

The Briefs

A Publication of the Orange County Bar Association



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By the Hon. Karla R. Spaulding



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The Briefs

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Deadline for March Issue: 02/01/2008

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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Our 75-Year Legacy

C. Gene Shipley

Let the celebration begin! This year marks the 75th Anniversary of the Orange County Bar Association. For three quarters of a century, the OCBA has been assisting attorneys and legal professionals 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; and to promote camaraderie, a forum for discussion on issues pertaining to the legal system and education for its members.¹ For 75 years, OCBA members have been instrumental in transforming Orlando from a rural citrus town into The City Beautiful and in transforming the practice of law from its modest origins into the sophisticated system we now enjoy.

Your Executive Council has been working hard to plan the commemoration of our history and this milestone year. This month, I am taking a break from the theme of my previous President's Messages, which have described the numerous ways the OCBA is fulfilling its mission, to give you a glimpse of what is to come as we invite you to celebrate our heritage, our association and our members. Following are some of the events we have planned and articles about the OCBA slated for publication in upcoming issues of *The Briefs*.

This issue includes the first of several historical accounts you can expect to find in *The Briefs* during the coming year. We hope you enjoy OCBA attorney Melanie Shoemaker's lively and fascinating account of the legal community, the judiciary and noteworthy cases prior to the OCBA's founding in 1933. Be sure to read, too, the article by OCBA attorney David A. Yervey, Jr. His is the first of other upcoming articles that give a generational perspective to the practice of law in Central Florida as experienced by family members who served at the bar, on the bench or as officers of the court. As for upcoming activities, our first 75th Anniversary event of the year will be the annual Winter Wine and Cheese Party on January 24. We will round out the month when the best local bar association in the nation is joined by another national best - Jeremy Foley, Athletic Director of the University of Florida² - at our luncheon on January 31.

The February issue of *The Briefs* will include a piece by long-time friend and OCBA associate member Lori Spangler. Lori will provide the history of significant events related to the first years of the OCBA - 1933 to 1945. On our events calendar is the annual OCBA Past Presidents' Dinner. Initiated by our own past president, Bill Sublette, the Past Presidents' Dinner on February 13 reunites and

honors all previous OCBA presidents for their years of service. Appropriately, we will bring President's month to a close at our February 27 luncheon with guest speaker Dennis W. Archer, the first African-American President of the ABA. We are honored to have Mr. Archer attend our luncheon, and we thank our co-host, the Paul C. Perkins Bar Association.

In March, *The Briefs* will include an article by OCBA attorney Christine Weingart, who will tell us about the changes in the OCBA, the legal profession and Orange County from 1946 through 1960. We will continue to acknowledge our history as we celebrate an OCBA tradition in March at our annual OCBA Professionalism Luncheon by presenting our annual Professionalism Awards to two outstanding attorneys and, for the first year, an outstanding jurist. Florida Supreme Court Justice Harry Lee Anstead will be our guest speaker during this very special luncheon. We hope you will attend.

We will briefly stray from the chronological account of our history in April when OCBA attorney Ralph Losey's feature article will entertain us by describing how changes in technology have impacted the practice of law over the years. Our monthly luncheon on April 24 will feature a man who has seen many of these changes in the past several decades. Randall James, our guest speaker, served twenty-three years as Chief of Staff for three Orlando mayors. In addition to attending the luncheon, don't forget to mark your calendar now to attend the 75th Anniversary Gala, which will be held on April 12 at the new George C. Young Federal Courthouse. The Gala promises to be our 75th Anniversary capstone event!

In May, OCBA attorney Joyce Fuller's article for *The Briefs* will take us back to the 1960s by describing changes in our local community and profession. As for events, we are planning to hold a celebratory happy hour in mid-May. If you have not attended one, consider doing so - it's a great way to meet colleagues and have a wonderful time. Later in the month, during our May luncheon, the OCBA will swear in our next OCBA president, Tad Yates, as well as the other officers elected to serve into our 76th year.

June's issue of *The Briefs* will include photographs and articles highlighting the 75th Anniversary Gala and will recount the history of the Gala and the OCBA Foundation. Please join me in thanking Bill Sublette and current

Continued on page 4

¹ Excerpt from the OCBA Mission Statement.

² Foley was named the Street & Smith's *SportsBusiness Journal* National Athletic Director of the Year in June of 2006; the National Football Foundation and College Football Hall of Fame recently awarded him the 2007 John L. Toner Award, awarded annually an athletics director who has displayed superior administrative abilities and a strong commitment to college football.



Editors' Note

Our Shared History

Kristyne E. Kennedy

Well, here we are again - another year has flown by already and it is 2008! The New Year is always a great time to reminisce about the previous year and to look forward to the exciting things the coming year has in store. The OCBA has been gearing up for more than just a new year - 2008 is the year we celebrate our 75th Anniversary! During the next twelve months, you can expect to see many special events and features commemorating this milestone, including some articles and photos in *The Briefs* highlighting the growth of the legal community since the late 19th century and the founding of the Orange County Bar Association in 1933.

This year we will be looking at our shared history, including significant moments, influential people and positive achievements over the years. This retrospective peek at our past will also give us an opportunity to really appreciate at how far our legal community has come, see where we are and examine what we can do to continue to get even better. I am sure many of us take for granted how

much better we have it now, in so many ways - and I'm not just talking about word processing and computerized research! Today, we also are fortunate to have the benefit of being a part of a much more diverse group, one that includes lawyers from many different specialties, backgrounds, cultures and even geographical areas. On this point, I urge all of you to take a moment to read Atheseus Lockhart's article on page 13 of this issue.

We are looking forward to taking you back through our history and are grateful for the efforts and generosity of the contributors and committee members who have been so hard at work planning our 75th Anniversary projects, events and feature articles. We hope you enjoy this first very special issue of *The Briefs*. If you have any ideas, stories or photos you would like to share, please let us know! Until next time, have a safe and healthy New Year!

Kristyne E. Kennedy is an associate with Jackson Lewis LLP. She has been a member of the OCBA since 2001. The Briefs co-editor, Thomas A. Zehnder, is a partner with King, Blackwell, Downs & Zehnder, P.A. He has been a member of the OCBA since 1996.

President's Message *Continued from page 3*

Executive Council member Nick Shannin, both of whom will contribute articles. We also anticipate publishing a feature about the past, present and future of the Legal Aid Society, which was founded in 1967. We think you will enjoy learning more about the history and direction of our marvelous service organization.

Since I turn over the reins at the end of May, Tad will have the honor of letting you know about the events the OCBA has planned for the second half of our anniversary year. But, *The Briefs* articles are already in the works, and I would like to acknowledge, in advance, members who have graciously agreed to contribute to our magazine. In July, affiliate member Maribel Mojica will describe the OCBA as it existed in the '70s; Melanie Shoemaker will write about the '80s in August's issue; and an article about the OCBA in the '90s will be authored by attorney Judi Hayes and published in September. The October article, describing the challenges of the current decade and beyond, will be written by OCBA Secretary Jessica Hew. We will conclude

our 75th Anniversary coverage in November with an article honoring past OCBA presidents written by Christine Weingart.

In addition to our regular columns, new articles each month from our committees and the historical articles described above, we hope you will enjoy the other features planned for the our 75th Anniversary year, including pieces about the significant *pro bono* contributions you and your firms have made over the years. If you have stories that provide historical context, photographs of events or people, or mementos that illuminate our history, please feel free to contact a member of the Executive Council, *The Briefs* co-editors or the OCBA communications department.

We are looking forward to an exciting and very special year. We hope you will join us in celebrating the 75th Anniversary of the Orange County Bar Association!

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



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Orange County Bar Association

OCBA Luncheon Speaker

January 31, 2008

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Jeremy N. Foley

Athletic Director, University of Florida

Jeremy N. Foley, who has handled virtually every aspect of the University of Florida's \$76.6 million athletic program during an athletic administrative career that began with his internship in the Gator Ticket Office in 1976, was named UF's Director of Athletics in March of 1992.

A man with great leadership, vision and experience, Foley, 54, brings a die-hard dedication, never-ending enthusiasm and hands-on approach to the top athletic post at the University of Florida. Foley's philosophy involves continuing to build a comprehensive athletic program, with the goal that it be ranked as the top program in the nation.

Foley, who had served as UF's Senior Associate Athletic Director since 1987, says, "We have an outstanding academic institution and fantastic coaches, student-athletes, administrators, facilities and fans. With hard work, patience and a commitment to excellence and integrity, we will achieve the success this University deserves."

Thanks in great part to a tireless effort by Foley, Florida has consistently ranked among the nation's 10 best athletic programs.

As chief financial officer for the University Athletic Association (UAA), Foley has been the driving force directly responsible for more than \$180 million in capital improvements, including two major expansions of the football stadium, a multipurpose athletic fieldhouse, new facilities for tennis, track and field, soccer, baseball, golf, softball and swimming. Foley also played a role in developing the \$4.1 million academic advising center, which serves UF students and Gator student-athletes, and assisted in funding the \$10 million renovation of the Stephen C. O'Connell Center. The most recent project - the 2003 completion of a \$55 million renovation of the football - added luxury seats to the west side and improved the press facilities.

Foley's commitment to the overall athletic program includes plans to increase the number of opportunities for women. To date, three women's sports have been added under his tenure - soccer, softball and lacrosse.

In an era when the NCAA estimates 90 percent of Division I schools are losing money on inter-collegiate athletics, the University of Florida Athletic Association has contributed more than \$37.6 million since 1990 to help fund University of Florida academic endeavors. UF has been equally successful on the field of play and in the classroom during Foley's administrative tenure. The athletic program has ranked among the nation's top 10 for 24 straight years (1983-84, 2006-07) and among the top five for 12 of the last 18 years, according to national all-sport rankings.

UF became the first program in collegiate history to win both the men's basketball and football national titles in the same calendar year (2006). The men's basketball team then became the first repeat champions in their sport in 15 years after cutting the nets down again in 2007.

In all, 12 Gator athletic teams have won national titles under Foley. In 2006-07, a total of 11 teams

Continued on page 6

The Ballroom at Church Street • 11:30 a.m. - 1:00 p.m.
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Please RSVP for the luncheon no later than Thursday, January 24, 2008.
RSVP to Wendy Mazlin, Events Manager, at reservations@ocbanet.org.

To ensure proper luncheon count, RSVPs are requested no later than 5 days in advance. Those reserving less than 24 hours in advance will not be guaranteed a name badge. If you have made a reservation and find that you are unable to attend, please notify us as soon as possible via e-mail. We appreciate your effort to keep us up-to-date on your reservation status.

finished in the top 10 of their respective sports, including five top-five finishes.

Foley is the only athletic director in Division I history to supervise a program that has won national titles in football (1996, 2006) and men's basketball (2006, 2007).

Foley was named the Street & Smith's *SportsBusiness Journal* National Athletic Director of the Year in June of 2006, and the National Football Foundation and College Football Hall of Fame awarded him the 2007 John L. Toner Award.

In Southeastern Conference action, Florida picked up six league crowns in 2006-07 action, raising its total to 77 league titles since 1992, the top totals in the SEC over that time span.

UF's commitment in the classroom is equally impressive. Under Foley, student-athletes have been honored 66 times as Academic All-Americans, the fourth highest among all Division I colleges since 1992. For the 2006-07 academic year, UF had 187 SEC Academic Honor Roll honorees.

The Gator athletic coaching family, which Foley had a large part in assembling, has collected 53 SEC Coach-of-the-Year awards during the last 16 years.

Gator student-athletes, coaches and administrators have also been a fixture in the community, taking part in a variety of community-related endeavors. Florida student-athletes remained involved in the community and beyond. A total of 313 UF student-athletes participated in 2,041 hours of community service in 2006-07, partnering with 35 schools, 24 civic organizations and 18 non-profit organizations.

Florida was honored with a White House commendation for volunteerism in 1994.

Foley also served on the NCAA Division I Management Council from 1997-2002 and was named Honorary Alumnus of the University of Florida by the Florida Alumni Association Board of Directors in October of 2000.

Born in Washington, D.C., but calling New London, New Hampshire, home, Foley received his undergraduate degree in 1974 from Hobart College in Geneva, New York, where he also coached and scouted for the tradition-rich lacrosse program following graduation. He went on to earn his Master's Degree in Sports Administration from Ohio University in 1976, and then joined the Gator athletic program as an intern in the ticket office. In 1995, the Ohio Graduate School presented Foley with the school's Distinguished Alumni Award.

There is a continuing line of leadership in the Foley family, as his younger brother, James, commanded troops during Desert Storm and won two silver stars. In Foley's UAA office, an orange Gator sweatshirt that was worn by his brother at the battle of the Kuwait International Airport is encased in glass.

An avid sports and Boston Red Sox fan, Foley ran the Boston Marathon in a 3:39.51 clip in April of 1995 and completed the course in 3:28.10 in 1998.

A dog lover and proud owner of one Labrador retriever, Foley is involved with the Humane Society and makes numerous personal donations and public appearances with local charities.

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The Honorable Karla R. Spaulding

Computer-assisted research allows lawyers to find orders issued by almost any court in the country. Federal Rule of Appellate Procedure 32.1 allows you to cite some unpublished federal court decisions. But simply because you find an opinion that supports your position, it may not be appropriate to rely upon it.

Rule 4-3.3(a)(3) of the Rules Regulating the Florida Bar provides that “[a] lawyer shall not knowingly . . . fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel.” In the United States District Court for the Middle District of Florida, the controlling federal law comes from the decisions of the United States Supreme Court, the United States Court of Appeals for the Eleventh Circuit (and some decisions of the United States Court of Appeals for the Fifth Circuit), and the United States Court of Appeals for the Federal Circuit on patent issues. *See, e.g., Fishman & Tobin, Inc. v. Tropical Shipping & Constr. Co.*, 240 F.3d 956, 965 n. 14 (11th Cir. 2001); *Bonner v. City of Pritchard, Ala.*, 661 F.2d 1206, 1209 (11th Cir. 1981). Decisions from other federal courts of appeals are not binding. *Bonner*, 661 F.2d at 1209. Similarly, orders entered by district and magistrate judges are merely persuasive, unless they are the law of the case. *Fishman & Tobin, Inc.*, 240 F.3d at 965.

In Florida courts, the controlling decisions are those of the United States Supreme Court, the Florida Supreme Court, and the Florida District Court of Appeal for the district in which the trial court is located. *See, e.g., Brannon v. State*, 850 So. 2d 452, 458 n.4 (Fla. 2003); *Roland v. Fla. East Coast Ry., LLC*, 873 So. 2d 1271, 1275 n. 5 (Fla. 3d DCA

2004).¹ If none of the foregoing courts has decided an issue, the decision of any Florida District Court of Appeal controls if there is no inter-district conflict. *See Pardo v. State*, 596 So. 2d 665, 666 (Fla. 1992). Decisions of trial court judges do not bind other trial court judges even if they sit on the same circuit or county court. *See State v. Bember*, 592 So. 2d 1129, 1132 (Fla. 2d DCA 1991), *approved*, 630 So. 2d 1048 (Fla. 1994).

In practical terms, Rule 4-3.3(a)(3) means that when you prepare a memorandum of law, you must first determine whether there is any decision on point from a court whose opinions bind your court. If there is, you must cite it. Whether or not it supports your client’s position, the presiding judge is entitled to know about it. If the decision is adverse to your position, you may explain why you believe the decision should not control the outcome in your case - because, for example, there is a difference in the facts or procedural posture of the cases, or there has been an intervening change in the law. Only after you cite the controlling cases may you appropriately rely upon other cases as *persuasive* authority. If you honor the spirit of Rule 4-3.3(a)(3) by citing - or expressly noting the absence of - controlling law, the judge can feel confident in considering the non-binding decisions you cite as persuasive support for your argument. By complying with your ethical duty of candor to the court, your client, the court, and the profession are well served.

¹ Decisions of circuit courts acting in their appellate capacity are binding on all county courts within that circuit. *See State v. Lopez*, 633 So. 2d 1150 (Fla. 5th DCA 1994).

The Honorable Karla R. Spaulding, United States Magistrate Judge, Orlando Division, has been an OCBA member since 1998.

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947 So. 2d 1263 (Fla. 5th DCA 2007)
Reduced lis pendens bond from
\$600,000 to \$20,000.

McGhee v. Volusia County,

679 So. 2d 729 (Fla. 1996)
Clarified sovereign immunity/scope
of employment rules for deputy
sheriffs.

Acadia Partners, L.P. v. Tompkins,

759 So. 2d 732 (Fla. 5th DCA 2000)
Prevented multi-million dollar
judgment addition in complex
business litigation.

Wenzel v. Boyles Galvanizing Co.,

920 F. 2d 779 (11th Cir. 1991)
Affirmed a \$2.75 million dollar
personal injury award.

Boyles v. Mid-Florida Television Corp.,

467 So. 2d 282 (Fla. 1985)
Reversed the dismissal of a libel action
against an Orlando television station.

Hamlet v. Hamlet,

583 So. 2d 654 (Fla. 1991).
Reinstated permanent alimony award.

Marriott International, Inc. v. Perez-Melendez,

855 So. 2d 624 (Fla. 5th DCA 2003)
Affirmed million dollar personal injury
verdict based on the "two issue rule".

Lieberman v. Dept. of Professional Regulations,

573 So. 2d 349 (Fla. 5th DCA 1990)
Restored a physician's medical license.

Layeni v. Layeni,

843 So. 2d 295 (Fla. 5th DCA 2003)
Reversed denial of wife's interest
in medical accounts receivable.

Thomas v. Fusilier,

32 Fla. L. Weekly D2457a (Fla. 5th DCA 2007)
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payment required by marital
settlement agreement.

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Pre-1933 History of the Orange County Bar Association¹

—Melanie C. Shoemaker

The Orange County Bar Association was not yet a blip on the minds of legal scholars of the Central Florida community in 1933 and before. However, that does not mean that there was not an active legal community in Orlando and beyond during this time. The article below gives a brief overview of the courts, judges, solicitors, grand juries, crimes, criminals and interesting facts occurring in Central and Southeast Florida before the establishment of the OCBA. Whether they realized it or not, the characters touched on below were setting the stage for the establishment of a cohesive, accomplished legal organization in the years to come.

Early Orange County Circuit Court

An Act of Congress dated March 30, 1822 divided Florida into two judicial areas, East Florida and West Florida. A Superior Court, the territorial equivalent of a state Circuit Court with jurisdiction over all criminal and capital cases, was assigned to each area. As of 1823, the Superior Court of East Florida convened twice per year, on the first Monday in May and November, in St. Augustine.

In 1838, the people of the State of Florida ratified the Florida Constitution. This document provided that the State would be divided into a Western, Middle, Eastern, and Southern Circuit, with each circuit having a judge assigned to it with jurisdiction over all criminal matters. As of 1847, the following counties comprised the Eastern Circuit of Florida: Alachua, Columbia, Duval, Levy, Marion, Nassau, Orange, St. Augustine, St. Johns and St. Lucie. At this time, Orange County represented all, or a significant part, of the following present-day counties: Brevard, Lake, Orange, Osceola, Seminole, Indian River and Volusia. The Circuit Court for then-Orange County convened in Mellonville twice per year, on the third Tuesday of April and the first Monday of November.

The court continued to convene twice per year in Mellonville for a decade, from 1847 until 1857, until the Circuit Court for Orange County began meeting in Orlando during the fall term of 1857. In 1868, Florida was divided into seven judicial circuits; Orange, Volusia, Brevard, and Dade counties comprised the Seventh Circuit.

Judges of Early Orange County Circuit Court

When the Eastern Circuit Court first convened in Orange County in 1847, the Honorable Thomas Douglas presided over the court. At that time, circuit judges were elected to five-year terms, so Judge Douglas served Orange County from 1847 until 1852. His annual salary was \$2,000.00 and he was required to live within the Eastern Circuit. Before being elected to the Eastern Florida Circuit Court, Judge Douglas served as the United States Attorney for the Eastern District of Florida for approximately eighteen years. After his term as circuit judge, Judge Douglas was elected to the Florida Supreme Court, on which he served for three years. Interestingly, during his five-year term as circuit judge, Judge Douglas never sentenced anyone to jail.

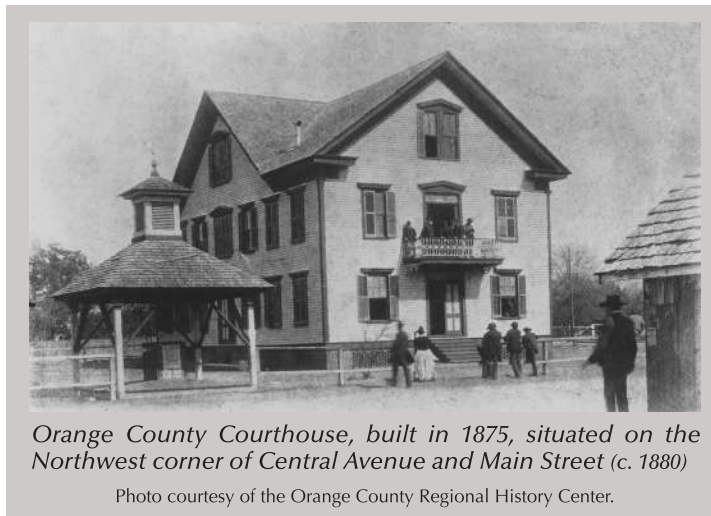
In 1853, the Honorable William A. Forward began his five-year term as Orange County Circuit Judge. Before his election to the circuit bench, Judge Forward served as Speaker of the Florida House of Representatives. Like Judge Douglas, Judge Forward imposed no jail sentences during his term.

In 1858, the Honorable Benjamin A. Putnam assumed the circuit court bench for two terms. Although he served Orange County for ten years, his first term coincided with the Civil War. Accordingly, the Orange County Circuit

Court only met once during Judge Putnam's first five years on the bench. Despite the lack of meetings, the annual salary of a circuit court judge increased twice during Judge Putnam's two-term tenure. In 1859, the Judge's annual salary rose to \$2,500.00, and in 1866, it rose to \$3,000.00.

In 1868, the Honorable John W. Price began two terms as Orange County Circuit Court Judge. Before assuming the bench, Judge Price served as a delegate to the 1864

Continued on page 11



Orange County Courthouse, built in 1875, situated on the Northwest corner of Central Avenue and Main Street (c. 1880)

Photo courtesy of the Orange County Regional History Center.

¹ The following sources were consulted during the preparation of this article: Susanne Pacher, *Exploring Downtown Orlando - A Beautiful Walk Around Lake Eola*, <http://ezinearticles.com> (last visited November 29, 2007); Stuart McIver, *The Life of Piety*, FLA. MAG., Sept. 21, 1997, at 7; Gloria Lee, *The Infamous Ashley Gang*, THE BREVARD REP., Oct. 20, 1994, at 6; Frank Robbins, *A Background & Analysis of Criminal Cases Originating in the Orange County Circuit Court from 1847 through 1869*, U. CENT. FLA. HIST. 6499 (1981); Bill Schnitt, *The Twelve Lives of Lena Clarke*, ORLANDO SENTINEL, July 20, 1969, at 6-F; 1 THE DOCKET 3, Nov. 1927; C. E. HOWARD, EARLY SETTLERS OF ORANGE COUNTY, FLORIDA 12 (C. E. Howard 1915).

The Honorable Thomas Picton Warlow Judge of the Criminal Court of Record, Orlando, 1911

Tad A. Yates

The Honorable Thomas Picton Warlow was born in India in 1865 to Edward Picton Warlow, a Captain in the British Army, and Isabelle MacKenzie Warlow. Mr. Warlow was educated in France and Switzerland and moved to Orlando in 1884 at the age of 19. He was admitted to the bar in 1888. At age 29, Mr. Warlow became a partner with the law firm of Massey & Wilcox, a prominent law firm in this area of our State. The same year he married Halle Hickcox of Chicago, Illinois. In 1907, Mr. Warlow was appointed County Solicitor. In 1911, he became Judge of the Criminal Court of Record. Judge Warlow was highly influential in the development of Dubsdread Country Club. He also served as Vice President of the State Bank and Trust and was an original developer of the Orlando Country Club. Judge Warlow

was a Shriner, an Elk and a Mason. As a Mason, he served as Grand Master of the 13th District.



The Hon. Thomas Picton Warlow (1940)

Judge Warlow's wife, Halle, was one of the founders of the Orlando Day Nursery, which has provided day care for needy working families in our area since 1921. She also was active in the Rosalind Club and the Sorosis-Orlando Woman's Club.

Thomas Picton Warlow III, IV and V (Tommy, Picton and Quinn) still reside in the College Park area of Orlando.

Tad A. Yates is a partner with Kirkconnell, Lindsey, Snure & Yates, P.A. He has been a member of the OCBA since 1994. He would like to thank the Warlow family for their contribution to this biographical sketch: T. Picton Warlow IV, VP, CFO, Georgetown Enterprises, Inc.; VP, CFO, Tubes & Hoses of Orlando, Inc.; President, Warlow Development, Inc., Orlando, Florida.



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Republican National Convention. Unlike the judges who preceded him, Judge Price did not hesitate to send convicted defendants before him to jail. During his first year in office, he sentenced five of the eleven convicted defendants before him to jail sentences of one month to five years in length.

Judge J. G. Speer

One judge of particular interest and importance to our community deserves to be highlighted – Judge J. G. Speer. Judge Speer is special to Orlando because he took an active role in the organization of the county, which as discussed above, included a large part of what is now Osceola, Lake and Seminole counties. While no one knows for sure exactly how Orlando received its name, many citizens and historians credit Judge Speer with this honor. According to legend, Judge Speer named Orlando after the name of a romantic hero in Shakespeare's *As You Like It*, a play set in the Forest of Arden.

In addition to serving as a county judge for several years, Judge Speer served a term in the State House and two terms in the State Senate. He had a reputation for standing against what he conceived to be morally wrong and did not compromise his principles for the luxury of success. To this end, Judge Speer is most likely infamously remembered by the liquor traffic of his day. Judge Speer attended a Florida Constitution Convention and was the author of Article 19, regarding regulation of the liquor business, of the Florida Constitution.

Solicitors of Early Orange County Circuit Court

Felix Livingston served as the first solicitor for the Eastern Circuit of Florida. He was followed by John P. Sanderson, who served in this position for three years. During his term, Mr. Sanderson procured seven indictments, but only two of these resulted in convictions.

In 1859, Louis J. Fleming began acting as the local prosecutor. His success rate proved high; of forty-three attempts at indictment, Mr. Fleming was successful forty-two times. He resolved twenty-three of these cases while he served as solicitor, with twelve defendants being convicted and four being acquitted.

In 1869, John G. Long assumed the solicitor office. His record was not nearly as successful as that of his predecessor; he lost, dismissed, or filed a *nollo prosequi* in approximately 61% of his cases.

There was a reason why the indictment and conviction rates of early Orange County solicitors was important: early solicitors were not paid an annual salary as such. Instead, they were given \$5.00 for every non-capital indictment, \$10.00 for every capital indictment, and varying compensation, often at the discretion of the presiding judge, for civil actions prosecuted on behalf of the state. Additionally, in 1865, solicitors began receiving a \$10.00 bonus for every conviction they obtained.

Continued on page 12



Orange County Courthouse, built in 1892. Left: Oliver Bradshaw; William Beardall; Judge William Martin; E.Y. Palmer. Right: Capt. Ben Robinson; Col. John Bradshaw, Clerk of Court; Arthur Butt; Maggie Hart; Mary C. Howard (c. 1904)



View of the 1892 Orange County Courthouse, looking east from the roof of the San Juan Hotel. In the lower left of photo, note the jail (below) and City Hall (above.). (c. 1900)



North end of the Orange County Courthouse started in 1926 and completed in 1927, facing Washington Street. (1927)

Photos courtesy of the Orange County Regional History Center.

Grand Jury of the Early Orange County Circuit Court

The grand jury of the Orange County Circuit Court convened for the first time in 1847. At this time, jurors were selected from the pool of “house-holders” between the ages of twenty-one and sixty that resided in Orange County. In 1861, selection of the grand jurors was modified such that the jury was selected from all “free, white males” rather than just those who owned homes.

In 1854, grand jurors were paid \$1.25 per day for their service to the court and five cents per mile traveled to and from court. In 1859, travel expenses were increased to ten cents per mile.

During this period, the “objective” component of the grand jury appears to have been missing. Often, the same individuals who sat on Orange County grand juries were also plaintiffs or defendants in pending civil cases before the court during the same session. Additionally, grand jurors were also defendants or related to defendants in criminal cases pending before the jury.

Early Crimes of Orange County

During Orange County’s early period, primarily the 1850s and 1860s, violent crimes against persons comprised nearly fifty percent of all indictments. To put this statistic into perspective, in 1980, violent crimes against persons constituted less than twenty percent of Orange County’s major crimes. Adultery and fornication also composed a high percentage of early crimes - approximately twenty-five percent of all crime during the 1850s and sixteen percent during the 1860s.

Interestingly, cases were resolved remarkably quickly during Orange County’s early period. Because the court only met twice per year, the minimum amount of time in which a case could be disposed was six months. Unlike today’s cases, six months was the most common period of time it took for a case to reach final resolution.

Famous Criminals from the Early Period of the Eastern Circuit

Shaker Mercy Killing

Just as in recent cases of present day, mercy killing was

a topic of controversy in the early period of the Eastern Circuit. In 1911, a young woman belonging to the local Shaker colony, Sadie Marchant, 35, asked two fellow Shakers, Brother Egbert B. Gillette and Sister Elizabeth Sears, to help her “pass out of her body.” Sister Marchant had been fighting tuberculosis for six years subsequent to a diagnosis that she would only live four months, and she had recently lapsed into unbearable pain. So, Brother Gillette and Sister Sears gave Sister Marchant chloroform to help her die.

The next day, the sheriff came to the Shaker colony, located on East Lake Tohopekaliga, and arrested Brother Gillette and Sister Sears for murder. The grand jury disagreed and refused to indict the two Shakers after days of deliberations. This infuriated the State Attorney, who asked Judge Price (discussed above) to hold Brother Gillette without bail on the murder charge and hold Sister Sears as an accessory to euthanasia. Judge Price agreed to hold Brother Gillette on a \$7,500.00 bond pending the next meeting of the grand jury. However, he refused to take any action against Sister Sears.

During the following year, citizens spoke out against the State Attorney’s and Judge’s decision to prosecute the “mercy killers.” It became obvious that there was no support in the community for prosecuting Brother Gillette and Sister Sears. Accordingly, in 1912, all charges were dropped against both defendants.

The Ashley Gang

The infamous Ashley gang, composed of John Ashley, Hanford Mobley, Ray Lynn and Bob Middleton, terrorized Florida’s East Coast for nearly fifteen years. John Ashley began his career of crime around 1911 when he was

approximately seventeen years old. In this year, he killed DeSoto Tiger, a Seminole Indian, with whom John had gone hide trapping. It was learned after the Seminole’s death that John had received \$1,200.00 for the hides trapped on John’s and DeSoto’s trip. It is alleged that John did not want to share this reward, so he killed his partner rather than split the booty.

In the years to come, John assembled his gang, and

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Interesting Facts from the Period

1847: Orange County had fewer than 500 residents, and therefore fewer than 500 potential plaintiffs and defendants, in an area comprised of approximately 3,716 square miles. At this time, the Orange County Courthouse was a log shack.

1850-1860: The harshest sentence imposed for the crime of manslaughter was five months imprisonment and a \$500.00 fine. During this same period, the two most popular crimes in Orange County were assault with intent to kill (twelve crimes committed in the twenty-year period) and larceny (eleven crimes committed within the twenty-year period).

1867: A penalty imposed in Orange County for assault with intent to kill was \$40.00 plus costs.

1868: The Orange County Courthouse burned to the ground. The Minutes of the Circuit Court for the Eastern Circuit and Deed Book D survived the fire, most likely because a law enacted in 1846 allowed the court clerk to keep court records at his home as long as he did not reside more than five miles from the Orange County Courthouse.

1869: Captain Benjamin M. Robinson began his service as Clerk of the Circuit Court of Orange County. Fifty-eight years later, in 1927, Captain Robinson was recognized as Dean of the Florida Clerks.

1926: Ground was broken for a new Orange County Circuit Courthouse. The courthouse opened one year later after a total of one million dollars had been expended.

1927: The Second Annual Meeting of the Association of the Court Clerks of the State of Florida was held at the Hotel George Washington in Jacksonville, Florida. Room rates ranged from \$3.00 to \$5.00 and radios were advertised to be in every hotel room.



Diversity Committee

A Discussion of Diversity and How the Legal Profession Can Lead the Way

—Atheseus Lockhart



In the wake of the Civil Rights era, the United States experienced tremendous growth in the inclusion of African Americans into the workforce, professional settings and institutions of higher education. Out of the profound litigation by Thurgood Marshall and others, the terms of integration and diversity were born. Diversity in the latter half of the 20th century traditionally meant the inclusion of African Americans in all aspects of society. The diversity movement in and of itself asked all persons in society to analyze and determine how the inclusion of persons different from themselves could be accomplished. In most instances, to ask an individual if he or she was committed to diversity would immediately bring forth images of African Americans who simply were “present” in workplaces, schoolhouses or social circles.

With the dawn of the 21st century, the term diversity has been transformed into something that involves so much more than simply the inclusion of African Americans, on an equal footing, into the fabric of society. Diversity now encompasses the inclusion of African Americans, Asian and Pacific Islanders, Hispanics and others of Latin descent, as well as persons of non-traditional sexual orientation and others who are marginalized or underrepresented in society. Now, diversity does not simply mean the “presence” of others in society as it did in the past; it means inclusion of others’ ideas, politics, dreams and goals.

One of the most interesting things about a discussion regarding diversity is that each and every member of the Orange County Bar Association is a unique and diverse individual. What makes being an attorney such a special and noble profession is the reality that all attorneys return to their respective communities carrying with them a group of skills that are as equally varied as the melting pot that is the United States. The OCBA has members who, prior to becoming attorneys, worked in a variety of different fields and their knowledge and expertise in these areas provides them with a perspective on the practice of law that allows all members of society to benefit.

As you look at the current landscape of the United States, attorneys are involved in every facet of today’s society. An analysis of businesses that are members of the New York Stock Exchange and NASDAQ will reveal attorneys who are CEOs, vice presidents and chairmen of boards of directors. Throughout history, attorneys have used their innate gifts and expertise in ways that benefit all of society, including in the arenas of business, politics and education.

One of the challenges OCBA members face in our analysis of any diversity discussion is to gain an understanding that, because each of us is an individual coming from a different background and belief system,

the conversation must always include ourselves. Often, diversity is couched in terms that are solely based upon the inclusion of others into our individual groups, rather than on an understanding that we must work to include ourselves into the discussions and groups of others. The best way to actively participate in creating a diverse, inclusive legal profession that suspends judgment of others based on race, creed or sexual orientation is for each of us to look outside of ourselves and determine that there is something we each can do in order to assist another group in the pursuit of its goals.

The Congress on Racial Equality (CORE) was a great example of a group working for the dream of a diverse society during the Civil Rights era. The members of CORE were of all different races and worked together to assist African Americans in their quest for voting rights in southern States. Most people have seen the movie “Mississippi Burning” and heard about the three young men who were brutally murdered in Mississippi. The young men were all members of CORE; two were Caucasian and the other was African American. The fact that the three young men were murdered is brutally tragic. However, what the story reveals is our ability to contribute to diversity on all levels by including ourselves in groups that are different and outside of our normal comfort zone.

Members of CORE and other organizations during that period understood that stepping out of one’s individual station in life to assist another person not only helps the individual but also assists in the enrichment and strengthening of the very fabric and tapestry that makes the United States one of the greatest societies in which to live. The three young men who were murdered worked tirelessly to ensure that African Americans were provided the right to vote in the face of bodily harm and death threats. Arguably, the civil rights struggle could have been considered solely an African American issue. To that end, any individual who was not African American might feel no obligation to assist in the fight of individuals for whom the ultimate reward could appear to be only for that different group.

As we go forward into 2008, we should continually strive to find opportunities to use our unique, individual and varied talents for the greater good of our society whenever and wherever we have the opportunity. If opportunities do not seem to exist, we should persist in creating them within our own groups in order to encourage others to enter our comfort zone and provide us with perspectives different from the ones to which we are accustomed.

Creating a diverse society in which every person regards himself or herself as a unique and distinct individual who

Continued on page 14

they took up rum-running, moon-shining, burglarizing, car stealing, hijacking liquor and terrorizing Southeast Florida. These men had their run of the territory until 1924. On November 1, 1924, the St. Lucie County Sheriff and other officers ambushed John and the others, killing all four members of the Ashley gang and leaving their bodies bleeding on the Sebastian River Bridge.

Lena Clark's Twelve Lives

On August 1, 1921, Lena Clark, the Postmistress of West Palm Beach, burst into the office of Orlando City Police Chief E. D. Vestel. Lena began to tell Chief Vestel how a robber, Fred A. Miltimore, robbed her post office of \$38,000.00 three years earlier. As a result, Lena tracked Miltimore to Orlando. There, she stated that she lured Mr. Miltimore to the San Juan Hotel, drugged him and left him with evidence of his robbery.

Despite this detailed account, Chief Vestel researched Lena's story. His inquiry revealed that Mr. Miltimore had not been drugged as Lena reported. Instead, he died from a pistol wound to the heart and two empty money pouches had been left next to his body. Additionally, it appeared that Lena, not Miltimore, had stolen the \$38,000.00 from the West Palm Beach post office, and Lena had tried to pin the crime on Mr. Miltimore rather than face charges herself. Chief Vestel confronted Lena with these new details, and Lena confessed that she shot Mr. Miltimore because he tried to implicate her and other postal employees in the robbery. Based on this confession, Chief Vestel charged Lena with first degree murder.

During trial, a crucial issue became the admissibility of Lena's "voluntary confession." State Attorney John H. Jones argued that Lena's statements were voluntarily given and thus admissible. Lena's defense attorneys countered

that the confession was extracted against Lena's will. At this time, the judge presiding over Lena's case, Judge C. O. Andrews, could not forecast how later high court decisions would strengthen an individual's rights. Accordingly, Judge Andrews ruled that Lena's confession had not been obtained by improper means and was admissible.

To defend her actions, Lena took the stand and provided some of the most intriguing testimony in Florida history. For approximately ten hours, Lena gazed into a crystal ball and recounted her twelve lives since the days of creation. Her tales included stories of her days in the Garden of Eden, her life as an Egyptian princess, her thwarted love affair with Emperor Titus, and her ascension to become President of the United States. After her riveting testimony, Lena sat quietly at the defense table reading works by Sir Walter Scott.

Her performance worked. A jury of Lena's peers determined her "not guilty on grounds of insanity" in less than two hours. Subsequently, Lena was committed to the insane asylum in Chattahoochee for one year and then lived a life of seclusion until her death in West Palm Beach in 1967.

1933 to 1945 History of the OCBA

In the next issue of *The Briefs*, you will have the opportunity to learn about the official organization of the Orange County Bar Association. Until then, this article has hopefully given you a deeper appreciation for the vibrant legal community that was the foundation for and impetus of the OCBA.

Melanie C. Shoemaker is an associate with Dean, Mead, Egerton, et al. She has been a member of the OCBA since June 2007.

Diversity Committee *Continued from page 13*

brings something to the table in order to create a better society for people in all walks of life is not an easy task. As individuals, we become accustomed to remaining in positions of relative seclusion and familiarity and do not venture out into surroundings that might be slightly uncomfortable and different. If it were not for persons within the legal profession who came before us -those who visualized and completed tasks that were outside their comfort zone - we would not be able to have a discussion regarding diversity today.

One of the basic tenets of being an American, especially where the law is concerned, is that we are bound by a belief that the lines that separated groups and individuals in the past must be blurred so that our country can ensure equality for all. We have the good fortune to be in one of the few countries and societies in the world in which individuals are considered to be unique in character, yet equal under the law. It is this uniqueness, combined with our interest in striving for equality and diversity, which gives us strength

as individuals and as a nation.

Our continuous quest for diversity within the law is necessary to ensure that future leaders project equality as a standard to be adhered to by all of society. With consideration and diligent effort, legal diversity can be attained within our profession. We attorneys are inevitably bound by our common educational experience that transformed us from non-lawyers to lawyers; we are bound by professional and ethical guidelines that help to shape our character; and we are bound by our interest in helping others and improving society. I encourage all OCBA members to recognize these bonds and embrace this brotherhood/sisterhood. In doing so, the Orange County Bar Association will reflect our individual uniqueness and celebrate our collective diversity; it will serve as a beacon to Central Floridians as a model for a truly diverse community of professionals.

Atheseus Lockhart is an associate with Meir, Bonner, Muszynski, O'Dell and Harvey. He has been a member of the OCBA since 2004.



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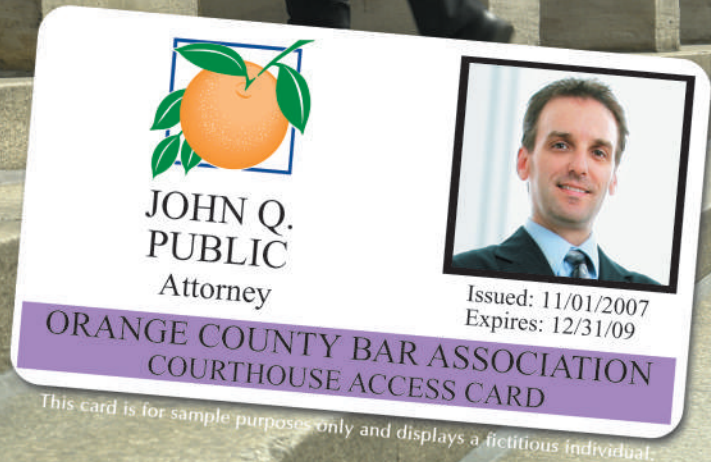
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Legal Aid Society News

Ins and Outs of the Interstate Compact on the Placement of Children (ICPC)

Stephanie K. Stewart



Attorney Robert Rasch had a problem: he was the GAL for a medically needy child who had a waiting prospective adoptive family in Georgia, but the Interstate Compact on the Placement of Children (ICPC) was taking far too long.

Attorney Rasch isn't the only GAL who has been placed in this position. The GAL Program has seen an increased number of requests for the placement of children outside the State of Florida the past couple of years. While in most cases this is a positive move for the child, ICPC is a time-consuming process that keeps the child in limbo for a lengthy period of time.

The purpose of the ICPC is to provide a process that places children in safe and suitable homes outside of their home state in a timely manner. Among other things, ICPC also provides for ongoing supervision of the placement and the delivery of services to the child.

In order to help GALs navigate the ICPC process, here are a few tips:

- To help move the process along, learn what documents the case manager needs to complete the ICPC packet. For instance, does she need a recent order (less than six months old) showing that the child remains dependent and in the custody of the State? Is there a recent Judicial Review Social Studies Report or Pre-Disposition Report which provides an assessment of the child's well being? Does the case manager have a copy of the child's birth certificate, school records and medical/vaccination records?
- Become familiar with the specific requirements of the state to which you are considering moving the child. Each state has its own "quirks" as to qualifications for placement in its jurisdiction. For instance, some states require relatives to be licensed foster parents before the child is placed with them. Knowing what is required by the receiving state ahead of time will allow for a faster response and better preparation prior to the ICPC packet being sent.
- It may be possible to arrange for a visit to the prospective home to check that the home and environment are in fact safe. If the GAL feels that a representative for the child should visit the home prior to placement to ensure its appropriateness, our GAL Program could contact a similar child advocacy organization, such as a CASA (court appointed special advocate) Program, to inquire about whether it has the resources to do such a visit as a courtesy to our GAL Program.
- If the GAL feels that the process is taking too long, the GAL can request that the court order the case manager

to request a "30 day notice" after every 30 days the ICPC packet has left Florida. If the problem persists, please contact Kenny Almonte at Family Services of Metro Orlando (FSMO). Mr. Almonte is our local ICPC Coordinator. He can be reached at 407-398-7368.

- **CAUTION:** Children are not to be in the prospective placement while the ICPC process is in the works. A "30 day visit" is a method used by many states to place children in prospective out-of-state placements during but prior to the completion of the ICPC process. Be aware that there has been a crack down on this practice, and receiving states have denied placement because of such a visit. This then means that the child must return to his or her home state, and the ICPC process must begin yet again for this child.

As for Attorney Rasch, after determining what was holding up the ICPC process, he spoke with members of the GAL Program and received some advice on how to proceed. Attorney Rasch requested that the court order key officials to appear at hearings once a week until the issues regarding the child's placements were resolved. The problems that had previously delayed the case were quickly fixed and the ICPC moved forward. The child is now adopted by the family in Georgia.

Attorney Rasch's experiences taught him to ask questions and not accept everything you're told at face value. His diligence and perseverance served the child well. His advice to GALs experiencing extended delays with the ICPC process is to recognize that while "some delay is inevitable...the only way to combat such delays is to push hard for regular hearings with mandated movement."

Be aware that there is a newly proposed ICPC. It is named the Interstate Compact *for* the Placement of Children. The *proposed* ICPC aims to improve the current ICPC by clarifying previously ambiguous definitions and article language as well as increasing efficiency to ensure faster placement of children. Critics of the proposed ICPC do point out that this ICPC also has its share of flaws, such as enforcement problems. So far it has only been enacted by Ohio. To date, the proposed ICPC has not been introduced in the Florida legislature.

For more information on ICPC please go to:

www.dcf.state.fl.us/publications/icpclibrary.shtml

Stephanie K. Stewart, GAL Program Permanency Attorney at the Legal Aid Society, has been a member of the OCBA since 2007. For more information, she can be reached at 407-841-8310, ext. 3147 or at stewart@legalaidocba.org.



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The Treasures of the Law Practice

—David A. Yergey, Jr.



In my law office in downtown Orlando I have a walk-in vault in the basement. It has been there since my father purchased the building in 1974 as his practice was advancing after his retirement as an Orange County Juvenile Court Judge. It was there when I joined him and began practicing law in 1983. It was there as my grandfather spent his last days practicing law in Orange County in 1974.

The vault holds many treasures, as you can imagine. When asked to write an article for *The Briefs* about being a third-generation Orlando lawyer and the changes in the law practice, I took the opportunity to dust off and review many of those treasures. These items have very little monetary value, but they are priceless to me. They consist of various diplomas, plaques, certificates and awards. The treasures of the vault have grown significantly since my grandfather, C. Arthur Yergey (“Art”), began the practice of law. He and his bride Germaine Graft, later known as Germaine G. Yergey (“Gerry”), had just acquired their first precious article of wealth. That wealth consisted of the knowledge and diploma that each of them had gained upon their graduation from Dickinson Law School in Pennsylvania in 1925.

My grandmother, Gerry, was truly a unique woman at that point in time. In the 1920s it was unheard of for a woman to consider going to law school or to even consider the “man’s” profession of the practice of law. She, however, had the inner strength and endurance to complete the task in spite of the many improper statements made by many of her male colleagues.

The next asset was acquired on November 5, 1927. This was the date that my grandfather was admitted to practice law in the State of Florida. With these assets, my grandparents embarked on their journey from Pennsylvania to Florida. Their plan was to leave the State of Pennsylvania for the Sunshine State and move to the thriving city of Miami, Florida. Orlando was an unknown factor.

I am told that the path to riches came to a swift halt when the young couple’s only monetary asset, their aging vehicle, died on the side of the road near the then-small town known as Orlando. My grandfather, without sufficient

funds to repair the vehicle, sought and obtained a full-time associate’s position from a local attorney, W.B. Crawford. My grandparents then made the decision that Orlando would be their home.

Shortly thereafter they made the decision to open their own office. They started their law practice in the Dolive Building at the corner of Orange Avenue and Washington Street. They worked as a team. My grandfather met with clients and handled the trial work. My grandmother did the research and handled the preparation of motions and briefs. She acted as attorney, paralegal and secretary, handling each task better than most of her male counterparts.

The practice of law was very different then. There was only one Circuit Court Judge (Judge Smith) who handled all of civil, criminal, domestic and probate cases. All pleadings and correspondence were handled solely by mail or hand delivery. There was no facsimile, email or overnight delivery.

Their practice was a general practice, including civil, criminal, probate and real property matters. This was the norm at that point in time. My grandfather assisted with the formation of Attorneys Title Insurance Fund and became the “fourth”

Fund member.

Their wealth grew on March 16, 1930, when their only child, D. Arthur Yergey (“Young Art”), was born. C. Arthur Yergey continued his practice of law with the assistance of his wife, who was instrumental in the growth of his practice despite never having taken the Bar. At that point, both felt that Gerry should spend her time raising Young Art, a decision that would reap dividends to all of Central Florida in the coming decades.

My grandparents’ service to the Orlando area grew with each passing year. Both shared a love of music. Gerry was active in the Florida Symphony Association and Art served as president of the Central Florida Civic Music Association. Art was also a staunch supporter of legal aid and acknowledged the need for access to the courts for all people, regardless of their financial abilities.

Continued on page 20



The Yergey Family: Palmer (age 9); D. Arthur Yergey; Louise Yergey, David (age 6); Germaine Yergey; Melissa (age 2); and C. Arthur Yergey

Unfortunately, World War II came along and hindered the growth of his law practice. However, it continued to increase his knowledge and inner wealth. Art Yergey was a Major in the Air Corps and served his country valiantly from June 18, 1942, through December 21, 1945. This service included time spent not only in Europe and West Africa, where he earned a Bronze Star, but also in the Judge Advocate General's Office.

He returned from his military service to a very different Orlando. He continued his law practice and his involvement in various civic organizations within the Orlando area. Both Art and Gerry were avidly involved in their churches: Art with St. Luke's Cathedral, where he served as Senior Warden, and Gerry with St. James Cathedral.

One of their greatest accomplishments came when Art represented land owners who owned property on the shores of Lake Maitland. A local dentist had purchased submerged property consisting of approximately 35 acres of lake bottom in Lake Maitland. The property consisted, in part, of what was then known as Picnic Island and what is now known as "Dog Island." The dentist was seeking to dredge and fill the areas between his existing property and Picnic Island. Injunctive relief was sought and temporarily granted while the court sorted out who had jurisdiction over the properties. The legal position of the dentist was that these were swamp lands. C. Arthur Yergey appealed to the Attorney General and the Trustees of the Internal Improvement Fund to intervene in the case, claiming that the lake was a navigable waterway. If it could be shown that the lake was a navigable waterway, then the State would own the lands and they could not be conveyed to private property owners. After several years of litigation it was ultimately determined that Lake Maitland was a navigable waterway, resulting in victory for Art's client and all citizens who enjoy that lake today.

C. Arthur Yergey was also concerned with the quality of life of Central Florida. He was honored several times, including being named Man of the Week for *Florida Magazine* on October 3, 1965, for his efforts as Chairman of the Chamber of Commerce Beautification Committee. He was adamant about continuing the efforts to beautify Orlando and worked to improve that beautification process at every opportunity.

He was proud to have his son join him in the law practice in 1957. The two practiced together in the Citizen's Bank Building at Orange Avenue and Robinson Street until C. Arthur Yergey was appointed as a Juvenile Court Judge in

1963. At that time Orlando was so small that there was no need for a full-time Juvenile Court Judge. This allowed my father to continue to practice law until his resignation from Juvenile Court at the end of 1969. He then went back to full-time practice since my grandfather was nearing retirement. My father continued that practice with his father until C. Arthur Yergey's death in 1974. Gerry continued to provide her "assistance" until her death in 1981.

The practice moved to its present location on Magnolia Avenue in 1974. The new location and resignation from the bench allowed Young Art to continue to assist and help others throughout Central Florida. These activities included acting as a founding Trustee for Lake Highland Preparatory School and assisting with establishing Edgewood Boy's Ranch, now known as Edgewood Children's Ranch. As his father before him, Young Art served as Senior Warden at the Cathedral Church of St. Luke and was involved in various Bar activities. He still supports these organizations today.

I was fortunate enough to begin my practice of law with my father in 1983. I did not realize the benefits of my father's desire to return to the law practice and not continue his career as a member of the judiciary until many years later. His patience and advice were, and continue to be, priceless. I went from law clerk, to all-knowing associate, to enterprising junior partner. My father has since retired but now serves as an ever-valuable sounding board with over fifty years of experience.

Yes, as I go through that vault, it has many priceless items. Those include the diplomas, the plaques, the certificates and the awards of three fine attorneys - attorneys who were dedicated to serving the people of Central Florida and making it a better place for all. I can only hope that as time marches on, the treasures of that vault will continue to grow as the needs of Orange County continue to increase. As my father, grandmother and grandfather before me, I am honored to be an attorney and a member of the Orange County Bar Association. I look forward to the OCBA's next seventy-five years of excellence. Hopefully, during that time, three more generations of Yergeys will have had the opportunity to provide legal services to the citizens of Orange County and all of Central Florida. And the treasures of my vault will grow with them.



Germaine ("Gerry") G. Yergey

David A. Yergey, Jr., Yergey and Yergey, P.A., has been a member of the OCBA since 1983.



Social Security Committee

Please Don't Forget Our Client's Social Security Claim

—Richard A. Culbertson



Your client is often my client, and how you settle your case may also determine the outcome of mine. I represent people who need Social Security and Supplemental Security Income (SSI) benefits. Without knowing the specific types of cases you handle, I can tell you that there are circumstances where the outcome of your case may determine whether or not our client receives desperately needed disability benefits and Medicaid. You may do a great job and have a great outcome for the client. The problem is that Social Security may have a policy or procedure which turns that good result for your client into a bad one for our client. Here are some examples.

Family law. After almost ten years of marriage, your client has separated from her husband. She is in desperate need of financial assistance. Her prescription costs alone exceed \$1,200.00 per month. She has a severe impairment which has kept her from working for years, but her application for SSI and Medicaid was denied. You represent her in a dissolution action and the court orders her husband to pay her \$1,500.00 per month in alimony. The amount is reasonable given all the facts, but the amount does not cover her rent and prescriptions.

Eventually, I win my case, and an administrative law judge finds my client is disabled and would otherwise be eligible to receive \$623.00 per month in SSI and Medicaid that would pay her medical expenses, including \$1,200.00 per month for her prescriptions. However, her claim for SSI and Medicaid coverage is subsequently denied because the alimony payment exceeds the maximum monthly income standard. In addition, she is not eligible to receive any benefits on her ex-husband's earnings record because the marriage did not last ten years. The outcome would be completely different if the court had ordered the alimony payments to be made into a special needs trust, and the dissolution had been delayed until after the marriage had lasted ten years.

Workers compensation. You've represented your client for two years. She had been receiving periodic payments from workers compensation in the amount of \$900.00 every two weeks, but she needs cash because she is behind on her mortgage, and she wants to settle her claim for lifetime permanent total disability and medical treatment of her work related injury. You negotiate a lump sum settlement of \$40,000.00, which is reasonable under all of the circumstances of her case. In what seems to be standard practice, the settlement does not specify how much of the total represents payment for anticipated medical expenses or whether the indemnification portion is prorated over her life expectancy.

Six months later, I obtain a favorable decision on her claim for Social Security Disability benefits. She would have received \$25,000.00 in retroactive benefits, but she

receives nothing because Social Security presumes her workers compensation settlement was intended to pay her the maximum monthly indemnification for the two years immediately after the settlement was finalized. This results in the maximum offset and reduction of Social Security benefits. Our client lost \$25,000.00 of Social Security benefits because your workers compensation settlement did not indicate how much of the total represented payment for anticipated medical expenses and whether the settlement of her lifetime permanent and total disability was intended to be prorated over her life expectancy.

Criminal law. Your seventy-year-old client hears a rumor that an arrest warrant was issued by the Orange County Sheriff's office. Orange County California that is. Your client has never been there, but has a disgruntled ex-spouse who now lives in Anaheim. After a few phone calls, you find out an arrest warrant was issued in California for aggravated stalking, a felony, based on a complaint by the ex-spouse. You find out the warrant is for pick up in California only, and the authorities there indicate no desire to extradite the suspect from another State. Your client is having health problems and sees no reason why he would need to go to California anytime during the rest of his life. After consulting with you, he decides to take no action.

Sometime within the next year, your client will be looking for a Social Security attorney. How can I be so sure? Because the Social Security computers communicate with the law enforcement computers. Whenever they discover there is a felony arrest warrant issued against someone who is receiving Social Security benefits, someone from Social Security will contact the issuing law enforcement agency to let them know they found their suspect. Social Security will give them the individual's home address.

If the law enforcement agency arrests the individual, Social Security will cut off his Social Security benefits if he is convicted and sentenced to more than thirty days. Social Security will cut off his SSI benefits if he is "confined" for any complete month. If the law enforcement agency does not arrest the individual (such as in the case of your client), Social Security will cut off his retirement, disability, and SSI benefits on the basis that he is a fleeing felon. They do not care how frivolous the charges are, or whether your client was aware of the warrant. They will stop the check. I will be able to appeal that determination and get a hearing in about two years. Meanwhile, our client will not get any monthly Social Security or SSI check unless and until an administrative law judge finds that he is not a "fleeing felon."

Estate planning. You draft a will for a longtime client leaving her estate to her five children in equal shares.

Continued on page 24

HEARSAY

*Nothing changes
On New Year's Day
— U2*



Gene Shipley addressed a crowd of nearly 300 members and guests at October's Bar Luncheon. He welcomed our guest speaker, Raquel "Rocky" Rodriguez.



Rocky Rodriguez (third from left) was recognized for her many contributions to the Hispanic community by HBA officers Cindy Duque, Andrea Caro and Penelope Perez-Kelly.



L. Anthony Collins Jr., Vice President of the public relations firm TuckerHall, addressed the November Bar Luncheon crowd. TuckerHall will be working with the OCBA during the coming year as we celebrate our 75th Anniversary.



Tom Marks, The Marks Law Firm, accepts a 100% Club certificate from Tad Yates at the November luncheon. With Tom are attorneys Valerie Evans and Abigail Schroeder.

The refrain from that little band from the Emerald Isle has often been taken in a negative sense. Could be that line about gold being the reason for the wars we wage, not sure. Being the glass half-full kind of guy I am, though, I choose to view Bono's axiom as fundamentally positive. How so? Glad you asked:

Example #1 of the good side of "the more things change, the more they stay the same" - the OCBA's Legal Aid Society. The coolest event taking place since the champagne dried on the new federal courthouse occurred in November when more than 25 past presidents of our groundbreaking *pro bono* organization reunited for an evening of camaraderie and a couple of trips down memory lane. **Russell** (like co-attendee **Leon**, he only needs one name) both sponsored the evening and spoke of the origins of the organization in the '60s. (Apparently, some who were there recall the decade after all!) He was followed by '70s' speaker **Michael Walsh**, '80s' representative **Chuck Stepter**, and '90s' designee **Mary Anne Morgan**, with the '00s' covered by the **Honorable Sally Kest**. The theme for each speaker was the constancy of Legal Aid through changing times. Most remarkable was how radical the idea of 100% bar participation was in the '60s, and how the OCBA has stuck true to that concept every year despite the ever-present challenges over time. After the event, **Tad "Keats and" Yates** remarked that the evening really made an impact on his view of how special this bar and its greatest achievement is, and that it's a shame that the event hadn't been videotaped. Whenever the reunion event gets planned, rest assured the tinseltown version will be recorded to ensure keeping this history intact. Congrats to **Bill "the U" Umansky** and his committee for pulling out the stops to make this first-ever event something which will surely be repeated.

Example #2 of "Nothing Changing can be a Good Thing" - the Social Committee's Poker Tournament. You'll see the pictures scattered about this column, illustrating how this annual event proved to be another smashing success for the "Shuffle Up and Deal" crowd. A full house of over 80 players - and more than a few onlookers - came downstairs into the speakeasy otherwise known as Tanqueray's to enjoy some card playing, camaraderie and charity, contributing more than \$1,000 to the OCBA Foundation. Scott Maxwell, announced as "the Nick Shannin of the *Orlando Sentinel*," was on hand to try his hand against the esquires present, but it was another non-lawyer who pulled off the big trophy, as Winderwee friend-of-the-firm Jason Skinner went all in to knock out big lawya after big lawya on his way to the coveted OCBASOP bracelet. Jason's profession? World history teacher and "Voice of the Wolves" for Timber Creek High School. Not sure what the lesson will be to his students for this victory, but congrats to Jason and to Winderwee, Haines, Ward and Woodman, P.A. for the vicarious victory. Congrats also to "Sheriff" **Woody Rodriguez** and **Steve "USC lost to Stanford!?" Jacobs** for their hard work to make sure the evening was flush with success.

Nicholas A. Shannin

Example # 3: If you miss a great social event, another one's around the corner. Ever since **Kristyne "K-Square" Kennedy** accepted the Helsbian assignment of starting this Social Committee up, it has been a never-changing flow of one cool event topped by an even cooler one. K²'s replacement, **Kimberly Webb 2.0**, will surely do just that when the OCBA holds its 4th annual Wine and Cheese gathering on January 24, 2008 at a place TBA. While great for those who know their Cabernet from their Camembert, this event safely avoids a pinkies-up aura and instead is always just plain fun, regardless of how sideways your views on Merlot may be. For more information, contact event chair **Judi Hayes** at jah@mcclanepa.com.

Need an Example #4? 45-12. 21-14. 34-7. 20-13. No, my colleagues from down I-10, I'm not trying to establish that the current trend is a permanent and unchanging constant, though it may last at least as long as Tim "Daily Planet" Tebow hangs around. But that a certain Hearsay columnist would delay his submission to get the 2007 vintage in the column - yeah, you can set a watch by that! And all this to segue to this Kudos note: Congrats to Carlton Field's **Karen Lynn Persis** for her election as President-Elect of the Central Florida Gator Club - the largest alumni chapter of any state university alumni association. Way to go, Karen!

An Example #5? Really? Well, you need look no further than the 16th Annual YLS Golf Tournament to verify that constants can be good indeed. This mainstay of the OCBA YLS had the perfect weather to compliment a full field, including **Judges Cohen** and **Kane** who were in the group right behind mine, and therefore should have been provided a full-armored golf cart! For additional details, turn to Brother Kessel's YLS on the Move article (but only after you're done reading this. Priorities!)

So, maybe nothing does change on New Year's Day. If that means continued strengthening of our bar, its events and - most importantly - its Legal Aid Society, then count me among the champagne-flute-half-full crowd who views this continuation as a serious positive. Best wishes to everyone for a great and prosperous 2008. Don't forget in this new year to send your kudos, gossip or other interesting information my way at nshannin@floridalawonline.com. Have a great January, see you at the Wine and Cheese Party and then I'll meet you back here in February.²

¹ Shannin tangent here: we are eight years into this decade of ours, and as far as I know there is no consensus as to what we are going to call it. The 0s? The Naughts? The 2000s would clearly be a wee bit over-encompassing. Maybe we'll all vote in a couple of years, and then debate what we'll call the next decade....

² Oh, wait - we have a winner! Our first Hearsay trivia contest winner is **William "Go Owls" Davis**, who correctly recalled that Clara Barton was our American Red Cross pioneer. Here's a bit of hearsay about our winner -- Bill has become the managing attorney for the Orlando and Jacksonville offices for Nationwide's staff counsel. Congrats, Bill. What, you want your name in print, too? Ok, here's your trivia question for the month: identify three movies with endings involving New Year's Eve. First correct answer e-mailed to nshannin@floridalawonline.com wins!

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.



Kristyne Kennedy and Orlando Sentinel columnist Scott Maxwell seemed to be having a great time at the Texas Hold 'Em Poker Tournament! Scott stepped up the "celebrity quotient" of the event!



Chips are up for OCBA Prez Gene Shipley! We don't know whether he held a winning hand, but you have to hand it to him, and event co-chairs Woody Rodriguez and Steve Jacobs, for putting on a great party!



Konstantin Pantas (left) and Scott Maxwell (right) watch their cards - and the mystery player - very carefully! Players raised more than \$1,000 for the OCBA Foundation.



Seminole Heather and Woody Rodriguez outflank Gator Tad Yates at the annual Florida-Florida State game in November. But, it's all history now....UF walked away with a 45 to 12 win. Next year, guys....

After her death, you probate the estate and each child receives \$50,000.00. One of the children is receiving SSI and Medicaid. The inheritance makes him ineligible until he spends it down to less than \$2,000.00 or hires a Social Security attorney to determine whether he can restructure his finances to re-establish eligibility.

Any bequest to my SSI client might result in making him ineligible for financial and medical benefits. The larger the bequest, the more problematic it becomes. If your client wants to leave something to someone who is disabled without jeopardizing what little he already has, there are some options, such as special needs trusts or homestead property, that will not result in termination or reduction of SSI or Medicaid.

Real Estate. Your client has not been feeling well and had to move out of her house into a smaller apartment. She wants to transfer the house to her sister. You help her do so and everyone is happy, until a few months later when your client has to apply for SSI and Medicaid because her health continued to deteriorate. Even though she is clearly disabled, her claim is denied because she transferred an asset, her former home, to someone else. An individual who gives away or sells a nonexcluded resource for less than fair market value to establish SSI eligibility will be charged with the difference between the fair market value of the resource and the amount of compensation received for thirty-six months from the date of the transfer. As a practical matter, Social Security presumes the transfer you handled was for the purpose of establishing eligibility. As a result, our client will be denied eligibility for SSI and the Medicaid that comes

with it for three years from the date of the transfer.

Personal injury. You obtain a policy-limits settlement of \$50,000.00 in an auto accident case for a disabled man who is already receiving SSI and Medicaid. Six months later he receives a notice from Social Security that he has been overpaid six months worth of benefits (\$3,738.00), and his monthly check and Medicaid coverage have been terminated. On his way to my office for advice, he is severely injured when he rear ends another car. He is taken to the hospital in an ambulance and must use the remaining \$49,000.00 from his settlement toward the \$100,000.00 hospital bill. He is once again eligible for SSI and Medicaid, but he has nothing else, and he still owes Social Security \$3,738.00 and the hospital \$51,000.00. If you had asked the court to pay the original settlement into a special needs trust, he would have continued to be eligible for SSI and Medicaid. He would not owe an overpayment. He would not owe the hospital anything because Medicaid would have paid. His settlement would still be safe and sound in the trust.

Similar problems may result from the use of annuities in a structured settlement, depending on the specific provisions.

The above examples are illustrative of the types of problems that may occur whenever Social Security and SSI requirements are not considered. They are not all inclusive. Whatever you do, there are situations where your case might affect the outcome of mine. If you have any doubt, contact a Social Security attorney.

Richard A. Culbertson, Esq., Law Office of Richard A. Culbertson, has been a member of the OCBA since 1991.



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So, You've Won the Lottery ... What Now?

February 28, 2008

6:00 – 8:30 p.m.

CLE credit – 2 hours

Speakers:

Luann Machise of
The Florida Lottery

Eddie Fisher,
VP of Investments
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YLS on the Move!

New Year, New Beginnings



Taylor C. Kessel

2008 ushers in yet another great year for YLS members, and January is a time to set new goals and chart paths to reach those goals. Change is not always inevitable, but for some January will mean the resurfacing of that health club membership card buried deep in the back of the wallet, or maybe cleaning out the pantry and replenishing it with healthier choices. Some will vow to do their part in conserving the environment and pledge to live greener, and some may just desire to keep on trucking the way things are. YLS would like to see its members pledge more of their time to any cause that might better the community. From *pro bono* work with Legal Aid to volunteering with any one of the numerous local charities, we would like to see our members make even more of a difference in the community and share the talent and enthusiasm for success we have all been blessed with. A great opportunity to lend a hand will be with the YLS Habitat for Humanity project which has been rescheduled for the spring. Keep an eye out for dates and more information on this year's Habitat for Humanity service project.

But before we get ahead of ourselves with making changes, let me take the opportunity to reflect on a few of the great events that capped off the 2007 year. This year's YLS Charity Golf Tournament on October 12, 2007, at ChampionsGate was an overwhelming success, with over 116 players participating. The first place team of Shutts & Bowen, LLP consisted of **Eric Reed, Gregg Swift, Eric Castleson** and **Bud Bennington**. Following in second place was the team of Dellecker Wilson, King McKenna & Ruffier, LLP, led by **Bob Dellecker, Brian Wilson, Sam King** and **Ken McKenna**. Rounding out the top three was the team from Stovash, Case & Tingley, P.A., which included **Bob Stovash, Stewart Grasshoff, Charlie Carnes** and **Justin Bentley**. The Closest to the Pin was won by **Bruce Conchelos** of Digital Legal, and the Longest Drive was taken by **Tyler Everett** from Akerman Senterfitt. Thanks again to everyone who helped organize this great event and we look forward to seeing everyone back out on the links next year!

At the YLS Luncheon on October 18, 2007, **Wynne McFarlin** of Legal Talent was present to help us all evaluate our jobs by conducting a confidential salary survey. She will be back for the January 17, 2008, luncheon to present the results, so be sure to attend and find out the most current evaluation of the Central Florida legal job market. If you are interested in attending the luncheon, please RSVP to ocbayls@gmail.com by Tuesday, January, 15. The cost is \$18 if you RSVP on or before January 15, \$20 at the door, or \$10 for sole practitioners, law students and government attorneys and judges.

On Thursday, October 18, 2007, **Westlaw, Findlaw,** and **Arthur's Catering** hosted a reception for law students

in the Atrium at the new Federal Courthouse. Many of the YLS members in attendance enjoyed the opportunity to visit our newest hall of justice and welcome Central Florida's law students to the legal community. Everyone in attendance was able to mingle and converse about the practice of law and reminiscence on the foes and joys of law school.

On October 19, 2007, the Young Lawyers and Young CPAs hosted a Joint Happy Hour at Waitiki at Wall Street. The event was a great chance to meet and mingle with other young business professionals here in the Central Florida community. More than 70 Young Lawyers and Young CPAs showed up for the event. Thanks to **Kristen Cox** and **Jason Hill** for putting on yet another great YLS social event.

Speaking of how much we all like to meet and mingle, don't forget to mark your calendar for the OCBA Social Committee's Winter Wine & Cheese Party on Thursday, January 24. Details will be posted on the OCBA website by the time you read this column!

YLS invites you to participate in the **Young Lawyers Division Affiliate Outreach Conference on January 25-27**, at the Renaissance Vinoy Resort in St. Petersburg. This year's Outreach Conference will be an opportunity to present project ideas at the President's Roundtable and will also include the presentation of the annual YLD awards. For those interested, this year's conference will also provide charter bus transportation to the Gasparilla Parade of Pirates in Tampa on Sunday. The **registration deadline is January 11**. For more information, please visit The Florida Bar website at www.flayld.org or the OCBA website at www.orangecountybar.org.

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, the new year is already beginning to fill up with exciting YLS events, so be sure to keep an eye out for the YLS email blasts and updates on all the upcoming events. If you are not receiving the YLS email blasts, please send an email to ocbayls@gmail.com to sign up. 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 email me and I will try to include it in the next month's edition of YLS on the Move. 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 e-mail at taylor.kessel@cni.com.

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

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Now I have a Future!

Robert B. Storrs, Jr.



"I feel like a new person," said Leitha Curry when we spoke with her recently about her experience as a client of the Legal Aid Society.

When Burton Spracher met Mrs. Leitha Curry at Orangewood Presbyterian Church, she was already in serious trouble. Needing money to pay the property taxes on her modest home, Mrs. Curry borrowed the money from an unscrupulous lender. Without realizing it, she had signed documents agreeing to loan interest of 92% and had signed a quit-claim deed as "security" for the loan. Mr. Spracher, himself an attorney retired from Broad and Cassel, quickly realized that Mrs. Curry had a problem, and with her very limited income, Mrs. Curry's only option was the Legal Aid Society. He brought her personally to the Legal Aid office, where Mrs. Curry filed an application with the assistance of Martha Lawrence, an intake volunteer. Her case was accepted by Jim Grodin, a partner with Foley & Lardner, LLP.

Mr. Grodin immediately grasped the essential elements of the problem and commenced litigation. His case was founded on two premises: a) if the loan was usurious, then as a matter of law it did not exist; and b) if there was no loan the deed/mortgage was a nullity as well. He filed suit on Mrs. Curry's behalf and prevailed on a summary judgment motion before Orange County Circuit Judge Jay Cohen, which nullified the debt and cancelled the deed. She received clear title to her home and was absolved of the entire debt. It was wonderful news, but unfortunately, her troubles were not over.

While the unscrupulous lender ostensibly had title to the property, he failed to pay the property taxes over a multiple-year period. When the holder of the oldest tax certificate filed a request for the issuance of a tax deed, under Florida law Mrs. Curry was required to pay not just the oldest tax certificate, but all outstanding certificates in order to maintain ownership of her property. Since her lack of means was the source of the original problem, once again she was threatened with the prospect of losing her home. But again, Mr. Grodin and Foley & Lardner came to the rescue. To augment the funds that Mrs. Curry had been able to save,

Mr. Grodin put together an "aid package" that included gifts from Foley & Lardner and a local synagogue. This was enough to pay the property taxes and save the property for Mrs. Curry.

When asked why he went the extra mile in this case, Mr. Grodin responded that *pro bono* is a part of Foley & Lardner's firm culture. The firm considers *pro bono* service

to be both an individual and firm responsibility. According to Mr. Grodin, Foley & Lardner projects this year the firm nationally will devote approximately 40,000 hours to *pro bono* legal projects. Mr. Grodin shared a pearl of wisdom given to him by an early mentor who told him, "Your job is to make every client feel like he/she is the only client in your office." Jim said to me, "Mrs. Curry is no different than any other Foley & Lardner client. She deserves the exact same level of service we like to think every one of our clients receives."

Now, Mrs. Curry is safe and secure in her own home

for the holiday season. But the good news does not end there. Orangewood Presbyterian Church has indicated a desire to renovate her home for her. Burton Spracher was so favorably impressed with the professionalism and compassion displayed by Martha Lawrence during that initial intake interview, that he is now a Legal Aid volunteer. When good people go the extra mile, it makes a real difference.

Congratulations Mrs. Curry!
Thank you Jim, Burton and Martha.

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.



Mrs. Leitha Curry, Mr. Burton Spracher,
Ms. Martha Lawrence and Mr. James Grodin

Photo courtesy of Kathryn Kelly Photography

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International Law Committee

Trademark Infringement and Unfair Competition under the Lanham Act

Paul E. DeHart III



It is not unusual for clients to be sorely deficient in the recognition and protection of intellectual property. This is true notwithstanding its significant value and the fact that it has increasingly become the subject of costly litigation. To provide a forum for attorneys to discuss emerging intellectual property issues, I am pleased to announce the creation this year of the Intellectual Property Law Committee of the Orange County Bar Association. As co-chair of the committee, I would like to invite you to attend our monthly meetings at the Orange County Bar Center. Over the next year, our committee members will be writing substantive articles for publication in *The Briefs* and conducting a few short seminars on common intellectual property issues. In this inaugural article, I will be briefly addressing common law trademark infringement and unfair competition under the Lanham Act.

Often, questions concerning trademark registration and protection come up only after another person has started using a client's mark or a confusing variation thereof. Although there are no substitutes for thorough and pro-active efforts to protect intellectual property rights (e.g., internal intellectual property audits and timely registration), the Lanham Act, 15 U.S.C. § 1125(a), provides a remedy for trademark infringement even in the absence of federal or state registration. *Planetary Motion, Inc. v. Techsplosion, Inc.*, 261 F.3d 1188, 1193 (11th Cir. 2001) (citing § 1125(a) and *Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 768 (1992)).

To establish a *prima facie* claim for unfair competition under the Lanham Act, a plaintiff must show that a defendant uses in commerce in connection with his or her goods or services any "word, term, name, symbol, or device, or any combination thereof, or false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which... is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person." 15 U.S.C. § 1125(a). In simpler terms, courts have interpreted this requirement to mean that a plaintiff alleging common law trademark infringement must show: (1) that it had prior rights to the trademark (essentially, that the mark was used by plaintiff in commerce and distinctive enough to qualify for protection); and (2) that defendant's use is likely to cause consumer confusion. *Planetary Motion*, 261 F.3d at 1193; *G-Force Entm't, Inc. v. G-Force Partners, Inc.*, 2000 WL 1346699, *2 (M.D. Fla. Aug. 23, 2000).

Ownership rights in a trademark can be established only through actual prior use of the mark in commerce. *Planetary Motion*, 261 F.3d at 1193. The level of protection afforded a mark depends on the distinctiveness of the mark. There are four common categories of distinctiveness. In descending order of distinctiveness, they are: arbitrary or fanciful,

suggestive, descriptive, and generic. *Ice Cold Auto Air of Clearwater, Inc. v. Cold Air & Accessories, Inc.*, 828 F.Supp. 925, 930-931 (M.D. Fla. 1993). A generic mark, which on its face suggests the very nature of the type of service or product (e.g., Cola Soft Drinks and Convenient Store), is not distinctive and therefore incapable of receiving protection. *Id.* A descriptive mark, which directly describes or identifies a characteristic or quality of the service or product (e.g., After Tan Sunning Lotion and Computer Land Computer Stores), is also not distinctive and can only achieve protection upon a showing of secondary meaning (when over time the mark has become distinctive of the plaintiff's use of it in commerce). *Id.* A suggestive mark, which requires the imagination of the consumer in order to be understood as descriptive of the service or product (e.g., Playboy, Rainbird Irrigation, and 7-Eleven), is considered inherently distinctive and entitled to protection. *Id.* Finally, an arbitrary or fanciful (made up) mark, which involves a word used in relation to the service or product entirely unrelated to the word's understood meaning (e.g., Apple Computers and Kodak Photo Supplies), is also considered inherently distinctive and entitled to protection. *Id.*

In the Eleventh Circuit, the following seven factors are considered in assessing whether or not a likelihood of consumer confusion exists: (1) type of mark; (2) similarity of marks; (3) similarity of the products or services the marks represent; (4) identity of purchasers and similarity of retail outlets; (5) similarity of advertising campaigns; (6) defendant's intent; and (7) actual confusion. *Lone Star Steakhouse & Saloon, Inc. v. Longhorn Steaks, Inc.*, 122 F.3d 1374, 1382 (11th Cir. 1997). Of these factors, the type of mark and the evidence of actual confusion are the most important. *Dieter v. B&H Indus. of Sw. Fla., Inc.*, 880 F.2d 322, 326 (11th Cir. 1989), *cert. denied*, 498 U.S. 950 (1990)).

So, if ownership of a protectable mark and likelihood of consumer confusion can be established, an individual may have a cause of action for common law trademark infringement and unfair competition under the Lanham Act, irrespective of federal trademark registration. Available remedies under the Lanham Act include injunctive relief, recovery of defendant's profits, damages, costs, and, in exceptional circumstances, attorneys' fees. 15 U.S.C. §§ 1116 & 1117.

This article is for general information and should not be construed as legal advice or legal opinion on any specific matter. While the information set forth in this article is accurate, every situation presents unique factual and legal considerations. Accordingly, I encourage you to consult an attorney for proper legal advice before taking any action based on the information contained herein.

Paul E. DeHart III is an associate at Litchford & Christopher, P.A. He is co-chair of the OCBA Intellectual Property Law Committee and has been a member of the OCBA since 2001.

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Bill Sublette earned his law and bachelor's degrees from the University of Florida. He moved to Orlando in 1988, and in 1992 won a seat in the Florida House of Representatives, where he served for eight years.

Mr. Sublette focuses on the general civil litigation needs of his clients, with his primary emphasis being personal injury, wrongful death, and professional malpractice claims. He also litigates ERISA benefit claims, third-party insurance claims, and general commercial disputes, and he handles local, state, and federal government entities for a select few clients.

Bill Sublette is a partner in the law firm of Sublette, Sanders & Sanders, a personal injury, family law, bankruptcy, commercial litigation, and government affairs firm. Its attorneys have a combined 53 years of courtroom experience.





Presentation Skills for Lawyers

Why They're Ignoring You



Elliott Wilcox

Do you need to persuade judges, jurors, or clients to your way of thinking? If so, then keep reading to discover the best way to grab their attention and get them listening to your message.

One morning last month, I was rushing to court. Although I wasn't running late (yet), I needed to hurry, because our 23-story courthouse has only 6 elevators, so getting stuck in the lobby waiting on the elevators is virtually a guarantee. As I raced toward the courthouse entrance, a man carrying a clipboard approached me. He was collecting signatures for a petition in support of a voter referendum, and was stopping everyone who walked by to give them a quick sales pitch and ask for their support. If he was going to get me to sign his petition, he needed to present me with an *incredibly* compelling reason to stop. Like everyone else headed to court that morning, I did not wake up that morning and think to myself, "I sure hope somebody asks me to sign a petition today!" In fact, there was only one dominant thought in my mind at that moment: "*Please* don't let the judge yell at me for being late to court!"

Now, keep in mind, it takes a lot of work to support a petition drive. You need to print all of the forms and paperwork, then you need to get approval to petition in front of the courthouse and, finally, you need to take time off from your regular job to stand outside and collect signatures all day. If you're serious about starting a petition drive, it takes some serious thought and planning. One of the most important things to consider is that, since you'll only have an instant to grab someone's attention, pique their curiosity and motivate them to action, you need to have an attention-grabbing sales pitch.

And that's where this petitioner's attempt to gain my signature failed. As I approached, all he did was hold out his clipboard and ask, "Want to sign my petition?"

"Want to sign my petition?" *That's it!?* The attention grabbing portion of his sales pitch was so bad that I didn't even break my pace. I just muttered, "No thanks," and kept moving. For all I know, his petition could have been the most important voter referendum ever proposed. The petition he wanted me to sign may have supported a constitutional amendment mandating that I win the lottery once a month and requiring beautiful women to fawn over me during happy hour. But I'll never know, because he couldn't give me a compelling reason to stop and listen to anything else he had to say.

Why was the attention grabbing portion of his sales pitch so bad? The primary problem was because he phrased his pitch exclusively in terms of *his* interests. He was only thinking about what he wanted: "I want this person to stop and sign my petition." But here's the problem with that: *I didn't care what he wanted.* I was busy caring about what

I wanted, and all I wanted right then was to avoid being late to court. As a result, his sales pitch fell on deaf ears.

Are your sales pitches falling on deaf ears too? Nearly every time you make a presentation, you're making a sales pitch. Every time you speak to a jury, every time you ask for someone's help, and every time you ask someone to think, act, or feel *differently*, you are making a sales pitch. Sadly, your ability to persuade people doesn't just depend on the importance of your cause or the value of your proposition. Your ability to persuade people depends largely upon the attention-grabbing quality of your sales pitch. One of the most important factors in determining the persuasiveness of your sales pitch is whether or not you can get anyone to listen to it. If you can't *immediately* grab your audience's attention in the first few moments of your sales pitch, they may not listen to anything else you have to say - perhaps because they are busy and their minds are cluttered with their own personal concerns. If you want to cut through that clutter and get them listening to you, you'll need to give them a compelling reason to tune out those personal concerns and listen. You're only going to have an instant to grab their attention and cajole them into action, so you can't waste time talking about what you want. Your audience doesn't care what *you* want. They only care about what *they* want. To grab their attention and get them listening to you, you'll need to frame your pitch in terms of what your listener wants to hear.

Think of how much more effective the petitioner's request would have been if he had phrased his question in terms of *my* interests. Rather than asking, "Would you like to sign my petition?" (which I didn't care about) he could have asked, "Would you like to help the environment?" (sure!) or "Would you like to lower your property taxes?" (of course!) or even, "Would you like to stick it to The Man?" (you betcha!).

The next time you make a sales pitch, think about how your proposition will benefit your listener. Will it save them time? Save them money? Help them avoid litigation? Prevent trouble at work? Minimize the amount of time they'll spend in jail? If you craft your sales pitch so that you mention those benefits at the very beginning of your presentation, you will do a far better job of grabbing your listener's attention and getting them to listen to you, and you'll dramatically increase your ability to persuade judges, jurors, and clients.

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Elliott Wilcox is the editor of *Trial Tips Newsletter*. To obtain a free special report, "*The Top Ten Tips for Trial Lawyers*," send an email with the subject line "OCBA" to FreeTips@TrialTheater.com.



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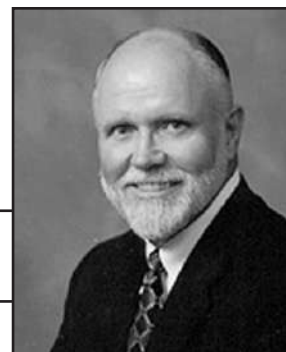
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Rainmaking

All the World's a Stage – for Rainmaking

— Mark Powers



What can a mouse teach us about personal presentation? As it turns out, quite a lot. Visit any Disney property throughout the world and you'll encounter clean scrubbed, well-groomed employees who'll give you directions, sell you a balloon or serve your meals. Each person (Disney refers to employees as members of their "cast") you meet is costumed according to the role they play and all conform to rigorous standards of appearance.

Supporting this effort are extensive backstage facilities dedicated to making, cleaning and distributing thousands of custom-made costumes each day. To complete their look, each employee is given written grooming guidelines to follow and management doesn't tolerate deviations. Excess facial hair can be a firing offense.

Why does Disney spend millions of dollars and a great deal of effort maintaining the look of their employees?

The answer may surprise you. Prior to the opening of Disneyland in California, Walt Disney is reputed to have had a recurring dream haunt his sleep: he dreamt of walking down his newly constructed Main Street and being accosted by surly, cigar-smoking carnival types trying to entice guests into the shops. Carnival "barkers" were the antithesis of how he wanted his employees to dress and act. Though theme parks are a familiar concept today, in the mid-fifties he was breaking new ground and feared his multi-million dollar entertainment complex would be mistaken for some sort of carnival-like operation. Carnivals, in his mind, sat on the bottom tier of the entertainment hierarchy - far below Hollywood and the theatrical traditions with which he wanted to be associated. Driven by his fears, he instituted grooming standards for all of his employees to follow.

So what does this have to do with you and your law firm? More than you might think.

Every day you don a costume of some sort to play your role as an attorney. Whether you stumble into the closet and emerge dressed in a new blue suit, a skirt and jacket or old khaki pants and a sport shirt, you pick out something, put it on and present yourself to the world. Your staff members do much the same.

Some of you make an effort to put together something nice; others don't give it much thought.

Unfortunately, whether you think about it or not, your clothing and style of grooming make up your image and telegraph a message that clients, colleagues and others can clearly read. If you look clean, well groomed and dressed to fit your law firm's culture, clients will believe you to be intelligent and trustworthy. If you aren't appropriately put together, clients may, rightly or wrongly, regard you as less capable and won't be as inclined to enlist your help with their problems.

At Atticus, we take a very broad view of client development. We believe that everything about your personal

presentation either adds to, or detracts from, your marketing efforts. Most of the good rainmakers we meet also know this and are caught by surprise when their team doesn't display good judgment. Baffled attorneys all over the country have turned to us to educate their staff and young associates on how to look, dress and act in a professional manner. In trying to help, we've dealt with fashion emergencies of every kind, including tattooed receptionists, associates who wore mismatched suits and bad shoes in court, and - to the horror of their firm's partners - staff members who stripped off their shirts at firm marketing events. Even with our broad view of rainmaking, that's showing a little too much enthusiasm.

Just like Walt Disney, you can't expect all your team members - especially the younger ones - to automatically possess grooming and dress standards suitable for a law office. Many don't yet realize how their personal appearance speaks volumes about who they are. Compounding their lack of awareness is their lack of funds.

To remedy this situation, we frequently advise partners to pay bonuses to team members in the form of gift certificates to assist with the financial burden of upgrading their wardrobe (this has the added benefit of avoiding any "fee-splitting" concerns for bonuses given to non-attorney staff). We also advise that anyone who needs help in this area meet with personal shoppers in department stores, who can be very helpful in assembling a business wardrobe that is flexible and looks professional, but isn't overly expensive.

Most people don't require a major makeover, but every now and then it's a good idea to check your look. For most of you, a good rule of thumb to follow is this: dress slightly better than your clients. Adopt your own style, within reasonable parameters, but be consistent with your firm's image.

Below are some suggested written guidelines for you and your staff. These can be adopted and modified to fit your firm, communicated to new recruits as part of their orientation, or posted somewhere in a back office. These guidelines can also be conveyed to clients who must appear in court - their personal appearance can make a huge difference in how credible they look and how well they are perceived. You may even want to create a handout for clients to take home and follow. As for you and your team, read through the following suggestions and see if you are putting your best foot forward.

Personal Presentation Guidelines:

Hair for staff and attorneys:

For women: clean, well-groomed hair in an appropriate cut with no obvious roots or unnatural colors is best for the law firm environment. Hair ornaments, bands, ties and ribbons should be small, kept to a minimum and match the

Continued on page 35

HISPANIC BAR ASSOCIATION OF CENTRAL FLORIDA

A Year in Review 2007 - The New Year Ahead 2008

Under the leadership of Penelope Perez-Kelly and its Board of Directors, the Hispanic Bar Association of Central Florida "HBACF" had a very exciting and productive year. One of the key HBACF accomplishments in 2007 was the Voluntary Bar Association Community Service Grant awarded to the HBACF by the Florida Bar Foundation for the program "Conozca sus Derechos." Another highlight event was the HBACF Annual School Supply Drive, where the members of the organization and firm sponsors were able to collect all of the school supplies needed for the entire second grade at Englewood Elementary School. Our sincere thanks to Payas Payas Payas, Greenberg Traurig, Longwell & Gentle, Kiwanis Foundation, Marchena & Graham, P.A., Zimmerman, Kiser & Sutcliffe, P.A., CityLine Title, McClane Tessitore, and all our HBACF members for their support and generous donations. The HBACF also had some fun events including the Annual Domino Tournament sponsored by the Baez Law Firm, Pendas Law Firm and the Presentation Group and a Happy Hour at Sam Sneads sponsored by Felix Aguilu, P.A. Most recently, on October 25, 2007, the HBACF held one of its landmark programs, its annual "Path to the Bench" Seminar. We ended the year on a high note celebrating with friends and members of the HBACF at our "Fiesta Navidena" and collecting toys for our annual Toy Drive.

The HBACF will begin the new year with its Installation Dinner on Saturday, January 19, 2008. The HBACF will host its annual Installation Dinner at the Citrus Club from 6:00 p.m. to 8:30p.m. The Keynote Speaker for the evening will be the Honorable Florida Supreme Court Justice Raoul G. Cantero, III. The cost of attending the dinner is \$65 per person. Corporate Sponsorships are also available. Sponsorships for a table of 8 start at \$500. Please contact Andrea Caro at Zimmerman, Kiser & Sutcliffe, P.A., Phone: (407) 425-7010 or acaroz@zkslawfirm.com to RSVP or for further information.



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outfit they are accessorizing.

For men: clean, well-groomed hair in a cut appropriate for the law firm culture and not featuring unnatural colors or obvious roots is preferred. Facial hair should also be well tended.

Accessories for staff and attorneys:

Jewelry and other accessories should be conservative in size and few in number. Earrings should not exceed half the size of the ear. Necklaces should be limited to one or two. One or two bracelets, or two bracelets plus a watch, is appropriate. No obvious ankle bracelets. Cufflinks and tie-clips should be small in size and tasteful in appearance. Tattoos or piercings should not be on display.

Clothing for staff and attorneys:

Clothing should be clean, unwrinkled and of a style appropriate to the type of business the law firm conducts. Every attempt should be made to look well put together and coordinated, whatever your style. Low-cut, cleavage-revealing tops or dresses are not usually appropriate for the law firm. Cropped tops that reveal the midriff and skirts that are too tight or too short don't look professional.

Courtroom attire for attorneys, staff members and clients:

Err on the side of comfortable but conservative business attire. All clothing should be clean and unwrinkled. Men should wear ties and dark suits or dark sports jackets with coordinating pants. Blue suits are considered the best for enhancing credibility. Women should wear business-like blouses, dresses or jackets and coordinating skirts or pants. Pantsuits or dresses that are not low-cut or revealing are also good. Shoes should be coordinated with the suit or outfit, and always clean and polished. For women, clean, closed-toe shoes are preferred, but some sandal styles may work if they don't look too informal.

Makeup for staff and attorneys:

Minimal, natural-looking makeup devoid of glitter or other additives can be worn. Makeup should enhance facial features and look polished, but not appear unnatural or too exaggerated. Piercings and tattoos should be covered up or minimized for both court appearances and work in the law firm.

Now that you've read these guidelines, take a long look in the mirror. If you like the way you look, great. If not, ask yourself if you need to upgrade your wardrobe or shine your shoes or buy a better briefcase. Assess your staff the same way. You may not be a paid performer, but everyday you are onstage playing the role of someone who can be trusted to handle complex matters. Make sure you and all of the supporting players dress the part. If you borrow a page from Disney's book on grooming, you may find that running a Mickey Mouse operation isn't such a bad thing after all.

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.

Side Bar

Jessica K. Hew



Every holiday season, many people reflect on what they've learned in the past, where they are in the present, and where they want to go in the future. These reflections also lead to the spirit of giving - freely and generously. Whether it is giving your time or your hard earned funds, thank you!

In the spirit of community and giving, the Paul C. Perkins Bar Association is in the process of forming a *Pro Bono* Attorney group. If you are interested in participating, please contact PCP President, **Aramis Donell** at adonell@circuit9.org.

The Young Lawyers Division of the NBA invites you to be a part of its 5th Annual Diversity Roundtable and Network Retreat aboard Carnival's Fantasy of the Sea. Enjoy a four-day Western Caribbean Cruise from New Orleans to Cozumel on Thursday, May 22 through Monday, May 26, 2008. For further information, please contact tanyadmcduffie@yahoo.com or Bpatter318@aol.com.

Relatively new to the Orlando legal community, the Central Florida Gay and Lesbian Law Association was founded "[t]o establish and maintain an integrated group to support, assist, and encourage gay and lesbian attorneys, legal professionals, and law students, and to provide support and resources to the community at large on lesbian, gay, bisexual and transgender issues." Membership applications can be found at <http://cfglla.org/Membership.htm>. Please mail the completed form and membership dues to M. Merrell Bailey, 1598 Lookout Place, Suite 101, Maitland, FL 32751. Membership allows CFGLLA to maintain current contact information and funding to operate the Association. The Board is in the process of sending out renewal / membership statements to all members and those who have expressed an interest in CFGLLA.

Central Florida Paralegal Association, Inc. (CFPA) hosts its monthly lunches at four locations: Winter Park/Maitland (2nd Thursday of the month), Downtown Orlando (2nd Wednesday of the month), South Orlando (Quarterly) and Altamonte Springs (final Friday of the month). On January 9, 2008, CFPA will host the seminar *Foreclosure Defense* from 6:00 p.m. to 7:00 p.m. at the Orange County Library, 101 East Central Boulevard, Orlando. In addition, CFPA will hold its monthly "Third Thursday Social" on Saturday, January 19, 2008, 8:00 p.m. at the Bob Carr Performing Arts Centre, 401 West Livingston Street, Orlando, where we'll see the Orlando Philharmonic's Radio Days performance. Please visit CFPA's website at www.cfpainc.org for more details.

Hope your holidays were wonderful, and we will see you in February!

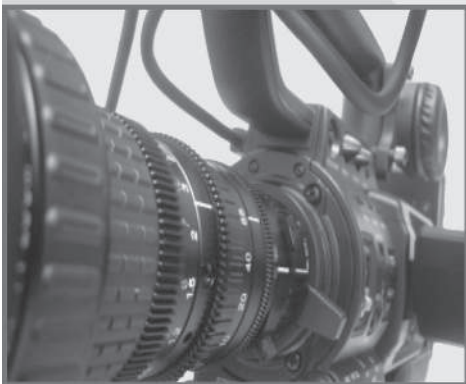
Jessica K. Hew is a partner with Graham, Builder, Jones, Pratt & Marks, LLP. She has been a member of the OCBA since 1995. Please send your submissions to Jessica at jhew@grahambuilder.com.

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Financial Planning

A New Year Brings New Opportunity to Make Financial Progress

Andrew C. Orr, CFP®, CLU, ChFC, AIF®



Would you believe that another year has swept by and we are entering a brand new one? This means many things, such as more wrinkles that we notice or even less hair. From my perspective, however, it means that we are all one year closer to retirement and one year closer to our kids entering college. Thus, this moment in time offers us a chance to look back on 2007 and review what financial progress we have made toward these financial goals or others we may be working on.

Regardless of the success you have had reaching your financial goals, though, there is always room to improve! Now that 2007 is over, I encourage you to get “back to the basics” and create a strategic budget. If you don’t seem to know where the money goes, or if you make a great income but there never seems to be any money left each month, then you are an ideal candidate for budgeting. Let’s walk through the basics, shall we?

What is budgeting?

Budgeting is a process for tracking, planning, and controlling the inflow and outflow of income. It is a process that we all begin soon after we get our first spending money. Relying on our overloaded minds to manage such a complex process has many shortcomings. The solution is to analyze your current situation, determine your goals, and develop a written plan against which you’ll measure your progress.

How does the budgeting process work?

The budgeting process begins with gathering the data that makes up your financial history. Next, you use this information to do a cash flow analysis. You will calculate your net cash flow, which tells you whether cash is coming in faster than it’s going out, or vice versa. Then you will determine your net worth. Simply stated, this is the sum of everything you currently own less the sum of everything you currently owe. Having a snapshot of your present financial situation, you’ll then define your financial objectives and create a spending plan to achieve them. Finally, you will periodically check your progress against the plan and make adjustments as needed.

Analyzing cash flow is little more than adding and subtracting.

Add up your income, then your expenses, and subtract the latter from the former. The result is your net cash flow. If it is positive (hopefully), you’re earning more than you’re spending. If not, then budgeting is not really an optional process. You must do it to avoid losing more ground financially. To the extent that you can make cash flow strongly positive, you will be able to save for upcoming needs and investments.

Is net worth growing or declining?

Your net worth shouldn’t be a mystery. To determine what it is, you simply add up the current value of your assets (the things you currently own), and then subtract the total of your

liabilities (what you currently owe). The idea, if you haven’t guessed it, is that your net worth should grow from year to year, barring unforeseen setbacks.

Know where you stand, turn to the future, and set your goals.

You might have one or more major savings goals in mind, but now is the time to look at all of your anticipated financial needs, including your cash reserve, and determine your goals. Knowing what all of your goals are enables you to create the best plan to achieve those objectives over the long term. While you may not be able to achieve all of your goals simultaneously, having a plan in place will help as you work toward your future goals.

Create a spending plan that fits your resources and objectives.

Once you know where you stand financially and the goals you hope to achieve, you are in a position to design a plan that will move you expeditiously in that direction. You will know how aggressive you need to be in order to achieve the objectives you set, and therefore you can design a plan that fits both your resources and objectives.

Just as with a plan that falls short of delivering on your goals, a plan that is overly aggressive relative to your resources is likely to lead to budget frustration. Keeping goals aligned with objectives is a critical part of the process and essential to budgeting successfully.

Remember that it is a plan and that plans change as needed.

Flexibility is always an important ingredient in the planning process. As life’s circumstances change, as they inevitably will, you will need to adjust your spending plan accordingly. The important point is that the budgeting process keeps you abreast of how these changes are occurring and allows you to make changes as you find them appropriate to your needs and resources.

Budgeting can be a temporary or a permanent habit.

It may be that your present financial situation calls for the short-term control that budgeting can provide. Alternatively, you may find that budgeting gives you a level of control over your finances that you’d prefer to maintain over the long term. If the latter is true, you should make it a lifelong habit. Sound too difficult? Don’t worry, that is what your financial planner is there for. Let him or her help you!

Andrew C. Orr, CFP®, CLU, ChFC, AIF®, 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.

Announcements

New Associates

Stacy J. Borisov - Pohl & Short, P.A.

Regina A. Henderson - deBeaubien, Knight, Simmons, Mantzaris & Neal, LLP

Gary J. Spahn, Jr. - Cabaniss, Smith, Toole & Wiggins, PL

Alexandra Vargas - deBeaubien, Knight, Simmons, Mantzaris & Neal, LLP

Speaking Engagements

Partner **Steve Eichenblatt** with Page, Eichenblatt, Bernbaum & Bennett, P.A., recently spoke at the Juvenile Justice Center about the outreach program, Andy's Promise, which is designed to educate teenagers and parents about the consequences of destructive behavior. It was founded by Mr. Eichenblatt and Jan and Andrew Tanzillo, whose son was lost to drunk driving. For details about booking the program, please contact Erica Hopkins at 407-386-1900 or ehopkins@floridalawonline.com.

David W. Henry of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. presented *Transitioning Your Practice - Helping Law Firms Prepare for Big Changes* at the DRI Annual Meeting in Washington, DC, on October 13, 2007.

Orlando attorney **Larry D. Smith**, Cabaniss, Smith, Toole & Wiggins, PL, served on the Faculty at the Fall Conference and Induction of Fellows for the Litigation Counsel of America on November 1-2, 2007, in Scottsdale, Arizona.

Ian L. Gilden, Esquire of Ian L. Gilden, P.A., made a presentation through the Office of the Attorney General to Law Enforcement, First Responders, and Community Volunteers for the Elderly. The topic of discussion was "Legal Aspects of Protecting the Elderly."

News to Note

Florida Registered Paralegal Program Approved. The Florida Supreme Court approved creation of the Florida Registered Paralegal Program, which provides for voluntary registration of paralegals who meet certain minimum educational, certification or work experience criteria and agree to abide by an established code of ethics. According to the Nov. 15 order, the program will begin on March 1, 2008. To read the order, go to www.floridabar.org.

Seminars & Conferences

Be sure to check the OCBA website for January's seminars!
Tues., Jan. 22 (2.0 CLE) - *The Lawyer's Guide to Managing Client, Contact & Calendar Information with Outlook*, presented by Adriana Linares, President of LawTech Partners, Inc., Orlando. **Thurs., Jan. 24 (9.5 CLER, including 3.0 Ethics)** - *Ethics & Estate Planning, Probate, Elder Law - Dos and Don'ts for Dabblers and New Attorneys, Including Homestead Law and a View from the Bench*, presented by the OCBA Estate, Guardianship & Trust and Elder Law Committees. **Fri., Jan. 25 (2.5 CLE)** - *Nuts and Bolts Means Test Workshop*, presented by the OCBA Bankruptcy Law Committee. **Jan. 25-27** - *YLD Affiliate Outreach Conference: A Fantastic Voyage*, Renaissance Vinoy Resort, St. Petersburg, FL. Visit the Florida Bar YLD website at www.flayld.org.

THE 100 CLUB!

Congratulations to the members of the OCBA's 100 Club

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Nardella Chong, P.A.

Page, Eichenblatt, Bernbaum & Bennett, P.A.

Perla & Associates, P.A.

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Wolff, Hill, McFarlin & Herron, P.A.

Wooten, Honeywell, Kimbrough, Gibson, Doherty & Normand, P.A.

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!



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Continued on page 40

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Continued from page 39

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Earn CLE at these January & February OCBA Seminars

Tuesday, January 22, 2008
2.0 CLE

The Lawyer's Guide to Managing Client, Contact & Calendar Information with Outlook
12:00 p.m. – 2:30 p.m.; OCBA Center
Presented by LawTech Partners, Inc., Orlando, FL

Thursday, January 24, 2008
9.5 CLER, including 3.0 Ethics

Ethics & Estate Planning, Probate, Elder Law - Dos and Don'ts for Dabblers and New Attorneys, Including Homestead Law and a View from the Bench
8:00 a.m. - 5:00 p.m.; OCBA Center
Presented by the OCBA Estate, Guardianship & Trust and Elder Law Committees

Friday, January 25, 2008
2.5 CLE

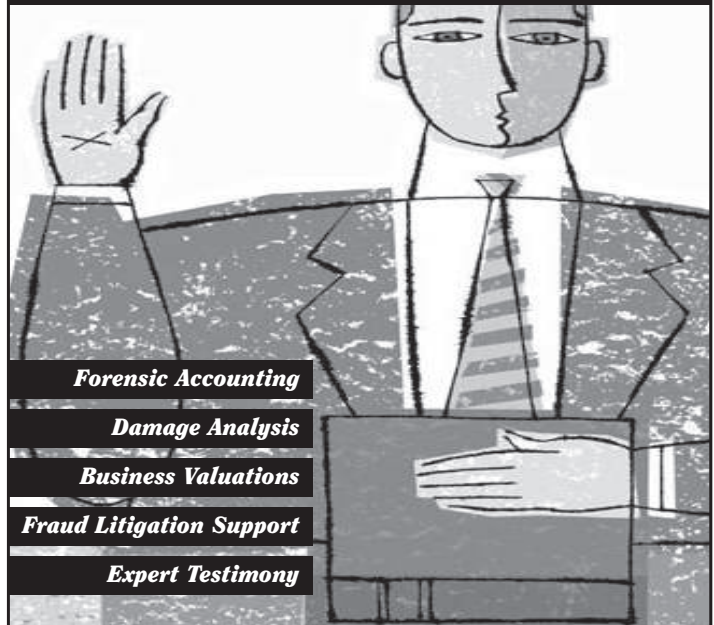
Nuts and Bolts Means Test Workshop
9:30 a.m. - 12:00 p.m., OCBA Center
Presented by the OCBA Bankruptcy Committee

Wednesday, February 27, 2008
(CLE pending)

Title: TBA
1:30 p.m. - 4:30 p.m., OCBA Center
Presented by the OCBA Appellate Practice Committee

Details and registration forms available at
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DOWNTOWN ORLANDO expanding litigation firm seeks energetic, motivated attorney with a minimum of 5 years experience in construction and commercial litigation, including trials. Looking for an attorney with excellent attention to detail, excellent academic, writing and communications skills. Fax resume / references to: 407-426-9304.

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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.

SPECIALTY DEFENSE FIRM seeks associate attorneys with 2-5 years litigation experience for its Maitland and Tampa offices. SIU/anti-fraud insurance defense experience preferred. Fax/mail resume to: Office Manager (407) 647-9966, Kingsford & Rock, P.A., 1760 Sennell St., Maitland, FL 32751.

RISSMAN, BARRETT, HURT, DONAHUE & McLAIN, P.A., an AV-rated law firm, seeks an attorney for its liability section with 1 - 3 years experience. Interested parties should reply to Jennings L. Hurt III, P.O. Box 4940, Orlando, Fla. 32801-4940 or via e-mail to ucky.hurt@rissman.com.

BANKRUPTCY ASSOCIATE – Winderweede, 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 richmond@WHWW.com or fax (407) 645-3728.

AV-RATED Plaintiff's Personal injury firm in downtown Orlando seeks one or more associate attorneys with 0 to 3 years experience to assist attorneys in the firm with litigation of significant personal injury cases including medical malpractice, nursing home, product liability and related cases. Colling Gilbert Wright & Carter. Email cover letter and resume to ncarter@thefloridafirm.com.

DYNAMIC, GROWING FIRM seeks associates with 6 plus years experience in construction/commercial litigation and insurance defense for its Maitland and Tampa offices. Salary commensurate with experience, excellent compensation package. Lateral candidates with own client base welcome. Send resume and writing sample to: Managing Partner, P.O. Box 4449, Orlando, Florida 32802-4449, or email to managingpartner@myflalawyer.com.

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2008

January-February Calendar

OCBA Luncheon • Thursday, Jan. 31, 2008

Jeremy N. Foley
Athletic Director, University of Florida

RSVP by Jan. 24th to reservations@ocbanet.org

Luncheon Sponsored by



January

- 3 Elder Law Committee**
12:00 p.m. • Bar Center
- 4 CFWAL Luncheon**
11:30 p.m. • Citrus Club
- 8 Executive Council Meeting**
11:30 a.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- 9 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. • Orange Co. Courthouse
- 10 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
- 11 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 14 Central Florida Family Law American Inn of Court**
5:00 p.m. • Sam Snead's Tavern
- 15 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
- 16 Solo and Small Firm Committee**
12:00 p.m. • Bar Center

- Insurance Law Committee**
12:00 p.m. • Bar Center
- 17 YLS Luncheon**
11:30 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- Social Committee**
5:30 p.m. • TBA
- 18 Family Law Committee**
8:00 a.m. • 425 N. Orange Ave., #2310
- 22 LawTech Partners, Inc. Seminar**
The Lawyer's Guide to Managing Client, Contact & Calendar Information with Outlook (2.0 CLE)
12:00 p.m. • Bar Center
- 23 Labor & Employment Committee**
12:00 p.m. • Bar Center
- 24 Estate, Guardianship and Trust & Elder Law Committee Seminar**
Dos and Don'ts for Dabblers and New Attorneys, Including Homestead Law and a View from the Bench (9.5 CLE, including 3.0 Ethics)
8:00 a.m. • Bar Center
- Winter Wine and Cheese Party**
TBA
- 25 Bankruptcy Committee Seminar**
Nuts and Bolts Means Test Workshop (2.5 CLE)
9:30 a.m. • Bar Center
- Bankruptcy Committee Meeting**
12:00 p.m. • Bar Center
- 28 CFAWL Board Meeting**
12:00 p.m. • Bar Center
- 30 Business Law Committee**
12:00 p.m. • Baker Hostetler, SunTrust Bldg.

31 OCBA Monthly Luncheon

Jeremy N. Foley,
UF Athletic Director
11:30 p.m. • The Ballroom at Church Street

February

- 1 CFWAL Luncheon**
11:30 p.m. • Citrus Club
- 5 Criminal Law Committee**
12:00 p.m. • Bar Center
- OCALSS**
5:30 p.m. • Bar Center
- 7 Elder Law Committee**
12:00 p.m. • Bar Center
- 12 Executive Council Meeting**
11:30 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- 13 Estate, Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- International Law Committee**
12:00 p.m. • Bar Center
- Past Presidents Dinner**
6:00 p.m. • The Courtyard at Lake Lucerne
- 14 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
- 15 Family Law Committee**
8:00 a.m. • 425 N. Orange Ave., #2310

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