have and all we will leave behind. Let your loved ones know that you care and spend some time with them. Your spouse, your parents, your siblings, if you have them, helped make you what you are today. If you have children, be a part, or remain a part of their lives. Teach them courtesy, manners, and respect. These lessons and memories will most likely be with them long after you are gone.

2) Health – Try to take care of yourself. For some people, it is quitting smoking, getting more exercise, eating less (this is one of mine every year), drinking less, or a better diet. I sometimes listen to an inspirational speaker, Zig Ziglar. In one of his messages, he points out that if you owned an expensive thorough bred horse, would you feed it caffeine, alcohol, cigarettes, not let it sleep enough, and not feed it a proper diet? If we would not do this to a horse why do we do it to ourselves. It does make you think as I have been told by some wise people that your health is something you don't notice until it is gone.

3) Friends – Take some time to appreciate and recognize your true and good friends. These are the people that are there when you need them and that you will be there for them. I have been blessed with several friends that I feel this way about. I try to let them know every so often that I feel this way. They bring joy, laughter, and a certain calmness to my life.

4) Community – The charitable causes that we contribute to, or support, make our communities friendlier, nicer, warmer, and more pleasant places to live. We should all have goals to contribute back to the community through our activities, our time, or our finances. I have worked with

Continued on page 18

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

LETTERS TO THE EDITOR

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



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

Director's Comments



Is "The Look of Others" Hindering You?

By Lynn Whitfield

While attending Brandeis University, I studied Maslow's Theory of Need. Abraham Maslow developed this theory by studying exemplary people such as Albert Einstein, Eleanor Roosevelt and Frederick Douglass. This is the belief that humans are motivated by unsatisfied needs and that lower level needs must first be satisfied before higher level needs can be satisfied.

The most interesting premise to me was "The Look of Others." Studying this concept I learned about the fear of not being accepted and the hindering affect it can have on each and every one of us. This fear explains why some people do not raise their hands in class for fear that they might be wrong and others will look at them with disgust and they will not be accepted. It also explains why we don't venture out of our "comfortable surroundings" to where we might be different from everyone else. This fear can immobilize us and keep us from realizing our true potential as individuals and as groups.

Conquering this fear can open new doors and enable us to better connect with others. Conquering this fear can even make us better lawyers. How is this possible, you ask? Well imagine that you have a client who is of a different culture than yourself. It is a culture that you do not understand and therefore cannot relate to at all. By not being able to relate to the client's culture, you can be hindered in your representation of the client, especially if the client's culture plays an intricate part in the client's legal matter. You want to learn more about the culture, but you are afraid to attend a function with the client, because you will be the only one there who is different. You do not know how you will be received. You are concerned that you will not say the right things or you will do something embarrassing. So you do not go and therefore never fully understand your client or how to help him or her.

On the other hand, let's say you decide to go. I submit that what you will find is that people are just people. The client may have different experiences than you do, but you will find that there are a lot of similarities. Having gone, and conquered your fears, you will discover things about yourself that you never knew.

I challenge each member to step out of the box and to go somewhere, a place, an event or another country, where you are the minority either by race, religion, political thought, culture, gender or age. Experience how you feel in the situation. It will make you more sensitive to how someone else might feel when they find themselves in that situation. It might change the way you relate to strangers in your midst or even your clients and colleagues. It will definitely help you to overcome any fear of "the look of others." Moreover, it will make you a better lawyer and person.

The Blood Bank Committee wishes to acknowledge the following who donated during the month of November:

Edward A. Garrison, Steven A. Harris,
Matthew J. Polak and Joan F. Williams.

The Committee requests that all attorneys who donate blood do so for the benefit of the accounts of the Bar Association. For attorneys in the West Palm Beach-Boynton Beach vicinity, the account number is PBBA. For attorneys in the north county area, the north county account number is PBBG.

Need CLE Credit?

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

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

Historical Committee

Who are they?

In continuing with a project started by last year's Historical Committee, we will continue to run old photos of some of our members. Can you guess who they are?

Answers on page 12



Minutes Of The Meeting Of The 188th Junior Bar Association Meeting October 7, 1966

Fifty members and guests were present. Dick Jorandby and George Moss were proposed for membership by Martin Flanagan, and Tom Yeager was proposed by Tom Shahady. They were warmly and graciously received by our President who said "OK, you're in as soon as you pay your three bucks".

President Campbell proceeded with the business at hand in his usual precise and efficient manner. After a spellbinding 15 minute explanation of certain proposed by-law amendments, Hank James moved that we change the by-laws to have elections of officers today instead of next May. Whether or not the amendment passed is unknown.

Undaunted, President Campbell was about to explain a second amendment when Jim Robinson suggested that we split the secretary-treasurer by deleting the hyphen and inserting a comma.

Nominations were open for president. Harry Johnston recognized Ray Royce's

introduction of him at the previous meeting in return for which he nominated Ed Lewis for President. After his seizure, Ray was informed he had been elected President without objection. Pete Van An del was nominated for Vice president by Jim Robinson who mumbled something about 400 years ago and some Dutch ancestors emigrating from Antwerp (which happens to be in Belgium). The nominee thought it would be proper to entertain a second to the nomination, but hastily agreed that seconds were not necessary when none were forthcoming.

Unimpressed by Dutch ancestry of 400 years past, Gavin Letts next nominated Larry Klein for the office of Secretary.

The three nominees for Secretary were Larry Klein, Wally Colbath and Stan Tucker. After a run-off election, it required Dick Burk only 30 minutes to tabulate the more than 36 votes and declare Larry Klein the winner.

Jim Weber extolled the virtues of sprinters and bayonets and nominated John Flanagan who survived the stigma which in previous years has attached to that last name and was elected Treasurer.

Ray Royce assumed his position as President and presided over what was left of the meeting. He suggested he would entertain a motion to buy outgoing President Campbell an expensive gift. Hearing none, he proceeded to introduce our speaker, Jack Sanford, pitcher for the California Angels. Drawing upon the knowledge acquired in many years of having pitched in both National and American Leagues, Mr. Sanford predicted a four game sweep by the Dodgers.

There being no further business to come before the meeting, it was duly adjourned.

Peter Van An del,
Secretary

PALM BEACH COUNTY BAR ASSOCIATION HISTORICAL COMMITTEE Family Profile: The Johnson Family

The Palm Beach County legal community gained a great family when A.R. Johnson moved to the county from East St. Louis in 1922. A.R. opened his law practice in the Comeau Building downtown concentrating mostly on collections. At home, A.R. raised six children, two of whom he persuaded to join him in the law. Judge Tom Johnson was called "Little Red" by his family and friends. Judge Johnson graduated as a four-letter athlete from Lake Worth High School in 1946 and joined the Marine Corps so that he could go to college on the GI Bill. Upon his graduation from the University of Miami near the top of his law school class, Judge Johnson returned to West Palm Beach to practice law with his father, A.R. and older brother, Bill. The year was 1953 and the County Bar Association had less than 100 lawyers as members.

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Florida Bar Board of Governors Contested Elections

Two local representatives to The Florida Bar's Board of Governors are retiring... Jerry Beer, who has served for eight years, and Amy Smith, who was recently elected to the Circuit Court

bench. There are two candidates running for Seat 4: Lisa Small and Lynn Whitfield and there are two candidates running for Seat 2: Greg Coleman and Siobhan Shea. Ballots for these races will be sent by The

Florida Bar on or around March 1 and must be returned to the Bar's election office no later than midnight March 21. Candidate profiles are listed below for your information.

SEAT 2



Gregory W. Coleman
Burman, Critton, Luttier & Coleman

Year admitted to practice : 1990
Law School: Stetson University
College of Law

What do you feel you can contribute to The Florida Bar as a member of the Board of Governors:

Much is at stake for the legal profession today and our Board of Governors needs the kind of leadership that can find solutions and offer aggressive advocacy for the legal community.

I have devoted thousands of hours of time to The Florida and Palm Beach County Bars. Over the years, I was fortunate to serve as President of the Palm Beach County Bar and The Florida Bar, Young Lawyers Division. As the YLD President, I sat as a voting member of The Florida Bar Board of Governors. During this time, the President of The Florida Bar appointed me to the Executive Committee, Access to the Legal System Committee, Disciplinary Review Committee and Communications Committee, while also serving on The Florida Supreme Court Commission for Professionalism.

My primary commitment is to diversity and the independence of our legal system. I established the first diversity committee and program in Palm Beach County and statewide. Acknowledging, accepting and encouraging diversity throughout the practice of law must be a priority.

I would also like to reach out to members who feel they have been abandoned by The Florida Bar or have been discouraged with Bar leadership. It is vital to the future of our practice that we act as a unified force to ensure the continuance of our independence.

I ask for your support so I may continue to work for all of the lawyers of Florida. Please vote for Gregory W. Coleman, Seat 2 when you receive your ballots on March 1, 2005.



Siobhan Helene Shea
Siobhan Helene Shea Appellate Practice

Year admitted to practice: 1991
Law School: University of Miami School of
Law J.D. cum laude 1991

What do you feel you can contribute to The Florida Bar as a member of the Board of Governors:

Experience in Board of Governors meetings as Statewide President of the Florida Association for Women Lawyers and as President-Elect taught me a great deal about how the BOG works. As Chair, and serving for the past six years on the Appellate Court Rules Committee of the Florida Bar, I have substantive experience in how rules are promulgated before reaching the Board of Governors. Extensive experience on a standing committee, combined with my active service for the past six years in the leadership of the Appellate Practice Section of the Bar and service as an advisory board member of the Equal Opportunity in the Law Section of the Bar have provided me experience working with and learning from other members of the Bar and bar staff.

In addition to my experience, ability to work well with others, vision, and values, I contribute character and integrity and a profound respect for professionalism and ethics in the practice of law. It is deeply important to our system of justice that the Bar and judiciary remain independent from the legislative branches of government. To retain our independence and continue to be self-regulatory, we must be responsible in leadership and must be vigilant in enforcing the Rules Regulating the Florida Bar. We must be fair in our enforcement and the rules we seek to enforce must be clearly written. As a Bar leader I promise to serve and listen to our members and will contribute to the advancement of jurisprudence and the administration of justice.



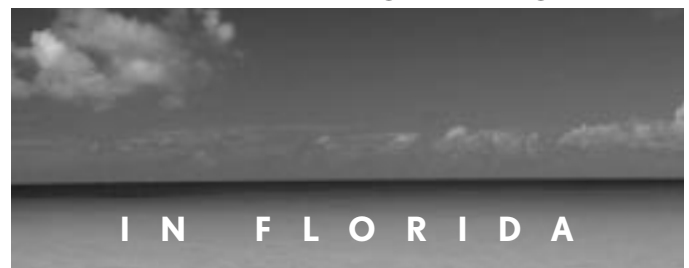
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SEAT 4



Lisa S. Small

Firm: Small & Small, P.A.
Year admitted to practice: 1992
Law School: University of Florida

What do you feel you can contribute to The Florida Bar as a member of the Board of Governors:

Our Circuit has enjoyed a tradition of excellent representation on the Board of Governors. Serving on the Board requires hard work, a balanced approach to issues and a dedication to representing all lawyers by being responsive, inclusive and accessible. I have the experience, strong work ethic and broad based diverse support to fulfill those high standards. I am overwhelmed by the outpouring of endorsements from over 500 lawyers, the last 3 Past Presidents of the Florida Bar and Presidents/Past Presidents of every voluntary bar in our Circuit.

It has been my privilege to serve as President of our PB County Bar, President of FAWL and on the Florida Bar Board of Governors (YLD) as a representative and officer. Of greater importance than the number of titles are the accomplishments while serving in these positions of leadership. I have a proven track record of setting goals and achieving those goals through consensus building and teamwork.

Even as a strong proponent of vision and change, I am mindful of the importance of maintaining a historical perspective. As lawyers, we face serious issues and challenges: legislative initiatives impacting the practice of law and the public's access to justice, attacks on the independence of the judiciary, court funding issues, the erosion of professionalism and the public's negative perception. There are no easy or quick answers. I am prepared to meet these challenges and I pledge to be pro-active, responsive and to work hard on behalf of all lawyers in our Circuit.

ELECT LISA SMALL



V. Lynn Whitfield

Firm: Walton Lantaff Schroeder & Carson
Year admitted to practice: 1980
Law School: University of Miami

What do you feel you can contribute to The Florida Bar as a member of the Board of Governors:

I am an attorney with proven leadership skills and a wealth of experience that is representative of a large number of attorneys practicing in the Fifteenth Judicial Circuit. Having practiced both criminal and civil law, if elected to the Board of Governors, I will offer an informed perspective. Also because I understand the issues facing solo practitioners and government lawyers, I will be able to address issues with their concerns in mind. My leadership skills will aid me in building consensus with the other Board members and therefore make me more effective at the meetings. Furthermore, because of my prior experience, as a non-voting member of the Board of Governors, I already know and have a working relationship with other attorneys currently on the Board including President-elect Alan Bookman and President-elect designate Hank Coxe.

The Florida Bar Board of Governors not only controls issues such as Bar dues and discipline, but they, through committees, propose changes to rules of procedures in the various practice areas. Having practiced in most of those areas equips me in determining which proposed changes are beneficial to my constituents and colleagues and which are overly burdensome. My twenty-four years of practicing law has given me life experiences that will make me a valuable addition to the Board and will allow me to represent all of the attorneys practicing in Palm Beach County regardless of their race, gender, areas of practice or location.



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Going Bare - An Analysis of Medical Groups Attempts to Protect Accounts Receivables

By Robert C. Furr, Esq. and Alan R. Crane, Esq.

In an attempt to avoid the high costs of medical malpractice premiums many physicians are deciding to "go bare." This requires that the physician, especially, if they have hospital privileges or perform surgery be self insured in the amount of \$100,000/\$300,000 or \$250,000/\$750,000. See Fla. Stat. § 458.320. This is to save the physician from losing his/her license by the State of Florida. This does not prevent multimillion dollar judgments against the physician if he or she loses the suit, in the past several years, doctors have set up asset protection plans involving an attempt to protect a medical group's account receivables.

This is how a typical plan works: The medical group takes a loan against the account receivables from a third party lender. The medical group then distributes the loan proceeds to each physician. Each of the physicians uses their share of the funds to purchase an exempt asset such as an annuity and/or a

life insurance policy. The object of the scheme is to make both the medical group and the physician judgment proof. If a patient obtains a judgment against the physician, the physician can seek bankruptcy protection, claiming that the personal annuity or life insurance assets as exempt under the law and request that the judgment be discharged.

Published articles on this issue generally tout the benefits, but none of those articles address the Florida's Uniform Fraudulent Transfer Act and whether these types of schemes will stand up to a sophisticated creditor's challenge. The Eye-MDs, Florida Society of Ophthalmology, *Helpful Hints on Dealing With "Going Bare"*, available at <http://www.mdeye.org/se/2403.php>. and Singer Xenos, *Protecting Your P.A. Assets From Malpractice Judgments*, available at <http://www.singerxenos.com/pages/physiciansnewsletter/protectingyourPAassets.html>

The Florida's Uniform Fraudulent Transfer Act protects both present and future creditors from being harmed by fraudulent transfers where the transfers were made with the actual intent to hinder, delay or defraud a creditor. See Florida Statute 726.105(a) (1). The statute lists factors that the court is to consider in determining whether a transfer is fraudulent. These are commonly referred to as "badges of fraud" and the list is not exclusive of the factors that the court may consider. In these type of transactions the court would consider that the transfer was made to an insider (i.e. the Group transferred the accounts receivable to the physicians), the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor (i.e. the Group transfers the value of the account receivables to a 3rd party lender by

Continued on page 14

2005 15th Judicial Circuit Court Holidays

New Year's Day

(Saturday, January 1, 2005) . . . Friday, December 31, 2004

Martin Luther King, Jr.

(3rd Monday in January) Monday, January 17, 2005

President's Day

(3rd Monday in February) Monday, February 21, 2005

Good Friday Friday, March 25, 2005

Memorial Day

(Last Monday in May) Monday, May 30, 2005

Independence Day Monday, July 4, 2005

Labor Day

(First Monday in September) . . . Monday, September 5, 2005

Rosh Hashanah Tuesday, October 4, 2005

Columbus Day

(2nd Monday in October) Monday, October 10, 2005

Yom Kippur Thursday, October 13, 2005

Veteran's Day Friday, November 11, 2005

Thanksgiving Day Thursday, November 24, 2005

Floating Holiday Friday, November 25, 2005

Christmas Holiday Friday, December 23, 2005

Floating Holiday Monday, December 26, 2005

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CONGRATULATES MEMBER



Manuel Farach

PRESIDENT-ELECT OF THE
PALM BEACH COUNTY BAR ASSOCIATION

FLORIDA BAR BOARD OF GOVERNORS REPORT

At its December 10 meeting in Naples, The Florida Bar Board of Governors:

- By a 31-13 vote denied permission for the Family Law Section, the Public Interest Law Section, and the Equal Opportunities Law Section to lobby for the repeal of a state law which prohibits homosexuals from adopting. Many board members expressed opposition to the law, but agreed with the Legislative Committee that the sections cannot act on the matter because it engenders deep philosophical and emotional divisions among a significant segment of the Bar membership.

- Approved the recommendation from the Program Evaluation Committee to create a Special Board Committee to Study the Florida Constitutional Amendment Process, including citizen initiatives. The committee is expected to work with the executive and legislative branches, as well as the public and the business community and make any recommendations by the board's August 2005 meeting.

- Approved the recommendation of the PEC to create a Special Board Committee on Judicial Independence. The committee will be charged with finding ways to strengthen Florida's judiciary and maintaining its independence. It will look at the JNC process and ways to support candidates who support judicial independence.

- Heard a report from the Member Benefits Committee that it is looking into proposals to provide a basic level of online legal research as a free service to all Bar members. RFPs have been sent out, replies have been received, and a further report is expected at the board's January 28 meeting.

- Heard a report from Chair Manny Morales on the Advertising Task Force 2004's preliminary recommendations and that the final proposals could be ready by the board's January meeting and acted

on at the board's April meeting. Board members asked extensive questions and also heard the preliminary view of the Bar's Citizens Forum on the ad rules.

- Heard President-elect Alan Bookman announce that U.S. Supreme Court Justice Anthony Kennedy will be the keynote speaker at the General Assembly at the June Bar Annual Meeting in Orlando.

- Adopted 10 new Bar-wide legislative positions for the 2004-06 biennium. All but one were positions in the 2002-04 biennium. The positions include supporting the Supreme Court's certification of the need for 110 new judges, continued state funding for legal aid under the Civil Legal Assistance Act, opposing any constitutional amendments that would alter the Supreme Court's oversight of the legal profession, supporting have the state pay for the Bar annual fees and CLE costs of its attorneys, and supports restrictions on legal advertising that meet constitutional requirements.

- Endorsed two-year cycle procedural rule amendments as proposed by the respective committees for Family Law Rules, Rules of Judicial Administration, Probate, Civil Procedure, and Small Claims Court.

- Heard a report from the Communications Committee about possibly allowing lawyers to put a link to their legal websites from the Bar's website, so that a person using the Bar's Find a Lawyer service would be able to go to a lawyer's site for more information. Concurrent with that would be an education program to remind lawyers that the content of their websites must comply with Bar advertising rules.

Jay White
Amy Smith

Jerry Beer
Scott Hawkins



Come out to Roger Dean!

On Wednesday, March 23rd the Quality of Life Committee will host its Second Annual Night Out for members beginning with dinner in the private dining room at JJ Muggs, followed by the baseball game at 7:00 p.m. between the National League Champion St. Louis Cardinals and the New York Mets. Tickets are just \$35.00 per person. Seats are limited. To purchase your tickets, please call Lynne at the Bar Office today!



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Troubleware Reaches Critical Mass

by *Bard D. Rockenbach, Chairman, Technology Committee*

Spyware, Viruses. Pop-ups. I refer to all of them as Troubleware. It's like Tupperware but with more of a belch than a burp. I have personally declared war on troubleware because it is threatening to ruin my life or, at least my computer. It has forced me to run two or three programs just to try to stay ahead of the wave. I now use Symantec Antivirus Corporate Edition (fka Norton Antivirus), Ad-Aware SE (<http://www.lavasoft.de/>), and then a pop-up blocker that is part of Internet Explorer. All of these products are necessary to stay ahead of troubleware scourge.

The basic problem with all troubleware is that it preys on Microsoft products. With a virtual monopoly in Internet browser software (something that Microsoft created by killing off Netscape) and in the word processing software market with MS Word, people who want to cause trouble know exactly what product to attack. It also doesn't help that Microsoft has been unable or unwilling to write software with security in mind, and has responded so slowly to fix problems once they arise.

Mozilla, an organization created to facilitate cooperation among programmers in an open source environment, has taken upon itself the job of battling troubleware. "Open source" is geek-speak for an environment similar to Utopia, where all programmers and business owners strive for the good of the computer users. It stands in stark contrast to the perception of Microsoft as a greedy, competition stifling and innovation thwarting giant. Anyway, Mozilla has developed a program called Firefox, a web browser that competes with Microsoft's Internet Explorer. It is free by download at <http://www.mozilla.org/products/firefox/>. I downloaded and installed Firefox to test its capabilities and assess any problems that were created by it.

My initial impression was one of great concern. After the installation process I started Firefox, expecting to see the Internet at blazing fast speeds. Instead, I found it to be incredibly slow, almost plodding. I opened pages on Firefox and then opened the same page using Internet Explorer and for about 5 minutes Firefox

was unable to open or process any page faster than I could draw it with chalk. After that first five minutes, however, it got faster and very quickly proved to me that it was much faster than Internet Explorer. I have determined that Firefox was doing some background processing during those first few minutes to convert my Internet Explorer Favorites and History over to Firefox.

After spending a day using the two browsers side-by-side, it appears to me that Firefox is at least as fast, probably faster, and doesn't suffer from the curse of annoying pop-ups. In fairness I have to also point out that my version of MS Internet Explorer blocked most pop-ups as well. I ran across an occasional website that told me it could not be found by Internet Explorer, but opened just fine in Firefox. I ran a test using both programs and Ad-Aware SE. I first ran Ad-Aware SE to clear out all spyware on my computer. I

then used Internet Explorer to surf the Internet for about 5 minutes. When I ran Ad-Aware SE again, it found 11 new spyware/tracking programs on my computer. I cleaned them out. I then surfed the Internet using Firefox for 5 minutes, going mostly to the same sites as before but then I added several more sites that I did not visit with Internet Explorer. When I ran Ad-Aware SE after using Firefox it found no new spyware programs. None. Zero. Although this test is not conclusive, it looks like Firefox stops spyware as well as pop-ups. That would be a marked improvement over Internet Explorer.

I am now relying more on Firefox each day and I may abandon Internet Explorer completely. I plan to try Mozilla's e-mail program, Thunderbird, to see if it really handles spam as well as it claims. If Microsoft isn't careful, it may have some real competition on its hands.

At this point, I would usually tell you to e-mail me if you have any questions. This time, however, I want to draw your attention to the fact that my e-mail address

Continued on page 16

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Florida Supreme Court Recognizes Local Attorneys for Pro Bono Work

Florida Supreme Court Justice Barbara Pariente and the Florida Pro Bono Coordinators Association in collaboration with the Legal Aid Society of Palm Beach County are proud to announce a new program to recognize the efforts of local attorneys who provide pro bono service through a legal services organization. Attorneys to be recognized will receive a lapel pin designating their level of pro bono activity. Three levels will be recognized:

- Bronze level - 20 to 49 hours
- Silver level - 50 to 99 hours
- Gold Level - 100 or more hours

All hours are based on cases closed in the year 2004. The pins, along with a letter of recognition from the Chief Justice of the Florida Supreme Court, will be distributed this spring through the Legal Aid Society. Additional local recognition for these attorneys is anticipated.

Attorneys that closed pro bono cases in December 2004

The following attorneys closed their pro bono cases in December 2004:

Stephen P. Artusi	Melynda Melear	Brian M. O'Connell	Jeffrey H. Rosenthal
G. Steven Brannock	Thomas B. Miller	Leslie S. Osborne	Christopher J. Schuster
Gary Brookmyer	Kim T. Mollica	Bruce Parrish, Jr.	Arne Siegel
Byron R. Cornwell	Sean F. Monahan	Louis P. Pfeffer	S. Smith-Gordon
Lorie M. Gleim	Mary Morris	William H. Pincus	Thomas E. Streit
Wendy A. Hausmann	A. Gabriela Mostaufauri	Leonel R. Plasencia	Thomas E. Streit
Mark Hektner	John B.T. Murray, Jr.	Marnie R. Poncy	Dewey H. Varner
Julie Littky-Rubin	Charles W. Musgrove	Ann Porath	and Jonathan H. Wasserman.
Mimi McAndrews	Georgia T. Newman	Corinne T. Poscher	
Hubert McGinley	David B. Norris	Michael J. Posner	
Lonnie K. Martens	Gloria O. North	Jaime Quick	
Alexander L. Martone		Hena Rodely	

Total number of hours: 978.78

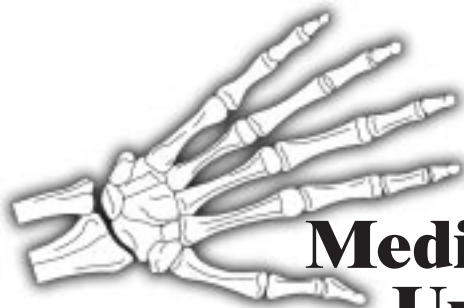
BRUCE W. PARRISH, JR. NAMED PRO BONO ATTORNEY OF THE MONTH

The 15th Circuit Pro Bono Committee is pleased to announce this month's Pro Bono Attorney of the Month, **BRUCE W. PARRISH, JR.** Focusing primarily in general civil litigation, Bruce, a solo practitioner in West Palm Beach is being recognized for his representation of a mother in a contested custody case. The mother received primary physical custody of the child in the original paternity case. The father was incarcerated for a time and after his release the mother allowed the child to go to visit with the father. The father kept the child and refused to return the child to the mother or even allow the mother to see or speak with the child. In addition, the father instructed the day care not to allow the mother to have contact with the child. The father went into hiding with the child avoiding service and thwarting any attempts by the mother to see the child. Over a year went by before the case was able to proceed to trial. The father showed up at the trial where the judge ordered the child returned to the mother. Even after the trial the father remained in hiding refusing to turn over the child. Finally, when an Emergency Motion for Child Pick Up was filed and signed by the judge, the father turned over the child to the mother at the courthouse. Bruce spent over a year and half and well over 65 hours in his representation of the mother in this case.

Circuit Court Report CIVIL DIVISIONS • November 2004

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	04/05	04/05	03/05	1100
B	07/05	07/05	03/05	1393
D	10/05	03/05	01/05	1367*
E	04/05	04/05	05/05	1350
F	03/05	02/05	04/05	1225
G	07/05	07/05	04/05	1097
H	06/05	05/05	01/05	1127
I	03/05	03/05	02/05	1176
J	08/05	05/05	02/05	1383
N	04/05	04/05	03/05	1268
O	06/05	03/05	03/05	1441

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 12/13/05 * (Asbestos 923)



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NCS Sponsors Party for Guardian Ad Litem Children

“It’s amazing what a difference a little bit of love can do for a child,” said Stan Klett, Jr., president of the Palm Beach County Bar Association. Stan & his dad are the driving force behind the North County Section’s Annual Holiday Party for abused and neglected children. This year, more than 100 kids enjoyed a day of bowling, lunch and presents.



Santa Claus (aka: volunteer Chris Nichols) and Stan presented 9-year-old Gabriel with a brand new bicycle! Gabriel and his two brothers and sister were recently adopted by their Grandmother.

Thank You!

To Jane Pastore of
Ley & Marsaa Court Reporters,
for volunteering her time to
record the recent
JNC interviews.

For the second year, Lori Combs, a Royal Palm Beach resident & mother of six young children of her own, bought, wrapped and labeled presents for all of the 25 kids who currently live at the Place of Hope in Palm Beach Gardens.



Movie tickets make great gifts for clients & staff!

The PBCBA has discount movie tickets available for sale to its members. Remember, these tickets make great gifts for family, babysitters, staff, teachers or clients. Savings are available for the following theaters (check your newspaper for locations near you):

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Photo Answers:

1. Ernie Simon
2. John Remsen
3. JulieAnn Rico Allison
4. Joe Reiter
5. Judge James Stewart



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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.

TANA SACHS COPPLE, New York; 1997; Associate in the law firm of Powers, McNalis & Torres in West Palm Beach.

ROSANNA FERRARI, Uruguay; Nova Southeastern University; 2004; Associate in the Law office of Matthew S. Nugent in West Palm Beach.

W. JAY HUNSTON III, Ohio; Florida State University; 2004; Associate in the law firm of Berrocal & Wilkins, P.A. in Jupiter.

RICHARD B. MATEER, Stetson College of Law; 1975; Sole Practitioner in Boca Raton

ROSE ROBBINS, Germany; University of Miami Law School; 1987; Sole Practitioner in Boca Raton.



SARA SAULL, Florida; Stetson University College of Law; 2004; Associate in the law offices of Martin L. Haines III Chartered in Lake Park.



SARAH LEVIEN SHULLMAN, Ohio; Georgetown University Law Center; 2004; Associate in the law firm of Steel, Hector & Davis LLP in West Palm Beach.

PHILLIP THRON, Florida; University of Florida; 1999; Associate in the law firm of Billing, Cochran et al. in West Palm Beach.

SARAH M. YOHO, Illinois; Nova Southeastern University; 2004; Associate in the law firm of Steel, Hector & Davis LLP in West Palm Beach.

CORRECTION: One of our new members from last month was incorrectly identified – her name is Erica L. Livingston. We apologize for the error.

“Going Bare”

(continued from page 9)

taking a loan against the receivables then transfers the proceeds of the loan to the physicians), and the debtor removed or concealed assets (i.e. the physician removed the proceeds he received from the accounts receivable and converted them to life insurance and/or annuity policies.) See 726.105(a) (2).

Based upon the badges of fraud, a court could rule that the transfer from the Group to the physicians are fraudulent. Therefore, a creditor could bring an action to set the transaction aside and obtain a judgment against the physicians.

The physician's conversion of the non-exempt loan proceeds into exempt funds, i.e. life insurance and/or annuity policies can be set aside pursuant to Florida Statute § 222.30. This statute allows the court to set aside exempt assets, except homestead, that were improperly converted from non-exempt assets. Therefore, the creditor may be able to reach the life insurance policy and the annuity.

“New Year's Resolutions”

(continued from page 3)

some great people in putting together events to benefit underprivileged children, and in the end, I just plain felt good about what we had done.

5) Professionalism – Try to conduct yourself in a professional, reasonable, ethical, and honest way. As lawyers we are almost constantly under public scrutiny. How we interact with the Judges, other lawyers, and our clients reflects upon the public's perception of each of us. I am proud, and feel privileged, to be an attorney and I believe most attorneys feel this way. Granted our profession is demanding and there are times when things don't go our way, or we feel we are being taken advantage of, however, we must endeavor to rise above it.

If I am mindful, and can stick to these 5 resolutions alone, than I will consider 2005 to be a successful year. Here is my hope that many of you that read this message can say the same in December.



W. JAY HUNSTON, JR. Mediator/Attorney

- 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)
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Death Of A Nursing Home Resident – What Are The Rights?

By Ted Babbitt

The rights that are available to a nursing home resident that dies in the nursing home were decided in the recent case of Knowles v. Beverly Enterprises, 29 Fla. L. Weekly S788 (Fla. Dec. 16, 2004). That case arose as a

result of injuries received by a nursing home resident as a result of bed sores suffered during the resident's life. The resident died from unrelated causes and a motion for summary judgment was made when an attempt was made to bring an action under Fla. Stat. 400.023(1) and 400.022 for violation of the Patient's Bill of Rights. The trial court granted a summary judgment under Fla. Stat. 400.023(1), which provides:

Any resident whose rights as specified in this part are deprived or infringed upon shall have a cause of action against any licensee responsible for the violation. The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or **by the personal representative of the estate of the deceased resident when the cause of death resulted from the deprivation or infringement of the decedent's rights.** (emphasis by the Court.)

The case then went to trial on a common law negligence theory and the jury returned a verdict for the defendant.

The sole issue before the Supreme Court was whether a cause of action could be brought under the above-cited statute by the personal representative for the injuries suffered during the decedent's lifetime when the decedent died from an unrelated cause. The Supreme Court held that such a cause of action could not be brought under the statute. The Supreme Court concluded that the unambiguous highlighted language provided that the personal representative could only bring a cause of action under that statute when the cause of death resulted from the violation of the decedent's rights.

The holding of the Supreme Court seems to fly in the face of Fla. Stat. 46.021, which clearly provides that all causes of action survive the death of a person. A stinging dissent by Justice Lewis reviews the legislative history of Fla. Stat. 46.021, the Florida

Wrongful Death Act, and the Nursing Home Bill of Rights, Fla. Stat. 400.023.

The dissent points out that the consistent holdings of the Supreme Court have been that the 1973 amendment of the Florida Wrongful Death Act merely merged survival actions for personal injuries which caused death with wrongful death actions while leaving in existence survival actions in which the tort in question did not cause death. These holdings, the dissent points out, are directly contrary to the decision in the instant case in which the Court holds that no survival action exists when a nursing home resident dies from a cause unrelated to the wrongful act. Such a holding, the dissent points out, is particularly strange in consideration of the fact that the legislative history of the Nursing Home Act which added the highlighted section was specifically designed to increase rather than decrease the rights of residents. At Page S796, the dissent puts it as follows:

It is extraordinarily twisted that the Legislature's attempt to shield the elderly from abuse through an expansion of the right of estates to file actions for conduct causing death is today used as a weapon against the survival rights of former nursing home residents' estates. The 1986 amendment of section 400.023(1) was never intended to restrict actions or complaining parties under the Nursing Home Residents' Rights Act; indeed, the legislative history of the Act reflects that the provision interpreted by this Court today was designed with the opposite goals in mind.

The majority opinion points out that while a cause of action cannot be brought under Fla. Stat. 400.023(1) by the personal representative where the person dies from causes unrelated to the violation of rights, an action for ordinary negligence is not cut off. The Court ignores that by its opinion important statutory rights of survival are indeed eliminated by the Court's seemingly strained interpretation of the statutory amendment, the effect of which is to eliminate a survival action that the legislature clearly intended to retain.

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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“Johnson Family”

(continued from page 5)

In 1955, Judge Johnson was appointed Assistant County Solicitor under Chuck Nugent. The Solicitors prosecuted all criminal cases in the county except for first degree murder and rape which were within the domain of the State Attorney, Phil O’Connell, who was State Attorney for both Palm Beach and Broward counties. These were considered part-time jobs but the State Attorney and Solicitors were so busy that they decided to work full-time even though the salary was less than \$5,000. Law enforcement was preoccupied at this time with solving the murder mystery of Judge Chillingworth who Judge Johnson considered the best judge ever to serve in the County. There was no Public Defender’s office in the 1950’s. Judge Johnson recalls Hal Ives defending 90% of the criminal trials in the county, estimating that Mr. Ives was compensated in less than 10% of the cases as indigent clients would line the courthouse hallways to grab Mr. Ives for a trial that would begin 15 minutes later.

Judge Johnson’s tenure as Assistant County Solicitor was only the beginning of a career of public service. Governor

Hayden Burns appointed Judge Johnson State Attorney for Palm Beach County in 1964. During his four-year tenure as State Attorney, Judge Johnson developed the reputation of a vigorous prosecutor who never lost one of his 35 murder trials. He returned to practice law with his brother in the Comeau Building for a brief period of time before winning a seat in the Florida Senate in 1970. In 1978, “Little Red” ran for circuit court judge for a two-year term, won that election, and served ably as circuit judge in Palm Beach County until his retirement in 1993. Judge Johnson served in all divisions of the court, and when asked to describe the best case he presided over as a judge, Judge Johnson quickly recalls a two-day case tried by Bob Montgomery and Lake Lytal in which there were no objections during the course of the trial. Mr. Montgomery requested 29 minutes for his closing argument. The Judge timed the closing and it took exactly 29 minutes.

Tom is the proud father of five sons all of whom were raised in the Catholic faith, grew up on Singer Island and followed the same scholastic path, attending St. Francis Elementary, Cardinal Newman High School, Palm Beach Community College, and Florida State University. Three of

Tom’s sons followed their father and grandfather into the law and have been practicing in the county as members of the Bar Association since the early 1980’s.

Joe Johnson has been a partner for over 22 years with the Babbitt, Johnson, Osborne & LeClainche, P.A. firm.

Bob Johnson began his career in the State Attorney’s Office where he worked as Chief of Felony before Judge Mounts. Bob currently practices with the firm of Sellars, Marion and Bachi.

Bill Johnson practices as a solo practitioner in the areas of personal injury and wrongful death. Bill met his future wife, Laura, while attending FSU law school in the early 1980’s. Laura Johnson, a native of Palm Beach County, practiced as a prosecutor in the State Attorney’s Office for 18 years where she was the head of Felony, and later, of the Domestic Violence Division before being elected county court judge in 2002 where she serves in the Criminal Division.

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“Troubleware Reaches Critical Mass”

(continued from page 5)

has changed. My new address is bdr@flappellatlaw.com. After many years, I have decided to build an appellate law firm with my good friend Phil Burlington. I’m sure that experience will bring new technology challenges. You might have noticed that I tend to write about things that are happening in my life, so you can expect to see new topics as life evolves at Burlington & Rockenbach.

By the way, in case you are keeping track I decided to purchase an EDTV plasma television, not the HDTV DLP projection television. I recently threw away my Linksys Wireless 802.11b Access Point and replaced it with a NetGear 802.11g Wireless Access Point. Apple iPod has invaded our house and I have now copied every CD we own onto the home laptop. My next step is to connect the stereo to a wireless media adapter so that I can play all my music on the stereo. We can explore all of those decisions in the coming months. Until then, email me. bdr@flappellatlaw.com.

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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. Mrhlaw@msn.com.

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

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

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Eli Franks joined the law firm of Gonzalez & Porcher, P.A., of Lake Worth, as an associate and will be participating in the area of worker's compensation law. Franks is also licensed to practice in New York and Illinois.



Romano, Eriksen & Cronin recently announced the hiring of **Maureen Martinez-Schwab** and **Todd Romano**, who joined the firm as associates. Mrs. Martinez-Schwab was most recently with the firm of Williams, Leininger and Crosby where she practiced insurance defense. Mr. Romano recently received an honorable discharge from the United States Marine Corps where he attained the rank of



Captain and was a member of its Judge Advocate Branch. He also acted as a Civil Law Attorney, a prosecutor, and as a Claims and Investigations Attorney for the base while stationed at Camp Pendleton, California.

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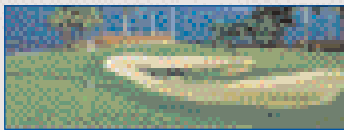
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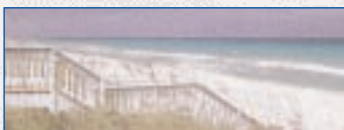
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CALENDAR

February 2005

Thursday, February 3, 8 a.m. – 4:50 p.m.
Fla Bar Seminar Video Replay “Land Trusts”
 Bar Association Office

Friday, February 4, 12 noon
Law Week Committee Meeting
 Bar Association Office

Friday, February 4, 4:00 p.m.
Investiture for Judge Amy Smith
 Courtroom 11A, Main Courthouse

Wednesday, February 9, 12 noon
Hispanic Bar Association Meeting
Judicial Dining Room, Main Courthouse
 Contact: Miriam Acosta-Castriz 625-1122

Thursday, February 10, 8 a.m. – 4 p.m.
Fla Bar Seminar Video Replay
“Basic Probate”
 Bar Association Office

Friday, February 11, 8:30 a.m. – 2:35 p.m.
PBCBA Securities Arbitration Seminar
 NASD Boca Center

Friday, February 11, 4:00 p.m.
Swearing-in Ceremony for Clerk
of the Court Sharon Bock
 6th Floor, Governmental Center

Tuesday, February 15, 5:30 p.m.
Jewish Federation Reception
 Kravis Center
 Contact Randy at (561) 242-6179

Tuesday, February 15, 6:30 – 8:00 p.m.
Small Claims Court Clinic
 SW County Regional Library, Boca Raton

Tuesday, February 15, 12 noon
North County Section Board Meeting

Wednesday, February 16, 8:30 – 5:00
PBCBA ADR Seminar
 Bar Association Office

Thursday, February 17, 8:00 – 5:00
Fla Bar “Practicing with Professionalism”
Seminar
 Marriott at City Place
 Call FL Bar at 800-342-8060 to register

Friday, February 18, 12 noon
Cunningham Bar Association Meeting
 Law Library, Main Courthouse

Friday, February 18, 12 noon
Federal Bar Association Meeting
 Colony Hotel, Palm Beach
 Contact: Judy Wilkinson (561) 650-7217

Friday, February 18, 4:00 p.m.
Investiture for Judge Mark Eissey
 Courtroom 11A, Main Courthouse

Saturday, February 19, 11:30 a.m.
Cunningham Bar Wm. Holland
Scholarship Luncheon
 Frenchman’s Reserve
 Contact: Lisa Quarrie 832-3300

Monday, February 21
Court Holiday

Tuesday, February 22, 12 noon
Lawyers for Literacy Committee Meeting
 Bar Association Office

Wednesday, February 23, 8:15 – 4:05
Fla Bar Seminar Video Replay
“Probate Law”
 Bar Association Office

Wednesday, February 23, 5:00 p.m.
Legal Aid Board of Directors Meeting
 Bar Association Office

Thursday, February 24, 5:00 p.m.
Board of Directors Meeting
 Bar Association Office

Thursday, February 24, 12 noon
Circuit Civil Practice Committee Meeting
 Judicial Dining Room, Main Courthouse

Friday, February 25, 8:30 – 1:00 p.m.
PBCBA Construction Law Seminar
 Bar Association Office

Friday, February 25, 5:30 p.m.
North County Section BBQ
 Bonnette’s Hunt Club, Palm Beach Gardens

Friday, February 25, 1:30 – 4:30
Hispanic Bar Association Seminar
 Contact: Miriam Acosta-Castriz 625-1122



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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

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