

the Briefs

A Publication of the Orange County Bar Association

2010
Happy New Year!



December 2009 /
January 2010
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Inside this Issue:

Professionalism Committee

*Godzilla: The World Series MVP –
A Study in Professionalism*
Magistrate Howard D. Friedman

Legal Aid Society News

Harness Your Inner Indiana Jones
Bethanie Barber

*Jury Service in the Electronic Age: New
Solutions for New Challenges*
J. Richard Caldwell, Jr.

Appellate Practice Committee

*New Rules Expedite Dependency and
Parental Termination Appeals*
Thomas Wade Young

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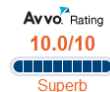
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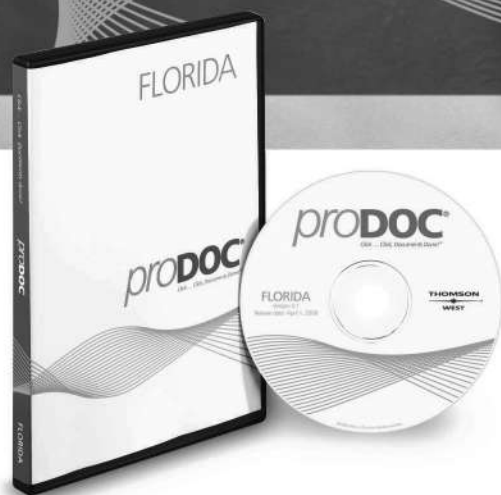


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Table of Contents:

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President's Message	3
<i>How Many Political CLEs Do You Have?</i> Diego "Woody" Rodriguez	
OCBA January Luncheon	5
Bill Cowles Orange County Supervisor of Elections	
Professionalism Committee	7
<i>Godzilla: The World Series MVP – A Study in Professionalism</i> Magistrate Howard D. Friedman	
Judicial News	9
<i>Korean High Court Judges Visit Orlando Courts</i>	
Judicial News	9
<i>Judges Bring Awareness to the Need for Child Adoption in Central Florida</i>	
Legal Aid Society News	11
<i>Harness Your Inner Indiana Jones</i> Bethanie Barber	
Legal Aid Society News	13
<i>What We Do ...</i> <i>Broken Glass, Mended Spirits, and Dancing</i> Kira Romero Craft and Donna A. Graf	
Appellate Practice Committee	14
<i>New Rules Expedite Dependency and Parental Termination Appeals</i> Thomas Wade Young	
<i>Lawyers for Literacy – Defending the Right to Read</i>	16
Lisa Warren	
2009 Bench Bar Photo Spread	24-25
<i>PINing in the Public Arena: Beware of "Private" Texting</i>	27
Leonard J. Dietzen, III and Noah D. Valenstein	
YLS on the Move	29
<i>Happy New Year</i> Sunny A. Hillary	
<i>Jury Service in the Electronic Age: New Solutions for New Challenges</i>	31
J. Richard Caldwell, Jr.	
Rainmaking	33
<i>Top 20 Influencers</i> Mark Powers and Shawn McNalis	
Presentation Skills for Lawyers	35
<i>9 Simple Ways to Ruin Your Next Presentation</i> Elliott Wilcox	
New Members	36
Announcements	38
Classifieds	39
Calendar	40

President's Message ● *How Many Political CLEs Do You Have?*

December 2009/
January 2010

During our country's inception, lawyers were not only more revered and well respected but there was an expectation that lawyers would be entrusted to have knowledge of our political systems and an expectation that lawyers would issue educated opinions on the state of the country's affairs to the masses. Our Declaration of Independence contains fifty-six signatures of which no less than twenty-four were lawyers or jurists. The Constitutional Convention, which resulted in the ratification of one of humanity's greatest legal documents, commenced with fifty-five delegates of which thirty-four were lawyers. The majority of our U.S. Presidents, fifty-eight percent, have been lawyers.

As Florida lawyers, we are bound by Rule 6-10.1 which states that "it is of primary importance to the public and to the members of The Florida Bar that attorneys continue their legal education throughout the period of their active practice of law." We comply with this requirement by obtaining the requisite 30 CLE credits that we honestly and faithfully report every three years on legal courses regarding case law, statutes, ethics, diversity, and other related topics. But our legal education is not complete unless we have a firm understanding of not only how the laws are adopted but who the key players are in bringing about changes to the law.

Every year, we are faced with a myriad of choices on everything from our local city council races, to the election of competent school board members, to the retention or election of members of our judiciary, to the election of countywide, state-wide and federal officials. In addition, seemingly every two years, we are now faced with a growing number of constitutional amendments and challenges that can significantly impact the landscape of our professional and personal lives.

As we commence not only a new year but a new decade, 2010 will bring with it a whole series of important election-cycle banter and choices in which we will be asked by lawyers and non-lawyers alike to render our educated opinions on these topics. Further complicating matters are the falsehoods and rhetoric espoused by those with political gain that cloud the real facts about issues and candidates. As lawyers, we are specially trained to analytically resolve our client's problems by identifying the real issues of contention and segregating the pertinent facts from the rhetorical legal arguments. So this month, and in future months, I invite you to take part in our OCBA lunches that will raise your awareness of the central political issues facing our community, our state, and our country. We will hopefully provide you with some unofficial CLEs in legal education.



The Brockmans – Chris, Ben, Shannon, Daniel and Maureen. Shannon was recently crowned FSU Homecoming Princess.



Diego "Woody" Rodriguez

ABA Meetings

The ABA mid-year meeting will be held in our backyard in early February. Regardless of whether you are a member of this national organization or not, I would encourage you to attend and support the various events, presentations, and activities as good ambassadors of our legal community and good ambassadors of Central Florida who are looking to continue to make Orlando a top travel destination.

If You Missed the November Lunch . . .

You missed quite a program in which we were honored with words of wisdom from four of our distinguished colleagues. The good news is that thanks to **Flo Boehm**, of Boehm & Boehm, our OCBA videographer, we were able to memorialize the lunch. If you attended the lunch and are interested in sharing it with others, or if you missed it and would like to watch these masters of our profession, please visit the YouTube link: http://www.youtube.com/watch?v=Gd_X_vuhBV4. We will also be expanding our website in the next few months and hope to have this luncheon as well as other top OCBA events available, possibly in a downloadable format.

Small Moments

My daughter is routinely asked to capture small moments in her second grade writing class, and I thought this might be an appropriate forum to do the same. I do not always have the opportunity to boast about the accomplishments of others, and after this year's presidency that opportunity will be further diminished. However, I wanted to take a minute of your time to help recognize a few of our OCBA colleagues who have stood out in varying ways for their "off-the-court" accomplishments in recent months. **Lou Pendas**, of the Pendas Law Firm, recently used his office parking lot to give away over 1,000 turkeys before the Thanksgiving holiday. While most firms have blood drives, **Jeff Feulner**, of the Men's Divorce Law Firm, e-mailed

his clients and others to support his blood drive, thereby bringing greater awareness of the need to give blood in our community. **Liz McCausland**, soon to be of the Liz McCausland law firm, completed her eighth year of organizing a toy drive for the foster children at Devereux Therapeutic Foster Care. Past OCBA president and one of our own Florida Bar Board of Governors, **Mary Ann Morgan**, of the law firm Billings Morgan & Boatwright, was recently highlighted in the Florida Bar News for bringing more attention to the plight of the homeless when she and her daughter camped out in the streets of Orlando for a night to gain valuable insight on the living conditions of this sometimes forgotten population. And in

continued page 5



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Bill Cowles
Orange County
Supervisor of Elections

Bill Cowles has been an integral part of the Orange County Supervisor of Elections office since 1989, after serving thirteen years on the staff of the Central Florida Council, Boy Scouts of America. He was elected as the Orange County Supervisor of Elections in 1996 and re-elected in 2000, 2004 and 2008. Bill supervises the sixth largest county elections office in the State of Florida.

Bill serves on the Federal Elections Assistance Commission Board of Advisors, to which he was appointed in 2007. His other professional involvement includes being Legislative Chair

(currently) and past president of the Florida State Association of Supervisors of Elections, as well as immediate past president of the International Association of Clerks, Recorders, Election Officials, and Treasurers in 2008/2009.

Bill graduated in 1976 with a degree in Public Administration from Florida Technological University (now known as University of Central Florida). He is a member of the Alumni Association Legislative Committee.

Not only is Bill busy with his professional associations, he is also very active in his church and community. He is an elder at St. Pauls Presbyterian Church, a member of the executive board of Goodwill Industries, and a member and past president of the Kiwanis Club of North Orlando.

Bill has been married to Cheryl since 1978 and has two married sons and one grandson.

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To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, January 22, 2010. The OCBA is happy to provide 10 luncheons as part of your member benefits, **but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.** Please keep us up-to-date on your reservation status!

President's Message

continued from page 3

October, at FSU's homecoming, my wife and I witnessed as our good friend and colleague **Chris Brockman**, of Holland & Knight, beamed with pride when his daughter was elected as FSU's Homecoming Princess. This is obviously an incredible accomplishment of a very driven and confident young woman, whose accomplishment also was made possible with proper parental guidance and direction through years of dedication by her parents, Chris and Maureen. All of these accomplishments, and the many more that go unreported, represent the heart and soul of Orange County's legal community and the willingness with which we constantly give. For that I say thanks for making our community a better place to live.

So Long Bobby . . .

Finally, in years past, we have had

some active Young Lawyers editors who have produced YLS columns with the concluding tag line, "Go Gators." And while I wince at the introduction of such partisan sportsmanship in our publication (particularly when it does not say "Go Noles"), I would be remiss if I did not take a final moment in my column to thank FSU's beloved coach Bobby Bowden for his thirty-four wonderful years as FSU's head football coach. Bobby won a lot of games but, more importantly, he has served as a wonderful spiritual leader to those who played for him, and his true legacy will always be the difference he made in the lives of all those football players. Thanks Bobby!

Woody Rodriguez is a partner with Marchena & Graham, P.A. He has been a member of the OCBA since 1998.

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Chaffin v. Overstreet,

982 So. 2d 11 (Fla. 5th DCA 2008)

Reversed numerous provisions of trust judgment that violated due process.

Rykiel v. Rykiel,

795 So. 2d 90 (Fla. 5th DCA 2000)

Reversed dissolution judgment due to excessive awards against husband.

Miller v. Jacobs & Goodman,

699 So. 2d 729 (Fla. 5th DCA 1997)

Declared liquidated damages clause of attorney employment agreement void and unenforceable.

Hamlet v. Hamlet,

583 So. 2d 654 (Fla. 1991).

Reinstated permanent alimony award.

Atkins v. Atkins,

611 So. 2d 570 (Fla. 1st DCA 1992)

Reversed inadequate award of permanent alimony.

Stockstill v. Stockstill,

770 So. 2d 191 (Fla. 5th DCA 2000).

Reversed marital dissolution judgement for new trial due to extensive judicial questioning.

Acadia Partners, L.P. v. Tompkins,

759 So. 2d 732 (Fla. 5th DCA 2000)

Prevented multi-million dollar judgment addition in complex business litigation.

Lieberman v. Dept. of Professional Regulations,

573 So. 2d 349 (Fla. 5th DCA 1990)

Restored a physician's medical license.

Finch v. Seminole County School Board,

995 So. 2d 1068 (Fla. 5th DCA 2008)

Affirmed denial of taxpayer challenge to school rezoning plan.

Foley v. Foley,

34 Fla. L. Weekly D1943A (Fla. 5th DCA 2009)

Reversed unequal distribution of marital estate.

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Kudos to the New York Yankees who became Major League Baseball's World Series Champions for the twenty-seventh time this past November. Whether you are the most ardent Red Sox fan/Yankee hater or otherwise, you must admire the quiet perseverance of Hideki Matsui, the World Series MVP award winner.

As the Yankees designated hitter, he had a starting spot in only the three Yankees home World Series games. On November 4, 2009, in the sixth game of the World Series, with the Yankees ahead three games to two in the best of seven series, Matsui batted in six runs. Those runs standing alone were enough to defeat the defending title-holder Phillies and secure the 2009 title for the Yankees. Sure it can be said that Andy Pettitte was pitching well in game six after only three days rest, and Mariano Rivera was virtually untouchable. But Matsui, who hit for a respectable .274 average during the regular season with 28 dingers and 90 RBI's, was positively on fire during the series. Aside from Matsui, not too many others in the Yankees \$208 million dollar line-up were really able to do too much against the 38-year-old Phillies future Hall of Fame pitcher Pedro Martinez. Matsui appeared to be some kind of well-tuned World Series hitting "monster," going 4 for 4 with 5 RBI's, including a home run in each of the two outings against Martinez. For the series, Matsui went an incredible 8 for 13 with 3 home runs and 8 RBI's. Matsui was the most productive Yankee hitter, even compared to big guns A-Rod and Mark Teixeira, who started all six games. He even surpassed Derek Jeter and Johnny Damon's fine series-hitting performances. He is the third player in major league history to bat over .500 and hit 3 or more home runs in World Series play. This is an honor he shares with Lou Gehrig and Babe Ruth. For his performance against the Phillies, Hideki Matsui was awarded the 2009 World Series Most Valuable Player Award.

What is remarkable about Matsui is that he is not a "show boat." In response to winning the series and receiving the 2009 World Series MVP Award he stated through a translator: "It's awesome. Unbelievable. I'm surprised myself." (Walker, Ben [AP]. "Matsui becomes 1st

Japanese-born World Series MVP" Nov. 5, 2009. Yahoo Sports. <http://sports.yahoo.com/mlb/news?slug=ap-worldseriesmvp&prov=ap&type=lgns>.)

Matsui appears to understand that as a professional athlete he is a role model. He quietly does his job, and in the World Series when his team needed him to deliver, deliver he did – and he did it swimmingly well. Despite the success he has achieved, Hideki Matsui appears understated and humble. Part of it, some may assert, is because he speaks primarily Japanese and has only recently learned English. However, as a baseball fan, I recall hearing something about Matsui that tends to confirm that he has a sense of humility and also suggests that he conscientiously desires to convey a positive image regarding his work ethic and status as an athlete on a professional sports team.

Back in May 2006, while playing outfield for the Yankees, Matsui dove for a shallow fly ball hit by the Red Sox' Mark Loretta. Matsui landed on the arm on his glove hand and broke his left wrist. He retrieved the ball and threw it back into the in field. Despite being in pain he didn't complain. This injury ended Matsui's streak of having played in 518 consecutive major league games (after having played 1,250 consecutive professional games in Japan). Matsui said in a statement after sustaining this injury, "Due to this injury, I feel very sorry and, at the same time, very disappointed to have let my teammates down. I will do my best to fully recover and return to the field to help my team once again. I would like to thank Joe Torre from the bottom of my heart for having been considerate of my consecutive games played streak these

past several years and for placing me in the line up every day." (From the AP release appearing on espn.go.com May 12, 2006.)

Matsui is one of Japan's most famous baseball stars. Perhaps Matsui's model behavior is an act of contrition to his Japanese fans for his decision to leave the Yomiuri Giants after 10 seasons (1993-2002) and come to New York in 2003 to play major league baseball for the Yankees. Whatever may be motivating him, he seems to understand that as a national figure in Japan, how he conducts himself in America is a reflection of his character and of his country.

The 2009 World Series MVP Hideki Matsui will become a free-agent this off season. At age 35, with recurring knee problems, it appears unlikely the Yankees will offer him a contract for next season. When asked about his plans for next year and whether he'd be back, Matsui replied, "I hope so. I hope it works out that way. I love New York, I love the Yankees." (Walker, Ben [AP]. "Matsui becomes 1st Japanese-born World Series MVP" Nov. 5, 2009. Yahoo Sports. <http://sports.yahoo.com/mlb/news?slug=ap-worldseriesmvp&prov=ap&type=lgns>.)

I am neither this guy's fan club nor a huge Yankees fan. I just wanted to share with you a story about professionalism and achievement. And, by the way, "Godzilla" is Matsui's nickname.

The **Honorable Howard D. Friedman** is a magistrate of the Ninth Judicial Circuit. He has been a member of the OCBA since 2005.



**General Magistrate
Howard D. Friedman**

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Judicial News

Korean High Court Judges Visit Orlando Courts

Chief Judge Young Jin Ahn of the Busan High Court of Korea met with judges of the Ninth Judicial Circuit to learn about jury trials and the American system of justice. Judge Ahn, along with a delegation of four

other judges, court administrative staff, and court clerks from Korea spent a full-day Monday, November 2, 2009, and a half-day Tuesday, November 3, 2009, witnessing jury trials and learning about courtroom procedures and the American judicial system.

The Republic of Korea recently implemented a jury system as part of that country's legal process. At the request of the Korean visitors, the National Center for

State Courts in Williamsburg, Virginia, coordinated the educational visit to focus primarily on jury trials. The Ninth Circuit was selected as a tour location based on the court's model of best practices in jury trial procedures and jury management. This is the second time the National Center has brought international visitors to the Ninth Circuit. In 2004, a similar tour of Korean officials visited the court and later adopted many Ninth Circuit practices in the Republic of Korea.

Aside from witnessing actual courtroom proceedings, the Korean visitors reviewed Court Administration's jury management process, remote court interpreting program, and high tech courtrooms. They also had an opportunity to hold

one-on-one discussions with various Ninth Circuit judges about Florida law and courtroom procedures.

Submitted by
Karen Levey,
Director of Due
Process Services,
Ninth Judicial
Circuit Court.



Judges and other court officers in the Korean delegation were Presiding Judge Young Jin Ahn, Busan High Court; Tae-Kyu Kim, Associate Judge; Jae-wook Lee, Associate Judge; Jun-pal Lee, Clerk of Court; Bo-gyoon Kwon, Assistant Court Officer; Dong-sik Lee, Judge, Seoul Central District; Hyang-soon Kim, Junior Clerk of Court; Yoon-jung Choi, Assistant Court Officer. U.S. judges pictured are Judge Carolyn B. Freeman, Orange County Court; Magistrate Linh T. Ison, Osceola County Court; Judge Frederick J. Lauten, Circuit Court; and Judge Alice L. Blackwell, Orange County Court.



Judges Bring Awareness to the Need for Child Adoption in Central Florida

Two Ninth Judicial Circuit Adoption Ceremonies helped to celebrate National Adoption Day and bring awareness to the benefits of adoption in Central Florida. More than 20 children were welcomed into new families during public ceremonies on Wednesday, November 18, 2009, at the Orange County Courthouse and Friday, November 19, 2009, at the Osceola County Courthouse. Hundreds of other children still wait in foster care for permanent homes.

"We hold these ceremonies for the benefit of those still in foster care," stated **Judge Robert Evans**. Judge Evans, who is an adoptive parent, presided over the Orange County ceremony. "I can say from experience, that adoption is the most rewarding experience any family could have. We are overjoyed for the children that will be adopted, but we must bring awareness to the hundreds of children still needing good homes."

The adoption ceremonies were a collaborative effort among the courts, Family Services of Metro Orlando, and their partner

agencies. The events were coordinated as part of a national effort to raise awareness of the 129,000 children in foster care throughout the United States. Normally, adoptions are private proceedings held behind closed doors. Families involved in November's ceremonies have agreed to share their special moment with all citizens of Central Florida in order to promote adoption in our community.

Judge Margaret Waller has presided over the Osceola County ceremony every year and knows the importance of adoption in Osceola County. "It is a joyous day for these children and parents," said Judge Waller, "but there are still many children right here in Osceola County that need good homes – we really want to focus on those children."

Submitted by **Karen Levey**, Director of Due Process Services, Ninth Judicial Circuit Court.



Tina Terry



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News

● Bethanie Barber

You can't always test the waters. Remember Indiana Jones and the fly by the seat of your pants, twists and turns around every corner, death-defying antics? It might have been scary for some, but you probably experienced that satisfying adrenaline rush when he dodged rolling boulders and jumped over pits. Serving as a *pro bono* Guardian ad Litem (GAL) for older children aging out of foster care and transitioning to adulthood provides the Indiana Jones exhilaration without any of the near-death experiences. *Pro bono* GALs such as **Wynne McFarlin** have braved the challenges, all in an effort to assist foster youth in preparing for the challenges of adulthood.

In Orange County, the needs of teenage youth transitioning out of the foster care system are vast. Although the State of Florida works to equip children with the skills necessary to live independently at age eighteen, the amount of guidance needed by foster youth is often enormous. The Guardian ad Litem's legal background, therefore, is not the most important tool for successful representation. Rather, it is empathy derived from your own adolescent experiences, along with a genuine desire to improve the lives of foster children, that truly makes a difference.



Wynne McFarlin

Like Indiana, older foster youth find themselves in difficult situations with very little time to find resolutions. Youth turning eighteen must determine where to live, where to attend school, and how to secure medical assistance – often all within a matter of months – with little money and even less support. Throughout the process, foster youth struggle to maintain normalcy through participation in everyday activities the rest of us took for granted as teens, such as visiting siblings, participating in after school activities, sports clubs, sleepovers, and attending prom. These activities, though they may seem routine, are enormous challenges to foster youth. Who will pay for the activities? Will the court grant permission? Where *is* the Medicaid office and does the bus go *there*?

Pro bono attorneys can help transitioning foster youth rescue themselves from these harrowing circumstances. It doesn't matter whether you're a litigator, have dependency law experience, or have survived parenting a teenager. The real question is – are you willing and able to help a youth determine what should happen next in his or her life? Are you able to advise the court on whether sibling visits should be permitted, or whether the youth's current educational path will help him or her attain the desired goal? It's often a wild ride for these youth. By bringing potential problems to the attention of the court, *pro bono* Guardians ad Litem are able to help ensure that youth receive immediate help for the important issues they face.

Pro bono attorney **Wynne McFarlin** channels her inner Indiana Jones regularly. Wynne's primary practice area is not dependency law. However, she recently served as the GAL for a foster youth turning eighteen and in need of last-

minute legal relief. Wynne met regularly with her young client, assessed his needs and listened to his concerns. The relationship Wynne developed with the youth allowed her to really get to know him and his needs. After determining that he was a responsible young adult, she worked to obtain special independent living housing for the foster youth so he could test the waters of adulthood. She learned of the housing program beneficial to her client, thoroughly researched the program, and then lobbied the court to grant her foster youth the housing services he both desired and deserved.

Wynne also ensured that her client received the specific financial benefits he was entitled to after his eighteenth birthday. She helped him understand the court process in general, making it all far less intimidating for him. Wynne's pure commitment to improving the life of her foster youth made her a successful *pro bono* Guardian ad Litem.

Unlike Indiana Jones, you won't come within inches of a fiery death before the court. Constant assistance from the Legal Aid Society's Guardian ad Litem Program is always available to *pro bono* attorneys. The GAL Program consists of eight attorneys and two case coordinators, all of whom provide support at every stage of the dependency process. Program attorneys are available to help *pro bono* GALs file pleadings, attend out-of-court meetings, and provide legal guidance specific to each dependency case. The program houses an Independent Living Transitions attorney with specific knowledge of statutes and policies directly impacting transitioning youth. The attorney is always available for case consultation. The GAL program attorneys can accompany you to court and provide around-the-clock assistance. Additionally, GAL Program case coordinators are able to visit foster youth on behalf of *pro bono* GALs to gather necessary information or to help in identifying resources and services available for families.

Indiana Jones didn't always know which path to choose. However, like Indiana, intelligence, dedication, and a clear mission will make you successful as a *pro bono* GAL. Not only will you have one of the most rewarding experiences of your professional career, but you can even wear the hat, if necessary.

Bethanie Barber is a Guardian ad Litem Program Transitions attorney at the Legal Aid Society. She has been a member of the OCBA since 2008.





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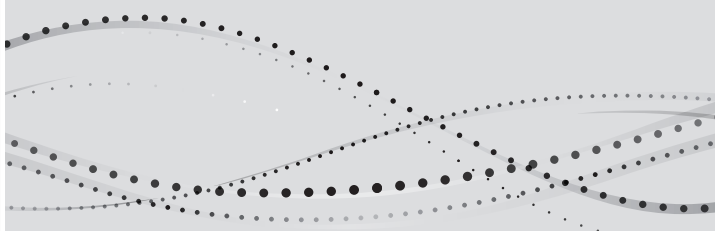
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Sarah's story is one example that illustrates the results of collaborative efforts between staff and *pro bono* attorneys working to change lives.

Sarah does not recall much about her life in Haiti or her parents. What she remembers is arriving in the United States as a child of five or six years old, perhaps with an aunt. She came to live in Orlando's Pine Hills section with an uncle, his wife, and their six kids. As much as she tried to fit in, she was not allowed to become part of the family. She recalls her cousins beating her and burning her arm with a hot iron. When she broke a glass, her aunt burned Sarah's hand with a cigarette. She eventually moved in with her older sister and other relatives but still suffered abuse, with her body carrying the beating marks. Over the course of nine years, Sarah was moved more than a dozen times. This is not uncommon in the lives of undocumented persons, but for a child the instability of many abusive "caretakers" can have tragic results. Even so, Sarah kept a positive attitude, spent time with her friends, and hoped for a better day.

Change came in December 2004 when someone called the Florida Department of Children and Families. Sarah found herself before the Orlando juvenile court, where her mother and father's parental rights were terminated and she became a ward of the state. **Chuck Stepter**, a private attorney and member of the Legal Aid Society's Board of Trustees, was appointed her Guardian ad Litem. His team includes his assistant, Jeanette Churn. Finding out that Sarah was an undocumented non-citizen, the Legal Aid Society began working to obtain her lawful, permanent resident status in the country, while Chuck and Jeanette worked on the medical, dental, and other issues that affected Sarah's life. Attorney **Kira Romero Craft** stated that "Mr. Stepter provided the legal skills necessary to do battle on behalf of Sarah in the courtroom, while Ms. Churn's diligence in case monitoring proved to save Sarah from getting lost in the system!"

Kira worked on the case to try to get Sarah a green card through an immigration process known as special immigrant juvenile status. Difficulty arose when it was discovered that Sarah's older sister had filed for political asylum when she first arrived in the United States, and she included Sarah on the asylum application as her young daughter. The immigration judge in Miami denied

the asylum claim, and a removal order was issued against Sarah and her sister. Without knowing it, Sarah grew up for years with an order that made her deportable on the spot.

Attorney **Chuck Conroy** became involved when Kira approached him to discuss the case alternatives at the

late stage. Our attorneys found that the only way to obtain legal status for Sarah was to request that the Immigration Court in Miami reopen the case. Reopening a case can be difficult. In order for Sarah to "come out of the shadows," we were required to file a joint motion with the attorneys at Immigration and Customs Enforcement (cheerfully known as "ICE") as well as show the court that a new form of relief, which had previously been unavailable, was now available.

Chuck Conroy and Kira proceeded to collect the supporting documents needed to have Sarah's case reopened, including obtaining Sarah's birth certificate. The birth certificate was ultimately acquired, and other documents were gathered in support of the Motion to Reopen. Negotiations were moving forward with the ICE attorney in Miami when we realized another snag existed. Because Sarah was under a removal order from the Immigration Court, the U.S. Department of Homeland Security, it was maintained that the state court dependency order was not valid because it had not been granted with the express consent of the Department of Homeland Security. This became a serious problem. The state dependency order was what would allow Sarah to show she qualified for special immigrant juvenile status as a minor abused, abandoned, and/or neglected. The status basically gave Sarah a special visa classification that allowed her to apply for the green card, which was the ultimate goal. Effectively, the Department of Homeland Security was saying that Sarah could not qualify for special immigrant juvenile status.

Fortunately, a lawsuit in the California Federal District Court resulted in an injunction against the Department of Homeland Security's requirement that express consent be obtained from them before an undocumented child would be found to be a dependent of the state juvenile court system. This opened the door to move forward, and the ICE attorney agreed to join the motion to reopen. Within days, the immigration judge issued an order granting the motion and terminating proceedings, thus allowing Sarah to apply for her green card through the U.S. Citizenship and Immigration Services.

Shortly after her eighteenth birthday, Sarah was granted a green card and lawful permanent resident status. She now has an apartment, works as a beautician, and pays her own bills and taxes. Her status as a lawful permanent resident has opened educational doors for her, and she plans to enroll at Valencia Community College and earn a degree in psychology. Sarah also dreams, like others her age, of becoming an actress/dancer.

The Legal Aid Society's immigration practice includes attorneys Charles Conroy and Kira Romero Craft, along with legal assistants Barbara Pagan and Mary Linton. For more information about these areas, please contact ctucker@legalaiddocba.org or dgraf@legalaiddocba.org.

Kira Romero Craft, LAS attorney, and **Donna A. Graf**, LAS Manager of Development, have been members of the OCBA since 2008.



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● New Rules Expedite Dependency and ● Parental Termination Appeals

Thomas Wade (Tom) Young¹

Caping a rule-making odyssey that began in 2005, the Florida Supreme Court adopted rules on November 12, 2009, intended to expedite appellate review in dependency and parental termination cases.² The Court's opinion amends three bodies of rules: the Florida Rules of Judicial Administration, the Florida Rules of Juvenile Procedure, and the Florida Rules of Appellate Procedure. The new rules took effect immediately.³

Two of the most significant rules adopted are new Rule of Judicial Administration 2.535(i) and new Rule of Appellate Procedure 9.146(g)(2)(B). Rule 2.535(i) mandates that court reporters and transcriptionists give first priority to transcripts in dependency and parental termination cases "unless otherwise ordered by the court based upon a demonstrated exigency." Rule 9.146(g)(2)(B) further requires that the transcripts be prepared and filed "[w]ithin 20 days of the date of service of the designation."⁴ Prior to the proposal of these new rules, the Commission on District Court of Appeal Performance and Accountability cited delays in the preparation of transcripts as one of the leading causes for delay on appeal.

Under the new rules, a parent who has been declared indigent in the lower court may, unless the trial court revokes the declaration, be presumed indigent for purposes of appeal in order to expedite appointment of appellate counsel and release of the transcript.⁵ Another change designed to aid transcription appears in an amendment to Florida Rule of Juvenile Procedure 8.525(i)(1) and related forms. This amendment requires the trial court to include the dates of the adjudicatory hearing in orders terminating parental rights in order to eliminate situations in which less than the full record is designated.

New rules also directly impact the work and schedules of dependency court practitioners. For example, new Florida Rule of Appellate Procedure 9.146(g), among other things:

- Requires the appellant to file, simultaneously with the notice of appeal, (i) motions for the appointment of appellate counsel and for authorization of payment of transcription costs;⁶ (ii) directions to the clerk;⁷ and a designation to the court reporter, including the name(s) of the individual court reporter(s);⁸
- Requires the appellant to serve the designation on the court reporter the day it is filed and to advise the court reporter that the appeal is from a final order of termination of parental rights or of dependency, Fla. R. App. P. 9.146(g)(2)(B);
- Requires the clerk to transmit the record to the district court within five days of the date the court reporter files the transcript(s) or, if a designation to the court reporter has not been filed, within 5 days of the filing of the notice of appeal, Fla. R. App. P. 9.146(g)(2)(C);
- Requires the clerk to, simultaneously with transmittal of the record to the district court, serve copies of the record to the Department of Children and Family

Services, the guardian ad litem, and the indigent parties or their appointed counsel, Fla. R. App. P. 9.146(g)(2)(C);⁹

- Restricts extensions of time to "extraordinary circumstances in which the extension is necessary to preserve the constitutional rights of a party, or in which substantial evidence exists to demonstrate that without the extension the child's best interests will be harmed," and imposes specific pleading requirements for requesting an extension, Fla. R. App. P. 9.146(g)(4)(C);¹⁰
- Requires service of the initial brief within 20 days of service of the record on appeal or the index to the record on appeal, service of the answer brief within 20 days of service of the initial brief, and service of any reply brief within 10 days of the service of the answer brief, Fla. R. App. P. 9.146(g)(3)(B);
- Requires requests for oral argument to be filed "not later than the time when the first brief of that party is due," Fla. R. App. P. 9.146(g)(5);
- Precludes the filing of a response to a timely filed motion for rehearing, rehearing en banc, clarification, or certification, unless the court orders a response, Fla. R. App. P. 9.146(g)(6); and,
- Codifies the holding in *N.S.H. v. Florida Department of Children and Family Services*, 843 So. 2d 898 (Fla. 2003), by requiring appellate counsel who wish to withdraw from representation of an indigent parent to (i) certify that counsel has conscientiously reviewed the record and made a good faith determination that no meritorious grounds support an appeal and (ii) file and serve a motion containing that certification on the parent, Fla. R. App. P. 9.146(g)(4)(B).¹¹

The Supreme Court declined to adopt amendments proposed by the Appellate Court Rules Committee that would have enumerated specifically appealable final and non-final orders. Instead, said the Court, "we conclude that at this point, preservation of the status quo is the preferable resolution."¹² The Court's decision in that regard leaves unresolved the questions of whether a shelter order is final or non-final and whether, if non-final, a shelter order is reviewable by direct appeal or only by certiorari.¹³ Likewise, the Court left open the issue of whether any non-final dependency orders may be reviewed on direct appeal under Florida Rule of Appellate Procedure 9.130. As the result of the Fifth District's recent decision in *R.M. v. Department of Children & Families*, __ So. 3d __, 34 Fla. L. Weekly D1909 (Fla. 5th DCA Sept. 15, 2009), that issue appears headed for resolution through a live controversy. *R.M.* directly conflicts with *In re J.T. (Department of Children and Family Services v. Heart of Adoptions, Inc.)*, 947 So. 2d 1212 (Fla. 2d DCA 2007), in terms of what constitutes an "authorized motion" for purposes of direct appeal of a non-final order under Rule 9.130(a)(4).¹⁴

Regardless of the questions that remain, the Florida Supreme Court delivered the unmistakable message that counsel and courts alike must endeavor to ensure that cases involving children are decided in “child time.”^{15, 16}



Thomas Wade Young is an attorney with Dempsey & Associates, P.A. He has been a member of the OCBA since 2003.

¹This article is submitted on behalf of the Orange County Bar Association's Appellate Practice

Committee, Barbara A. Eagan, Chair. Tom Young is board certified in appellate practice by The Florida Bar and maintains a litigation practice with Dempsey & Associates, P.A. in Winter Park.

² *In re Amendments to the Florida Rules of Judicial Administration, the Florida Rules of Juvenile Procedure, and the Florida Rules of Appellate Procedure – Implementation of the Commission on District Court Of Appeal Performance and Accountability Recommendations*, No. SC08-1724, __ So. 3d __, 2009 WL 3763128 (Fla. Nov. 12, 2009).

³ *In re Amendments*, No. SC08-1724, slip op. at 10.

⁴ Extensions are available for “extraordinary reasons,” but reporters requesting such extensions must specify the extraordinary reasons and the number of additional days requested. Fla. R. App. P. 9.146(g)(2)(B).

⁵ Fla. R. App. P. 9.430(d).

⁶ Fla. R. App. P. 9.146(g)(4)(A). This requirement applies only if indigent parents are involved. The rule also requires that copies of the motions be served on the presiding trial court judge, who is required to promptly rule on the motions.

⁷ Fla. R. App. P. 9.146(g)(2)(C).

⁸ Fla. R. App. P. 9.146(g)(2)(B).

⁹ Non-indigent parents will not automatically receive a copy of the record. Rather, the new rule obligates the clerk to “simultaneously serve copies of the index to all non-indigent parties, and, upon their request, copies of the record or portions thereof at the cost prescribed by law.” Fla. R. App. P. 9.146(g)(2)(C).

¹⁰ “The motion shall state that the appeal is from a final order of termination of parental rights or of dependency, and shall set out the extraordinary circumstances that necessitate an extension, the amount of time requested, and the effect an extension will have on the progress of the case.” Fla. R. App. P. 9.146(g)(4)(C). “The extension will be limited to the number of days necessary to preserve the rights of the party or the best interests of the child.” *Id.*

¹¹ The rule allows the parents 20 days in which to file a pro se brief after an order granting the motion to withdraw is issued. Fla. R. App. P. 9.146(g)(4)(B).

¹² *In re Amendments*, No. SC08-1724, slip op. at 9.

¹³ The Fourth and Fifth District Courts of Appeal have reviewed shelter orders by direct appeal. See *L.M.C. v. Dep’t of Children & Fams.*, 935 So. 2d 47 (Fla. 5th DCA 2006); *M.L. v. Dep’t of Children & Fams.*, 942 So. 2d

977 (Fla. 4th DCA 2006). Because a shelter order is the first order rendered in a dependency case, it is not preceded by a final order. Therefore, if a shelter order is deemed non-final, it must be reviewed by certiorari because only “non-final orders entered after final order on authorized motions” are reviewable by direct appeal under Florida Rule of Appellate Procedure 9.130(a)(4).

¹⁴ Compare *In re J.T.*, 947 So. 2d at 1217 (defining an “authorized motion” under rule 9.130(a)(4) as a motion “directed to some aspect of true finality in the original order or judgment”) with *R.M.*, 34 Fla. L. Weekly D1909 (Fla. 5th DCA Sept. 15, 2009) (holding that an order resulting from a motion authorized by the Rules of Juvenile Procedure may be reviewed by direct appeal under rule 9.130(a)(4)). In addition to this inter-district conflict, the district courts have individually alternated over the years between reviewing non-final dependency orders by direct appeal and applying the harsher standard of review under certiorari jurisdiction. In recent years, at least until the Fifth District’s *R.M.* decision, the trend has been toward certiorari, but the courts have not overruled earlier decisions invoking jurisdiction under rule 9.130(a)(4). See *S.P. v. Dep’t of Children & Fams.*, 17 So. 3d 878 (Fla. 1st DCA 2009) (identifying many of the inconsistent decisions).

¹⁵ “Children are affected by delay in court proceedings far more than are businesses or adults, because their sense of time is different than adults and the need for attachment to promote healthy children is great.” *In re Amendments*, No. SC08-1724, slip op. at 11 (Pariente, J., concurring) (quoting *Report of the District Court of Appeal Performance & Accountability Commission on Delay in Child Dependency/Termination of Parental Rights Appeals* at 1).

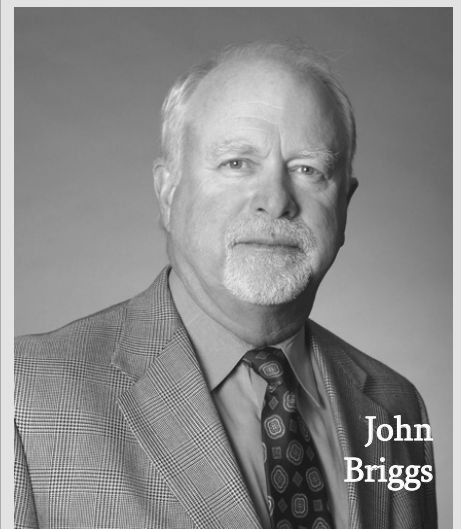
¹⁶ See also *Fla. R. Jud. Admin. 2.250(a)(2)* (prescribing a standard for deciding cases within 60 days of oral argument or submission of the case for decision without argument); Fla. R. App. P. 9.146(g)(7) (allowing the clerk to issue the mandate “as soon as practicable” when directed by the court).



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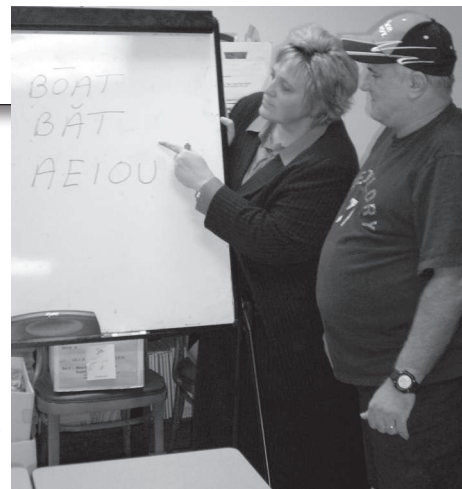
Profile of a Successful Literacy Student

Learning to read as an adult is hard work, but the rewards are great. Just ask George.

When George first came to the Adult Literacy League at age 31, he was a complete non-reader working as a janitor in an Orange County public school. He was one of 12 children and dropped out of school because both of his parents died when he was 13, and he had to raise his brothers and sisters.

George could drive to work, to his church, and back to his home. He didn't venture further because he couldn't read the street signs. After working with a tutor for several years, George's reading improved dramatically and his world enlarged. He became a deacon at his church. He received three promotions at work and is now the lead janitorial supervisor at his school. In 2007, he was a finalist for the Orange County Public Schools Non-Instructional Employee of the Year.

When a tragic death occurred in his family, George became the foster parent for his niece and eventually adopted her when he was able to read and understand the necessary legal documents. Recently he started a small barbeque business using his favorite recipe. George can read, and the world no longer has boundaries for him.



adult learner. Most tutoring occurs in your local branch of the library.

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Lisa Warren,
Community Relations
Manager, Adult
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Lorraine DeYoung,
a prosecutor with the
State Attorney's Office,
helps her new student,
George, recognize sight
words. George is a
non-reader.

With a growing immigrant population, an increase in high-school dropouts, and the disturbing fact that 20 percent of our Central Florida residents read at or below a fifth-grade level, helping improve the literacy of our community is a goal

we must all share. People who can't read or write have limited access to life and are more apt to commit crime, live in poverty, and be unemployed or under-employed.

The Lawyers for Literacy Coalition was recently established as a way that all aspects of the legal community can

Criminal Defense attorney, **Blaine McChesney**, has worked with his student, Mary Hardaway, for almost a year. Mary needs help with computer literacy, reading fluency, and pronunciation.

get involved in the important cause of improving literacy in Central Florida. The goals of Lawyers for Literacy are to:

- 1) raise awareness of literacy;
- 2) recruit more people from the legal community as volunteer literacy tutors;
- 3) explore ways to increase funding and donations for the Adult Literacy League (ALL) so it can serve the burgeoning need in Central Florida.

The ALL is a non-profit organization that is dedicated to developing readers to build a strong and literate community. It currently serves more than 600 adult learners in regularly-scheduled classes or one-on-one tutoring — an all-time high number in the organization's forty-year history. Unfortunately, more than 100 adult learners are currently on the waiting list to be matched with a volunteer literacy tutor, so more volunteers are desperately needed.

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Editors' Note

Going Green



LaShawnda K.
Jackson
Co-editor



Kimberly D. Healy
Co-editor

LaShawnda K. Jackson, an associate with Rumberger, Kirk & Caldwell, P.A., has been a member of the OCBA since 2002. **Kimberly D. Healy**, an associate with King, Blackwell, Downs & Zehnder, P.A., has been a member of the OCBA since 2002.

In March 2010 the OCBA will publish its first ever **specialty edition** of *The Briefs*. As many individuals, law firms, businesses and governments are going “green,” the OCBA has decided to dedicate its March edition to “green” topics and issues. We are currently accepting substantive “green” legal and industry articles, as well as other submissions describing your experiences with going “green” in your personal lives, law firms, law schools or businesses.

If you are interested in contributing to *The Briefs*’ “green” issue, please contact Kim Healy (khealy@kdbzlaw.com), LaShawnda Jackson (ljackson@rumberger.com) or Peggy Storch (peggys@ocbanet.org). The deadline for all submissions is **January 15, 2010**.



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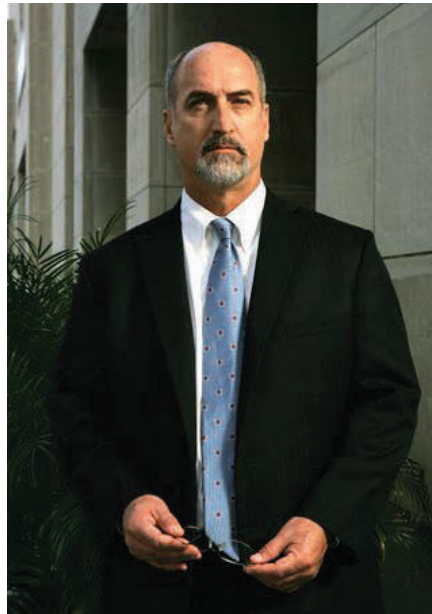
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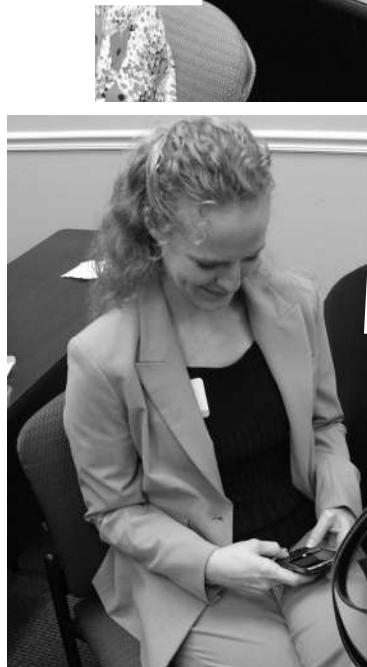
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PINing in the Public Arena: Beware of "Private" Texting

Leonard J. Dietzen, III and Noah D. Valenstein

The "smart phone" has quickly become an indispensable communication tool for the modern business person. For many, the BlackBerry® is an icon of the world's new addiction to instantaneous communication. President Obama's nonstop use of his BlackBerry® during the last presidential campaign was widely covered by the press and is indicative of just how much society has come to rely on this technology. One unforeseen consequence of this addiction is confusion over how to apply Florida's broad public records laws to this new technology, particularly BlackBerry® PIN messages.

In addition to text messages and e-mails, BlackBerry® users can send "PIN" messages, an activity known as "PINing." Each BlackBerry® device has a Personal Identification Number (PIN). Substituting a contact's PIN for an e-mail address, users can communicate directly between their devices. Users appreciate the speed of PIN conversations, akin to instant messaging, and the perceived confidentiality of these communications, since they were thought to be unrecorded.

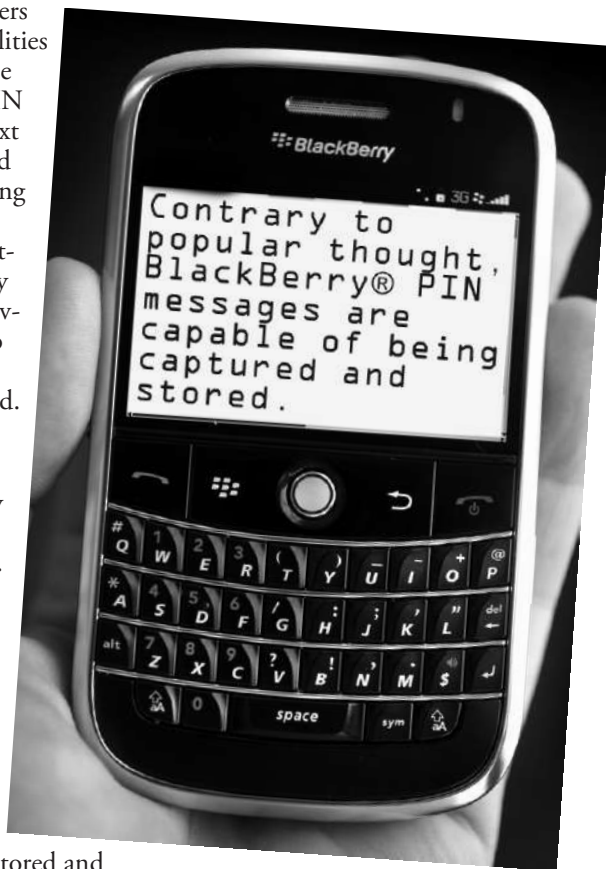
PIN messages and text messages were originally believed to be transitory in nature and unable to be stored, leading public agencies to conclude that such messages were not required to be maintained. Even a report as recent as January 2009, issued by the Florida Commission on Open Government Reform, described such messages as "analogous to the spoken word," finding that "the public records law most likely does not apply." As a recent scandal at the Florida Public Service Commission (PSC) and a Canadian lawsuit illustrate, to view PIN messages as merely transitory is incorrect.

Contrary to popular thought, BlackBerry® PIN messages are capable of being captured and stored. In some instances, these messages are already being archived by public agencies and private businesses. For instance, the Canadian Imperial Bank of Commerce in Toronto sued a rival business founded by six former employees. The bank submitted the PIN messages of its former employees as evidence that they used confidential information acquired through their employment to solicit business for their new venture while still employed by the bank. The employees seemingly believed that the PIN messages were private and unrecoverable.

In Florida, just five months after the Commission on Open Government Reform published its report, allegations of secret conversations between PSC staffers and utility executives surfaced after it was discovered that the PSC's Legislative Affairs Director and several high level PSC staff shared their PIN numbers with lobbyists for several utilities regulated by the PSC. At the time, the PSC considered PIN messages and BlackBerry® text messages "transitory" and did not have a policy for recording them at the time. However, the simple knowledge that attorneys for a utility company had exchanged PINs with several PSC staff was enough to tarnish the reputation of the utilities and the staff involved.

During the PSC's investigation of this matter, the PSC chairman ordered his agency to disable all text messaging on state-issued BlackBerrys®. Shortly thereafter, the Attorney General of Florida announced that his office would begin treating all BlackBerry® PIN messages and instant messages as public records and would establish a working group to create procedures for ensuring such messages are stored and available to the public. State Senator Dan Gelber, a candidate for Attorney General in 2010, announced that he intends to file legislation mandating the preservation and retrievability of PIN messages to and from Florida's public employees.

Therefore, public agencies that use a BlackBerry® or other "smart phone" should establish policies addressing their use, particularly with respect to PIN messages. There may be a duty for public employees to archive their PIN and text messages. Moreover, private citizens who communicate with public officials or employees may soon find that their PIN or text messages are matters of public record.



Leonard J. Dietzen, III and **Noah D. Valenstein** are partners in the Tallahassee office of Rumberger, Kirk & Caldwell, P.A.



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YLS *on the move*

Happy New Year

Sunny A. Hillary

On October 17, 2009, young lawyers and proud Gator fans put on their orange

and blue for the **Second Annual YLS Gator Bus Trip!** At 9:00 a.m., the bus wheeled out of the city of Orlando and headed for the city of Gainesville for the Gator's exciting game against the Arkansas Razorbacks. Thanks to **Jonathan Stimler** and **Ray Noble** for arranging this event!

On November 18, 2009, members of the YLS participated in a **Teach-In at Rock Lake Elementary School**. The young lawyers spoke to third, fourth, and fifth graders about the legal profession, as well as the value of staying in school and knowing the difference between right and wrong. Special thanks to **Melanie Griffin** for giving the YLS the opportunity to offer this guidance to our local students.

On November 19, 2009, the YLS was awestruck with a special performance of *The Chocolate Nutcracker*, a LaVerne Reed Production, presented by **Southwest United Communities, Inc.** *The Chocolate Nutcracker* is a modern take on the holiday classic. Set in early-'50s Harlem, with a cast of theater professionals and 200 children performers from throughout Central Florida, the performance tells the story of young Claire and the Chocolate Nutcracker as the two journey around the world in a dream. During their global travels, a variety of dance genres - including ballet, tap, modern, jazz, gospel and hip-hop - provide the soundtrack for the choreography. A special thanks goes to **LaShawnda Jackson** for bringing the arts and the music to our monthly luncheon!

Now, did you know that one out of five Central Floridians reads at a fifth grade level or below? For these folks, reading books, maps, and menus is nearly impossible. Imagine a world where you couldn't read. In furtherance of our community service goals to support programs that help people help themselves, the YLS is proud to announce that it will participate in the **Lawyers for Literacy Coalition of Central Florida**. The YLS is forming a Lawyers for Literacy committee to support literacy initiatives of the Adult

Literacy League, a non-profit organization that helps adults learn to read and understand English. If you are interested in increasing awareness or tutoring an adult learner for one hour a week, then please contact **Daryl Gottlieb** at dgottlieb@fisherlawfirm.com.

"Wine" Down with YLS for Holidays in January on January 10, 2010, from 5:30-7:30 p.m. at Urban Flats, 183 S. Orange Ave., Orlando. In addition to having a good time, we'll be collecting toys for local foster and homeless children who have had little or nothing to bring them joy during the holiday season. For more information, please contact **Tony Sos** at asos@dwklaw.com or **Jacquelynne Jordan** at jacquelynne.jordan@lowndes-law.com.

The University of Central Florida Rosen College of Hospitality Management is hosting the **2010 We the People: The Citizen and the Constitution Competition from 8:00 a.m.-4:00 p.m. on Friday, January 8, 2010**. We the People is a constitutional studies program that consists of a multi-unit instructional curriculum on the U.S. Constitution and the Bill of Rights, culminating with a mock congressional hearing exercise where students apply their constitutional knowledge to contemporary issues. Young lawyers are needed to serve as judges. If you are interested in serving as a judge, please email **Melanie Griffin** at mgriffin@deanmead.com

The **YLS January Luncheon** will take place on **January 21, 2010**, at 11:45 a.m. at the Citrus Club. Please email your RSVP to ocbayls@gmail.com. The cost is \$20 if you RSVP before January 20, or \$22 at the door; \$12 for law students, government attorneys, sole practitioners, and judges.

If you want to find out more about our section and its committees and events, please call me at 407-388-1900 or email me at sunny@brownstonelaw.com. If you are not receiving the YLS email blasts, send an email to me or ocbayls@gmail.com to sign up.



YLS had a strong presence at the **Joint Happy Hour**. Thanks for the successful turnout and generous contributions.



Mark your calendar!
YLS Annual Evening with the Judiciary
 Wednesday, February 17, 2010
 Winter Park Civic Center
Look for details in upcoming email blasts & on the OCBA website.



Sunny A. Hillary is an attorney with Brownstone, P.A. She has been a member of the OCBA since 2005.

Jury Service in the Electronic Age: New Solutions for New Challenges

J. Richard Caldwell, Jr.

On August 26, 2009, Justice R. Fred Lewis of the Supreme Court of Florida requested that the Supreme Court Committees for Standard Jury Instructions in civil and criminal matters submit to the court proposed jury instructions to address the issue of jurors making unauthorized use of the Internet and other sources, which could impermissibly influence the decisions of the jury. This unusual step was prompted by a rising tide of media and other reports of jurors either consulting the Internet to perform unauthorized research, or using social networking media to publicize details of the trial and even jury deliberations.

Currently, Florida Standard Jury Instruction 1.1 provides in pertinent part:

Consider Only The Evidence. *** The law tells us that a juror can consider only the testimony and other evidence that all the other jurors have also heard and seen in the presence of the judge and lawyers. Doing anything else is wrong and is against the law. That means that you cannot do any homework or investigation of your own. You cannot obtain on your own any information about the case or about anyone involved in the case, from any source whatsoever, *including the internet* (emphasis added), and you cannot visit places mentioned in the trial.

Standard Jury Instruction 2.1 tells jurors that:

The case must be tried by you only on the evidence presented during the trial in your presence and in the presence of the defendant, the attorneys and the judge. Jurors must not conduct any investigation of their own. Accordingly, you must not visit any of the places described in the evidence, and you must not read nor listen to any reports about the case. Further, you must not discuss this case with any person and you must not speak with the attorneys, the witnesses or the defendant about any subject until your deliberations are finished.

The inadequacy of these types of instructions to deter unauthorized use of social electronic media by jurors, particularly in this age of instant and constant communications, is evidenced by a number of recent examples, both in Florida and elsewhere. Television personality Al Roker, when called to jury service in New York, used his blog to keep the public updated on his jury experience, including photographs of fellow jurors. While Mr. Roker immediately apologized when informed that this was improper, other instances of unauthorized communications by jurors have not been so easily remedied. Earlier in 2009, U.S. District Judge William Zloch was forced to declare a mistrial when nine jurors admitted that they had conducted electronic research into various aspects of the case.¹ In blogs, and on such vehicles as Facebook and Twitter, jurors have been found to be disclosing subjective impressions of the quality of certain evi-

dence, as well as of personal characteristics and competence of lawyers and judges. In one instance, a juror even conducted an online poll of his acquaintances as to what his vote should be concerning the outcome of the case.

A number of recent articles have drawn attention to the issue of protecting jurors from improper outside influences in this electronic age. Orange County Bar Association member Jim Edwards presented a paper to FLABOTA entitled "Jurors Who Tweet, Blog and Surf – Deciding and Discussing Your Case." In this paper, Mr. Edwards discusses in some detail the societal underpinning of the issue. Many individuals who are called for jury service, particularly younger persons, have grown up with the Internet and consider constant communication by way of cell phones, BlackBerrys and other such devices to simply be a part of normal, everyday life. It is more difficult with these individuals to perceive that jury instructions, such as found in FSJI 1.1 and 2.1, have any bearing whatsoever on their personal communication and interaction with friends and family.²

Retired 10th Circuit Judge Ralph Artigliere, current 13th Circuit Judge James Barton, and Tampa lawyer Bill Hahn have authored an upcoming article for the Florida Bar Journal pointing out that, in the final analysis, existing procedures are inadequate to totally avoid juror misconduct such as that detailed above. The authors outline a number of practical steps which may be taken to minimize the possibility that unauthorized communications research by jurors will adversely affect the results of a trial. In a recent article in the New York Law Journal, Michael Hoenig discusses a recent South Dakota case in which a juror conducted online research concerning one of the parties, even before the juror arrived at the courthouse for jury selection.³

The thrust of all of these commentaries is that the use of social media by potential jurors is so pervasive in today's society that it is extremely difficult to limit exposure of these individuals to unauthorized and potentially improper information, which could influence a juror's decision at a given trial. This is yet another example of the inability of the legal system to keep pace with the rapid development of technology.

It was against this background that Justice Lewis requested the Supreme Court Civil and Criminal Standard Jury Instructions Committees to submit proposed instructions to the court which would attempt to better inform jurors of their obligations to refrain from seeking unauthorized information concerning a trial and to drive home the seriousness of any violation of the jurors' duty. This request evidenced the Court's realization of the scope of the problem and of the necessity to move as rapidly as possible to deal with it.

In a series of committee and joint subcommittee meetings, some core principles were agreed upon by the two committees. Perhaps most significantly, it was determined that these instructions need to be given at multiple times during a juror's service, beginning with preliminary juror qualifications in the jury assembly room.⁴ In slightly different language, jurors would be reminded of the need to avoid outside influences, both by way of electronic media communications and otherwise, before *voir dire* begins and again after they are selected to sit as the trial jury. Finally, the instructions given before the jury retires to deliberate would state in very strong and clear language the need

to avoid any type of exposure to information or data, outside the evidence presented in the case, which could influence the jury's decision.⁵

The Supreme Court of Florida is not alone in its concern about the possibility of contamination of the jury system by improper use of electronic media. Idaho, Wisconsin, Mississippi, Pennsylvania, Oregon, and Kansas are among the jurisdictions actively considering enhancement of jury instructions, as well as other possible precautions, in this area. Michigan has recently enacted procedural rules to require comprehensive admonitions to jurors about the necessity of avoiding independent research, or communications to or from the jurors about the trial.⁶ California is now using jury instructions with provisions against such activity.⁷

In the interim, a number of Florida circuit judges have crafted instructions using somewhat stronger and broader language than is set in the current Florida Standard Jury Instructions. For example, Ninth Circuit Judge John Kest instructs jurors as follows:

I know that most, if not all of you, have cell phones and that many of those cell phones have computer access. I also suspect that most of you are computer literate - certainly much more than I am. I have cautioned you not to do an independent research and that your verdict must be based on the facts you hear in this courtroom from the witness box and the evidence. Let me extend that caution. You are not to conduct any independent research on computers, your cell phones, or in any other manner. Not the old fashioned kind in encyclopedias, or the newer methods of "Googling" and "Tweeting" on your computer based research tools. Lastly, you have been advised not to discuss this case with anybody except your fellow jurors and then only when you retire at the conclusion of the case to deliberate. Therefore, you must not e-mail or otherwise electronically contact other people about this case nor seek their opinions, advice or even thoughts on the issues before you.

Fifteenth Circuit Judge Lucy Chernow Brown uses similar language to remind jurors that they are not to talk about the case, to lawyers or the parties, in person, by phone, or by tweeting, blogging, texting, e-mailing, writing or any

other method of communication, and that they are not to do research or look up anything in books, papers or on the Internet. Other Florida trial judges give instructions along these lines, using language which is either shorter or more lengthy. It is hoped that the promulgation of standard instructions will benefit Florida jurists and practitioners in addressing this issue.

It would be a mistake to believe, however, that improved jury instructions alone will solve the problem of unauthorized use by jurors of the Internet and particularly social networking media. The Artigliere and Hoenig articles point out that carefully tailored and thorough *voir dire* examinations are crucial in emphasizing the duty of jurors to avoid such improper conduct and in weeding out those potential jurors who may have a tendency to disregard the court's instructions. Effective *voir dire* techniques constitute a subject for articles much more lengthy than this one, and the careful trial lawyer in today's society will always come to trial prepared to discuss these matters with the jurors. In federal courts, where lawyer *voir dire* has been largely eliminated or at least restricted, adequate *voir dire* questions should be timely submitted to the court.

Federal courts customarily collect jurors' cell phones, BlackBerrys, laptops, iPods and other means of communications as soon as the juror or potential juror reaches the courthouse.⁸ State court practice is not as uniform, but many Florida circuit judges take up cell phones and other communications devices of jurors at least before deliberations begin.⁹

As pointed out at the beginning of this article, there is no procedure or set of procedures known to the legal system which can guarantee that jurors in a trial remain immune from improper outside influences. However, comprehensive new standard jury instructions, incisive *voir dire*, better control of jurors' personal communications devices, and a better understanding of juror psychology should help alleviate the effect of the advances in personal communications technology on the jury system.

J. Richard Caldwell, Jr., of counsel,
Rumberger, Kirk & Caldwell, Tampa, Florida.

¹*United States v. Hernandez, et al.*, United States District Court for the Southern District of Florida, Case No. 06-600027.

²Not only jurors are affected by access to ubiquitous electronic media. Lawyers, parties and even judges



have run afoul of restrictions on the use of the social networking media. See, D. Keene and R. Handrich, "On Line and Wired for Justice: Why Jurors Turn to the Internet," *The Jury Expert*, Vol. 21, no. 6 (Nov. 2009). Interestingly, and perhaps fittingly, all of the endnotes in this article cite electronic media sources exclusively.

³M. Hoenig, "Juror Misconduct On the Internet", N.Y.L.J. (October 8, 2009). Apparently the case in question was the only one on the docket, so the juror knew at least the identity of the parties in advance.

⁴Many jury assembly rooms, particularly in larger counties, have internet access available for potential jurors, complicating the task of convincing them that customary internet usage must be avoided during their jury service.

⁵As of the writing of this paper, the Committees' reports have not been finalized although, as indicated above, substantial agreement has been reached as to the "core language" of the recommendations. The Supreme Court of Florida must in any event approve any recommendations, and any such Court decision is obviously in the future.

⁶Rule 2.51, Michigan Court Rules (Amended June 30, 2007).

⁷See, CACI 100, "Introductory Instructions."

⁸See, Rule 4.11, Local Rules, United States District Court For the Middle District of Florida.

⁹This can create real problems for jurors. For example, parents, particularly single parents, may resist the necessity of being unavailable to their children. Eleventh Circuit Judge Jennifer Bailey tries to lessen the impact of such deprivation by providing jurors with a court telephone number, so that they can be reached by family and friends in an emergency. No single approach may be able to adequately address all situations.

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Rainmaking Top 20 Influencers

In an ideal world, all referral sources would be created equal. They would send you nothing but the best and brightest clients and cases – a steady stream of high quality work and loyal clients.

Wouldn't life be grand? Unfortunately, in the real world, there is a great deal of difference in the quality of your referral sources, and the sooner that you realize the difference, the better. Your existing group of referral sources is far from equal in terms of the amount and quality of work they refer to you. In this lesson, we are going to help you tell the difference by introducing the concept of your "Top Twenty" influencers.

YOUR TOP 20 INFLUENCERS

Your Top Twenty Influencers are those referral sources that send you your highest quality business. They send you the kind of matters you specialize in and the kind of clients you most enjoy. These are the influencers who consistently send quality "A" client referrals your way.

Most attorneys who have practiced for five or more years will have a small group of referrers that fit into this category – even if they don't yet have twenty of them.

This is an extremely important group of names for you to identify. These referral sources have probably kept you in business over the years because their good referrals have resulted in money in your pocket. Often, very substantial money. Calculated or uncalculated, you have done something to impress this group and they demonstrate their trust and confidence in your abilities by continually sending you new clients.

WHY DO THEY REFER TO YOU?

As you work through the attached Top Twenty exercise, think about what you have done to cultivate the relationship you have with each of your referral sources. Do they like you because you have a lot in common as people? Do they send you work because of your quick turn-around time? Do you possess a certain expertise that they have come to rely upon? Does your work make them look good to their superiors, their clients, or their end-users?

This group of referral sources often has the potential to send you even more business than they send you now. As you start studying them and paying attention to their referral habits, it may become clear that they have more work to give out. They could be spreading it around to other attorneys.

ACKNOWLEDGMENT

Never let this group of people, whether they are business professionals, fellow attorneys, or your next door neighbor, wonder whether or not their referrals came to you. Always express your appreciation as quickly as you can – even if the client did not ultimately engage your services. You



Mark Powers



Shawn McNalis

want to continually reinforce the fact that they thought of you so that the next time they have an opportunity to refer someone – your name is the first one on their mind. Immediately let them know that you appreciate their ongoing faith in you. Send them thank you notes and take them out to lunch every so often to thank them for their "trust and confidence" in you. Their referrals have added substantially to your income. Never take them for granted.

CULTIVATION

Invite them to join you in non-work related activities to further the bonds between you. Have fun with them if it is appropriate for the relationship. Include them in important practice changes and decisions – solicit their feedback. Keep them up-to-date on any new directions or services you incorporate.

THE NEXT STEP

Make a list of your Top 20 Influencers in the left-hand column under "Name." Next, list the type of influencer the person is, such as "attorney" or "CPA" under "Type." Then, in the columns marked "High Rapport" and "Low Rapport," put a checkmark in the appropriate box. In the far right column, list the amount of money their referrals amount to on a yearly basis. When this is complete you will have a matrix that clearly illustrates your most valuable relationships. Upon further study you might notice you have the basis for a marketing plan. Here's why: those influencers with whom you have high rapport should be put into a maintenance rotation – that is, you should contact them at a comfortable rate for the relationship. For some relationships, this will be two or three times a month, for others, once or twice a quarter. Cultivate the relationships marked "Low Rapport" a little more aggressively based on their receptivity, their availability, and their ability to send you more work. Use this matrix to plan your marketing activities, follow your plan faithfully, and you should see a surge of new business.

continued page 34

Rainmaking

continued from
page 33

THE NEXT INSTALLMENT

The first three issues of this course have focused on who to talk to in your word-of-mouth marketing campaign. In the next issue we'll discuss strategic conversations – what to say when you are face-to-face with them.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis**, co-authored "The Making of

a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and are featured writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

TOP 20 INFLUENCERS

Name	Type	High Rapport	Low Rapport	Annual \$ Worth (to your practice)
1.				
2.				
3.				
4.				
5.				
6.				
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Presentation Skills for Lawyers

9 Simple Ways to Ruin Your Next Presentation



Elliott Wilcox

When I began writing this column, I assumed that you would probably be asked to speak in public (at a bar luncheon, the Rotary group, or some other gathering of peers or prospective clients) and wanted to develop your presentation skills so that you could do a great job and get invited back. Unfortunately, it never occurred to me that you might **hate** speaking in public, and you would prefer learning how to *avoid* being asked to speak. If you've received a speaking invitation, I can't help you avoid that obligation, but if you follow the nine tips outlined in this article, I can assure you that your presentation will be an absolute disaster, so that you'll **never** be asked to speak in public again.

1. Wing it. Your time is far too valuable to waste it preparing for a speech. Besides, if you prepare ahead of time, you'll kill the spontaneity of your presentation. It's better to wing it so that you don't look too polished.

2. Start with a joke. Audiences love to hear lame jokes that they've heard hundreds of times before. It's even more effective when you tell it poorly and stammer your way through the punch line. To get the most out of this technique, however, make sure that you start with an off-color or offensive joke.

3. Read your entire presentation. You'll want to write out your entire presentation so that you can read it word-for-word. Having your entire presentation written out ensures that you won't accidentally say something unscripted or spontaneous. As an added benefit, reading your entire presentation forces you to tilt your head down towards the paper so that your voice becomes muffled and the audience will have a difficult time listening to you.

4. Don't make eye contact. Audience members hate direct eye contact. If you look directly at them, they'll feel like you're trying to connect with them and nobody wants that. The less eye contact you have with your audience, the better. Using extensive notes will help minimize the amount of time you look at your audience, but you can go a step further and *completely* avoid looking at them by turning your back on them to read from your PowerPoint slides. Audiences appreciate it when you read your slides word-for-word, since this saves them the effort of having to think.

5. Emphasize substance over style. Sure, you could inject some vocal variety into your presentation, raising and lowering your volume, varying your pitch, and adjusting your speaking rate to emphasize important points, but that would make you look more like an entertainer than a serious professional. If this audience wanted to be entertained, they would have hired a clown. They want to learn. They only care about *what* you say, they don't care *how* you say it. Focus all of your efforts on the substance of your presentation, and they'll hang on your every word.

6. Remind them that you're a lawyer. You're a lawyer, so that means you're **awesome**. Don't be humble about your brilliance. Never let the audience forget that you invested three years of your life learning principles, language, and concepts that the average person will never know. One of the best ways to impress your audience (and demonstrate your intellectual superiority) is by peppering your presentation with the acronyms, jargon, and Latin terms that you learned in law school.

7. Call attention to missing elements. If your presentation normally has more bells and whistles (example: videos, more information, fireworks) but is being cut short to fit into the audience's time frame or to accommodate the speaking environment, make sure you tell them what they're missing. They'll really appreciate being told that they're receiving the inferior version of your presentation. ("Sorry that the projector isn't working correctly-- I had a slide here that shows the meaning of life and reveals the location of the Holy Grail. If the projector was working, you'd be able to see that. Sorry.")

8. Tell them everything that you know. Since you've invested so much time learning about your topic, you should share *everything* you've learned with your audience members. Don't leave anything out. Fill their minds with all of the minutiae that you've learned. Make them suffer as much as you did by packing their heads with every fact, every detail, and every theory that you've learned. They'll be grateful that you were willing to share everything you know and didn't give them a *Cliff's Notes* version of the topic.

9. Ignore time limits. Sure, the meeting planner asked you to wrap things up at 1:00 PM, but you still have 18 more slides to get through. Why should the audience be denied your brilliance simply because of some arbitrary deadline? Your audience loves you. The only reason they woke up this morning was to hear your presentation. You know that unless you impart them with your wisdom, their lives will be empty and meaningless. That's why you should never worry about any time limits the meeting planner gives you. Speak until you're finished, and the audience will be grateful you were willing to go the extra mile (or extra 15 minutes).

You can probably think of other ways to avoid being asked to speak, but if you'll apply these nine tips to your next presentation, it's *guaranteed* that you'll never be asked to speak again!

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Elliott Wilcox is the editor of *Trial Tips Newsletter*. To get a free copy of "The Art of Cross-Examination," visit www.TheArtOfCrossExamination.com

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New Associate

Matthew T. Belisle - *Alvarez, Sambol, Winthrop, and Madson, P.A.*

New Partner

Karen M. Walker - *The Rock Law Group, P.A.*

Speaking Engagements

Samuel King, a partner with the Orlando law firm Dellecker, Wilson, King, McKenna & Ruffier, was a speaker at The Probate Team 2009 seminar for attorneys, paralegals, court officials and corporate fiduciaries held in Tampa, Florida, on October 2-3, 2009. The seminar was presented by the Florida Legal Education Association and eligible for continuing legal education credit by the Florida Bar.

Andrew P. Rock of The Rock Law Group, P.A. recently gave a presentation for the National Society of Professional Insurance Investigators on *Preparing for a Fraud Trial*.

William Ruffier, a partner with the Orlando law firm Dellecker, Wilson, King, McKenna & Ruffier, spoke at the annual meeting of the Florida Perfusion Society in Tampa, Florida, on October 8, 2009. His topic was *Medical Malpractice Lawsuits from a Plaintiff's Perspective*.

Sandra C. Upchurch, mediation counsel for Upchurch Watson White & Max and co-chair of the firm's Government Affairs Practice Group, presented *Mediation Advocacy* to the Clearwater Bar Association (CBA) Civil Practice Section Luncheon on November 19, 2009, in Clearwater, Florida.

Social Events

Jan. 2010 - *Winter Wine & Cheese Party*. Look for news about this annual event in upcoming "Discovery" email blasts and on the OCBA website!

Feb. 17 - *Evening with the Judiciary*. Look for news about this upcoming annual event in email blasts and on the OCBA website!

Seminars

Jan. 26 - *10 Tips to Avoid Legal Malpractice*. Solo and Small Firm Committee. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speaker: Lora A. Dunlap. For details, contact Marie at the OCBA at marieb@ocbanet.org.

Feb. 4 - *Insurance in the Trial of a Lawsuit*. Insurance Law Committee Seminar. 12:00 p.m.- 4:00 p.m. OCBA Center. CLE: 4.0. Speakers: Brian Wilson, Bill Davis and James Markel. For details and to register, please contact Marie at the OCBA at marieb@ocbanet.org.

Feb. 9 - *Unemployment Compensation*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speaker: Sally McArthur. For more information, please email ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

Feb. 23 - *GAL 101 Basics*. LAS/GAL Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speakers: Susan Khoury and Cara Dobrev. For more information, please email ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

Feb. 23 - Solo & Small Firm Seminar. Details TBA.

Other News

Jan. 8 - **Young lawyers are needed to serve as judges** for the UCF Rosen College of Hospitality Management's 2010 *We the People: The Citizen and the Constitution* competition from 8:00 a.m.-4:00 p.m. For more information, please contact Melanie Griffin at mgriffin@deanmead.com.

Jan. 21 - **The Orange County Office on Aging**, the Orange County Library System, and Channel 9 will present *Selecting a Nursing Home*, with guest speaker Edith Gendron. The 30-minute seminar provides information about services available for Central Florida seniors. For details, please contact: Jan Reynolds, Orange County Office on Aging, at 407-836-6553.

Corrections

Jeffrey S. Boyles, shareholder, Stephen D. Milbrath, partner, and Allison R. Imber, associate at Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. co-authored the Intellectual Property Committee's article: *Under Review: Fraud-Based Defenses in Patent, Trademark, and Copyright Cases*. The article appeared in November's issue.

Ingrid A. Keller's office is located at 214 S. Dillard Street, Winter Garden, Florida 34787. The city was incorrectly identified in October's Hearsay column.



Cartoon courtesy Marc R. Jacobs, Michelman & Robinson, LLP



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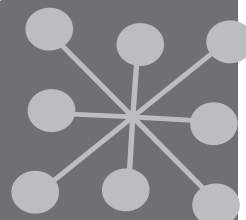
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January 2010

- 6 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 7 Federal Judicial Relations**
12:00 p.m. • Judge Conway's Chambers
- 8 Family Law Executive Committee Meeting**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 13 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations**
12:15 p.m. • Courthouse
21st Flr. Conference Rm.
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 14 Real Property Committee**
12:00 p.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- 15 Family Law Committee**
12:00 p.m. • 425 N. Orange Ave., #2310
- 19 Professionalism Committee**
12:00 p.m. • Bar Center
- 20 Insurance Law Committee**
12:00 p.m. • Bar Center
- 21 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center

- 26 Solo & Small Firm Committee Seminar**
10 Tips to Avoid Legal Malpractice
12:00 p.m. • Bar Center
- 27 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Law Committee**
12:00 p.m. • TBA
- 28 OCBA Luncheon**
Bill Cowles, Orange County Supervisor of Elections
11:30 a.m. • The Ballroom at Church St.
- 29 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

February 2010

- 3 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 4 Insurance Law Committee Seminar**
Insurance in the Trial of a Lawsuit
12:00 p.m. • Bar Center
- 9 LAS Lunchtime Training**
Unemployment Training
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- 23 LAS Lunchtime Training**
GAL 101 Basics
12:00 p.m. • Comerica Bank
- Solo & Small Firm Committee Seminar**
12:00 p.m. • Bar Center
- 24 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Law Committee**
12:00 p.m. • TBA
- 25 OCBA Luncheon**
11:30 a.m. • The Ballroom at Church St.
- 26 Bankruptcy Law Committee**
12:00 p.m. • Bar Center



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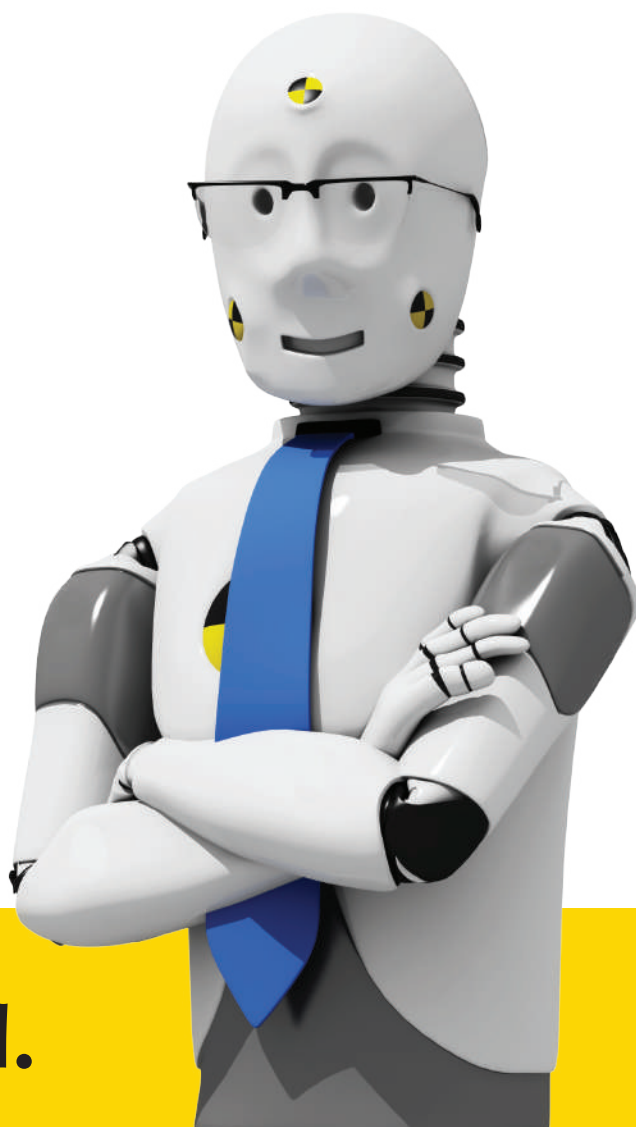
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