

the Briefs

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The St. Johns River



April 2013
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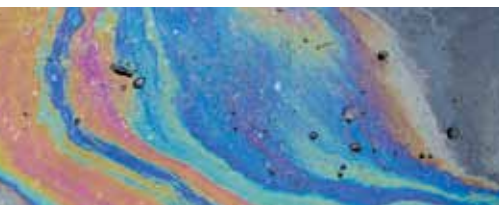
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FACTOID: EARTH DAY

The first Earth Day was held on April 22, 1970. Created as a day to demonstrate support for environmental protection and reform, it is now celebrated each year by more than 1 billion people in 192 countries.

The theme of Earth Day 2013, April 22, 2013, is: The Face of Climate Change.

Children, college students, and people in community and civic organizations will be among the masses who will participate in thousands of organized events around the globe. This year will be marked by an increased reliance on social media to share local images of climate change and network facts, commentary, and opinion.

DEADLINE INFORMATION

Advertising - 10th of the month prior to the month of publication

Copy - 15th of the month six weeks prior to the month of publication

If the deadline falls on a weekend or holiday, the deadline is the next business day. Publication of advertising herein does not imply any endorsement of any product, service or opinion advertised. The opinions and conclusions, including legal opinions and conclusions contained in articles appearing in *The Briefs*, are those of the authors and do not reflect any official endorsement of these views by the Orange County Bar Association or its officers and directors, unless specifically stated as such.

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the Briefs April 2013 Vol. 81 No. 4



Kristyne E. Kennedy, Esq.

It's not Easy Being Green... Or is it?

As this month's issue of *The Briefs* is dedicated to the environment, it seems fitting to take a moment to note a "green" movement that has been taking root (pun intended) at many law firms in Florida. Yes, folks – "going green" is no longer just a hip buzz phrase. Actually, I think the hipper new phrase may be: Green is the new red, white, and blue! In response to factors such as global warming, economic pressure, and eco-conscious clients, many law firms and legal professionals have been establishing green initiatives to cut expenses, reduce their carbon footprint, and also, of course, to promote social responsibility.

Here in Central Florida, many law firms have been taking steps to "go green" by participating in the **ABA-EPA Law Office Challenge**, a program designed to assist firms with managing their office paper and reducing their energy usage. Some of our local law firms and legal organizations that should be recognized for their participation as partners and/or leaders in the program are:

Baker, Donelson, Bearman, Caldwell
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Lowndes, Drosdick, Doster, Kantor
& Reed, P.A.

Of course, there are many ways law firms can "go green" short of formal enrollment in the program. One of the easiest ways to start is by curbing paper consumption. As we all know, a busy law practice can generate a tremendous amount of paper. What we may not realize is that paper use leaves a significant carbon footprint. In any case, it doesn't take an environmental expert to tell us that reducing your firm's paper consumption is a significant way to help the environment. Those who know me know that I am no tree-hugger. To the contrary, I confess that I have even been called a "tree-killer" by some because of my excessive old-school need to print everything. So, in an effort to try to do a little something to help the earth, here are a few easy tips someone shared with me to help minimize paper use in the office:

Use recycled paper.

Recycle discarded office paper. As a practical matter, a law office can implement this practice by establishing an office-wide policy to recycle office paper and ensure that all office personnel have ready access to recycling bins.

Institute a policy of double-sided printing and copying for drafts and internal documents.

Institute a policy of electronically saving and filing emails as opposed to printing them out for a paper file.

While the (probably accurate) perception may be that law firms have historically used more paper than other businesses, that doesn't have to be the case anymore – thanks in part to technology. For example, our new email service rules and mandatory e-filing requirements could end up having the effect of drastically reducing the number of printed documents currently preserved in law offices.

As attorneys, we often strive to be leaders in our profession and in the community. We can also set an example by being leaders in the movement to go green through implementing environmentally friendly practices in our firms and organizations. (On that note, however, I will comment that while I may be close to giving up on my fight to bring back our paper OCBA directory and have also been working to refrain from printing each and every document that is emailed to me, I will continue fighting against an electronic-only version of *The Briefs*. Some things are sacred.)

These relatively simple changes in our policies and practices not only further lofty goals like helping to save the planet. They can also result in more immediate, self-serving benefits such as reducing business costs, increasing efficiency, boosting the bottom line, and perhaps even attracting new clients who favor enviro-friendly law firms.

So, now as I am finishing this "President's Message" and about to push "Send," emailing the final version, it just occurred to me that I am dispatching it without having printed a hard copy to review. Wow, so maybe even I am evolving toward becoming paperless. (Wait a minute, I take that back – I'm now resisting the urge to print so I can see it on paper first...) Okay, urge resisted – pushing "Send!"

Kristyne E. Kennedy, Esq., Cole, Scott & Kissane, P.A., has been a member of the OCBA since 2001.



James A. Edwards, Esq.

Heroes & Villains, Saints & Sinners

It is truly an honor to receive the 2013 William Trickle, Jr. Professionalism Award from my fellow members of the Orange County Bar Association. I thank those involved in my nomination and selection, including the members of our Professionalism Committee, the prior recipients of the professionalism awards, and the Executive Council of the OCBA for this recognition.

I got involved formally in legal professionalism through the Orange County Bar's Professionalism Committee in 2000 and later served for six years on The Florida Bar's Standing Committee on Professionalism. My decision to engage in the noble pursuit of professionalism was highly motivated by what some might consider a selfish reason: I enjoy litigating with highly professional, skilled trial lawyers and hate having to mess around with opposing counsel who act like jerks. I thought if I could encourage professionalism in the practice of law and achieve any degree of success in doing so, my own law practice and career would be more pleasant and fulfilling. It worked. But it is a team effort, and the job isn't finished. As a huge bonus, I have gotten to know other like-minded lawyers, judges, professors, and deans from around town and around the state.

I have many, many more people to thank for helping me to learn what it means to behave professionally in the practice of law. After all, we aren't born knowing how to behave professionally any more than we are born knowing how to practice law. It is something that has to be learned. Over the last thirty-four years, I have learned many lessons on professionalism. Sometimes my lessons came from heroes, saints, and good role models. Other times I learned from the examples of villains, sinners, and jerks. If you don't learn from both the good and the bad, you are missing half your education, in my opinion. Here are some of the lessons I have learned from heroes, villains, saints, and sinners.

Lesson one: Be thankful.

I absolutely love being a lawyer and I am so thankful to everybody who has helped me so far and to all who will be helping me in the future to be a good lawyer. I didn't get here by myself, nor did anybody else. My heroes in this area are my parents, my wife, my children, and all those with whom I have practiced law who have cared enough about me and others to encourage, to guide, to praise, to prod, and when necessary, to scold. We should all be thankful that we made it into and out of law school, that we landed

that first job, and that we got our first client. We should be thankful that there are so many wise, skilled, talented, and patient lawyers who become judges. Be thankful that witnesses come forward to testify and that concerned citizens actually sit as jurors. Don't be quietly or internally thankful. Tell your heroes "thank you" every chance you get. The poor old villains, sinners, and jerks are all quite certain that they "earned and are entitled to" everything good that has come their way, because after all, they are more worthy and better than the rest of us.

Lesson two: Be prepared.

How are you supposed to be prepared for something that you have never done before? Ask somebody who has gone before you. Get advice from somebody you trust. Read. Plan ahead for what you are going to be doing. Think about what will actually be taking place, whether it is a hearing, a deposition, an inspection, a real estate closing, or a meeting. Heroes spend some time thinking about what they should know about and what they should have with them. Saints do likewise, and bring extra copies for the rest of us. Villains just roll on in, without giving any thought to what will take place and how to participate meaningfully and intelligently. Villains can't understand why the judge won't take the time to do a little research so that he/she can come up with the right answer. My heroes know the law, read and follow the applicable rules, understand the facts, and are ready to explain the issues clearly to the judge or jury.

Lesson three: Stop, look, and listen.

Lawyers who practice with professionalism are not "know it alls." They don't act like the proverbial bull in the china shop. Before they have their first hearing or trial before a judge, our heroes may go watch a couple of hearings, or sit in on jury selection in the case ahead of theirs. Did you ever notice how much more you can learn by listening than by talking? Does the lawyer who chatters non-stop really have that much to say? Take a moment to reflect on what you are getting ready to do, look at how it is being done by others who seem knowledgeable, and listen to what they have to say. Don't try to be a clone or a parrot, but do take advantage of what can be learned so easily.

Lesson four: Play nicely.

Life is too short to fight with everybody about everything, even if you are a trial lawyer. Be considerate of others' schedules whenever possible. If

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OCBA Luncheon Thursday, April 25, 2013



Law Week Luncheon ***Realizing the Dream: Equality for All.***

Please join us as we acknowledge the work of outstanding students, parents, and community leaders during our annual Law Week Luncheon, hosted by the OCBA's Law Week Committee. Law Week at the OCBA spans several months and includes: Goldilocks Mock Trial, Pathways in Law program, A Day in the Life of a Judge, DUI mock trials, a poster and speech contest, the presentation of the Liberty Bell Award, and a naturalization ceremony.

The year 2013 marks the 150th anniversary of the issuance of the Emancipation Proclamation and the 50th anniversary of the Reverend Dr. Martin Luther King Jr.'s inspirational "I Have a Dream" speech in front of the Lincoln Memorial.

The OCBA's Law Week activities have provided participants an opportunity to explore the movement for civil and human rights in America and the impact it has had in promoting the ideal of equality under the law. We hope it has provided a forum for each of us to reflect on the work that remains to be done in rectifying injustice, eliminating all forms of discrimination, and putting an end to human trafficking and other violations of our basic human rights. As Rev. Dr. King pointed out in his Letter from a Birmingham Jail, "Injustice anywhere is a threat to justice everywhere."

We hope that through our Law Week programs, participants will continue to grow and become effective participants in our nation's civic life.



The Ballroom at Church Street

11:30 a.m. - 1:00 p.m.

225 S. Garland Avenue • Orlando, FL 32801

Co-hosted by the OCBA Law Week Committee

Please RSVP by Friday, April 19, 2013
to reservations@ocbanet.org

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, April 19, 2013. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

Please keep us up-to-date on your reservation status!

Exhibiting sponsors: DEX Imaging and Protechnica



Nick Dancaescu, Esq.

The Long Road From East Orange County to The United States Supreme Court: How a Dispute Over a St. Johns Wetland Permit Found its way to the United States Supreme Court

A block east of the intersection of S.R. 417 and Colonial Drive sits a partially wooded parcel of property measuring about 15 acres. If you leave that property and head north on S.R. 417, it will take you to I-4, which eventually merges onto I-95. Follow I-95 north for about 700 miles to I-395, and a few turns later you will find yourself standing before the United States Supreme Court. Google Maps estimates it will take you about 12 hours.

There is another way to get to the United States Supreme Court from this property – a much longer and more tortuous route. This route stretches over 20 years and involves numerous stops at the Fifth District Court of Appeal in Daytona Beach and a detour to the Florida Supreme Court.

BACKGROUND

The facts leading up to this 20-year battle pitting private property rights against environmental concerns began in December 1993, when Coy Koontz, Sr. petitioned the St. Johns River Water Management District (St. Johns) for a permit to develop 3.4 acres of his 15-acre property. All but 1.4 acres of his property had been designated a “State Riparian Habitat Protection Zone” by the St. Johns. Koontz sought to convert 3.4 acres of wetlands and 0.3 acres of protected uplands closest to Colonial Drive into developable land.

St. Johns’ staff agreed to recommend approval if Koontz would dedicate the remaining property to a conservation area **and** do off-site mitigation “by either replacing culverts on St. Johns’ property four and one-half miles southeast... or by plugging canals on property seven miles away owned by St. Johns.”¹ Koontz agreed to the conservation easement on his property, but refused the off-property demands. In turn, St. Johns denied the permit and Koontz filed suit in 1993 claiming inverse condemnation under a line of U.S. Supreme Court cases known as the “exaction” cases.

What is an exaction?

Exaction law appears relatively straightforward, but the devil, as always (and as evidenced by this case), is in the details. Two primary U.S. Supreme Court cases frame the exaction law. First, in *Nollan v. California*, 483 U.S. 825 (1987), the California Coastal Commission conditioned approval of a permit to rebuild a home on a public easement being placed across the Nollans’ private beach. Despite the owner’s objections, the permit

was issued and the owners then filed suit to avoid the condition. The U.S. Supreme Court held that conditioning the permit on the easement was a violation of the owners’ constitutional property rights because the condition did not serve the same governmental purpose as the development ban. In effect, the Court held, this was nothing more than “an out and out plan of extortion.” *Nollan* 483 U.S. at 837. The test created by *Nollan* became known as the “essential nexus” test.

The next case, *Dolan v. City of Tigard*, 512 U.S. 374 (1994), was the result of the City of Tigard requiring that approximately 10% of Ms. Dolan’s property be dedicated for improvement of storm drainage. It also required she develop a bicycle path as a condition of the city approving her application to expand her store and pave the driveway. Ms. Dolan argued that the city’s refusal to issue the permit was an exaction under *Nollan*. The city responded (and the Oregon Supreme Court agreed) that the bike path and improvements were to assist with traffic congestion and stormwater management which the additional store traffic may increase, thus meeting the essential nexus requirement.

The Supreme Court rejected the city’s argument, holding that the requirement that the owner give up over 10% of her property dwarfed any minor additional impacts the store and parking lot expansion might cause. In doing so, the Court expanded the exaction test to include a second prong known as the “rough proportionality” test, which holds that if the conditions required are not proportional to the impacts which might be caused by granting the permit, there is an unconstitutional exaction.

The long journey begins

Koontz’s first trip up I-4 to the Fifth District was in 1998 to challenge the trial court’s determination that Koontz’s claim was not yet ripe. St. Johns had argued that “since there was a chance that a modified application might be approved, there was no final agency action.” *Koontz I*, 720 So.2d at 562. The Fifth District, after expressing discomfort with St. Johns’ application of its rules,² held that the claim was clearly ripe: “[T]he owner in this case drew a line in the sand and told St. Johns: ‘I can go no further.’ Whether the owner can now convince the court that there has, in fact, been a taking is an issue properly before the trial court.”³

The case churned on and in 2003 re-emerged at the Fifth District, this time with St. Johns as Appellant (*Koontz 2*).⁴ *Koontz 2* was an appeal of the trial court's declaration that the actions of St. Johns "were an unreasonable exercise of police power." The Fifth District found that such a determination was a non-appealable, non-final order, and dismissed the appeal.⁵ Two years later, St. Johns again appealed, this time challenging the trial court's ruling that St. Johns' actions were a taking. The Fifth District again found lack of jurisdiction, making clear that without a final jury verdict determining the amount of damages, a finding of liability in an inverse condemnation action is not appealable in Florida. *Id.* at 518.

An appealable final order

On February 21, 2006, the trial court entered the jury's verdict, finding \$327,500 in damages as compensation for St. Johns' taking of the Koontz's property rights.

With a final order now issued (and despite having already had no less than five of the judges on the Fifth District express their displeasure with St. Johns' actions towards Koontz⁶), St. Johns appealed yet again. Not surprisingly, the Fifth District affirmed the award, but in an unusual split opinion, with each judge writing separately (*Koontz 4*).⁷

Judge Torpy went first, voicing some of his previous concerns set forth in *Koontz 3*. He noted that the facts showed the property was not ideal plant and animal habitat, contained a mowed transmission line corridor, adjacent to both Colonial Drive and S.R. 417 (which had each taken a portion of the previous parent tract), and was in an area of intense development that had severely reduced the site's environmental usefulness. *Id.* at 9. The opinion affirmed the trial court's finding that St. Johns violated **both** the essential nexus test and the "rough proportionality" test set forth in *Nollan* and *Dolan*.

Judge Orfinger concurred, but expressed some real concerns about unsettled issues in exaction and takings jurisprudence, pointing out that the lack of a universally accepted definition of an exaction created confusion among federal and state courts. He further suggested that two other unsettled issues – whether an exaction can occur when the landowner refuses to meet the exaction and whether monetary demands can be exactions – make the analysis more complex. Finally, he examined the real world implications of exactions case law, namely that a broad reading of *Nollan* and *Dolan* may encourage government agen-

cies to flat out deny permits rather than risk exaction claims by setting conditions.

Judge Griffin, the first appellate judge to side with St. Johns in the case's long life, attacked the majority's position and reasoned that St. Johns was correct that there was no taking here because, since Koontz had not given in to the condition, nothing had been taken:

In what parallel legal universe or deep chamber of Wonderland's rabbit hole could there be a right to just compensation for the taking of property under the Fifth Amendment when no property of any kind was ever taken by the government and none ever given up by the owner? *Koontz 4* at 20.

While stating that there was no exaction and therefore no taking, Judge Griffin did set forth what she saw as Koontz's alternative remedies:

In this case, if Mr. Koontz had given in to the District's condition, gotten his development permit and done the off-site mitigation, he would be entitled to recover the value of the off-site mitigation. If he elected to refuse the offer, he had a judicial remedy to invalidate the condition, just as Mrs. Dolan did. The parcel of land for which he sought the development permit was not, however, in any wise "taken" by the District. The only way a "taking" can even be conceptualized in such a circumstance is by adopting the view that by proposing an "unconstitutional condition" that was rejected, the District forfeited its right (and duty) to protect the public interest to refuse the permit at all. *Id.* at 20-21.

Given this strong disagreement, it is not surprising that the Fifth District certified a question of great public importance to the Supreme Court of Florida.

The Florida Supreme Court (*Koontz 5*)

In 2009, the Florida Supreme Court granted jurisdiction based on the certified question:

Do the Fifth Amendment to the United States Constitution and Article X Section 6(a) of the Florida Constitution recognize an exactions taking under the holdings of [Nollan and Dolan] where there is no compelled dedication of any interest in real property to public use and the alleged action is a non land-use monetary condition for permit approval which never occurs and no permit is ever issued?

The Court ruled unanimously in favor of St. Johns.⁸ The Court reviewed the sparse

U.S. Supreme Court case law interpreting exactions and concluded that two primary issues precluded a finding for Koontz. First, the Court held that exaction case law applied only "where the condition/exaction sought by the government involves a dedication of or over the owner's interest in real property in exchange for permit approval," meaning conditions that amounted to a land swap or mandatory easement, like in *Nollan* and *Dolan*.

Second, the Court held that Koontz had no viable exaction claim, since St. Johns never issued the permit sought and essentially nothing was ever "exacted" from Koontz. *Id.* at 1230. The Court pointed to the strong public policy considerations it felt mandated such a holding:

It is both necessary and logical to limit land-use exactions doctrine to these narrow circumstances. Governmental entities must have the authority and flexibility to independently evaluate permit applications and negotiate a permit award that will benefit a landowner without causing undue harm to the community or the environment. If a property owner is authorized to file an inverse condemnation claim on the basis of the exactions theory any time regulatory negotiations are not successful and a permit is denied, two undesirable outcomes inevitably ensue. First, the regulation of land use, deemed by the United States Supreme Court to be "peculiarly within the province of state and local legislative authorities," would become prohibitively expensive.

Second, and as a result of the first consequence, agencies will opt to simply deny permits outright without discussion or negotiation rather than risk the crushing costs of litigation. Property owners will have no opportunity to amend their applications or discuss mitigation options because the regulatory entity will be unwilling to subject itself to potential liability. Land development in certain areas of Florida would come to a standstill. We decline to approve a rule of law that would place Florida land-use regulation in such an unduly restrictive position. *Id.* at 1230 -1231 (internal citations omitted)

The Crystal Ball

The United States Supreme Court granted Koontz's petition for writ of certiorari on October 5, 2012. Oral argument was held on January 15, 2013.



The Hon. Thomas W. Sculco



David C. Knapp, Esq.

What Do You Mean I Can't Say That? Avoiding Improper Opening Statements and Closing Arguments – Part 2

In Part 1 of this article, which appeared in the March 2013 issue of *The Briefs*, we discussed opening statements, one of the two most important parts of any trial. In Part 2, we present the second most important part of a trial – improper closing arguments and the need to object. We hope this article will prevent you from having to turn one day to your client, partner, opposing counsel, or even the judge and say, “What do you mean I can’t say that?”

CLOSING ARGUMENT

While opening statement provides counsel with one of the first occasions to sway the jury, closing argument is “the last and best opportunity trial counsel have to directly address the jury on what they should or should not decide.”¹ Unlike an opening statement, a final argument may be possessed of “partisan zeal.”² In fact, “[c]ourts are conscious of the fact that without partisan zeal for the cause of [a] client, counsel in many instances could have little success in properly representing litigants in sharply contested cases.”³ However, closing arguments are not a win-at-all-costs proposition. “[T]he signal caveat [is] that the zeal must be confined to the evidence in the case and to the issues and inferences that can be drawn therefrom.”⁴ While attorneys are afforded “wide latitude” in presenting their closing argument, they are still required to “confine their argument to the facts and evidence presented to the jury and all logical deductions from the facts and evidence.”⁵

All of these guiding principles support the purpose of closing argument, which is “to help the jury understand the issues in a case by applying the evidence to the law applicable to the case,” and to “explicate those inferences which may reasonably be drawn from the evidence.”⁶ Closing argument should never be used to “inflame the minds and passions of the jurors so that their verdict reflects an emotional response to the crime or the defendant rather than the logical analysis of the evidence in light of the applicable law.”⁷ Counsel’s conduct during a case “must always be so guarded that it will not impair or thwart the orderly processes of a fair consideration and determination of the cause by the jury.”⁸

In fact, lawyers have an ethical duty pursuant to R. Regulating Fla. Bar 4-3.4(e) to refrain from “stat[ing] a personal opinion about the credibility of a witness unless the statement is authorized by cur-

rent rule or case law, allud[ing] to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert[ing] personal knowledge of facts in issue except when testifying as a witness, or stat[ing] a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused.” Further, Rule 4-3.5(a) mandates that “[a] lawyer shall not seek to influence a... juror... except as permitted by law or the rules of court.”

An attorney who knows the parameters and purpose of closing argument is better able to spot an improper statement when it is made during trial, and act accordingly. However, sometimes it is difficult to conceptualize exactly what a specific improper argument might sound like. Below is a non-exhaustive list of several of the most common categories of improper arguments, along with some concrete examples of how each might actually be stated during a trial. Hopefully this list will reinforce your ability to quickly identify improper closing arguments made against your client, and help you to recognize and refrain from making improper arguments yourself.

1. Golden Rule Argument

“A ‘Golden Rule’ argument asks the jurors ‘to place themselves in the plaintiffs’ position and urge[s] them to award an amount of money they would desire if they had been the victims.”⁹ *Chin v. Caiaffa*, 42 So. 3d 300 (Fla. 3d DCA 2010), contains a straightforward example of an improper Golden Rule argument. In *Chin*, plaintiff’s counsel specifically asked the jurors to place themselves in his client’s shoes when he made the following closing arguments:

It’s difficult to comprehend in many ways because **we can’t feel his pain. We can only guess, only imagine.** We seem to accept other people’s pains and problems and disability, because that’s how we have to live.

That old expression “Scars are only tiny on somebody else’s face.” So I’ve said embrace him [plaintiff] for the time you’re here so that you can do justice.

The defendant wrote a blank check [when they admitted liability for the automobile/motorcycle accident].¹⁰

The court concluded that these comments, along with the statement that “[i]n two and a half years we haven’t heard ‘I’m sorry I caused the acci-

dent,” were a violation of the Golden Rule and had no “conceivable purpose” but to suggest that the jurors place themselves in the claimant’s shoes and “thwart a fair consideration of the cause.”¹¹

In *Chin*, the invitation for jurors to place themselves in the claimant’s shoes was explicit. However, a Golden Rule violation can also be implicit.¹² In *SDG Dadeland*, plaintiff’s counsel told “the Puppy Story” during closing argument. The Puppy Story went as follows: A little boy got \$8, and he wants a puppy, and he goes into a puppy store because it has a big sign that says puppies for sale. And the owner comes out, and the boys [sic] says, “I only have \$8.” And the owner says, “Let me show you the puppies.” And he opens up the door, and five or six little white puffy puppies come running out except the one in the back. The one in the back comes limping out, and the owner goes, “Which one of these do you want?” The little boy says, “I want the one in the back that’s limping.” And the owner says, “Why would you want the one in the back that’s limping?” Take one of these healthy puppies. That one has a bad leg. He’s been injected. He’s had surgery. It is no good.” The little boy says, “I want that one.” And the owner says, “Why?” And the boy lifted up his pant leg with a brace on it. “Because,” he says, “that puppy is going to need somebody that knows what it is like to feel that bad.”¹³

The court concluded that although the Puppy Story did not explicitly ask the jurors to place themselves in the plaintiff’s shoes, there was no “conceivable purpose” behind the story other than to implicitly ask the jurors to imagine themselves in the claimant’s position.¹⁴

An analogous decision was reached in *Bocher v. Glass*, 874 So. 2d 701, 703 (Fla. 1st DCA 2004), where plaintiff’s counsel referred to a “magic button.” In *Bocher*, plaintiff’s counsel stated: “if plaintiffs were given the choice between millions of dollars and a ‘magic button’ that could bring their child back, the plaintiffs would quickly push the button.”¹⁵ The court concluded that the statement violated the Golden Rule, because it implicitly invited the jurors to place themselves in the parents’/claimants’ position.

2. The Value-of-Life

It is clear error to ask a jury to place a monetary value on the life of a decedent.¹⁶ “The value of a human life is not an element of damages and is not the proper topic for

closing argument.”¹⁷ Therefore, any closing argument that asks jurors to place a value on life is an improper and objectionable closing argument.

In *Pineiro*, the 5th DCA held that comparing a claimant’s pain and suffering to that of basketball star Dwight Howard was an improper value of life argument.¹⁸ Specifically, plaintiffs’ counsel had improperly argued:

We live in a very strange society. If someone is at fault in a crash, ran a red light and injured Dwight Howard, and Dwight Howard broke a bone and couldn’t play basketball for a year, no jury in the world would have any problem compensating Dwight Howard \$20 million or whatever the value of one year’s salary is for Dwight.

But we’re all here today trying to evaluate Mom and Dad’s pain and suffering for the loss of their son. Edwin was not famous. He was not a star. Very few people even knew who he was. Edwin was one of many faces in the crowd, but to Mom and Dad, he was the most important person in the world.¹⁹

A similar conclusion was reached by the 3d DCA in *Pub. Health Trust v. Geter*, 613 So. 2d 126, 127 (Fla. 3d DCA 1993), where plaintiff’s counsel compared the value of a decedent’s life to the price of an \$18 million Boeing 747 or an \$8 million SCUD missile. The court held that the comment made during closing argument was “improper, highly inflammatory, and deprived the defendant... of a fair trial on the issue of damages.”²⁰

Attorneys are also precluded from comparing a client’s life to a painting. In *Fasani v. Kowalski*, 43 So. 3d 805 (Fla. 3d DCA 2010), the 3d DCA held that it was improper to compare claimant’s alleged head injury to a Picasso painting. Plaintiff’s counsel improperly argued:

If that was a Picasso painting that was in the elevator and it got ripped, no one would argue with paying \$80 million to replace it. Why is it any different when it’s a man’s brain? Why is it any different when it’s a man’s brain who’s had an injury the equivalent to a stroke who’s had post-concussion syndrome, posttraumatic stress disorder.²¹

Plaintiff’s counsel in *Chin v. Caiaffa*, 42 So. 3d 300, 305 (Fla. 3d DCA 2010) also compared his client’s injuries to a Picasso painting, with the same result. In *Chin*, plaintiff’s counsel stated:

Folks, only in a courtroom, only in a courtroom is the value of human life cheap. As I submit to you, if Mr. Chin

ran into Mr. Adams’ car that had a beautiful magnificent Picasso painting worth \$10 million and it got ripped from that accident or it got shredded from that accident, he’d [Mr. Adams] tell you to go back there and take your time...

When you consider the value of this claim, if there were a Picasso, ladies and gentlemen, that was torn by a result of an impact between a car and another car and the value of the painting was worth \$10 million dollars in this case and it wasn’t [the claimant], it was Picasso’s painting, you would go back and in five minutes you would write out a \$10 million check.²²

Counsel in *Fasani* and *Chin* apparently never read the 3d DCA’s earlier decision in *Carnival Corp. v. Pajares*, 972 So. 2d 973, 979 (Fla. 3d DCA 2007), where the court held that comparing the value of plaintiff’s life, “created by the greatest creator there is,” to a \$20 million Van Gogh painting, “created by one of the greatest artists in history,” was “highly improper.”

3. Punishment v. Compensation/Send-a-Message

It is improper to argue that a party should be punished in a case that does not involve punitive damages.²³

In *Health First, Inc. v. Cataldo*, 92 So. 2d 859, 864 (Fla. 5th DCA 2012), the 5th DCA concluded that plaintiff’s counsel had improperly exhorted the jury to punish the defendants by talking about “repentance.”²⁴ Specifically, counsel stated:

...And I was reading about the concept of repentance. And it applies here, folks, because part of what you’re going to be doing in this case, through your verdict, is to make sure that the Defendants who caused the wrong we’re here on, really have repented for what they’ve done.²⁵

A similar result was reached in *Intramed*, where counsel for plaintiff argued:

They have never taken responsibility. They have been forced to admit they sent the wrong medication... and they still take zero responsibility.

How did they respond? Have you heard sorry once in this courtroom, we are sorry we sent you the wrong medication? ...Not one time have you heard that, not from there, not anywhere.

There are things your verdict cannot fix ... But you can fix the harms that



Shaunda Brown, Esq.

Back to the Basics – HBCS Waivers: The Process of Preserving the Dignity and Self-reliance of the Elderly

Seniors, specifically those who depend on government assistance, face decisions such as how to maintain their health, medical, and financial independence, particularly if they have been independent for many years. They must decide whether to apply for assisted living services, stay in a nursing home, or live in a group home with others who are similarly situated. Seniors who choose to remain in their homes often face the reality that it may not be feasible to maintain their standard of living as well as meet everyday medical expenses and other financial obligations. The decision to remain in the home is compounded by the challenges seniors encounter when they try to obtain the assistance they need.

Medicaid funding is difficult even if seniors meet the medical qualifications to receive assisted living facility (ALF) care or long-term care services. Since funding is limited but critical to most seniors, the questions are: What are the eligibility requirements for government assistance resources? What is the availability of these resources? How accessible are they?

To qualify for an ALF or long-term care services under the Medicaid Home and Community-Based Services Waiver Program (HCBS) in the state of Florida, a two-prong evaluation must be met.

Medical Assessment Evaluation

The first step in determining a senior's eligibility for waiver programs is the medical assessment evaluation. If the senior is seeking a HCBS waiver, then a medical need assessment must be administered. If the senior is seeking nursing home placement, then a Pre-Admission Screening and Resident Review (PASRR) must be administered.

The PASRR is a federally mandated review designed to ensure that the applicant and potential resident is placed in the least restrictive environment possible according to the level of specialized care he or she needs. Prior to placing an individual in residential care in a nursing home, Comprehensive Assessment and Review for Long-Term Care Services (CARES), a Florida-based entity that operates within the Florida Department of Elder Affairs (DOEA), administers the PASRR.

If the senior is seeking a Medicaid HCBS waiver, a medical need assessment is necessary. This assessment is also administered by CARES, and it must be implemented in order for the individual

to qualify for Medicaid long-term care services. Assisted Living Medicaid Waivers apply to seniors who have a social security number, are citizens of the United States or are qualified non-citizens, are sixty-five years or older, or are individuals who are blind or disabled. They must meet Florida residency requirements, and their ability to physically function must meet the program's eligibility requirements. If those requirements are not met, the individual may be at risk of nursing home placement.

For example, to qualify for an Assisted Living for the Elderly (ALE) waiver, the senior must meet the basic requirements of age, citizenship, and Florida residency, and have a social security number. In addition, the ALE waiver requires that the senior have a diagnosis of Alzheimer's, other dementia disease, or a chronic disease that requires nursing care; lack of the ability to independently perform two or more of the basic activities of daily living (ADL), such as bathing, feeding, and getting dressed; need assistance with the administration of medication as well as lack the ability to perform at least three ADL; need total help with one or more ADL; or require assistance with four or more ADL.

In contrast to the ALE, the Nursing Home Diversion (NHD) waiver, which is known to have the strictest requirements of the various waiver programs, is an alternative to nursing home placement for frail, elderly seniors. To meet eligibility requirements, the senior applicant must meet the basic requirement of age, citizenship, and Florida residency requirements; have a social security number; and be Medicaid eligible. The senior applicant must also be Medicare Parts A and B eligible and meet nursing home level of care criteria. Furthermore, the senior must reside in his or her own home, in a caregiver's home, or in an assisted living facility, as well as meet one or more of the following: lack the ability to independently perform five or more ADL; need supervision with medication management as well as require assistance completing four to five ADL; be totally dependent on another for the completion of two or more ADL; be diagnosed with dementia or Alzheimer's disease and be dependent upon another for the completion of three or more ADL; or require nursing home care services.

Even though each waiver program requires the

continued page 12

Judicial Investitures: Blechman, Marques, Carsten, Cameron, and McGinnis

Conferring the authority and symbol of the high office, the Honorable Mark S. Blechman, the Honorable Leticia Marques, and the Honorable Keith A. Carsten as circuit judges, and the Honorable Andrew L. Cameron and the Honorable Adam McGinnis as county judges took their oaths of office during a judicial investiture ceremony February 22, 2013, at Jones High School in Orlando.



The Honorable
Mark S. Blechman

Judge Mark S. Blechman received his juris doctor degree from the University of Florida. Prior to being elected to the circuit bench, Judge Blechman worked as a prosecutor with the Ninth Circuit's State Attorney's Office and then subsequently operated his own firm. He is a member of the Florida, Colorado, and United States Supreme Court bars and has practiced as a trial lawyer for more than 30 years. He was also awarded the 2007 Supreme Court Pro Bono Award.

Judge Leticia Marques majored in political science at Loyola University and then received her juris doctor degree, with honors, in 1983 from the Georgetown University Law Center. She is a member of The Florida Bar as well as the Orange and Osceola County bars, and is among the first female Hispanic judges in the Central Florida area. She worked for 16 years in several law firms before starting her own firm in 2001. She won the general election in 2012 and sits on the circuit bench.

Judge Keith A. Carsten received his juris doctor degree in 1997 from Stetson University College of Law. Prior to starting his own firm, he worked for the State Attorney's Office from 1998 to 2001. Judge

Carsten was appointed to the circuit bench by Governor Rick Scott on January 4, 2013, to fill the vacancy left by Judge Fleming. He is a former chairman of the Orange County Bar Association Criminal Law Section and is also a former volunteer Teen Court judge and legal advisor.

Judge Andrew L. Cameron majored in political philosophy, with honors, from James Madison College at Michigan State University and then received his juris doctor degree from Indiana University School of Law in 1986. Before being elected to the Orange County bench, he practiced law for 26 years, handling civil and criminal matters at both the state and federal court level. He was named the Seminole County Prosecutor of the Year in 1992.

Judge Adam McGinnis received his juris doctor degree from Barry University School of Law and is its first graduate to become a member of the judiciary. He began his own firm in 2005, where he specialized in criminal and traffic defense cases. Judge McGinnis has also served as a county court mediator as well as a professor of business law at Valencia College. Judge McGinnis was elected to the county bench in August of 2012.



The Honorable
Andrew L. Cameron



The Honorable Leticia Marques being enrobed by
Thomas A. Ginther



The Honorable Keith A. Carsten



The Honorable Mark S. Blechman, Ninth Judicial Circuit, swears in Adam McGinnis, attended and enrobed by Katy McGinnis and Judy Fraser.

enrollee to meet basic qualifications in addition to specific eligibility requirements, the services provided are general or comparable to other waiver programs, with few exceptions. For example, both the ALE and NHD program waivers provide services such as living assistance, case management, chore and companion services, personal care, and physical, occupational, and speech therapy services. However, each offers discrete services, too. The ALE waiver program offers medication administration, homemaker services, and intermittent nursing care along with additional services. In contrast, the NHD waiver program offers the services listed above plus family training, home health care, nutritional assessment and risk reduction, respite care, and several other services.

Thus, seniors must meet the criteria that are functionally equivalent to the waiver services of the program in which they seek to enroll. The purpose of the waiver is to determine eligibility criteria for the particular service that will best supplement the enrollee's deficiencies, thereby allowing the individual to live in the least restrictive environment possible and preserve his or her dignity as much as possible.

Additional HCBS waivers include, but are not limited to:

- Aged/Disabled Adult
- Assisted Living for the Elderly
- Channeling for the Frail Elder
- Nursing Home Diversion (NHD), known as Long-Term Care Community Diversion Pilot Project
- Adult Day Health Care

Medicaid Financial Assessment

The second step of the two-prong evaluation is the Medicaid financial assessment requirement. The Florida Department of Children and Families determine the financial eligibility for Medicaid waiver services to low-income children and families, persons with disabilities, and those seeking institutional care for the elderly.

Those who apply for Medicaid assistance must consider that the financial assessment includes evaluation of the individual's assets and income. Some of the resources that are considered are real property (other than homestead), bank accounts, certificates of deposit (CDs), money market accounts, trusts, stocks, bonds, and life insurance cash value. Property and assets that are generally excluded are: homestead (residence), vehicle, burial funds up to \$2500, prepaid burial contracts that are irrevocable, and life insurance policies up to a particular amount. For life insurance policies, the requirements vary depending on acquired funds. Income sources that are considered and calculated are veteran, income from mortgages, social security, pensions, interest, and contributions. Therefore, to become a recipient of and qualify for Medicaid financial assistance, the recipient must have assets within the prescribed limits.

SSI-related Medicaid programs that offer full benefits include, but are not limited to:

- Hospice
- Aged/Disabled Adult Waiver Program
- Medicaid for the Aged and Disabled (MEDS-AD)
- Assisted Living for the Elderly Waiver Program
- Institutional Care Program (ICP)
- Channeling Waiver Program

Long-Term Care Community Diversion Waiver Program

Eligibility requirements can and may change each year; additionally, it is important to note that seniors must meet the technical requirements of Medicaid in addition to specific criteria and limitations to that particular program to receive program benefits. Equally important, seniors who are eligible to receive SSI from Social Security can automatically receive Medicaid.

If Medicaid with full benefits is not available to the senior, other options are available. Medicaid service programs with limited benefits may be beneficial to the senior, including services such as Quali-

fied Medicare Beneficiaries (QMB), Special Low-Income Medicare Beneficiaries (SLMB), Qualifying Individuals 1 (QI-1), and Medically Needy. Similarly, there are optional services that are non-Medicaid such as Optional State Supplementation, OSS, Home Care for the Disabled HCDA, or Help with Medicare Prescription Drug Plan Costs. The caveat, however, is that these service programs do not apply to the HCBS waiver programs. Thus, if you are working with a senior who is preparing to enroll in a waiver program, be sure to determine whether the senior meets the eligibility criteria of the HCBS waiver, then check to see whether a limited Medicaid benefits or non-Medicaid option will be effective on behalf of the senior.

If the total waiver-approved enrollment is fixed for each program and enrollment has reached its maximum capacity, or if Medicaid dollars are a depleted resource, seniors may be placed on a waitlist and thereby not be able to make immediate use of HCBS services or Medicaid resources. If, however, the senior has been residing in a qualified assisted living facility for a minimum of sixty days, there is a possibility the senior can bypass the waitlist for the HCBS waiver and begin to receive services after the nursing home stay.

Designing a long-term care plan for the senior and a plan of attack is imperative. The plan must consider the geographical area of operation of the waiver for which the senior seeks to enroll (ALE, NHD, etc.). Every waiver program does not apply statewide; some waivers are locale-specific, and some phase out. For instance, as of 2012 the NHD waiver now applies statewide instead of in only 40 counties as it had previously; the Adult Day Health Care (ADHC) waiver applied to Lee County and expired March 31, 2012; the Channeling for the Frail Elderly is served only in Miami-Dade and Broward counties. Each program has specific asset and income limits. Hence, the plan must consider the income, asset, and limitations criteria of each program.

Shaunda Brown, Esq., has been a member of the OCBA since 2010.

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Special St. Johns Wetland Permit
continued from page 7

Gazing into the crystal ball, the questions asked by the U.S. Supreme Court's justices suggest the Koontz family may not like where this road has taken them.

First, Justice Ginsburg pointed out that an outright denial of the permit with no conditions attached would not be a taking. Justice Scalia, who authored the *Nollan* opinion, expressed concern that Koontz never accepted the conditions, or had them imposed upon him, and therefore no land or property rights were actually taken as they were in *Nollan* and *Dolan*. "I can't see where there's a taking here," he said. Justice Kagan's questions seemed to point to the same issue: "So then you need a taking someplace in the picture, isn't that right . . . where is the taking?"

Justice Sotomayor asked why, where Florida policy is working to prohibit a net loss of wetlands, the conditions here do not meet "essential nexus" and "rough proportionality." Justice Ginsburg pointed to the numerous possible options St. Johns had given Koontz and that "the district didn't come back and say take it or leave it," suggesting she may feel this case is not even ripe. Justice Breyer's questions suggested other causes of action, relying on other constitutional case law, may have been the appropriate cause of action given these facts, like equal protection (Koontz was treated differently than others), due process, or a claim for a regulatory taking under the *Penn Central* Test. Justice Kennedy seemed to agree, suggesting through his questions that he may feel that a due process violation occurred, but that that was not properly before the Court.

Justice Roberts, Kennedy, Alito and, to a lesser extent, Scalia, seemed to offer Koontz at least a glimmer of hope. Chief Justice Roberts expressed concerns with what he perceived as the government's position that the takings clause does not limit what the agency can demand as a condition for a permit. Justice Kennedy and Scalia joined in this line of questioning, inquiring whether a city demanding money for a football stadium in order to approve a permit would implicate the takings clause of the Constitution.

Justice Alito, seemingly the most pro-Koontz of the Justices, expressed a serious concern that if a bright line is placed suggesting monetary conditions or conditions not exacting property rights are not compensable under the takings clause, *Nollan* and *Dolan* will become nothing more than "a trap for really stupid districts."

Given these questions, it appears the court will likely rule for St. Johns – but most likely not as an outright victory. Perhaps the Court will use this case to set forth more comprehensive exaction, regulatory takings, and due process/equal protection law, more clearly setting the boundaries of what is or is not a permissible condition set by the government in a permit approval and whether an exaction must involve demands for land, or whether money and actions also qualify. Alternatively, the Court could head in an entirely new and unpredicted direction. The only thing we can know for sure is that the Koontz family and St. Johns will soon reach the end of this long and unusual journey.

Nick Dancaescu, Esq., GrayRobinson, P.A., is the co-editor of *The Briefs*. He has been a member of the OCBA since 2005.

¹See *Koontz v. SJRWMD*, 720 So.2d 560, 561 (Fla. 5th DCA 1998) (hereinafter "Koontz 1").

²See *Koontz 1* 720 So.2d at 561 FN 1: "why was offsite mitigation necessary and... [h]ow does a landowner or a prospective buyer reasonably assess what the District is

likely going to require in order for development to take place in areas regulated by the district[?]"

³The Florida Supreme Court denied St. Johns' petition for review. 729 So.2d 394.

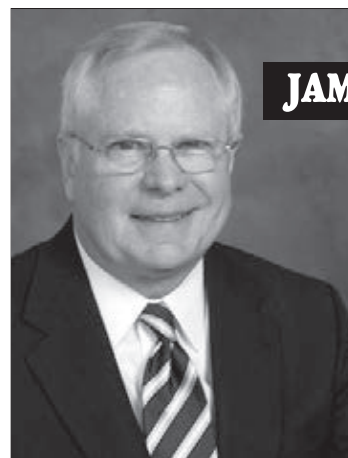
⁴*SJRWMD v. Koontz*, 861 So.2d 1267 (Fla. 5th DCA 2003). Sadly, the land owner, Coy Koontz, Sr. died between *Koontz 1* and *Koontz 2*. His son as personal representative carried the case forward.

⁵In a scathing concurrence, Judge Pleus described "the extortionate actions of [St. Johns]... in hope[s] that the [St. Johns] District will stop the extortionate demands on property owners which this case demonstrates." (*Id.* at 1268-1269) He felt "as Justice Scalia did in *Nollan*, that [St. Johns'] demands for offsite mitigation were nothing more than an 'out-and-out plan of extortion.'" *Id.* at 1272.

⁶Justice HARRIS in *Koontz 1* (with J. DAUKSCH and J. SHARP concurring), J. PLEUS' special concurrence in the first denial of jurisdiction and J. TORPY's special concurrence in the second denial of jurisdiction.

⁷*SJRWMD v. Koontz*, 5 So.3d 8 (Fla. 5th DCA 2009)

⁸77 So.3d 1220. Justice Lewis wrote for the Court with Pariente, Labarga, and Perry joining in the opinion. Justice Quince concurred in result only and Justices Polston and Canady felt that Koontz had not exhausted his administrative remedies and therefore there was no reason to reach the certified question.



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The George C. Young First Central Florida American Inn of Court is currently accepting nominations for the **2013 Arnie Wilkerson Memorial Court Service Award**. This award honors individuals (excluding lawyers and judges) working in the judicial system who display the highest standards of character, integrity, and ongoing dedication to the judicial system. Past recipients have been long-term models of excellence in their work within the judicial system and have also been extremely active in some dimension of community service outside of the judicial system.

The winner of this award will receive a plaque and \$500, and will have his/her name added to a plaque hanging outside the Roger Barker Memorial Courtroom on the 23rd floor of the Orange County Courthouse.

The due date for nominations is **April 15, 2013**. If you are interested in submitting a nomination, please contact Roger Handberg at handberg@mindspring.com or go to our website (www.innsofcourt.org/Content/InnContent.aspx?Id=6085) to obtain a nomination form.

Florida Supreme Court Honors Orange County Attorneys

The Florida Supreme Court, The Florida Bar's Young Lawyers Division (YLD), and the Florida Pro Bono Coordinators Association announced the attorneys who were recognized for their 2012 *pro bono* work. The annual project is funded by YLD and was established to encourage participation with local organized *pro bono* programs. Each year, attorneys who contribute 20 or more hours receive a letter from the Chief Justice and a pin recognizing their contribution. The donation of time is based on

hours contributed in cases closed during 2012 and project work in 2012. Only attorneys who close a case with 20 or more hours, or provide 20 or more hours in a project, are included on the list. This year, the 342 attorneys who participated in *pro bono* work through Legal Aid will receive a letter from Chief Justice Ricky Polston and pin at the May 30th OCBA Installation of Officers and Pro Bono Awards Dinner.

The attorneys recognized are listed below:

Aaronson, Austin	Boulden, John D.	Demps, Melanie M.	Gibbs, Eric P.
Adams, Glenn A.	Boyles, Jeffrey S.	Desai, Tushaar V.	Gillham, Elizabeth Stevens
Adams, Scott C.	Brams, Craig L.	DeVoe, Michael P.	Giordano-Gilden, Ann Marie
Allen, Herbert L.	Branham, Jeffry J.	DeYoung, Erin L.	Gluck, Andrew M.
Anderson, Victoria L.	Brehmer-Lanosa, Linda Sue	Dierking, John	Gluckman, Kenneth S.
Antoine, Marc J.	Brewer, Trevor K.	Dietz, Robert	Goldstein, Joseph I.
Arango, Eduardo D.	Brown, Steen James	Diglio-Benkiran, Michele	Gordon, Charles E.
Arnold, Sarah E.	Brown, Michael S.	Dimayuga, Edward	Gottlieb, Daryl P.
Aschenbrenner, Kate	Budowski, Susan M.	Dixon, Rebecca L.	Green, Dorothy F.
Augspurger, Lisa J.	Buie, Carsandra Denyce	Dobrev, Cara M.	Gridley-Hetz, Shannon C.
Ayers, Grady G.	Bussey, Teri Ann	Dolney, Thoma, S.	Griffith, Wendy S.
Azcunaga, Ileana Hazel	Callahan, Jane Dunlap	Doppelt, Ava K.	Gutmacher, Jon H.
Badgley, Jeffrey Scott	Cameron, Andrew L.	Dowling, Brian C.	Hale, Maria DiBlasio
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Lopez-Campillo, Juan C.	Myers, Ernest J.	Smith, Christopher L.	Wesighan, Frank C.
Lord, Jr., John Stanley	Nebel, Michael E.	Smith, C. Todd	Wieland, Glen D.
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Losey, Mary Catherine E.	Nelson, Lynn F.	Smith, Michael L.	Williams, Lavon B.
Lowe, Jessica L.	Newcomer, Sarah K.	Smith, Mimi L.	Williams, Natasha J.
Luxenberg, Jerry S.	Nguyen, Kim Yen	Smith, Pamela J.	Willick, Scott R.
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Lynch, Melody B.	Nuebel, James	Sookrajh, Kavita	Woody, Carlos L.
Magee, James M.	O'Toole, Sean M.	Sos, Anthony F.	Wozniak, Carrie A.
Magill, Robert T.	Owens, Gayle A.	Spears, James R.	Yates, Tad A.
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Malik, Imran E.	Partridge, Philip L.	Stalcup, JoAnn M.	Young, Jr., William B.
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Mandelkern, I. Paul	Payne, Susan M.	Stedman, Sharon Lee	Zehnder, Thomas A.
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McFarlin, Wynne	Rigdon, Amy R.	Torres, Carlos E.	
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Donna A. Haynes

Charitable Giving Reaps Rewards in the Here and Now

Some of the money you give to charitable causes can find its way back into your pocket when tax time comes around. If the charity to which you donate qualifies, and you itemize deductions on your income tax return, you may be able to use this contribution to reduce your taxable income. The Legal Aid Society of the Orange County Bar Association, Inc. is a 501 (c) (3) non-profit organization and therefore donations to our organization qualify for this tax deduction.

Donna King, enrolled agent and owner of Tax Pros of Florida (Lake Mary), reminds us that “each donor’s tax situation is different and one should always seek the advice of a tax professional to determine whether or not a donation will reduce your tax bill. Additionally, if you receive goods or services in exchange for a donation, the deductible amount is limited to the excess of the contribution over the fair market value of any items received.”

Some parents choose to donate to charities to teach their children the concept of giving. By involving them in the process, allowing them to determine which charities should receive donations, and how much to give, children experience the joys of philanthropy at a young age. Parents who pass down these positive values to their children are encouraging them to continue demonstrating this generosity throughout their lives.

According to the National Philanthropic Trust, people in today’s aging population are growing less likely to pass on their entire estate to next-of-kin. Instead, many are electing to allocate their finances among diverse recipients. When leaving a fortune to your family’s next generation, one has no idea what will become of it. More people are choosing to bestow assets to a charitable cause they feel passionately about – before they die – and experience the rewards of giving in the here and now.

Ms. King states:

Charitable gifts made pursuant to your will reduce the amount of your estate that is subject to estate tax. Lifetime gifts have the same effect on your estate (by removing assets from your estate), but might also be a current income tax deduction. If you have property that has significantly appreciated in value, you might be able to avoid or defer the capital gains tax that would be due on its sale – all while helping a charity. Again, professional guidance is even more important here than in the garden-variety contributions because of the complexity of these gifts.

The 2013 tax rates based on the “fiscal cliff” agreement make it extremely likely that a high-income taxpayer in the 39.6% tax bracket receives a greater tax benefit from making contributions in 2013 than making the same contribution in 2012, when the maximum tax rate was 35%. However, it can be a much more complex situation, taking into consideration limitations on itemized deductions and effects of the alternative minimum tax (AMT). Again, another reason for consulting a tax expert! In any event, make sure your 2013 donations are received by the non-profit organization before December 31, 2013, to qualify for the 2013 tax deduction.

With high unemployment, soaring medical costs, and natural disasters occurring worldwide, bona fide charitable organizations need your help. Unless the organization is nationally known, I would encourage you to do a little research on the organization to review their non-profit status before giving.

The aim of charity is to help others, and if you were once on the receiving end of charitable help you may feel the desire to pay it back – or pay it forward – once you are in a better position. This is also a possible motivating factor for those who are friends or relatives of someone a charity has helped. Those who feel a deep commitment to the cause of any charitable organization are likely to contribute whenever possible. For many of us, the choice to give money to a charity becomes a personal one.

Because of your ties with the Orange County Bar Association, and your love and respect for the legal profession, we encourage you to make the Legal Aid Society of the Orange County Bar Association your “official charity.” In the end, any reason to give money or time to a charity is a good one.

Legal Aid continues to thank you for your support – be it in volunteer hours, board participation, and/or financial contributions. Because of you, we change and save lives, right here in Orange County, Florida.

For more information on donations to the Legal Aid Society of the Orange County Bar Association, Inc. contact Donna Haynes, Manager of Development, Legal Aid Society of the Orange County Bar Association, Inc., 100 East Robinson Street, Orlando, Florida 32801 or by calling (407) 515-1850. E-mail: dhaynes@legalaidocba.org.

Donna Haynes is the LAS manager of development and has been a member of the OCBA since 2008.

The Orange County Bar Association 16th Annual

Gala & Silent Auction

April 20, 2013

7 O'Clock in the Evening
Cornell Fine Arts Museum at Rollins College
1000 Holt Avenue in Winter Park

2013 Gala Sponsorship Information

The OCBA would be honored by your sponsorship of this event and your support of the work of the Legal Aid Society and the OCBA Foundation. The following sponsorship opportunities are available:

Platinum Sponsor - \$2,500

Includes 20 tickets to the Gala as well as recognition as a Platinum Sponsor in *The Briefs*, at the Gala and at the Annual OCBA/Legal Aid Society Installation and Awards Banquet

Gold Sponsor - \$1,000

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Silver Sponsor - \$500

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Sponsorship level _____ Amount \$ _____ Mail sponsor tickets to:

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Please make checks payable to the Orange County Bar Association and mail to OCBA, Attn. Accounting, 880 N. Orange Avenue, Orlando, FL 32801.

For additional information about Gala sponsorship opportunities, please contact Kimberly Webb at 407-647-8911 or kwebb@schwarzlawfirm.net.

Individual tickets are \$125. To purchase tickets, please go online to: <http://ocbagala.brownpapertickets.com>.



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LAW WEEK 2013

Realizing the Dream: Equality for All

VOLUNTEERS NEEDED!

EVENTS

Poster & Speech

April 8, 2013 at 4:30 p.m.

Orange County Bar Association.

Looking for volunteers to judge the entries for the poster and speech contests.

Naturalization Ceremony

April 11, 2013 at 4:00 p.m.

Boone High School Auditorium

All are welcome to attend.

Pathways in Law

March 22, 2013 at 8:30 a.m., Courtroom 6D

Orange County Courthouse

Looking for volunteers to participate in a mock trial.

Liberty Bell Award

Submission deadline: April 5, 2013

Looking for volunteers to judge the nomination entries.

Ethics & Diversity Panel at FAMU College of Law

April 10 (tentative), 2013 at 5:00 p.m.

Florida A&M University College of Law

All are welcome to attend.

Job Shadowing "A Day in the Life of a Judge"

April 25, 2013

Orange County Courthouse

Looking for volunteer Judges from the Ninth Judicial Circuit to host students for a special job shadowing program.

Goldilocks Mock Trials

Week of April 8, 2013

Looking for volunteers to participate in a mock trial for elementary school students at several local schools.

DUI Mock Trials

Week of April 8, 2013

Looking for volunteers to participate in a mock trial for high school students at several local schools.

Law Day Luncheon

April 25, 2013 at 11:30 a.m.

The Ballroom at Church Street

Looking for volunteers to help coordinate the event.

ORANGE COUNTY BAR ASSOCIATION

For additional information, please contact:

Bill Davis via email at william.davis@csklegal.com

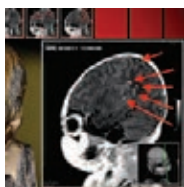
Elizabeth Collins Plummer via email at elizabeth.plummer@csklegal.com,

John Robinson III by telephone at (402) 679-0286 or via email at john.e.robinsoniii@gmail.com.





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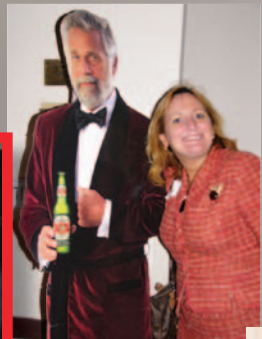
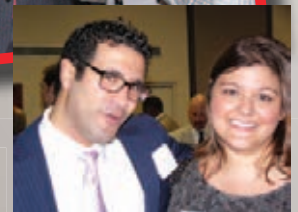
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Evening With the Judiciary

February 28, 2013

Winter Park Civic Center



OCBA Luncheon

February 28, 2013

The Ballroom at Church Street

Sponsored by Curtis Protective Services, Inc.
Co-hosted by the Paul C. Perkins Bar Association



The Hon. Faye Allen, Ninth Judicial Circuit, and The Hon. Mary S. Scriven, with members of the Paul C. Perkins Bar Association

The Hon. Mary S. Scriven, Luis Gonzalez, Esq., and The Hon. Belvin Perry, Jr.



Andre T. Young, Esq.



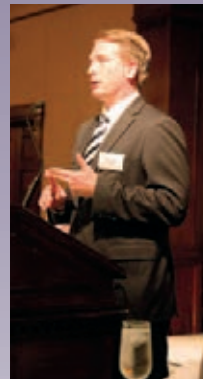
The Honorable Mary S. Scriven
U.S. District Court, Tampa



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Irene Abdelmehseh, Kay-Ann Johnson, Amina Daniels



PHOTOS: FLO BOEHM

Captain John Campbell

Cars & Coffee

February 16, 2013

The University Club

Sponsored by Orange Legal; Rumberger, Kirk & Caldwell, P.A.; Credence Corp



DJ Don Musica of Cruisin' Orlando



Steve Klein, event chair

Euribiades "Euri" Cerrud II and Phil Calandrino



Al Cook



Euri Cerrud II and his children, Adrian and Euri III, Jennifer Birmingham



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Leadership Law 2013

Leadership Law, now in its second year, held its third class meeting on March 1, with sessions at the Orange County Courthouse and the Medical Examiner's office. During the morning sessions at the courthouse, the 45-member class broke into two groups. In Judge Frederick Lauten's courtroom, the first group of participants observed victim impact statements. The defendant, who was charged with first degree murder, was then convicted of second degree murder. Being able to observe the arguments for and against a particular sentence was a powerful and moving experience for class participants.

In Judge Julie O'Kane's courtroom, the second group observed various hearings on bond, potential lifting of domestic violence "no contact orders," and observed entries of pleas and sentencing in numerous cases. In particular, the class observed a plea in which a felony charge arising from improper text messaging was reduced to a misdemeanor. The group also had an opportunity to observe portions of a criminal trial, witness testimony, and legal arguments on objections in Judge Anthony Johnson's courtroom.

Groups then met in the Jury Assembly for a Q&A with State Attorney Jeff Ashton, Public Defender Bob Wesley, and Judges Lauten and O'Kane. A lunch and learn program was presented by body language expert Susan Constantine.

Dr. G – Jan Garvaglia, M.D., Medical Examiner – presented a lively session at the Medical Examiner's office during the afternoon session. After presenting a history of how the current practices and legal standing of medical examiners evolved, Dr. G led a tour of the ME's facility. She stressed her commitment to treating individuals who come before her humanely, with respect and dignity. Participants gathered for a group shot at the end of the tour, and then headed back to the OCBA for a reception.

The 2013 Leadership Law Class graduation ceremony and reception will be held on May 3 at the OCBA center.

For information about this award-winning program and how your business associates can participate, please contact Sheyla Asencios, marketing manager, at 407-422-4551, ext. 244.



Hearsay...



Christine A. Wasula, Esq.

Spring is in the air, and the “Hearsay” column is back! After a brief hiatus, “Hearsay” is returning to *The Briefs*, with all the news, gossip, and bolded names you’ve been long for.

Before I launch into my first-ever “Hearsay” column, I would like to take a moment to acknowledge the “Hearsay” columnists who have gone before me, including current OCBA president **Kristyne Kennedy, Esq.**, OCBA treasurer **Nick Shannin, Esq.**, Gala chair **Kim Webb, Esq.**, Executive Council member **Wiley Boston, Esq.**, and past Foundation president **Jessica Hew, Esq.** I am excited to be following in these esteemed footsteps.

I am also excited to announce the numerous accomplishments of our OCBA members during recent months. As I was reviewing the available material for this column, I was impressed by the many leadership roles our OCBA members are fulfilling at the local, state, and national levels.

Charles H. Egerton, Esq., one of the founding shareholders at the law firm of **Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.**, has been appointed to the American Tax Policy Institute’s (ATPI) Board of Trustees. ATPI members and trustees are recognized as national leaders on taxation from the fields of law, accounting and economics. Mr. Egerton is the former chair of the American Bar Association’s Section of Taxation, the nation’s largest organization of tax lawyers.

Mya M. Hatchette, Esq., a shareholder with **Winderweede, Haines, Ward & Woodman, P.A.**, is serving as the new president of the Orlando Chapter of Commercial Real Estate Women (CREW), which is dedicated to the advancement of women in commercial real estate.

Terence (Terry) J. Delahunty, Jr., Esq., a partner in the Orlando office of **Foley & Lardner LLP** has been named as Ireland’s first ever Honorary Consul for Orlando, Florida. A reception hosted by Paul Gleeson, Ireland’s Consul General for seven southeastern U.S. states, was held at the University Club of Orlando on January 30. Mayor Buddy Dyer was on hand to welcome the new appointee.

Michael C. Sasso, Esq. has been appointed as a Member of the Fifth District Court of Appeal Judicial Nominating Commission, which reviews applications and makes nominations to the governor for the appointment of judges to the Fifth District Court of Appeal. Mr. Sasso was nominated by The Florida Bar, and his term on the commission will run through July 1, 2016.

Patricia Strowbridge, Esq. has been honored by the Florida Adoption Council with a Lifetime Achievement Award, recognizing her many years of service as one of Florida’s leading adoption advocates and for her devotion to improving Florida’s adoption laws. Ms. Strowbridge was the primary author of both the 2003 Adoption Reform Act, signed into law in May 2003 by Governor Jeb Bush, and the 2012 Adoption Act, signed into law in April 2012 by Governor Rick Scott.

Ken Wright, Esq., a partner at **Shutts & Bowen LLP**, is currently serving as chairman of the Florida Fish and Wildlife Commission (FWC). Mr. Wright has a long history of involvement in environmental issues and has served in various groups that shape statewide environmental policy and regional development. Prior to his election as chairman, Mr. Wright was a member of the FWC for almost five years and also served as its vice chairman.

Wayne Helsby, Esq., a partner with **Allen, Norton & Blue, P.A.**, is currently serving as chair of the Trial Lawyers Section of The Florida Bar for the 2012-2013 term. The Trial Lawyers Section provides a forum for discussion and exchange of ideas leading to the improvement of individual trial ability, and includes both plaintiff and defense attorneys as well as prosecutors.

In addition, many OBCA members are showing their community spirit by serving as board members in local organizations.

Nicolette Vilmos, Esq., a partner in the Orlando office of **Broad and Cassel**, has been elected to serve on the Board of Directors for the Central Florida Bankruptcy Law Association (CFBLA), a non-profit organization that supports the collegial and professional practice of bankruptcy law in the Orlando Division of the Middle District of Florida. Ms. Vilmos has been a member of CFBLA since 2005.

April Y. Walker, Esq., an attorney in the Orlando office of **Carlton Fields, P.A.**, has been elected to serve a three-year term on the Board of Directors for the Orlando Repertory Theatre, a professional theatre company located in Orlando’s premier cultural park, Orlando Loch Haven Park.

Tiffany Payne, an attorney in the Orlando office of **Baker & Hostetler**, has been appointed to the Juvenile Diabetes Research Foundation’s Board Committee, which is instrumental in raising money and awareness in the Central Florida community for individuals who are affected by Type 1 Diabetes.

Cory L. Taylor, Esq., a partner in the Orlando office of **Roetzel & Andress**, has been elected to serve on the board of the Orlando Shakespeare Theater.

Nikie N. Lomax, Esq. has been voted in as a member of the BETA Board of Directors and the Victims Service Center of Central Florida Board of Directors.

Andre T. Young, Esq. has been appointed to the Menello Folk Art Museum Advisory Board and has also received a Pro Bono Award from the Community Legal Services of Mid-Florida, naming him a Guardian of Justice for Orange County.

The attorneys at **Holland & Knight LLP** have also been busy. **Clay Henderson, Esq.**, senior counsel at the Orlando office, has been named a recipient of Stetson University's George and Mary Hood Award, which is given in recognition of extraordinary passion for, and commitment and contributions to, Stetson University and its core values. **Suzanne E. Gilbert, Esq.**, a partner in the Orlando office, has been elected president of the American Counsel Association, which is the oldest association of independent law firms in the world and is comprised of approximately 300 members from across the United States, Canada, England, and other countries.

Foley & Lardner LLP has been recognized by The Women in Law Empowerment Forum with a Gold Standard Certification for integrating women into the highest levels of firm leadership. This honor recognizes firms that have made a considerable number of women equity partners, extensively incorporated women partners into the governance structure, and recognized the contributions of women attorneys through compensation.

Finally, we offer our congratulations to those members of the OCBA who have been named among the "Best Lawyers in America for 2013." Best Lawyers is based on a peer-review survey in which more than 36,000 leading attorneys cast almost 4.4 million votes on the legal abilities of other lawyers in their practice areas. Special kudos goes to **Baker, Donelson, Bearman, Caldwell & Berkowitz, PC** for being ranked among the top ten law firms in the nation in Vault.com Inc.'s 2013 "Best Law Firms for Diversity." This national ranking includes separate categories for diversity as it relates to minorities, women, and gays and lesbians, with the overall diversity ranking determined by a formula that weighed the three categories evenly.

While my first "Hearsay" column has focused on the professional accomplishments

of our OCBA members, please feel free to send me any and all items that may be of interest to our members, including birth announcements, reality show appearances, marathon results, embarrassing photos, etc. My email is Christine.wasula@csklegal.com, and I look forward to receiving your contributions. Until next month....

Christine A. Wasula, Esq., Cole, Scott & Kissane, P.A., has been a member of the OCBA since 2002.

Issues in Ecology

The American Bar Association offers a number of books on issues in ecology. The ABA recently profiled this piece on its website.

Coastlines and Climate Change

Excerpted from "Protecting the Coast," in *The Law of Adaptation to Climate Change*
Chapter Authors: Robert R.M. Verchick, Joel D. Scheraga

Book Editors: Michael B. Gerrard, Katrina Fisher Kuh

Coastal areas experience the most dramatic effects of climate change, for they face the twin threats of rising seas and stronger storms. They are also where most Americans, along with billions of dollars in cultural and commercial assets, currently reside. How are coastal areas adapting to climate change, even as they try to mitigate it?

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Editors' Note

July's Briefs will be devoted to **technology and the law**. Technology is trending! Please contact Peggy Storch at peggys@ocbanet.org if you have questions or suggestions. **The deadline for submission of articles is May 15, 2013.**

The Briefs Editors

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Professionalism Committee

continued from page 4

you must take a firm position on something, you can do so without yelling, cursing, finger pointing, or getting out of your chair. You can score points by the hundreds by doing a good job cross examining an opponent's expert during a deposition without having to call that witness any bad names or disparaging him. When I was a young associate, I was in Ft. Lauderdale for a deposition with my senior partner. He had to leave early. We had worn similar suits. The deposition had been long and grueling; I wanted to make sure I had covered everything. By mistake, my partner took my jacket with my wallet and airplane ticket, leaving me his perfectly empty jacket. When I discovered my plight, I can tell you that I was glad that all the "sparring" during the deposition was on a most professional level. My hero was kind enough to lend me the money to buy another ticket so I could fly back home. Had I been a jerk, he would have been justified in simply wishing me good luck on getting home. See lesson one above on being thankful.

Lesson five: Be a teacher, a mentor.

You know a lot about professionalism already or you would not have read this far. Be a hero. Share what you know with those who are starting out in the practice of law. It doesn't matter whether you have been practicing for two years or two decades, you can help others learn the ropes. The new lawyer you help may become a friend, a referral source, a judge, or just a good lawyer who will serve our community well. Heroes teach informally by answering questions in their firm, on the phone – or now – online. Heroes also teach formally by doing brown bag lunches, participating in seminars, or writing articles.

Lesson six: Be respectful.

Some of you may have known or heard of Judge Claude R. Edwards. He was my fa-

ther. As those of you who practiced before him can attest, he insisted upon the lawyers being respectful, of him for sure, but of him as the "court." He felt that without respect for the court – for the judge – there would be no respect between the lawyers for each other. Nor would there be respect for the clients, parties, witnesses, jurors, or court personnel. That would have been an unthinkable situation to my father, and it is to me as well. Respect includes being on time, being courteous, standing when proceedings start and adjourn, standing as the jury enters the court room, being courteous to court personnel, and arguing your points to the court rather than arguing with opposing counsel. Villains are habitually late, often bicker with their opponents, or worse yet, make personal attacks upon counsel or witnesses. Sinners and villains alike seem to mistake loud volume for good legal reasoning. Sinners try to bully counsel or witnesses; they even tell the judges to their face or by a filed pleading that the ruling is "ridiculous, arbitrary, and the result of a complete failure to comprehend the law or facts." If you want to learn a good lesson from villains, see how much they gain or lose when they threaten the judge that they will "take it up on appeal."

Lesson seven: Have fun.

How does having fun involve practicing with professionalism? Try not to be too obvious, but the next time you are in a room full of lawyers, look around and see who is smiling, who is laughing, and who is having fun. I submit that there is a strong correlation between those who are happy and those who you judge to be professional. You will be good at what you do when you love what you do. When you are good at what you do, you will be happy. Although I take my clients' business and court appearances seriously, I try not to take myself too seriously. I always try to have a little fun, under the right circumstances, with every case, every lawyer, and every trial.

I try to have a good balance between practicing law and my family life. When my children were young, I would plan business trips in such a way that my family could travel with me. We would drive to a new city, and I would take care of my deposition or hearing while the family was enjoying the hotel pool or beach. We would then take the next day or two off to do something exciting like touring the Everglades by airboat, jumping into Wakulla Springs, visiting Lion Country Safari, or exploring the Mariana Caverns. It didn't really "count" as a vacation, but those are fun times that the whole family looks back on with joy, when it could have just been me, once again, on the road. Smiles are contagious; so is happiness. Nobody likes a grouch, a curmudgeon or a Scrooge, so why act like one? Behaving professionally will make you a happier lawyer and will hopefully rub off on others around you.

Having fun also includes the relationships established in your firm and in doing bar work. The practice of law consumes a big part of your day; make sure to take the time to enjoy it.

In conclusion, I say thanks to my family; thanks to my colleagues and the staff at Zimmerman, Kiser & Sutcliffe; thanks to all the wonderful lawyers, young and old, who took the time to teach me something; many thanks to all the lawyers and staff with whom I have had the pleasure of practicing; thanks to my opposing counsel, to the judges, and court personnel with whom I have tried cases or argued appeals; thanks to the wonderful staff of the Orange County Bar; thanks to everybody on the Orange County and Ninth Circuit Professionalism Committee for all your good work; and finally, many thanks to all of you.

James A. Edwards, Esq., Zimmerman, Kiser & Sutcliffe, P.A., is the recipient of the 2013 William Trickett, Jr. Professionalism Award. He has been a member of the OCBA since 1980.

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50th UCF Award

Merrell Bailey (center), managing partner of Bailey Zobel Pilcher, was recently recognized by the UCF College of Business Administration as one of Central Florida's top 50 businesses and community leaders in a banquet commemorating UCF's 50th Anniversary. UCF Alumni Association assistant director Bridget Downes (left) and Tiffany Hughes, director of communication and corporate relations for the UCF College of Business Administration (right) were instrumental in planning the week-long celebration of UCF's impact and contribution to the region over the last five decades. The awards were presented by UCF president Dr. John Hitt, and the dean of the UCF College of Business Administration, Dr. Jarley.



CFAWL's February Luncheon Celebrating Black History Month

Florida Supreme Court Justice E.C. Perry was the featured speaker at the luncheon. Pictured left to right are:

Barbara Leach (CFAWL president-elect); Jacquelynne Regan (CFAWL president); Justice E.C. Perry (Florida Supreme Court); Jessica Thomas (CFAWL Young Lawyers chair)

Bruce Blackwell Receives Pro Bono Award

On January 31, 2013, Bruce B. Blackwell received The Florida Bar President's Pro Bono Service Award for the Ninth Judicial Circuit. The award was presented by Florida Bar president, Gwynne Young, during a ceremony held at The Florida Supreme Court in Tallahassee, with justices in attendance.

Bruce is a shareholder and partner at King, Blackwell, Zehnder & Wermuth, P.A. He has been a champion of the less fortunate and a tireless advocate for *pro bono* legal services for over 30 years. He has donated more than 2,000 hours on *pro bono* cases through the Legal Aid Society of the OCBA, serving in the areas of greatest need and challenge. In 1996 Bruce was honored by Legal Aid with its highest recognition for *pro bono* service, the Judge J. C. "Jake" Stone Distinguished Service Award.





Emily W. Andersen, RMR

The Paperless Writer

In 1992, a scandalous undercover investigation of the judiciary in Miami, Florida, culminated in a high-profile trial locally nicknamed “Operation Court Broom.” The beautiful ceremonial courtroom of the old Dade Federal Courthouse was filled to capacity with spectators, including a courtroom artist, the defendants, their counsel, Judge Jose Gonzales, and me, the court reporter assigned to prepare the transcript of the day’s proceedings. The wheels of justice were rolling along smoothly that afternoon, that is, until I brought them to a grinding halt. “Excuse me, Your Honor. I need to change my paper.”

Many court reporters have updated their equipment to paperless writers. In the past, the record was written to long strips of paper that scrolled through the platen of our machines, where they were struck by the inked ribbon. Oh, that ribbon – it was guaranteed to shred on a day you were wearing white! What a mess. I always had ink on my fingers! And all that paper? We stored it in stacks of boxes, filling our garages at home or warehouses with years of trials and depositions waiting to be transcribed. I had steno paper everywhere!

When the paperless writers were first introduced to the marketplace, they were a shock. To be honest, it took me a few years to garner the courage to go paperless, but, in fact, the paperless machines actually protect the record more than ever. As the record is written, it is simultaneously saved to multiple SD (Secure Digital) disks, as well as an internal memory. Each SD card has the capacity to store four banker boxes of notes. My newest writer, the Diamante, is a beautiful, sleek, marvel of a machine.

Last year we were able to give up the storage unit. Enough years had passed to destroy the expired notes. When I cleaned out all those old boxes of notes, they nearly filled the dumpster. It was a great feeling. One tiny, secure drawer in my desk has replaced an entire storage unit. Can you imagine the disappointment on *Storage Wars* to open a storage unit filled with boxes of court reporter notes?

In the workplace, court reporting firms have streamlined their practices to make the process of setting a deposition easier by encouraging clients to use the option of uploading the deposition notice information online. A scheduling confirmation email is promptly sent and is followed up with a secondary confirmation the day before the deposition. If the deposition is cancelled or rescheduled, there is always an electronic trail of communication.

Attorneys can save gasoline and travel expenses by appearing at the deposition via videoconference, Skype, and WebEx. Real-time can be streamed over the internet to your desktop.

Put aside the yellow legal pad and use the iPad at your next deposition. A popular real-time app, iCVNet, is free on iTunes, but you will need a real-time court reporter to provide the streaming real-time. With iCVNet, you tap the screen to highlight text, search, and email the rough draft at the conclusion of the deposition. The rough draft transcript is fully compatible with litigation support software.

The production department of the court reporting firm has reduced the use of paper in the process of preparing the transcript. The increased popularity of condensed transcripts, printed four-to-the-page, has replaced the typical transcript copy requested by attorneys, but we can do even better than that. Many attorneys request E-Transcript™, commonly referred to as E-Tran, to receive a standardized and secure electronic transcript. Exhibits are scanned and hyper-linked to the electronic transcript and have word-searchable content (OCR).

There are many other options available for electronic delivery, including providing a disk that contains the synced transcript, the scanned exhibits, and PDF files of the full transcript, the condensed transcript, a word index, the exhibits, and the ASCII file of the transcript.

Too busy to use the disk? Too excited to read the transcript and can’t wait for delivery? I know, I know – I feel that way, too! Law firms are emailed when the transcript is ready for download from the court reporting firm’s proprietary site, the same site where the deposition notice was first uploaded. Depending on your reporting firm, the transcript repository is always available and is username and password protected.

When I was a new reporter, notices were printed on legal-sized paper, 8½” x 14”. The rules of our local courthouse changed, and all pleadings and notices were to be printed on standard-sized paper. At the time, I thought it odd how that wasn’t really a savings after all, because most deposition notices were now two pages long instead of one. I’m grateful the legal industry has taken strides since that time to move to electronic filing, and the court reporting industry has kept pace.

Emily W. Andersen, RMR, Andersen Realtime Services, LLC, is a freelance court reporter in Central Florida and a member of NCRA and the OCBA.

were caused her, the way they defend this case.

[The defendant] will get off cheap. [The defendant] will move on. [The defendant] won't change. [The defendant] won't care.²⁶

The 4th DCA stated that the comments were improper, because the purpose of damages was to compensate, "not to make the defendant care, 'take responsibility,' or say it was sorry." *Id.* The court concluded that the argument was incorrectly "designed to inflame the emotions of the jury" rather than prompt a "logical analysis of the evidence in light of the applicable law."²⁷

In *City of Orlando v. Pineiro*, the 5th DCA indicated that plaintiff's counsel had made two improper send-a-message arguments.²⁸ Counsel argued:

You may be asking yourself, what good is the money going to do? We all know that money cannot bring back Edwin, but that's not the issue here. ... Also, the money does help to tell Edwin's mother and father that you, the jury, recognize that what has been done is wrong and should not have ever happened.

[And]

The law in Florida recognizes that the loss of a loved one is a traumatic and tragic experience... We want others to act responsibly and to do – *Id.*

At this point an objection was made. The 5th DCA concluded that the two comments were improper because they asked the jury to award money to punish a wrong, instead of to compensate.²⁹

Finally, in *Fasani*, counsel stated that, due to "corporate greed and arrogance," defendants had treated plaintiff poorly by "kicking him out on the street like a dog," "kick[ing] him out and say[ing] were giving you nothing."³⁰ Plaintiff's counsel told the jury that they would have to "make them do the right thing because they haven't done it on their own and they have no intentions on doing it on their own. You're going to have to make them do the right thing."³¹ The 3d DCA concluded that counsel was, in essence, asking the jury to punish the defendant, and that such comments served no purpose other than to inflame and prejudice the jury.³²

4. Economic Disparity Between Parties

The general rule in Florida is that no reference may be made to the wealth or poverty of a party during trial.³³ Therefore, in *Carnival Corp.*, the 3d DCA concluded that

it was improper for plaintiff's counsel to make a closing argument that referenced the economic disparity between the defendant Cruise Company, and the claimant. Plaintiff's counsel argued:

Now, one of the most unbelievable things that I have ever heard was don't think of who's involved. As if Mr. Pajares – Mr. Pajares, that's who's involved. And this is a shipping company, is also involved. The company that operates how many cruise ships; how many crew members?³⁴

The 3d DCA reasoned that this comment, coupled with plaintiff's evidence that he was a relatively poor man who had to borrow money and sell a house to obtain care, "could only have served to prejudice the members of the jury."³⁵

Similarly, in *Fasani*, the 3d DCA held that it was improper for plaintiff's counsel to contrast the defendant's alleged "corporate greed and arrogance" in "want[ing] to put beauty over safety," with the claimant's being "just a simple man trying to get by. Not trying to get anything from anybody."³⁶ The court concluded the argument went to the parties' economic disparity, was irrelevant to the issues before the jury, and could only have served to prejudice the jury.³⁷

5. Disparaging Opposing Counsel

As part of a closing argument you cannot disparage opposing counsel or insinuate that they are committing a fraud upon the court.

In *SDG Dadeland*, plaintiff's counsel utilized a "hiding the evidence" theme during closing argument.³⁸ He also called the defense "frivolous" and stated: "[y]ou never read about frivolous defenses. Well you got to see one and hear one up close and personal."³⁹ Plaintiff's counsel also told the jury that the defense "belonged in the 'garbage,' and asked, '[c]an you come into a courtroom seeking the truth and start with one deceit and finish with a bigger one?'"⁴⁰ Plaintiff's counsel concluded by stating that defense counsel "knows they are liable," but "[h]e's got to protect the wallet of the corporate defendant."⁴¹ The 3d DCA held that the disparaging comments concerning opposing counsel and suggesting that they hid evidence or perpetuated a fraud upon the court constituted reversible error.⁴²

Similarly, in *Carnival Corp.*, the 3d DCA reversed and remanded, in part, because plaintiff's closing argument disparaged defense counsel and Carnival's defense.⁴³ In a case where plaintiff suffered a stroke allegedly caused by lack of treatment from his employer's doctor, plaintiff's counsel argued Carnival was attempting to "divert the jurors' attention" from the real issue by

arguing that plaintiff was a smoker. Counsel then made sarcastic comments suggesting that the defense was improper.⁴⁴ The 3d DCA held that the defense was proper, and that comments suggesting a party should be punished for contesting liability were condemned by the court.⁴⁵

In *Sanchez v. Meneses*, 954 So. 2d 630, 632 (Fla. 3d DCA 2007), the court held that a closing argument asserting that defense counsel was "pulling a fast one," "hiding something," and "trying to pull something," was improper, and tantamount to calling defense counsel liars and accusing them of perpetrating a fraud.

Likewise, in *City of Orlando v. Pineiro*, the 5th DCA indicated that arguing the City would "do whatever it takes to try to win this case," improperly suggested that the City was using improper or dishonest tactics.⁴⁶

6. Personal Opinions

As with opening statements, personal opinions are improper during closing arguments. Numerous cases stand for the proposition that "[a]n attorney's personal beliefs or feelings toward a case or the trial's participants are irrelevant and create reversible error."⁴⁷ However, please note that the Florida Supreme Court in *Murphy v. Int'l Robotic Sys. Inc.*, 766 So. 2d 1010, 1029 (Fla. 2000), concluded that the use of the personal pronoun "I" during closing argument was not, in and of itself, improper if merely used as a figure of speech.

7. Calling Someone a Liar

Prior to the Florida Supreme Court's opinion in *Murphy v. Int'l Robotic Sys. Inc.*, 766 So. 2d 1010, (Fla. 2000), the district courts of appeal were split as to whether a lawyer could refer to a witness as a "liar" during closing argument. In *Murphy*, the Florida Supreme Court held it was not necessarily improper to say a witness had "lied" or was a "liar" during closing argument.⁴⁸ However, the characterization has to be supported by evidence in the record, such that counsel is simply "submitting to the jury a conclusion that reasonably may be drawn from the evidence."⁴⁹ This topic is discussed in detail in *Calling the Witness a Liar During Closing Argument: The Florida Supreme Court's Final Approval*, a 2001 Florida Bar Journal article by Craig Lee Montz.⁵⁰

OBJECT OR WAIVE

Once counsel recognizes an improper comment during opening statement or closing argument, he must properly object to the comment or risk a waiver. Generally, counsel must make a contemporaneous objection and then seek either a curative instruction and/or move for mistrial.⁵¹

In *Murphy*, the Florida Supreme Court all but “closed the door” on appellate review of improper, but unobjected-to, closing argument.⁵² The Court held that such arguments can only be reviewed on appeal *if* counsel establishes that the improper comments meet four difficult criteria – that the comments were (1) improper; (2) harmful; (3) incurable; and (4) so damaged the fairness of the trial that the public’s interest in the system of justice requires a new trial.⁵³

The dangers of failing to object are evidenced in *Health First, Inc. v. Cataldo*, 92 So. 2d 859 (Fla. 5th DCA 2012), where, although the 5th DCA strongly disapproved of the tactics used by plaintiff’s counsel during closing argument, and although appellate counsel conceded the impropriety of plaintiff’s counsel’s statements, the 5th DCA affirmed judgment in favor of the plaintiff. Therefore, when you spot an improper comment – object.

CONCLUSION

We hope the examples of improper opening statements and closing arguments discussed in this two-part article help you identify improper comments, and when necessary, help you make a timely and proper objection to the court. While an attorney must zealously advocate for a client, as discussed above, going too far in opening statement or closing argument can lead to the opposite result – a mistrial, reversal on appeal, or possibly even an ethics violation. Understanding what is improper during opening statement and closing argument will help you avoid these problems, so that hopefully you will never have the need to say – “What do you mean I can’t say that?”

The Honorable Thomas W. Sculco is a Judge of Compensation Claims in Orlando, and is board-certified in both appellate practice and workers’ compensation law. **David C. Knapp, Esq.**, is a partner and appellate attorney with McDonald, Toole, Wiggins, P.A. in Orlando. Both are charter members of the Orange County Bar Association Appellate Practice Committee.

¹*O’Keefe v. State*, 47 So. 3d 937, 940 (Fla. 4th DCA 2010).

²*Chin v. Caiaffa*, 42 So. 3d 300, 308 (Fla. 3d DCA 2010).

³*Id.*

⁴*Id.*

⁵*Saunders v. Willis Dickens, M.D.*, (Fla. 4th DCA 2012) (quoting *Knoizen v. Bruegger*, 713 So. 2d 1071, 1072 (Fla. 5th DCA 1998)).

⁶*Murphy v. Int’l Robotics Sys. Inc.*, 766 So. 2d 1010, 1028 (Fla. 2000); *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985).

⁷*Bertolotti*, 476 So. 2d at 134.

⁸*Chin*, 42 So. 3d at 309.

⁹*SDG Dadeland Assoc., Inc. v. Anthony*, 979 So. 2d 997, 1003 (Fla. 3d DCA 2008), (quoting *Coral Gables Hosp.*

Inc. v. Zabala, 520 So. 2d 653 (Fla. 3d DCA 1988)).

¹⁰*Chin*, 42 So. 3d at 304. (Emphasis original).

¹¹*Id.*

¹²*See SDG Dadeland*, 979 So. 2d at 1002.

¹³*Id.* at 1001-02.

¹⁴*Id.* at 1003.

¹⁵*Id.*

¹⁶*City of Orlando v. Pineiro*, 66 So. 3d 1064, 1070 (Fla. 5th DCA 2011).

¹⁷*Id.*, citing *Wilbur v. Hightower*, 778 So. 2d 381, 383 (Fla. 4th DCA 2001) (quoting *Russell v. Trento*, 445 So. 2d 390, 392 (Fla. 3d DCA 1984)).

¹⁸*Pineiro*, 66 So. 3d at 1073.

¹⁹*Id.*

²⁰*Id.*

²¹*Id.* at 808.

²²*Id.*

²³*See Intramed, Inc. v. Guider*, 93 So. 3d 503, 506-07 (Fla. 4th DCA 2012), and *Fasani v. Kowalski*, 43 So. 3d 805, 809-10 (Fla. 3d DCA 2010).

²⁴The 5th DCA also indicated that counsel’s reference to “repentance” was part of a greater “religious theme,” which improperly suggested to the jury that God favored a verdict in favor of the plaintiff. *Cataldo*, 92 So. 2d at 868.

²⁵*Id.*

²⁶*Intramed*, 93 So. 3d at 507.

²⁷*Id.*

²⁸*Pineiro*, 66 So. 3d at 1070-1071.

²⁹*Id.* at 1070.

³⁰*Fasani*, 43 So. 3d at 810.

³¹*Id.*

³²*Id.*

³³*Chin*, 42 So. 3d at 308.

³⁴*Carnival Corp.*, 972 So. 2d at 977.

³⁵*Id.*

³⁶*Fasani*, 43 So. 3d at 810.

³⁷*Id.*

³⁸*SDG Dadeland*, 979 So. 2d at 999.

³⁹*Id.* at 1000.

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.* at 1001-03.

⁴³*Carnival Corp.*, 972 So. 2d at 977.

⁴⁴*Id.*

⁴⁵*Id.* at 978.

⁴⁶*Pineiro*, 66 So. 3d at 1073.

⁴⁷*Cohen v. Pollack*, 674 So. 2d 805, 807 (Fla. 3d DCA 1996), citing *Owens Corning Fiberglass Corp. v. Morse*, 653 So. 2d 409 (Fla. 1995); and *Kaas v. Atlas Chem. Co.*, 623 So. 2d 525 (Fla. 3d DCA 1993).

⁴⁸*Id.* at 1028.

⁴⁹*Id.* See also *Benjamin v. Diel*, 831 So. 2d 1227, 1228 (Fla. 4th DCA 2002).

⁵⁰Craig Lee Montz, *Calling the Witness a Liar During Closing Argument: The Florida Supreme Court’s Final Approval*, Fla. Bar J., Oct. 2001, Vol. LXXV, No. 9.

⁵¹*See Murphy v. Int’l Robotic Sys. Inc.*, 766 So. 2d 1010, 1016-17 (Fla. 2000); *City of Orlando v. Pineiro*, 66 So.3d 1064 (Fla. 5th DCA 2011); *Grau v. Branham*, 761 So. 2d 375, 378 (Fla. 4th DCA 2000); and *Durse v. Henn*, 68 So. 3d 271, 274 (Fla. 4th DCA 2011).

⁵²*Murphy*, 766 So. 2d at 1031.

⁵³*Id.*



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Select Your Clients Wisely

This is the second in a series of articles about the basics of word-of-mouth marketing. Last month, the first article focused on “who to talk to” and how to identify the “ideal” client for different practice areas. Although it sounds deceptively simple, recognizing whom you best serve is a crucial first step in building a successful practice.

The Quality of Your Clients = The Quality of Your Practice

A maxim states: The quality of your practice – and how much you enjoy practicing law – is directly correlated to the quality of your clients.

If you, like many of your colleagues, have stocked your practice with clients who aren't a good fit, you'll spend much of your career feeling frustrated, unappreciated, and resentful. What's more, you'll never realize your income potential nor find real satisfaction in your chosen career. Our research with many lawyers over many years shows that if you applied the Pareto Principle, also known as the “80/20 rule,” to your client base, you would probably find that 80% of your income comes from 20% to 40% of your clients! The Pareto Principle applies again because this small, quiet 20% that can generate up to 80% of your revenue only takes up about 20% to 40% of your time as well.

Most of you know from your own experience that all clients are not created equal – but you haven't yet learned to trust your own instincts during the intake process. You may know instinctively that the client who shows up at your office clutching a page ripped out of the Yellow Pages is not quite the same as the client sent by your best referral source – but you still tend to give everyone the benefit of the doubt. Don't. Stop adopting clients and start selecting them. Become more rigorous in your screening procedures. Here's how to do it.

The Four Client Types

To keep this process simple, we classify clients into four types or levels: “A,” “B,” “C,” and “D” clients. Each type is judged on pre-determined, general criteria: the ability to pay and payment habits; loyalty; having needs consistent with your expertise; their ability to cooperate and trust; their opinion of lawyers in general; whether they are high or low maintenance; their ability to be satisfied with services rendered; and the likelihood of them sending more work or quality referrals.

Who Are Your “A” and “B” Clients?

In this classification system, which you can customize for specific practice areas, A and B clients are the good, C clients are the bad, and D clients

are downright ugly. In short, the A and B clients are those you actually enjoy working with! They are the low maintenance clients who bring you the kinds of matters that fit your expertise. They appreciate the value of the work you do for them, they cooperate with you, and they trust your opinion. They don't hassle your staff and they're not crisis-driven. They show up for appointments on time and they pay their bills promptly. They can also refer other clients like themselves to you. Unfortunately, they are also the clients who tend to get lost in the shuffle as you scramble to handle the constant demands of your C and D clients.

Who Are Your “C” and “D” Clients?

Your C and D clients don't sneak into your practice unannounced – they usually come through your door waving a variety of red flags. You know them when you see them. Often, because you need the money, you welcome C and D clients into your practice and ignore the red flags. But remember: For every negative characteristic you can attach to a client, you will spend more time with that client – persuading him to trust you, calming him down, or trying to get paid. If you find you have stocked your practice with C and D clients, follow the steps listed below to conduct your own housecleaning.

The Next Steps

1. Go through your case list and rank your current clients A, B, C or D. Take special note of your A and B clients, and then do a quick mental calculation: Does the 80/20 rule apply to your client base? Now, identify the lower level C and D clients on your list. If you have any doubts during this process and begin to vacillate on whether a client is a C or D, ask your staff – C and D clients often treat staff poorly and take up an unreasonable amount of their time, too.
2. If you think any of your borderline C clients can be rehabilitated and upgraded to a B level, then sit down and have a very straight conversation with them about the problems they are creating and the needed solutions – bring payments current, produce requested documentation in a timely manner, or stop cancelling appointments. Some will respond positively to this approach, others will not. Take the rest of your C clients and refer them out if their issues are personality-based, not payment-based. Avoid sending clients who won't pay you to another lawyer.

3. Let your D clients go – the sooner, the better. You can do this in person, over the telephone, or by letter. If you let them go in person or by phone, make sure you follow-up with a letter documenting your conversation. Your bar association will have sample disengagement letters that you can use. Disengagement and non-engagement letters are especially critical when a lawyer decides not to continue past a specific stage in a case. If the issue is nonpayment, you are not ethically bound to continue work for a client who who is not paying you. (*Litigators must be careful here – confer with your trial judge.*)

Finally, avoid working with any more C and D clients! The fastest, most effective way to stop dealing with them is to refine your intake selection so you don't admit them into your practice in the first place! Imagine how different your practice would be if you worked with nothing but A and B clients and the *pro bono* clients of your

choosing (instead of the clients who become *pro bono* cases by default). Lowering your stress level across the board is just one of the many benefits you can anticipate.

Carefully selecting the clients you work with not only helps to protect you from malpractice claims, it has the added benefit of saving a lot of time, improving office morale, increasing income, minimizing collection problems, and restoring some peace in an otherwise crisis-driven practice. Client selection is one of the most important practice management skills every lawyer should master – the impact on your peace of mind and your profitability will be significant.

Michael Hammond, Esq., is a "founding father" of Atticus and is a Certified Practice Advisor. A licensed attorney since 1983, he has spent his entire career either practicing law or supporting and promoting the practice of law. Michael has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. He is currently a featured writer for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

More... Issues in Ecology

The American Bar Association offers a number of books on issues in ecology. The ABA recently profiled this piece on its website.

Private Contracts for the Public Good

Excerpted from "Development by Agreement"

Authors: David L. Callies, Cecily Talbert Barclay, Julie A. Tappendorf

If a proposed development has the potential to ignite opposition, developers and community members sometimes reach agreements to try to head off problems. These private contracts can address matters such as hiring local residents, purchasing materials from local suppliers, building low-income housing, and creating streets, sewers, and water pipes for the community.

See the ABA website at <http://www.americanbar.org>



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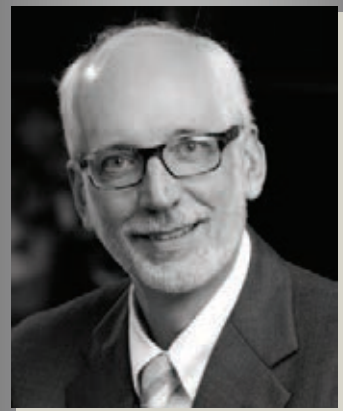
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Speaking Engagements

Stephen M. Bull, Esq., Bull and Associates, P.A., presented *Contractual Indemnification Issues for Architects* at the AIA Florida Chapter – License Renewal Seminar in Orlando in February.

Merrell Bailey, Esq., Bailey Zobel Pilcher, PLC, presented a workshop, *Impact of the 2012 American Taxpayer Relief Act on Estate Planning Practices*, in February.

Hallie Zobel, Esq. and **David Pilcher, Esq.**, Bailey Zobel Pilcher, PLC, co-presented a workshop about the changes to beneficiary designations related to divorce to a group of estate planning attorneys in February.

Merrell Bailey, Esq. and **Hallie Zobel, Esq.**, Bailey Zobel Pilcher, PLC, hosted a workshop at the President's Appreciation Luncheon for the Orange County Council of PTA in February. The presentation was entitled: *Are You Smarter than an Estate Planning Attorney?*

Events

Apr. 10 – Diversity and Professionalism Panel. 5:00 p.m. - 6:00 p.m. FAMU College of Law. All are invited to attend.

Apr. 11 – Naturalization Ceremony. 4:00 p.m. Boone High School. All are invited to attend.

Apr. 20 – OCBA Annual Gala. Cornell Fine Arts Museum, Rollins College, Winter Park. 7:00 p.m. All proceeds to benefit the Legal Aid Society and the OCBA Foundation. Individual tickets: \$125. Go to <http://ocbagala.brownpapertickets.com>. For sponsorship information, contact Kim Webb at 407-647-8911 or kwebb@schwartzlawfirm.net.

May 30 – OCBA Installation Banquet. 5:30 p.m. Church Street Ballroom, 225 S. Garland Ave., Orlando, FL 32801. Keynote Speaker: Hon. John Antoon, II, James G. Glazebrook Memorial Bar Service Award recipient. Registration details forthcoming.

Seminars

Apr. 9 – Dependent Youth and Immigration Law. LAS Lunchtime Training. 12:00 p.m. – 1:30 p.m. Speaker: Bethanie Barber, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

Apr. 11 – Objections: In Discovery and at Trial. Brown Bag Lunch with Judge J. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. CLE: 1.5. Please feel free to bring your lunch, and tell security you will be attending the Brown Bag Lunch. To register, contact: Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Apr. 12 – Immigration Consequences for the Non-Citizen Criminal Defendant. Criminal Law Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. Speaker: Luigi Perdomo, Esq. CLE: pending. Free to all attorneys and law students. RSVP by April 10th to Jessica Travis at jessicatravispa@gmail.com

Apr. 16 – Bluebook Citation Changes. Appellate Law Committee and Solo & Small Firm Committee Joint Seminar. 12:00 p.m. – 1:00 p.m. Speaker: Susan W. Fox, Esq. CLE: pending. RSVP to ocbasolos@gmail.com.

Apr. 23 – Independent Living Issues for Transitioning Youth and Young Adults. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Speaker: Bethanie Barber, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

May 7 – Finding Forever Families for Developmentally Disabled Dependent Youth. 12:00 p.m.-1:30 p.m. Speaker: Stephanie Stewart, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

May 14 – Taming the ESI Beast: Florida's New E-Discovery Rules and Best Practices for All Cases. Intellectual Property, Business Law, and Technology Committees Joint Seminar. 12:00 p.m.-5:00 p.m. OCBA Center. CLE pending. Speakers: Kevin R. Gowen, Esq.; Joshua R. Brown, Esq.; Drew Sorrell, Esq.; Donna M. Ches-teen, Esq.; Christopher Newton, Esq.; Lawrence H. Kolin, Esq. \$40 (OCBA members); \$55 (non-members). Fee includes lunch and happy hour. Registration deadline: **May 7**. Registration form available on OCBA website calendar at <http://orangecountybar.org/calendar.asp>. Sponsored by: Elijah Computer Forensic and E-Discovery Services.

May 21 – GAL Representation of Youth Who Are Sexual Abuse Victims or Victims of Human Trafficking: Discussion of the Keeping Children Safe Act and the Safe Harbor Act. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Speakers: Kavita Sookrajh, Esq., Tanka Patrick, GAL Case Coordinator; Tomas Lares, Co-Founder and Chair of the Rescue and Restore Coalition of Orlando. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121

May 29 – Under the Microscope: The Right to Bear Arms & The Second Amendment. Paralegal Section Seminar. Speakers: David Simmons, Esq., State Senator, District 10; Arthur Hayhoe, executive director, Florida Coalition to Stop Gun Violence; Sean Carranna, founder and executive director, Florida Open Carry, Inc. Moderator: Paul Owens, senior editorial writer, *Orlando Sentinel*. CLE: pending. Registration details forthcoming.



The OCBA Donates \$75,000 to A Place for Children

Photo: Flo Boehm

The Briefs, February 2013

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 Gregory S. Martin & Associates, P.A.
 Grossman & Grossman, P.A.
 Harris, Harris, Bauerle & Sharma
 Higley & Szabo, P.A.
 Hilyard, Bogan & Palmer, P.A.
 Infocus Family Law Firm, P.L.
 James H. Monroe, P.A.
 Jill S. Schwartz & Associates, P.A.
 Kelley, Kronenberg, Gilmartin, Fichtel, Wander,
 Bamdas, Eskalyo & Dunbrack, P.A.
 King, Blackwell, Zehnder & Wermuth, P.A.
 Korshak & Associates, P.A.
 Kosto & Rotella, P.A.
 Law Offices of Thomas H. Justice III, P.A.
 Law Offices of Walter F. Benanati Credit Attorney, P.A.
 Legal Aid Society of the OCBA
 Lewis & Crichton, Attorneys at Law
 Lynn B. Aust, P.L.
 Marcus & Myers, P.A.
 Mark M. O'Mara, P.A.
 Marshall, Dennehey, Warner, Coleman & Goggin, P.A.
 McClane Partners, P.A.

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 McShane & McShane Law Firm, P.A.
 Men's Divorce Law Firm
 Michael R. Walsh, P.A.
 Mooney Colvin, P.L.
 Morgan, White-Davis & Martinez, P.A.
 Murrah, Doyle and Wigle, P.A.
 N. Diane Holmes, P.A.
 Neduchal & MaGee, P.A.
 Nishad Khan, P.L.
 Ossinsky & Cathcart, P.A.
 Page, Eichenblatt, Bernbaum & Bennett, P.A.
 Provencher & Simmons, P.A.
 Ringer Henry Buckley & Seacord, P.A.
 Rumberger, Kirk & Caldwell, P.A.
 Sawyer & Sawyer, PA
 SeifertMiller, LLC
 Snure & Ponall, P.A.
 Southern Trial Counsel, PLC
 Stovash, Case & Tingley, P.A.
 Swann Hadley Stump Dietrich & Spears, P.A.
 Tangel-Rodriguez & Associates
 The Aikin Family Law Group
 The Brennan Law Firm
 The Carlyle Appellate Law Firm
 The Draves Law Firm, P.A.
 The Elder Law Center of Kirson & Fuller
 The Johnston Law Firm, P.A.
 The Llabona Law Group
 The Law Offices of Terry L. Bledsoe, P.A.
 The Law Offices of Trevett and Bonham, P.L.
 The Marks Law Firm, P.A.
 The McMahon Law Group, P.A.
 The Orlando Law Group, P.L.
 The Rosenthal Law Firm, P.A.
 The Skambis Law Firm
 The Smith Family Law Firm, P.A.
 The Tech Law Firm, PLLC
 Troutman, Williams, Irvin, Green, & Helms, P.A.
 Vose Law Firm, LLC
 Walton Lantaff Schroeder & Carson, LLP
 Warner + Warner, P.L.
 West, Green & Associates, P.L.
 Wicker, Smith, O'Hara, McCoy & Ford, P.A.
 Wieland, Hilado & DeLattre, P.A.
 William G. Osborne, P.A.
 Wilson McCoy, P.A.
 Winderweedle, Haines, Ward & Woodman, P.A.
 Wolff, Hill, McFarlin & Herron, P.A.
 Wooten, Kimbrough and Normand, P.A.
 Yergey and Yergey, P.A.
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To reply to BRIEFS box number, address as follows:
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c/o Orange County Bar Association,
P.O. Box 530085 • Orlando, FL 32853-0085

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Courtesy: Marc Jacobs, Esq., Michelman & Robinson, LLP, Litigation Partner.

OCBA Calendar

APRIL - MAY

OCBA Law Week Luncheon

Exhibiting Sponsors: DEX Imaging and Protechnica
Co-hosted by the Law Week Committee

Law Week Program

April 25, 2013 • 11:30 a.m. - 1:00 p.m.

The Ballroom at Church Street

RSVP by April 19, 2013

reservations@ocbanet.org

April

- 2 Social Committee Strategy Meeting**
11:45 a.m. • Location Varies
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 3 Business Law Committee**
12:00 p.m. • OCBA Center
- 8 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 9 LAS Lunchtime Training**
Dependent Youth and Immigration Law
12:00 p.m. • Marks Street Senior Center
- 10 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Executive Council Meeting**
4:30 p.m. • OCBA Center
- Law Week**
Diversity and Professionalism Panel
5:00 p.m. • FAMU College of Law
- 11 Social Security Committee**
12:00 p.m. • OCBA Center
- Law Week Committee Meeting**
12:00 p.m. • OCBA Center
- Brown Bag Lunch with Judge J. Kest**
Objections: In Discovery and at Trial
12:00 p.m. • Orange County Courthouse,
23rd Flr.
- Law Week**
Naturalization Ceremony
4:00 p.m. • Boone High School
- 12 Criminal Law Committee Seminar**
Immigration Consequences for the Non-Citizen Criminal Defendant
12:00 p.m. • OCBA Center
- 16 Appellate Law Committee and Solo & Small Firm Committee Joint Seminar**
Bluebook Citation Changes
12:00 p.m. • OCBA Center

- 17 Elder Law Committee**
12:00 p.m. • OCBA Center
- Veterans' Committee**
12:00 p.m. • OCBA Center
- 19 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee**
12:00 p.m. • OCBA Center
- 20 OCBA 16th Annual Gala**
7:00 p.m. • Cornell Fine Arts Museum,
Rollins College
- 23 LAS Lunchtime Training**
Independent Living Issues for Transitioning Youth and Young Adults
12:00 p.m. • Marks Street Senior Center
- 25 OCBA Luncheon**
Law Week Program
11:30 a.m. • Ballroom at Church Street
- 26 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center
- 30 Tax Law Committee**
12:00 p.m. • OCBA Center

May

- 1 Business Law Committee**
12:00 p.m. • OCBA Center
- 7 LAS Lunchtime Training**
Finding Forever Families for Developmentally Disabled Dependent Youth
12:00 p.m. • Marks Street Senior Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 8 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- 9 Social Security Committee**
12:00 p.m. • OCBA Center
- 10 Criminal Law Committee**
12:00 p.m. • OCBA Center
- 13 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 14 Intellectual Property, Business Law & Technology Committees Joint Seminar**
11:30 a.m. • OCBA Center
- 15 Elder Law Committee**
12:00 p.m. • OCBA Center
- Veterans' Committee**
12:00 p.m. • OCBA Center
- 17 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee**
12:00 p.m. • OCBA Center
- 21 LAS Lunchtime Training**
Dependent Youth with Developmental Disabilities: Impact on the Family
12:00 p.m. • Marks Street Senior Center
- 22 Judicial Relations Committee**
12:00 p.m. • Orange County Courthouse,
23rd Flr.
- 24 Solo & Small Firm Committee**
12:00 p.m. • OCBA Center
- 27 Memorial Day**
OCBA Office Closed
- 28 Tax Law Committee**
12:00 p.m. • OCBA Center
- 29 Paralegal Section Seminar**
Under the Microscope: The Right to Bear Arms & the Second Amendment
11:30 a.m. • OCBA Center
- 30 OCBA Installation Banquet**
5:30 p.m. • Ballroom at Church Street
- 31 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center

Please check the OCBA website calendar for updates on events and seminars.