

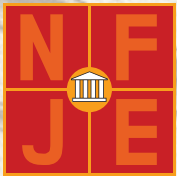
*Fourth Annual Judicial Symposium*

# JUSTICE IN JEOPARDY?

The Search for Due Process, Statutory Construction and Ethics  
in New Age Litigation

*Presented by*

NATIONAL FOUNDATION  
FOR JUDICIAL EXCELLENCE



**July 11—12, 2008**  
**The Drake Hotel**  
**Chicago, Illinois**

# Promoting Excellence; Affirming Justice

A strong, independent, responsive judiciary adhering to the rule of law is one of the hallmarks of a democratic society. Although every citizen has an interest in the maintenance of an effective judicial system, as an officer of the court, the lawyer's obligation in this regard is of paramount importance.

It was with this in mind that DRI created the National Foundation for Judicial Excellence (NFJE) on October 7, 2004. NFJE is an independent, 501(c)(3), charitable foundation that provides judges with educational programs and other tools to continually enhance the rule of law and administration of justice.

In 2005 NFJE hosted its inaugural symposium, and each year since has hosted an average of 130 judges from 38 states. Approximately 10% of state appellate court judges attend the NFJE symposia.

Judges' responses to the programs have been universally enthusiastic, and many expressed appreciation for the high caliber and balanced nature of the program. Comments included

- This was a fantastic program—intellectually stimulating and thorough.
- The speakers were excellent and the topics were timely. I anticipate next year's symposium.
- Thanks to everyone for a great program. I already look forward to next year's program.
- This is one of the best organized and informative seminars that I have ever attended. Keep up the good work.
- The program and the entire experience were excellent. I encourage the Foundation to continue this long into the future.
- The program was well planned and of high intellectual caliber.
- Bravo! Keep up the good tradition for which you have laid a sound foundation.
- Thank you for providing us with an opportunity to get together and compare notes with judges from other states.

---

## This Year's Program

**N**ew age litigation is here, and it appears that it is here to stay. What is it? And what makes it so different from the litigation courts have faced for centuries? The answers will come from state appellate courts.

New age litigation is a creature of technology, science and law. It takes various forms—from mass torts to consumer class actions to complex cases of every kind. In this age of technology, global contact and global impact are an instant away. Lawyers and their clients often communicate with little or no personal contact; and in some instances, the very existence of their relationship may be unclear.

Because of the size, complexity and often national scope of new age litigation, questions about ethics, due process, evidence and statutory construction take on much broader dimensions and significance. Join NFJE as we explore several of the most important questions inherent in new age litigation.

---

# JUSTICE IN JEOPARDY?

The Search for Due Process, Statutory Construction and Ethics in New Age Litigation

---

## Schedule of Events

### Friday, July 11

6:00 p.m. Registration and Cocktail Reception

---

7:30 p.m. Dinner on Your Own

### Saturday, July 12

8:00 a.m. Registration and Continental Breakfast

---

8:30 a.m. New Age Litigation—What Is It? What's New About It? What Difference Does It Make?  
Welcome and Introduction to the Program

---

8:45 a.m. New Age Litigation—A Case Study: The Facts and Procedural Posture

---

#### MORNING SESSION

#### **Procedural Posture—The Critical Juncture of Personal Jurisdiction Venue, and the Operative Pleadings**

9:00 a.m. The Statutes, the Rules—Statutory Construction and Interpretation  
Douglas McFarland

---

9:45 a.m. Break

---

10:00 a.m. Plaintiffs' Perspective on the Critical Juncture of Personal Jurisdiction Venue, and the Operative Pleadings  
Peter W. Burg

---

#### MID-MORNING SESSION

#### **The Construct between Complex Litigation, Technology and Ethics in New Age Litigation**

10:45 a.m. Ethical Dilemmas in the New Age of Mass Tort and High Tech  
Debra Lyn Bassett

---

11:45 a.m. Plaintiffs' Perspective on Ethical Issues in New Age Litigation  
Edward D. "Chip" Robertson, Jr.

---

12:30 p.m. Luncheon and Keynote Address  
Honorable Alexander M. Sanders, Jr.

---

**AFTERNOON SESSION**

**Due Process, Choice of Law, Evidence and Pretrial Motions:  
Does New Age Litigation Require Different and More Focused Guidance  
from our Appellate Courts?**

2:00 p.m. Choice of Law Considerations—Facts and Statutory Construction and  
Perspectives on Interlocutory Appeal  
Mary Kay Kane

---

2:45 p.m. Appellate Perspectives on Pretrial Motions—*In Limine*, *Daubert* and  
Summary Judgment  
Bernard Taylor, Sr.

---

3:30 p.m. Due Process Considerations—Constitutional Perspectives: Procedural and  
Substantive Due Process and Evidentiary Issues in Complex Multiparty Litigation  
Robert H. Klonoff

---

4:15 p.m. Break

---

4:30 p.m. Everything You Want to Know about New Age Litigation and Aren't Afraid to Ask  
Michael D. Jones, Facilitator

---

5:15 p.m. Reception

---

6:30 p.m. Dinner on Your Own

---



## Keynote Speaker



**Honorable Alexander M. Sanders, Jr.** is currently the President Emeritus of the College of Charleston, South Carolina and the Chairman of the Board and a founder of the Charleston School of Law. Judge Sanders has been a lawyer, a law professor, a state senator, a judge, and a college president. His experience on the bench included organizing and serving for nine years as Chief Judge of the first modern South Carolina Court of Appeals and as an Acting Associate Justice on the South Carolina Supreme Court. He has taught law for 25 years as a member of the Adjunct Clinical Faculty of the Harvard Law School.

## Speakers



**Debra Lyn Bassett** is a Professor of Law and Judge Frank M. Johnson, Jr., Scholar at the University of Alabama School of Law. The author of four books and more than 20 law review articles, Professor Bassett's scholarship addresses three primary areas—legal ethics, procedural issues in the federal courts, and the significance of place. She teaches civil procedure, federal jurisdiction, complex civil litigation, professional responsibility, and law and psychology, and is the recipient of three teaching awards. Before teaching she clerked for the Honorable Mary M. Schroeder of the Ninth Circuit Court of Appeals, practiced law with Morrison & Foerster in San Francisco, and worked as a Senior Attorney for the California Court of Appeal. She is a graduate of the University of California, Davis School of Law and is a member of the American Law Institute and Order of the Coif. In addition to teaching at the University of Alabama, Professor Bassett has also taught at the University of California, Davis, Florida State University, Michigan State University, and the University of the Pacific/McGeorge School of Law.



**Peter W. Burg** is a Shareholder at the firm Burg Simpson Eldredge Hersh & Jardine PC, in Denver, Colorado. Mr. Burg's practice focuses on complex commercial litigation in a wide range of substantive areas. He has developed a national reputation as a trial lawyer handling cases in the pharmaceutical field, product liability, personal injury, and mass tort litigation. Many of Mr. Burg's recent practice activities have focused on product defect cases, pharmaceutical tort cases and traumatic brain injury matters. Recently, he was selected as Co-Chair of the Plaintiffs' Steering Committee for a newly formed MDL involving an FDA approved product. Additionally, Mr. Burg was selected as a Colorado Super Lawyer for 2006, 2007 and 2008 and has been selected by members of the national legal community for inclusion in 2008's Best Lawyers in America.



**Michael D. Jones** is a partner at Kirkland and Ellis in Washington, D.C. His areas of practice include litigation and product liability litigation; the geographic scope of his practice ranges from New York to Hawaii. Mr. Jones is a *cum laude* graduate of Georgetown University Law Center and a recipient of the Thurgood Marshall Award. In 2007 Mr. Jones was named a “Leading Lawyer” and selected as one of the top ten business litigation attorneys in Washington, D.C., by *Legal Times*. In addition, Mr. Jones was selected as one of the top ten trial attorneys in the nation by *The National Law Journal*. He was also chosen as one of the “75 Best Lawyers” in Washington by *Washingtonian* magazine and recognized as one of America’s “Top Black Litigators” by *Black Enterprise*.



**Mary Kay Kane** is the John F. Digardi Distinguished Professor of Law, Chancellor and Dean Emeritus, at the University of California, Hastings College of the Law. After earning her B.A. and J.D. degrees from the University of Michigan, she became the co-director of a National Science Foundation project on privacy and social science research data. Chancellor Kane began her teaching career in 1974 at the State University of New York at Buffalo Law School and joined the Hastings faculty in 1977. She has been a member of the Michigan State Bar since 1971. Chancellor Kane has written numerous articles and books in her primary field of federal civil procedure. She has been a co-author with Professors Charles Alan Wright and Arthur R. Miller of the leading, multi-volume federal procedure treatise, *Federal Practice and Procedure*, serving as the principal author for 13 volumes in their second and third editions. In addition to her scholarship, Chancellor Kane has been active in several procedural law reform activities.



**Robert H. Klonoff** is currently Dean and Professor of Law at Lewis and Clark Law School in Portland, Oregon. His areas of expertise include class action litigation, civil procedure, and appellate litigation. Dean Klonoff clerked for the Honorable John R. Brown, Chief Judge of the United States Court of Appeals for the Fifth Circuit, served as an Assistant United States Attorney in Washington, D.C., and as an Assistant to the Solicitor General of the United States. After his government service, he was a visiting professor at the University of San Diego Law School. He later served for many years as a partner at the international law firm of Jones Day. While at Jones Day, Dean Klonoff was an Adjunct Professor of Law at Georgetown University Law Center. In 2003 he was selected as the Douglas Stripp/Missouri Endowed Professor of Law at the University of Missouri-Kansas City School of Law. He has written numerous articles on class actions and has lectured throughout the United States and in several foreign countries on class actions and appellate litigation.





**Douglas McFarland** has 34 years of law teaching experience at Hamline University in St. Paul, Minnesota and Phoenix School of Law in Phoenix, Arizona. His subjects include civil procedure, evidence, federal courts, torts, and persuasion. His primary subject is civil procedure with special interest in jurisdiction. He has been voted “Professor of the Year” five times, most recently in 2007. After graduating Phi Beta Kappa from Macalester College and from New York University School of Law as a Root-Tilden Scholar, he began his career at Dorsey & Whitney in corporate law and litigation. In 1984 he took a leave to work for Chief Justice Warren E. Burger as the Tom C. Clark Judicial Fellow. In 1986 he was promoted to the head of the Chief Justice’s staff.



**Edward D. “Chip” Robertson, Jr.**, is the former Chief Justice of the Missouri Supreme Court. He is a partner at the trial law firm Bartimus, Frickleton, Robertson and Gorny, and concentrates on appellate practice, complex cases, and litigation strategy. Mr. Robertson is involved in numerous national class actions and he serves as a mediator in other cases.



**Bernard Taylor, Sr.**, is the chair of Alston & Bird LLP’s Products Liability Group. He concentrates his practice on complex disputes including commercial litigation, products liability and toxic tort lawsuits. Mr. Taylor received his J.D. degree in 1982 from Vanderbilt University School of Law, where he was the recipient of the Bennett Douglas-Bell Memorial Prize in Legal Ethics. He received his B.A. from Wayne State University. From 1970 to 1979, Mr. Taylor was a police officer for the Detroit Police Department. Mr. Taylor is a member of the American Bar Association, the Georgia Bar Association, the Gate City Bar Association, the Atlanta Bar Association and a member of the DeKalb County, Georgia Chapter, of 100 Black Men of America. From 1994 to 1997 he served on the Georgia Commission on Dispute Resolution, having been appointed by the Justices of the Supreme Court of Georgia. Mr. Taylor is a Fellow of the American College of Trial Lawyers and is listed in *Super Lawyers* magazine.



## The Drake Hotel: It's Happening in Chicago

There is no place more captivating than Chicago in the summer. The weather is ideal, the city's beautiful lakefront is a flurry of activity, and there is an abundance of cultural, sporting, entertainment, and dining offerings.

Located at the base of the Magnificent Mile and the edge of Chicago's prestigious Gold Coast neighborhood, The Drake Hotel has become a unique historical landmark. Head north on the "L" to Wrigley Field, home of the Cubs, or south on the "L" to Millennium Park to see "the bean." Other nearby attractions include Michigan Avenue and Oak Street shopping, Navy Pier, the Sears Tower, the Art Institute of Chicago, the Theatre District, and the Museum Campus with the Field Museum of Natural History, Shedd Aquarium, and Adler Planetarium.



## Registration

### To register:

**Phone** 312.698.6280  
**Fax** 312.795.0748  
**Online** [www.nfje.net](http://www.nfje.net)

## Contact Information

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_

Preferred Name \_\_\_\_\_ Title \_\_\_\_\_

Court \_\_\_\_\_

Street \_\_\_\_\_ Suite \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Business Telephone \_\_\_\_\_ Fax \_\_\_\_\_ E-mail \_\_\_\_\_

Will a spouse or guest be traveling with you?  Yes  No

If yes, please indicate his/her name.

If yes, will your guest attend the keynote luncheon?  Yes  No

\_\_\_\_\_

## Hotel and Travel Arrangements

This program is limited to 150 participants. Registration is on a first-come, first-served basis. Once NFJE receives your completed registration form, you will be sent an e-mail confirmation with instructions about making your hotel and travel reservations. Please be advised that you will need to secure your hotel reservations by June 13, 2008.

NFJE will cover the cost of a deluxe room for Friday, July 11 and Saturday, July 12, 2008, and transportation (air, rail, ground) costs up to \$500. When making your travel arrangements, please plan to arrive by 5:00 p.m., Friday, July 11th. *If you would like to extend your stay, you are welcome to do so at your own expense.*

**The Drake Hotel**  
140 East Walton Place  
Chicago, IL 60611  
Phone: 312.787.2200  
Fax: 312.787.1431  
[www.thedrakehotel.com](http://www.thedrakehotel.com)

## Cancellations

*If you must cancel your attendance, please do so at least three weeks prior to the event so a judge on the waiting list can attend.*

**The Annual Judicial Symposium is a tuition-free program for state appellate court judges.  
Transportation and hotel accommodations are provided at NFJE's expense.**



## 2008 NFJE Board of Directors

---

*Chair*

**Robert E. Scott, Jr**  
Semmes, Bowen & Semmes  
Baltimore, Maryland

*President*

**Sheryl J. Willert**  
Williams Kastner  
Seattle, Washington

*Vice President*

**William R. Sampson**  
Shook Hardy & Bacon  
Kansas City, Missouri

*Secretary-Treasurer*

**John R. Kouris**  
DRI  
Chicago, Illinois

*Directors*

**Matthew Y. Biscan**  
Clisham Satriana & Biscan  
Denver, Colorado

**Richard T. Boyette**  
Cranfill Sumner & Hartzog  
Raleigh, North Carolina

**H. Mills Gallivan**  
Gallivan White & Boyd  
Greenville, South Carolina

**R. Daniel Lindahl**  
Bullivant Houser Bailey  
Portland, Oregon

**Patrick A. Long**  
Long Williamson & Delis  
Santa Ana, California

**John H. Martin**  
Thompson & Knight  
Dallas, Texas

**Leslie C. O'Toole**  
Ellis & Winters  
Cary, North Carolina

**Christopher W. Tompkins**  
Betts Patterson & Mines  
Seattle, Washington

**Marc E. Williams**  
Huddleston Bolen  
Huntington, West Virginia

## 2008 NFJE Program Content Committee

---

*Committee Chair*

**Sheryl J. Willert**  
Williams Kastner  
Seattle, Washington

*Program Chair*

**Patrick Lysaught**  
Baker Sterchi Cowden & Rice  
Kansas City, Missouri

*Committee Members*

**William C. Cleveland, III**  
Buist Moore Smythe & McGee  
Charleston, South Carolina

**Zenola Harper**  
Bristol Meyers Squibb  
New York, New York

**R. Daniel Lindahl**  
Bullivant Houser Bailey  
Portland, Oregon

**David Martin**  
Medtronic, Inc.  
Minneapolis, Minnesota

**Leslie C. O'Toole**  
Ellis & Winters  
Cary, North Carolina

**Laura Proctor**  
Louisiana-Pacific Corporation  
Nashville, Tennessee

**William R. Sampson**  
Shook Hardy & Bacon  
Kansas City, Missouri

**Michael B. Wallace**  
Wise Carter  
Jackson, Mississippi



**National Foundation for Judicial Excellence**

150 North Michigan Avenue, Suite 310  
Chicago, Illinois 60601

Phone: 312.698.6280

Fax: 312.795.0748

Email: [nfje@nfje.net](mailto:nfje@nfje.net)

Website: [www.nfje.net](http://www.nfje.net)