



# PALM BEACH COUNTY BAR ASSOCIATION

# BULLETIN

www.palmbeachbar.org

February 2014



The YLS hosted their annual holiday party for 75 foster kids at the Marriott Hotel in West Palm Beach who graciously donated space for the party. Pictured with Santa (YLS President Julia Wyda) are: Lisa Kohring, Colleen Farnsworth, Dan Barsky, Reeva Oza, Leslie Arsenault Metz, Dane Leitner, Ryan Fogg, Ed Walker, Christine Bialczak, Alison Percy, Jamie Gavigan, Andrea Robinson, Lindsay Demmery, Cash Easton, Scott Perry and Greg Salnick. The members of the YLS have been providing toys to foster children for over 30 years.



## Mark your calendar for upcoming Membership Events

### February 3:

Joint Luncheon with Forum Club  
with guest speaker U.S. Supreme Court  
Justice Samuel Alito

### March 7, 2014:

Bench Bar Conference; Luncheon guest  
speaker will be Laurence Leamer, author of  
fifteen books including five *New York Times*  
bestsellers. Leamer is perhaps best known for  
his trilogy on the Kennedys including  
*The Kennedy Women*.

### April 22:

Law Day Luncheon with guest speaker  
Former FL Supreme Court  
Chief Justice Charles Wells

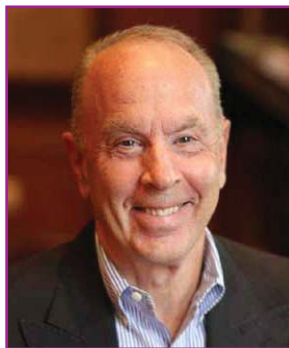
### April 29:

Annual Judicial Reception

### June 7:

Annual Installation Banquet

## Bench Bar Conference Keynote Speaker Laurence Leamer



Author Laurence Leamer will be the keynote speaker for the March 7 Bench Bar Conference. Leamer is the author of fifteen books including five *New York Times* bestsellers. Leamer is perhaps best known for his trilogy on the Kennedys including *The Kennedy Women*. His book about Palm Beach, *Madness Under the Royal Palms*, was so controversial that the Palm Beach police chief said the author should hire security. That book sold more than any other volume in Palm Beach County in a quarter century. His 2013 book, *The Price of Justice*, received some of the best reviews of his career. John Grisham said the story of two Pittsburgh lawyers and their fifteen-year struggle for justice was "superb...it is a book I wish I had written." In a sense, Grisham has. His novel, *The Appeal*, was based in part on the story.

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## New Rule 1.451: Taking Testimony

By Matt Triggs and Jonathan Galler

The next time you hear the words “counselor, please call your next witness,” the judge might be inviting you to use the phone.

Effective January 1, 2014, the Florida Rules of Civil Procedure were amended to include a new addition – Rule 1.451 – which allows the taking of testimony at a hearing or trial by use of “communication equipment” if all parties consent or good cause can be shown. In those situations where not all parties consent, a showing of good cause must be made in writing and reasonable notice must be given to all other parties of the intention to use such equipment.

Interestingly, the good cause test set forth in the rule (as explained in the committee note) presents what would appear to be an easier hurdle than that set by the rule’s federal counterpart, Rule 43 of the Federal Rules of Civil Procedure, which allows the use of such testimony for good cause “in compelling circumstances and with appropriate safeguards.” The federal rule committee note makes clear that “the importance of presenting live testimony in court cannot be forgotten.” And it stresses that “[t]he very ceremony of trial and the presence of the fact finder may exert a powerful force for truth telling.”

The Florida rule, by contrast, does not require a showing of “compelling circumstances,” but it too appears to recognize the potential for prejudice that can result from the admission of “out of court” testimony. Indeed, although the bulk of the newly enacted rule is devoted to the procedural requirements that must be followed when taking testimony through use of communication equipment, even the rule itself notes the general rule that a witness must normally be physically present when testifying at a hearing or trial. In other words, the rule makes clear that use of communication equipment is the exception to the norm – “in court” testimony of witnesses. Just as important, the good cause test articulated in the rule recognizes the potential for prejudice that could result from testimony via communication equipment, as opposed to traditional “in court” testimony.

The rule is otherwise silent as to what factors the court should consider when deciding whether good cause has been shown. The committee note, however, provides significant guidance on this

issue. Specifically, the committee note advises that the trial court may consider, in addition to “any other factors”:

- The type and stage of the proceeding
- The presence or absence of constitutionally protected rights
- The relative cost or inconvenience of requiring the presence of the witness in court
- The ability of counsel to use necessary exhibits or demonstrative aids
- The limitations (if any) placed on the opportunity for opposing counsel and the finder of fact to observe the witness’s demeanor
- The potential for unfair surprise
- The witness’s affiliation with one or more parties

Communication equipment, as defined by the rule, includes a conference telephone or other electronic device that allows those appearing or participating to hear and speak to each other simultaneously. Video communication is permissible under the rule and, if used, the equipment must make the witness visible to all participants during the



testimony. Under all circumstances, the equipment must allow for the court to stop the communication to accommodate objections or to otherwise prevent prejudice.

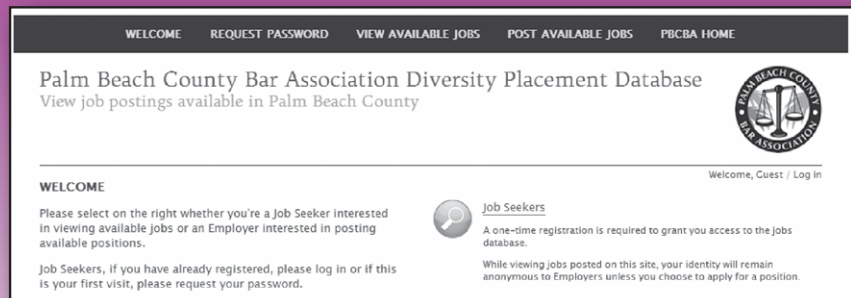
Under the rule, a notary or other person authorized to administer oaths must be present with the witness and administer the oath consistent with the laws of that jurisdiction.

We can hear the judge speaking into your iPhone now... “Siri, please swear in the witness.”

*Matt Triggs is a partner in the litigation department of Proskauer Rose LLP and the head of the department in Boca Raton. Jonathan Galler is a senior counsel in the department. Both concentrate their practices in commercial and probate litigation.*

## LOOKING TO RECRUIT DIVERSE ATTORNEYS?

*The Committee for Diversity and Inclusion Introduces the*  
**DIVERSITY PLACEMENT DATABASE**



The Diversity Placement Database (DPD) is designed to be a useful tool for law firms and government agencies eager to recruit attorneys from diverse backgrounds. The DPD:

- is FREE
- allows interested candidates and employers to find each other EASILY
- allows you to register QUICKLY and
- gives you the ability to post and describe open attorney positions DIRECTLY

*The DPD can be found under the “Diversity” tab on the PBCBA’s new and improved website – <http://www.palmbeachbar.org>.*

*Scan the QR code to go the Diversity Placement Database for more details and to register!*

