



PALM BEACH COUNTY BAR ASSOCIATION

BULLE IN

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September 2005

Tri-County Appellate Seminar September 16

Mark your calendars now for the Tri-County Appellate Seminar – “An Afternoon with the Judges of the Fourth DCA” to be held on September 16. The Seminar will start with a luncheon at 11:30 a.m. and we are very pleased to have Florida Supreme Court Chief Justice Barbara Pariente as our keynote speaker. The seminar will end with a cocktail reception from 5 – 6 p.m. Sponsors to date for this seminar are: **Grand Benefactor:** Mellon United National Bank; **Gold Sponsors:** Lytal, Reiter, Clark, Fountain & Williams; Carlton Fields; Gunster Yoakley & Stewart; Jane Kreusler-Walsh, P.A. and **Bronze Sponsors:** Boose Casey Ciklin Lubitz, Martens McBane & O’Connell; Freedland, Farmer, Russo & Sheller; Richard A. Kupfer, P.A. and Bunnell, Woulfe, Kirschbaum, Keller, McIntyre & Gregoire, P.A. Please see insert in this issue of the Bulletin for the full program and registration information.

Bench Bar Conference scheduled for November 18 at Convention Center

This year’s Bench Bar Conference has been scheduled for **Friday, November 18** at the Palm Beach County Convention Center. The Bench Bar Conference is an opportunity for attorneys and judges to meet informally in a roundtable atmosphere to discuss issues of concern to both the Bench and Bar. Registration forms will be mailed to all PBCBA members. Last year, over 800 people attended throughout the day, so be sure to sign up early! A morning session will be dedicated to legal assistants, judicial assistants and legal secretaries. This session has proven to be valuable to staff, so please be sure that you register them. A general luncheon will be held at 12 noon followed by the afternoon breakout session for attorneys and judges. The Bar sincerely thanks Mellon United National Bank for its support of this conference. Law firm sponsorship opportunities are available to assist in the underwriting of this year’s conference in the following amounts:

- \$175 for law firms with 1-2 attorneys
- \$250 for firms with 3-10 attorneys
- \$350 for firms with 11 or more attorneys.

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

Smith wins Florida Bar Award

D. Culver “Skip” Smith III was recently presented with the Florida Council of Bar President’s 2005 Outstanding Past Voluntary Bar President Award. This award recognizes past local bar presidents who have gone on to contribute significantly to the Bench, Bar and to the public after they have served as president. Skip, a former member of The Florida Bar Board of Governors and past chair of The Florida Bar’s Professional Ethics Committee, was president of the Palm Beach County Bar in 1982. Skip is pictured above with Vene Hamilton, Vice President of the Florida Council of Bar Presidents and joins fellow past PBCBA presidents Bob Romani, Joe Reiter and Harry Johnston as previous recipients of this award.



Schiavo parents’ attorney, David Gibbs, To Speak September 30

David Gibbs, attorney for Terri Schiavo’s parents, will be the Association’s speaker at a membership meeting to be held on Friday, September 30. This meeting will be held at the West Palm Beach Marriott, 1001 Okeechobee Blvd. from 11:45 – 1:00 p.m. Cost of the luncheon will be \$25 per PBCBA member; non-PBCBA attorney members \$40; and judges are complimentary.

An invitation has been extended to George Felos, attorney for Terri’s husband, but not confirmed by press time.

New Member Benefit Discount Card!

By now you should have received your special membership benefit card in the mail. The card offers you discounts to various local businesses including Regent Bank, Brooks Brothers, Casual Corner, Petite Sophisticate, the Daily Business Review, Ballet Florida, Roger Dean Stadium, plus lots more! Be sure to put the card in your wallet and take advantage of all the great savings!

A special thank you to Regent Bank for sponsoring the card.



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President's Message



PASSION

By Theodore J. Leopold, President

I recently returned from a trip to Yosemite National Park where I was asked to speak to the Elder Law Section of the Florida Bar. Those of you who have been to Yosemite know that words cannot describe its awe inspiring beauty.

I was initially asked to lecture on "Litigating the Managed Care Case." Simple enough, right? Shortly before the trip, however, the Chair of the Elder Law Section, Scott Solkoff, asked whether I would be willing to read an article that he wrote to the Elder Law Section, and if, after reading the article, whether I would feel comfortable speaking not about litigation, but would instead focus my comments on "passion" for the practice of law. Yes, you read correctly, "PASSION"!

At first I did not know quite what to think of Scott's inquiry. "Passion" used in the same sentence as practicing law, dealing with difficult clients and putting up with opposing attorneys? At first blush, "PASSION" was not the first word that came to my mind when I thought of "the law," or so I thought.

Then I read Scott's article. It was beautifully written, enlightening and provocative. The article focuses on how attorneys have forgotten why they do what they do and how to get "passion" back in their lives.

After reading the article I realized that I indeed do have a passion for what I do. I have a passion to help others and to assure that those that need help have an avenue to seek justice.

So as I stood in the heart of the Yosemite mountain range contemplating what I would say to this group of Elder Law Attorneys about "why I do what I do" it soon came to me very easily. I came to fully appreciate just how precious life is. Passion for me is achieving justice for someone who has suffered a catastrophic injury or has lost a loved one. Passion for me is working to assure that those in power don't abuse it.

What is your passion? You have it, but you may have to rekindle the fire and look within yourself to once again find it.

If you have lost the passion for the practice of law, work hard to regain it. The law provides such a wonderful opportunity for us to grow as individuals and to help our community. I realized in preparing my talk that sometimes we do lose sight of our passions and that every day we must work hard to remember why we do what we do. As long as we keep a healthy balance between work, community and family, our passions for each can be fulfilled.

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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
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50-year members honored by Florida Bar

Several attorneys from Palm Beach County were recently honored by The Florida Bar for their fifty years of practicing law in Florida. Pictured to the left is John Burns, who served as President of the PBCBA in 1967. Other PBCBA members recognized, but not in attendance were Daniel Downey, Richard Kramer and Bill Pruitt. Congratulations to each of you!

Pilot Project: Judicial Liaison Feedback Program

We are pleased to announce that the Palm Beach County Bar Association, in conjunction with our Judiciary, will continue its pilot program to address issues related to professionalism and the Judiciary. Our Professionalism guidelines say that both lawyers and Judges should strive to be respectful, honest and professional in the practice of law. It is with this goal in mind that the Bar Association and the Judiciary wish to work together closely to ensure that these ideals are pursued to the highest degree.

The participating judges from our County have agreed to appoint a friend/liaison to accept professionalism concerns regarding the Judiciary from the Liaison Committee. The concerns would be presented to the committee via a lawyer wishing to express a concern against a particular Judge. It is important to keep in mind that those concerns should not involve disputes over legal rulings or ethical issues, but should be focused upon judicial demeanor and professionalism in the courtroom.

For a complete listing of the participating judges and further information, please go to the Bar's home page www.palmbeachbar.org to download this information.

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My Newest Computer Is the One I Drive

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

I don't know about you, but I love living in the 21st century. I love almost everything about it. I love the fact that I can watch 225 channels of television beamed to my plasma TV from outer space. I love the fact that I can sit with my computer almost anywhere in the country and connect to the Internet. And I love the fact that I can talk to my computer instead of typing. As you may recall from previous articles, however, I have been less than satisfied with the 21st-century options available in cars.

Well now that has changed too. I proudly drive a brand-new vehicle which is basically a computer with four wheels, an engine, and air conditioning. I'm talking about my 2005 Acura TL. From my research of various car models which have come out in the past two years, it appears that car manufacturers have finally begun to introduce useful technology into new models. The latest crop from the BMW, Mercedes Benz, Audi and Acura now include XM or Sirius radio, navigation systems, some voice-recognition, all-wheel-drive, Bluetooth technology, and sophisticated sound systems which rival anything you have at home. Actually, with regard to the sound systems, the technology might be better since the manufacturer knows exactly where you will be sitting in the car and it is an enclosed space.

After test driving new cars from each of the manufacturers listed above, I finally settled on the Acura because they included more options and executed on them better than the other manufacturers. Acura also did it at a lower price. My favorite new feature is the navigation system. Navigation systems have been available for the last couple years, but they have been so hampered by inadequate technology. Frankly, lawyers have played a part in making technology less useful. Many manufacturers design the navigation system so it cannot be changed or used, other than to follow directions, while the car is moving. Apparently, some lawyer decided that the manufacturer will get sued if the navigation system allows the driver to input an address while the car is moving and the driver has an accident because he is not paying attention to the road. Acura is perhaps taking a risk by allowing the system to be used while the car is moving, but maybe they figured out that the passenger in the car could push the buttons while the car is moving without distracting the driver.

In addition to allowing me to input an address, the navigation system has business information which allows me to look up places without having the address. For example, I was easily able to look up, by name, most law firms that have existed for more than three years. I've also been able to plot a course to most every courthouse in the state by knowing nothing more than the name of the county. Once you pull up the name of the business, the telephone number

also appears and that is where the Bluetooth telephone comes into play.

Bluetooth is a wireless communication protocol which connects devices up to 30 feet away. It is commonly used in cellular phones and, to a lesser extent, office equipment. Once I get a Bluetooth cell phone, I will be able to tell the navigation system to dial the phone number and the car's computer will dial the number on my cell phone, connect the phone to the microphone and speaker system in the car and turn off the stereo system volume so that I can carry on my conversation. Actually getting a Bluetooth cell phone has been somewhat of a challenge, however, since I am a Nextel customer and Nextel has apparently decided that the 20th century was a great time for technology and there is no need to advance. If I receive a call while driving, the display panel will show the name of the person calling and ask me if I want to answer.

The voice recognition technology has some other advantages as well. Instead of surfing through 200 channels of music on my XM Satellite Radio, I can simply push a button and say "XM channel 121" to listen to Fox News. I can also use voice commands to control the six disc CD/DVD Audio player, eliminating the need to push buttons to find various CDs. For those of you who are interested, I did not put the same six CDs in this car that were in the old car. I actually bought new discs. That was primarily because the Acura TL has a DVD audio, which provides much greater sound fidelity. Of course, finding DVD Audio discs is a bit of a challenge in itself.

A really great feature available on the navigation system in a different model, the Acura RL, is a constant satellite traffic feed. If the navigation system gets a report of traffic problems along a route that you are following, it will alert you to the traffic problem and reroute you around the jam. I wish that the system would also overlay Doppler Radar weather information on the map as well. It would be helpful to see what weather problems there are along the path that I am traveling. That would require an uplink to the national radar system, and probably cost more, but I think it would be worth it.

Although the TL did not have all-wheel-drive, many cars manufactured these days do. That is another feature which is operated by a computer. The onboard computer constantly monitors road conditions, speed and control of the vehicle and adjusts the power distribution, even putting on the brakes, if the computer senses that you are about to lose control of the vehicle.

New technology has made new car models safer and more fun to drive. If you are looking for an excuse to replace your car, I can think of a dozen. Call or e-mail me, and we'll talk about them. bdr@flappellatlaw.com

Who are they?

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

Answers on page 10



Minutes of the Palm Beach County Junior Bar Association

January 6, 1967, Holiday Inn

Thirty-three guests and members were present.

According to the notes taken by the secretary, Major Campbell first introduced his Commanding Officer, Col. Greer, chairman of the local cell of the CAP, and then recognized the presence of Judges White, MacMillan and Currie. If the Secretary's notes on the order of presentation are in error, it is reasonably certain that at the next meeting, the President will entertain a motion to correct the minutes.

Members Colbath and Kapner announced the annual party. President Campbell's Cocktail Party and the ensuing festivities at the Racquet club were an overwhelming success, marred only by the embarrassment caused by the informal and shoddy attire exhibited by members Letts, Rogers and Byrd.

The speaker was Lowell W. Ross, Chairman of the South Carolina Bar Committee on Legal Services for the Indigent. He informed us that we could set up our own funded poverty pocket, with only a 10% contribution from lawyers. The contribution may take various forms and need not be in cash. For instance, although it would probably be appraised for value at something less than 10%, the Jr. Bar could contribute Ray Royce.

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

Respectfully submitted,
Peter Van Andel, Secretary



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YLS Golf Tournament a Success

The YLS recently held a golf tournament to benefit the Child Protection Team which raised over \$8,000. Pictured at right is Michael Napoleone, YLS Executive Committee Member; Patrick McKamey, Golf Tournament Chair; and Dr. Philip Colaizzo, medical director of the Child Protection Team of Palm Beach.



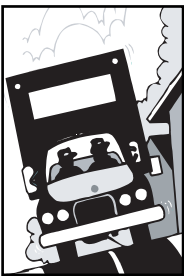
Spencer Copeland, Stan Klett, John Copeland and Tom Spall

Boose Casey Ciklin players Charlie Pickett, Patricia Christiansen and Jason Maier

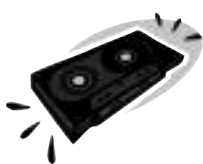


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
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Set Off Of HMO Discounted Bills

by Ted Babbitt

In Goble v. Frohman, 30 Fla. L. Weekly S280 (Fla. April 28, 2005), the Supreme Court was faced with a certified question as to whether it was appropriate to set off under Fla. Stat. 768.76 the portion of the medical bills awarded by the jury which are written off by the medical providers pursuant to their contract with the plaintiff's HMO. That case involved a trial which arose from a motorcycle/vehicle accident in which the plaintiff was severely injured. As a result of the accident, the plaintiff incurred almost \$600,000.00 in medical bills but those bills were paid by plaintiff's HMO after the HMO received a substantial discount from the medical providers. As a result, the HMO paid only \$145,000.00 of those bills and the providers, pursuant to their contract with the HMO, agreed to accept that sum in full payment of their bills.

The jury trial resulted in a verdict which included the full amount of the medical bills and the defendant sought a setoff for the portion of the bills which were reduced pursuant to the discount obtained by the HMO. The HMO had a right of subrogation, but only for the amount actually paid. The trial court granted the motion to reduce the amount of the verdict by the discounted amount and the Second District affirmed.

The definition of collateral sources in Fla. Stat. 768.76 is "collateral sources" means any payments made to the claimant or made on the claimant's behalf, by or pursuant to: (3) any contract agreement of any group, organization, partnership or corporation to provide, pay for, or reimburse the costs of hospital, medical, dental, or other healthcare services." Plaintiff argued that the discount was not a "payment" within the meaning of the statute. The Supreme Court rejected that argument in holding that the defendant was entitled to the setoff.

We conclude, as the Second District did, that the contractual discounts fit within the statutory definition of collateral sources. Section 768.76 defines collateral sources as 'payments made' on a claimant's behalf. Virtually all dictionaries include, among the first three definitions of "payment" or "pay," the concept of discharge of a debt. See, e.g. *Merriam-Webster's Collegiate Dictionary* 851 (10th ed. 1993) ('to discharge a debt or obligation'); *Webster's Third New Int'l Dictionary* 1659 (1981) ('discharge of a debt or obligation'). In this case, the discounts negotiated by Goble's HMO fully discharged Goble's obligation to his medical providers. Because of the medical provider's contracts with Goble's HMO, Goble was obligated to pay the claimants

\$145,970.76, rather than the billed charges of \$574,554.31. In this light, the discounts negotiated by Goble's HMO are as much a benefit to Goble as the HMO's remittance of \$145,970.76 to satisfy the remaining charges on Goble's medical bills. The contractual discounts, therefore, constitute 'amounts which have been paid for the benefit of the claimant, or which are otherwise available to the claimant, from [a] collateral source[.]; Therefore, under section 768.76, the amount of the contractual discount, for which no right of reimbursement or subrogation exists, is an amount that should be set off against an award of compensatory damages.

Thus, the Supreme Court has held that contractual discounts negotiated by an HMO do come within the statutory definition of collateral sources and the defendant is entitled to a set off for any amounts resulting from that discount.

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

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Photo Answers:

From Page 6

1. David Horvath
2. Judge Mary Lupo
3. Dick Schuler
4. Albert Gortz
5. Eugene Shuey



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- Florida Bar Board Certified, Emeritus in Civil Trial Law (2003-Present)

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The PBCBA Lawyer Referral Service refers potential clients on a daily basis to attorneys throughout Palm Beach County. This service is available to members of either the Palm Beach County Bar Association or the South Palm Beach County Bar Associations. In 2004, 4,117 referrals were made to local attorneys resulting in fees of over \$650,000.

The LRS handles referrals in most areas of law, but is especially looking for attorneys in the following areas:

Consumer Law, Labor/Employment Law (employee rights), Civil Rights, School Board Issues and Creditors' Rights.

Other requirements to join the LRS is admission in The Florida Bar for a minimum of one year, carry at least \$100,000 in professional liability insurance and having your name screened by The Florida Bar to verify that there are no complaints pending against you.

If you have a client you are unable to assist and want to refer them to the LRS, please call the Service directly at (561) 687-3266 or 451-3256 for Boca/Delray residents.

If you are interested in joining the LRS, you may go to the Bar's website to obtain an application <http://www.palmbeachbar.org/referral.php>

The Quality of Life and Stress Management Committee held their last meeting at the Columbia Restaurant at CityPlace. This fairly new group has served our membership well by providing STRESS FREE activities including reduced priced tickets to Roger Dean Stadium, the Breakers Spa, and a Stress Free CLE Seminar. A special thanks to chair Denise Nieman and her dedicated committee members for all their hard work.



Seated front left to right: Steven Harris, Kyle Caparosa, Denise Nieman, David Shiner, and Richard Morrelli.

Back row from left to right: Steve's wife Ann joined us as did Kyle's daughter Wallis, Lynn Whitfield, Ellen Block, Vicky Vilchez, and Molly Williams.



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Patience Burns was recently recognized by the FL Society of Association Executives for receiving her Certified Association Executive designation from the American Society of Association Executives. To earn this credential, one must obtain a minimum number of years of experience in nonprofit management, complete multiple hours of specialized professional development and pass a stringent exam in association management issues. Burns is pictured below with FSAE CAE Committee Chair Diane Gill, CAE and FSAE President, Ann Guiberson, CAE.



Hats Off to the Following Attorneys that have Closed Their Pro Bono Cases in June and July 2005

We thank the following attorneys that have graciously given of their time to assist our pro bono clients:

Lawrence M. Abramson
Stanley D. Appelbaum
Virginia Aurilio
Theodore Babbitt
Judy Ballen
Bridgett Ann Berry
Jason P. Blevins
Brian R. Brattebo
Gary Brookmyer
John L. Bryan, Jr.
Richard H. Chaves
Lois Clement
David W. Craft
Scott Devore
J. Andrew Fine
Jack A. Fleischman
Anne H. Ford
Kai Li Aloe Fouts
John A. Garcia
Paul R. Golis
Steven I. Greenwald
Christopher A. Haddad

Michael R. Hanrahan
Seymour C. Hartman
Bonnie W. Hutton
Charles Jamieson
John M. Koenig, Jr.
Helene Kottler
Jo Ann Kotzen
John A. Kovarik
Bruce I. Kravitz
Michael A. Lampert
Abby L. Levine
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Lawrence E. Murphy
Matthew S. Nugent
Thomas G. O'Brien
R. Brady Osborne
Steven M. Pessa
Gary L. Pickett
Frank T. Pilotte

Michelle Polom
James L. Purcell
Stephen F. Radford Jr.
Susan B. Ramsey
Stephen Rauch
Arthur R. Redgrave
J. Freddy Rhoads
Thomas D. Rielly
Alan B. Rosenthal
Erika D. Rotbart
Christopher J. Rush
Anthony G. Ryan
Steven T. Samiljan
M. Richard Sapir
Arthur Schofield
Kerry R. Schwencke
David Schwartz
Robert M.W. Shalhoub
G. Mark Shalloway
David I. Shiner
Neil Shoter
Barry Silver

Michael W. Simon
R. Slinkman
Jed A. Stabler
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Michael D. Tannenbaum
Rod Tennyson
Barry Waylor
Paul Thibadeau
Matthew Thibaut
Anna D. Torres
Doreen A. Varela
Dewey A. Varner
Brian Vassallo
Victoria Vilchez
Gary Walk
Thomas C. Walser
Roy R. Watson
Lynn Waxman
Fred Weinstein

George Weinstein
Wendi S. Weisman
James R. Wells
Todd B. Weprin
Shaun W. Wiedrick
Robert W. Wilkins
Keith L. Williams
John A. Willis
Michael Winston
Gary A. Woodfield
Nancy Wright
Stuart A. Young
Alan S. Zangen
George Zednek
Randy Zeldin
Ronald J. Zeller
Evelyn A. Ziegler
Alfred Zucaro, Jr.

**A GRAND TOTAL OF:
1428 HOURS**

Doreen Varela Named Pro Bono Attorney of the Month

The Fifteenth Circuit Pro Bono Committee is pleased to announce this month's Pro Bono Attorney of the Month is **DOREEN VARELA**. Doreen, a solo practitioner in West Palm Beach who practices predominantly in the area of marital and family law, donated over 100 hours of her time representing a disabled father in a modification case. Doreen became involved in the litigious case at the request of the Legal Aid Society several years after the parties divorce was final. The case revolved around issues regarding frustration of visitation. The parties had been in court on contempt issues numerous times. The mother of the parties child had only allowed the father to visit the child once in five years. In addition to thwarting the father's visitation the mother continually made false accusations against the father. Doreen attended many hearings in an effort to resolve the issues in the case. After a year, the case was finally concluded. In addition to her efforts in this particular case, Doreen has been a member of the Pro Bono panel for ten years and assisted clients in a variety of cases. For her tireless efforts on behalf of the underprivileged of Palm Beach County, Doreen Varela is recognized as this month's Pro Bono Attorney of the Month.



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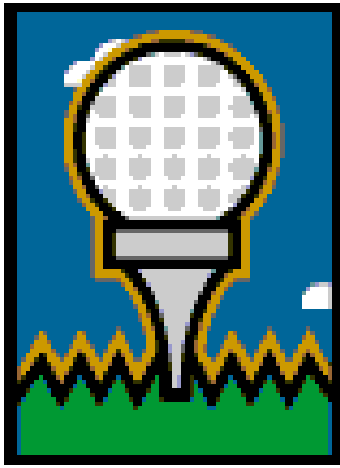
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Legal Aid Receives \$450,000 Grant from Quantum Foundation

The Legal Aid Society of Palm Beach County, Inc. is the lead agency in a collaborative entitled the Bioethics Collaboration for Education, Advocacy and Outreach which has recently been awarded a two year grant of \$450,000 from the Quantum Foundation. The supervisor of the Collaboration is Legal Aid attorney, Marnie Poncy who is also a registered nurse. The focus of the project is to assist individuals of all ages to make decisions about their health care in case of incapacity. This includes writing living wills, health care surrogates, signing do-not-resuscitate orders, etc.

The other partners in this collaborative are the Palm Beach County Medical Society, Hospice of Palm Beach County and Hospice by the Sea. Anyone wanting information regarding this program please contact the project's Administrative Assistant, Libby Spillane at (561) 655-8944 x 236.

Circuit Court Report CIVIL DIVISIONS • June 2005

DIVISION	JURY TRIALS	NON-JURY TRIALS	MOTIONS	CASES PENDING
A	12/05	12/05	09/05	1089
B	03/06	03/06	08/05	1468
D	06/06	01/06	09/05	1337*
E	10/05	10/05	10/05	1379
F	09/05	09/05	09/05	1155
G	02/06	10/06	08/05	970
H	01/06	01/06	08/05	1214
I	10/05	10/05	09/05	1189
J	01/06	10/05	09/05	1373
N	10/05	10/05	09/05	1175
O	02/06	11/05	09/05	1415

All Civil Division Judges schedule their own Jury and Non-Jury Trials.
Pending cases as of 8/08/05

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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.

JAMES A. BURNHAM - Glens Falls, NY; Duke University; 1997; Associate with Kelley & Warren, P.A., in West Palm Beach.

ANDREA J. CHRISTLE - Palm Beach Gardens, FL; University of Missouri; 2004; Associate with the Jupiter Law Center, in Jupiter.



ALAN SCOTT DIXON - New York, NY; Williams & Mary School of Law; 2004; Associate with Hilley & Wyant-Cortez, in North Palm Beach.

SCOTT C. GHERMAN - Freehold, NJ; Nova University; 1999; Associate with St. John, Core & Lemme, in West Palm Beach.

ROSALIND R. GRIFFIE - Texarkana, TX; St. Thomas University School; 2005; Griffie & Associates, in Plantation.

NICOLE HESSEN - Miami, FL; 2004; Associate with Wender & Associates, P.A., in Delray Beach.

ALLISON O. KAHN - Jacksonville, FL; Nova Southeastern University; 2001; Associate with Carlton Fields, P.A., in West Palm Beach.

DEBRA D. KLINGSBERG - Charlotte, NC; University of North Carolina Chapel Hill Law School; 2004; Associate with Hunt & Gross, P.A., in Boca Raton.

LAURA MANNING - New Orleans, LA; University of Miami; 1997; Associate with Siegfried, Rivera, Lerner, DeLaTorre & Sobel, P.A., in West Palm Beach.

DIANA L. MARTIN - Great Lakes, IL; University of Florida; 2003; Associate with Berrocal & Wilkins, P.A., in Jupiter.

MARC D. MATTHEWS - Bradenton, FL; University of Florida; 2004; Associate with Holland & Knight, in West Palm Beach.

ROBERT L. MCELROY IV - Oak Ridge, TN; University of Tennessee; 2005; Associate with Downey & Downey, P.A., in Palm Beach Gardens.

GLENN M. MEDNICK - Philadelphia, PA; University of Miami; 1979; Partner in Hodgson Russ LLP, in Boca Raton.

MARK R. PARTHEMER - Ohio; The Dickinson School of Law, Penn State; 2004; Associated with Bessemer Trust Company, in Palm Beach.



A. RICHARD REDGRAVE - Carlisle, PA; University of Florida; 2005; Associate in Redgrave & Rosenthal LLP, in Boca Raton.

RENEE MARIE RENUART - Coral Gables, FL; John Marshall Law School; 2004; Associate in Haile, Shaw & Pfaffenberger, P.A., in North Palm Beach.

DOUGLAS J. RUDMAN - Chicago, IL; John Marshall Law School; 2005; Sole Practitioner in Boca Raton.

JEFFREY D. SAMMONS - Affiliate member; Columbus, OH; Capital University; Sole Practitioner.

EIMAN SHARMIN - Mashad, Iran; Syracuse University; 2004; Partner in The Sharmin Law Firm, P.A., in West Palm Beach.

MINDY STEIN - Pittsfield, MA; Nova University; 2005; Associate in Berger Singerman, in Boca Raton.

ANDREW P. SPERANZINI - Union, NJ; University of Florida; 2001; Associate in Jeck, Harris & Jones LLP, in Jupiter.

DANA J. STRONG - Jacksonville, FL; Nova Southeastern University; 1997; Associate in Nason Yeager Gerson et al, in West Palm Beach.

KAREN K. THOMPSON - Cleveland; Cleveland Marshall College of Law; 1995; Sole Practitioner in West Palm Beach.

ROBERT W. TRIBUIANI - New Britain, CT; Seton Hall Law School; 2005; Sole Practitioner.

SIDNEY J. WARTEL - Suffolk University; 1987; Associated with H.T. Wartel & Associates, in Delray Beach.

NISHA S. WRIGHT - Toronto, Canada; California Western School of Law; 2005; Associate with Buden McClosky, in West Palm Beach.



DAVID YAREMA - Queens, NY; University of Florida; 2005; Associate with Jones Foster Johnston & Stubbs, P.A., in West Palm Beach.

GLENN ZIEGLER - Miami, Florida; Syracuse University; 2001; Associate with Plasencia & Associates, in West Palm Beach.



New Legislation Update: Commercial Real Estate Commission Liens

Submitted by Jessica M. Callow, Commercial Litigation Associate
Boose Casey Ciklin Lubitz Martens McBane and O'Connell

Closing agents need to be cautious of the new "broker's lien" legislation which takes effect October 1, 2005. House bill 1459 added two entirely new sections to Chapter 475 of the Florida Statutes – sections 475.700 *et seq* ("Commercial Real Estate Sales Commission Lien Act") and 475.800 *et seq* ("Commercial Real Estate Leasing Commission Lien Act"). Both real estate and litigation attorneys should familiarize themselves with the new Acts and be aware that different rules apply depending on whether the real estate transaction is a sale or a lease.

Real estate attorneys need to properly advise their clients of the ramifications of the new Acts and/or take steps to protect themselves from liability as a closing agent. Litigation attorneys should take note that the uncertainty and "growing pains" that accompany most new legislation will undoubtedly result in future litigation involving a client's rights, duties and obligations under the Acts. We will likely see an increase in the number of interpleader actions filed by closing agents as well. Please note that there are provisions for prevailing party attorney's fees in sections 475.713 and 475.809. The remainder of this article will provide a brief overview of the new legislation.

As the titles indicate, the new Acts pertain only to *commercial* real estate, as defined in section 475.701(5) and section 475.801(4). The broker's lien does not attach to the actual property in a sale (§475.700 *et seq*), but to the seller's net proceeds from the sale. However, the broker's lien does attach to the actual property in a lease (§475.800 *et seq*). Also note that only the seller's broker can obtain a broker's lien. The Acts do not provide a lien option for a buyer's broker.

Strict adherence to the disclosure and notice requirements and deadlines as set forth in each section is necessary to create a valid broker's lien. Just a few of the requirements/deadlines pursuant to section 475.700 *et seq* include:

- The broker must disclose its ability to obtain a broker's lien, a right which is not waivable before the commission is earned, to the owner of the property at or before the time the owner executes the brokerage agreement. The Act provides sufficient language for the disclosure.
- The broker must deliver the commission notice to the owner and closing agent, if the closing agent is known, within 30 days of earning the commission. Section 475.703(2) defines when a commission is earned for purposes of this part. The Act provides sufficient language for the notice.
- For a commission notice to be effective, it must be delivered to the closing agent at least 1 day prior to closing.
- A closing agent is deemed to have constructive notice of a commission notice if the notice is recorded for a minimum of 60 days.
- The owner must dispute the broker's lien due within 5 days of closing to ensure the proceeds are not released to the broker.
- If the closing agent has received a commission notice, but the owner has not disputed the commission, the agent should retain the net proceeds from the sale for a minimum

of 5 days in order to ensure proper compliance with section 475.700 *et seq* and help avoid liability.

Just a few of the requirements/deadlines for section 475.800 *et seq* include:

- The broker must disclose its ability to obtain a broker's lien, a right which is not waivable before the commission is earned, to the owner of the property at or before the time the owner executes the brokerage agreement.
- For a lien notice to be effective, the broker must record the lien notice after the commission is earned and no later than the earlier of 90 days after the tenant takes possession of the leased premises, or the date on which the owner records a deed or assignment transferring the owner's interest in the property to a bona fide purchaser for value, and the broker shall deliver a copy of the lien notice to the owner within 7 days after recording. Section 475.803(2-3) defines when a commission is earned for purposes of this part.
- If the owner records a notice of contest of the broker's lien, the broker must commence a foreclosure action within 60 days of service of the notice of contest or the lien extinguishes automatically.

Section 475.700 *et seq* exposes closing agents to potential liability. The closing agent must carefully monitor whether a broker's lien has been recorded or delivered, whether the owner objects or consents to the lien and whether the parties have complied with the deadlines. The closing agent must carefully calculate the net proceeds in order to exclude mortgages, liens or encumbrances with priority over the broker's lien and reserve disputed commission amounts pending resolution or interpleader of the commission dispute.

Section 475.709(11) *appears* at first reading to absolve closing agents from liability under the Act by including the following language: "[a] closing agent is not liable...in any civil action for any action taken by the closing agent to comply with the provisions of this part." A closer reading of the language, however, reveals that the closing agent is released from liability only if he or she properly *complies* with the Act. A closing agent will still be liable for failing to properly comply with the Act. Section 475.700 *et seq* effectively causes closing agents to become litigators by forcing them to file an interpleader action and deposit the net proceeds with the court registry in order to be discharged from further liability or responsibility concerning the disputed reserved proceeds.

As this very brief summary of a 44 page bill indicates, the new broker's lien statutes need to be taken seriously by all parties involved in a commercial sale or lease. A thorough review of the new sections is recommended in order to fully appreciate the many details in the Acts. Please go to www.flsenate.gov/data/session/2005/House/bills/billtext/pdf/h145904er.pdf to view and print House Bill 1459. If you have additional questions or concerns, please feel free to e-mail me at jcallow@boosecasey.com and I will try to help you decipher this new legislation.

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GREGORY TENDRICH:

Former Vice President & Asst. General Counsel (with Series 7 license) to regional & national NYSE/NASD brokerage firms, current NASD Arbitrator and Florida Supreme Court Certified County Court Mediator, is available to mediate all securities related matters, as well as business and commercial disputes. Mr. Tendrich is also accepting referrals and is available to co-counsel and/or provide trial consultation & assistance in all securities related matters, including state, federal and SRO regulatory enforcement. Please call 561-417-8777 or visit our website www.yourstocklawyer.com or email the firm at 10drich@bellsouth.net.

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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).

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.

KATE LYNN: The Law Offices of Kate Lynn, LLC are pleased to announce the relocation of their offices on July 1, 2005 to: The Comeau Building, 319 Clematis Street, Suite 109, West Palm Beach, FL 33401, Tel: (561) 659-2280; Fax (561) 659-2208 E-mail: katelynnlaw@bellsouth.net. The Law Offices of Kate Lynn, LLC concentrates on criminal defense (felony, misdemeanor, DUI, traffic), family law and civil litigation.

RICHARD HUIJBER: Former Immigration Attorney-Advisor to the Miami Immigration Court and the Board of Immigration Appeals, is pleased to announce the opening of his new law office in Boca Raton. Mr. Hujber has 10 years experience, exclusively in immigration law. He and his staff speak Spanish, Hungarian, and Portuguese fluently. The office accepts ALL types of immigration matters. 980 N. Federal Hwy. Suite 306, Boca Raton, Florida, 33432. Tel: (561) 417-VISA (8472); Fax: (561) 417-2575;
Richardhujber@yahoo.com.

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 So. Central Blvd., Suite 203, Jupiter, FL 33458; (561) 744-0802.

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

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HEARSAY



Law partners **Gerald A. Rosenthal** and **Jonathan T. Levy** have both been certified as members of *The Million Dollar Advocates Forum*. Membership is limited to attorneys who have won million and multi-million dollar verdicts, awards and settlements. Gerald A. Rosenthal is a Board Certified Workers' Compensation Attorney. Jonathan T. Levy is a Board Certified Civil Trial Attorney.



Schwarzberg Spector Duke Schulz & Rogers announces that **Lorraine O'Hanlon Rogers** and **Timothy W. Schulz** have been named shareholders in the firm. Ms. O'Hanlon Rogers focuses her practice on Labor and Employment Counseling and Litigation, and Commercial and Business Litigation. Mr. Schulz focuses his practice on Complex Business Disputes, Commercial Litigation and Employment Matters.



Howard J. Wiener has joined the law firm of Fowler White Boggs Banker as a shareholder. Mr. Wiener will practice in the firm's Trusts and Estates Practice Group.

He has more than 28 years of experience in tax planning for business and family wealth transactions. Mr. Wiener is a Florida Bar Board certified tax lawyer and is AV-rated by Martindale Hubbell.



Fowler White Boggs Banker is pleased to announce that **Francis B. Geary, Jr.**, managing shareholder of the West Palm Beach office has been recognized by

Florida Trend as Florida's Legal Elite in the area of Health Care Law.



Attorney **Joseph J. Reiter**, a partner law firm of Lytal, Reiter, Clark, Fountain & Williams, was recently honored by the Academy of Florida Trial Lawyers (AFTL) Young Lawyers Section for serving as a mentor and role model for up and coming trial lawyers. Pictured with Reiter is **Scott B. Smith** who has been elected Chairperson of the Young Lawyers Section of the Academy.

Bulletin Board

The Law Firm of Robin Roshkind P.A., a family law and divorce practice located in downtown West Palm Beach announces the addition of Attorney **Jonathan C. Ross** to its litigation staff. He joins Attorneys Maria Patullo and Rosemarie Guerini, along with the firm's principal, Attorney Robin Roshkind. Ross will be responsible for handling DUI/DWI cases as well as domestic violence and divorce matters.

Michael A. Lampert, Esq. of West Palm Beach has been appointed by The Florida Bar to both the Tax Law Certification Committee and to the Continuing Legal Education Committee for the term 2005-2006. The Certification Committee is responsible for the board certification process for Florida Tax Lawyers.

The law firm of **Ricci-Leopold** recently made a grant to MADD. The funds helped underwrite a recent MADD and Sports Car Club of America "Get In Gear Road Rally." The road rally was a family-friendly event that joined teams of car and road enthusiasts together.



The Karp Law Firm is pleased to announce that two new attorneys have joined the firm. **Adele Claire Small** will practice in the areas of estate planning, probate and trust administration, elder law and real estate. **Rachel G. Zetouni** will practice in the areas of guardianship, estate planning, probate and trust administration, and elder law.



The Law Offices of Philip M. Burlington, P.A. is pleased to announce that **Bard D. Rockenbach** has become a shareholder of the firm and that the firm will now be known as Burlington & Rockenbach, P.A. The law firm specializes exclusively in Civil Appellate Practice. The firm's new address and phone numbers are 2001 Palm Beach Lakes Blvd. Suite 410, West Palm Beach, FL 33409 Telephone 561-721-0400 Fascimile 561-721-0465 www.Flappellatlaw.com.



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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.



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- > 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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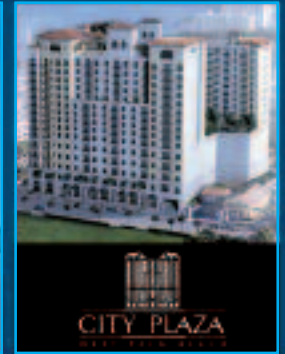
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CALENDAR

September 2005

Thursday, September 1, 12 noon
Special Needs of Children Committee
 Law Office of Boose Casey Ciklin et al

Wednesday, September 7, 12 noon
Historical Committee Meeting
 Bar Association Office

Wednesday, September 7, 12 noon
Hispanic Bar Assn. Mtg
 Judicial Dining Room, Main Courthouse

Wednesday, September 7, 12 noon
North County Section Board Meeting

September 8 – 9
Florida Bar General Mtg of Sections & Committees
 Tampa Marriott, Tampa

Friday, September 9, 8:15 a.m.
ADR Committee Meeting
 Bar Association Office

Tuesday, September 13, 12 noon
Young Lawyers Section Executive Committee Mtg.
 Bar Association Office

Friday, September 16, 11:30 am – 6:00 pm
Appellate Law Seminar
 Pete's in Boca Raton

Friday, September 16, 12 noon
Cunningham Bar Association Meeting
 Law Library

Thursday, September 22, 8:00 a.m. – 4:30 p.m.
Fla Bar Videotape Seminar Replay "Basic Commercial Litigation"
 Bar Association Office
 Register at 800-342-8060

Thursday, September 22, 5:00 p.m.
Board of Directors Meeting
 Bar Association Office

Wednesday, September 28, 5:00 p.m.
Legal Aid Board of Directors Meeting
 Bar Association Office



PALM BEACH COUNTY BAR ASSOCIATION

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