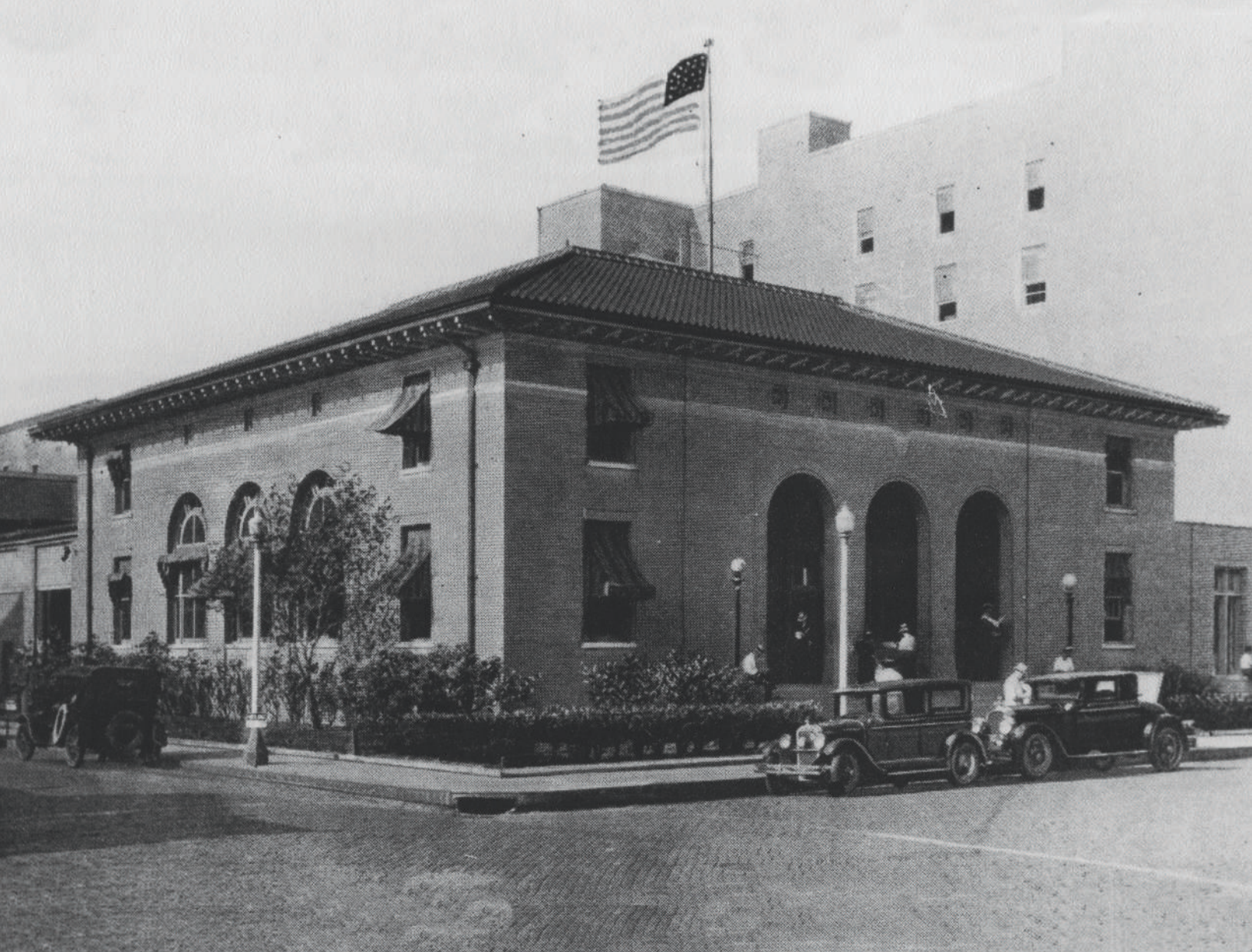


The Briefs

A Publication of the Orange County Bar Association



75
ORANGE COUNTY BAR ASSOCIATION
YEARS
OF EXCELLENCE

February 2008 Vol. 76 No. 2

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Deadline for April Issue: 03/01/2008

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 prior working day.

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An Inclusive Bar?

C. Gene Shipley

As we move into the second month of our 75th year anniversary celebration, we hope you will continue to read and enjoy the articles outlining the history of the Orange County Bar Association. Picking up where I left off last year, I will continue to devote my President's Messages to highlighting the best "instruction manual" our founders and past leaders left us: the OCBA Mission Statement. I hope you have found my previous messages informative in describing the many ways the OCBA and its nearly 3,000 members are fulfilling our common mission: to promote professionalism and to provide quality legal services to all in our community. I regret that I cannot confidently and comprehensively report to you similar successes in meeting the next objective set out in our Mission Statement: to provide for an inclusive bar. In fact, I disagree entirely with the proposition that our bar is or has ever been "all inclusive" during our 75-year history.

Please don't misunderstand me. The goal of being an organization where *all* who practice in the legal profession in and around Orange County are welcome (regardless of their differing backgrounds, characteristics or beliefs) is one we should and will continue to pursue. But we must recognize that the very definition of "diversity" is constantly changing, both in the minds and hearts of our members and throughout the world. Regardless of how you define diversity, you can be sure that today and in the next 75 years the OCBA will always support the inclusion of individuals and groups whose goals are aligned with the OCBA's mission: those who seek to promote honor, dignity, truth, and professionalism within the legal community; to promote improvements in the law and aide in the administration of justice; to enhance the delivery of and access to quality legal services; to educate the public about the legal system; to provide for an inclusive bar (at least in the sense I've described); and to promote camaraderie and a forum for discussion on issues pertaining to the legal system

and education for its members.

These words from our Mission Statement, as recited above, require OCBA members to be something more than just lawyers. We are called to be honorable and professional, acting in a truthful and dignified manner. Furthermore, as members of this bar, we are also called to serve our community. Therein lies the source of my discomfort in calling the OCBA "inclusive."

The OCBA has always prided itself on striving to ensure that *all* Orange County citizens in need of legal services are provided with equal access to the courts of this State. This is especially true for those who are most in need but have the least ability to pay, such as our fellow citizens who are homeless or indigent; innocent children who through no fault of their own have been removed from their parents' care; and other citizens at incomes below poverty level. Therefore, we can say that this is one area where the OCBA is not inclusive - the OCBA excludes those who are not willing to serve the community by supporting the Legal Aid Society through *pro bono* services and other contributions. Simply put, to be a member, you must be willing to commit to supporting legal services for *all* citizens of our community, regardless of means or ability to pay. Without this commitment, you don't meet the deeply-rooted standards to which all in our association are held accountable.

I hope you take the same great pride in the standards of professionalism established by our founders. I hope you also take pride in your membership with the OCBA, which remains "exclusive" to an extent - by restricting membership to those who support providing legal aid and freely volunteering legal services to those in greatest need in Central Florida. And if you're not a member, I hope you feel included to join us.

C. Gene Shipley is a shareholder with Nardella Chong, P.A. He has been a member of the OCBA since 1997.

United States Post Office (1917 - 1941)

East Central and Court Streets



Photo courtesy of the
Orange County Regional History Center.

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"In the presence of a crowded court room, packed to capacity with city and county officials, members of the bar of the 17th judicial circuit, and private citizens, Federal Judge Alexander Akerman opened court Monday morning [October 2, 1933] for the Orlando division of the U.S. of the southern district of Florida.

Preceding the formal charge to the grand jury delivered by Judge Akerman, impressive ceremonies sponsored by the local bar were held, inaugurating the court and welcoming Judge Akerman back to Orlando, where five years ago he was a distinguished member of the local bar . . .

H. N. Roth, chairman of the arrangements committee, first introduced Giles F. Lewis, acting president of the Bar Ass'n, who [. . .] in welcoming the court to Orlando, [. . .] declared that it was a landmark in Orlando's history, indicating the section's growth and development to a point where a local division of federal court had been considered advisable and necessary to serve [the] best interests of the section . . .

Mr. Lewis introduced the three Orange county judges seated on the bench beside Judge Akerman, Judge Frank A. Smith of the 17th judicial circuit, Judge W. M. Murphy of the Orange county criminal court of record and Judge Victor Hutchins, judge of the county and probate courts.

Speaking on behalf of the Florida judiciary Judge Smith said . . . '[W]e are glad to welcome the federal court to Orlando, and congratulate ourselves on the pleasant and profitable contacts with its officers which will result. Most favorable reports of all the court's officers have preceded them to Orlando.'"¹

¹Federal Court Opens Session: Orlando Bar Association Welcomes Judge to the City, The Evening Reporter-Star, Vol. 48, No. 91, October 2, 1933, at A1.



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OCBA Luncheon Speaker

February 27, 2008



Dennis Wayne Archer

Former President of the American Bar Association

Former Mayor of Detroit

Dennis W. Archer is Chairman of Dickinson Wright, a Detroit-based law firm with more than 200 attorneys, with offices in Michigan and Washington, D.C. He sits on the corporate boards of Johnson Controls Inc., Compuware Corporation and Masco Corporation. He also is on the nonprofit boards of the CATCH Foundation and the Community Foundation of Southeast Michigan.

Archer served two four-year terms as mayor of the city of Detroit (1994-2001) and earned national and international respect for his success in changing Detroit's image and direction.

In 2000, Mayor Archer was named Public Official of the Year by *Governing* magazine. Archer served on the Board of Trustees of the U.S. Conference of Mayors and was president of the National League of Cities from 2000-2001. He received an Award of Excellence and was named 1998 Newsmaker of the Year by *Engineering News-Record* magazine, a sister publication of *Business Week*. He has been named one of the 100 Most Influential Black Americans by *Ebony* magazine, and one of the 100 Most Powerful Attorneys in the United States by the *National Law Journal*. Archer was named one of the 25 Most Dynamic Mayors in America by *Newsweek* magazine.

He received a Bachelor of Science degree in Education from Western Michigan University and taught learning disabled students in the Detroit Public Schools.

Archer earned his Juris Doctor from Detroit College of Law in 1970. He began practicing law thereafter, working as a trial lawyer and a partner in several Detroit firms, serving as associate professor of the Detroit College of Law and adjunct professor at Wayne State University Law School.

In 1985, Governor James Blanchard appointed Archer an Associate Justice of the Michigan Supreme Court. He was elected to an eight-year term the following year. In his final year on the bench in 1990, Archer was named the most respected judge in Michigan by *Michigan Lawyers Weekly*.

Archer has long been active in organized bars. He was the first person of color elected president of the American Bar Association (2003-2004) as well as the State Bar of Michigan. He has also served as president of the Wolverine Bar Association and the National Bar Association. Archer is a Life Member of the Fellows of The American Bar Foundation and the National Bar Association, a Fellow of the International Society of Barristers, a Fellow of the College of Law Office Management and Life Member of the Sixth Circuit Judicial Conference.

Archer is married to Trudy DunCombe Archer, Judge of Michigan's 36th District Court. They have two sons, Dennis W. Archer, Jr. and Vincent DunCombe Archer, and a grandson, Dennis Wayne Archer III.

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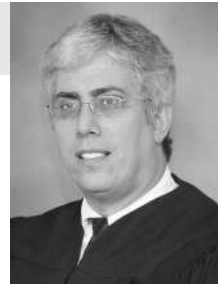
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Professionalism Committee

Three Tales of What Not To Do

—The Honorable Howard D. Friedman



Just before the Christmas holidays, I was skimming through the December 15, 2007 issue of *The Florida Bar News*. The front page article entitled, “Professionalism’s new focus: Change lawyers’ bad behavior” caught my eye. The Commission on Professionalism and Standing Committee on Professionalism held a meeting November 30 in Tallahassee. Florida Supreme Court Justice Raoul Cantero spoke at the meeting. The Commission resolved to achieve professionalism by pursuing a change of focus toward getting to the causes of bad behavior so change can actually occur to correct the bad behavior.

In his speech to the committee, Justice Cantero pointed toward a recent trend of the Supreme Court meting out harsher sanctions for unprofessional conduct for violations of the Florida Rules of Professional Conduct. *The Florida Bar News* article briefly described three examples of unprofessional conduct given by Justice Cantero which resulted in lawyer suspension. Specifically:

- 1) During a trial, a lawyer angrily talked back to the judge, repeatedly ignored the judge’s rulings and referred to him as “Judge Glare” (not the judge’s real name).
- 2) In a deposition, a lawyer claimed she couldn’t find a relevant document in her briefcase, when she had specifically taken the document and hid it under the table (her behavior was witnessed by the court reporter).
- 3) A lawyer refused to accept a check for satisfaction of judgment from another lawyer because it was 23 cents short – even after the opposing counsel reached into his pocket for a quarter to settle up.¹

I wanted the OCBA members/readers to have more details. And now, the rest of the story. . .

What NOT To Do at Trial

The following are excerpts from the published opinion *Florida Bar v. Morgan*, 938 So. 2d 496 (Fla. 2006), in which the lawyer referred to the judge as “Judge Glare.” What ensues below, in vivid detail, demonstrates what attorneys should not be doing in pursuit of the obligation to zealously represent their client at trial.

Morgan represented a felony defendant in a circuit court trial. During the cross-examination of a prosecution witness, Morgan asked the witness how she was dressed on the occasion in question. The prosecution objected to the relevancy of the question. The court sustained the objection. At that point Morgan raised his voice and told the judge he did not understand why the judge was interfering with his cross-examination. This exchange occurred in front of

the jury. The judge excused the jury. Morgan continued to speak in a loud and angry manner and to pace back and forth. The following exchange took place:

The Court: Mr. Morgan, I want you both to-

Mr. Morgan: I am moving for a mistrial.

The Court: Mr. Morgan, I am not going to-

Mr. Morgan: Don’t treat me like that in front of a jury.

The Court: I sustained an objection, and you-

Mr. Morgan: No judge treats me like that, in front of a jury.

The Court: I heard the way you treat other judges, and I don’t appreciate it.

Mr. Morgan: I don’t care how you think I treat other judges. You don’t treat me-you treat me with respect. I treat you with respect. I don’t care what you think about other judges.

The Court: Please come up, kindly. Please come up, sir.

Mr. Morgan: No, I’m staying right here.

The Court: I think you are out of line, sir.

Mr. Morgan: I think you are out of line. That’s what I think. You don’t talk to me like that in front of a jury.

The Court: You don’t have to talk any further. Are you going to continue? I sustained the objection, for the record.

Mr. Morgan: Wait a minute.

The Court: If you continue we will have a contempt hearing. I don’t want to go through this again.

Mr. Morgan: I object.

The Court: You are not going to pull stuff in my court without being-receiving-

Mr. Morgan: So you think I am pulling something on you, **Judge Glare?**²

The Court: I think you are not respectful. I’ve never heard anyone-

Mr. Morgan: You are not respectful to me.

The Court: I have sustained an objection. I don’t want you to talk for one moment. I am controlling this courtroom. I am the judge here.

Ultimately, the trial court agreed to let Morgan make a proffer. During Morgan’s questioning of the witness, the prosecution objected that it exceeded the scope of the

Continued on page 8

¹ Excerpted from “Professionalism’s new focus: Change lawyers’ bad behavior” by Jan Pudlow, *The Florida Bar News*, December 15, 2007.

² The trial court judge’s name was not “Glare.”

subject of the proffer, which the judge sustained. At that point, the following exchange occurred:

[The Prosecutor]: Judge, now it's gone beyond the proffer. It's gone beyond the item of clothing.

The Court: I don't know what he is doing.

Mr. Morgan: Now, wait a minute.

The Court: I have already ruled.

By Mr. Morgan:

Q. Were you dressed properly for the inside of that bar?

The Court: Hold it, one second.

The Witness: Yes.

The Court: Hold it. I have ruled.

By Mr. Morgan:

Q. How do you know?

The Court: I want you to stop now. What's the matter with you?

Mr. Morgan: She answered something.

The Court: I am the judge here. Now, you continue, I am going to have you arrested.

Mr. Morgan: Go ahead and have me arrested. What are you threatening me for? I want a mistrial. Take me to jail and let's go with it. I want my mistrial. You don't talk to me like this. It's not going to happen.

The Court: Mr. Morgan?

Mr. Morgan: No, I am not going to be talked to like that, by you or anyone else, when I'm defending somebody in a felony case. It's not going to happen.

The Court: You are out of line. I don't want to hear anything further, here.

Mr. Morgan: Well, I move for a mistrial.

The Court: What you want to do?

Mr. Morgan: You are prejudice [sic].

The Court: And you are obnoxious.

Mr. Morgan: So what?

The Court: You can't be obnoxious in a courtroom to a judge.

Mr. Morgan: You are obnoxious to me.

The Court: I don't want to talk with you any further. You are not going to get me excited, sir.

Based on the facts above, the referee found that Morgan had violated Rules 4-3.5(c) (conduct intended to disrupt tribunal) and 4-8.4(d) (conduct prejudicial to the administration of justice) of the Rules Regulating the Florida Bar. He further found several aggravating factors, including prior disciplinary offenses, a pattern of misconduct, refusal to acknowledge the wrongful nature of his conduct and substantial experience in the practice of law. Morgan had been disciplined twice before for similar misconduct. The first time, he was publicly reprimanded for making several intemperate or derogatory remarks to and about the judiciary. The second time, he was suspended for ten days for making statements that he knew were false or with reckless disregard of their truth or falsity about the qualifications or integrity

of a judge. He had also been previously ordered to complete the Bar's ethics school. Thus, this was Morgan's *third* time appearing before the court for the same kind of misconduct, which warranted the next level of available discipline: a rehabilitative suspension. The court also warned him that if he appeared before them again for similar misconduct, the court may find it necessary to apply Standard 8.1 and disbar him. *Morgan* at 500.

I don't know the attorney or judge involved in this courtroom dialogue. Is it reasonable to believe that the duty to zealously represent includes being rude, obnoxious, confrontational and disrespectful to the court in order to manipulate a mistrial when an attorney is unhappy with the trial court's rulings on evidence? Attorney Morgan's approach not only proved to be unpersuasive with the court, but resulted in his suspension. Can we take for granted that not every judge we appear before will always agree with the legal argument we make on our client's behalf? We provide legal authority for our client's position and, if binding on the court, the court should follow the authority. If we believe the court misapplied the law or abused discretion, we are to politely communicate this to the court. If the court errs, the remedy is appeal or rehearing . . . and clearly *not* what Mr. Morgan did.

Like the "Goofus and Gallant" duo in *Highlights Magazine* (often found in the pediatric dentist's waiting room), there is a principled and intelligent ("Gallant") approach to adverse rulings - even those rulings perceived as wrong or unjust. There is also the unfiltered and unfettered "speak your mind while being upset" (or "Goofus") approach. The intelligent approach is to make your record for the appeal. I urge you to research whether appeals courts consider error to be adequately preserved where an attorney attempts to preserve the error but is prohibited by the trial court's ruling.

What NOT To Do in a Deposition

The "connivance" or "hide the ball" case described by Justice Cantero was *The Florida Bar v. Forrester*, 818 So. 2d 477 (Fla. 2002). In this case, Forrester's opposing counsel had an original document (a contract between the parties with original signatures) marked as an exhibit at deposition. Attorney Forrester asked opposing counsel to retrieve other documents from a box or brief case behind him. While this occurred, Forrester's client removed the marked exhibit from the table and gave it to Forrester, who concealed the document underneath the table. All of this was witnessed by the court reporter. When opposing counsel asked where the exhibit was, Attorney Forrester responded that she didn't see it and asked "didn't you attach a copy of the contract to your complaint?" She, in fact, had placed the document next to her other belongings under the table. Forrester received a suspension for violating Rule 4-3.4(a) ("A lawyer shall not ... unlawfully obstruct another party's access to evidence or otherwise unlawfully alter, destroy, or conceal a document or other material that the lawyer knows

Continued on page 12



The City Beautiful – A Retrospective of Orlando in the 1930s and 1940s

—Lori M. Spangler

Have you ever wondered why Orlando was named “The City Beautiful”? In 1908, a contest was held to find a more suitable name for Orlando than “The Phenomenal City.” Some of the more daring entries submitted were “The Health City,” “The Picturesque City,” “The Queen City,” and, get this, “The Magic City.” (Imagine that, “The Magic City” pre-Disney and Orlando Magic days!) Thanks to Mrs. W. S. Branch, Sr. and her winning entry, The City Beautiful was born and the beautification of Orlando commenced.

The 1930s

The Economy

The Florida land boom of the 1920s radically changed the face of Orlando from a rural community into a prosperous city with a population totaling 27,330 in 1930. Following the growth and prosperity of the 1920s, Orange County roared into the 1930s with a vengeance and was immediately enveloped in an aftermath of bank failures following the stock market crash. Despite Orlando’s strong agricultural base, as well as the influx of tourists that kept the local economy afloat, the early part of the decade was met with financial despair. Panic set in following a run on the First National Bank and the Florida Bank at Orlando. Nationally, President Roosevelt closed all of the country’s banks on March 6, 1933, and Florida Governor Dave Sholtz responded by declaring a five-day bank holiday in order to get the crisis under control. On a local level, Judge Frank Smith (of what was then known as the 17th Judicial Circuit) responded by postponing all foreclosure sales in Orange and Osceola counties for one month due to the March 6th bank holiday. The problem was short-lived as the First National Bank & Trust Company and the Florida Bank at Orlando promptly reopened for business on March 7th under a program dictated by the Secretary of the United States Treasury.

Following the boom of the 1920s, Orlando’s skyline was transformed into one which included the Florida National Bank, the Orlando Bank & Trust Company, the Angebilt Hotel, the San Juan Hotel and a few large department stores. Public buildings included the impressive marble courthouse across from Wall Street, the old brick courthouse, the library, the municipal auditorium and the railroad station.

Orange County Bar Association

Before 1933, lawyers practicing in Orange County were part of what was known as the 17th Judicial Circuit Bar Association, comprised of attorneys practicing in Orange and Osceola counties. That organization was formed in 1924, and our official list of presidents still recognizes the names of the individuals who led the 17th Judicial Circuit Bar Association.

In 1933, however, the OCBA emerged from that older association and was led by Maxwell W. Wells, Sr., who would become our “first” OCBA president. At the time, the OCBA operated under a constitution which was amended frequently.

Since the 1933 formation of the Orange County Bar Association, membership was on the rise. The cost of annual membership dues was a whopping \$3.00 for lawyers who practiced less than seven years and \$5.00 for lawyers who practiced more than seven years. By 1939, there were 62 members of the OCBA under the astute leadership of William H. Dial. During his presidency, Mr. Dial appointed six members of the newly created Committee on Legal Education. He appointed John S. Lavin chairman of the committee, which focused on legal education, including radio broadcasts. The OCBA radio broadcasts aired each Tuesday evening

at 7:30 p.m. beginning on December 6, 1938.

The long list of distinguished OCBA presidents during the decade included Louis C. Massey 1930-1931; Troy C. Musselwhite, Sr. 1931-1932; Ellis F. Davis 1932-1933; Giles F. Lewis 1933-1934; M. W. Wells, Sr. 1934-1935; William H. Dial 1938-1939 and Clark W. Jennings 1939-1940.

Crime

Due to the adverse state of the local economy, the crime rate sharply increased as citizens struggled to make ends meet. For instance, philanthropist Harry P. Leu was robbed and kidnapped from his office on West Livingston Avenue. Three armed men took all of Leu’s cash and his 1939 Packard, dropped him off in a remote part of West Orange County and left him to fend for himself in the dense

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View of Lake Eola (1949)

Photo courtesy of the Orange County
Regional History Center

wilderness south of Hiawassee Road. Leu's vehicle was eventually recovered in Tallahassee, and the men who were caught confessed to the crime.

In one of the most daring crimes of the decade, George Coston, a private detective (formerly sheriff and constable) hired a set of cousins (Edward Mosely, a 17-year-old ex-con from Jacksonville, and Donald Long, a 33-year-old former policeman and deputy sheriff) to rob and kill the current sheriff who had recently defeated him in his re-election bid. Coston planned to poison Long with cyanide-laced whiskey in order to keep him quiet after he refused to proceed with the crime. The poisonous bottle of whiskey eventually slipped into the wrong hands and inadvertently killed Delores Myenly, a 19-year-old call girl, in her hotel room at the San Juan Hotel. Coston was tried and, after a 1939 appeal, was convicted of third degree murder and sentenced to 20 years in Raiford prison.

By the mid-1930s, Orlando citizens became increasingly disillusioned with the growing crime rate. Rumblings that a group of citizens had seriously contemplated forming a vigilante group forced the city to respond by increasing the police force by a whopping fifty percent! The city increased the size of the police force by adding four new patrol cars and one new motorcycle. They even installed one-way radios in all of the police cars ("Car 54 where are you?"). A subsequent curfew law that went into effect dictated that anyone found on the street after midnight was subject to arrest.

The Courts

In 1933, Orlando got its first Federal court district, which was comprised of six counties (Orange, Lake, Seminole, Osceola, Brevard and Indian River counties). The first court was held October 2, 1933, and members of the 17th Judicial Circuit Bar Association paid tribute to Judge Alexander Akerman, who was responsible for the creation of the Orlando division.

Orlando philanthropist Dr. P. Phillips and city officials became entangled in a dispute over the municipal airport land. According to Phillips's attorney, the area on which the municipal airport, incinerator and stockade was built was not a 20-year lease from Phillips; rather, it was an outright purchase by the city and secured by a 20-year \$200,000 mortgage with \$12,000 interest payable annually in advance. Attorneys also claimed that the land sold to the city was intended for an additional water supply, not an airport. Approximately 60 acres of the land was in the

lake and it was the only way the city could gain control of Lake Underhill's water. After Mayor S.Y. Way ordered the \$12,000 interest payment stopped, city attorney E. W. Davis deemed the payment illegal, the contract void with interest payments to be recovered and the land returned to Phillips. Phillips initiated suit for the \$12,000 interest payment. In March 1933, Judge Frank Smith ruled the city's purchase was illegal as it had not been referred to the people. Three months later, Phillips initiated a \$300,000 suit against the city for principal and interest past due. The case went to the Florida Supreme Court, and in February 1934 the Court ruled the City of Orlando must make payment on the property it purchased from Phillips.



President Franklin D. Roosevelt visited Rollins College in 1936, while nearly 100,000 people crowded the sidewalks.

Photo courtesy of the Orange County Regional History Center.

Visitors

Highlighting this era were visits to The City Beautiful from several distinguished guests. Amelia Earhart packed the municipal auditorium while here on a national lecture tour; Helen Keller was a guest lecturer at the Orlando Auditorium and drew a crowd of 3,000 people; and Buddy Ebsen, who hails from O-town, put in an appearance to benefit the Goodfellow's Charity Show. The list of distinguished guests was overshadowed by a special visit from President Franklin D. Roosevelt. Roosevelt rode

through Orlando on his way to Rollins College as nearly 100,000 people crowded the sidewalks along Orange Avenue to catch a glimpse of the "The New Dealer."

The 1940s

As Orlandoans weathered the era of the Great Depression, they saw a rise in employment and wages while prices remained steady throughout the 1940s. The 1940 census identified Orlando as a growing city with a population of 36,735. Although the city entered the decade in a strong economic position, it soon braced itself for the war clouds that loomed overhead.

Orange County Bar Association

By 1940, the OCBA had grown in membership and functioned as a well-established legal association in the community. The Bar encompassed seven standing committees, which included the Committee on Admissions; the Committee on Judicial Administration and Legal Reform; the Committee on Legal Education (including radio broadcasts); the Committee on Grievances and Legal

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Ethics; the Committee on the American Bar Association; the Committee on the State Bar Association; and the Committee on Fees.

The Bar continued to hold its annual banquets at the Orlando County Club at a nominal cost of \$1.00 per person. This fee included the meal, entertainment and cigars.

The long list of distinguished OCBA presidents during the decade included C. P. Dickenson 1940-1941; S. E. Durrance 1941-1942; J. R. Wells, Sr. 1942-1943; Addison L. Williams 1943-1945; Edward G. Goethe 1945-1946; Robert J. Pleus 1946-1947; George B. Carter 1947-1948 and Wilson Sanders 1948-1949.

World War II

While the war raged throughout Europe, the Orlando Army Base was established. When the United States entered into World War II, the camps, munitions and supply depots were established and transformed Orlando into a major center of military activity. The war seemingly spurred economic development in Florida as the state became a major training center for soldiers, sailors and aviators of the United States and its allies.

In 1941, the Army Air Corps took over Orlando Municipal Airport. Dozens of buildings were erected near the airfield and around Lake Baldwin. Due to the impending war, the Orlando Army Airfield developed into a significant air base with the arrival of the Air Corps Tactical School. In 1943, the airfield was also used as a training field for B-2 Superfortress bomber crews.

In the early months of WWII, the U.S. Navy Department only had a handful of ships and planes to defend the east coast. This miniscule fleet was completely inadequate to handle the U-boat offensive launched against the United States by German submarines. In fact, during the first seven months of 1942, the Germans sank nearly 400 vessels, which included more than 35 ships off the coast of Florida.

During the war, many German prisoners of war were captured off the east coast of the United States. Beginning in 1944, German POWs arrived in Orlando and were assigned to the airbase during their incarceration. Many POWs were assigned to military base duties while others worked in orange groves, packing houses and a cement plant that was under civilian contract. Like most POWs throughout the United States, the German prisoners were paid \$1 per day for their work. They were also allowed to play sports, take classes, worship with German-speaking ministers and priests, and were taught about democracy and the "American way of life."

Although the POWs had decent living conditions while incarcerated in the United States, that didn't deter a few from trying to escape. Rudolf Krause made a daring escape from Ft. Leonard Wood, Missouri, while he was on trash detail. Krause made it all the way to Orlando where he was captured by local police prior to the end of the war.

By 1944, the tide had turned in favor of the Allies. Floridian pilot Paul W. Tibbetts was responsible for having

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Victor Hutchins served two terms as OCBA President (1927-1929) and as an Orange County Probate Judge (1921-1925). He is shown here as a naval officer during World War II (c. 1945).

Photos courtesy of the
Orange County Regional
History Center.



Orlandoans supported the war effort, including being home to the Army Air Corps Tactical School housed at Orlando Municipal Airport.

Photo courtesy of the State Archives
of Florida Memory Project



William H. Dial (inset), OCBA President from 1938-1939, was an attorney with the Orlando firm of Akerman, Dial & Akerman. Photo shows members of the Board of the First National Bank (c. 1945).

Photo courtesy of the Orange County Regional History Center.

piloted the B-29 Enola Gay which dropped the atomic bomb on Hiroshima. In August 1945, following the explosion of atomic bombs on Hiroshima and Nagasaki, Japan agreed to surrender terms. Victory celebrations swept the nation following the formal Japanese surrender on September 2, 1945.

Following World War II, Florida emerged as a modern and influential state. The conflict spurred economic growth and development, which brought prosperity to rural and urban areas alike. This rapid modernization transformed an agricultural state into a modern one. In Orlando, the Air Force base situated during and following the war proved an ideal location for technological industries. This postwar technological development opened a myriad of opportunities for the future growth of Orlando - The City Beautiful.

Lori M. Spangler, a paralegal with Roetzel & Andress LPA, has been a member of the OCBA since 1996.



Growth following the war is evident in this 1950 view of Orange Avenue. Photo courtesy of the Orange County Regional History Center.

Professionalism Committee *Continued from page 8*

or reasonably should know is relevant to a pending or a reasonably foreseeable proceeding; nor counsel or assist another person to do any such act.”) and Rule 4-8.4(c) (“A lawyer shall not ... engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.”). Epilogue: *Florida Bar v. Geneva Carol Forrester*, 916 So.2d 647 (Fla. 2005). In a *Per Curiam* opinion, the attorney was disbarred.

What NOT to Do When Someone Really Irks You

Finally, the “23 cents” case: *The Florida Bar v. Walton*, 952 So. 2d 510 (Fla. 2007). Attorney Walton obtained a \$3,000 county court judgment against the defendant, which was held in the registry of the court and accessible to Walton. Costs in the amount of \$250 had also been awarded to Walton’s client. The defendant’s counsel held off for three months in tendering the cost check in an effort to diminish his client’s exposure on an attorney’s fees claim, then mailed a check for costs to Walton (including an additional \$4.08 to cover the seven percent interest for the three-month period). In return, defendant’s counsel demanded that Walton provide a recorded satisfaction of judgment. Walton didn’t check to see if his client would agree to waive the 23 cent shortfall and, instead, held the check. Four months later, Walton ran into defendant’s counsel and informed him for the first time that, according to Walton’s calculation, the cost check was 23 cents short. The defendant’s attorney pulled out change from his pocket to make up the difference. However, Attorney Walton refused to accept the change and instead required the entire payment be made by check. Walton returned the first check for costs to defendant’s counsel.

Walton received what he considered satisfaction in full shortly thereafter. Although his clients had been paid what they were owed according to Walton’s own calculation, he still refused to provide a recorded satisfaction of judgment

as requested by opposing counsel. The proof that Walton was pursuing some personal vendetta or agenda against the opposing party or counsel was confirmed by Walton’s failure to inform his client that he had been tendered a full settlement payment that was short by 23 cents. Walton was found to have violated Rules 3-4.2 (violating Rules of Professional Conduct is a cause for discipline), 3-4.3 (commission by a lawyer of any act that is unlawful or contrary to honesty and justice can be cause for discipline), 4-1.1 (professional competence), 4-1.3 (reasonable diligence and promptness), 4-8.4(a) (violation of Rules of Professional Conduct constitutes misconduct) and 4-8.4(d) (conduct prejudicial to the administration of justice, including disparaging litigants) of the Rules Regulating the Florida Bar.

Walton’s conduct flowing from his decision to not accept full settlement payment short by only 23 cents resulted in his 91-day suspension from the Bar. Maintaining a personal vendetta is contrary to practicing with professionalism. In these situations, the grudge-holder is prone to placing his or her personal interest ahead of the client, thus compromising the duty to the client as Attorney Walton did.

Granted, all of these cases are extreme examples of unprofessional behavior. However, they illustrate some of the root causes of unprofessional behavior, such as egotism, letting emotions dictate behavior and compromising integrity and honesty to keep a client happy. In each of these three instances, the attorney’s unprofessional conduct spiraled into violations of the Rule of Professional Conduct and resulted in suspension or worse. Let’s all follow through in this new year with a heightened commitment to showing courtesy to our opponents as well as the court. The practice of law is an honorable profession. Let us all demonstrate this by our conduct. We all have it within us.

Howard D. Friedman is a Magistrate in the Ninth Judicial Circuit. He has been a member of the OCBA since 2005.



Elder Law Committee

Bankruptcy Filings by Florida's Seniors Expected to Increase

Rosalyn Dunlap



This article will discuss issues related to bankruptcy filings by individuals 65 years and older in Florida. Specifically, this article will address reasons why those 65 years and older file bankruptcy and what impact BAPCPA has had on Americans 65 years and older who file bankruptcy. Finally, this article will review legislation that may impact those 65 years and older relative to filing bankruptcy.

According to the 2000 U.S. Census, Florida is ranked number one with the highest proportion of Americans 65 years and older, with older Americans at about 17.6% of the overall total population of the Sunshine State.¹ In 2006, the American Community Survey estimated that 16.7% (3,034,117 out of the total state population of 18,089,889) were 65 years and older.² Because older residents are such a large proportion of our state's population, what impacts older residents also impacts the entire State of Florida. The majority of those 65 years and older live on fixed incomes, which translates into an ever-growing number of older individuals struggling with debt and turning to the bankruptcy courts for relief.³

Filing Bankruptcy: An Overview

The most common relief for debtors in the bankruptcy courts is provided through either a Chapter 7 or Chapter 13 bankruptcy that help those who are "insolvent," which means where their "financial condition is such that the sum of such entity's [individual's] debts is greater than all of such entity's [individual's] property, at a fair valuation."⁴ The Chapter 7 Bankruptcy Code provides the greatest immediate relief for individuals with "consumer debts," which discharges "debt incurred by an individual primarily for a personal, family, or household purpose."⁵ This liquidation of debts provides debtors with a fresh start and refers to the characterization of a debtor's status after bankruptcy, *i.e.*, free of most debts.

Giving debtors a fresh start is one purpose of the Bankruptcy Code.

Chapter 13 of the bankruptcy code provides relief over a period of time through a repayment plan referred to as an "adjustment of debts of an individual with regular income."⁶ Chapter 13 allows debtors with a steady income to devise a repayment plan that is payable from 36 to 60 months. In this case, the debtor makes consistent monthly payments over the life of the plan that cover mostly secured debt (such as a mortgage), unsecured priority debt (such as IRS taxes) and minimal payment for unsecured debt (such as credit cards).

Bankruptcy Filings in Florida

The good news is Florida's rankings in the total number of filings of primarily consumer debts or non-business filings has fallen from second in the nation in 2000 (with 71,284 non-business filings) to eighth overall in the nation in 2006 (with 24,709 non-business filings).⁷

Florida is located in the United States Eleventh District Court and its Federal courts are divided into three geographical districts: the Northern District⁸, Middle District⁹ and Southern District.¹⁰ In the year ending December 31, 2006, there were more Chapter 7 filings than Chapter 13 filings in the State of Florida.¹¹ More Chapter 7 and 13 filings were filed in the Middle District than in the Southern or Northern Districts.¹² This is noteworthy because the mid-section of the state is the oldest, particularly in counties along the Gulf Coast from Levy to Collier, and 20 to 40% of residents are at least age 65.¹³

A closer look at the number of Florida filings by county reveals that during the twelve-month period ending September 30, 2007, Miami-Dade County was first with 4,280 total consumer debt filings, 3,248 Chapter 7 filings

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¹ 2000 United States Census.

² 2006 American Community Survey (ACS): *Data Profile Highlights*. The ACS program was fully implemented in 2005 in every county of the United States and in Puerto Rico, with an annual sample of approximately three million housing units. Although the American Community Survey (ACS) produces population, demographic and housing unit estimates, it is the Census Bureau's Population Estimates Program that produces and disseminates the official estimates of the population for the nation, states, counties, cities and towns and estimates of housing units for states and counties.

³ Martin, Ray, "Elderly Struggle With Debt: Growing Number of Seniors In Bankruptcy Court." New York, July 22, 2004, available at <http://www.cbsnews.com/stories/2004/07/21/earlyshow/contributors/raymartin/main630966.shtml>

⁴ 11 U.S.C. § 101 (32)

⁵ 11 U.S.C. § 101 (8).

⁶ 11 U.S.C. § 1321

⁷ Annual Business and Non-business Filings by State (2000-2006), American bankruptcy Institute available at <http://www.abiworld.org//AM/Template.cfm?Section=Home>.

⁸ The North District is comprised of the following counties Alachua, Bay, Calhoun, Dixie, and Escambia, Franklin, Gadsden, Gilchrist, Gulf, Holmes, Jackson,

Jefferson, Lafayette, Leon, Levy, Liberty, Madison, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washinton

⁹ The Middle District is comprised of the following counties: Baker, Bradford, Brevard, Charlotte, Citrus, Clay, Collier, Columbia, De Soto, Duval, Flagler, Geneva, Glades, Hamilton, Hardee, Henry, Hernando, Highlands, Hillsborough, Indian River, Levy, Lake, Lee, Manatee, Marion, Nassau, Orange, Osceola, Pasco, Pinellas, Polk, Putnam, St. Johns, Sarasota, Seminole, Sumter, Suwannee, Union, Volusia,

¹⁰ The Southern District is comprised of the following counties: Broward, Dade, Highlands, Martin, Miami Dade, Monroe, Okeechobee, Palm Beach, and St. Lucie.

¹¹ Table F-2 U.S. Bankruptcy Courts, Business and Non-business Bankruptcy Coots Commenced, by Chapter of the Bankruptcy Code During the Twelve Month Period ended Dec. 31, 2006.

¹² *Ibid*.

¹³ Florida State University, Florida's Aging Population; Critical Issues for Florida Future, 2002, Pepper Institute on Aging and Public Policy: College of Social Sciences, p. 9 (2002), available at <http://www.pepperinstitute.org/Population/2002FloridaAgingPopulationReport.pdf>

and 1,025 Chapter 13 filings.¹⁴

A report compiled by the U.S. Bankruptcy Courts regarding bankruptcy filing statistics by county further reveals that some counties that have a large proportion of residents over 65 years of age or older have the lowest reported filing rates.

Leading Causes for Seniors Filing Bankruptcy

It appears that an increasing number of debtors ages 65 and older are finding that the bankruptcy laws provide relief for those who have out of control “consumer debts.” For the elderly, “consumer debts” often include credit card debts, skyrocketing housing costs due to refinancing or equity lines of credit and costs related to healthcare. More recently, “consumer debts” for seniors can also result from debt incurred due to their children who may be returning home, often with their families in tow.

Credit Cards

Over the last decade, high interest rate debt incurred by America’s seniors has skyrocketed, making them the fastest growing age group headed into bankruptcy court.¹⁵ Although it has been reported that those 65 years and older are less likely to file bankruptcy than filers half their age, the fact remains that ages 50 to 70 is one of the fastest growing age groups in bankruptcy filings.¹⁶ The average credit card debt of Americans over the age of 65 increased by 89% between 1992 and 2001 (from \$2,143 to \$4,041.)¹⁷ Many seniors are using credit cards to pay for groceries, prescription drugs, major home repairs, loans to children and grandchildren, and other necessities.¹⁸

Refinancing Mortgages and Home Equity Lines of Credit

One of the leading causes of seniors filing bankruptcy is their attempt to avoid foreclosure, usually after refinancing a mortgage or opening up a home equity line of credit. This tragic phenomenon has many in their “golden years” seeing red and looking to filing bankruptcy to save their home from foreclosure. In the 50 and older age group (which includes those 65 years and older), home ownership is still the highest. However, Florida’s high foreclosure rate - one foreclosure filing for every 273 households - was ranked third highest among the states in October 2007, behind Nevada and California, respectively.¹⁹

Lack of Health Care Coverage

Lack of coverage for medical expenses is also at the

top of the list of reasons for seniors’ indebtedness and their necessity to file bankruptcy. Even with Medicare coverage, an individual 65 years or older generally faces an average of \$3,588 out-of-pocket medical expenses.²⁰ Another rising expense faced by seniors is out-of-pocket costs for prescription drugs. Many debtors 65 years and older use their credit cards to pay for these expenses that have risen rapidly in recent years due to increased pharmaceutical costs. Couples and individuals living on a fixed income (usually Social Security as their chief source of income) often find themselves charging this out-of-pocket prescription drug cost on their credit cards.²¹

Other Contributing Factors

Helping other family members is often another contributing factor those 65 years and older are facing, sometimes upon the return of their own children and grandchildren after a divorce or a job loss. Many older Americans also find themselves filing for bankruptcy due to inadequate retirement income. The fact that many older Americans will retire and not have enough income is a very sobering reality for many today. More than 90% of seniors over 65 live on their Social Security income alone. While it is good news that those 65 years and older are living longer, healthier lifestyles, a downside to such a sunny proposition is the prediction that many will outlive their retirement savings.²²

Bankruptcy after 2005

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA) was signed into law by President Bush on April 20, 2005. The most notable changes since then have been in the number of bankruptcy filings, new motions, objections and hearings that did not exist prior to the BAPCPA.²³ The effect on seniors, as on the rest of the nation, was that it started the myth that individuals could no longer file bankruptcy.

An important change was the introduction of the means test, which determines whether an individual debtor’s Chapter 7 filing is presumed to be an abuse of the Bankruptcy Code requiring dismissal or conversion of the case (generally to a Chapter 13 filing).²⁴ The majority of filers 65 years or older would positively pass the means test as most are on fixed incomes.

What did not change is that Florida is still an opt-out state²⁵ for filing bankruptcy, which means that Florida’s

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¹⁴ Table F-5A U.S. Bankruptcy Courts, Business and Non-business Bankruptcy Courts Commenced, by Chapter of the Bankruptcy Code During the Twelve Month Period ended Sept. 30, 2007, Public Access to Court Electronic Records (PACER) system, available at <http://pacer.psc.uscourts.gov/register.html>.

¹⁵ Tamara Draut and Heather C. McGhee, Demos, *Retiring in the Red: The Growth of Debt Among Older Americans* (February 2004). Available at <http://www.demos-usa.org>.

¹⁶ Hobbs, Frank R., “The Elderly Population,” U.S. Census Bureau, <http://www.census.gov/population/www/pop-profile/elderpop.html>

¹⁷ Tamara Draut et al., Demos, *Retiring in the Red: The Growth of Debt Among Older Americans* (February 2004).

¹⁸ National Consumer Law Center, *Consumer Bankruptcy Law and Practice* (2006 ed.).

¹⁹ October 2007 U.S. Foreclosure Market Report: Foreclosure Filings Up 94 Percent From October 2006, Realty Trac, available at <http://www.realtown.com/>

articles/foreclosures-filings-up-94-percent -from-oct-2006.

²⁰ Lori Achman and Marsha Gold, *Out-of-Pocket Health Care Expenses for Medicare HMO Beneficiaries: Estimates by Health Status, 1999-2001*, Mathematica Policy Research, Inc., The Commonwealth Fund, (February 1, 2002) available at www.cmwf.org.

²¹ Lucretia Marmon, *Older Americans Going Deeper in Debt*, AARP Bulletin, (March 2003).

²² Sophie M. Korczyk, Ph.D., *Back to Which Future? The U.S. Aging Crisis Revisited*, AARP, #2002-18, (December 2002.)

²³ Impact of New Bankruptcy Law Tops Committee’s Concerns, An Interview Judge Barbara M.G. Lynn, Vol. 39, Number 11 (November 2007.)

²⁴ 11 U.S.C. § 707(b).

²⁵ The Federal Bankruptcy Code allows states to offer exemptions that debtors filing may select to claim instead of the Federal Allowable Exemptions under the Bankruptcy Code.



Lee D. Gunn IV

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The **Young Lawyers' Section** of the OCBA invites you to its annual **Evening with the Judiciary**, a casual get together with the state and federal judiciary. Please join us for an evening of Florida Inspired Cuisine, beer, wine, refreshments, and a great conversation in a relaxed atmosphere.

When: Tuesday, April 29th
5:30 p.m. until 8:30 p.m.

Where: Doc's Restaurant



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RSVP: Wednesday, April 16th

For further information and RSVP, please contact Mike Remensnyder at miker@ocbanet.org, (407) 422-4551 x 223, or fax/ mail the form below to 407-843-3470 or OCBA, 880 N. Orange Avenue, Orlando, FL 32801.

Names of Attendees*:

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Judicial Relations Committee

The Local Bar Needs to Improve its Handling of Scheduling Conflicts with the Local Courts

William A. Davis, Jr.



At a recent Orange County Bar Association Judicial Relations Committee meeting, County Administrative Judge Carolyn Freeman raised a significant issue she requested that the Committee relate to the local bar. The purpose of the Judicial Relations Committee is to serve as a forum for judges to make issues known to the local bar and for lawyers to make issues known to the local judiciary. This article is meant to fulfill the Committee's mission by alerting OCBA members to Judge Freeman's concerns.

Judge Freeman told the Committee that the local judiciary has been having significant problems with lawyers having simultaneous hearings set in multiple courts. She noted that this occurs with conflicts between circuit courts, county courts, magistrate hearings, and traffic infraction courts. Frequently there is no notice of the conflict to courts and judges - the lawyer simply appears at one court and either does not appear at all in the second court, or appears very late. Magistrate and traffic infraction court hearing officers suffer the most, and it appears that lawyers may favor the circuit court judges over the county court judges, magistrates and hearing officers when such a conflict exists. Judge Freeman stated that this is a daily occurrence in Orange County. Judges are annoyed at this practice because it wastes the time and resources of the courts and judges, as well as the police officers, staff and clerks who appear for hearings.

In a follow-up interview with Judge Freeman, she elaborated on the concerns of the local judges and stated the simple, obvious solution: "Please notify us that you have a conflict. Don't expect us to find you." She emphasized that common courtesy and professionalism dictate that lawyers notify courts of scheduling conflicts. She stated that the judges like to see a conflict notice filed, and also suggested that lawyers call the judge's office when conflicts may prevent a scheduled appearance. The judges would also like to be advised if another attorney will be covering an appearance for the scheduled lawyer.

Judge Freeman believes that this problem can be a disservice to the lawyer's client. Police officers are often angered by the nonappearance of a lawyer at a traffic infraction hearing, which delays the resolution of the matter. Judge Freeman believes that this may make it less likely that an officer as the prosecuting agent will negotiate with the offender later.

Judge Freeman stated that this problem not only wastes the court's time and resources, but also community resources and the police department's resources. Whenever a police officer has to appear multiple times for a traffic infraction hearing, that officer has less time to be in the community

protecting our citizens. This time could be considerable - according to Judge Freeman, in September 2007, there were approximately 30,000 new traffic infraction cases in the Ninth Judicial District.

When asked why the judges do not simply rule against the party whose lawyer does not appear, Judge Freeman explained that the judges do not like to penalize a defendant for the attorney's misconduct in criminal or infraction matters. The judges are more likely to rule against a party in civil matters.

Judge Freeman summed up her message as follows: "Please let the local bar know that the consequences to lawyers and their clients could be severe. The judges understand that you have conflicts, but you need to be more courteous to the judges and the other people in the court system. Each lawyer has an ethical responsibility to represent clients to the best of the lawyer's ability. Failure to appear as scheduled at court or to provide the court with reasonable notice of nonappearance is a failure to meet this ethical duty."

All lawyers and judges are welcome to join us at meetings of the Judicial Relations Committee to discuss issues like this one. Lawyers are invited to bring issues regarding the local judiciary; judges are invited to bring issues regarding the local bar. The purpose of the Committee is to provide a forum and interface between the trial and appellate judiciary and attorneys who practice before them. Representatives from the State Attorney's Office, Public Defender's Office, Clerk's Office, judiciary and private bar participate in the Committee. The State Attorney, Public Defender and Clerk's Offices use this Committee as a forum to communicate information to the judiciary and the local bar.

The Committee meets on the second Wednesday of every other month at 12:15 p.m. at the Orange County Courthouse, 21st Floor Conference Room, 425 North Orange Avenue, Orlando, Florida 32801. Committee meeting dates are listed in the OCBA *Briefs* calendar.

If you would like more information about the Committee, please contact Committee Chair Debra W. Botwin at P.O. Box 568126, Orlando Florida 32856; phone: (321) 206-1713; deb@dwbotwin.com, or William A. Davis, Jr., Law Offices of Patricia E. Bologna-Garagozlo, 1001 Heathrow Park Lane, Suite 1019, Lake Mary, Florida 32746; phone: (407) 433-8272; davisw14@nationwide.com.

William A. Davis, Jr., is the Managing Attorney for the Nationwide Insurance Staff Counsel offices in Lake Mary and Jacksonville. He has been a member of the OCBA since 1997.

Homestead Exemption is still intact. Also, Floridians who don't file the homestead exemption are eligible for a \$4,000 personal property exemption in addition to a \$1,000 automobile exemption.²⁶

In all counties, it appears that the post-BAPCPA downward filing trend is reversing. Filings in all categories are expected to increase substantially as individuals are faced with adjustable rate mortgages that are expected to adjust upwardly in the beginning of 2008. The numbers reported in 2006 already demonstrate an upward trend in the number of total bankruptcy filings.²⁷

Legislative Assistance for Those 65 Years or Older

Several national and statewide legislative initiatives have been proposed or passed that may assist older Americans who are contemplating bankruptcy. "FHASecure" is a new refinancing program under the Federal Housing Authority designed to assist families to avoid foreclosure. Another example is a proposed expansion of the American Homeownership Act, known as the FHA Reform or Modernization plan,²⁸ which may allow more seniors to obtain reverse mortgages from this federally backed program. Many seniors have fallen prey to reverse mortgage shams and such other predatory lending practices, and this proposed legislation could assist seniors in selecting a reputable reverse mortgage product.

Other laws that may affect seniors involve proposed amendments to the Truth in Lending Act, requiring credit card companies' financial privacy notices to include information required by law in a short document that consumers can readily understand, instead of the current and confusing jargon that often accompanies credit card applications and notices.²⁹

Conclusion

Seniors still remain the smallest group of bankruptcy filers. However, due to expected increases in foreclosure rates, continued rising costs of healthcare, inadequate retirement incomes as well as an increased reliance on seniors by their children and grandchildren, it is expected that the rate of bankruptcy filings by those 65 years and older will rise in the future.

²⁶ Amended Florida Statutes § 222.25, to increase to \$4,000 from \$1,000 the amount of personal property exempt from creditor claims, provided that the debtor does not receive the homestead exemption under Florida's Constitution, signed into law by Governor Charlie Christ. Effective July 1, 2007.

²⁷ Table F-5A U.S. Bankruptcy Courts, Business and Non-business Bankruptcy Courts Commenced, by Chapter of the Bankruptcy Code During the Twelve Month Period ended Sept. 30, 2007.

²⁸ Introduced in the 109th Congress in 2006, and is awaiting the reintroduction in the House of Representatives.

²⁹ These proposed regulatory changes would amend the jointly issued regulations in 2000 implementing the financial privacy provisions of the Gramm-Leach-Bliley Act, but a recent federal regulators' survey indicated that many consumers neither read nor understand the notices financial institutions provide under those regulations.

Rosalyn Dunlap is a sole practitioner in Orlando. She has been an OCBA member since 2006.

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Is your firm part of the 100 Club? Any firm with two or more attorneys and 100% membership in the OCBA can be a member of the 100 Club. If you think your firm is eligible, e-mail a typed list of your attorneys to Susan Laviolette at susanl@ocbanet.org and she'll let you know!



Appellate Practice Committee

Take the Appellate Challenge! **Part Four**

——— *Marcia K. Lippincott and Michael R. D'Lugo*



This marks the fourth and final installment of our “Take the Appellate Challenge” questions and answers. In our first and second editions, we challenged you with a series of questions designed to test your knowledge of the mechanics of initiating the appellate process and the potential pitfalls that exist for the practitioner who is not experienced in handling appeals. The third edition moved away from notices of appeal and addressed other areas of appellate practice that can create problems for the unwary. This month’s installment looks at specific situations that can arise during the course of trial and underscores the theme of this series: it is important to have an experienced appellate practitioner on your side, not only for the appeal itself, but also for the trial and important events leading up to the trial.

Questions:

16. You represent the plaintiff in a personal injury action. The defendant moves for summary judgment, arguing that there are no disputed issues of material fact and that the defendant is entitled to a judgment as a matter of law. The trial court agrees and enters an order granting final summary judgment, effectively ending your claim. You file a Notice of Appeal, and attach the order granting the Motion for Final Summary Judgment. The defendant, now appellee, moves to dismiss the appeal. How will the appellate court rule?

17. You represent the plaintiff in a declaratory judgment action against an insurance company. The parties file Cross-Motions for Summary Judgment. Prior to the hearing on the Cross-Motions for Summary Judgment, you enter into a stipulation with counsel for the insurance company agreeing that there are no genuine issues of material fact and that the court can rule on the cross-motions as a matter of law. The trial court rules in favor of the insurance company and you appeal. The only argument that you raise on appeal is that the evidence presented to the trial court was insufficient to allow the insurance company to carry its burden. How will the appellate court rule?

18. You represent the plaintiff in a personal injury action. During jury selection, you identify three jurors who you feel are defense-oriented and should be stricken for cause. The trial court denies your challenges for cause, and you use your peremptory challenges to eliminate the three objectionable jurors. You request that the trial court issue three additional peremptory challenges to make up for the fact that you had to use peremptories on jurors who should have been stricken for cause. The trial court denies your request. Prior to the empanelment of the jury, you renew your objection to the jury as a whole. After a defense verdict, you appeal to the District Court, with the only argument in support of reversal

that the trial court abused its discretion in refusing to grant your cause challenges. How will the appellate court rule?

19. You represent the defendant corporation in a personal injury action. During the course of closing argument, the plaintiff’s lawyer encourages the jury to send a message to the defendant with its verdict and to act as the conscience of the community. You know that these arguments are impermissible, but you do not object because you feel that the trial has gone well, you like the composition of the jury, and you will likely obtain a defense verdict. However, the jury returns a significant verdict for the plaintiff. You feel that a motion for new trial will be a waste of time because the trial judge has consistently ruled against you throughout the case, and instead you immediately file your notice of appeal, confident that the District Court will reverse based on the improper closing argument. How will the appellate court rule?

20. You represent the defendant corporation in a personal injury action. After a contentious trial, the jury awards a significant verdict to the plaintiff. Your motion for new trial is denied, and you timely file your notice of appeal. While you are in your office preparing the initial brief, you receive a phone call from your client, who tells you that two sheriff’s deputies have arrived at your client’s place of business and are proceeding to remove your client’s office equipment. The deputies tell your client that they are removing the equipment for the purpose of selling it in order to satisfy the judgment that was entered pursuant to the jury award at trial. Your client is furious with you for allowing this to happen. Are the plaintiff’s attorney’s actions in initiating the process of levying on your client’s property legal?

Answers on page 20

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Answers

16. The District Court of Appeal will grant the Motion to Dismiss the appeal. Although it seems counterintuitive, an order granting a Motion for Final Summary Judgment is not considered to be a final order that is appealable. *McQuaig v. Wal-Mart Stores, Inc.*, 789 So. 2d 1215 (Fla. 1st DCA 2005). Instead, the plaintiff will have to go back before the Circuit Court in order to obtain an actual final judgment. It is the final judgment, and not the order granting summary judgment, that is the appealable document. However, always be careful when assessing the language of an order granting a Motion for Final Summary Judgment. The Fifth District Court of Appeal has held that if the order granting the motion contains the proper language, an order can also serve as a final judgment, triggering the 30-day deadline for filing a notice of appeal. *Boyd v. Goff*, 828 So. 2d 468 (Fla. 5th DCA 2002).

17. The appellate court will affirm the entry of summary judgment in favor of the insurance company pursuant to the doctrine of invited error. Because of the agreement with the insurance company stipulating that there were no genuine issues of material fact, the insurance company was relieved of its burden of conclusively showing the absence of any genuine issues of material fact. *Hunter v. Employers Mutual Liability Insurance Company of Wisconsin*, 427 So. 2d 199 (Fla. 2nd DCA 1982).

18. The jury verdict will be affirmed because you have failed to properly preserve the issue for appellate review. In order to preserve the issue of jury selection for appellate review, trial counsel must not only request additional peremptory challenges and renew the objection prior to the empaneling of the jury, but counsel must also specifically identify members of the jury pool who would have been the subject of peremptory challenges had additional peremptories been granted. The failure to do so is fatal to your effort at appellate review. *Sebring Associates, Ltd. v. Aumann*, 673 So. 2d 875 (Fla. 2nd DCA 1996).

19. The appellate court will affirm the jury's verdict for the plaintiff, because you failed to properly preserve the issue for appellate review. The doctrine of fundamental error allows a civil litigant to seek appellate review of an issue to which there was no objection in the lower tribunal if the conduct complained of is so egregious that it undermines the integrity of our judicial system. Florida's appellate courts have been narrowing the application of this doctrine over the years, and this narrowing includes the application of fundamental error to closing argument. A civil litigant may not seek appellate relief based on improper but not objected to closing argument unless the issue is raised with the trial court in the form of a motion for new trial. *Murphy v. International Robotic Systems, Inc.*, 766 So. 2d 1010 (Fla. 2000).

20. Although the plaintiff's tactics may not be professional, they are perfectly legal if you have not secured a stay of

execution on the judgment. Without a stay, a plaintiff can execute on your client's property until the amount of the judgment is satisfied. If a plaintiff does so and the verdict is reversed, the plaintiff will owe your client the money back. However, that is of little consolation if the plaintiff spends the money and is judgment-proof. In order to prevent this from happening, your obligation is to secure a stay of execution on the judgment. This can happen in one of two ways. One way is to obtain an order from the trial judge staying execution, which is a discretionary decision. The better practice is to obtain an automatic stay of execution on the judgment by obtaining a *supersedeas* bond from a bonding company. This bond will act as security for the satisfaction of the judgment and must be in the amount of the judgment, plus two years of accrued interest, reflecting the amount of time that an appeal may take to run its course.

This concludes our "Take the Appellate Challenge" series. We hope that these questions and answers have been informative, entertaining and thought provoking. We also hope that this series demonstrates the importance of having an experienced appellate practitioner on your side in order to maximize the services provided to your clients.

Marcia K. Lippincott, Marcia K. Lippincott, P.A., and Michael R. D'Lugo, a partner with Wicker, Smith, O'Hara, McCoy & Ford, P.A. Ms. Lippincott has been an OCBA member since 1992 and Mr. D'Lugo has been a member since 1999.

**The Central Florida Paralegal Association's
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What We Do . . .

Reunited

Robert B. Storrs, Jr.



Sheila's (not her real name) life of addiction began at the age of 12 when it is believed she first started drinking alcohol. In her teens she added marijuana and cocaine to her list of addictions. In 1989, she had a child. She was unable, as one might predict, to properly parent her newborn daughter. Then, in 1995, she had another daughter. The addictions had grown inexorably. Official records contain numerous reports of family violence, physical abuse of the girls, medical neglect, and even abandonment. Sheila had been offered rehabilitative and counseling services several times over the years, but had always refused. Her daughters went to school using make-up to disguise the bruises and contusions received at their mother's hands. They needed medical attention, but did not receive it. Periodically, their mom, in an alcoholic rage, would expel them from their home, and they would take shelter with their grandmother.

Finally, after one particularly violent incident which occurred in the grandmother's home, the grandmother filed charges against the mom, and DCFS requested a court order for dependency. The girls were placed in the temporary custody of their grandmother, and the Court appointed Mark V. Morsch as Guardian *ad Litem* for the two girls, Tanya and Allison (not their real names).

Mark Morsch has always had a special place in his heart for children. He began handling Guardian *ad Litem* cases on a *pro bono* basis for the Legal Aid Society in 1987. For the past 20 years, Mark has taken personal and professional satisfaction in being an advocate for abused and troubled children who often have no one to speak for them. Morsch told us that "[i]t's a serious commitment and every member of the firm is involved." One of the younger members of the firm, Alan Mirelman, currently has 10 GAL cases in process. Rebecca Wine, a paralegal, has been assigned as full-time coordinator to expedite the work and to insure that young clients receive the best possible representation in a timely fashion. They make frequent home visits and often go the extra mile on behalf of the children they represent.

The following is Rebecca's account of their work on behalf of Tanya and Allison.

Upon our initial visit with our new clients, we found two wonderful and exceptionally bright young women. Allison, the younger girl, was a good student who is particularly fond of music and just wanted to live in an environment free from abuse. The older daughter, Tanya, was pregnant and in need of guidance for the safety of herself and

her baby. Working hand in hand with the Department we were able to create a plan which enabled the mother to seek counseling and rehabilitation for her addictions. While the mother was getting much-needed help, we continued to monitor the wellbeing of both Allison and Tanya while they were residing with their grandmother.

Thankfully, their mother was able to overcome her addictions, and we were able to oversee the process of the girls' reunification with their mother. It was a happy day for all when we were able to recommend

to the court that Allison and Tanya be returned to the custody of their mother, who no longer posed a threat to her daughters and was ready to be the caring and loving parent that they deserved.

The personal and professional satisfaction that comes from helping children like Allison and Tanya is the reason the Morsch Law Group continues to be actively involved in the Guardian *ad Litem* Program.

***Allison and Tanya, we wish you the very best.
Thanks, Mark, Alan, Rebecca and Marla.***

Robert B. Storrs is the Director of Development for the Legal Aid Society of the OCBA. He has been a member of the OCBA since 2007.



Attorney Mark V. Morsch (seated); Attorney Alan P. Mirelman, Office Administrator Marla Philips-Morsch and GAL Paralegal Rebecca Wine (left to right).

Photo courtesy of Kathryn Kelly Photography

HEARSAY

Am I not destroying my enemies when I make friends of them?

– Abraham Lincoln



Sarah Reiner, CFAWL President, packs her van with tons of Christmas presents donated by OCBA and CFAWL members for the annual CFAWL Angel Tree project.



Gregory McMahon spoke to 20 new mediators at the OCBA's Citizen Dispute Mediation training workshop in mid-January.



Paramore area teens toured the Orange County jail as part of the Pathways in Law program developed by Judges Bob LeBlanc and Faye Allen. This event, sponsored by the OCBA and the Paul C. Perkins Bar in cooperation with others, is specifically targeted at crime prevention.



Judge Faye Allen hears arguments from attorneys Aramis Donell (left) and Rosalind Williams (right) during a Pathways in Law mock trial in November 2007. Read more about this award-winning program in March's Briefs!

Proud and Honored is Hearsay to have Honest Abe lead us into our February issue. Lincoln's big day is February 12, of course, unless you merge it into Washington's Birthday - in which case it becomes that amalgam known as President's Day or "that day we don't get off work but the trash won't be picked up." Still, any excuse we have to honor this particular founding father who truly knew what it was to be a lawyer works by me. I'm particularly fond of the chosen quote - clever like most of his pithy sayings, this one should be a mantra of litigators everywhere, especially when the heat of battle makes it hard to remember to litigate the case, not the attorney.

Sadly, it appears that the Tao of Abe has been lost on more than a couple of us during some recent skirmishes. While the local bar prides itself in a collegiality supposedly not typical in parts further south, no fewer than three separate professionalism quandaries have surfaced for colleagues of mine. Colleague Number 1 asked for a discovery extension and received the common but unfortunate retort that, because the client had offended pre-suit (and pre-attorney), the attorney must now suffer the consequence. Colleague Number 2 had the same scenario, but more vexing still - a motion for extension of time was requested because of a death in the immediate family. Amazingly, not only did the opposing attorney object, but also filed a heated opposition memorandum to object to the requested brief extension. Colleague Number 3 was the victim of the classic inadvertently sent fax scenario - but opposing counsel, prior to sending it back as though unread, elected to make copies of the fax and attempt to use it at a deposition! I know that these examples are not typical of our bar (and to be fair, at least one of the three scenarios involved an opposing attorney from afar). Still, it appears that we could all use the excuse of President's Day to brush up on putting a little extra Lincoln into our daily practice!

Ok, let's get me off my soapbox and onto some good old fashioned Hearsay. First a nod of the cap to my former employer, the good folks at LDDK&R. (What, you didn't know I got my legal start at the land of Lowndes? Yup - Original Building, Fourth Floor - home of the mail room, files and logs for the document couriers! Ooooh, and the five-ton shredding machine, but that's another story for another time!) Anyhow, turns out that the Orlando firm has only had two presidents in its 40-year history: **John Lowndes** and **Nicholas Pope**. (Yep, I've delivered intra-office mail to both of those fine gentlemen!) Well, the mantle is being passed and Hearsay congratulates long-time OCBA'er **William Drymond** on his recent selection to take the helm. The amazing thing here is that not only is Drymond *not* a Duke Law alum like his two predecessors, but his diploma came in a shade of *Tar Heel blue*. March Madness may get interesting at 215 North Eola....

Sticking with the large but still Orlandocentric firms, **Zimmerman, Kiser & Sutcliffe** recently raised over \$300,000 for Civitan International, earmarked for the Civitan International Research Center, a developmental disability research facility. **Robert** "Miami will go bowling again. Someday." **Dietz** was

Nicholas A. Shannin

the mastermind, organizing the Golf Tournament at Bay Hill to reach this excellent result. Congrats to Robert, ZK&S and Civitan.

One more kudos-related entry goes to Holland + Knight Attorney **Heather** “Better Half” **Rodriguez**. Wife of Sheriff Woody, Heather was awarded the Young Lawyers’ Section *Pro Bono* Award by the Florida Supreme Court in a ceremony on January 31st in her beloved Tallahassee. Heather was a shining force during the efforts to free Thong Nguyen “**Liz’s mom**” Foshee during her year-long unwarranted detention in Vietnam when Foshee was essentially accused of assisting democracy. Heather led the Holland + Knight attorneys who worked on Foshee’s behalf *pro bono* while maintaining her other *pro bono* work for Legal Aid Society tenants and actively participating on our LAS Board of Trustees. In a column where I had to invoke Abraham Lincoln to remind us of the meaning of professionalism’s call, Heather has provided honor to our bar and our profession. Congrats, Heather!

Rather than force anyone to follow that, I’ll switch gears to congratulate our first Trivia Contest winner from the Judiciary! The Honorable **Cynthia** “**Gavin’s Mom**” **Mackinnon** was the sender of the first correct response to November’s query concerning the animal gracing each side of the Namibian Coat of Arms, which, of course, was the African Oryx (a species of the Antelope family). The prize, as always, is your name in lights here - so, congrats to Judge Mackinnon. What, you want a chance too? Fine: in honor of Valentine’s Day, e-mail me the name of Cupid’s human wife whose mythological path to the altar gained her immortality. The first to do so will be published, likely in the April issue, which is oddly appropriate.

Doodlebop Alert! A thank you to the attentive readers who recalled my issue #1 doodlebop reference to let me know that Tad’s Band is in town for a concert. For those who joined late, the inaugural Shannin Hearsay column determined that our OCBA President-Elect, **Tad** “Keats and” **Yates**, sounds just like the blue member of this rock band for the preschool set. A request was made by one reader, however, to determine the remaining members of the band. The suggestion was made that the Yellow Doodlebop, drummer and prankster of the group, was rather reminiscent of our own **Tom Wert**. In light of the fact that Tom gave Tad the most grief over his Blue designation, I find the suggestion meritorious and welcome Tom to Yellow Doodlebop stardom. But wait – the band numbers three, so readers, I need your help. Who should get the honor of being the Purple Doodlebop, the piano-playing purple-and-pink clad female front singer? Send your suggestions, plus any other news - noteworthy or otherwise – to me at nshannin@floridalawonline.com.

Happy President’s Day and Valentine’s Day to all, keep making friends out of enemies whenever possible, and I’ll see you back here in March!

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.



Liz McCausland, YLS President, hosted the annual YLS Holiday Party at her home on December 20. More than 60 young lawyers put aside their work to enjoy a festive evening. Look who’s having fun . . .



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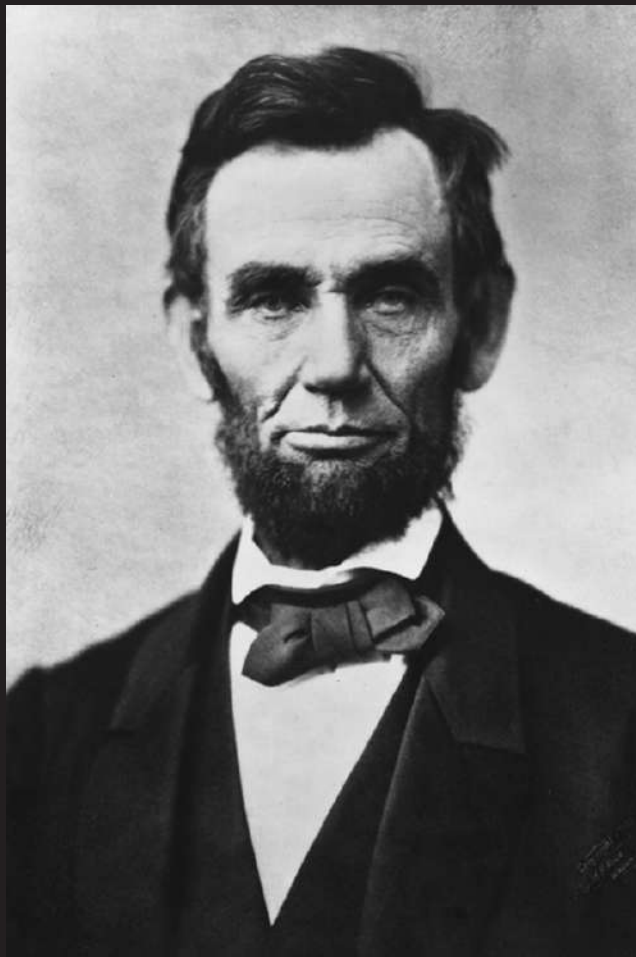
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YLS on the Move!

In Full Swing



Taylor C. Kessel

The New Year is in full swing and warmer months will soon be upon us. As the seasons begin to change, and the weather hopefully warms up, so do the activities on the YLS calendar. Before we get to what is going on with YLS, we would like to send out a special thank you to all of those who helped with the Seniors First drive in December. Seniors First, Inc. is a nonprofit social service organization dedicated to the needs of Central Florida senior citizens. The drive generated several contributions from members of YLS and the "Big Bar," such as pajamas, blankets, slippers and decorated trees. The donations were given to Lorraine Shumaker, Seniors First Volunteer Coordinator, on Wednesday, December 19, to be distributed in time for the holiday and bring joy to many Central Florida senior citizens this holiday season. Thanks again to Melanie Shoemaker and all those who helped with this great community service project!

Thanks also to Molly Young and her committee for all their hard work with the "Holidays in January" project. "Holidays in January" is a charitable event held annually by YLS, where members host a pizza party and provide presents to disadvantaged children to help make up for the presents and holiday cheer which may have been absent for them during the holiday season. This annual event is always a hit with the children who reside at the Coalition for the Homeless shelter. The event would not be possible without the help of the committee and those of you who donated your toys!

Start the New Year off with a helping hand! We need you to help the YLS kick off our "Helping the Homeless" project by collecting new travel-sized toiletries. We will be putting together care packages that include travel-sized soap, deodorant, shampoo, toothpaste and toothbrushes. We also need your help collecting toiletry cases for the care packages and lanyards to be used to hold important documents such as identification, medical information and emergency phone number lists. Bring your donations to the YLS luncheons in February and March. Not able to attend the YLS luncheons? That's okay! You can also drop off your items at the Legal Aid Society *Pro Bono* Information table at the OCBA luncheons on Wednesday, February 27, 2008 and Thursday, March 27, 2008. (Bonus: Florida Supreme Court Justice Harry Lee Anstead will be the guest speaker at

the OCBA March luncheon!) For care package donation details, please contact Jennifer Wimberly at the LAS at jwimberly@legalaidocba.org or 407-841-8310, ext. 3167.

If you are interested in attending the YLS February 21, 2008 luncheon, please RSVP to ocbayls@gmail.com by Tuesday, February 19. The cost is \$18 on or before February 19; \$20 at the door; \$10 for sole practitioners, law students, government attorneys and judges.

Just a reminder that the YLS's annual Evening with the Judiciary will be held on April 29 and all are invited to come out and meet and mingle with the members of the federal and State judiciary of Central Florida. Be on the look out for more information soon.

As an additional reminder, the Florida Bar Young Lawyers' Division is currently accepting submissions for its quarterly newsletter, "Across the Bar." If you have an article or photo of interest to young lawyers across the state that you would like to be considered for publication, please send it to Chelsie Roberts at croberts@fordharrison.com.

As you can see, 2008 is already beginning to fill up with exciting YLS events, so be sure to keep an eye out for the YLS e-mail blasts and updates on all the upcoming events. If you are a YLS member but are not receiving the YLS e-mail blasts, please sign up by sending an e-mail to ocbayls@gmail.com. Also, if you have an exciting story to share about a YLS member, or know of an award or accolade presented to one of our members, please e-mail me and I will try to include it in the next month's YLS on the Move column. Until next time, if you have any questions or want to find out more about our section, please contact me, Taylor Kessel, at 407-540-7595 or taylor.kessel@cnl.com.

Taylor C. Kessel is an attorney in the acquisitions department at CNL Income Company, LLC. He has been a member of the OCBA since 2005.



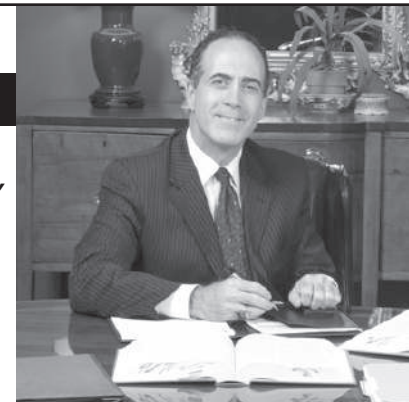
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*The Judges of the United States District Court
for the Middle District of Florida and
The Federal Bar Association, Orlando Chapter,
cordially invite you to attend the
Portrait Ceremony and Memorial Tree Dedication
for the*

Honorable James G. Glazebrook

United States Magistrate Judge

Friday, March 7, 2008

at four o'clock p.m.

in the Special Proceedings Courtroom #3A

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AS CIRCUIT COURT JUDGE**

**THE HONORABLE HEATHER L. HIGBEE
AS COUNTY COURT JUDGE**

**THE HONORABLE F. RAND WALLIS
AS CIRCUIT COURT JUDGE**

**FRIDAY, FEBRUARY 22, 2008
4:00 P.M.**

**THE HONORABLE FREDERICK T. PFEIFFER
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Ninth Judicial Circuit

Juvenile Commission Report Executive Summary

Ninth Judicial Circuit

Final Report - December, 2007

Communities across the Country have been working for years to identify the risk factors that place our youth at risk for becoming involved in problem or delinquent behaviors including crime, substance abuse, violence, and truancy. Orange County, Orlando, Florida is no different. Research within Orange County indicates that the delinquent behaviors can be attributed to several factors, such as feelings of low neighborhood attachment because of a high number of residential moves.

For years Orange County's community partners have been working on solutions to solve juvenile crime. In 2003, the Honorable Belvin Perry, Jr., Chief Judge of the Ninth Judicial Circuit initiated a Juvenile Strategic Plan Task Force in Orange County, Orlando, Florida. Officials and community leaders were involved in the planning process, seeking collaboration and community consensus from both sanction and prevention perspectives. In May, 2003, the Key Leaders Team, which consisted of over 95 community leaders, came together to explore the possibility of creating a comprehensive juvenile strategic plan in Orange County. After presentations, breakout sessions and discussion, participants at the Key Leaders Team meeting began the implementation of the strategy. Three sub-committees were developed and its members' collected and analyzed data, identified Orange County's risk factors based on research and data, inventoried and mapped community resources, and identified issues regarding the juvenile court process. The Orange County Comprehensive Juvenile Strategic Plan was completed in June, 2006 and is attached to this report.

On a daily basis in Orange County, Orlando, Florida, there is an average of 116 juveniles in the Orlando Regional Detention Center and 90 juveniles incarcerated in the Orange County Jail being prosecuted as adults. Perhaps if these youth had been dealt with differently in the juvenile court system, the number of juveniles in the adult system would be lower. There are a lack of resources in the community, a lack of organized sports in the middle schools, and weekend activities in the neighborhoods. Vocational programs need to be put back into the curriculum in the high schools. Juveniles and the community would benefit from learning trades, such as auto mechanics, carpentry, electrician, plumbing, and home economics.

During a discussion on the escalation of juvenile crime in Orange County and the number of juveniles incarcerated in the Orange County Jail as adults at a Criminal Justice/Public Safety Coordinating Council meeting in October, 2006, Chief Judge Belvin Perry, Jr. established the Juvenile Commission. The Juvenile Commission was charged with taking a comprehensive look at the juvenile system, to develop strategies for reducing juvenile crime in the community, and improve the safety and well-being of our community. The Commission was asked to

document its findings and make formal recommendations for improving the juvenile justice system. The Honorable Tony Johnson was named Chairman of the Juvenile Commission.

The sub-committees' purpose was to address the deliverables set by the Juvenile Commission by gathering information through research, data, expert and public testimony, visiting schools, reviewing practices and procedures, and information from the committee participants.

The following individuals provided leadership and support for the Juvenile Commission and its sub-committees:

- *Juvenile Commission Chairman, Honorable Tony Johnson, Circuit Judge, 9th Judicial Circuit*
- *Juvenile Commission Staff Director, Mr. Walter Gallagher, Criminal Justice Coordinator*
- *Juvenile Commission, Advisor to Chief Judge, Mr. Paul Snead*
- *Juvenile Commission Staff Coordinator, Ms. Helene Welch, Court Operations Consultant*
- *Community Resources Vice Chair, Ms. Carol Burkett, Coalition for a Drug Free Community*
- *Community Resources Staff Director, Ms. Shirley Johnson-Delgado, Orange County Public Schools*
- *Mental Health/Substance Abuse Vice Chair, Mr. Howard Tipton, Office of the Clerk of Court, Lydia Gardner*
- *Mental Health/Substance Abuse Staff Director, Mr. Richard Radin, Health and Family Services*
- *Processing and Assessment Vice Chair, Mr. Steve Dalsemer, Director of the Juvenile Assessment Center*
- *Processing and Assessment Staff Director, Ms. Laura Brimmer, Court Operations Manager, Juvenile Court*
- *Truancy Vice Chair, Honorable Daniel Dawson, Circuit Judge, 9th Judicial Circuit*
- *Truancy Staff Director, Ms. Jill Gentry-Tankersley, Executive Director of PACE Center for Girls*
- *Dependency Vice Chair, Mr. Alan Abramowitz, District Administrator, Department of Children & Families*
- *Dependency Staff Director, Ms. Traci Klinkbeil, Special Projects Coordinator/Family Safety, Department of Children & Families*
- *Delinquency Vice Chair, Honorable A. Thomas Mihok, Circuit Judge, 9th Judicial Circuit*
- *Delinquency Staff Director, Ms. Irene Bustamante, Court Administration, Juvenile Division*
- *Legislative Vice Chair, Mr. Richard Morrison, Florida Hospital*

Continued on page 28

- *Legislative Staff Director, Sergeant Michael Crabb, Orange County Sheriff's Office*

The following interns from the University of Central Florida and Florida AMU Law School attended the Juvenile Commission and its sub-committee meetings, and assisted the members of the sub-committees with research, sending out surveys, and writing proposed legislation:

- *Joe Ferrandino, Legislative Sub-committee*
- *Felisha Garcia, Delinquency Sub-committee and Truancy Sub-committee*
- *Ashley Harding-Orizondo, Truancy Sub-committee*
- *Amanda Holmberg, Juvenile Processing and Assessment Sub-committee*
- *Lance Morley, Community Resources Sub-committee and Legislative Sub-committee*
- *Jon Piccard, Dependency Sub-committee and Delinquency Sub-committee*
- *Ali Unlu, Mental Health and Substance Abuse Sub-committee*
- *Tim Willis, Mental Health and Substance Abuse Sub-committee*

The Juvenile Commission was divided into seven sub-committees having defined roles and responsibilities directed by a Vice Chair and supported by a Staff Director. The Committees were identified as:

- 1) Community Resources
- 2) Mental Health/Substance Abuse
- 3) Processing and Assessment
- 4) Truancy
- 5) Dependency
- 6) Delinquency
- 7) Legislative

The sub-committees met independently on a periodic basis to collaboratively identify major issues and formulate recommendations intended to reduce juvenile crime. The staff directors for the sub-committees met frequently to give sub-committee updates, discuss and share data, and to identify/formulate recommendations to be included in this report.

The sub-committee reports are the result of a group effort on the part of the Juvenile Commission, committee chairs, staff and its members. The work ethic is demonstrated in this report of all those involved and the participation and enthusiasm of all those who gave presentations and provided information. The time, effort and sacrifices of all the participants gives the Juvenile Commission Chairman cause to believe that the issues and recommendations presented in this report will have a positive impact on the Juvenile Justice System and bring about the changes needed.

To ensure that the recommendations in this report are completed, an implementation team will be developed. The implementation team will report its progress at the regularly scheduled Criminal Justice/Public Safety Coordinating Council meetings. The Juvenile Commission members have also been invited to become a part of the Juvenile Justice Council.

During the time that the Orange County Juvenile Commission met, Department of Juvenile Justice (DJJ)

Secretary Walter McNeil, Deputy Secretary Richard Davison, Department of Juvenile Justice Executive Management Team, and Regional Directors met with various agencies in the Central Florida area. After the meetings, Secretary McNeil developed 25 specific "Action Items" that DJJ will implement to improve public safety and the delivery of services in the Ninth Judicial Circuit. Teresa Ponchak, Chief Probation Officer, and the 9th Circuit Coordinator for the Department of Juvenile Justice, will coordinate with all of the stakeholders to ensure that the following "Action Items" are completed:

1) The Department will enhance the newly created Circuit Coordinator's involvement in the Department's management, media, and other juvenile delinquency related public safety, prevention, intervention, and treatment responsibilities within the Ninth Judicial Circuit.

2) The Department will assist in enhancing the Circuit Nine Juvenile Justice Board and the Orange County and Osceola County Juvenile Justice Councils.

3) The Department will provide information and updates to the Ninth Judicial Circuit stakeholders on the Blueprint Commission, particularly in preparation for the Orlando meeting of the Commission, to ensure a comprehensive consideration of the juvenile delinquency issues and recommendations for improvement of the state's juvenile justice system.

4) The department is currently providing a Positive Achievement Change Tool (PACT) assessment on all youth entering the Juvenile Assessment Center (JAC). The Department will work with other agencies at both the state and local level to ensure that comprehensive assessments, such as the Treatment Alternatives for Safer Communities (TASC) or Diagnostic Interview Schedule for Children (DISC), are completed for all youth who need them.

5) The Department will modify the information relating to gangs in the Juvenile Justice Information System (JJIS) to make the system more usable for law enforcement and other non-law enforcement entities that are authorized to use the system.

6) The Department will designate and train a gang coordinator within the Ninth Judicial Circuit who will work closely with the Circuit Coordinator, law enforcement and local task forces in a concerted effort to address the growing gang and violent crime issues.

7) The Department will designate trainers within the Ninth Judicial Circuit who will train newly appointed juvenile judges, state attorneys, and public defenders within the circuit to increase their knowledge and competency of the juvenile justice continuum.

8) The Department will work cooperatively with the Orange County School District to identify programs and services that will effectively utilize the U.S. Department of Labor Grant for school related and juvenile delinquency issues.

9) The Department will implement a training program for parents and families that will enhance their knowledge of the juvenile delinquency system and provide information on accessing programs and services.

10) The Department will ensure that the collection and

Continued on page 30



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reporting of information relating to juveniles and gang affiliation meet the same requirements as sworn law enforcement officers, which will facilitate a more effective transfer of information.

11) The Department will review and consider minor modifications, if necessary, to Chapter 985, F.S., as it relates to judicial discretion in the placement of committed youth.

12) As a pilot project, the Department will enhance the Serious Habitual Offender and SHOCAP programs within the Ninth Judicial Circuit in order to ensure that the most serious juvenile offenders are targeted for the most intensive levels of supervision and services.

13) The Department will provide additional focus on commitment staffing through further consideration of underlying facts of the committing offense(s).

14) The Department will hold commitment staffings at the Juvenile Assessment Center to increase participation by the State Attorney, Public Defender, families, and other eligible and interested parties. Staffings for youth who are detained will be conducted at the Juvenile Detention Center.

15) As a pilot project, the Commitment Managers in conjunction with the Juvenile Probation Officer within the Ninth Judicial Circuit will make final commitment recommendations for youth within the Circuit. The recommendations will not be subject to override by the Regional Residential Office.

16) As a pilot project, the Department will develop a transitional Receiving and Reception Facility with a general services overlay for committed youth in the Ninth Judicial Circuit who are awaiting placement and do not qualify for secure detention.

17) The Department has reorganized the Youth Custody Officer unit and will reallocate an additional officer to the Ninth Judicial Circuit.

18) The Department conducted a needs analysis and will reallocate three additional Juvenile Probation Officers to the Ninth Judicial Circuit.

19) The Department will fully participate in the Children's Cabinet and Secretary McNeil will serve as Department's member of the Cabinet.

20) The Department will review the impact of the education programs of the juvenile justice system and the cooperative agreements between the Department and the Orange and Osceola School Districts to assure the effective academic and vocational programs within the Department's programs and facilities.

21) The Department has assembled a workgroup, which is reviewing the Detention Risk Assessment Instrument.

22) The Department is reviewing programs and initiatives that will increase gender specific programming and provide for the special needs of girls committed to the Department.

23) The Department will coordinate community-prevention resources including civil citation, faith-based programs, community-based programs, and other programs that provide for delinquency prevention or intervention.

24) The Department will share up-to-date information and

verify or challenge the preliminary findings of the UCF research project on the relationship of adult crime to juvenile delinquency.

25) The Department will conduct semi-annual reviews of all Action Items and report on their effectiveness to the stakeholders of the Ninth Judicial Circuit.

Submitted by the Ninth Judicial Circuit Court. To read the entire Juvenile Commission Report, please see the Ninth Judicial Court website at www.ninthcircuit.org.

Juvenile Commission Members

Mr. Alan Abramowitz
District 7 Administrator
Department of Children
& Families

Hon. Kevin Beary
Orange County Sheriff

Dr. Ronald Blocker
Superintendent
Orange County Public
Schools

Hon. Daniel P. Dawson
Circuit Court Judge
9th Judicial Circuit

Mr. Jerry L. Demings
Public Safety Director
Orange County

Mr. Walter Gallagher
Criminal Justice Coordinator
Commission Staff Director

Hon. Lydia Gardner
Clerk of the Circuit
and County Courts
Orange County

Hon. Tony Johnson
Circuit Court Judge
9th Judicial Circuit
Commission Chair

Mrs. Marcia Mathes
National Alliance on
Mental Illness
Greater Orlando

Mr. Mike Mathes
National Alliance
on Mental Illness
Greater Orlando

Chief Michael McCoy
Orlando Police Dept.

Hon. A. Thomas Mihok
Circuit Court Judge
9th Judicial Circuit

Ms. Teri Mills-Uvalle
Office of the
State Attorney
Lawson Lamar

Roberto Moreno, Esq.
Stoller & Moreno, P.A.

Mr. Richard Morrison
Regional Vice President
Florida Hospital

Ms. Teresa Ponchak
Chief Probation Officer
Circuit 9
Department of
Juvenile Justice

Hon. Belvin Perry, Jr.
Chief Judge
9th Judicial Circuit

Hon. Jose R. Rodriguez
Circuit Court Judge
9th Judicial Circuit

Kevin Sherin, M.D., M.P.H.
Director, Orange County
Health Department

Mr. Paul Snead
Snead & Associates
Commission Advisor
to Chief Judge

Pastor Frank E. Thompson
Worship Center Orlando

Hon. Robert Wesley
Public Defender
9th Judicial Circuit



Office of the Judges of Compensation Claims

Orlando District Office Making Progress

Deputy Chief Judge David Langham

The Office of the Judges of Compensation Claims (OJCC) is part of the executive branch, but is often erroneously referred to as a “court.” The OJCC operates eighteen offices in which thirty-two Judges manage the entire volume of workers’ compensation litigation in Florida. They are assisted in this responsibility by mediators, clerks, and secretaries. This effort is further supported by the Division of Administrative Hearing, or “DOAH,” in Tallahassee. The DOAH became involved in the OJCC when the Department of Labor was abolished in 2001. At that time, the OJCC was transferred to the DOAH, which now provides extensive expertise and support to the OJCC operations in many ways. Two of the most important aspects of DOAH support have been the DOAH expertise in administrative and facilities management and the Management Information Services.

It has required significant effort to integrate the OJCC operations into the DOAH organization. In the midst of that transition, the OJCC began a long overdue transition to exploiting developing computer technology and the Internet. The DOAH had long been a leader in State of Florida information management. Soon after the OJCC transfer, the DOAH leadership recognized the immense potential that the Internet and better technology held for improved public service in the workers’ compensation litigation system. Leadership, coupled with vision, dedication and sound fiscal management, have resulted in the OJCC making a quantum leap in the last six years, to the undeniable benefit of the litigants, the attorneys that represent them, and the State.

Florida workers’ compensation seems to be always changing. The Florida Legislature has amended the Florida workers’ compensation law repeatedly in the last twenty years. Significant alterations were made in 1989, 1990, 1991, 1994, 2001, and 2003. These statutory amendments have made the practice of workers’ compensation law challenging to attorneys, and have likely been difficult for injured workers and employers to follow at times.

The administrative processes have probably been as difficult for attorneys and their clients. In 1973, the Florida Supreme Court adopted workers’ compensation rules of procedure, similar to the other procedural rules they have adopted and maintain for practice in Florida’s courts. In 1993, the Legislature directed the OJCC to undertake this responsibility and to publish procedural rules. Despite this mandate, the OJCC elected instead to publish a supplemental set of uniform “procedures” designed to explain or augment the Supreme Court rules. These were called the Uniform Practices and Procedures, and were published but never formally adopted pursuant to Chapter 120. In 2003 the DOAH published procedural rules pursuant to the Legislature’s 1993 mandate. This decision was challenged

in the courts, with the Florida Supreme Court concluding that the DOAH rules were appropriate, and retracting the previously published Supreme Court procedural rules.

Certainly, attorneys have struggled with these changes in substantive and procedural laws and processes. In the midst of it all, they have been further called upon to understand and embrace the benefits that technology and modern electronic information management techniques have brought to the system. We find that despite these many challenges, the vast majority of workers’ compensation attorneys are persevering.

The advent of computer hardware and software improvements allows the OJCC to more precisely track the changing trends in litigation volume and processing. These information management improvements have made it possible for the OJCC to track both the volume of petitions filed and new cases filed. We are also able to monitor the lifespan of petitions, from filing through their closure by voluntary dismissal, judicial dismissal, or adjudication. In short, the OJCC can now determine where the work volume is, where performance issues exist, and track trends in both work volume and work performance.

An integral part of the OJCC is the Orlando District office. This operation services the residents of four counties (Lake, Orange, Osceola, and Seminole). Three judges usually manage the Orlando OJCC operations; however, Judge William Condry and Judge Thomas Sculco are currently managing this District. The third Judge position has been vacant since May 2007, when Judge Thurman transferred from Orlando District to Gainesville District. This district has seen a significant decrease in filings since 2003. In 2003, 13,139 petitions were filed in Orlando District, compared to 8,101 (-38%) in 2007. Statewide, petition filings decreased 45% during the same period. During the same period, “new case” filings have decreased from 5,805 to 4,239 (-26%) in Orlando District. New case filings decreased 36% statewide during the same period. Thus, Orlando District is experiencing less than average decrease rates in both petition filing generally and “new case” filing.

Judge Condry is the administrative Judge in Orlando, and manages the overall District operations. He is assisted by mediator Sherry Hires, Deputy Clerk Tina Phillips, Executive Secretary Susan Berman, and Administrative Secretary Samantha Ganpat-Mansingh. Judge Sculco is assisted by mediator Valerie Marshall, Deputy Clerk Sonia McGuire, Executive Secretary Marla Miller, and Administrative Secretary Yadira Suarez. These two Judges have effectively managed the workload of the vacant

Continued on page 32

Judgeship since Judge Thurman's transfer. In that effort, they are also assisted by the staff previously assigned to Judge Thurman: mediator Anna Marie Kim, Deputy Clerk Cathy Boling, Executive Secretary Rose Ann Tayes, and Administrative Secretary Gabriela Durlick.

Petitions were mediated on average in less than the 130-day statutory period in all three divisions of the Orlando District during 2007. Trial volumes were significant in Orlando District when compared to the statewide average of trial volumes. The volume of "other" hearings held, settlement orders entered, and stipulation orders entered were each notably greater in Orlando District than the statewide average for these volumes. Despite these significant work volumes, both Judge Sculco and Judge Condry entered settlement orders in fewer average days than the statewide average of all Judges. The Orlando district office was renovated in 2007, including reallocation of space and better organization of operations to accommodate the many litigants and attorneys making use of these facilities. The OJCC is proud of the resulting physical environment of the

District office and the efforts of the team that manages the litigation assigned to it.

The operations of Orlando District are further detailed in the 2007 OJCC Annual Report, available on the OJCC website under the "reports" tab, www.fljcc.org. The OJCC continues to look to the horizon and plan for the future of Florida workers' compensation litigation. However, we also remain focused on the here and now. We are working hard to provide Florida with timely performance and accurate statistical analysis of the litigation process. As we refocus our efforts, we recognize the contributions of diligent and effective Judges. Florida is fortunate to have the leadership of Judge Condry and Judge Sculco in Orlando. Their efforts are improving the OJCC service to the public and bringing order and efficiency to the workers' compensation litigation process.

Submitted by the Honorable David Langham, Deputy Chief Judge of Compensation Claims for Florida.

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Presentation Skills for Lawyers

Ditch Your Notes



Elliott Wilcox

An upstanding member of the business community had been charged with soliciting an undercover police officer at a men's room in the mall. After listening to the man's version of events (something to do with a "wide stance") the attorney believed in the man's innocence and agreed to take the case.

Because the client's reputation hung in the balance, there would be no plea negotiations, and the case was set for trial. Less than two months later, the attorney found himself in court, ready to deliver his opening statement. He knew that if the jurors viewed the evidence from his client's point of view (rather than the police officer's point of view) they would clearly see his client's innocence and would vote for an acquittal. Believing that this opening statement might be the most important speech in his client's life, the attorney had spent countless hours writing a word-for-word script outlining everything he needed to tell the jurors. He walked to the center of the courtroom, confidently placed his script on the lectern, and looked out at the jurors. He was ready. He'd invested dozens of hours preparing, he fully believed in his client's innocence, and he knew exactly what he wanted to say.

Unfortunately, according to spectators, it was one of the duller opening statements ever heard in the courthouse. Five minutes into his opening statement, the attorney knew that he had lost the jurors' attention, and possibly lost the case as well. The only problem was, he didn't understand why.

The reason he lost his audience wasn't because he wasn't prepared, it wasn't because his message didn't matter, and it wasn't because he didn't care about what he was saying. The reason he lost them was perched right before him, sitting atop the lectern. Like many speakers, he had allowed his notes to interfere with his presentation.

Too many notes can ruin your presentation, too. The more notes that you carry with you to the lectern, the greater the chances that your presentation will be a failure.

"But wait," you're thinking, "that doesn't make sense. The more notes I have, the more prepared I am. That means there's less of a chance for me to forget something. Wouldn't more notes guarantee that my presentation will be a success?"

Only if your speech needs to be word-for-word perfect (like a State of the Union address), you don't particularly care if anyone listens to what you say, and you don't need to move them to action. But if you want to persuade your audience, move them to action, or convince them to change their minds, a prepared script can be the kiss of death.

There are two reasons why extensive notes or prepared scripts can destroy your presentations. The first reason? Audiences hate to watch you read. "I'm a busy person," they think; "If you're just going to stand up there and read your presentation to me, you're wasting my time. Just go ahead and e-mail me a copy of your script and I'll read it on my own time."

The second reason extensive notes and prepared scripts ruin the power of your presentations is more insidious. People

associate eye contact with honesty, sincerity and confidence. When you read from a prepared script or are overly dependent upon your notes, you make it more difficult to maintain eye contact with audience members. Without that all important eye contact, it becomes nearly impossible to establish an emotional connection with your audience.

If you're serious about delivering powerful presentations, you will need to ditch your notes. Unfortunately, ditching your notes can be one of the scariest things you'll ever do. When I coach other lawyers about improving their opening statements or public presentations, one of the most common recommendations I make is to reduce or eliminate their use of notes. The response is almost always the same: With a look of terror in their eyes, they'll say, "Get rid of my notes? Are you crazy? I won't know what to say!"

Based on their reactions, you'd think I was asking them to chop off their left foot. But the truth is, I'm asking them to something nearly as scary - I'm asking them to chop off a crutch they've grown dependent upon. They're afraid that without notes, their presentation will fall flat on its face. But actually, the fewer notes they use, the more powerful their presentations become.

Speaking without notes not only lets you make more eye contact with the audience (resulting in a more emotional connection), but it also instantly enhances your credibility. Regardless of whether you're speaking to a civic group, a jury, or the bar association, you probably want them to believe that you are the subject-matter expert and the person to turn to if they have any questions. When your audience sees that you aren't relying on any external notes, they'll think to themselves, "This person must really know what they're talking about!"

If you've been depending upon word-for-word scripts or extensive notes to deliver your presentations, don't expect to suddenly go "cold turkey" and completely ditch your notes. Like a pack-a-day smoker, it may take a while for you to wean yourself away from your addiction, but the sooner you start reducing your dependence upon your notes, the sooner you'll start enhancing the power of your presentations.

Start by replacing your word-for-word script with an outline of your presentation. Once you become comfortable using an outline rather than a script, the next step is to reduce your outline to a single page. Finally, reduce your outline once again, summarizing each of your major points in less than four or five words. As you grow accustomed to having fewer and fewer notes, you'll eventually be able to completely ditch your notes, allowing you to speak from the heart, connect emotionally with your audience, and deliver the most powerful presentations your audiences have ever heard.

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Elliott Wilcox is the editor of Trial Tips Newsletter. To discover more courtroom presentation skills and trial advocacy secrets that will help you persuade jurors and win trials, visit www.TrialTheater.com.

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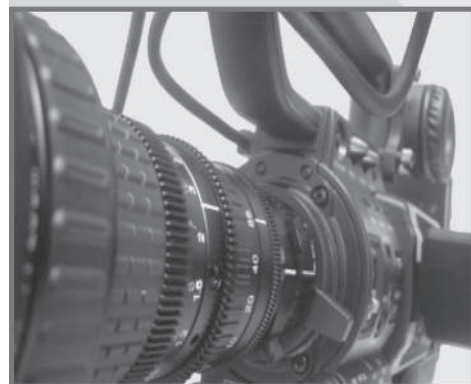
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Rainmaking

Are Your Marketing Efforts Turning to Dollars?

Mark Powers



In a marketing workshop awhile back, a client stood up and challenged me with the question, “Just how many times do I have to go to lunch with someone before they’ll send me business?”

It’s a great question. And one that’s especially difficult to answer.

Sometimes the results of your marketing efforts show up swiftly, such as when you take a referral source out to lunch and he sends a client the very next day. Boom. The ratio is one lunch to one client and the payoff is clear. When business shows up this quickly, and sometimes it does, it’s a gratifying experience.

Then there are the times you take a referral source to lunch four or five times and he sends nothing. Ever. Your repeated attempts to cultivate a relationship fail miserably. You believe you have good rapport because the individual appears to like you - but no new business results. In stark contrast to your earlier success, the ratio here is five lunches to zero clients.

What makes marketing so unpredictable?

Many variables come into play: the level of relationship you have with the referral sources; their access to good, referable clients; whether or not they feel you can reciprocate; their standing relationships with other attorneys; their desire to see you succeed, etc.

The interplay of all these variables leads to wide-ranging results, making it difficult to answer the “How many lunches does it take?” question. But let’s take it one step further. With this lack of predictability, how can you tell whether your marketing efforts ever pay off?

By stepping back to take in the long view.

The sometimes-disappointing results of individual client development actions can be discouraging, and after a few disappointments many would-be rainmakers stop their efforts all together. But if they (and you) stay focused on major client development goals and keep marketing, you will see results.

Perhaps, like one of the attorneys we work with, you want to increase the number of referrals you get from a certain type of referral source. We met with this particular client at the beginning of the year and examined his list of referral sources. We saw that certain attorneys provided his best referrals. We asked him to cultivate them further and get to know more attorneys of the same type. As we’ve said many times before, referrals often increase as the level of relationship increases. After a rough start in the first quarter he became somewhat discouraged, but he stuck with his plan and increased his efforts. At the same time he began measuring his outcomes. Sure enough, toward the end of the second quarter the referrals started to pick up. Not only did he prove to himself he could market to a targeted group successfully; he was inspired to set larger goals.

Think of marketing as a game in which the scores accumulate over time. With marketing, you can’t manage what you don’t measure. Marketing retreats that set fresh objectives at the beginning of the year are a very effective way to focus on new strategies. Once you set those new strategies, you’ve created a game for yourself.

How do you tell if you’re winning the game? By keeping score.

To win the marketing game you’ve got to focus on two areas of play: getting the clients to call your office, then converting the clients from “potential” to “paying” clients.

Our best advice on getting clients to call your office is to engage, at a minimum, in three substantial marketing contacts a week. That means you’ll have over a hundred targeted contacts over the course of a year. Spend your time with the right kind of referral sources and this level of activity *will* get clients to call.

Once they do, the game changes and your job is to lead them through the chain of events involved in signing them up. Measuring how you do at each of these steps is critical to improving your effectiveness. All of these statistics can be tracked on a simple chart (often kept at the receptionist’s desk). The statistics can be compiled each quarter and analyzed at the end of each year to evaluate whether or not progress was made.

The first bit of data to collect is the number of inquiry calls you receive. Not only will you want to capture who called and how many calls you received per month, you’ll also want to gather information about where the calls originated. Were they from specific categories of referral sources (CPA, attorney, doctor, etc.), the telephone book, or past clients? An upward trend in the number of clients who come from your referral sources, measured month to month, should indicate that your marketing efforts are resulting in new client calls.

Now you have to get new clients from the call to the office. You want a high number of callers to schedule an initial consultation, so track this percentage. This tells you how successful the person who’s conducting the intake calls is at bringing interested clients in the door. It may be you, it may be your associate or an experienced staff person - whoever it is should aim to get 80% to 90% of *qualified* clients (keep in mind some clients are price shopping and shouldn’t be scheduled) in for a consultation.

Next you want to track the number of consultations with potential clients who then become paying clients. This measures the effectiveness with which you are converting them. No one is successful all of the time, but attorneys who are the most successful typically convert 85% to 95%. Learn what your conversion ratio is so you can improve your consultation approach. We work with attorneys all the time

Continued on page 38



Financial Planning

Why Aren't You Maxing Out Your 401(k)? Could it be the best retirement planning tool you have?

Andrew C. Orr, CFP®, CLU, ChFC, AIF®



Do you have a million dollars? At the moment, maybe not. But if you invest and save diligently and let your assets compound, who knows? You may be a millionaire someday. In fact, you may need to be a millionaire someday. If you stay retired for 20 or 30 years – which could happen – it could take well over \$1 million to fund that retirement.¹ This is the #1 reason many Americans contribute the maximum to their 401(k) plan.

Your 401(k) is your friend. For years, employers have wondered: why don't people contribute more to their 401(k)s? At the typical large company, the majority of employees contribute too little, and some find it a hassle to even fill out the paperwork.² Most people don't speak "financial" and don't look at financial magazines or websites. It's "boring." So they mentally file "401(k)" under "boring." But the advantages of a 401(k) should not bore you; they should motivate you.

Tax-deferred growth and compounding. The money in your 401(k) compounds year after year without tax penalties. The earlier you start, the more compounding you get. Let's say you put \$200 per month in a 401(k) starting at age 30, and for the sake of example, let's assume you get an 8% annual return. How much money would you have at 65? You could have a retirement nest egg of \$437,148 from putting in \$200 per month. But if you started putting in that \$200 a month five years later, you might have only \$285,588. You can put up to \$15,500 into a 401(k) in 2008, and if you are 50 or older, you are allowed up to an additional \$5,000 in "catch-up" contributions.³

Potential matching contributions. Who would turn down free money? Big companies will often match an employee's 401(k) contributions. Usually, the corporate match is 50¢ for each dollar up to 6% of your salary.⁴

Reducing your taxable income. Many employees don't recognize this benefit. Your 401(k) contributions are pulled out of your wages before taxes are withheld (pre-tax dollars). So you get reduced taxable income and tax-free growth; you pay taxes on 401(k) assets when you withdraw them from the plan. With the new and increasingly popular Roth 401(k), the contributions are after-tax (no reduction in taxable income), but you can enjoy both tax-free compounding and tax-free withdrawals.

Why not take advantage? If you don't contribute greatly to your 401(k), 403(b) or 457 plan, you may be ignoring a great retirement savings opportunity.

Feel we are heading into a recession? Calls to our office are increasing as a result of the market volatility and declines in 401k account balances. Perhaps you also feel that we are heading for troubled waters, economically-

speaking. You can't help but notice that all the talking heads are speaking of the dreaded "R" word. However, any recession or bear market is wonderful news to the 401k investor. Why? Because the 401k investor is an *accumulator* of mutual fund shares, not an *analyzer* of the value of those shares (today anyway). You will have plenty of time to analyze *value* when you are retired tomorrow, but there is no point to it now.

A better bet is to keep accumulating. And as markets go down, the accumulator knows that they are buying more and more shares of mutual funds. Each and every pay period, the total number of shares only goes up, not down. Sure the value maybe down, but it could be up as well. In fact, it is either going to be down or up, up or down, and so it goes. This is perfectly normal. It is almost never static. But the number of shares a 401k investor owns always goes up while you are employed and contributing to the plan. And the number of shares increase even more in down markets because share prices are cheaper.

Try to always remember: if you are still working and contributing to the 401k, you are in the accumulation game right now. Forget about valuation. Focus on the numbers of shares and rejoice that you may be able to get many more shares for the same dollar that you paid for them in recent years. Bear markets mean shares are on sale. They are at a bargain price. So, feel great about investing in a 401k plan in down markets! Such buying opportunities only come about once in every four years, historically-speaking.

Don't panic. Stocks (equities) go up and they go down. And, unfortunately, while the return on stocks far exceed everything else in which you could invest in terms of bonds and cash, the volatility is the highest with stocks. Volatility comes with the territory and you never get a better place to view volatility than reading your quarterly 401k statement. Three months of market volatility on display in all of its glory or shame! It can be exceptionally wonderful or really ugly in down markets.

Mostly it is ugly because you are only looking at three months of time. This is a nanosecond of time to a 401k investor. More time is needed to be able to discern anything about returns or performance. We instruct everyone to give stocks at least a minimum of five years before calculating rate of return. Ten years is better. Why? Because volatility in five and ten years reduces dramatically compared to just three months. In fact, since 1927, you can hardly find a ten-year period of time where a globally-diversified portfolio of stocks lost value. This is a challenging thing to remember when you open up your 401k statement and you

Continued on page 38

Announcements

New Associates

Joel E. Maxson - Roetzel & Andress, LPA

Jonathan A. Stimler - Latham, Shuker, Eden & Beaudine, LLP

Sheena A. Thakrar - Latham, Shuker, Eden & Beaudine, LLP

Christopher R. Turner - William G. Osborne, P.A.

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Katherine E. McKinley - Zimmerman Kiser & Sutcliffe, P.A.

Jeremy S. Sloane - Zimmerman Kiser & Sutcliffe, P.A.

Speaking Engagements

Samuel P. King and **Kenneth J. McKenna**, partners in the law firm Dellecker, Wilson, King, McKenna & Ruffier, recently served as a faculty presenters for a seminar on "*Plaintiff's Personal Injury: Practice Tips and Application*." The National Business Institute's continuing education seminar took place in Orlando, Fla. on December 14 and was approved for seven CLE credits by the Florida Bar.

Susan W. Savard of Michael R. Walsh, P.A., has been a featured speaker and recently completed three separate family law seminars for the National Business Institute. The seminars included a review of revised changes to the rules of professional conduct and their application to marital and family law issues, and a review of child support and support guidelines as indicated in the Florida Statutes, 2006 as amended.

Dennis Wall of Orlando, Florida recently spoke to the School Board Attorneys of Florida at their Annual Meeting in Tampa, Florida about "Self-Insured Retention" Insurance Coverage.

Louise B. Zeuli, Esquire, Louise B. Zeuli, P.A., was an Ethics Panel Member during *Practicing with Professionalism* seminar on September 21, 2007, for the Young Lawyers Division of The Florida Bar in Orlando, Florida. On September 26, 2007, Ms. Zeuli spoke on *Legal Implications of Parish Nursing* at the Florida Hospital Community Outreach Program, Center for Community Health Ministry, in Orlando, Florida. She was recently elected for a two-year term to the Board of Directors for The Seminole County Legal Aid Society, Inc. Ms. Zeuli is also an arbitrator and certified circuit court and family law mediator.

Published

Michael R. Walsh and **Susan W. Savard** have published a lead article for the Barry Law Review: *International Child Abduction* and the *Hague Convention*. The article discusses the increasing problem of international child abduction and federal legislation to assist the "left behind" parent, and offers suggestions as to preventive measures.

A Florida law that allows for alimony to be reduced or terminated if the recipient is living with someone is reviewed by local attorneys **Richard D. West**, **Caryn M. Green** and **Andrea L. Cain**, of the firm West, Green & Associates, P.L., in the June 2007 issue of *The Matrimonial Strategist*, a national

publication that focuses on marital law. West, Green and Cain analyze the 2005 amendment to the state's alimony law that allows a court to reduce or terminate alimony if the recipient is living in a supportive relationship with another person.

Seminar

Appellate Practice Committee: Managing the Maze of Administrative Law Appeals (3.5 CLE, including 1.0 Ethics); Wed., Feb. 27; 1:30 p.m. - 5:00 p.m., OCBA Center. Advance registration by Feb. 20 - OCBA Members: \$40; Non-members: \$60. See registration form at www.orangecountybar.org.

News to Note

The **OCBA 75th Anniversary Committee** is seeking volunteers for its History Project. If you are interested in volunteering, or if you have stories that provide historical context, photographs of events or people, or mementos that illuminate our history, please contact Woody Rodriguez at dwrodriguez@aol.com.

Central Florida Paralegal Association, Inc. (CFPA) hosts monthly lunches at four (4) locations. Please see the CFPA website at www.cfpa-inc.org or the OCBA website for details. Upcoming events: Seminars: Feb. 6: "If They are not Serving you Electronically, You are not being Served;" Feb. 28: "Excel for Paralegals: Understanding How to Create, Edit and Manipulate Spreadsheets." Public Relations: CFPA's First Quarter Community Service project will be the Harbor House. Membership Mixers: The 3rd Thursday of the month. Next Mixer: Feb. 21, Houlihan's Downtown. For more information on all CFPA events, please visit www.cfpa-inc.org.

Correction

The article "**Trademark Infringement and Unfair Competition under the Lanham Act**" by **Paul E. DeHart III** published in the January 2008 issue of *The Briefs* was misidentified as having been submitted by the OCBA International Law Committee. In fact, the article was submitted on behalf of the **OCBA Intellectual Property Committee**, co-chaired by Paul E. DeHart III and Hutch K. Hicken, both of Litchford & Christopher, P.A. We regret the error and thank the committee for its submission.

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Financial Planning *Continued from page 36*

see losses on paper. But you must remember this, because otherwise you may capitulate and sell your stocks to retreat to bonds or cash. This would be unwise.

It's a lot easier to simply not open your statement at all. Sounds silly, but I am serious. So long as your investment strategy and portfolio is allocated in an acceptable manner to you, do not burden your human emotions and natural loss aversion by opening up your statement to see if you were up or down in the quarter.

Keep accumulating. Place focus on just the number of shares you own. Compare this number, if you must, to the numbers of shares you owned last quarter. You will be pleasantly surprised that it will be greater than last time.

¹ kiplinger.com/moneybasics/archives/2003/04/401k.html

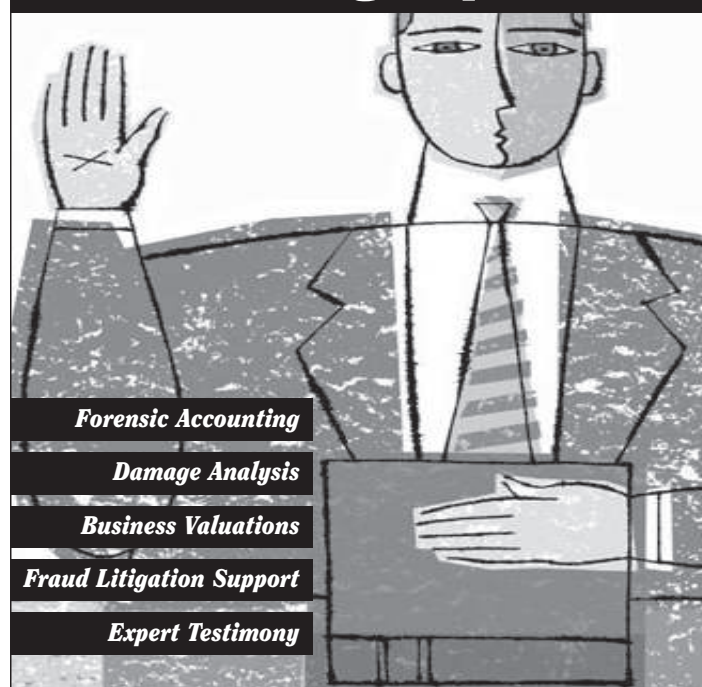
² moneycentral.msn.com/content/RetirementandWills/P90046.asp

³ investopedia.com/articles/retirement/04/111004.asp

⁴ money.cnn.com/magazines/moneymag/money101/lesson23/

Andrew C. Orr, CFP(r), CLU, ChFC, AIF(r), is an independent, fee-only financial planner and accredited investment fiduciary located in Orlando. He is President of ORRGROUP, a financial life planning firm providing comprehensive financial management services to individuals and businesses. Contact him at andrew@orrgroup.com, 321-332-7179 or www.orrgroup.com.

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Rainmaking *Continued from page 35*

to rework their consultation strategies and measure their results to see whether they've improved. If someone who is at the top of his game like Tiger Woods can break down his swing and rebuild it to be more effective, you can do the same thing with your consultation. It's well worth spending time to sharpen your skills. If your marketing efforts bring in ten clients one month, but you only convert 50% of them, you've lost all the time, money and effort that went into getting half of them there. Life is easier on those who convert a greater percentage of potential clients. They don't have to market twice as hard to make up for their inability to close the client.

Finally, the last statistic to track is your average fee per file. Most attorneys watch for an increase in the raw number of files they open, but we advise you to take it a step further. Why? Because opening 100 files at an average fee of \$5,000, for example, is not as good as opening 75 files with an average fee of \$7,000. The first scenario generates \$500,000 in revenue – not bad, but the second gives you an additional \$25,000 for a total of \$525,000 – and you opened fewer files. Do the math using your own metrics. This approach typically translates to working fewer hours and generating more income.

To achieve this goal, you must market yourself intelligently. To begin the process, establish what your average fee per file is presently by looking back at the cases you've opened in the last year. One way to do this is to have your bookkeeping software print out a list of cases, files or clients for the last year in descending order of value. Print a hard copy of this, and then jot down the referral source for each case as you read through the list. It should be obvious who sends you higher-dollar business – the names will be clustered at the top of the list.

Focus on cultivating these people - and others like them. If one CPA, psychotherapist or tax attorney sends you great work, clone them. Get to know more potential referral sources in the same field. The fact you have one good referral source of this type means you can cultivate others. If your referral sources are not competitive with one another, ask the one you know well to introduce you to his or her colleagues. If it's not appropriate to ask for an introduction like this, get to know other professionals on your own. Targeting those who will not only send business, but will send *very good* business, is the essence of smart marketing.

Make sure your marketing efforts translate into dollars by doggedly sticking with your marketing goals – even when it's discouraging. Capture your marketing statistics to understand and improve your conversion rates in the chain of events that lead a client from potential to paying, and target your referral sources intelligently. To win at the game of marketing you've got to be good at every aspect of the game and learn to keep score. Because, in the words of the great Yogi Berra, "You can see a lot, just by watching."

Mark Powers, President of Atticus, Inc., co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners," is a featured marketing writer for Lawyers, USA and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers(tm) program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.



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Treasurer (1 yr.)

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Election of Trustees of the Board of Trustees of The Legal Aid Society of the Orange County Bar Association, Inc.

The following positions are open for election:

Two (2) seats on the Legal Aid Society Board of Trustees;
the elected Trustees will serve from June 1, 2008
through May 31, 2011.

Election of At-Large Members of the Board of Directors of The Young Lawyers Section of the Orange County Bar Association

The following positions are open for election:

Five (5) At-Large Board of Directors (2 yrs.)

Anyone interested in running for any of these positions should file a written petition at the Association office, 880 N. Orange Ave., Orlando, FL 32801, signed by not less than five (5) members of the Association.

Petitions must be received no later than 5:00 p.m. on March 3, 2008. Petitions may be mailed or couriered to the OCBA, 880 N. Orange Ave., Orlando, FL 32801.

Nominees must endorse their written acceptance on the petition and may NOT accept nominations for more than one (1) office.

No nomination for office of Vice President shall be accepted unless nominee has served on the Executive Council at least one (1) year.

Thereafter, the nominating petitions will be canvassed and tabulated by the President and Secretary, who shall thereupon certify the names of all members who have been properly nominated.

Voting shall be by secret ballot mailed to each member of the Association on or before March 15, 2008.

Voted ballots must be returned to the Association office no later than 5:00 p.m. on March 25, 2008.

In the event of a run-off election, the ballots will be mailed on or before April 5, 2008, with the voted ballot returned no later than 5:00 p.m. on April 17, 2008.

Blank petitions are available at the Association office and on the website at www.orangecountybar.org.



Classifieds

To reply to BRIEFS box number, address as follows: BRIEFS Box# _____
c/o Orange County Bar Association,
P.O. Box 530085 • Orlando, FL 32853-0085

Employment

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BANKRUPTCY ASSOCIATE – Winderweedle, Haines, Ward and Woodman seeks an associate for its bankruptcy department, preferably with 1 - 3 years experience in bankruptcy or commercial litigation. E-mail resume to jrichmond@WHWW.com or fax (407) 645-3728.

ALTAMONTE SPRINGS law firm looking for lawyer with 3-5 years experience in commercial and/or construction litigation. Salary and benefits commensurate with experience. Send resume to: Attorney, 986 Douglas Avenue, Suite 102, Altamonte Springs, FL 32714.

ALVAREZ, SAMBOL, WINTHROP & MADSON, P.A., A Full Service AV rated firm has immediate openings for the Orlando Office for the Commercial Litigation and General Liability Practice Groups. Successful candidates will have two to five years' experience. Please forward resume in confidence to, Firm Administrator, Alvarez, Sambol, Winthrop & Madson, P.A., P.O. Box 3511, Orlando, Florida 32802 or email to hfr@aswmpa.com.

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2008

February-March Calendar

OCBA Luncheon • Wednesday, Feb. 27, 2008

Dennis W. Archer

Past President of the ABA

RSVP by Feb. 21st to reservations@ocbanet.org

February

- 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
- 20 Solo and Small Firm Committee**
12:00 p.m. • Bar Center
- Insurance Law Committee**
12:00 p.m. • Bar Center
- 21 Appellate Practice Committee**
12:00 p.m. • Bar Center
- YLS Luncheon**
11:30 a.m. • Citrus Club
- OCBA Book Signing & Happy Hour**
5:00 p.m. • Urban Think
- CFPA Mixer**
TBA • Houlihan's Downtown
- 25 CFAWL Board Meeting**
12:00 p.m. • Bar Center
- 26 LAS Lunchtime Training**
The Basics of Serving as a GAL
12:00 p.m. • First Presbyterian Church, 106 E. Church St.
- 27 OCBA Monthly Luncheon**
Dennis W. Archer
11:30 p.m. • The Varsity Club at the Citrus Bowl, 1 Citrus Bowl Place
- Appellate Practice Seminar**
Managing the Maze of Administrative Law Appeals
1:30 p.m. • OCBA Center
- CFAWL Professional Women's Exchange**
6:00 p.m. • Taproom at Dubsdread
- 28 CFPA Seminar**
Excel for Paralegals
www.cfpa-inc.com

- 29 Barry University Seminar**
Framing an Earth Jurisprudence for a Planet in Peril
8:30 a.m. • Barry University
- Bankruptcy Committee Meeting**
12:00 p.m. • Bar Center

March

- 3 CFFLAIOC**
5:00 p.m. • Sam Snead's Tavern
- 4 Criminal Law Committee**
12:00 p.m. • Bar Center
- OCALSS**
5:30 p.m. • Bar Center
- 6 Elder Law Committee**
12:00 p.m. • Bar Center
- Federal Judicial Relations**
12:00 p.m. • Judge Conway's Chambers
- 7 CFAWL Luncheon**
11:30 a.m. • Citrus Club
- 11 Executive Council Meeting**
11:30 a.m. • Bar Center
- LAS Lunchtime Training**
Guardianships (Part II)
12:00 p.m. • First Presbyterian Church, 106 E. Church St.
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- 12 Estate Guardianship & Trust**
12:00 p.m. • Bar Center
- International Law Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse
- 13 Legal Aid Society Board Meeting**
11:45 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

YLS Executive Board Meeting
5:30 p.m. • Bar Center

CFAWL Judicial Reception
5:30 p.m. • I. W. Phillips House, Courtyard at Lake Lucerne

14 Workers' Compensation Committee
11:45 a.m. • Smokey Bones

18 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

Inn of Court
6:30 p.m. • Dubsdread

OCBA Seminar
How Good Attorneys Become Great Attorneys
9:00 a.m. • OCBA Center

19 Solo and Small Firm Committee
12:00 p.m. • Bar Center

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

20 YLS Luncheon
11:30 a.m. • Citrus Club

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

Paul C. Perkins Bar
12:00 p.m. • TBA

Social Committee
5:30 p.m. • TBA

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

Please see OCBA website for updates:
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