

# The Briefs

A Publication of the Orange County Bar Association



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August 2008

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## The Briefs

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### DEADLINE INFORMATION

*Deadline for October Issue: 09/01/2008*

The deadline for each edition is the first day of each month. If that day 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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### Seating a Judiciary

Tad A. Yates

In April 2008, Governor Crist's General Counsel, **Jason Gonzalez**<sup>1</sup>, asked me to participate in the interview process for the six attorneys nominated to fill a Ninth Circuit judicial vacancy, which was created upon Judge Cohen's elevation to the Fifth District Court of Appeal. Having previously been nominated for vacancies on our county court bench, and three times having sat in the same room and same chair as the candidates to be interviewed by Mr. Gonzalez and his staff, I jumped at the chance to see things from the other side of the table.

The Ninth Circuit was well represented. Mr. Gonzalez and his staff thought so. One of the Governor's lawyers commented that the Ninth Circuit Judicial Nominating Commission (JNC) had "done an awesome job." I think the members of the JNC would agree that they were able to do a great job because of the outstanding quality of the applicants from which they could choose. But could the pool of quality applicants for judicial appointments dry up if the number of contested elections in our area increased? I certainly think so.

It is said that in the areas of our state that see frequent contested judicial elections, the local JNCs have trouble sending a qualified list of nominees to the Governor's office. This idea highlights the interplay between the appointment and election processes. Increased contested elections might deter wonderfully qualified applicants from seeking appointment, because they may feel the risk of mounting an expensive election campaign a few years later is too great given the modest salary paid to members of our judiciary.

And while increased judicial elections may have the effect of discouraging some talented lawyers from pursuing the bench, there is certainly an argument that these elections have the additional negative effect of politicizing the process, calling the legitimacy of our courts into question. The 2003 Report of the American Bar Association Commission on the 21st Century Judiciary cautioned that "[t]he escalating partisanship and corrosive effects of excessive money in judicial campaigns, coupled with changes in society at large and the courts themselves, have served to create an environment that places our system of justice, administered by independent and impartial judges, at risk."

Lest my comments be construed to suggest I oppose the election process, let me without hesitation say that some of the best on our local bench have been elected, rather than appointed. I will also candidly admit that I take some comfort in knowing that bad judges may be opposed and removed from office through a democratic process. These are weighty issues that many of us may consider as we head to the polls on August 26, 2008.

Whether judges should be appointed or elected has certainly been hotly contested. States and nations have debated the merits of the many alternative means of seating a judiciary. While I certainly don't pretend to have the answer to these long-debated issues, I am interested in hearing from our members about their views on our State's judicial selection process. On this topic, *The Briefs* would welcome your Letters to the Editor.

If you have an interest in this topic, I would commend to you a recent article from *The New York Times*, entitled "American Exception – Rendering Justice, with One Eye on Re-election." The article ran in print on May 25, 2008, but can be accessed online at [www.nytimes.com](http://www.nytimes.com). The website version of the article includes links to appendices that detail the judicial selection processes for other states and nations.



Please consider marking your calendars for our **November 13, 2008**, OCBA luncheon, which will feature a panel discussion by three members of our judiciary, each of whom is retiring in the coming year, and each of whom previously served as OCBA President. We are thrilled on that date to be joined by past-OCBA Presidents, **Judge Patricia C. Fawsett**, Chief Judge, United States District Court for the Middle District of Florida, **Judge Robert J. Pleus, Jr.**, Fifth District Court of Appeal, and **Justice Charles T. Wells**, Florida Supreme Court.

How many days left until the kickoff of football season?

Enjoy the rest of your summer!

<sup>1</sup>Mr. Gonzalez will join us as our speaker for the October 30, 2008, OCBA luncheon, which the OCBA is proud to co-host with the Hispanic Bar Association of Central Florida.

*Tad A. Yates is a partner with Kirkconnell, Lindsey, Snure and Yates, P.A. He has been a member of the OCBA since 1994.*

### Editor's Note

LaShawnda K. Jackson

#### One World, One Dream

08.08.08 marks the opening ceremony of the 2008 Summer Olympics, officially known as the Games of the XXIX Olympiad. The world will be focused on Beijing, China. The U.S. Olympic Team will be focused on a dream: Olympic Gold. For information about the Olympics or your very own U.S. Olympic team, visit [www.usoc.org](http://www.usoc.org). Check your local T.V. listings for television coverage of the games.

*LaShawnda K. Jackson is an associate with Rumberger, Kirk & Caldwell, P.A. She has been a member of the OCBA since 2002 and is an associate editor of The Briefs.*



**Thomas v. Fusilier,**  
966 So. 2d 1001 (Fla. 5th DCA 2007)  
Reversed forfeiture of \$250,000  
payment required by marital  
settlement agreement.

**Marriott International, Inc.  
v. Perez-Melendez,**  
855 So. 2d 624 (Fla. 5th DCA 2003)  
Affirmed million dollar personal injury  
verdict based on the "two issue rule".

**Savoie v. Southeast Bank, N.A.**  
529 So. 2d 1275 (Fla. 5th DCA 1988)  
Reversed and remanded mortgage  
foreclosure for exercise of option  
to purchase.

**Pettry v. Pettry,**  
768 So. 2d 8 (Fla. 5th DCA 2000)  
Reversed conversion of rehabilitative  
alimony to permanent alimony.

**Mitchell v. Metropolitan at  
Lake Eola LLC,**  
947 So. 2d 1263 (Fla. 5th DCA 2007)  
Reduced lis pendens bond from  
\$600,000 to \$20,000.

**Wenzel v. Boyles Galvanizing Co.,**  
920 F. 2d 779 (11th Cir. 1991)  
Affirmed a 2.75 million dollar  
personal injury award.

**Winn v. Winn,**  
669 So. 2d 1155 (Fla. 5th DCA 1996)  
Reversed "woefully inadequate"  
permanent alimony.

**McGhee v. Volusia County,**  
679 So. 2d 729 (Fla. 1996)  
Clarified sovereign immunity/scope  
of employment rules for deputy  
sheriffs.

**Rykiel v. Rykiel,**  
795 So. 2d 90 (Fla. 5th DCA 2000)  
Reversed dissolution judgment due to  
excessive awards against husband.

**Acadia Partners, L.P. v. Tompkins,**  
759 So. 2d 732 (Fla. 5th DCA 2000)  
Prevented multi-million dollar  
judgment addition in complex  
business litigation.

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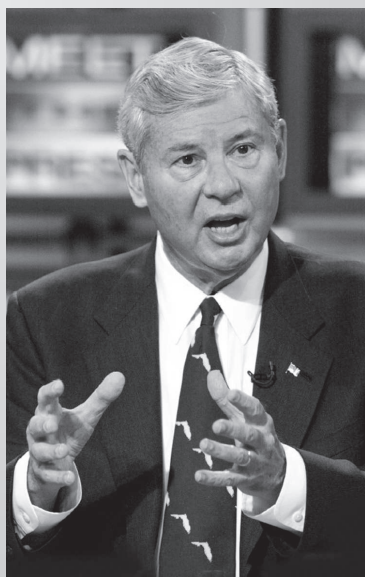
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September 4, 2008



### **Senator Bob Graham** **Former United States Senator**

Senator Bob Graham is the former two-term governor of Florida and served for 18 years in the United States Senate. He served 12 years in the Florida legislature, for a total of 38 years of public service. As Governor and Senator, Bob Graham was a centrist, committed to bringing his colleagues together behind programs that served the broadest public interest. He was recognized by the people of Florida when he received an 83% approval ranking as he concluded eight years as Governor. He retired from public service in January 2005, following his Presidential campaign in 2004.

Senator Graham is recognized for his leadership on issues ranging from healthcare and environmental preservation to his ten years of service on the Senate Select Committee on Intelligence – including eighteen months as chairman in 2001-2002.

Following the release of the Joint Inquiry's final report in July 2003, Senator Graham steadfastly advocated reform of the intelligence community and sponsored legislation to bring about needed changes. In the fall of 2004, Senator Graham authored *Intelligence Matters* based upon his experiences gleaned during the joint inquiry and his analysis of the run up to the Iraq War.

After retiring from public life, Senator Graham served for a year as a senior fellow at the Harvard Kennedy School of Government where he lectured to undergraduate, graduate and executive management students. His primary focus was on civic education and intelligence. These issues continue to be of great importance to Senator Graham. He is currently researching and writing a book about civic participation, tentatively entitled *What Citizens Need to Know to Make Democracy Respond*.

Senator Graham has also been a regular contributor to National Public Radio's Morning Edition, a frequent guest on CNN, Fox and MSNBC news, and has written opinion editorials for newspapers. Since retirement, his commentaries have appeared in *The New York Times*, *Washington Post*, *The Financial Times*, *Chicago Tribune*, *Boston Globe*, *Charlotte Observer*, *Washington Times*, *Miami Herald*, *Orlando Sentinel*, *St. Petersburg Times*, *South Florida Sun Sentinel*, *Sarasota Herald Tribune*, *Gainesville Sun*, *Palm Beach Post*, *Tallahassee Democrat* and the *Tampa Tribune*.

Senator Graham serves as the chair of the Board of Overseers of the Graham Center for Public Service. This Center, with homes at the University of Florida and the University of Miami, commenced programs in the fall of 2007 in the areas of Public Service, Homeland Security, and The Americas, subjects in which Senator Graham has been deeply involved during his public career.

Since his retirement, Senator Graham has been recognized by national and Florida organizations for his public service. These include: The Woodrow Wilson Institute Award for Public Service; The National Park Trust Public Service Award; The Everglades Coalition Hall of Fame; The Florida Homebuilders Hall of Fame; having the largest bridge in Florida, constructed while Senator Graham was Governor, renamed the Bob Graham Sunshine Skyway Bridge; LeRoy Collins Lifetime Leadership Award from Leadership Florida; an honorary doctorate of public service from his alma mater, the University of Florida; an honorary doctorate from Pomona College; and an honorary doctorate from Nova Southeastern University.

Senator Graham, and his wife Adele, have returned to their home in Miami Lakes, Florida, and are enjoying more time with their four daughters and eleven grandchildren.

**The Ballroom at Church Street • 11:30 a.m. - 1:00 p.m.**

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To ensure a proper luncheon count, **RSVPs** and **CANCELLATIONS** are requested no later than Thursday, August 28, 2008. The OCBA is happy to provide 11 luncheons as part of your member benefits, **but no-shows incur additional charges for the Bar and walk-ups can't be guaranteed a spot.** Please keep us up-to-date on your reservation status! Thank you.

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## Professionalism Committee

### *Professionalism, Mentoring and Signing Up!*

— Patrick M. Magill



I have decided, after thirty-two plus years of practicing law, that sometimes practicing with professionalism needs nothing more than simply being friends. Let me explain.

I am often asked, as I know many of you are, how I can be friendly and enjoy my time with the “other side.” My clients often have a very difficult time, particularly in domestic practice, understanding how I can shake the hand of, smile at or laugh with my opponent, who is doing his or her best to undercut my client’s position. My explanation is usually something like this: My best friends are lawyers; I enjoy the company of lawyers, who are intelligent, friendly and stimulating conversationalists. They have the same interests in life, the same goals, and the same perspective on making a living that I do. We usually share many of the same goals and life perspectives, and therefore they are some of my very best friends. But nothing gives us more pleasure than beating each other in court, honestly.

The practice of law seems, in many quarters, to have deteriorated into sharp practices, including an unwillingness to give common courtesy to each other or the benefit of the doubt. I am happy and proud to report to my clients and friends that, all in all, practicing law in this Bar does not generally require me to deal in “sharp practices.” Unfortunately, others have different experiences.

Two examples from my own experience in appellate practice illustrate the difference. In one case, I was late in preparing and filing a brief because I miscalculated the number of days from the last brief. After I was two days late, I realized that I needed to ask for an extension or the brief might not be accepted. I contacted opposing counsel to ask if he had an objection to my motion. His response was to file a motion to dismiss the appeal, which required each of us to present lengthy memoranda of law on whether or not the dismissal should be granted. Both of us knew that motions for extension of time are routinely granted.

In another case, my opponent was late in filing a brief and called me to ask if I had an objection to an extension. I had litigated with this South Florida lawyer for four or five years. After I responded “Sure, no problem,” I heard a pregnant pause on the other end of the line. Surprised by my immediate willingness to consent, he eventually asked, “Really?”

Where am I going with this? First, we have a high quality of standards in the Orange County Bar Association and a culture of professionalism which is

always in danger of erosion if we are not careful. Those of us who have practiced for a time need to be aware of those coming into the practice of our profession. They may have a different vision of how one practices law with professionalism. We need to treat these new lawyers with respect, a friendly welcome and a willingness to mentor them and teach them how we treat each other in this Bar. How do we reach them? We do so by our willingness to volunteer our time with the Professionalism Committee or other volunteer opportunities within the Bar. We can also participate with other volunteer organizations that exist for just this purpose, such as the American Inns of Court.

I must confess that I am biased because I have been a part of forming the Central Florida Family American Inn of Court, which is in its third year of existence. We have made great strides in that organization, and I am very proud to be a part of a group of quality professional practitioners. Nevertheless, it is time for us to reach out to newer members of the Bar whom we may not even know. Consider joining the Central Florida Family American Inn of Court or the George C. Young First Central Florida American Inn of Court for the general practice of law. Also, consider membership nominations for people who would benefit from being able to establish good, mentoring friendships and relationships with judges and senior members of the Bar, many of whom are already members of these organizations.

At the end of each of our meetings one of our members proposes a toast. To end this somewhat wandering set of thoughts, let me propose one: Here is to all of my colleagues, my friends, my fellow practitioners. May we all practice with friendship, professionalism and courtesy, and I look forward to beating you in court next time!

*Patrick M. Magill, Attorney at Law, has been a member of the OCBAsince 1978.*

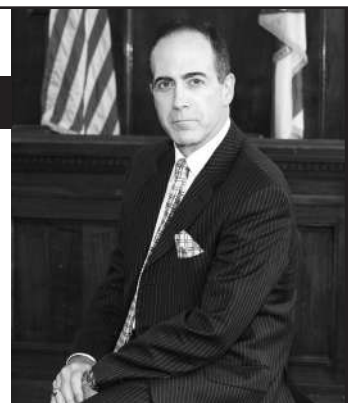


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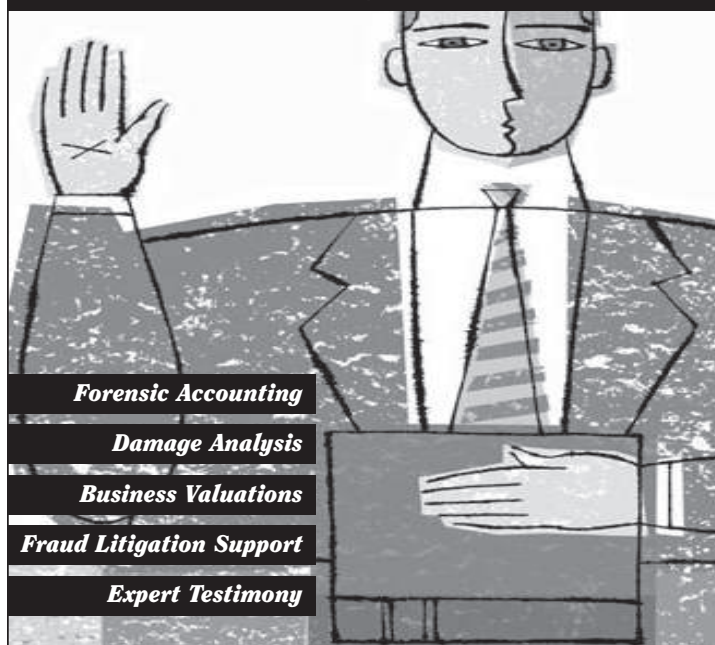
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## Policy on Guardianship Statutes

### *The Honorable Lawrence R. Kirkwood Issues Policy on Guardianship Statutes*

—Vanessa J. DiSimone



Circuit Judge Lawrence R. Kirkwood recently issued a policy interpreting several guardianship statutes, which had previously left both court clerks and local attorneys searching for judicial direction.

Under Florida law, a guardian of the property is required to file an initial guardianship report with the court within sixty days of appointment. Such report shall consist of a verified inventory detailing the property, assets and income of the ward. According to Section 744.365(2)(a), Florida Statutes, which was enacted on July 1, 2006, the verified inventory must include any trusts of which the ward is a beneficiary.

Although this statute in and of itself appears to be more procedural than substantive in nature, Section 744.365(2)(a), applied in conjunction with two other fairly new guardianship statutes, significantly impacts the administration of guardianships in Florida. If a guardian discloses the existence of a trust on an initial inventory pursuant to §744.365(2)(a), then F.S. § 744.3678(2)(a) and 744.441(19) must also be examined.

Section 744.3678, which was also enacted on July 1, 2006, mandates that each guardian of the property file an annual accounting with the court. Subsection (2)(a) of the statute states that the annual accounting must include “a full and correct account of the receipts and disbursements of all of the ward’s property over which the guardian has control and a statement of the ward’s property on hand at the end of the accounting period.” Subsection (2)(a) further notes, however, that the accounting need not include “any property or any trust of which the ward is a beneficiary but which is not under the control or administration of the guardian.”

Remarkably, since §744.3678 was first enacted in 2006, subsection (2)(a) has not yet been the subject of any appellate litigation across the state. In the absence of legal precedent, Judge Kirkwood has issued a policy stating that in cases where the ward is a beneficiary of a trust which is under the control or administration of the guardian, or similarly where the trustee of such trust is also the guardian of property, then such trust effectively becomes an asset of the guardianship, and it must be included in the annual guardianship accounting to the court. The annual accounting is to be filed on a fiscal year cycle and not a calendar year cycle. This is true even in cases where the trust was not originally intended to be an asset of the guardianship.

In accordance with Judge Kirkwood’s new policy and previous administrative requirements, if the guardian discloses the existence of a trust on the initial inventory in accordance with §744.365(2)(a), then along with the initial inventory the guardian must file the page of the trust listing the amount in the trust and the identity of the trustee. In cases where the guardian serves as the trustee, a copy of the entire trust is required.

If the guardian is not the trustee, the initial inventory

should reflect the ward’s beneficial interest in the trust at a \$1.00 carrying value. If the guardian serves as the trustee, the initial inventory shall include an itemized listing of the trust assets as valued at the time of the guardian’s appointment. The court will require copies of the trust account statements reflecting the trust assets as of the date of appointment, so the beginning values can be verified before any monies are expended. The trust assets will be included in calculating the audit fee, which is the fee for the auditing of the verified inventory when the corpus of the inventory is valued in excess of \$25,000.

Judge Kirkwood’s policy also provides guidance on the proper application of F.S. § 744.441(19), which was enacted on July 1, 2008. According to §744.441(19), a plenary or limited guardian of the property has the power to create or amend a revocable trust or create an irrevocable trust with the ward’s property for estate, gift, income or other tax planning or in connection with estate planning, such as special needs trusts and Medicaid income trusts. Pursuant to this statute, the court now retains “oversight” of the property transferred to the trust, unless the court orders otherwise. Although the statute gives no indication as to what this judicial “oversight” shall entail, Judge Kirkwood has interpreted this to mean the court has oversight when it reviews the trust property per the annual accounting. By court order, the court can relieve the guardian of the court’s oversight.

The passage of these three guardianship statutes in recent years, according to Judge Kirkwood, is perhaps indicative of the Florida legislature’s desire to return to the days when trust administration was largely overseen by the court. Judge Kirkwood explains that prior to the probate court becoming a part of the circuit court as result of the revision of Article V, Section 1 of the Florida Constitution in 1968, the court did, in fact, have oversight of trust assets. Since 1968, the trend in legislation has stressed the importance of judicial oversight in guardianship administration, while trust administration has seemed to fall less within the court’s purview, presumably because trusts are created largely to be self-serving and trustees are already held to a fiduciary duty in administering trusts.

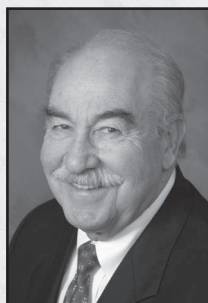
Although Judge Kirkwood says the verdict is still out on whether these newly enacted guardianship statutes are, in fact, a sign of changing times on the trust administration horizon, he is certain of the need for his new policy interpreting the statutes. Both court clerks and local attorneys have expressed growing concerns to him in recent months about the confusion over the application of such statutes. “My policy follows the plain meaning of the statutes so that all three of them work together, rather than conflict with each other,” states Judge Kirkwood.

*Vanessa J. DiSimone is an associate with Winderweedle, Haines, Ward & Woodman, P.A. She has been a member of the OCBA since 2003.*

# The Florida Bar Honors 50-Year Members



*Norman F. Burke*  
*Foley & Lardner LLP*



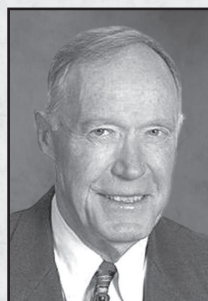
*Lee J. Colling*  
*Lee Jay Colling & Associates, P.A.*



*J. Charles Gray*  
*Gray Robinson, P.A.*



*John F. Lowndes*  
*Lowndes, Drosdick, Doster,  
Kantor & Reed, P.A.*



*William G. Mateer*  
*Mateer & Harbert, P.A.*



*Kenneth F. Murrah*  
*Murrah, Doyle & Wigle, P.A.*



*Bill C. Pyle*  
*Retired*



*James M. Russ*  
*Law Offices of James M. Russ, P.A.*



*William F. Simonet*  
*William F. Simonet, P.A.*



*Russell Troutman*  
*Troutman, Williams, Irvin, Green,  
Helms & Polich, P.A.*



*Victor E. Woodman*  
*Winderweede, Haines,  
Ward & Woodman, P.A.*



*Albert Yurko*  
*Law Offices of Albert Yurko*

Twelve Orange County Bar Association attorneys from the Ninth Judicial Circuit were among 178 attorneys honored by The Florida Bar on Friday, June 20, 2008, for 50 years of dedication to the practice of law. Their service to the profession was acknowledged during a luncheon at The Florida Bar's Annual Convention at the Boca Raton Resort & Club. Russell Troutman, a 50-year honoree and Florida Bar president in 1977, was the featured speaker.



To be recognized, attorneys must be members in good standing of The Florida Bar and attain their 50th anniversary of admittance to the practice of law in Florida in 2008.

Other attorneys from the Ninth Judicial Circuit who were recognized at the luncheon include Richard E. Batterson, Bernard C. Muszynski and Norman J. Smith.

The OCBTA extends its hearty congratulations and sincere thanks to each of these fine attorneys for their dedication to the profession and service to the community.



## Request for Comments: OCBA Standards of Professionalism

### *Proposed Orange County Bar Association Standards of Professionalism, Professional Courtesy, and Courtroom Decorum*

*Submitted by the OCBA Professionalism Committee*

*The Professionalism Committee invites comment on the following proposed Standards of Professionalism, Professional Courtesy, and Courtroom Decorum. Please contact Magistrate Howard D. Friedman, chair of the OCBA Professionalism Committee, via e-mail at [ctgmhfl@ocnjcc.org](mailto:ctgmhfl@ocnjcc.org), by mail at 2000 East Michigan Street, Orlando, Florida 32806-4941, or contact the OCBA by mail at 880 North Orange Avenue, Orlando, Florida 32801.*

#### **Preamble**

Whereas, the practice of law is largely an adversarial process and Attorneys are ethically bound to zealously represent and advocate in their clients' interest;

Whereas, in addition to Attorneys' professional responsibilities prescribed by substantive and procedural law, Attorneys are also guided by personal conscience and the approbation of professional peers;

Whereas, in Orange County, Florida, there have developed certain community standards of legal professionalism, professional courtesy, and courtroom decorum previously acknowledged and recognized through the adoption in 1990 of the Orange County Bar Association Standards of Professional Courtesy and in 2003 through entry of Administrative Order 2003-07 establishing the Orange County Courtroom Decorum Policy;

Whereas, Attorneys should strive to attain certain ideals of professionalism and demonstrate a minimum level of professional courtesy necessary to lend dignity to the practice of law in our community and instill public confidence in the justice system.

In order to promote and perpetuate the long tradition of professionalism among and between members of the Orange County Bar Association and the bench and to assist in the efficient administration of justice, the following Standards of Professionalism, Professional Courtesy and Courtroom Decorum are hereby adopted.

#### **Introduction**

The foregoing standards describe the conduct expected of Attorneys practicing in the Courts of the Ninth Judicial Circuit in and for Orange County. While not meant to be exhaustive, these standards set a tone or guide for conduct not specifically covered by these standards. The overriding principles promoted by these standards are communication and civility between counsel, as well as cooperation with the Courts and other participants in the justice system.

These standards have been codified with the hope that their dissemination will educate new Attorneys and others

who may be unfamiliar with the Orange County legal community's expectations regarding legal professionalism, professional courtesy, and courtroom decorum. \*\*They are awaiting/have received the approval of the Executive Council of the Orange County Bar Association. They are awaiting/have also been endorsed by the Judges of the Ninth Judicial Circuit. \*\*\*These standards should be read consistently with the Ideals and Goals of Professionalism adopted by the Board of Governors of The Florida Bar in 1990 and the Conferences of Circuit Judges and County Court Judges and Trial Lawyers Section of The Florida Bar Guidelines for Professional Conduct, (2008 Edition).

#### **I. Discovery, Litigation Practice, and Scheduling**

1. Attorneys should pursue discovery requests that are reasonably related to the matter at issue. Attorneys should not use discovery for the purpose of harassing, embarrassing, causing needless duplication of effort, or causing the adversary to incur unnecessary expenses.

2. Attorneys should not propound or object to discovery for the purpose of causing undue delay or obtaining unfair advantage.

3. Attorneys should ensure that responses to reasonable discovery requests are timely, complete, and consistent with the obvious intent of the request. Attorneys should not produce documents in a way calculated to hide or obscure the existence of documents.

4. Attorneys should, whenever appropriate, discuss and coordinate discovery planning with opposing counsel. (e.g., counsel should cooperate in scheduling and coordinating depositions after requested documents pertaining to the deponent have been disclosed).

5. When setting hearings, conferences, and depositions, Attorneys should not schedule any matter without first making a good faith effort to coordinate the date and time with opposing counsel's office. Depositions and hearings should only be set, with less than one week's notice, by agreement of counsel or when a genuine emergency exists. Sufficient time should be reserved to permit a complete presentation by counsel for all parties.

6. Upon receiving a scheduling inquiry concerning a proposed time for a hearing, deposition, meeting, or other proceeding, Attorneys should promptly agree to the proposal or offer a counter suggestion that is as close in time as is reasonably possible. When scheduling changes are absolutely necessary and requested due to professional or family commitments or emergencies, Attorneys should

*Continued on page 12*

cooperate with each other in agreeing to calendar changes when rescheduling will not have a material adverse effect on the rights of the client.

7. Reasonable extensions of time should be granted to opposing counsel where such extensions will not have a material adverse effect on the rights of the client or result in undue delay. (*e.g.*, permitting a deadline for a response to discovery to be extended or not objecting to a first-time motion for extension of time in which to file an appellate brief).

## **II. Conduct toward the Court, Attorneys, and Other Participants**

1. Attorneys should refrain from disrespectful and disruptive behavior towards the Court and likewise refrain from rude and offensive behavior towards opposing counsel, parties, and witnesses.

2. Attorneys shall abide by the spirit and letter of all rulings of the Court and instruct their clients to do the same.

3. Attorneys should be, and should impress upon their clients and witnesses the need to be, courteous and respectful towards the Court, opposing counsel, parties, and witnesses.

4. Attorneys should make an effort to explain to non-party witnesses the purpose of their required attendance at depositions, hearings, or trials. Absent compelling circumstances, Attorneys should give adequate notice to non-party witnesses before the scheduling of their depositions and make a reasonable effort, when possible, to provide advance notice of a subpoena for a deposition, hearing, or trial. Attorneys should, when possible, accommodate the schedules of non-party witnesses when scheduling their appearance and promptly notify them of any cancellations.

5. Attorneys should act and speak civilly to courtroom deputies, clerks, court reporters, judicial assistants, and other court personnel and recognize that they are an integral part of the judicial system. Attorneys should be selective in inquiries posed to judicial assistants to avoid wasting their time. Attorneys should endeavor to be knowledgeable about the Court's administrative orders, local rules, and each Judge's published or posted practices and procedures.

## **III. Candor and Fairness to the Court, Counsel, and Others**

1. Attorneys should not knowingly misstate, misrepresent, or distort any fact or legal authority to the Court or to opposing counsel. Further, if this occurs unintentionally and is later discovered, it should immediately be disclosed or otherwise corrected.

2. Attorneys should notify opposing counsel of all oral or written communications with the Court or other tribunal, except those involving only scheduling matters. Attorneys shall simultaneously provide to opposing counsel by substantially similar mode of delivery, copies of any submissions, correspondence, memoranda or law, case

law, etc. to the Court. (*e.g.*, if a memorandum of law is hand-delivered to the Court, a copy should simultaneously either be hand-delivered or faxed to opposing counsel). If the Court requests the parties to submit a proposed order, written closing argument, or statement of a party's legal position, unless otherwise specified by the Court, the submission should be in the form of a pleading, memoranda, or proposed order and not in the form of a letter.

3. Attorneys should draft proposed orders promptly, and the orders should fairly and adequately represent the ruling of the Court. Attorneys should promptly provide, either orally or in writing, proposed orders to opposing counsel for approval. Opposing counsel should promptly communicate any objections to the entry of the proposed order. The drafting Attorney shall clearly advise the Court as to whether or not the proposed order has been approved by opposing counsel.

4. In drafting agreements and other documents, Attorneys should use their knowledge, training, skill, and integrity to ensure that the agreements and documents fairly reflect the true intent of the parties. Where revisions are made to an agreement or other document, Attorneys should point out or otherwise highlight any such additions, deletions, or modifications for all opposing counsel.

## **IV. Efficient Administration of Justice**

1. Attorneys should not use the Court system for the primary purpose of harassing, embarrassing, causing needless duplication of effort, or causing an adversary to incur unnecessary expenses.

2. Attorneys should endeavor to stipulate to all facts and legal authority not reasonably in dispute.

3. Attorneys should encourage principled negotiations and efficient resolution of disputes on their merits.

4. Attorneys should make a good faith effort to contact opposing counsel prior to filing and upon receiving a motion to determine, first, whether the matter can be resolved without the necessity of Court hearing, or second, whether there are any matters raised to which all parties can stipulate. Adequate communication between Attorneys may alleviate the need for filing a motion and may allow entry of an agreed upon order in lieu of hearing. Adequate communication may further serve to narrow the issues that need to be litigated and reduce the amount of hearing time necessary to resolve a matter.

5. Attorneys should promptly notify the Court or other tribunal of any resolution between parties that renders a scheduled Court appearance unnecessary or otherwise moot.

6. Attorneys should notify opposing counsel and the Court of a scheduling conflict and make efforts to ensure that others impacted by a scheduling conflict are notified as soon as it becomes apparent. Further, Attorneys should cooperate

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## Legal Aid Society News

### Pro Bono Highlight: Guardian Ad Litem Program Attorneys

—— Krista Bartholomew and Stephanie Stewart



#### The Teen Parent Education Project

In addition to accepting cases to fulfill *pro bono* requirements for the OCBA, attorneys can elect to participate in one of the many projects offered by the Legal Aid Society. The Teen Parent Education Project is one way members can offer their services to the community. The project is unique because the attorneys involved have the opportunity to wear many hats and work directly with a high-risk population.

The Teen Parent Education Project was originally an Equal Justice Works fellowship project for LAS attorney Cara Dobrev, the current Litigation Coordinator for the Guardian ad Litem Program. The project allowed her to work full time on the legal issues of Orlando's teen parents. Cara taught monthly classes at BETA, a high school for pregnant and parenting teens in grades 7 through 12. In addition, she provided legal consultation and actively litigated cases on behalf of teen parents. At the completion of her fellowship, the program was expanded to other high schools as a *pro bono* program that would provide classes to more teen parents in Orange County.

The purpose of the Teen Parent Education Project is to provide teen parents with a general legal education on issues that may impact their lives and to assist them in identifying potential legal problems that may arise. The goal is to help these young parents now so they can avoid legal problems in the future. Specifically, the project seeks to enable teen parents to make informed decisions and protect their legal rights, stabilize their family's economic and legal situations, and break the cycle of poverty and poor decision-making for their children. The needs of the teens are often far reaching in terms of education on their rights and responsibilities.

*Pro bono* attorneys involved with the project are placed in various Orange County high schools that have expressed an interest in participating in the program. The attorneys, who coordinate lesson plans with each school's Teen Parent teacher, teach various legal topics to expectant mothers and fathers as well as to teens who are already parents. Topics covered include the role of the law in our lives; parental responsibility; child support child custody; emancipation; domestic violence; and public benefits. In addition, students often have questions about other issues and the LAS attorneys are prepared to provide the information needed.

Lee Lombardy, a *pro bono* attorney who participates in the project, says,

This project informs teens about their legal duties as parents yet also explains their restricted rights as minors. It is a fine line they are walking, and they know it – they are parents themselves but not yet legally recognized as adults. Some of the young women I have met have had to make critical decisions regarding their relationship with their baby's father, their baby's paternal grandparents,

or their own parents. By explaining basic tenets of family law to teen parents and providing them with tools to navigate through the social services system, this project empowers them to make decisions that will positively impact not only their lives, but also their children's lives.

Nikie Lomax, another attorney participating in the project, adds, "The project works because a teen who is about to be a parent often doesn't know what to expect, so they don't know what to ask. The Teen Parent curriculum provides them with information and resources, thereby empowering them to be better parents."

In addition to Legal Aid's Teen Parent Project Coordinators, Stephanie Stewart and Krista Bartholomew, seven other attorneys participated in teaching classes at nine different schools during the 2007-2008 school year. The attorneys spent 122 hours teaching a total of 33 separate classes to teen parents at Colonial, Evans, Apopka, Winter Park, Olympia, Edgewater, Oakridge, Timber Creek, and Wekiva high schools. Because the project was so well received in the school system and attorneys' interest has increased, the Teen Parent Project hopes to expand to 15 Orange County high schools this fall.

Participating Teen Parent teachers speak very highly of the attorneys, commenting on how invaluable their participation is in making a difference in the lives of these teens. Teachers involved in the classes have reported seeing an increased awareness among the students, an increased interest in doing what is "right" in terms of law and their children, and an improved sense in their ability to handle complex family situations that may arise.

When asked about her participation in the project, Nikie responded,

I continue to participate in the project because it allows me to have more of an impact on the lives of teens who are about to embark on the incredible journey of parenthood. My work in this project affects their lives and the lives of their children. The goal is to educate the teens and have a significant impact on their understanding of their parental rights, responsibilities and duties, which will hopefully impact their parenting skills and increase their child's chance for a happier, more fulfilling life.

The Legal Aid Society extends its sincere appreciation to those *pro bono* attorneys participating in the project: Andrea G. Amigo, Camille M. Evans, David Gillespie, R. Kimbark Lee, Nikie N. Lomax, Lee Lombardy and Sarah P. Reiner.

*Attorneys Krista Bartholomew and Stephanie Stewart are the Teen Parent Project Coordinators at the Legal Aid Society. They both have been members of the OCBA since 2007.*

with one another regarding all reasonable rescheduling requests that do not prejudice their clients or unduly delay a proceeding.

## **V. Courtroom Decorum**

1. When appearing in Court, unless excused by the presiding Judge, it is expected that the Attorneys shall stand when Court is opened, recessed, or adjourned; when addressing, or being addressed by the Court; and when the jury enters or retires from the courtroom.

2. When making opening statements, closing arguments, or examining witnesses, Attorneys shall not approach either the jury or the witness without the Court's permission. Attorneys shall remain at the lectern unless using exhibits or charts.

3. Attorneys shall address all remarks to the Court and not to opposing counsel or the opposing party.

4. Attorneys shall avoid making disparaging personal remarks or showing acrimony toward opposing counsel and remain detached from any ill feeling between the litigants or witnesses.

5. Attorneys shall refer to all persons (including witnesses, other counsel, and the parties) by their surnames and not by their first or given names unless the permission of the Court is sought in advance.

6. Only one Attorney for each party shall conduct the direct examination or cross examination of each witness. The Attorney stating objections, if any, during direct examination, shall be the Attorney recognized for cross examination.

7. Attorneys shall request permission before approaching the bench. Any documents counsel wishes to have the Court examine should be handed to the clerk. Any paper or exhibit not previously marked for identification should first be handed to the clerk to be marked before it is tendered to a witness during examination. Any exhibit offered in evidence should, at the time of such offer, be handed to opposing counsel.

8. Attorneys shall not hold or place in any position in the courtroom that would allow the jury to see, any exhibit, whether marked for identification or not, unless the exhibit has been admitted into evidence and permission to publish the exhibit to the jury has been obtained from the Court.

9. In making objections, Attorneys' shall state only the legal grounds for the objection, withholding all further comment or argument unless elaboration is requested by the Court. In examining witnesses, Attorneys' questions should not be echoing the witness's response.

10. Attorneys shall make all offers of settlement or requests for a stipulation privately and not within the hearing of the jury.

11. In opening statements and in arguments to the jury, Attorneys shall not express personal knowledge or opinions

concerning any matter in issue.

12. It is inappropriate for any person present in Court to make gestures, facial expressions, outbursts, audible comments, or the like manifesting approval or disapproval of witness testimony or whatever else is occurring during Court proceedings. Attorneys certainly shall not engage in this type of conduct and shall instruct their clients not to engage in this type of behavior. Attorneys should further endeavor to inform those observers appearing supportively for their client or witness not to engage in this type of behavior. This behavior is strictly prohibited.

13. Attorneys shall refrain from making a re-argument after the Court has ruled.

14. Attorneys shall ensure that their clients are adequately informed of any settlement proposals.

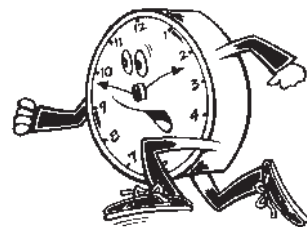
15. Attorneys shall cooperate with opposing counsel during trials and evidentiary hearings by disclosing the identities of all witnesses reasonably expected to be called and the length of time needed to present their entire case. Attorneys should cooperate with a request to call a witness out of turn when the circumstances justify it, unless a client's material rights would be adversely affected.

16. In the courtroom, Attorneys shall not use tobacco in any form, chew gum, or bring bottles, beverage containers, paper cups, or edibles, except as permitted by the Court.

17. Attorneys shall turn off or place in silent mode all cell phones and pagers. Attorneys shall further turn off or mute the audio of any computers brought into or used in Court, unless specifically permitted by the Court as part of the proceedings.

## **IT'S DUES RENEWAL TIME!**

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Dues Renewal  
Statements have  
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**A \$25 late fee applies.**

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- Update your contact information
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*For more information, please contact  
Susan Laviolette, Membership Manager,  
at [susanl@ocbanet.org](mailto:susanl@ocbanet.org).*

## *The OCBA and Florida's Legal Community in the 1970s*

*Maribel Mojica*

The 1970s were busy times for the Greater Orlando area. The population was growing, and, with the opening of Walt Disney's Magic Kingdom in 1971, we welcomed families and tourists from around the world to Central Florida. As our economy grew and tourism increased, so did development outside the boundaries of Walt Disney World.<sup>1</sup>

Despite the "magical" moments that came with Walt Disney World, according to OCBA past President **Michael Walsh**, the 1970s were the "most controversial" time for our legal community.<sup>2</sup> In 1970, we saw Florida Governor Claude Kirk in the media for his anti-busing antics when he intervened in the Manatee County school desegregation case in an effort to stop the school board from complying with federal desegregation rulings. Governor Kirk's anti-busing interventions came to a halt when a federal judge imposed a \$10,000 per day sanction against him.<sup>3</sup>

In 1972, we saw a controversial election over a city council seat right here in Orlando. **Arthur "Pappy" Kennedy** ran for city council and lost, or so they thought. After the results of the election were announced, he filed suit in Orange County Circuit Court alleging that the votes were miscounted. The court agreed. On January 15, 1973, Mr. Kennedy took office on the city council as the first African-American to sit on the city's ruling board.<sup>4</sup>

Arthur Kennedy was not the only African-American making Florida legal history in the 1970s. In 1975, Governor Reubin Askew appointed the first African-American Justice, **Joseph Hatchett**, to the Florida Supreme Court.<sup>5</sup> When Justice Hatchett resigned four years later, Governor Bob Graham looked to Orlando for his replacement. Governor Graham appointed the Honorable **Parker Lee McDonald**, who had served as an Orange County Circuit Court Judge and as a temporary appellate judge of the Fifth District Court of Appeals.<sup>6</sup>

The '70s also proved to be a historical decade for women. In 1979, President Jimmy Carter appointed **Susan Harrell Black** to the U.S. District Court for the Middle District of Florida, making her Florida's first female federal judge.<sup>7</sup>

We also saw some notable Florida court decisions during the 1970s. The Florida Supreme Court ruled in 1972 that Florida circuit courts lacked jurisdiction in cases previously delineated as capital, following the U.S. Supreme Court ruling that voided capital punishment.<sup>8</sup> There were also decisions that fundamentally changed Florida courtrooms. In 1975, the Florida Supreme Court launched

an experimental program involving the televising of civil and criminal trials with participant consent.<sup>9</sup> The Court expanded the experimental program to include the Ninth Circuit and other circuits in 1976, but the experiment still failed due to lack of litigant consent.<sup>10</sup> Thus, in 1977, the Court invoked a one-year pilot program whereby electronic media would be permitted to cover judicial proceedings in Florida courts without participant consent.<sup>11</sup> Ultimately, the Court decided that electronic media would be permitted access to Florida's courtrooms and amended the code of judicial conduct accordingly. During this time,

Orlando was experimenting with its own use of courtroom cameras. There are stories of **Judge Frank N. Kaney** allowing a witness testify in two separate trials in front of two separate juries at the same time with the use of video cameras. No one can deny that this was truly innovative for the '70s.

As the Central Florida legal community saw its share of ups and downs during the decade, the OCBA continued to thrive. **Judge Robert J. Pleus, Jr.** (1976-77 OCBA President) has fond memories of the OCBA during this decade. He recalls that "in 1962 there were only about 250 lawyers in Orlando and Winter Park," and, "with a couple



*Walt Disney with company at press conference: Orlando, Florida (1965). Walt Disney, Governor Haydon Burns, Roy Disney. Photo courtesy of the State Archives of Florida Memory Project*

*Continued on page 16*

of exceptions, there were no women lawyers.” Indeed, he reminisces, “I cannot remember any women being active in a leadership role in the Orange County Bar until **Judge Patricia Fawsett.**” Judge Pleus remembers only one African-American or minority attorney belonging to the OCBA back then: **Paul C. Perkins, Sr.**, who was a member of the Executive Committee and, according to Judge Pleus, “a likeable and very professional lawyer.” Judge Pleus also has fond memories of **Russell Troutman**, the “aggressive” Winter Park attorney who fought all the way to the U.S. Supreme Court to keep the OCBA Legal Aid Society locally funded and to prevent its merger with the government-funded Greater Orlando Area Legal Services (GOALS). Today, the Legal Aid Society remains locally funded. Thinking back on his tenure as OCBA President, Judge Pleus mentions two accomplishments that he considers the highlights of his year: the establishment of the Citizens Dispute Settlement program and the founding of the Council of Bar Presidents, which provided a forum for local bar presidents to meet and exchange ideas and program information.<sup>12</sup>

The 1970s brought both controversy and celebration to the Florida and Orlando legal communities. Through it all, the OCBA has continued to serve attorneys and Central Floridians with vitality and professionalism. It has ensured that attorneys have opportunities to network, exchange ideas, discuss current legal trends within their various practice areas, and participate in professional development activities to enrich their careers. And, most notably, OCBA members have worked to ensure that anyone in the community who needs legal representation has access to it. As the OCBA continues to grow, it is clear the organization and its members embrace the future yet still maintain their commitment to having a positive, lasting impact on the community. Judge Pleus, along with other past OCBA presidents, salutes the OCBA for its continuous support of its Legal Aid program, community outreach programs, and the visibility and opportunities the OCBA offers local attorneys.

<sup>1</sup> STEPHEN FJELLMAN, *VINYL LEAVES: WALT DISNEY AROUND THE WORLD* 128-30 (Westview Press 1992).

<sup>2</sup> Interview with Michael Walsh, 1973-74 OCBA President, in Orlando, FL (July 1, 2008).

<sup>3</sup> See [http://www.flahum.org/Assets/PDFs/Unfinished\\_Journey\\_Spring\\_2004.pdf](http://www.flahum.org/Assets/PDFs/Unfinished_Journey_Spring_2004.pdf).

<sup>4</sup> See Joy Wallace Dickinson, *A Fitting Tribute to “Pappy Kennedy”* ORLANDO SENTINEL (January 20, 2008), available at <http://www.orlandosentinel.com/news/columnists/orl-orflash2008jan20.0.2390550.column>

<sup>5</sup> MAXINE D. JONES AND KEVIN M. MCCARTHY, *AFRICAN AMERICANS IN FLORIDA: AN ILLUSTRATED HISTORY* 124-25 (Pineapple Press, Inc. 1993).

<sup>6</sup> <http://www.5dca.org/General%20Information/Courthistory.htm>.

<sup>7</sup> Juneau Empire Online: *A look at 11th Circuit Judges* (Nov. 17, 2000), available at [http://quest.juneauempire.com/stories/111700/gen\\_1117006925.shtml](http://quest.juneauempire.com/stories/111700/gen_1117006925.shtml).

<sup>8</sup> See *Donaldson v. Sack*, 265 So. 2d 499 (Fla. 1972).

<sup>9</sup> *In Re: Petition of Post-Newsweek Stations, Florida, for Change in Code of Judicial Conduct*, 370 So. 2d 764, 766 (Fla. 1979).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Interview with Judge Robert J. Pleus, Jr., 1976-77 OCBA President, in Orlando, FL (July 26, 2007).

*Maribel Mojica is a paralegal with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. She has been a member of the OCBA since 2006.*

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Gregory A. Presnell - 1975-1976  
Robert J. Pleus, Jr. - 1976-1977  
Robert W. Duckworth - 1977-1978  
Dan H. Honeywell - 1978-1979  
Chandler R. Muller - 1979-1980



*Florida Governor Claude Kirk*

Photo courtesy of the State Archives  
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*Justice Joseph Hatchett*

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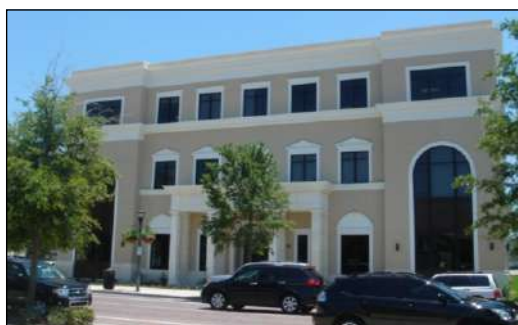
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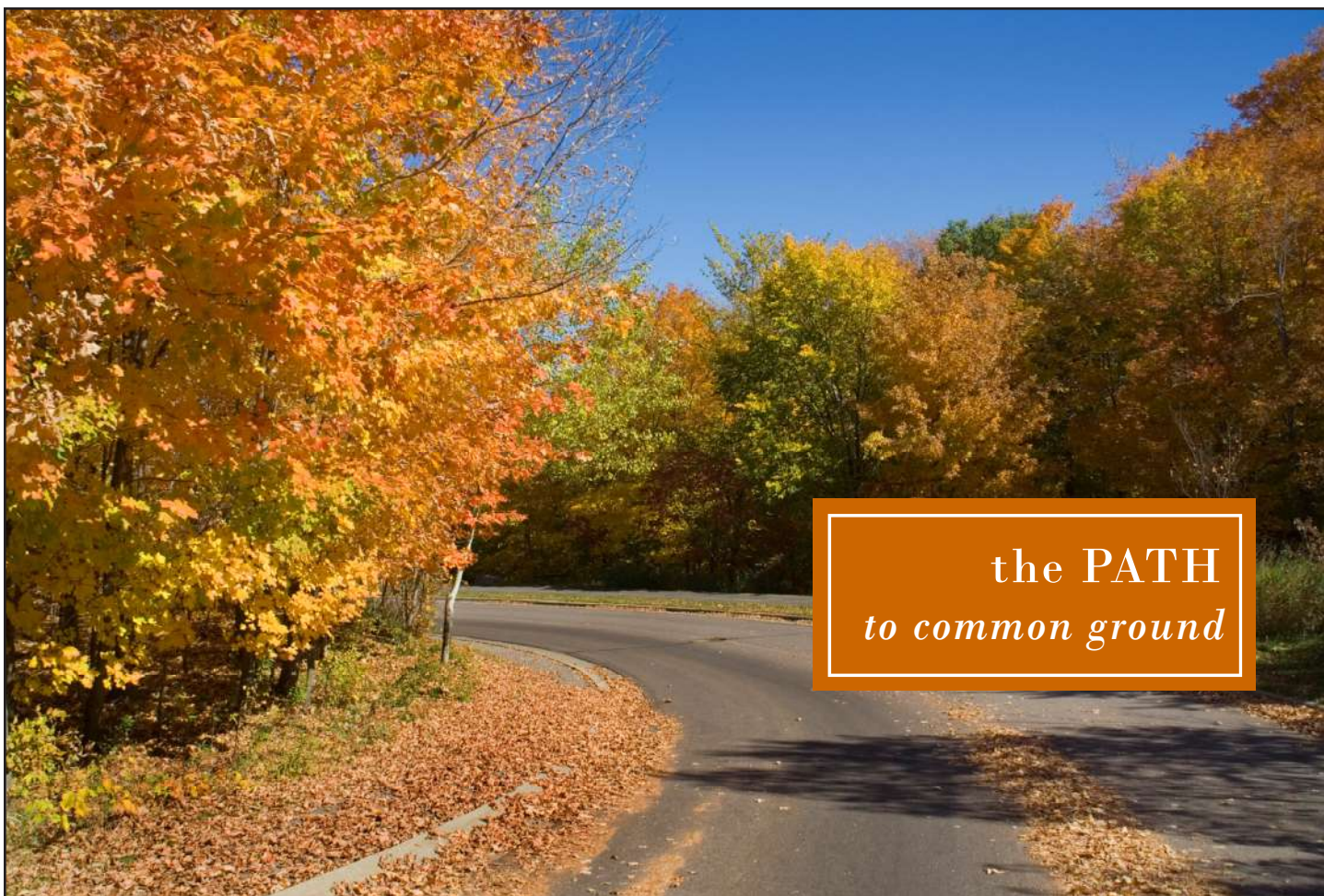
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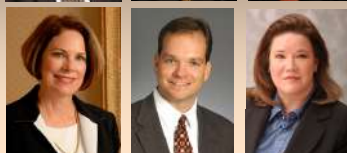
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## Bankruptcy Law Committee

### *New Florida Law May Hurt Homeowners in Foreclosure*

New Florida Statute § 501.1377 may make it impossible for homeowners to find lawyers to represent them in foreclosure or bankruptcy proceedings

— *Michael Alex Wasylik*



#### **Florida's new foreclosure rescue fraud law**

On May 28, 2008, Florida Governor Charlie Crist signed into law Fla. Stat. § 501.1377, which imposes broad-ranging restrictions on so-called “foreclosure rescue” service providers. The well-intentioned bill was meant to curb the worst abuses by bottom-feeding predators who use foreclosure as an opportunity to bilk money and property out of desperate homeowners. But some unintended consequences will likely leave homeowners out of luck when it comes to seeking legal representation after October 1, 2008, when the law takes effect.

Some of the protections in Fla. Stat. § 501.1377 will prevent con-artists from “rescuing” homeowners by signing them into predatory loans, getting them to sign over their property unwittingly, or just pocketing a fee to negotiate with the lender and then disappearing. Unfortunately, the broad scope of the law also means it applies some strict new regulations on Florida lawyers who are actually trying to help these homeowners – regulations which may prevent these homeowners from having access to legal assistance during a foreclosure.

#### **Scope of the new law**

Fla. Stat. § 501.1377 applies to all “foreclosure-rescue consultants” who provide homeowners with “foreclosure-related rescue services.” Those services include any service related to “[s]topping, avoiding, or delaying foreclosure proceedings concerning residential real property” or “[c]uring or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan obligation.”

Since attorneys are conspicuously absent from the list of entities exempt from application of the statute, this broad definition therefore includes consumer and bankruptcy lawyers who would represent homeowners defending against or seeking relief from a foreclosure suit. Here's why:

#### **Disclosure and cancellation requirements**

Among the requirements in the new law, these attorneys who may fall within the definition of “foreclosure-rescue consultants” would have to provide their prospective clients with written agreements containing certain disclosures – in uppercase type, no less – and also state “the exact nature and specific detail of each service to be provided” and “the total amount and terms of charges to be paid by the homeowner for the services.” The “consultant” must also provide a copy of the agreement to the homeowner “not less than 1 business day before the homeowner is to sign the agreement.” The homeowner also has a three-day right to

cancel the agreement after signing it.

The written disclosures and cancellation rights are minor impediments, but still they present problems for the lawyer who might represent a foreclosure defendant. First, without spending time reviewing the documents, it may not be possible to determine in advance the “exact nature” of the services to be provided. And for lawyers who might bill hourly, it is not at all possible to calculate the total charges to be paid until the work is actually done. It would be difficult, if not impossible, for many lawyers to take on new clients if they had to comply with these requirements.

Also, the one-day advance copy requirements and the three-day cancellation requirement effectively mean that any homeowner facing an immediate deadline may not be allowed to hire a lawyer. Have a court deadline tomorrow? Sorry, you can't hire a lawyer until a full business day has passed. Have a court deadline or sale date in two days? Sorry, but most lawyers won't enter a case until after the three-day cancellation notice has passed. Otherwise, the court might not let them out of the case if the client cancels. A homeowner who needs a lawyer in a hurry will have a hard time hiring someone before time runs out.

#### **Deferred fee requirements**

Besides the written agreement, the new law also forbids the “consultant” from asking for or accepting any fees from the homeowner “before completing or performing all services contained in the agreement for foreclosure-related rescue services.” What does this mean? It means that a lawyer who takes on a foreclosure defense or bankruptcy case can't even ask for a retainer – a deposit – until after he has already done all the work on the case, which may be months or even years later. It also suggests that a bankruptcy lawyer cannot ask for or accept any fee from his client until after the bankruptcy case has concluded, which means the bankruptcy attorney would be working for free since all debts owed and listed at the time a bankruptcy petition is filed, with limited exceptions, are discharged.

What effect would this have on the willingness or ability of lawyers to represent homeowners in foreclosure cases? For most, it means they can't. To defer a fee on a foreclosure defense until the end of a case not only means they have to wait to get paid, in most cases it means they won't get paid at all. Once a lawyer has provided his services, he can't take them back. He has no leverage to persuade a cash-strapped homeowner to pay the bill for services that have already been provided. Faced with the choice of taking on a long-deferred fee that might never be received, or refusing to take the case, most lawyers will refuse the case. And then the

*Continued on page 22*

# HEARSAY

*If it wasn't hard, everyone would do it.  
It's the hard that makes it great.*

– Tom Hanks



Jim Bacchus, former U.S. Congressman, was the guest speaker at June's luncheon. He spoke passionately about issues related to international trade and the global economy.



Past OCBA President, Dan DeCubellis, presented the Florida Bar Board of Governors report to members attending the luncheon.



Long-time OCBA member, Robert Hendry, introduced guest speaker Jim Bacchus. More than 275 members and guests turned out to hear the former Congressman.



David Yervey of Yervey and Yervey, P.A. is welcomed into the 100% Club at June's OCBA luncheon with a certificate presented by Woody Rodriguez.

My partner went to Rome, Italy, and all I got was a lousy "Hearsay" column item! Gregg "Viva Italia" Page not only gets to go and listen to the Pope in person, but happens to randomly time his trip so that he gets to see the above quoted Tom Hanks and Ron "Opie" Howard filming right outside his hotel, shooting the *Da Vinci* prequel, *Angels & Demons*, which runs around much of fair Roma. So when you spot Signore Page pretending to be an extra in the movie, you'll know you got the scoop here first!

Gregg wasn't the only one with a movie connection this week though. Congrats to **Mark Lang** of Mark Lang & Associates, who did his best Sean Connery imitation, re-enacting his *Escape from Alcatraz* feat from *The Rock*. This escape was in the form of a triathlon, where Mark and similarly inclined athletic masochists swam 1.5 miles through the chilly Pacific waters surrounding Alcatraz, biked 18 miles up and down San Fran's famous hilly terrain, followed by an eight-mile run through treacherous obstacles such as the 400 sand stairs of Baker Beach. Crazy? Yes. "Hearsay"-worthy? Absolutely. Tom's quote opening the column clearly fits this – congrats, Mark, on the best prison escape that didn't involve a Rita Hayworth poster.

Worry not, fellow attorneys – feats of strength and stamina may be one way into the column, but activities more lawyerly may do as well! A feat that would have scared Mr. Connery away would be taking – and passing – one of those Board Certification tests administered by a particularly devious section of The Florida Bar. Of those tests, it is general consensus that two such certifications are particularly hard-to-come by: appellate (where the pass rate amongst us über-geeks who take it is low) and family law (where the pass rate is apparently lower still). That said, two OCBA derring-doers have joined the ranks in those two fields, and so "Hearsay" extends a hearty congratulations to **Thomas W. Young**, appellate counsel for the Statewide Guardian ad Litem office, and to **Ingrid Keller** of the Law Office of Diane N. Holmes, for their respective certifications in appellate and family law.

While handing out kudos, still more super-distinguished-lawyer types, this time to some young lawyers who were named to the *Orlando Business Journal's* "40 Under 40" list. Hats off **Corina Castillo-Johnson** with Broad and Cassel, **Hank Didier, Jr.** of the Didier Law Firm, and Foley & Lardner's **Cristi Adams**.

---

*Nicholas A. Shannin*

Congrats to all three - there's no business like law business!

But back to show business. You remember Separated-at-Birth, don't you - where we accuse one of our colleagues of secretly being a twin of someone else? You know, like **Bill Vose** and Telly Savalas, or **Tad Yates** and Ferris Bueller? Well, this month's ringer is **Ian Forsythe** of Hilyard, Bogan & Palmer, P.A., who was separated at birth from the blond thespian playing one of the two prospective clients on those hilarious lawyer-interviewing-Coca Cola Zero commercials. My question is who is Ian's fellow taste-infringement plaintiff? Send your suggestions over to "Hearsay" at [nshannin@floridalawonline.com](mailto:nshannin@floridalawonline.com)! (Bonus question - I've got a couple of the various Sonic Drive-thru people pegged, but need a couple more to go live with the Separated-at-Birth suggestions.)

As for the last casting call, I had asked for your favorite needs-an-updated-picture-in-the-Membership Directory candidates and, despite some stiff competition, our easy winner was past LAS president **Dennis "The Cardinal" O'Connor** with Cooney, Mattson, Lance, Blackburn, Richards & O'Connor, P.A. Proving to be a great sport, Dennis has not only accepted the award, but even volunteers this month's trivia question, related both to his new moniker and to the Vatican theme at the outset: identify the name of the small red cap worn by those Cardinals not found in St. Louis. Winner gets a prize and name in lights here. Last issue's winner - **Jennifer Jones Bloodworth** of Winderweeddle, Haines, Ward & Woodman, P.A., the self-avowed Brat Packer who correctly identified the Billy Hicks quote as originating with Rob Lowe in the '80s canon film, *St. Elmo's Fire*. Congrats Jennifer! (Plus, look, another Saint to keep the theme going!)

Okay, that's about it this month, except to mention that the **OCBA Joint Happy Hour** with other voluntary bars will take place on November 6 at a location TBA. For details on what promises to be a super-star-studded-event (*local* super stars, that is), contact **Jacquelynne Jordan** at [jacquelynne.jordan@lowndes-law.com](mailto:jacquelynne.jordan@lowndes-law.com).

Next month, look for this critic's review of the Trivia Fest and other fun events, and send your kudos, news of lawyers acting like angels or demons, and other interesting tidbits of info to me here at Casting Central - [nshannin@floridalawonline.com](mailto:nshannin@floridalawonline.com). It's a wrap!

---

*Nicholas A. Shannin is a Board Certified Appellate Attorney and a partner with Page, Eichenblatt, Bernbaum & Bennett. He has been a member of the OCBA since 1995.*



OCBA Appellate Practice Committee (APC) members are shown with retired Judge James C. Dauksch, Jr. at the APC's May dinner. The entire Court, including Judges Dauksch and Antoon, attended.



Chief Judge William D. Palmer spends a few minutes with Appellate Practice Committee member Jessica Hew.



Abdelrahman Zeini of The Zeini Law Firm, P.A. accepts a 100% Club certificate from Woody Rodriguez at June's luncheon.



The Winter Park firm, Allen, Norton & Blue, P.A., joins the ranks of firms with 100% membership in the OCBA. Laura Weis and Bona Kim accept the certificate on behalf of the firm.

homeowner has to face foreclosure alone. This is helping?

### **Aiming at the wrong target**

The worst part is, there's no need at all to apply these restrictions to consumer and bankruptcy lawyers who represent foreclosure defendants. Attorneys who, in good faith, take on these cases and litigate them can provide an enormous benefit to their clients. The rare attorney who takes a fee, pockets it and disappears is subject to the strict discipline of The Florida Bar. And, despite the rash of foreclosure rescue scams in Florida and across the nation, I know of none that involve lawyers representing homeowners in court proceedings. By lumping these lawyers in with everyone else, the legislature tried to fix a problem that doesn't exist.

### **Is there any hope for the future?**

I hope I'm wrong about the scope of the bill, but I'm afraid that it means exactly what I think it means. No doubt the consumer law bar will eventually figure out a way to modify these restrictions, but until then, homeowners seeking legal help are getting the short end of the legislative stick.

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*Michael Alex Wasylik is a founding partner of Ricardo & Wasylik, PL, in Dade City, Florida. This article was originally published on the author's website at <http://fwasyliklaw.com>. Lori Patton, chair of the OCBA Bankruptcy Law Committee and OCBA member since 2007, reviewed and submitted this article on behalf of the committee.*



## ***Bruce B. Blackwell Receives The Florida Bar's Outstanding Past Voluntary Bar President Award***

Bruce B. Blackwell of King, Blackwell, Downs and Zehnder, P.A. recently was awarded The Outstanding Past Voluntary Bar President Award by The Florida Bar's Council of Voluntary Bar Presidents. In its thirty-five year history, six other members of the OCBA have received the award: Michael R. Walsh (1974); Joel H. Sharp (1979); Fletcher Rush (1983); Russell Troutman (1984); R. Lee Bennett (2003); and Odessia Y. Joyner on behalf of the Paul C. Perkins Bar (2007).

The Florida Council of Bar Association Presidents' Outstanding Past Voluntary Bar President Award recognizes former voluntary bar association presidents who have continued to offer important service to the bench, bar, and public and emphasizes the importance of the close liaison between The Florida Bar and voluntary bar associations.

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# YLS on the Move!

## Midsummer Happenings



*Bridget Heffernan Labutta*

I hope everyone has been having a fun and productive summer! The heat and rain hasn't slowed down the YLS this season. We have been having a great time socializing and networking with our fellow members and welcoming our summer interns into the Orlando legal community.

Before telling you about all the fun and exciting events on the YLS calendar, I wanted to take a moment to introduce myself – your new “YLS on The Move” columnist. I am thrilled to take on this role and look forward to dishing about all the YLS happenings in the past and the future. If you ever have an exciting story to share about a YLS member, or know of an award or accolade presented to one of our members, please send an e-mail to me, Bridget Heffernan Labutta, at [blabutta@addmg.com](mailto:blabutta@addmg.com). Photographs are welcomed and encouraged!

Next time you see him, be sure to say THANK YOU to **Taylor Kessel** for all his hard work over the past eighteen months as the “voice” of the YLS in *The Briefs*. As you may have read in last month's column, Taylor is staying active in the YLS as a board member. My goal is to keep you as well informed and as entertained as Taylor has over the past year and a half (fingers crossed!).

And introducing...the **2008 - 2009 YLS Officers and Board Members**: **Chelsie Roberts**, President; **Ryan Davis**, President-Elect; **Eric Reed**, Treasurer; **Lauren Heatwole**, Secretary; **Liz McCausland**, Past President; **Bridget Heffernan Labutta**, Communications Coordinator; and Board Members **Kristen Cox**, **Maria Hale**, **Jason Hill**, **LaShawnda K. Jackson**, **Taylor Kessel**, **Kristopher Kest**, **Heather Pinder Rodriguez**, **Melanie Shoemaker** and **Tony Sos**. We all look forward to a successful year!

The annual **Afternoon at the Courthouse** event took place on June 20, and we have **Kristopher Kest** and **The Honorable C. Jeffery Arnold** to thank for all their hard work organizing another outstanding program. It was a big success with more than 50 new and upcoming legal professionals in attendance. The summer interns and new associates at my firm had only great things to say about the program, and they especially enjoyed the ever-popular skit. If anyone is interested in helping to plan next year's event (it's never too early to start planning!), please contact **Jonathan Stimler** ([jstimler@lseblaw.com](mailto:jstimler@lseblaw.com)).

Other big YLS events in June included the **Family Picnic Day** at the Zoo on June 14. Many thanks to **Kara Rogers** for putting that together. We also had the summer **Pub Crawl** on June 7, which is always a great way to have a bit of fun. Kudos to **Kristen Cox** and **Allison Twombly** for arranging the Crawl.

Your next opportunity to have a bit of fun will be the **OCBA Joint Happy Hour** on November 6. Keep your eyes open for more information on this event in your upcoming YLS e-mail blasts, or contact **Kimberly Webb** ([kdwebb@littler.com](mailto:kdwebb@littler.com)) for more information or to volunteer to help plan the Happy Hour.

Also, mark your calendar for the **Fall Oath of Admission** ceremony that will take place in September when we will toast all of those new attorneys still basking in the joy of passing the bar exam. Your upcoming YLS e-mail blasts will include info on this event, too, or you can contact **Lauren Carmody** ([lcarmody@rumberger.com](mailto:lcarmody@rumberger.com)) for more information or to volunteer to help plan this event.

The **Law Clerks' Reception** Committee Chair, **Melanie Shoemaker**, would like to thank everyone who attended the reception and all of the generous sponsors who made the event possible. More information about the reception will be included in next month's issue of *The Briefs*. Melanie would like to give a huge thanks to members of the committee, each of whom spent many hours planning the event.

The annual **YLS Golf Tournament** will take place on October 3, 2008, at ChampionsGate. This is one of the best-attended (and most fun) events of the year, and money raised through sponsorship of this event helps to fund many other YLS charitable activities. If you are interested in helping to plan the event and bring in sponsors, e-mail **Sunny Lim** ([slim@sctlaw.com](mailto:slim@sctlaw.com)) or **Jason Hill** ([jhill@shutts.com](mailto:jhill@shutts.com)).

As you may already know, YLS meets the third Thursday of each month for a luncheon at the Citrus Club (255 S. Orange Avenue, 18th floor), and we are always interested in seeing new faces, including law students, attorneys who just moved into the greater Orlando area and guests. Stop by to see what we're all about, and come back again as a new member! The **YLS August Luncheon** will take place on Thursday, August 21. RSVP to [ocbayls@gmail.com](mailto:ocbayls@gmail.com) by Tuesday, August 19. The cost is \$18 if you RSVP on or before August 19, \$20 at the door, or \$10 for sole practitioners, law students and government attorneys and judges.

If you have any questions or want to find out more about our section and its committees, please call me at 407-841-2330 x111 or e-mail me at [blabutta@addmg.com](mailto:blabutta@addmg.com). I'd love to hear from you! Finally, if you are not receiving the YLS e-mail blasts, send an e-mail to [ocbayls@gmail.com](mailto:ocbayls@gmail.com) to sign up.

*Bridget Heffernan Labutta is an associate with Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. She has been a member of the OCBA since 2006.*



## Family Law Committee

### ***Chapter 2008-61*** **An Evolution in Statutes Affecting Family Law Issues**



*Richard D. West, Caryn M. Green, Andrea L. Cain, and Jeffrey A. Conner*

#### ***Part I: Introduction***

On May 28, 2008, Governor Charlie Crist signed into law Chapter 2008-61,<sup>1</sup> a sweeping family law bill that contains revisions for Chapters 61, 409, 414, 445, 741, 742, and 827 of the Florida Statutes. At first glance, Chapter 2008-61 might look like it does nothing more than change terminology throughout the affected statutes. Some might see it as a simple, clerical task requiring only the “find and replace” feature of a basic word processor. Find “custody,” replace with “time sharing.” Find “custody order,” replace with “Parenting Plan.” Repeat. But a more in-depth consideration of the bill shows it to be an important step forward in the evolution of the laws of Florida affecting the relationship between the courts, parents, and their children.

This evolution started with the Shared Parental Responsibility Act that became effective on July 1, 1982 (the “1982 Act”), the purpose of which was to throw out the win/lose mentality of custody decisions of the time where one parent was awarded full physical custody and decision-making authority over a child and the other parent was allowed to visit with the child as a type of consolation prize. This was replaced with the concept of Shared Parental Responsibility where the duties and rewards of raising a child were viewed as a bundle of rights and responsibilities to be shared by both parents. The rationale behind the 1982 Act was expressed in Section 61.13(2)(b)1, “[i]t is the public policy of this state to assure that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is dissolved and to encourage parents to share the rights and responsibilities, and joys, of childbearing.”

Thus under the 1982 Act, both parents were usually awarded Shared Parental Responsibility for their children whereby they were to consult and make decisions on important aspects of their children’s lives such as religion, education, and health. One parent was usually awarded primary residential responsibility of a child. By replacing the term “custody” with “primary residential responsibility,” the 1982 Act attempted to convey the idea that the physical location of the child was simply one of several parental responsibilities to be shared between the parents. The hope was that while one parent might be designated the Primary Residential Parent, both parents were to remain fully involved in their children’s lives.

Since the enactment of the 1982 Act, child development literature has continued to show that children suffer when they are the subject of animosity between the parents and heated court battles and that it is the best interests of most children to maintain a close relationship with both parents

after a divorce (or the parents’ separation if they were never married). More specifically, the recent literature shows that such children do better when they can spend substantial time with each parent. It was hoped that the 1982 Act would protect children from the most destructive consequences of their parents’ decision to part and make the transition from a unified family to a divided family as smooth as possible.

The promise of the 1982 Act, while laudable, has not been fully realized in the years since. Parents continued to battle, albeit for the title Primary Residential Parent, because too many parents continued to believe that with the title goes the authority to make all of the important decisions for the child. Decisions regarding who would be designated the Primary Residential Parent, and who would be designated the Secondary Residential Parent were still approached with the win/lose mentality of the old custody and visitation awards. The rationale and philosophy behind the 1982 Act often seemed lost on parties as they fought to obtain the coveted title of Primary Residential Parent.

It can be assumed that by replacing those terms that continued to divide parties between “primary” and “secondary” parents (and thus were providing more fuel for parental battles) with more neutral terms, the authors of Chapter 2008-61 were hoping to defuse determinations affecting the relationships between parents and their children. But the new bill goes further than a simple change in terminology and makes substantive revisions to the statutes involved that appear to recognize the recent developmental literature by embracing and promoting the goal of allowing children to spend substantial time with both parents.

#### ***Part II: Substantive Changes***

##### **Statutory Factors**

As discussed above, the most obvious revision in the new legislation is the change in the terminology used in the affected family law chapters. The terms “custody,” “custodial parent,” and “noncustodial parent” have been eradicated. The term “Primary Residential Parent” has been tossed to the junk pile. “Visitation” has hopefully seen its last days. However, there are several significant changes in Chapter 61 that should be understood, above and beyond the simple change in terminology.

Not surprisingly, one important revision begins with a terminology change. Instead of a visitation schedule, which typically sets out the contact times for the Secondary

*Continued on page 26*

<sup>1</sup>Chapter 2008-61 will become effective on October 1, 2008.

Residential Parent, both parties' relationship with a minor child will now be governed by a Parenting Plan, part of which shall be a time-sharing schedule. To develop a Parenting Plan, certain factors affecting the welfare and interests of the minor child must be considered. These factors comprise another importing feature in the new legislation.

Prior to the new revisions, Section 61.13(3) provided a list of factors used to determine primary residential responsibility that have been widely used by judges and that have remained relatively unchanged over the past fifteen to twenty years. These factors were not exclusive and contained the catch-all "any other factor considered by the Court to be relevant." The new legislature shifts the focus of §61.13(3)<sup>2</sup> from a determination of primary residential responsibility to the development of a Parenting Plan and has enacted significant changes to the statutory factors to be considered.

In general, the new list of factors is more specific as to the issues of parenting. They appear to be geared towards determining which parent has been most involved in the day-to-day care of the child, both prior to and during any court action, and which parent can place the interests of the child above his or her own interests or his or her own animosity toward the other parent.

The new statute has also adopted the idea of an age appropriate time-sharing schedule. The prior statute stated that "the Court may not deny the noncustodial parent overnight contact and access to or visitation with the child solely because of the age or sex of the child." Fla. Stat. §61.13(7). This provision has been deleted and, under 61.13(3)(s), the Court must now weigh "the developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child's developmental needs." While many mental health experts and family law practitioners will hail this as a change for the better as it recognizes the reality of developmental changes seen in children as they grow, others will view this as a revival of the "tenders years" doctrine, which was rejected in the past because it was seen as an unfair presumption in favor of the mother.

## **Parenting Plan**

Another significant evolution of Chapter 61 resulting

from the recent legislation is the concept of a "Parenting Plan." Not only is this a change in the terminology from our old Visitation Schedules, but the statute also appears to require a great deal more detail than what attorneys or judges had previously been required to place in Agreements or Final Judgments. The "Parenting Plan" must contain "adequate" detail as to: (1) how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; (2) a time-sharing schedule that specifies the time that the minor child will spend with each parent; (3) a designation of who will be responsible for any and all forms of health care, school-related matters, and other activities; and (4) the methods and technologies that the parents will use to communicate with each other. The question will be: what is "adequate" detail?

The statute now also requires that the Parenting Plan address "all jurisdictional issues," including the UCCJEA, PKPA, the International Child Abduction Remedies Act, and Hague Convention. However, the statute provides no guidance as to what, specifically, must be included. Does it simply have to be stated that Florida has jurisdiction under the UCCJEA and PKPA because it is the home state of the child, or do all of the UCCJEA elements usually pled in an initial custody petition have to be stated? For the Hague Convention, must it state that the United States is the country of habitual residence of the child?

## **Relocation Statute**

The revisions in Chapter 2008-61, as quite often occurs when such sweeping changes are made to multiple statutes, raise a few questions. One such question is evident in the revision to Section 61.13001, Fla. Stat. – the relocation statute. The statute applies when the principal residence of the child is relocated more than 50 miles from the child's principal place of residence at the time of entry of the last order establishing or modifying the Parenting Plan or time-sharing schedule. Confusion arises because the Florida legislature deleted the definition of the "principal residence of a child." Thus, which home is the child's primary residence if there is no official designation? If either parent relocates more than 50 miles, does the statute apply? What if the moving parent only has the child four days out of the

*Continued on page 28*

<sup>2</sup>Section 61.13(3) now states:

(3) For purposes of establishing or modifying parental responsibility and creating, developing, approving, or modifying a Parenting Plan, including a time-sharing schedule, which governs each parent's relationship with his or her minor child and the relationship between each parent with regard to his or her minor child, the best interest of the child shall be the primary consideration. Determination of the best interests of the child shall be made by evaluating all of the factors affecting the welfare and interests of the minor child, including, but not limited to:

- (a) The demonstrated capacity and disposition of each parent to facilitate and encourage a close and continuing parent-child relationship, to honor the time-sharing schedule, and to be reasonable when changes are required.
- (b) The anticipated division of parental responsibilities after the litigation, including the extent to which parental responsibilities will be delegated to third parties.

- (c) The demonstrated capacity and disposition of each parent to determine, consider, and act upon the needs of the child as opposed to the needs or desires of the parent.
- (d) The length of time the child has lived in a stable, satisfactory environment and the desirability of maintaining continuity.
- (e) The geographic viability of the Parenting Plan, with special attention paid to the needs of school-age children and the amount of time to be spent traveling to effectuate the Parenting Plan. This factor does not create a presumption for or against relocation of either parent with a child.
- (f) The moral fitness of the parents.
- (g) The mental and physical health of the parents.
- (h) The home, school, and community record of the child.
- (i) The reasonable preference of the child, if the court deems the child to be of sufficient intelligence, understanding and experience to express a preference.



## Intellectual Property Committee

### ***KSR v. Teleflex: The Supreme Court Rejects the Federal Circuit's Rigid Approach to Obviousness Determinations***

Barry L. Grossman, Anat Hakim and Ron Schirtzer

*"It requires a very unusual mind to undertake the analysis of the obvious."*

– Alfred North Whitehead, British Mathematician and Philosopher (1861-1947)

In patent law it is not always obvious or easy to determine an "obvious" invention. Lawyers, judges, inventors, and business executives continue to struggle with this seemingly simple issue.

On April 30, 2007, the U.S. Supreme Court gave its guidance on the subject when it unanimously reversed the U.S. Court of Appeals for the Federal Circuit in *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 167 L. Ed. 2d 705, 75 U.S.L.W. 4289 (2007). In the wake of the Supreme Court's decision, several questions leap to mind: Does *KSR* change the law? How will it affect litigation? Will patents be harder to obtain and enforce? This is the first time the Supreme Court has considered the question of obviousness under 35 U.S.C. § 103 in the 25-year history of the Federal Circuit. It is a significant decision that will affect how we obtain and litigate patents.

The *KSR* case concerns a basic issue of whether or not a claimed invention is patentable. The invention at issue was a mechanism that combined an electronic sensor with an adjustable automobile pedal so that the pedal's position could be transmitted to a computer that controlled the throttle in the vehicle's engine.

#### **Obvious Inventions Are Not Patentable**

An applicant is not entitled to a patent if the differences between the invention sought to be patented and prior patents, prior publications, or other prior information are such that the invention as a whole "would have been obvious" at the time the invention was made to a person having ordinary skill in the technology to which the invention pertains. In applying this standard, the Federal Circuit has held that even if all of the elements of an invention can be found somewhere in prior patents, publications, or other available information, the invention still is not obvious unless there is a "teaching, suggestion, or motivation" (TSM) to combine the prior information to create the claimed invention, with the TSM found in some place other than the inventors' disclosure.

The Supreme Court opinion reversed what it characterized as the Federal Circuit's "rigid approach" in analyzing the question of obviousness. In so doing, the Supreme Court's opinion re-emphasized that an obviousness determination required a "broad inquiry."

#### **Is *KSR* a Substantial Change in the Law?**

One of the things that makes the *KSR* case so challenging

is the widely divergent views on its interpretation. For example, Judge Holderman, Chief Judge of the U.S. District Court for the Northern District of Illinois, stated: "I believe the Supreme Court believes that it changed the law substantially, and it meant to." *A Panel Discussion of Obviousness in Patent Litigation, KSR International v. Teleflex*, 6 J. MARSHALL REV. ITELL. PROP. L. 595, 600 (2007). Gerald J. Mossinghoff, former Assistant Secretary of Commerce and Commissioner of Patents and Trademarks, and former President of the Pharmaceutical Research and Manufacturers of America, however, wrote that: "[i]t seems clear to me that the *KSR* case will not come close to producing a sea change in U.S. patent law." *KSR v. Teleflex: High Court's "Obviousness" Ruling No Sea Change Patent Law*, WASH. LEGAL FOUND., Vol. 22, No. 21, June 8, 2007. Judge Ellis, a senior judge on the U.S. District Court for the Eastern District of Virginia, stated that *KSR* "raises the bar" for obtaining and enforcing patents. Senior Judge Thomas S. Ellis, III, Remarks at the BNA and ABA Section of Intellectual Property Conference (Oct. 1, 2007). However, Chief Judge Michel from the Court of Appeals for the Federal Circuit stated exactly the opposite. His view is that the standard for obviousness is statutory and courts cannot "raise or lower the bar." Chief Judge Paul R. Michel, Remarks at the BNA and ABA Section of Intellectual Property Conference (Oct. 1, 2007).

Perhaps the most graphic characterization of the *KSR* case was from Judge Kennelly of U.S. District Court for the Northern District of Illinois. Judge Kennelly stated: "If I had to boil this case down into two things, it would be, number one, the Supreme Court is saying to the Federal Circuit, 'You're not the Supreme Court of patent law. We are.'" Number two, 'You've screwed it up.' I think that is the narrow holding of *KSR*, frankly." 6 J. MARSHALL REV. ITELL. PROP. 595, 607.

So far, there are no signs of a great sea change based on Circuit and District court application of *KSR*. In applying a non-rigid TSM approach, courts continue to uphold patents against obviousness challenges. See *Ortho-McNeil Pharmaceutical, Inc. v. Mylan Laboratories, Inc.*, 520 F.3d 1358 (Fed. Cir. 2008) and *Takeda Chemical Industries, Ltd. v. Alphapharm Pty., Ltd.*, 492 F.3d 1350 (Fed. Cir. 2007), cert. den. 76 USLW 3374 (March 31, 2008) (both rejecting obviousness attack on drug patent where there was no record of a finite group of solutions, or motivation to combine known elements); see also *Lucent Technologies v. Gateway, Inc.*, 509 F. Supp. 2d 912 (S.D. Cal. 2007) (refusing to overturn jury rejection of obviousness defense in a patent infringement case based on issuance of *KSR*

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month? Is primary residence going to be interpreted by the courts as where the child resides the majority of the time? Could it be where the child attends school?

### **Parenting Plan Recommendation**

Another question is raised by Section 61.046(14). This provision states a “Parenting Plan recommendation” means a nonbinding recommendation made by a psychologist licensed under Chapter 490. But Section 61.20 provides that a social investigation and recommendation regarding a Parenting Plan can be done by a qualified staff of the Court, a child placement agency, a psychologist, or a clinical social worker, marriage and family therapists, or mental health counselor. Can only a psychologist provide a Parenting Plan recommendation to the Court, as set forth in Section 61.046(14), or can the other individuals identified in Section 61.20 provide such recommendations?

### ***Part III: Drafting Considerations of the Parenting Plan***

Issues surrounding children during a divorce tend to be the most difficult areas, contributing significantly to the cost and conflict during the litigation process. The outcome of such litigation has historically ended in a visitation or contact schedule contained within a Final Judgment of Dissolution of Marriage or Marital Settlement Agreement. However, under Chapter 2008-61, these various provisions have now been replaced by a much more detailed document entitled a “Parenting Plan.” The details that will be seen in the Parenting Plan are important to be sure that the circumstances individual to each family are addressed. Although the Parenting Plan will be unique to each family, there are certain mandatory requirements that will be essential in all “plans.”

The Parenting Plan can be developed by agreement of the parties or by the Court if the parties are unable to agree. In either event, the Parenting Plan will be a mandatory component in the divorce proceedings. The Parenting Plan will be a combination of statutory jurisdictional language, parenting guidelines, and expectations and will include details on when a child will be with a parent and which parent will do what parenting tasks.

When developing a Parenting Plan for your client, there are various issues that need to be considered. At a minimum, the following issues must be included in a Parenting Plan:

A. The Time Sharing Schedule. Where will the children live? What will the overnight schedule be for each parent and the children? Will the schedule change once the child reaches another developmental stage? What will the schedule be during the holidays? Will there be a provision for unique holidays like the child’s birthday or the parent’s birthday? Will the schedule differ if there is school versus a school holiday? Where will the children spend their breaks from school, like summer, spring break, etc.? How will changes to the schedule be handled?

B. Daily Tasks. Who will be responsible for the daily tasks associated with the upbringing of the children? This could include transportation issues as well as ensuring proper medical and dental care. Who will be responsible for any and all forms of health care, school related matters, sports, hobbies, and all other activities of the child?

C. Communication. May the children call the other parent at any time or will there be a set schedule for phone calls? What other forms of communication between parent and child are appropriate? Is email an acceptable form of communication or video conferencing? Should the child have a personal cell phone or a private phone line in his or her bedroom?

Aside from the specific terms above, the statute also requires that jurisdictional issues be addressed in the Parenting Plan. These jurisdictional requirements will replace what used to be a general provision contained within the Marital Settlement Agreement and Final Judgment stating that “Florida has jurisdiction.”

Although the Parenting Plan will be a different form for the practitioners, courts, and litigants to use, the concepts as outlined are similar to those currently seen in most detailed Marital Settlement Agreements. For the seasoned practitioner, the change in the language will be more of an adjustment than the use of the required Parenting Plan.

### ***Conclusion***

It would be a mistake to believe that the statutory

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- (j) The demonstrated knowledge, capacity, and disposition of each parent to be informed of the circumstances of the minor child, including, but not limited to, the child’s friends, teachers, medical care providers, daily activities, and favorite things.
- (k) The demonstrated capacity and disposition of each parent to provide a consistent routine for the child, such as discipline, and daily schedules for homework, meals, and bedtime.
- (l) The demonstrated capacity of each parent to communicate with the other parent and keep the other parent informed of issues and activities regarding the minor child, and the willingness of each parent to adopt a unified front on all major issues when dealing with the child.
- (m) Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action regarding those issues has been brought.
- (n) Evidence that either parent has knowingly provided false information to the court regarding any prior or pending action regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect.
- (o) The particular parenting tasks customarily performed by each parent and

- the division of parental responsibilities before the institution of litigations and during the pending litigation, including the extent to which parenting responsibilities were undertaken by third parties.
- (p) The demonstrated capacity and disposition of each parent to participate and be involved in the child’s school and extracurricular activities.
- (q) The demonstrated capacity and disposition of each parent to maintain an environment for the child which is free from substance abuse.
- (r) The capacity and disposition of each parent to protect the child from the ongoing litigation as demonstrated by not discussing the litigation with the child, not sharing documents or electronic media related to the litigation with the child, and refraining from disparaging comments about the other parent to the child.
- (s) The developmental stages and needs of the child and the demonstrated capacity and disposition of each parent to meet the child’s developmental needs.
- (t) Any other factor that is relevant to the determination of a specific Parenting Plan, including the time-sharing schedule.

opinion). Indeed, in upholding the rejection of a patent application for obviousness, the Federal Circuit recognized no dramatic change created by *KSR* and referred to the decision as correcting “a rather straight forward error.” *In re Translogic Technology, Inc.*, 504 F.3d 1249 (Fed. Cir. 2007). However, the jury is still out on the scope and impact of *KSR*, and all patent litigants need to factor it into their litigation strategies.

### Did the Supreme Court Create a Two-Tiered Patent System?

The *KSR* decision does not purport to make new law. The decision reaffirms and applies principles that the Supreme Court has articulated and applied in numerous patent precedents dating back to 1851.

*KSR*, however, describes two kinds of patents: (1) “combination” patents and (2) non-combination patents. A combination patent is one that “unites old elements with no change in their respective functions.” The Court stated that: “For over half a century, the Court has held that a patent for a combination which only unites old elements with no change in their respective functions . . . obviously withdraws what is already known into the field of its monopoly and diminishes the resources available to skillful men.” *KSR*, 127 S.Ct. at 1739.

The Supreme Court provides us some guidance on what it regards as obvious and what it regards as not obvious. For “combination” patents, *KSR* states that “when a patent ‘*simply arranges old elements with each performing the same function it had been known to perform*’ and yields no more than one would expect from such an arrangement, the combination is obvious.” *Id.* (emphasis added.) Conversely, if the claimed invention is more than the predictable use of prior art elements according to their established functions, then the invention likely will be found to be not obvious.

Non-combination patents are those where “the claimed subject matter may involve more than the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.” *Id.* at 1740. The Court acknowledged, however, that for non-combination patents, “[f]ollowing these principles may be more difficult.” *Id.*

Yet, as a practical matter most inventions in most technologies are made of old or familiar elements. As Judge Learned Hand observed almost 50 years ago, “substantially every invention” is a “combination of old elements.” *Reiner v. I. Leon Co.*, 285 F.2d 501 (2nd Cir. 1960). Former Chief Judge Markey similarly noted “[t]here is not one word in the statute concerning ‘combinations of old elements,’ and nowhere does the statute concern itself with whether an invention is a ‘combination.’” *Why Not the Statute*, 65 J. PAT. OFF. SOC’Y, 331, 334 (1983). He also stated that if a combination-of-old-elements test was used to determine a patentable invention, it “would destroy the [patent] system.” *Id.* More recently, the Court of Appeals for the Federal Circuit wisely noted that inventors “must work with old elements.” *Fromson v. Advance Offset Plate*, 755 F.2d

1549, 1556 n.3 (Fed. Cir. 1985).

### What’s the Problem?

In *KSR*, the Supreme Court identified three errors in the Federal Circuit’s obviousness analysis. First, the Supreme Court held that “any need or problem known in the field of endeavor at the time of invention and addressed by the patent can provide a reason for combining the elements in the manner claimed.” *KRS*, 127 S. Ct. at 1742. This is in contrast to the Federal Circuit’s rule that only problems addressed by the patentee could be considered as the source of a motivation to combine references. Thus, for example, under the logic of *KSR*, a prior patent seeking to solve a problem involving turbulent air flow over the wing of an aircraft may be used against a medical device invention seeking to solve a problem involving turbulent flow of blood over a heart valve, since both arguably relate to the same problem – turbulence – and the same field of endeavor – fluid or air flow.

Second, the Supreme Court held that the Federal Circuit had adopted too constricted a view of the person of ordinary skill in the art. Because “[a] person of ordinary skill also is a person of ordinary creativity, not an automaton,” the fact that an invention is obvious to try may suffice to establish unpatentability. *Id.* According to the Supreme Court, the fact that a combination is obvious may show obviousness under §103. *Id.*

Third, the Supreme Court explained that the Federal Circuit had overemphasized the risk that patent examiners and courts would fall prey to hindsight bias. The Supreme Court cited and relied on only six of its many cases on obviousness: *Graham v. John Deere*; 383 U.S. 1, 86 S.Ct. 684, 15 L.Ed.2d 545 (1966); *Hotchkiss v. Greenwood*, 52 U.S. 248, 11 How. 248, 13 L.Ed. 683 (1851); *A&P v. Supermarket Equipment*, 340 U.S. 147, 71 S.Ct. 127, 95 L.Ed. 162 (1950); *United States v. Adams*, 383 U.S. 39, 86 S.Ct. 708, 15 L.Ed.2d 572 (1966); *Anderson’s-Black Rock v. Pavement Salvage*, 396 U.S. 57, 90 S.Ct. 305, 24 L.Ed.2d 258 (1969); and *Sakraida v. AG Pro*. 425 U.S. 273, 96 S.Ct. 1532, 47 L.Ed.2d 784 (1976).

A look back at these old cases may be helpful in predicting the future. Only *Adams* found the patent valid. 383 U.S. at 51-52. In all of these cases, the facts were similar in that all the elements were known in the prior art; there was generally a long-felt need; and there was commercial success. In the *A&P* case, the Court even noted that the invention was “a good idea.” 340 U.S. at 153. Still, the patents were all held invalid. Moreover, the *KSR* Court adopted and endorsed the “doctrines” from these cases. *KSR*, 127 S.Ct. at 1739-40. It is likely that they will receive far more prominence in future cases.

### More Summary Judgments?

In *KSR*, the district court granted summary judgment of invalidity. *KSR*, 127 S. Ct. at 1738-39. The Federal Circuit reversed, finding that there were genuine issues of

*Continued on page 30*

material fact. *Id.* at 1740. The Supreme Court vacated the ruling differing with the Federal Circuit on this issue, as well. *Id.* at 1746. The Court stated that where the content of the prior art, the scope of the patent claim, and the level of ordinary skill in the art are not in material dispute, and the obviousness of the claim is apparent in light of these factors, summary judgment is appropriate. *Id.* at 1745-46. The Court noted that an expert's conclusory affidavit is not sufficient to preclude summary judgment. *Id.*

Here again, there is some disagreement on the effect of the *KSR* decision. Judge Ellis stated that he expects more summary judgment decisions on validity as a result of *KSR*. Senior Judge Thomas S. Ellis, III, Remarks at the BNA and ABA Section of Intellectual Property Conference (Oct. 1, 2007). Judge Michel disagreed, stating he would be "surprised" if *KSR* results in a large number of summary judgment decisions of obviousness. Chief Judge Paul R. Michel, Remarks at the BNA and ABA Section of Intellectual Property Conference (Oct. 1, 2007). He thought, however, that *KSR* might encourage courts to grant more motions for judgment as a matter of law at trial. *Id.*

While there is not any definitive answer to the impact of *KSR* on the frequency of summary judgments, several courts have granted summary judgment, both upholding and rejecting obviousness attacks on patents, based on the *KSR*'s support of summary judgment where there are no material disputes as to prior art content, scope of the patent claim, or the level of ordinary skill in the field. *See, e.g., Roche Palo Alto, LLC v. Apotex, Inc.*, 526 F. Supp. 2d 985 (N.D. Cal. 2007) (summary judgment granted to patent holder, rejecting defense of obviousness); *Tokyo Keiso Co., Ltd. v. SMC Corp.*, 533 F.Supp.2d 1047 (C.D. Cal. 2007) (summary judgment granted to defendant, upholding obviousness challenge to plaintiff's patent).

### Changes to Litigation

Whether *KSR* is a substantial change, a "sea change," or no change at all in the law it is clear that its application will have a significant effect on patent litigation. For example, model jury instructions will need to be revised. Expert reports will need to take into consideration some new factors, like "common sense" and "ordinary creativity." Everyone interested in obtaining and litigating patents should therefore fully understand *KSR* and the changes it suggests for patent litigation.

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revisions are simple terminology changes. It takes a deeper understanding of the history behind the language to see that the statutory revisions are the next step in the evolution of family law in Florida. It can only be hoped that marital and family law practitioners will use the new statute, and the new language, as educational tools to shift their clients' mindset and help them understand that it is in their children's best interests to maintain a close relationship with both parents. Perhaps then we will see a much needed reduction in the level of hostility in contested cases involving children. Unfortunately, if practitioners see the statutory revisions as nothing more than a change in nomenclature, these hoped for changes will be less likely to occur.

| Old Term                                  | New Term                                                                                                                                                       |
|-------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Primary Residence and secondary residence | Eliminated                                                                                                                                                     |
| Custody                                   | Parenting and time-sharing                                                                                                                                     |
| Rotating Custody                          | Parenting Plan                                                                                                                                                 |
| Visitation                                | Time-sharing or time-sharing schedule                                                                                                                          |
| Child Custody Evaluation                  | Parenting Plan Recommendation                                                                                                                                  |
| Child Custody Proceeding                  | Dissolution of marriage, case of domestic violence, or paternity matter involving the relationship of a child and a parent, including time-sharing of children |
| Custodial and Non-custodial parent        | Eliminated                                                                                                                                                     |
| Primary residential parent                | Eliminated                                                                                                                                                     |
| Visitation rights                         | Parenting and time-sharing                                                                                                                                     |
| Determine custody                         | Approve, grant, or modify a parenting plan                                                                                                                     |
| Medical and dental care                   | Health care                                                                                                                                                    |
| Award of child custody                    | Order approving or creating the parenting plan                                                                                                                 |
| Custody or visitation order               | Parenting plan                                                                                                                                                 |
| Custodial parent                          | Parent                                                                                                                                                         |
| Non-custodial parent                      | Parent                                                                                                                                                         |

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## Presentation Skills for Lawyers

### *Speak to an Audience of One*

Elliott Wilcox



Do ever feel nervous when speaking to a large group of people? Do you wish that there was some way you could feel more comfortable on stage? Don't you wish there was a way to develop a more personal connection with your audience members, so that they were more attentive and engaged in your presentation?

Fortunately, there's a technique you can steal from professional speakers that will make you more persuasive and help you develop a more personal connection with your audience members.

Have you ever walked out of a presentation and thought to yourself, "That speaker was talking directly to *me*"? On those rare occasions when it happens, it feels like the speaker has tailored his entire message just for you, doesn't it? When you feel like you're the only person in the audience, you become far more attentive than usual, sitting upright in your seat, leaning forward, and eager to hear what the speaker has to say. You're also more receptive to the speaker's message, so when the speaker asks you to think, act, or believe differently, you're more likely to do so.

But take a moment to think about the last three or four speeches you've heard. Did you feel like the speakers were talking directly to you? Did they make direct eye contact with you? Did they develop a personal connection with you? Probably not, right?

Unfortunately, very few speakers ever develop that level of personal, one-on-one contact with their audience members, which means their speeches are far less effective and persuasive than they could be.

Want to know what differentiates the speakers who make a deep connection with their audiences from those who leave you feeling like you're just a face in the crowd?

The difference lies in the size of the audience they're speaking to. Many good speakers fall into the trap of talking to "the audience." They think that because they're standing in front of a group (regardless of whether it's a group of six, or 60, or 6,000), they should be speaking to "the audience." They treat the audience as one large, faceless entity and attempt to speak to the entire group at once.

But it's impossible to have a conversation with an entire group. That's why *great* speakers know better. They understand that if they try to speak to "the audience," their presentation will be a failure. These speakers ignore how many people are actually in the room and only speak to "an audience of one." In today's world of impersonal communication, audience members are clamoring for personal attention. They don't want to be talked *at*; they want you to engage them in a conversation and talk *with* them. Talking to "an audience of one" makes your audience

members feel like you're talking directly with them and are connecting on a personal level.

Here's how to begin speaking to "an audience of one" and improving your connection to the audience. Start by picking out someone in the front row and making direct eye contact with that person. Your goal is to have a one-on-one conversation with that person and talk directly with him or her, as if he or she is the only person in the room. Obviously, the person is going to become disconcerted if you focus on him/her exclusively throughout your entire speech, so only hold eye contact as long as it feels comfortable before picking another section of the room and making eye contact directly with a new audience member. Work your way around the entire room, hitting all four corners, always making eye contact with just *one* person, having a one-on-one conversation, and then moving on.

What's remarkable is, unless the group is *extremely* small, the other audience members seated near your "audience of one" will feel like you're talking directly to *them*, too. If you were to stop and say: "Raise your hand if you think I'm talking directly to you," you wouldn't see just *one* person raise his or her hand. You'd see an entire cluster of people raising their hands. That's because, in a larger audience, it's difficult to identify exactly which person you're pinpointing with your eye contact. As a result, an entire section feels like you're talking directly with them!

Speaking to "an audience of one" will have two benefits. First, you'll minimize your nervousness and won't feel overwhelmed by the size of the audience because you're only speaking with one person at a time. Speaking to a crowded room becomes as comfortable as holding a conversation with a single person. Second, everyone in the room will get the impression that you're talking directly to him, so individuals will feel more personally connected with you as a speaker. When they feel that connection, they're inclined to listen more attentively, which means they'll retain more of your message. Your audience members will become much more alert, attentive, and responsive if they feel like you're talking directly to them in one-on-one conversations. So, rather than speaking to "the audience," focus your attention on individuals around the room. When you can do that, your attendees will each feel like they're in an "audience of one," and your presentation will be a huge success.

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*Elliott Wilcox is the editor of Trial Tips Newsletter. To get a free copy of his special report, "The Top Ten Mistakes Trial Lawyers Make (and How to Avoid Them)," visit [www.TrialTheater.com](http://www.TrialTheater.com).*



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## Rainmaking

### *Reduce Stress by Selecting Clients Wisely* **Part 2**



Mark Powers & Shawn McNalis

In Part 1 of this article, we addressed an insidious problem experienced by most attorneys at some point in their career: the failure to be selective in choosing which clients to work with and which to turn away. We call the problem insidious because it may start out innocently enough: you see someone who needs help and you try to provide it. But when things do not go well, you can end up with collections problems, a beleaguered staff and tremendous personal stress.

If you suspect you are too lax in your standards and are suffering these consequences, follow the steps listed here to clean up your caseload. You'll be surprised at how energizing it is to take control of your practice in this way.

- **Step One:** Go through your case list and rank your current clients A, B, C or D. Note the A and B clients. (These clients will rank highest in terms of bringing you the type of work you prefer to do, their ability to cooperate, their ability to take direction, and their ability and willingness to pay. Each type of practice will have its own criteria, but these are some basic requirements.) Using this system, determine which clients qualify as A and B levels, then identify the lower level C and D clients.
  - **Step Two:** If you think any of your borderline C clients can be "rehabilitated" and upgraded to a B level, sit down and have a very straight conversation with them about what they may be doing that is a problem (*e.g.*, they need to bring payments current, produce requested documentation, stop canceling meetings, etc.). Some will respond positively to this approach; some will not.
- Take the rest of your C clients and refer them to another attorney if their issues are *personality-based*, but not *payment-based*. Avoid sending clients who won't pay to another attorney.
- **Step Three:** Take your D clients and let them go. You can let them know in person or you can phone them and follow-up with a letter. Check your local rules to be sure you follow the proper protocol. Sample disengagement letters that you can use are often available through a bar association. Disengagement and non-engagement letters are especially critical when a lawyer decides not to continue past a specific stage in the case.

If you decide to let the client go in a face-to-face exchange, you need to have a plan.<sup>1</sup> Review and follow the steps below (of course, local bar rules will supersede any suggestions given here, so be sure to check those rules in advance), and remember to document the conversation during or after the meeting.

1. Set an appointment with the client and plan to have a witness in the room with you if necessary (*e.g.*, if you feel the client may be irrational or likely to accuse you of misconduct). Document your meeting by summarizing the discussion in a letter and sending a copy to the client. Put a copy in your own file to protect yourself in case of a complaint. Try to prepare the client for the conversation and hopefully minimize his reaction by beginning the discussion with, "You may not like what I am going to tell you, but I feel I can no longer represent you (or work with you) due to..."
2. Give the client the context for your decision so he will not think it is arbitrary. Link your decision to his attitudes and/or behaviors. Give *specific* examples of where the communication broke down, the client was uncooperative, he was rude or abusive to you or your staff, or if he failed to pay.
3. Explain why the behaviors and/or attitudes expressed by the client make it uncomfortable, unethical or inappropriate for you to continue representing him. Be factual and objective.
4. Give the client an opportunity to respond, ask questions or express his anger. Resist being pulled into a discussion that escalates into a fight. Stay in control of the conversation by managing your own emotions.
5. If appropriate, act as a resource for the client and make recommendations as to how the client should proceed. You may recommend counseling, a legal service agency or the names of other attorneys. (Remember to be very careful when referring unstable personalities and non-paying clients to your colleagues.) Call the attorney and discuss the situation beforehand to be certain the attorney wants to take the client on.

### **The Quality of Your Practice = the Quality of Your Clients**

We maintain that the quality of your practice is determined largely by the quality of your clients. Imagine how different your stress level would be if you worked with nothing but A- and B-level clients and the *pro bono* clients of your choosing (instead of clients who become *pro bono* cases by default). You might actually look forward to

*Continued on page 34*

<sup>1</sup> Sanford M. Portnoy, *The Family Lawyer's Guide to Building Successful Client Relationships* (Chicago: American Bar Association, 2000).

# Side Bar

Jessica K. Hew



Welcome to the "Dog Days of Summer"! Although we'd all prefer to be lying somewhere in the shade with a fresh, cool body of water before us, we are all working to make our community better. Here's the latest and greatest on what's going on around town.

The **Central Florida Paralegal Association, Inc. (CFPA)** hosts monthly lunches at three locations: Winter Park/Maitland (second Thursday of the month), Downtown Orlando (second Wednesday of the month), and Altamonte Springs (final Friday of the month). On August 5, 2008, CFPA will sponsor a seminar on *Accident Reconstruction 101*. CFPA hosts monthly Membership Mixers/Happy Hours the third Thursday of the month. For more information on any and all of these events, please visit their website at [www.cfpainc.org](http://www.cfpainc.org).

The **Federal Bar Association (FBA)** celebrated the investiture of the **Honorable Gregory J. Kelly** on July 11, 2008.

The **Hispanic Bar Association (HBA)** held its annual Domino Tournament on June 21. HBA is collecting school supplies for Englewood Elementary; items may be brought to Zimmerman, Keiser & Sutcliffe. In partnership with the Hispanic Chamber of Commerce of Metro Orlando, Puerto Rican Chamber of Commerce of Central Florida, *La Prensa* newspaper, the Jewish Federation of Greater Orlando, WONQ Radio, Barry University School of Law, and the Lou Fry Institute of Politics and Government at UCF, the HBA will host a series of Central Florida election debates to promote voter education. The first series of primary election debates, "Decisiones '08," will be held on August 12 and 13 from 6:00 p.m.-9:00 p.m. at Barry University School of Law, and the second series of general election debates will be held on October 6 and 7 from 6:00 p.m.-9:00 p.m. at UCF's Downtown Orlando campus.

If you have any legal organizational news to share, please e-mail Jessica K. Hew at [jhew@grahambuilder.com](mailto:jhew@grahambuilder.com).

*Jessica K. Hew is a partner with Graham, Builder, Jones, Pratt & Marks, LLP. She has been a member of the OCBA since 1995.*

## Rainmaking Continued from page 33

going into the office in the morning! Just keep in mind that these A- and B-level clients tend to get lost in the shuffle as you scramble to handle the constant demands of your C and D clients. For every negative characteristic you can attach to a client, you can be sure that you spend more time with that client persuading him to trust you, calming him down or trying to get paid.

Carefully selecting the clients you work with not only helps protect you against malpractice problems, but it has the added benefit of saving you a lot of time, improving office morale, minimizing collections problems and restoring peace in an otherwise crisis-driven practice. Believe it or not, you can better manage your stress level when you develop your client selection skills. The impact on your peace of mind may be significant.

*Mark Powers, President of Atticus, Inc., and Shawn McNalis co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," and are featured marketing writers 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](http://www.atticusonline.com) or call 352-383-0490 or 888-644-0022.*

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**Michael P. Carolan** - *Winderweedle, Haines, Ward & Woodman, P.A.*

### New Partners

**Richard J. Brooderson** - *Chaires, Brooderson & Guerrero, P.L.*

**JoAnn M. Guerrero** - *Chaires, Brooderson & Guerrero, P.L.*

### Managing Partner

**Bart R. Valdes** - *deBeaubien, Knight, Simmons, Mantzaris & Neal, LLP*

### Board Certification

**Thomas Wade Young** - Board Certified in Appellate Practice by the Florida Bar

### Speaking Engagements

**David Henry** of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. presented *Intellectual Property Insurance 101* at the AIPLA Spring Meeting in Houston, TX, on May 14, 2008.

**Clement L. Hyland** of Hyland Mediation, LLC recently presented *Conquering the New Frontiers of E-Discovery* and *Ethics-How Far is Too Far* at a National Business Institute seminar.

**Frank Rapprich** of Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A. spoke to the Association of General Contractors (AGC) on lien and bond law in Orlando on June 24, 2008.

**Mike Ryan** of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. spoke at a Development Agreements, Easements and CCRs workshop in Tampa on June 24, 2008.

**Steve Sambol** of Alvarez, Sambol, Winthrop & Madson, P.A. spoke about the legal dangers of email communication to the Central Florida Chapter of the International Association of Business Communicators (IABC) on June 11, 2008. The presentation provided an overview of the most common communications-based lawsuits as well as five ways to avoid such issues.

**Drew Sorrell** of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. was a speaker/panelist at a seminar co-sponsored by RSM McGladrey CPAs and financial consultants on the topic *Business Readiness: Reducing Costs Through Proactive Management of eDiscovery* on June 12, 2008.

**Louise B. Zeuli**, JD, MSN, ARNP, RN, of Louise B. Zeuli, P.A., recently presented a lecture, *Titling Property: Does It Matter?*, to officers and employees at Colonial Bank in Orlando.

### News to Note

**New Law Program at UF** - The University of Florida Levin College of Law now offers a Master of Laws (LL.M.) in Environmental and Land Use Law. The program, which is the first in the nation, combines environmental and land use law in a one-year, post-juris doctor degree. Applications are now being accepted for fall 2008. For details, contact Lena Hinson at 352-273-0777 or [hinson@law.ufl.edu](mailto:hinson@law.ufl.edu), or visit [www.law.ufl.edu/elulp](http://www.law.ufl.edu/elulp).

**OCBA Strategic Planning Committee** - The OCBA is forming a new strategic planning group that will address planning for the future of the OCBA, including issues involving finances, policies and growth. If you are interested in serving on the committee or want additional information, please contact Jessica K. Hew at [jhew@grahambuilder.com](mailto:jhew@grahambuilder.com) or 407-647-4455.

### Seminars

These upcoming LAS Lunchtime Training seminars will be held from 12:00 p.m.-1:00 p.m. at the First Presbyterian Church in downtown Orlando.

**Tues., Aug. 26 - Guardian Advocate.** CLE pending. Presenter: Catherine A. Tucker, Attorney at Law.

**Tues., Aug. 26 - Residential Treatment and Dependent Children.** CLE pending. Presenter: TBD.

**Tues., Sept. 9 - Representing the Employee in Unemployment Compensation Cases.** CLE pending. Presenters: Attorneys Larri Thatcher and Sally McArthur.

**Tues., Sept. 23 - Understanding the Termination of Parental Rights.** CLE pending. Presenter: George Lytle, Attorney at Law, DCF.



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## The OCBA Literary Society

### 2008-2009 Reading List

Join your colleagues for the 22nd year of the OCBA Literary Society's discussion of novels, non-fiction, plays and short stories. Meetings are held at 12:00 p.m. at the offices of Zimmerman, Kiser & Sutcliffe, P.A., One Landmark Center, Suite 600, 315 East Robinson Street. For details, please contact attorney Robert E. Mansbach, Jr.

| Date     | Author              | Book                                       | Discussion Leader |
|----------|---------------------|--------------------------------------------|-------------------|
| 09/10/08 | Somerset Maugham    | <i>Of Human Bondage</i>                    | Stuart Bernstein  |
| 10/08/08 | Ian McEwan          | <i>Atonement</i>                           | Matt Brenner      |
| 11/12/08 | Isabel Allende      | <i>Daughter of Fortune</i>                 | Jules Cohen       |
| 12/10/08 | Rudyard Kipling     | <i>Kim</i>                                 | Robert Mansbach   |
| 01/14/09 | J. Joaquin Fraxedas | <i>The Lonely Crossing of Juan Cabrera</i> | Robert Hoofman    |
| 02/11/09 | Richard Russo       | <i>The Risk Pool</i>                       | Dennis Wall       |
| 03/11/09 | Flannery O'Connor   | <i>Wise Blood</i>                          | Maria Hinds       |
| 04/08/09 | Junot Diaz          | <i>Brief Wondrous Life of Oscar Wao</i>    | Karen Jennemann   |
| 05/13/09 | Erik Larson         | <i>The Devil in the White City</i>         | Dottie Green      |
| 06/10/09 | Jose Saramago       | <i>All the Names</i>                       | Michael Nardella  |

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# 2008

## August - September Calendar

**OCBA Luncheon • Thursday, Sept. 4, 2008**

RSVP by Aug. 28 to: [reservations@ocbanet.org](mailto:reservations@ocbanet.org)

**Bob Graham**  
Former United States Senator

Luncheon Sponsored by

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## August

- 5 IP Committee Mini Seminar**  
12:00 p.m. • Bar Center
- Criminal Law Committee**  
12:00 p.m. • Bar Center
- 8 Workers' Compensation Committee**  
11:45 a.m. • Bar Center
- 12 Executive Council Meeting**  
4:30 p.m. • Bar Center
- 13 Diversity Committee**  
11:30 a.m. • Bar Center
- Estate Guardianship & Trust Committee**  
12:00 p.m. • Bar Center
- 14 Legal Aid Society Executive Meeting**  
8:00 a.m. • 100 E. Robinson St.
- Real Property Law Committee**  
12:00 p.m. • Bar Center
- Social Security Committee**  
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**  
5:30 p.m. • Bar Center
- YLS Executive Board Meeting**  
5:30 p.m. • 300 S. Orange Ave., #1300
- 15 Family Law Committee**  
8:00 a.m. • 425 N. Orange Ave., #2310
- 19 Professionalism Committee**  
8:00 a.m. • Bar Center
- Legal Aid Society Board Meeting**  
11:45 a.m. • 100 E. Robinson St.
- Entertainment Law Committee**  
12:00 p.m. • Bar Center
- Social Committee**  
6:00 p.m. • TBA
- 20 Insurance Law Committee**  
12:00 p.m. • Bar Center
- 21 YLS Luncheon**  
11:45 a.m. • Citrus Club
- Appellate Practice Committee**  
12:00 p.m. • Bar Center

- 26 Legal Aid Society Lunchtime Training**  
Guardian Advocate  
12:00 p.m. • First Presbyterian Church, Downtown

**Legal Aid Society Lunchtime Training**  
Residential Treatment and Dependent Children  
12:00 p.m. • First Presbyterian Church, Downtown

- 27 Business Law Committee**  
12:00 p.m. • TBA

**Labor and Employment Law Committee**  
12:00 p.m. • Bar Center

- 28 New Member Orientation Happy Hour**  
4:00 p.m. • Bar Center

- 29 Bankruptcy Law Committee**  
12:00 p.m. • Bar Center

## September

- 2 Criminal Law Committee**  
12:00 p.m. • Bar Center

- 4 OCBA Luncheon**  
Senator Bob Graham  
11:30 a.m. • The Ballroom at Church Street

- 9 Legal Aid Society Lunchtime Training**  
Representing the Employee in Unemployment Compensation Cases  
12:00 p.m. • First Presbyterian Church, Downtown

**Executive Council Meeting**  
4:30 p.m. • Bar Center

- 10 Diversity Committee**  
11:30 a.m. • Bar Center

**Estate Guardianship & Trust Committee**  
12:00 p.m. • Bar Center

- 11 Legal Aid Executive Meeting**  
8:00 a.m. • 100 E. Robinson St.

**Real Property Law Committee**  
12:00 p.m. • Bar Center

**Social Security Committee**  
12:00 p.m. • Bar Center

**OCBA Paralegal Committee**  
5:30 p.m. • Bar Center

**YLS Executive Board Meeting**  
5:30 p.m. • 300 S. Orange Ave., #1300

- 12 Workers' Compensation Committee**  
11:45 p.m. • Smokey Bones

- 16 Professionalism Committee**  
8:00 a.m. • Bar Center

**Legal Aid Society Board Meeting**  
8:00 a.m. • 100 E. Robinson St.

**Entertainment Law Committee**  
12:00 p.m. • Bar Center

**Social Committee**  
5:30 p.m. • TBA

- 17 Insurance Law Committee**  
12:00 p.m. • Bar Center

- 18 YLS Luncheon**  
11:45 a.m. • Citrus Club

**Appellate Practice Committee**  
12:00 p.m. • Bar Center

- 19 Family Law Committee**  
8:00 a.m. • 425 N. Orange Ave., #2310

- 23 Legal Aid Society Lunchtime Training**  
Understanding the Termination of Parental Rights  
12:00 p.m. • First Presbyterian Church, Downtown

- 24 Business Law Committee**  
12:00 p.m. • TBA

**Labor and Employment Law Committee**  
12:00 p.m. • Bar Center

- 25 OCBA Luncheon**  
Val Demings, OPD Chief of Police  
11:30 a.m. • The Ballroom at Church Street

- 26 Bankruptcy Law Committee**  
12:00 p.m. • Bar Center

**Monday, September 1**  
**Labor Day**  
**Bar Office Closed**

- Insurance Coverage
- Bad Faith
- Serious Personal Injury
- Medical Malpractice
- Product Liability

Lee D. Gunn IV

## Focused On Insurance

**“However, the focus in a bad faith case is not on the actions of the claimant but rather on those of the insurer in fulfilling its obligations to the insured.”**

*Berges v Infinity, 896 So. 2d 665, 677 (Fla. 2004)*

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