



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

www.palmbeachbar.org

June 2005



Professionalism Committee Co-Chairs Paul Golis (second from right) and Patricia Leonard (forth from right) congratulate this year's Professionalism Award Winners Sidney Stubbs, Judge Lucy Brown, and Bob Bertisch.

Congratulations to this year's Professionalism Award Winners!

Congratulations to **Sidney Stubbs, Judge Lucy Brown and Bob Bertisch** winners of this year's Professionalism Awards. The local awards were established seven years ago to honor an individual, a Judge and a Law Firm and/or an organization, which exemplify the highest ideals of ethics within the legal system.

Circuit Court Judge Lucy Chernow Brown received the award in the Judicial category. Sidney A. Stubbs, Jr., a partner with the West Palm Beach Law Firm of Jones, Foster, Johnston & Stubbs, won the individual award; and the Legal Aid Society of Palm Beach County was honored for its work as an organization.

The awards were presented during a recent Professionalism Luncheon, which was held at the Airport Hilton in West Palm Beach.

New Officers/Directors to be sworn in at banquet on June 4

Congratulations to incoming Board members who will be sworn in by the Honorable Mary Lupo at this year's installation banquet on June 4 at the Breakers Hotel:

| | |
|------------------------|--|
| President | Ted Leopold |
| President-elect | Manuel Farach |
| Directors (2-yr terms) | Scott Murray Richard Schuler Bryan S. Poulton |
| Directors (1-yr term) | Meenu Sasser Michelle Suskauer V. Lynn Whitfield |

Also serving on the Board next year will be North County Section President William Fleck, Young Lawyers Section President Wade Bowden and South County Bar President Jeffrey Marks. Ex-officio members will be Immediate Past President Stan Klett and Board of Governors Members Greg Coleman, Scott Hawkins, Lisa Small and Jay White.



Photo courtesy of the 15th Circuit

Palm Beach County celebrated Juror Appreciation Month by having local dignitaries thank the jurors for their service. Pictured (l-r) are Bar President Stan Klett; Public Defender Carey Haughwout; 15th Circuit Chief Judge Edward Fine; FL Supreme Court Chief Justice Barbara Pariente; West

Palm Beach Mayor Lois Frankel; Clerk & Comptroller Sharon Bock; Chair of the Board of County Commissioners Tony Masilotti and State Attorney Barry Krischer. The Palm Beach County Bar Association with contributions from its Young Lawyers Section; the Hispanic Bar; the Cunningham Bar and the Palm Beach County Trial Lawyers Association provided a free bagel and cup of coffee to the jurors for four days.

One Summer Issue of Bar Bulletin

The next issue of the Bar Bulletin will be a combination issue of July and August issues. The deadline for submitting articles/advertisements is June 1. The issue will be mailed in July.

Dues are due

Annual membership dues statements were mailed to all PBCBA members in March for fiscal year 2005-06, which begins July 1. If you did not receive a bill, please contact Shoshannah Spence at the Bar Office (687-2800). Don't miss the benefits of being a member, renew your dues by July 1.

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President's Message



Thank You to Many for a Rewarding Year

By Stanley D. Klett, Jr.

As I sat to compose my final President's Message, I was amazed at how quickly the year had passed. Last June, when I was installed as President of the Palm Beach County Bar Association, I was very proud of the honor, but I wondered how I would do and what kind of legacy I would leave.

Now my year has passed and I know many people will remember it. We survived two major Hurricanes that tore through Palm Beach County (albeit not my fault as I proudly claim my collegiate Gator heritage). We endured the initial implementation of Constitutional Amendments that shifted funding in our State (so far anyway) although we now realize we have a separate fight to save worthy causes like our Law Library and Legal Aid. We successfully held a Presidential Election that did not result in the entire nation focusing on Florida and Palm Beach County. I somehow view all these as positives.

Personally, my wife and I, welcomed into this world our second child. My son, Foster, being born in December, joined his older sister, Scotti. I was not being lazy but I can now easily keep track of how many years ago I was the President of the Palm Beach County Bar.

I took part in the swearing in of four (4) new additions to our Judiciary (Judges Smith, Colin, Bosso-Pardo and Eissey) that are wonderful additions to our bench, as well as swearing in a new Comptroller/Clerk of Court (Sharon Bock). During my term, I was able to write about causes that I believe in that support our roles and duties as lawyers to society. I also know that there are events that occurred while I was president that will be felt for years to come.

As part of my final President's Message I want to give thanks to some of the people and groups of people that I worked with in the past year that made it special for me.

To Patience Burns- I hope that you know how much I appreciate your work and effort that play a large role in making our Bar the very best in the State. I also congratulate you on becoming a certified association executive. Hard to believe that you have only been doing this for 25 years come December.

To Lynne Poirier-Your positive and friendly attitude helped make my job so much easier. Your talent for obtaining recognition for the good the bar does and for obtaining and securing sponsors for our many events is incredible. To the other staff members, Shoshanah Spence, Silvia Vighetto, Melba Pena and Marquila Cabrera who work hard to keep the office running so smoothly.

To the Judiciary of Palm Beach County- I want to thank

Continued on page 19

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THE
BULLETIN

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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

Dear Patty & Paul:

It was an honor to be named an award recipient this year by the Professionalism Committee which has done so much to foster and enhance professionalism in our legal community. The beautiful crystal award now sits gracefully in a place of honor in my chambers. It will daily serve as a reminder of the lofty goals of professionalism to which your committee works so hard to keep all of us aspiring. Thank you.

/s/
Lucy Chernow Brown
Circuit Court Judge

Trial Strategies of The Masters Seminar June 10

by *Matthew Lane, Employment Law Committee Chair*

A group of exceptional attorneys have agreed to discuss their successful trial strategies with the members of the bar.

The employment law committee has enrolled Chris **Searcy**, Willie **Gary**, Bob **Montgomery**, David **Boies**, and the Honorable Kenneth Marra to speak at our upcoming Trial Strategies of the Masters Law Seminar. This seminar will take place on June 10, 2005, at the Marriott at CityPlace.

This seminar is sure to sell out, so it is important that bar members promptly send in their reservations. The cost is \$130.00 for bar members and \$170.00 for non-bar members. If you have any questions, feel free to contact Matthew Lane at 651-7273 or CLE Coordinator, Melba Pena at 844-1212.

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Making the Case for Practice Management Software

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

Most people have a procedure for storing information about their cases. For years, I have relied on a set of rules for storing documents and other case related materials, and then another set of rules for calendaring and emails. These rules involve at least two different programs, but the system has worked fairly well. I rarely lose important information. Despite that track record, however, I have recently started to consider practice management software.

Practice management involves more than just storing documents. A good practice management program will handle your email, calendar, appointment scheduling across several calendars in the office, task management, document storage, billing and accounting. The basic idea is that instead of using several programs to perform all of these functions, you can use just one. The big advantage is that when you set up a new case in a case management program you input all of the information needed for that case, which is then used in every other function. Some programs even tie into the phone system and pull up case information related to a call by checking the phone number of the incoming call with the client database and then displaying the relevant information for that client.

The hardest part about purchasing practice management software is choosing which one to buy. There are several to choose from:

- Legal Files (www.legalfiles.com)
- TimeMatters and BillingMatters (www.timematters.com)
- PCLaw and PCLaw Pro (www.pclaw.com)
- Amicus Attorney (www.amicusattorney.com)
- Client Profiles (www.clientprofiles.com)

Each of these programs is built around the central desire to make all information about a particular case accessible at one time. Amicus, for example, organizes cases so that on one screen you can view everything related to that case such as upcoming appointments, hearings, tasks, as well as planned events such as a discovery plan. The screen will also include events being handled by other lawyers in your office. Without practice management software, you would have to go through a great deal of investigation to figure out who is handling what and when. The program keeps track of your emails and makes sure that you bill for them. In fact, many of the features are designed to help “capture” time and increase profitability. By integrating functions into one program, attorneys spend less time finding information and more time working of productive, and billable, events.

All practice management programs are designed to increase productivity and profitability, but go about it in different ways. You will want to take a detailed look at several

programs before selecting the program that is right for you. The manufacturers have assisted in this process by creating online videos of the program functions. By spending about two hours reviewing the various videos, you can probably narrow your choice down to one or two strong candidates. You might also want to involve a consultant in this process. Steven Best (770-998-3800, www.bestlawfirm.com), an attorney who used to practice civil litigation in Palm Beach County, now works as a consultant for several of the programs I have listed, and others I have not. Lexis/Nexis recently purchased TimeMatters and has begun to integrate some Lexis/Nexis features into the software, such as court documents. Your local Lexis/Nexis representative can help you with that product. The various websites also provide pricing information. Even though the software will cost a few hundred dollars per user, it doesn't take very many recaptured hours of billing time to make that expense profitable.

Getting organized is a laudable goal, and sometimes software can help you accomplish that goal. In the case of law firm and case management, software can definitely help. I have a short list of local firms which are using different programs, and I can put you in touch with lawyers who are already using a particular product. Sometimes it helps to talk to another person in your same field to get a good perspective on a program. The products are priced similarly, so this is a decision that will come down to features and ease of use rather than pricing. Email me if you have questions.

bdr@flappellatelaw.com

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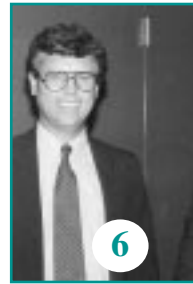
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Minutes of the Junior Bar Section

The 167th regular meeting of the Junior Bar Section of the Palm Beach County Bar Association was held at the Town House at 12:15 p.m., Friday, January 8, 1965. There were 42 members and guests present.

In the absence of the President, the Vice President presided and recognized the presence of Circuit Court Judges Hewitt and Downey and Small Claims Court Judge Currie.

Pete Van Andel introduced Ken Beall, a new associate with his firm, and proposed him for membership. Marvin Mounts introduced Ed Miller, a new Assistant County Solicitor, and proposed him for membership. Both were unanimously accepted subject to the payment of dues.

Paul Potter introduced Ken Jones, an associate of Winters, Cook, Brackett & Lord, who is awaiting the next Bar examination. Norm Kapner introduced as his guest Dr. Bob Greene.

Our program consisted of the film of the highlights of the 1963 Chicago Bears N.F.L. Championship team. Ed Lewis, in introducing the film, suggested that it made a good review of Criminal Law inasmuch as it combined various involved aspects of mayhem, assault and battery, petty larceny and sundry intentional torts. Those present, who recalled the Bears' dismal 1964 record, felt that the only thing criminal was that the Bears won the Championship in the first place.

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

Respectfully submitted,
Angus J. Campbell, Secretary

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More than 300 members kicked off the beginning of Law Week by attending our annual Judicial Reception, which was recently held at the Harriet at CityPlace.

The Palm Beach County Bar Association sincerely thanks the following for sponsoring the reception:

Law Firm Sponsors:

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Chief Judge Edward Fine (far right) pictured with this year's Law Week Co-chairs Matthew Thibaut and Kim Rommel-Enright



F. Malcom Cunningham, Jene Williams-Rhoads, and Freddy Rhoads.



Robin Rosenberg and Michael McAuliffe



Judge Jack Cook, Jay Jacknin and 4th District Court of Appeal Judge Fred Hazouri



Judge Elizabeth Maass and Judge Jorge Labarga



Judge Jeffrey Colbath, Judge Laura Johnson, William Johnson, Judge Karen Marx, Judge Joseph Marx, and Judge Peter Blanc



Michael Gelfand, Colleen Nelson and Bruce Harris



Tom Sasser, Michelle Suskauer and Jerry Beer

Photos taken by Tom Brodigan, Brodiganphotography.com

Florida Bar Board of Governors Report

At its April 8 meeting in Tallahassee, The Florida Bar Board of Governors:

- Approved new advertising rules proposed by the Advertising Task Force 2004, with some changes. As approved, the rule amendments, which now go to the Supreme Court, would require that virtually all radio and TV ads be approved by the Bar before they are aired. The board also rejected a proposal by some members that attorneys doing direct mail solicitations in criminal cases be prohibited from doing those mailings for five days after an arrest and until they determined if the potential client were represented by another lawyer. The board also voted that all lawyer websites are subject to the advertising rules, except the filing requirement.

- Approved a resolution naming the Bar's Professionalism Center after the late board member Henry Latimer, to honor his accomplishments as a lawyer and contributions to the profession.

- Approved a recommendation from the Disciplinary Procedure Committee that lawyers be able to include in their fee contracts a clause requiring arbitration of fee disputes if the client is also advised that he or she should seek the advice of another lawyer on that provision. The board rejected a similar proposed rule requiring arbitration of malpractice claims, and then voted to direct the DPC to draft a rule that such an arbitration requirement cannot be in a fee contract unless requested by the client.

- Approved with some technical amendments a contract with Fastcase to provide free online basic legal research for all Florida Bar members. Fastcase will also provide a substantial discount for Bar members who wish to get more than the basic service.

- Approved the 2005-06 Bar budget that projects revenues of almost \$32 million with a nearly \$500,000 surplus and no increase in annual membership fees. The board will consider member comments at its June 3 meeting.

- Approved a new Bar legislative position proposed by the Special Committee to Study the Constitutional Revision Process. The Bar supports revision of the Florida Constitution that would restrict future initiative amendments to only basic or fundamental citizen rights, matters already in the constitution, or the basic structure of government.

- Heard a report from the Judicial Nominating Procedures Committee that the committee was reluctant to adopt a rule requiring JNCs to record their candidate interviews because of the expense. The board referred the matter to the Committee on Judicial Independence.

*Submitted by your local Board of Governors Representatives:
Judge Amy Smith, Jay White, Jerry Beer or Scott Hawkins.*



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)

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Is your current email address on file with the Palm Beach County Bar Association? If not, please be sure to send it to pburns@palmbeachbar.org. We send out a weekly eNewsletter with updated legal news and information about upcoming events and seminars. Bar members were sent emails after the hurricanes to keep them up-to-date on courthouse and clerk's offices closings and we also post information about judicial openings and any other critical information that comes from the Chief Judge's office. Don't be left out, send your email address in today.



Discovery In Bad Faith Actions

by Ted Babbitt

In Allstate Indem. Co. v. Ruiz, 30 Fla. L. Weekly S219 (Fla. April 7, 2005), the Supreme Court of Florida resolves numerous conflicts among the Districts concerning what can be discovered in a bad faith action. Justice Lewis, speaking for the majority, reviews the history of first party and third party bad faith actions.

The opinion notes that third party actions for bad faith arise when an insurance company fails to protect its insured against an action brought by a third party resulting in a verdict in excess of the insured's policy limits. That action arises from common law first recognized in Florida in Auto. Mut. Indem. Co. v. Shaw, 184 So. 852 (Fla. 1938). First party actions, on the other hand, arise when an insured sues under his or her insurance policy for the insurer's failure to properly process a claim made under that policy.

Until the enactment of Fla. Stat. 624.155 in 1982, a distinction existed between the common law duty of an insurer to its insured under first and third party actions. The duty to an insured under a third party action required good faith and fair dealing in the handling of that third party claim. See State Farm Mutual Automobile Ins. Co. v. Laforet, 658 So. 2d 55 (Fla. 1995). While, in a third party action the obligation to an insured created a fiduciary relationship similar to that as between an attorney and a client, historically, that fiduciary relationship did not exist in a first party action. That all changed with the enactment of §624.155 which made no distinction between first and third party actions and required an insurer to treat its insured identically in both types of actions.

Despite the unity of responsibility created by Fla. Stat. 624.155, there still remained a difference between the discovery materials which could be obtained when a bad faith action was brought in a third party claim versus a first party claim. That distinction was crystallized in Manhattan National Life Insurance Co. v. Kujawa, 522 So. 2d 1078 (Fla. 4th DCA 1988), approved, 541 So. 2d 1168 (Fla. 1989). In that case the Fourth District quashed a discovery order compelling the production of the insurer's underlying legal file in a first party action basing its opinion on the lack of fiduciary relationship between insurer and insured in such an action. The Supreme Court, by approving that opinion, created a schism between first and third party bad faith actions with respect to the discovery that could be obtained.

In Allstate Indem. Co. v. Ruiz, supra, that distinction was eradicated. At Page 221, the Court holds:

Today, however, we reconsider the wisdom of our decision in Kujawa and a fresh look at such decision convinces us that any distinction between first- and third-party bad faith actions with regard to discovery purposes is unjustified and without support under section 614.155 and creates an overly formalistic distinction between substantively identical claims. As we have previously acknowledged in LaForet and other decisions, section 624.155 very clearly provides first-party claimants, upon compliance with statutory requirements, the identical opportunity to pursue bad faith claims against insurers as has been the situation in connection with third-party claims for decades at common law. The Legislature has clearly chosen to impose on insurance companies a duty to use good faith and fair dealing in processing and litigating the claims of their own insureds as insurers have had in dealing with third-party claims. Thus, there is no basis to apply different discovery rules to the substantively identical causes of action.

Thus, the Court holds that in both first and third party bad faith actions, all documents contained in the underlying claim file and related legal files that were created up to the date of resolution of the underlying claim are discoverable and, in addition, any materials prepared after the resolution of the underlying claim may also be subject to discovery upon a showing of good cause after an in camera inspection by the trial court. The court cautions, however, that when coverage and bad faith actions are brought at the same time, the trial court must be wary of producing protected materials which prejudice the insurer in defending the coverage aspect before the bad faith action arises. In such circumstances, the Court cautions that the trial judge should use in camera review and perhaps even abate the bad faith action until such time as the coverage action is determined and the bad faith action ripens.

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.

Stress Relief during a CLE Seminar?

Take a look at these pictures and you'll see something that you normally don't see at our CLE Seminars. Members recently received acupuncture treatments as a way to relieve stress. A special thank you to Denise Neiman and Kyle Caparosa for coordinating our Second Annual Friday Morning Happy Hour, which was co-sponsored by the Quality of Life and Family Law Committees.



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www.palmbeachbar.org

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- Assistant Public Defender, 15th Judicial Circuit in and for Palm Beach County (1987-1992)
- Series 7 Securities License (1997-2004)
- **JD** – University of Miami School of Law (1987)
- **BSM** – Tulane University School of Business (1984)

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Detecting and Preventing Stockbroker Misconduct

by Adam T. Rabin and Jeffrey B. Kaplan, Dimond Kaplan & Rothstein, P.A.
(Part II of Two Parts)

What An Investor Should Do When He Believes His Account Has Been the Subject of Stockbroker Misconduct

If a review of account statements or trade confirmations reveals potential broker misconduct, the investor should contact the broker. If the investor is not satisfied with the broker's response, the investor should address the issue with the firm's branch manager. Any problems should be addressed by the broker or branch manager immediately.

Brokers and branch managers frequently will tell an investor that has raised a potential problem that investment losses are the result of "market losses." This is not always true. In many instances, account losses are much greater than general market losses. Investors receiving such an explanation should request documentation reflecting the performance of the appropriate market index as compared to the investor's account over the same time period. This analysis will reveal whether the investor's losses truly are commensurate with a general market decline.

For example, investors who wanted to be invested in a diversified stock portfolio, generally should request that

their account performance be compared to the S&P 500 Index. Investors who had a conservative income objective should request that their account be compared to a conservative bond index. If the investor's account performed significantly worse than the comparable index, their losses might be the result of stockbroker misconduct rather than "market losses."

When Dealing Directly with the Brokerage Firm Does Not Lead to an Acceptable Result, the Investor Should Hire a Lawyer

When clients believe that their investment losses have been caused by stockbroker misconduct, they often are inclined to attempt to recover their losses from the brokerage firm on their own. This frequently is ineffective. Brokerage firms often claim that there was no wrongdoing. And in those instances where a firm offers money to resolve a dispute, the offer usually is far less than the client's losses.

Investors also obtain little to no benefit from contacting the SEC, the NASD, or the NYSE. While these organizations are charged with policing the securities industry, they generally do

not assist investors in the recovery of investment losses.

If an investor believes that they are the subject of stockbroker misconduct, they should seek the advice of a lawyer who has expertise in the area of securities arbitration, as most brokerage firms have their clients sign arbitration agreements when they open their account. Most consultations with a lawyer in this practice area are free, and an experienced attorney will possess the requisite knowledge to determine if the client has a valid claim to recover the investment losses. Furthermore, the attorney often will be able to offer the client a variety of arrangements for the payment of attorney's fees, depending on the investor's preferences and resources, including a pure contingency fee, an hourly fee structure, or a hybrid arrangement that usually involves a reduced hourly rate and reduced contingency fee component.

In sum, while an expense to the investor accompanies the hiring of an attorney, the attorney likely will be able to achieve a better result for the investor than the investor acting without counsel.

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Legal Aid Supporters Enjoy Cruise on the Mariner III

On Saturday evening April 2, 2005 one hundred and five of Legal Aid's friends and supporters spent a wonderful evening dining, dancing and cruising on the Intracoastal on the Mariner III yacht. The event was hosted by Mariano and Shelley Garcia co-chairs of the 17th Annual Pro Bono Recognition Evening. The cruise which was a prelude to the May 14th celebration also helped raise funds for the evening's silent auction. The auction will raise much needed monies for Legal Aid's programs and the Sun Sentinel's WB/39 Children's Fund



Amy & Jeff Devore



Mariano & Shelley Garcia



Jamie & Scott Murray



Anatole Conde & Lisa Small

Pro Bono Attorneys Close Cases In April 2005

The following attorneys have closed their pro bono cases in April 2005:

Edrick E. Barnes
Flynn P. Bertisch
Greg Bloshinsky
Amy Bloom
Mark R. Brown
Jessica M. Callow
Louis Caplan
Alan Cooper
Benjamin Greenberg
Kevin L. McNamara
Jean Marie Nelson
Georgina Orosa
Craig F. Snyder
Paul Thibadeau
and N. Wiscovitch-Rentas.

Total number of hours: 134.10

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Law Week Highlights



In a special effort to educate the public about living wills and advance directives, Ellen Regnery talked to this gentleman about his personal planning during the Ask A Lawyer Booth, which was held at the Palm Beach Mall.



A photographer from WPBF Channel 25 talked to Sara Aliejwicz during our Dial A Lawyer program.



Attorney Jeff Vastola (left) recently talked to County Court Judge Peter Evans about the benefits of mediation.

In recognition of Law Week, mediation was one of three legal topics, which was discussed on "It's the Law with Jeff Vastola." Jeff's program can be heard Sunday mornings on WJNO live from 8:00 a.m. to 9:00 a.m.

Circuit Court Report CIVIL DIVISIONS • March 2005

| DIVISION | JURY TRIALS | NON-JURY TRIALS | MOTIONS | CASES PENDING |
|----------|-------------|-----------------|---------|---------------|
| A | 08/05 | 06/05 | 06/05 | 1079 |
| B | 01/06 | 01/06 | 05/05 | 1445 |
| D | 02/06 | 10/05 | 06/05 | 1297 |
| E | 09/05 | 09/05 | 07/05 | 1399 |
| F | 06/05 | 06/05 | 02/05 | 1158 |
| G | 11/05 | 11/05 | 05/05 | 1010 |
| H | 10/05 | 10/05 | 04/05 | 1166 |
| I | 07/05 | 07/05 | 05/05 | 1137 |
| J | 11/05 | 08/05 | 05/05 | 1376 |
| N | 09/05 | 08/05 | 07/05 | 1271 |
| O | 09/05 | 06/05 | 05/05 | 1362 |

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 4/7/05

*(Asbestos 540)

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



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

*Muvico Theater - \$6.00 each (\$8.00 at box office)

*Regal Theaters \$7.00 each (\$8.25 at box office)

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

Visit the Bar's Website
www.palmbeachbar.org

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.

HOMER P. APPLEBY - 2000;
Kansas University; Magnacent, LLC,
in Boca Raton.

MARK D. BAXTER - Memphis, TN;
1990; Cumberland School of Law;
Associate with Riley Knoerr &
Emanuel, in West Palm Beach.

VICTOR BERWIN - New York;
University of Southern California;
Associate in the Ruden McClosky et
al., in West Palm Beach.

BRIAN D. BUCKSTEIN - Queens,
New York; 2002; Rutgers University;
Associate in the law firm of Dobin &
Jenks, LLP, in Jupiter.

TRICIA J. DUTHIERS - Port Au
Prince, Haiti; 2003; University of
North Carolina at Chapel Hill; Clerk
with the Fourth District Court of
Appeal in West Palm Beach.

PHILIP J. FELDMAN - New York;
1990; St. Thomas University; Partner
in the Law Offices of Feldman &
Gertz, LLP, in Boca Raton.

KEITH A. GOLDBAUM - Detroit,
MI; 1985; Detroit College of Law;
Partner in the law firm of Friedman,
Rosenwasser & Goldbaum, in
Boca Raton.

KAREN R. HEIDTMAN - Port
Jefferson, NJ; 1998; Cardozo School
of Law, NY; Associated with Clerk
& Comptroller's Office, in West
Palm Beach.

JARED LEVY - Brooklyn, NY; 2003;
Boston University; Associate in the
law firm of Ackerman Link &
Sartory, in West Palm Beach.

JENNIFER KATHLEEN MAY -
Slidell, Louisiana; 2004; St. Thomas
University; Associate in the law firm
of Kelley, Kronenberg, et. al, in West
Palm Beach.

DWIGHT A. MILLER - Boston, MA;
2003; University of Virginia;
Associated with Alley, Maass, Rogers
& Lindsay, P.A., in Palm Beach.

ROBERT T. RIGAL - Philadelphia,
PA; 2000; University of Florida,
College of Law; Associate with the law
firm of Rutherford & Mulhall, P.A., in
West Palm Beach.

JOSE A. RODRIGUEZ - Puerto Rico;
2005; Nova Southeastern University;
Associate in the Law Office Celeste &
Thompson, in West Palm Beach.

**ANGELIC R. SHAKIR-
KIRKCONNELL** - 2002; Nova
Southeastern University; Associate in
the law firm of Kelley Kronenberg
Gilmartin Fichtel & Wander, in West
Palm Beach.

ANDREA M. SILVA - Pueblo, CO;
2004; Nova Southeastern University;
Associate in the law firm of Moyle,
Flanigan, Katz, Raymond & Sheehan,
P.A., in West Palm Beach.

KRISTI STAHNKE MCGREGOR -
Park Ridge, IL; 2004; Emory University
School of Law; Associated with the
law firm of Milberg Weiss Bershad &
Schulman, LLP, in Boca Raton.

ELISSA S. VESSAL - Philadelphia,
PA; 2003; Widener University School
of Law; Sole Practitioner in
Boynton Beach.



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Attorney Team Winners

Attorneys vs. Judges Softball Game

by Dennis Koehler

Led by Ken Lemoine, a team of lawyers captained by Dennis Koehler routed the judges' team for the second consecutive year by a final score of 24-4 in their annual game, played at John Prince Park on April 30.

The LAWYERS put the game away early, scoring nine times in the second inning, highlighted by starting pitcher John Kurtz' two-run triple and Sar Alijewicz' RBI single.

Ken Lemoine (3 for 3), Leon St. John (3 for 4) and Dennis Koehler (3 for 4) led the LAWYERS' 25-hit attack, while John Pankauski, Kirk Volker and John Kurtz drove in three runs each. Thom Baird tripled and doubled in 4 trips, and Tony Diaz singled twice and walked in 2 ABs.

Hoping to short-circuit the LAWYERS' power advantage, Judges Rich Wennet and Ken Marra overruled Koehler before the game began by selecting a playing field with a 25-MPH wind blowing directly into the batters' faces. The decision arguably backfired on the JUDGES, as the winds played havoc with fly balls hit to their outfielders.

Judges Wennet and Marra, along with JUDGES pitcher Pete Blanc's son Anthony, each collected three hits, followed by Jon Gerber's two singles in three trips. Judge Marra, who played college ball at Stony Brook, fielded flawlessly at short and blasted an RBI triple over the left fielder's head in the 4th.

(Three veterans of previous LAWYERS v. JUDGES contests – Rich Oftedal, Ed Garrison and Howard Berman – did not play in this year's game.) The annual post-game picnic, once again featuring a 6 foot long submarine sandwich donated by Tom Mulligan of SUBWAY, a Lisa Small client, provided an excellent opportunity for chatter between the players, their families and fans. The judges promised, "wait until next year?"

June 2005



Judicial Team



Some of the judicial team members hold up 2 six-foot subs donated by Tom Mulligan, who has contributed these for the past ten years!



Judges Jorge Labarga, Peter Blanc and Jon Gerber enjoy the picnic following the softball game.



Judicial Team Captain Jorge Labarga presents the winning trophy to attorney team member Sara Alijewicz and then ordered that the game results be thrown out!



Lawyers for Literacy plan their third annual Spelling Bee!

How well can you spell? The Lawyers for Literacy Committee is searching for the Bar's top spellers! If you're a good speller, then we need you to participate in our Third Annual Bar Bee, which will take place on Thursday, August 18 from 5:30 p.m. to 7:30 p.m. at the Presidential Country Club in West Palm Beach.

Here's how it works. The first 20 members who enter the contest will be asked to spell words from Black's Law Dictionary. The top three winners will then go on to represent the Bar Association's Team in the Palm Beach County Literacy Coalition's Great Grown Up Spelling Bee, which takes place in September at the Boynton Beach Mall.

The cost to enter the contest is \$50.00, which includes your name and your firm's name on the T-shirt; as well as in the Bar's Bulletin.

Thanks to the Presidential Country Club, all of the proceeds from this event will benefit literacy efforts in our area. In addition to "the bee," there will also be a cocktail reception for our members for just \$20.00. Please join us for this fun event and support your fellow spellers!

If you're interested in spelling, please call Cindy Spall at 650-0563 or Lynne Poirier at 687-2800. To register for the cocktail reception, you can register on line at www.palmbeachbar.org

Board Meeting attendance for 2003-2004

| | July Retreat | Aug | Sept | Oct | Nov | Dec | Jan | Feb | Mar | Apr |
|-----------|-----------------|-----|------|-----|-----|-----|-----|-----|-----|-----|
| Klett | X | X | X | X | X | X | X | X | X | X |
| Leopold | X | X | X | X | X | | X | X | | X |
| Farach | X | X | X | X | X | X | X | X | | X |
| Suskauer | X | X | X | X | X | X | X | X | X | X |
| Murray | X | X | X | X | X | X | X | X | X | X |
| Whitfield | X | X | X | X | | X | X | X | X | X |
| Schuler | X | | X | X | X | X | X | X | X | X |
| Sasser | X | X | X | X | X | X | X | X | | X |
| Kramer | X | X | X | X | X | X | X | X | X | X |
| Poulton | X | X | X | X | X | X | X | X | X | X |
| Coates | X | X | X | X | X | | X | X | X | X |

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Summary of “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005”

by Marc P. Barmat, Esquire, Furr and Cohen, P.A.

On April 20, 2005, President Bush signed the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” into law. The new law significantly changes the consumer and business bankruptcy practice. Most provisions of the new law become effective 180 days from April 20, 2005, i.e., October 17, 2005. However, some provisions became effective immediately on April 20, 2005. This article summarizes some of the important changes to the existing bankruptcy laws. This article is not intended to address all of the changes contained within the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.”

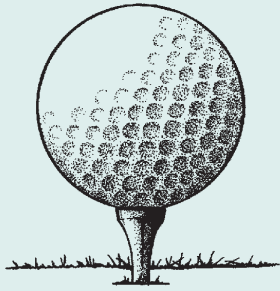
Provisions Which Became Effective on April 20, 2005

- A debtor may elect state law exemptions in the state in which he/she has lived for the 730 days before the filing of the bankruptcy petition. If the debtor moved during the 730 day period, the applicable state law exemptions will be those of the state in which the debtor lived for the majority of the 180 day period before the 730 day period.
- A debtor may only exempt up to \$125,000 of interest in a homestead that was acquired within the 1,215 day period prior to the bankruptcy filing, plus any equity that has been rolled over from one house to another within the same state during that period.
- A debtor may not exempt more than \$125,000 under a state law homestead exemption if the court determines that the debtor has been convicted of a felony which demonstrates that the filing of the bankruptcy case was an abuse of the bankruptcy system.
- A debtor may not exempt more than \$125,000 under a state law homestead exemption if the debtor owes a debt arising from – the violation of securities laws or a criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the five years preceding the bankruptcy filing.
- To the extent the equity in a debtor’s homestead was obtained through a fraudulent conversion of non-exempt assets during the 10-year period preceding the bankruptcy filing, the homestead exemption is reduced by the amount attributable to the fraudulent conversion.
- The maximum amount that may be exempted for certain qualified IRA’s is \$1 million.

Provisions Which Will Become Effective on October 17, 2005

- In a primarily consumer debt case, the court, trustee, United States trustee or any party in interest, can bring a motion to dismiss alleging abuse of the bankruptcy system, if the debtor’s income is greater than the state median income. Abuse is presumed if the debtor’s current monthly income (as determined by an average of the previous six months) less secured payments, less priority debts, less expenses allowed by the IRS, less certain other allowed expenses, is greater than the lesser of: (I) the greater of: (a) 25% of the debtor’s nonpriority unsecured claims divided by 60 or (b) \$100 and (II) \$166.
- No individual debtor may file a bankruptcy unless they have, within the last 180 days before filing bankruptcy, received credit counseling from an approved agency.
- A Chapter 7 debtor may not receive a discharge if a prior discharge was received within eight years (rather than six years) of the new filing.
- Consumer debts in excess of \$500 for luxury goods and services owed to a single creditor and incurred within 90 days of filing are presumed non-dischargeable.
- Cash advances in excess of \$750 made within 70 days of filing are presumed non-dischargeable.
- The trustee may avoid any transfer of a debtor’s interest in property to a self-settled trust or similar device if the transfer was made: (a) by the debtor or for the benefit of the debtor (b) on or within 10 years before the date of filing and (c) with the actual intent to hinder, delay or defraud any creditor.
- The debtor must provide to the trustee a copy of their latest Federal income tax return at least seven days before the meeting of creditors or the court shall dismiss the case, unless the debtor demonstrates circumstances beyond their control.

This article is merely a summary of some of the numerous changes which are and will impact the bankruptcy law practice. The new law will have a dramatic effect on the way bankruptcy proceedings are handled, from the perspective of the debtor, debtor’s counsel, creditors, United States Trustee, panel trustees and judges. Bankruptcy practitioners must pay special attention to the changes which have and will come into effect in order to ensure that you do not inadvertently rely on the old bankruptcy laws to the detriment of your clients. Please feel free to contact any of the attorneys at Furr & Cohen with questions regarding the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” and its impact.



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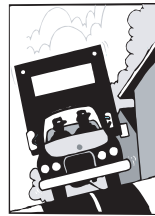
See Insert in this issue of the Bulletin to register teams

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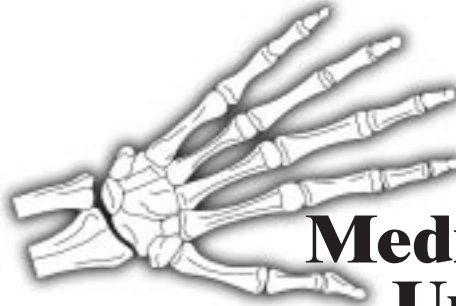
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Photo Answers:

1. Spencer Sax
2. Steven Brannock
3. Jay White
4. Judge Kenneth Stern
5. Lynn Whitfield
6. Bob Sellars
7. Rosemary Cooney
8. Larry Mesches

Thank You to Many for a Rewarding Year

(Continued from page 3)

the Judges and their Judicial Assistants for the cooperation and accommodations extended to me so that I could try to fulfill my obligations to the Bar Association. The extensions of time granted and the recognition of the Bar events and meetings when scheduling or ending hearings were of great assistance.

To my wife, Alicia, my daughter, Scotti and my son, Foster- I know that some of my commitments may have taken away some time I would have spent with you. I love you all and hope that some of the good that we accomplished made it all worthwhile.

To my assistant, Marcia Albrecht- Despite the added work, obligations, extra scheduling, multiple meetings, increased correspondence, endless phone calls, and countless e-mails you have not quit (threats don't count). Your loyalty, ability to remain calm, and understanding of me was definitely a firm foundation. (Thank you, and you are now permitted to have that breakdown that you richly deserve.)

To my firm, Rutherford Mulhall and my partners. In particular, Charlie Rutherford and John Mulhall, have been stellar in their commitment and dedication to my term as President. The time and resources were readily given without question. The continuance of your commitment to our bar is shown by the firm's support of Manny Farach as he becomes the President elect and future President.

To my Board of Directors- Each of you have demonstrated over and over and over again your belief in what we do and our mission statement. You have my gratitude.

To Lisa Small- As Past President, thank you for your assistance, your direction and your help. Thank you for covering for me a few times and congratulations on your election to the Board of Governors. You will do a marvelous job.

To the North County Section members, in particular, Colleen Nelson for her generous contribution of time, effort, and money to make the North County events fun, entertaining, and successful. Colleen volunteered for so much and delivered even more.

A small and special recognition to Robin Roshkind for her enthusiastic bidding at Ballen Isles that helped raise over \$17,000 for children's causes.

Finally, To Jerry Beer - I do not know if I have ever really let you know how much it has meant to me to work with you. You are the epitome of class and hard work. When I first became President it was your calming words that let me know everything would go fine. I feel your service to the Palm Beach County Bar and to the Board of Governors is unrivaled. I hope you know how much you will be missed.

Thank you all for a Rewarding Year!!



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GREGORY TENDRICH: Former Vice President and in-house counsel to national and regional NYSE & NASD brokerage firms, is available to accept referrals, provide consultation or assist in all securities investor related litigation and arbitrations involving stock broker misconduct, fraud, misrepresentation, churning and suitability. Call 561-733-5113 or email 10drich@bellsouth.net.

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

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

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.

RICHARD D. NADEL: Bankruptcy. Twenty years experience in the Southern and Middle District. Florida Bar designated 1996. Address: 3300 PGA Blvd., Ste. 970, Palm Beach Gardens, FL 33410, Telephone: (561) 622-9353 Email: nadelgrp@bellsouth.net.



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HEARSAY

Ward Damon & Posner, P.A. is pleased to announce that **Michael A. Weeks** has joined the firm as its Senior Litigation Attorney and will continue his practice in Business Litigation and Telecommunications Law. Mr. Weeks is a graduate of the University of Florida (J.D. with Honors, 1996, BSBA with Honors, 1993) where he served as Senior Research Editor of the Florida Law Review.

The Shavitz Law Group, P.A. is pleased to announce that **Maguene Dieudonne** has joined the firm to further its objectives in handling claims related to unpaid overtime and unpaid minimum wages. The firm concentrates its practice on Wage and Hour Law.

Law Offices of William H. Pincus is pleased to announce the relocation of their office and are proud to announce that **Guy C. Icangelo, Jr.** has joined the firm as an associate. Mr. Icangelo will concentrate in Personal Injury, Nursing Home Abuse and Wrongful Death. Mr. Icangelo may be contacted at gcilaw@lycos.com or 561-366-1306. The Law Offices of William H. Pincus is an AV-Rated Firm concentrating on civil trial practice in business litigation and personal injury matters.

Edward A. Shipe of Boca Raton has been named as Vice-Chair of the Guardianship Law and Practice Committee of the RPPTL Section of the Florida Bar.

MISCELLANEOUS

FOR SALE: Complete digital dictation system: IBM ViaVoice, Sanyo Recorder & Transcriber, Olympus Hand Recorder. Used once! 561-688-1000 or Michele@donphin.com.

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Proudly welcomes the following Shareholders to our firm:

David I. Spector



Mr. Spector, formerly a partner with Steel Hector & Davis, LLP, focuses his practice on employment, civil rights and commercial litigation. He has extensive trial and arbitration experience, and is a frequent lecturer on employment law. He was recently

selected as one of Florida's "Legal Elite" by *Florida Trend Magazine*. He graduated from Syracuse University and received his law degree from the University of Miami. He is admitted to practice before all Federal and State courts in Florida, the 11th Circuit and the U.S. Supreme Court.

E-mail: dspector@schwarzberglaw.com

Christopher S. Duke



Mr. Duke, formerly a partner with Steel Hector & Davis, LLP, focuses his practice on employment law and complex commercial litigation. He has extensive experience in federal and state courts, as well as various arbitration forums. He was selected

by the *South Florida Legal Guide* as a top "Up and Coming" attorney. He graduated from Davidson College and received his law degree from the University of Florida. He is admitted to practice in Florida, the U.S. District Courts for the Southern and Middle Districts of Florida and the 11th Circuit.

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CALENDAR

June 2005

Saturday, June 4, 7:00 p.m.
PBCBA Annual Banquet
 The Breakers Hotel, Palm Beach

Tuesday, June 7, 12 noon
Solo & Small Firm Practitioners Luncheon Meeting
 Bar Association Office

Thursday, June 9
Quality of Life Committee Spa Day
 The Breakers Spa, Palm Beach

Friday, June 10
PBCBA Trial Strategies of the Masters Seminar
 Marriott at City Place

Friday, June 10, 12 noon
Federal Bar Association Meeting
 The Colony Hotel
 Contact Patricia Lowry
 (561) 650-7217

Friday, June 10, 12 noon
Lawyers for Literacy Committee Meeting
 Bar Association Office

Saturday, June 11, 7:30 a.m.
Young Lawyers Section Golf Tournament
 Emerald Dunes Country Club

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

Friday, June 17, 8:00 a.m.
PBCBA Real Estate Seminar
 Bar Association Office

Friday, June 17, 12 noon
Cunningham Bar Association Meeting
 Law Library
 Contact Lisa Quarrie at
 (561) 832-3300

Sunday, June 19
Father's Day

Saturday, June 25, 7:00 p.m.
South County Bar Installation Banquet
 The Ritz Carlton, Manalapan
 Contact: Melissa Kelly
 (561) 482-3838

Wednesday, June 29, 5:00 p.m.
Legal Aid Board of Directors Meeting
 Bar Association Office

Thursday, June 30, 5:00 p.m.
Board of Directors Meeting
 Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

BULLETIN

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