



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

March 2005



## Election of PBCBA directors to be decided by mail ballot

Once again this year, the election for board of directors will take place using mail ballots. All members in good standing (members who are current on their dues) will receive a ballot in late March. Complete voting instructions will be contained in the mailing. Please read the instructions carefully, as failing to return the ballot properly will void your vote. Winners will be announced via the Bar's website and eNewsletter.

There are three director seats available and the following four members are running:

- Alan Crane**
- Scott Murray**
- Bryan Poulton**
- Richard Schuler**

Information about these candidates can be found on pages 6 and 7.

The new president-elect, with no opposition, will be Manuel Farach of Rutherford Mulhall in West Palm Beach. Manny will be the Bar's president in fiscal year 2006-07.

## Join the Quality of Life Committee for Dinner & Baseball!

Join fellow bar members for dinner and baseball on Wednesday, March 23rd beginning at 5:30 p.m. in the private dining room of JJ Muggs in Abacoa; followed by the game at 7:00 p.m. between the National League Champion St. Louis Cardinals and the New York Mets. Tickets are just \$36.00 per person and will be sold on a first come first serve basis. To purchase your tickets, please call Lynne at the Bar Office today!



## May 6 Law Day Luncheon to feature Jury Consultant, Jo-Ellan Dimitrius

Mark your calendars for this year's Law Day Luncheon, scheduled for Friday, May 6 at 11:45 a.m. at the Marriott City Place in West Palm Beach. This year's Law Week Theme is "The American Jury: We the People in Action". We are pleased to announce that this year's guest speaker will be famed jury consultant Jo-Ellan Dimitrius.

In 1984 she appeared in court for the first time to pick a jury. Since then she has consulted in over 1000 trials and picked over 600 juries. She has evaluated over 10,000 jurors, witnesses, lawyers and even judges during trial, and at least that many more in pre-trial focus groups and mock trials. She has served as the jury consultant in many of the most high profile cases of the 80's and 90's including: the Night Stalker (Richard Ramirez), McMartin Preschool, Rodney King, Reginald Denny, John Dupont, Frances Ford Coppola ["Pinocchio trial"], O.J. Simpson and most recently the Scott Peterson case.

Please join us May 6 for this luncheon. More details will be in the April *Bulletin*.



## Do you love to read?

The Lawyers for Literacy Committee invites you to participate in its annual "Read Across Palm Beach County" event. On the morning of Thursday, March 17th, local attorneys and judges will be reading to school aged children throughout our area.

If you can spare an hour of your time, please call Cindy Spall at 650-0563 and she'll assign you to a school close to your home or office.

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## President's Message



### Manners Don't Go Out Of Style

By Stanley D. Klett, Jr.

Growing up, my parents tried to instill in me some sense of courtesy and good manners. To a large extent they believe they were successful. Today, I find myself trying to do the same with my daughter and expect to do the same with my newborn son. "Please and thank you, you are welcome, may I," are consistently used and encouraged. I am proud when I receive compliments about my daughter's manners. These are compliments that I receive on a regular basis.

This leads me to comment on how we behave as attorneys. I personally believe that an effective advocate has manners and knows how to use them. This extends from conduct with opposing counsel, to behavior in front of a jury or Judge, to interaction with court personnel, staff and administration.

In my over 20 years of practice, I have dealt with court clerks from several counties through out the State. Although at times it has been frustrating and difficult, I have always been courteous and polite. I know the clerks are not intentionally trying to make my life difficult, and they have several times advised me of a procedure, local rule, or judicial preference that is different from ours in Palm Beach County. This information has frequently saved me time and my client money.

Therefore, I find it curious to learn from several discussions with our local clerks (and from my own observations) that the clerks are frequently treated rudely by attorneys or attorneys' staff. They are doing their job and they have feelings. The Court Clerks do not get paid more to be abused, denigrated, or mistreated.

More surprisingly, I have had many discussions with various Judicial Assistants concerning discourteous and obnoxious behavior by attorneys and their staff. I have had these discussions over the years with Judicial Assistants, both at the Bench Bar Conference and at the courthouse, so it appears to be an ongoing problem. Besides the common decencies that should be due to all people, it astounds me, that people would be offensive to the one person that has the most access to the Judge, and probably spends more waking hours with the Judge than anyone other than the Judges' spouse or companion. Nonetheless, some extremely bright people cannot see the connection.

Startlingly, I recently attended a hearing before one of our local Circuit Court Judges. I was appalled by the opposing attorney's lack of manners and respect for the Court. I do have to commend the Judge for her handling of the matter as she did not lose her composure, or temper while she admonished the attorney. I wondered to myself how I would have handled the situation and how close this attorney came to a stay in the holding cell that he deserved. While I may not always agree with the ruling of the Court, I was taught that manners included respect for authority and Bench when before the Court. As Judge Labarga has said on several occasions "before I rule, you are arguing to the court, after I

*Continued on page 20*

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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



## North County Section News

### North County Accepts Applications for Scholarship Award

The North County Section is currently accepting applications for its first college scholarship Award, which was established to enhance financial opportunities available to high school graduates who live in northern Palm Beach County. Applicants will need to attend the North County Campus of Palm Beach Community College or the Jupiter Campus of Florida Atlantic University on a full time basis.

Two scholarships will be awarded to two students in the amount of \$2,000.00 each. The money will be applied directly to the applicant's tuition, books and student fees.

The application deadline has been extended to March 18, 2005. A copy of the application can be found at [www.palmbeachbar.org](http://www.palmbeachbar.org) or call the Bar Office at (561) 687-2800.

### Last call for nominations for Outstanding Jurist of the Year sponsored by the North County Section

Judge Lupu 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](mailto: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.



Spring Break  
Happy Hour!

You've heard the song, you've seen the video, now come experience first hand why Alan Jackson chose the Square Grouper-Castaways Marina to film his smash hit video "It's Five O'clock Somewhere". The Square Grouper is where the North County Section will host its annual Spring Break Happy Hour on Thursday, April 7 from 5:30 p.m. to 7:30 p.m. Come for great food, drinks and live music! Members of the Martin County Bar Association will also be invited to attend. The cost is \$25.00 for NCS members and spouses; \$35.00 for non-members. Judges are complimentary.

To register, log onto [www.palmbeachbar.org](http://www.palmbeachbar.org)



Visit the Bar's Website  
[www.palmbeachbar.org](http://www.palmbeachbar.org)

### Lunch and CLE credit!

Attend the North County Section's Annual Technology Seminar on Wednesday, April 13th at Abacoa Golf Club in Jupiter. Learn more about productivity and security within your law firm.

For lunch and CLE credit, register on line at [www.palmbeachbar.org](http://www.palmbeachbar.org).

## Board of Directors Candidate Statements

There are currently four members running for three seats on the Board of Directors of the Palm Beach County Bar Association. Their candidate statements appear here. All members in good standing of the PBCBA will receive a mail ballot in late March. Complete voting instructions will be contained in the mailing. Please read the instructions carefully, as failing to return the ballot properly will void your vote.



Name: **Alan R. Crane**  
Firm: Furr & Cohen, P.A.

Year admitted to practice: 1992  
Year Admitted to PBCBA: 1996  
Law School: Nova Law Center

### *What do you feel you can contribute to the PBCBA as a Board member:*

I have practiced law in Palm Beach County for the past 12 years. As an attorney with the firm of Furr & Cohen, P.A, I practice bankruptcy, family and real estate law. Over time, I have come to understand the value that PBCBA can play in furthering a lawyer's career. I believe I can assist PBCBA build on its successes. As a member of the Board of Directors, I will encourage: 1) greater interaction among the varying practice areas, 2) development of more networking events, 3) improvement of the functionality of the web site, 4) greater usage of the purchasing power of the PBCBA to provide additional benefits to its members. My professional activities include serving as the Chairperson for the Bankruptcy Committee for the South Palm Beach County Bar Association and as a member of the Craig S. Barnard American Inns of Court LIV. In May of 2000, I was presented with the Child Advocacy Award from the Legal Aid Society of Palm Beach County in recognition of my pro bono services and commitment to children's rights.



Name: **Scott C. Murray**  
Firm: Murray & Guari, PL

Year admitted to practice: 1992  
Year admitted to PBCBA: 1992  
Law School: University of Florida

### *What do you feel you can contribute to the PBCBA as a Board member:*

As a current member of the Palm Beach County Bar Association Board of Directors, I hope to continue serving our Association as I have for the past eleven (11) years with proven leadership and commitment to the Bar. I have previously served as an Executive Committee member for the Young Lawyers Section and served as its Treasurer, Secretary, President-elect and President. I have also served as a Director of the Palm Beach County Bar Association for the past two years. My experience on the Board has been rewarding both professionally and personally. I firmly believe that we all have a responsibility to be active participants in our communities and it is through my involvement in the Bar that I am able to give back to the community. My goal is to make our Association a vibrant organization that we can be proud of, by serving the needs of our members and enhancing our image in the community. I encourage all of you to voice your opinions and ideas to me so that we can make our Bar Association more meaningful to each of you.

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## Board of Directors Candidate Statements



Name: **Bryan Poulton**  
Firm: State Attorney's Office

Year admitted to practice: 1998  
Year admitted to PBCBA: 1998  
Law School: Nova Law Center

### *What do you feel you can contribute to the PBCBA as a Board member:*

Since 1998, I have been a member of the Palm Beach County Bar Association. I am currently President of the Young Lawyers Section, and as such, a member of the Bar Association's Board of Directors. I have served on the Young Lawyers Section Board and held the positions of Treasurer, Secretary, and President Elect. I have been a member or chaired numerous project committees, one of which received an award from The Florida Bar Young Lawyers Division. As President, I have helped oversee projects including a hurricane relief effort and most recently, an ongoing tsunami relief effort. It has been my pleasure to work with the driven, intelligent, and compassionate members of the Young Lawyers Section.

For over 7 years, I have been an Assistant State Attorney. As part of my Presidency, I have sought the participation of public sector attorneys in the Young Lawyers Section. They are a critical, yet under represented segment of our Bar. The increased membership of government and legal aid lawyers adds immeasurably to the depth of our Bar Association.

Our Bar serves to assist all of its members. I am sensitive to the Bar's role in giving back to our community. This is very important because it reflects well on our profession. More important, it is the right thing to do.

I would appreciate the opportunity to continue to serve on the Board of Directors and continue the important work of our Bar Association.

Bryan Poulton



Name: **Richard D. Schuler**  
Firm: Schuler & Halvorson, P.A.

Year admitted to practice: 1973  
Year Admitted to PBCBA: 1973  
Law School: Syracuse University College of Law

### *What do you feel you can contribute to the PBCBA as a Board member:*

After having served two years on the Board of the PBCBA, and on seven different committees over the past 20 years, I think that the experience and perspective developed over time is what I have to offer to the Association.

Frequently, we deal with issues involving the interface between the judiciary and attorneys, as well as between The Florida Bar and the PBCBA. My tenure as Chairman of the Circuit Civil Court Practice Committee for 15 years, my experience as Past Chairman of the Personal Injury /Wrongful Death Committee, the Legal Secretaries' Educational Committee, the CLE Committee, and as a member of the Mentor Committee, the Fee Dispute Committee and the Professionalism Committee, I think gives me a "leg up" on the issues that we face in these areas.

Perhaps the greatest single issue facing all of us, as attorneys, is the bad image we have in the public domain. I would like the opportunity to be able to tackle some facets of this problem and to try and help turn this around. Basically, I'm tired of being the butt of "lawyer jokes".

We have, in this association, an army of attorneys who give blood, do pro-bono cases, work for literacy, make significant charitable contributions, and voluntarily attempt to advance the cause of justice and the knowledge about how our system works (Law Day). We need to highlight our contributions to the society at large, and promote ourselves in ways that will help to improve our image among the public.

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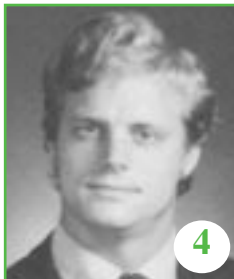
# Historical Committee

## Minutes of the Palm Beach County Bar Association Junior Bar Association Meeting • November 4, 1966

### 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 13



Approximately 50 members and guests were present. After recognizing members of the judiciary, and after most of the guests were introduced, President Royce, in his usual suave manner, tactfully announced that there were two guest who had not been introduced and glared at the attractive young couple seated in front of him.

After a long embarrassing silence, the gentleman arose and announced that he and his sister Mary Alice were their own guests. Mrs. Firestone's attorney, Melvin Belli, was conspicuously absent, but the judge who is currently presiding over her chancery suite was seated nearby in order to see that he rights were not violated.

Jon Moyle gave his usual concise report on the activities of the Legal Services Financing Committee.

President Royce appointed Larry Clarkson and Larry Klein as a committee to find out what the real name of or organization is.

Pete VanAndel gave a thirty-minute slanderous introduction of Ted Beacham, who gave a thirty-second introduction of our guest speaker, Richard Gerstein. Mr. Gerstein gave a very interesting and entertaining talk on how his office manages to lose cases such as the one where the defendant admitted killing the victim, cementing her into a garbage can and dumping her into the river.

There being no further business, the meeting was adjourned.  
Larry Klein  
Secretary

### Circuit Court Report CIVIL DIVISIONS • December 2004

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	05/05	05/05	03/05	1109
B	10/05	10/05	03/05	1418
D	10/05	05/05	02/05	1376*
E	04/05	04/05	05/05	1380
F	03/05	05/05	05/05	1215
G	07/05	07/05	02/05	1117
H	07/05	06/05	01/05	1148
I	05/05	05/05	03/05	1162
J	10/05	05/05	03/05	1390
N	05/05	04/05	04/05	1266
O	06/05	03/05	03/05	1448

All Civil Division Judges schedule their own Jury and Non-Jury Trials.  
Pending cases as of 1/7/05                      \*(Asbestos 887)

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# GREG COLEMAN

FOR THE FLORIDA BAR BOARD OF GOVERNORS, SEAT 2

## WHY GREG COLEMAN?

- **President** of the Palm Beach County Bar Association (2002-2003)
- **Member** of the Board of Governors for the Florida Bar as President of the Young Lawyers Division (1999-2000)
- **President** of the Palm Beach County Bar Association Young Lawyers Division (1996-1997)
- **Appointed** to the House of Delegates for the American Bar Association

## WHY GREG COLEMAN? IT'S SIMPLE...

Because the following members of The Florida Bar endorse  
**GREGORY W. COLEMAN**

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Eric Luckman	David Prather	James Beasley	John McCrackin
Steve Calamusa	John R. Hart	David P. Ackerman	James Pressly
Dick Schuler	Lance Ivey	Daniel Brams	Matthew Levy
Rosalyn Sia Baker-Barnes	Edward Blumberg	Julie Ann Rico Allison	Marci Ball
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"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."

- Greg Coleman



## When Too Much Wireless Security Becomes A Problem

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

If you want to keep something safe, lock it up in a really secure box, throw away the key and then bury the box in a secret place that not even you can find. If you want to use something, leave it out in the open in easy reach. Neither of these ideas apply very well to computer technology. If I kept my computer hidden in a box then I wouldn't be able to use it as much and it would lose some of its value. The same is true of everything in this world. If your car is so precious that you keep it in the garage and never drive it, then why bother owning it in the first place? Security always makes things less valuable.

And so it has been with the wireless network at the courthouse. The ability to access the Internet from the courthouse was a welcome relief to attorneys in long trials. Unfortunately, the county insisted on two layers of security 1) MAC Authentication and 2) 128 bit WEP security. The MAC Authentication required that every computer register its MAC Identification number ( a MAC ID is a unique number assigned to every network-capable device). The acronym WEP stands for Wired Equivalent Privacy. It uses a security key which encrypts all information transmitted over the network that cannot be decoded without the "key." The security made it hard to set up access on the various computers, so we instituted short sessions where new users could have their computers examined and configured by the County Information Technology staff. They set up the security features and tested the computer to make sure it worked properly. I think we got everybody set up and running after about a year of classes .

But there was still a problem. No sooner had we set everyone up when they started buying new computers and we had to do it all over again. It turned out that people buy new computers almost constantly. I started switching my own laptops about once every 18 months. Every time I did I had to register the new MAC ID for the network card and reinstall the WEP Key. And guess who lawyers call when they can't access the wireless network? Me.

The security proved to be so effective that it prevented many people from actually getting to use the network even though they had paid the nominal fee and installed the security key. Like anything else which is kept safe, it became hard to

use. So at the end of last year I resolved to change that situation and have the network redesigned. Fortunately for us, Les Davis, Chief Technology Officer for the Fifteenth Circuit Court and Steve Bordelon, Director of Information Systems Services for Palm Beach County, understood the problem that we were having. After some discussions late last year and early this year, they agreed to remove the security features and to stop charging the user fees. Beginning in late March the network will be modified so that any wireless computer will be able to access the network without any MAC Authentication or WEP Keys. If you have a wireless capable device then it will work inside the courthouse just like it does at your office or in your home. No registration. No fees. No WEP key. Just turn your computer on.

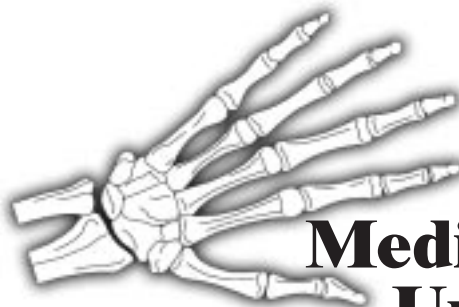
This is a welcome change. Now everyone will have access at the courthouse and the system will be much more useful. Please try to use the network starting in late March and let me know how it works for you.

### The Big Wireless Access Point Change

In the last article, I gave a rundown of some recent technology changes I have made. One of them was the replacement of my Linksys 802.11b Access Point/Router with a NetGear 802.11g Access Point. Here's the explanation.

Most wireless networks, including the one at my home and at the courthouse, were installed with 802.11b standard equipment because that was what existed at the time. A newer version, 802.11g, is now available. The G network equipment has a faster data transmission speed (54-108 mbps vs 10 mbps for the B network) and has a greater range. The 802.11g protocol handles concrete and steel better and is also backward compatible so that my 802.11b network cards will work with the 802.11g Access Point. It seemed to me that the Linksys equipment at my house was losing its range anyway. When I first bought it I could get a strong signal anywhere in the house. Toward the end, it seemed that I lost about half the range. The US Robotics Access Points I owned were also having problems. They would "drop" the signal several times a day. At home that

*Continued on Page 20*



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# Bankruptcy

## Who Gets The Tax Refund?

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

Now that tax season is upon us, it is important to consider what property rights a debtor and a non debtor spouse have in their income tax refund. In 1974, the United States Supreme Court made it clear that a tax refund received by an individual debtor is property of the bankruptcy estate. Kokoszka v. Belford, 414 U.S. 1091 (1974). Debtors have unsuccessfully argued that tax refunds are exempt under various theories. For example, debtors have asserted that a tax refund should be exempt pursuant to Florida Statute § 222.11 because the tax refund can be traced to and identified as withheld wages. This theory, however, was struck down in In re Lancaster, 161 B.R. 308 (Bankr. S.D. Fla. 1993) and In re Moody, 241 B.R. 238 (Bankr. M.D. Fla. 1999). Further, debtors have argued that a tax refund resulting from a joint tax return should be exempt as tenancy by the entireties. However, in In re Crum, the bankruptcy court found that the mere fact that a joint tax return was filed by the debtor and his non debtor spouse did not create a tenancy by the entireties interest in the tax refund and, thus, the

tax refund check was subject to administration by the bankruptcy trustee. In re Crum, 6 B.R. 138 (Bankr. N.D. Fla. 1980). See also, In re Alden, 73 B.R. 215 (Bankr. N.D. Fla. 1986).

The more complicated issue arises when a married debtor who filed a joint tax return, files an individual bankruptcy petition without his/her spouse. Three approaches have developed regarding whether a non-debtor spouse who filed a joint tax return with a debtor is entitled to receive a portion of the tax refund. The majority approach holds that a non-debtor spouse is only entitled to keep that portion of the tax refund attributable to her/his tax withholdings, i.e., a non-debtor spouse who had no tax withholdings for the year in question is not entitled to any portion of a joint tax refund. In re Lvall, 191 B.R. 78 (E.D. Va. 1996). A second approach divides the tax refund between the debtor and the non-debtor spouse based upon each one's income. In re Kestner, 9 B.R. 334 (Bankr. E.D. Va. 1981). The third approach splits the tax refund equally between the spouses regardless of tax withholdings or income. In re Aldrich, 250 B.R. 907 (Bankr. W.D. Tenn. 2000).

Florida bankruptcy courts have followed the majority approach and held

that a non debtor spouse is only entitled to keep the portion of the tax refund which is attributable to his/her tax withholdings. In re Levine, 50 B.R. 587 (Bankr. S.D. Fla. 1985) (Debtor's entire joint tax refund was property of the bankruptcy estate where non debtor spouse contributed nothing to the withheld amounts.); In re Crum, 6 B.R.138 (Bankr. M.D. Fla. 1980) (Since at least part of tax refund was generated by payroll deductions made on debtor's pay checks, at least part of tax refund check made out to debtor and his non debtor spouse was property of debtor's estate within meaning of Bankruptcy Code.); In re Alden, 73 B.R. 215 (Bankr. N.D. Fla. 1986) (Non debtor spouse who collected unemployment compensation but had no tax withholdings was not entitled to any portion of her and her debtor husband's joint tax refund check.).

In summary, an individual's tax refund is property of the bankruptcy estate and subject to administration by the bankruptcy trustee. If, however, only one spouse files a bankruptcy petition, the bankruptcy court will apportion the tax refund between the bankruptcy trustee and the non debtor spouse according to their relative tax withholdings.

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## Candidate for Board of Directors

### Palm Beach County Bar Association

#### GOALS

- **Increase interaction between practice areas**
- **More networking events**
- **Expand website**
- **Use purchasing power to improve benefits**

**Alan R. Crane**  
**Furr & Cohen, P.A.**



I have practiced law in Palm Beach County for the past 12 years. My areas of practice include bankruptcy, family law and real estate. Because of this experience, I understand the value that PBCBA can play in furthering a lawyer's career. I believe I can assist the PBCBA to continue to build on its successes. As a member of the Board of Directors, I will encourage:

- greater interaction between different practice areas
- development of more networking events
- expansion of the functionality of the web site to promote more interaction between members
- the use of PBCBA's purchasing power to provide greater membership benefits

My professional activities include serving as the Chairperson for the Bankruptcy Committee for the South Palm Beach County Bar Association and as a member of the Craig S. Barnard American Inn of Court LIV.

In May 2000, I was presented with the Child Advocacy Award by the Legal Aid Society of Palm Beach County in recognition of my pro bono services and commitment to children's rights.

## Pro Bono Corner

### And the 2004 Pro Bono Recognition Awards Go To...

#### Appellate Law Award

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William J. Manikas, Esquire

#### Special Services Award

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All 2004 honorees will be receiving their awards at the 17th annual Pro Bono Recognition Evening to be held on Saturday evening May 14, 2005 at the Kravis Center of the Performing Arts' Cohen Pavilion. The evening with a theme of "New Orleans and All that Jazz" will be hosted by the Legal Aid Society in cooperation with the Palm Beach County and South Palm Beach County Bar Associations. Chairpersons for the evening are Jeff and Amy Devore and Mariano and Shelley Garcia.

For additional information on this exciting evening call Legal Aid Development Director Harreen Bertisch at 561-655-8944 extension 257 or Development Associate Suzanne Foley at extension 279.

### Attorneys that closed pro bono cases in January 2005

The following attorneys closed their pro bono cases in January 2005:

Steven Ainbinder  
Peter M. Bernhardt  
John N. Buso  
Cathy Chimera  
Christopher Chopin  
Ryan S. Copple  
Alan R. Crane  
Robert C. Furr  
Isidro M. Garcia,  
Allan L. Hoffman  
Antonia L. Hulme  
Lillian Kaminer

John A. Kovarik  
Shepard Lesser  
Robert P. Marshall  
Rebecca Mercier-Vargas  
Kenneth L. Minerley  
David Powers  
Jordan Rappaport  
Kenneth Rappaport  
Peter R. Ray  
Dinah S. Stephenson  
George Weinstein

Total number of hours: 397.50

### Pro Bono Opportunity For Guardianship Attorneys

The Legal Aid Society of Palm Beach County, Inc.'s Public Guardianship Program needs volunteer lawyers to represent Petitioners in the filing of Petitions to Determine Incapacity and Appointment of Guardian. Your typical client would be social workers or family members of alleged incapacitated, indigent, elderly individuals in need of public guardianship services. For information contact Rena Taylor at (561) 655-8944 x 245.

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### Do You Need a Mentor?

The Palm Beach County Bar Association's Mentor Program is designed to



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

## Need Pro Bono Hours? Volunteer for Law Week!



### Dial-A-Lawyer

Attorneys are needed to answer phone calls from the public regarding general legal questions. Our phone lines will be open Monday, May 2 through Wednesday, May 4 from 9:00 a.m. to 4:00 p.m. If you are interested in

volunteering for a two-hour shift, please call one of the following committee members: Sara Alijewicz at 833-5787; Maureen Martinez-Schwab at 533-6700; or Matt Thibaut at 832-5900. Pro bono hours are available for your participation.

### Ask-A-Lawyer

Attorneys are needed to answer general legal questions during our Ask-A-Lawyer program, which will be held at the Palm Beach Mall on Tuesday, May 3 from 10:00 a.m. until 4:00 p.m. If you are interested in volunteering, please call Matt Thibaut, 832-5900. Pro bono hours will be given for your time.

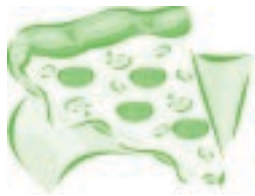
### Mock Trials

Do you enjoy spending time with children? If you do, then participate in the school Mock Trial program. Trials are held in public and private schools and require the assistance of two attorneys. We will arrange for another attorney to accompany you, if needed. If you are interested in educating children as a part of Law Week, please call Sherry C. Ingram, at 478-2500 (ingram97@bellsouth.net) Pro bono hours will be given for volunteering your time.

## Photo Answers:

1. James Nowlin
2. Harold Maass
3. Judge Stephen Rapp
4. Justus Reid
5. Lake Lytal

## Solo Pizza & Beer Seminar April 19



The Solo and Small Firm Practitioners Committee presents "Nuts & Bolts Part III" on Tuesday, April 19 from 4-6 p.m. at the Bar office. Join your fellow solos to learn about **General Office Management** – from liability insurance to postage meters; and **Office Technology** – what kind of equipment and software to buy – computers, cell phones, copiers, phone systems, etc. – so many choices, what brands are better than others; and many other basic topics. Cost is only \$25 per PBCBA member; \$40 for non-PBCBA members which will include pizza, beer and wine. Register today by filling out the form below or by going on line at [www.palmbeachbar.org](http://www.palmbeachbar.org).

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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.



**JASON ACKERMAN**, Minneapolis, MN; 2004; Associate in the law firm of Green, Kahn & Piotrkowski in Miami Beach.

**ANNIE J. ADKINS**, Gainesville, FL; 2004; Sole Practitioner in Boynton Beach.

**KAREN ADMONI-SAPAN**, Haifa, Israel; Nova Southeastern University; 2004; Associate in the Law Offices of Bennett S. Cohn in West Palm Beach.

**ERIC L. ANSCHUETZ**, Ohio; Regent University; 2004; Sole Practitioner in Boca Raton.

**LESLIE S. AUERBACH**, New York; University of Baltimore; 2004; Partner in the law firm of Auerbach & Simmons in Boca Raton

**NICHOLAS E. BOUYOUCAS**, Baltimore, Maryland; St. Thomas University Law; 2001; Associate in The Karp Law Firm, P.A. in Palm Beach Gardens.

**ERIC CANTER**, Pittsburg, PA; Nova University; 1997; Sole Practitioner: Law Offices of Eric Canter, P.A. in Boca Raton.

**ALEXANDER CONDE**, Miami, FL; Loyola University; 2004; Partner in the law firm of Conde & Cohen, PL in Boca Raton.

**RYAN D. DOHERTY**, Panama; William & Mary School of Law; 2004; Associate in the law firm of Sasser, Cestero & Sasser, P.A. in West Palm Beach.

**THERESA J. FONTANA**, Tampa, FL; Nova Southeastern University; 2003; Sole Practitioner in the Law Offices of Theresa J. Fontana, P.A. in West Palm Beach.

**STEVEN L. FRANKL**, Toronto, Canada; University of Florida; 2003; Associate in the law firm of Rosenthal & Levy, P.A. in West Palm Beach.

**MICHAEL L. GRANT**, Crown Point, IN; Stetson University; 2004; Associated with the law firm of Ward, Damon & Posner, P.A. in West Palm Beach.

**RASHEL N. JOHNSON**, West Palm Beach; University of Florida; 2003; Associated with the law firm of Bobo, Ciotoli, Bochino & Newman, P.A. in North Palm Beach.

**ETHAN F. KOMINSKY**, Wisconsin; Boston University School of Law; 2004; Associate in the law firm of Rosenthal & Levy, P.A. in West Palm Beach.

**JONATHAN P. KROSS**, Brooklyn, NY; University of Bridgeport; 1982; Sole Practitioner in the Law Offices of Jonathan P. Kross, P.A. in Deerfield Beach.

**MARCY LaHART**, Ithaca, New York; University of Oregon; 1992; Sole Practitioner in the Law Offices of Marcy LaHart, P.A. in West Palm Beach.

**PETER P. LINDLEY**, West Palm Beach; Nova University; 1998; Sole Practitioner in the Law Offices of Peter P. Lindley, P.A. in Boca Raton.

**MATTHEW F. LUPARDO**, New York City; St. John's University School of Law; 1999; Sole Practitioner in the Law Offices of Matthew F. Lupardo, P.A. in Royal Palm Beach.

**ALBERTO J. MATTA**, Ponce, Puerto Rico; Catholic University of Puerto Rico; 2004; Sole Practitioner in the Law Offices of Alberto J. Matta, P.A. in West Palm Beach.

**NICOLE C. MORRIS**, West Palm Beach; Nova Southeastern University; 2004; Associate in the law firm of Simses & Associates, P.A. in Palm Beach.

**KAREN J. ORLIN**, Washington, D.C.; Harvard Law School; 1982; Senior Attorney in Rutherford Mulhall, P.A. in Boca Raton.

**ROBIN L. PEKKALA**, Trenton, New Jersey; University of Florida; 1986; Sole Practitioner in the Law Offices of Robin L. Pekkala in Palm Beach Gardens.

**TANYA W. PHILLIPS**, Palm Beach County; Harvard Law School; Affiliate Member.

**FELICIA S. RAPHAEL**, Brooklyn, N.Y.; New York Law School; 1991; Sole Practitioner in the Law Offices of Felicia S. Raphael in Lake Worth.



**CRISTOPHES RAPP**, Palm Beach Gardens; University of Virginia; 2004; Associate in the law firm of Jones, Foster, Johnston & Stubbs in West Palm Beach.



**MICHAEL S. SINGER**, Miami, FL; University of Florida; 1988; Partner in the law firm of Comiter, Singer & Baseman, LLP in Palm Beach Gardens.

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## The Economic Loss Rule in Florida

by Ted Babbitt

In Indemnity Ins. Co. of North America v. American Aviation, Inc., 29 Fla. L. Weekly S815 (Fla. Dec. 23, 2004), the Supreme Court reviewed in a scholarly opinion the economic loss rule in the State

of Florida and strictly limited it to specific classifications.

The opinion arose from a case in which an airplane made a “gear up” landing after the defendant, during maintenance done on the aircraft, allegedly put a bearing in the gear in backwards. The Federal District Court dismissed the tort claim with prejudice on the basis of the economic loss rule and the Eleventh Circuit sent a series of certified questions to the Florida Supreme Court to determine the applicability of that rule in Florida.

The opinion explains the basis for the economic loss rule, which prohibits a tort claim in certain cases where only economic losses are suffered.

The economic loss rule has been applied to prevent negligent actions where economic damages are suffered in cases in two circumstances. The first is in cases in which the parties are in contractual privity with each other under the theory that parties who have entered into a contract are limited to the terms of the contract and cannot circumvent that contract by seeking to claim losses beyond the contractual provisions. At Page 816, the Court holds:

Underlying this rule is the assumption that the parties to a contract have allocated the economic risks of nonperformance through the bargaining process. A party to a contract who attempts to circumvent the contractual agreement by making a claim for economic loss in tort is, in effect, seeking to obtain a better bargain than originally made. Thus, when the parties are in privity, contract

principles are generally more appropriate for determining remedies for consequential damages that the parties have, or could have, addressed through their contractual agreement.

The second basis for barring a claim for economic loss only arises in circumstances in which a machine injures itself as the result of a manufacturing defect. In this opinion, the Court reviews the evolution of products liability law in Florida from one where lack of privity precluded even a personal injury action based upon a product defect to the adoption of strict liability in tort. The Court then reviews the evolution of economic loss in Florida arising out of a product defect, which ultimately upheld the supremacy of warranty law over tort law as the applicable remedy. The Court reviews the U.S. Supreme Court case of East River Steamship Corp. v. Transamerica Delaval, Inc., 476 U.S. 858 (1986), the California Supreme Court case of Seely v. White Motor Co., 403 P.2d 145 (Cal. 1965) and the Florida Supreme Court case of Florida Power & Light Co. v. Westinghouse Electric Corp., 510 So. 2d 899 (Fla. 1987). In the latter case, the Supreme Court of Florida adopted the economic loss rule in products liability cases rejecting both negligence and strict liability in favor of warranty law. At Page 818 in the case under review, the Court holds:

The economic loss rule adopted in *Florida Power* represents this Court’s pronouncement that, notwithstanding the theory of strict liability adopted in *West*, strict liability has not replaced warranty law as the remedy for frustrated economic expectations in the sale of goods. In exchange for eliminating the privity requirements of warranty law and *expanding* the tort liability for manufacturers of defective products which cause personal injury, we expressly limited tort liability with respect to defective products to injury caused to persons or damage caused to property other than the defective product itself. In this regard, we also note that

*Continued on page 22*

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Belkin, Amanda	Dukes, Amy	Henderson, Rebecca	Lesser, Shepard	Penalta, Richard	Schindell, Matthew	Wade, Elsa (5)
Bell, Alfred "Jib"	Duhy, Tara	Hennessey, William	Letts, Sophie	Perkins, L.A.	Schuler, Richard (9)	Waldorf, Pamela
Bennett, Kevin	Dunkel, Gary	Hill, Jack	Lewis, Darryl	Pershers, Robert	Schutz, John	Walk, Gary
Benrubi, Richard	Eastridge Morrison, Jennifer	Hinson, Richard	Lian, Alexander	Perry, Jr., David	Schulz, Joseph	Ward, Joseph
Benvenuto, Chris	Edelson, Brian	Holt, Richard	Litten, Barbara	Perry, F. Martin	Schwartz, Bob	Warriner, Cal
Betensky, Gary	Eisenberg, Jim (11)	Hopkins, Sheri	Lindsay, Alan	Petosa, Frank	Schwartz, Derek A.	Watt, James
Bidwell, Talina	Elden, Joyce	Horn, Richard	Little, John	Petrack, Amy	Schwartz, Nathan	Warwick, Charles (2)
Bierer, Reid	Eller, Craig	Huber, Greg	Lowry, Patricia (12)	Phillips, Jack	Schwartzberg, Steve (13)	Wasserman, Jeffrey
Bludworth, David	Ellison, Steve	Hughes, Howard	Maass, Harold (2)	Phillips, Steven	Schwind, George	Waterman, Linette
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Bock, Sharon	Eriksen, Mike	Hyman, Sherry	Maier, Jason	Piniero, Andrew	Sellers Ferguson, Julie	Weiss, Howard
Bornstein, Ron	Evans, Les	Ianno, Joe	Malasky, Ellen (4)	Ponzoli, Ronald	Sendler, Robert	Weiss, Jill
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Booras, Ted	Farish, Joe	Jacknin, Jay	Mangines, Brian	Poulton, Bryan (8)	Seymour, Brian	Wenzel, Kenneth A.
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Brown, Jeff (3)	Feuer, Brad	Johnson, William	Marmor, Seth	Pumpian, Art	Shern, Christian	Williams, Bill
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Calix Tiffany, Sharon	Fischer, Amy	Joslyn, Brian	Martz, Jim	Randolph, Cater	Silber, Louis	Winston, Michael
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Carroll, William	Fleck, William	Kaplan, Wayne	Mauro, Cory	Rapp, Christopher	Slavin, Michael (7)	Wyman, Andy
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Chopin, Susan	Garber, Jeffrey	Keen, Darla	McDonald, Jack	Rembaum, Jeff	Small, Michael	Zoberman, Solomon
						Zucaro, Al

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**Steven C. Chang, M.D.** was Chief of Spine Surgery at the University of Indiana School of Medicine. He received his undergraduate and Medical Degree at Brown University School of Medicine. Dr. Chang completed his residency in Orthopedic Surgery at Rush Medical College in Chicago and his fellowship in Spine Surgery at University Hospitals Spine Institute, Case Western Reserve University.

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## Professionalism

### Ethical Responsibilities of "Local Counsel"

#### Part I

By David P. Ackerman and Glory P. Ross

You are hired by an out-of-state firm to act as local counsel in a complicated case. On the day a response to the opposing party's motion for summary judgment is due, you receive documents from lead counsel which must be filed that day. You run them over to federal court to be filed. An employee in the clerk's office insists that the brief be signed. While you are not thrilled to sign the papers without having read them, you feel it is more important that they be timely filed and you count on the research and writing of lead counsel. To protect yourself, though, you seek and obtain an agreement by lead counsel to indemnify you should any sanctions be awarded against you personally as the lawyer signing the papers. Do you think this is pretty good way to handle a tough situation? In an unreported decision from the Eastern District of Michigan, local counsel was sanctioned for this conduct and the Magistrate issuing the sanctions order looked with disfavor on the indemnification arrangement. The Magistrate found that counsel's difficult situation in having received the papers on the day they were due did not excuse him from an award of sanctions.

Courts appear to be in disagreement over the extent to which local counsel's professional obligations may be limited through an indemnification agreement or by other means. In *Macawber Engineering, Inc. v. Robson & Miller*, 47 F.3d 253 (8th Cir. 1995), local counsel was exonerated in a malpractice claim because the Court found that the scope of the attorney-

client relationship between local counsel and the client was limited to serving as "local counsel in support of litigating attorneys" and therefore, local counsel undertook no duty in the handling of the overall conduct of the client's case. One rationale was that the distribution of labor between lead counsel and local counsel provide efficiency for the client. Were the law to require local counsel to assume overall responsibility for the case, the costs involved in retaining local counsel would increase substantially. "Out of state litigants would be forced to pay a local attorney to review lead counsel's work." *Id.* at 258; *see also Ortiz v. Barrett*, 278 S.E.2d 833 (Va. 1981) (recognizing in malpractice action that duties of local counsel can be limited).

There is a competing line of cases, however, where courts have rejected the view that local counsel has only limited responsibility and therefore should be held to a lesser standard. In *Gould, Inc. v. Mitsui Mining & Smelting Co.*, 738 F.Supp. 1121 (N.D. Ohio 1990), the court held that local counsel should not be held to a lesser standard and stated that all counsel signing pleadings and appearing in a case are fully accountable to the court and their clients for the preparation of the case: "The law makes no distinction, as to the liability of lawyers signing pleadings, between those who are self-designated "lead" or "local" counsel. Federal Rule of Civil Procedure 11 places stringent obligations on all counsel signing pleadings, however designated." *Id.* at 1125. Similarly, the Supreme Court of Louisiana has held that local counsel shall be responsible to the court at all stages of the proceedings and that designation of the visiting attorney as "trial attorney" does

*Continued on page 22*

## Director's Comment



### Director's Comment

By **Richard D. Schuler**

The time has now come (and is long since overdue) for instituting a barrister/solicitor system in the courts of this state. One of the greatest complaints from the Bench I have heard over the last 15 years is about the marked decline in the overall competence of those lawyers appearing in court. As our system stands right now, anybody with a law degree and an advertising slogan can attempt to obtain personal injury, general commercial, or tax cases for that matter, and attempt to appear in court to represent those clients. Unfortunately, because of incompetence or fear, many lawyers not skilled in the Rules of Evidence, judicial procedure, or how to put a case together, whether civil or criminal, will do a disservice to a client by settling a case unfairly. The damage that this does to our profession is far-reaching.

Additionally, if those lawyers who are unskilled do take a case to court, without proper mentoring, mistakes are made that tax the system in terms of unnecessary appeals (delay) and

unnecessarily adverse bench court rulings which leave genuinely good cases with a bad result (whether plaintiff or defendant). I submit that having a barrister/solicitor system would immeasurably help to eliminate much of the above and vastly improve our public image. The barrister would be a lawyer highly qualified to try a case in the civil or criminal arena and would be the only type of lawyer permitted to practice before the civil or criminal courts. Other lawyers, known as solicitors, would be permitted to have clients, but those clients would have to be referred to a barrister for further representation if a client was not satisfied with an offered resolution.

What makes this partial solution to our public image woes and the efficient administration of justice so appealing is that we already have a system in place to recognize the truly skilled in these specialties. This is called the Board Certification system of The Florida Bar. Right now, there are 75,912 members of The Florida Bar. Of that number, there are 1,107 board certified in the Civil Trial specialty, for example. In order to be board certified in the Civil Trial specialty, a lawyer must have been lead counsel in prosecuting 15 cases before a jury, have recommendations of several judges and a number of fellow attorneys, and take a full day examination. These are the true Barristers of our profession. It would be a simple matter to

recognize, in the civil arena, those people that have attained that expertise as barristers and limit practice before the courts to this group. To some extent, although not as rigorously, this is already being done in the Federal system. One cannot sign pleadings or appear in Federal Court unless one has passed an examination attesting to certain expertise in the rules of that Court. The effect of this proposed change in Florida, which would obviously have to be made by the Florida Supreme Court, would be to make the administration of justice more efficient, more professional, less contentious, more common sense, and more ethical. It would make the job of the judiciary easier and more efficient, and would considerably reduce mistakes which are now an unnecessary burden on the system. There would be significantly less in the way of objections at trial, since evidentiary problems can be worked out remarkably easily among experienced trial lawyers, and trials would be significantly shortened by elimination of unnecessarily wasted time. It would leave the public (i.e., the jury, the jury venire and the clients) with a significantly better impression of the legal system to carry back to their families and other members of the public. Its impact will be greater than any "PR" campaign we could ever mount.

### Monthly Board Meeting Attendance

	July Retreat	Aug	Sept.	Oct.	Nov.	Dec.	Jan
Klett	x	x	x	x	x	x	x
Leopold	x	x	x	x	x		x
Farach	x	x	x	x	x	x	x
Suskauer	x	x	x	x	x	x	x
Murray	x	x	x	x	x	x	x
Whitfield	x	x	x	x		x	x
Schuler	x		x	x	x	x	x
Sasser	x	x	x	x	x	x	x
Kramer	x	x	x	x	x	x	x
Poulton	x	x	x	x	x	x	x
Coates	x	x	x	x	x		x

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(As of February 7, 2005.  
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or fax to 561-741-1744.)

## Florida Bar Board of Governors Report

At its January 28 meeting in Key West, The Florida Bar Board of Governors:

- Paid tribute to board member Henry Latimer, who died in a car accident on January 24. Bar President Kelly Overstreet Johnson announced that a special committee has been named to coordinate Bar efforts with other groups for a suitable memorial to honor Latimer's legacy.
- Received the report from the Advertising Task Force 2004. The board is expected to take action on the recommendations at its April meeting. The task force's final report is on the Bar Web site, at [www.flabar.org](http://www.flabar.org).
- Approved in concept pursuing a contract to provide free online basic legal research for all Bar members. A final contract should be ready for the board's April meeting.
- Heard a report from Committee on Judicial Independence Chair Jesse Diner that the committee is planning to collect anecdotal information about judicial independence, the judicial nominating process, and related issues. The committee is also looking to expand its membership, to include general Bar members and nonlawyers, to improve its diversity and input.
- Held an extensive discussion with Council of Sections Chair Marsha Rydberg about the Bar subsidy for sections' operations and possible changes. The discussion included that sections are upset about alterations that could cost them more and reports on Bar expenses for underwriting section operations. Bar President Kelly Overstreet Johnson said she expected the board to get several options and make a decision at its April meeting.
- Approved a recommendation from the Legislation Committee and after hearing from Judge Fred Tygart, chair of the Conference of Circuit Court Judges, on cost of living increases for state judges. The board voted to support the circuit, county, and district court conferences in seeking a cost of living increase to make up for no such raise since 2001, in addition to whatever increase is given to general state employees this year.
- Approved a legislative request from the Young Lawyers Division that the division be allowed to lobby in support of funding to help repay student loans of all government and legal aid attorneys who have at least three year's public employment.

Respectfully Submitted,

Amy L. Smith

John G. (Jay) White

Jerry S. Beer

Scott G. Hawkins

## "When Too Much Wireless Security Becomes A Problem"

(continued from page 9)

would be a minor irritation. At the office it was a critical failure and I could not tolerate it.

That led to my research into new equipment and NetGear. The NetGear Access Point/Router (about \$80.00 and a \$20.00 rebate is sometimes available) has been getting some favorable reviews, so I decided to give it a try. Installation was easy. I followed the step-by-step directions and left most of the default settings in place. I had very few problems and had the system up and running in about 20 minutes. The best part has been the increased reliability and range. I am now back to having a strong connection everywhere in the house. In a quick test, I also found that the network was accessible with my laptop across the street as well. (So now my neighbors are probably using my Internet connection). I actually hear from people all the time who report that their laptop picks up several available unsecured networks in their office buildings or neighborhood. If you have installed a wireless network, you will probably want to enable the MAC Authentication to keep others out. You might also want to enable the WEP security on your home or office network. Without it your network and your data can be accessed by people who shouldn't have access.

So why would I suggest that you install the same security at home that we just got rid of at the courthouse? Because your home or office network is intended to be private and should be kept private while the courthouse network is intended to be public and should be accessible to the public. So it would be a good idea when you are using the courthouse network to remember that it is a public network and what you are sending can be seen, although it is by no means easy to do so. While you are on any public network you should make sure that file sharing is turned off. I have heard of horror stories where people at conventions have had their computer files copied because they forgot to turn off the sharing on the C drive. If you are unsure if you have sharing turned on, double-click "My Computer." If the C-Drive icon has a blue hand on it then it is being shared. Email me! [bdr@flappellatlaw.com](mailto:bdr@flappellatlaw.com)

## "Manners Don't Go Out Of Style"

(continued from page 3)

rule you are arguing with the court." The proper avenues are not open disdain for the court, or rude conduct, but rather a motion for rehearing or appellate relief.

Finally, our profession is stressful and litigation is built on an adversarial system. I try to be courteous and respectful to opposing counsel in discussions and arguments. In the heat of the battle, there have been times that I must admit, that I may have been less than polite. In those situations I have normally later called opposing counsel to clear the air. With very few exceptions the gesture has been appreciated and the apology accepted. It is for this same reason that I normally give my "heated correspondence" a cooling off period so I have a chance to edit and revise it when I have had a chance to reflect (in other words calm down). With e-mail, I really have to put a block on my send button.

A friend of mine uses what he calls the "Grandmother Rule". The Grandmother Rule means what would your grandmother say if you told her about it. If you would be ashamed to tell her then you should not have said or done it. I know that my Grandmother said when she was alive that "manners never go out of style." Let's make sure that we remember this as we practice law and live our lives.

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

**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](mailto: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](mailto: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.

**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](http://www.wgtlaw.com) (561-686-6886).



## 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)
- NASD Approved Mediator
- Qualified Florida Arbitrator
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(561) 832-5900; Fax: (561) 820-0381  
Email: [wjh@hunstonadr.com](mailto:wjh@hunstonadr.com)  
website: <http://www.hunstonadr.com>

**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

The West Palm Beach law firm of Beasley & Hauser, P.A. has changed its name to **Beasley, Hauser, Kramer & Leonard, P.A.** Their offices are located at 505 S. Flagler Drive, Suite 1500, West Palm Beach, FL 33401, phone (561) 835-0900.

**Jack Nieland**, of the Law Office of Jack Nieland, LLC., announces the opening of his new office at 3300 PGA Blvd., Suite 350, Palm Beach Gardens, Florida 33410, telephone (561) 691-5555. Mr. Jack Nieland is Board Certified in the area of Civil Trial, and the firm will concentrate in the areas of personal injury and civil trial practice.

**John Fumero**, a shareholder with the West Palm Beach law office of Lewis, Longman and Walker, has been elected to the Board of HISPAC of Palm Beach County. HISPAC is a non-partisan political action committee representing the political interests of Palm Beach County's increasingly influential Hispanic population.

The West Palm Beach plaintiff's personal injury law firm of Lytal, Reiter, Clark, Fountain & Williams, LLP, is pleased to announce that **Barry N. Heisler, II**, has joined the firm as an Associate. Mr. Heisler will concentrate his practice in the areas of medical malpractice and products liability among other areas of personal injury and wrongful death litigation.

**Randall Porcher**, a partner at Gonzalez, Porcher, Custer & Roca, P.A., in Lake Worth, received the 2004 Kennie Edwards Memorial Award from the Workers' Compensation Practice Committee of the Palm Beach County Bar Association. The award



is given annually to the attorney best exemplifying honesty, integrity, cordiality, good humor, high ethical standards and advocacy tempered by a sense of humility.

## "Economic Loss Rule"

*Continued from page 15*

the products liability economic loss rule articulated in *Seely and East River*, and adopted by this Court in *Florida Power*, applies even in the absence of privity of contract.

In the case under consideration, the Court refuses to expand the law beyond that described above. The Court reiterates that in cases where the parties are in privity and have negotiated remedies for nonperformance of a contract, the economic loss rule prohibits an action in tort. The Court, however, specifically limits the products liability economic loss rule to cases in which the product injures itself rather than other property. In the latter case, tort law can apply. The Court also reaffirms cases, whether or not involving privity of contract, where causes of action exist outside of contract such as in professional negligence, fraudulent and negligent misrepresentations or other free standing statutory causes of action. The Court holds that in the case under consideration since there was neither privity nor a manufacturing defect, which results in injury to the product, an action for tort would lie.

Thus it appears that while the economic loss rule is alive and well in Florida, it is strictly limited to specific circumstances.

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.

## "Ethical Responsibilities"

*Continued from page 17*

not relieve the local counsel of the responsibilities imposed by the rules. *See Williams v. City of New Orleans*, 831 So. 2d 947 (LA 2002); *see also Beebe Medical Center, Inc. v. InSight Health Services Corp.*, 751 A.2d 426 (Del. Ch. 1999) (local counsel should be held to the same standards as in cases where no co-counsel has been admitted pro hac vice); *Ingemi v. Pelino & Lentz*, 866 F.Supp. 156, 162 (D. New Jersey 1994) ("Even if pro hac vice attorneys attempt to delegate solely routine or ministerial tasks to local counsel, local counsel remains counsel of record and wittingly or unwittingly exposes itself to liability for penalties such as sanctions.").

Many jurisdictions have adopted local rules describing the duties of local counsel. The State Bar of Georgia has determined that the rule entitled "Responsibilities of a Partner or Supervisory Lawyer," similar to Florida Rule of Professional Conduct 4-5.1, is applicable to the ethical responsibilities

between lead and local counsel. (Formal Advisory Opinion No. 98-1). The Advisory Opinion states that:

Typical acts required of local counsel such as the moving of admission pro hac vice or the signing of pleadings, always carry with them affirmative ethical obligations. For example, in this, as in all circumstances, the signing of pleadings by an attorney constitutes a good faith representation regarding the pleadings and the conduct of the discovery procedure of which the pleadings are a part. There is nothing in the role of local counsel that changes this basic ethical responsibility.

This is an issue that will continue to arise especially with the increasing occurrence of "multi-jurisdictional practice." State Bar Associations have recognized these concerns and are attempting to address the issue.

\*This article will be continued next month with a discussion of additional issues to consider when entering into an agreement to act as local counsel.

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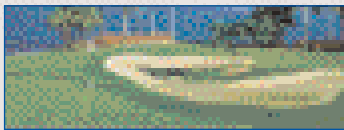
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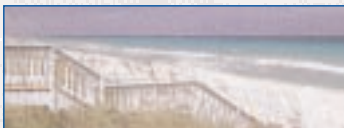
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# CALENDAR

## March 2005

March 1, 12 noon

**Historical Committee Meeting**  
Bar Association Office

Tuesday, March 2, 12 noon

**Hispanic Bar Meeting**  
Judicial Dining Room, Courthouse  
Contact: Miriam Acosta-Castriz 625-1122

Thursday, March 3, 12 noon

**Special Needs of Children Committee Meeting**  
Chair Joseph Ackerman's Office

Friday, March 4, 8:00 a.m. – 3:30 p.m.

**PBCBA Personal Injury Law Seminar**  
Marriott at City Place

Friday, March 4, 4:00 p.m.

**Investiture for Sandra Bosso-Pardo**  
Courtroom 11A, Main Courthouse

Tuesday, March 8, 12:00 noon

**South County Bar Membership Meeting**  
Contact: Melissa Kelly (561) 482-3838

Tuesday, March 8, 12 noon

**Young Lawyers Section Board Meeting**  
Bar Association Office

Wednesday, March 9, 8:00 a.m. – 5:00 p.m.

**Fla Bar Video Replay**  
"Basic Personal Injury"  
Bar Association Office

Friday, March 11, 8:00 a.m.

**ADR Committee Meeting**  
Bar Association Office

Tuesday, March 15, 12:00 noon

**North County Section Board Meeting**

Tuesday, March 15, 5:30 p.m.

**Inns of Court Meeting**  
Palm Beach County Courthouse  
Contact: Steven Brannock

Wednesday, March 16, 8:00 a.m. – 4:00 p.m.

**Fla Bar Video Replay "Damages"**  
Bar Association Office

Friday, March 18, 12 noon

**Federal Bar Association Meeting**  
Colony Hotel  
Contact: Judy Wilkinson, (561) 650-7217

Friday, March 18, 12 noon

**Cunningham Bar Association Meeting**  
Law Library  
Contact: Lisa Quarrie (561) 832-3300

Wednesday, March 23, 5:00 p.m.

**Legal Aid Board Meeting**  
Bar Association Office

Wednesday, March 23, 5:30 p.m.

**Quality of Life Baseball Game/Dinner**  
JJ Muggs/Roger Dean Stadium

Thursday, March 24, 5:00 p.m.

**PBCBA Board of Directors Meeting**  
Bar Association Office

Friday, March 25

**Court Holiday – Good Friday**

Thursday, March 31, 6:30 p.m.

**Small Claims Court Clinic**  
North County Library

Thursday, March 31, 6:00 p.m.

**PB County Trial Lawyers Association**  
Contact Susan Maynor, 561/999-9490



PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

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