

The Briefs

A Publication of the Orange County Bar Association



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Professionalism Committee

*Remarks of Judge Emerson R. Thompson, Jr.
to the OCBA – May 29, 2008
The Hon. Emerson R. Thompson, Jr.*

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July 2008 Vol. 76 No. 7

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The Briefs

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Deadline for September Issue: 08/01/2008

The deadline for each edition is the first day of each month. If that day falls on a weekend or holiday, the deadline is the next business day.

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Looking Ahead

Tad A. Yates

Greetings,

Hope that everyone is having a great summer and that each of you enjoyed the Fourth of July holiday with friends and family. While I love the summer months, I'm starting to count down the days until the kickoff of football season. I can almost see it on the horizon.

So what's on the horizon for the OCBA?

The OCBA is proud to co-host this month's luncheon with its Legal Aid Society on **July 31, 2008**. Our speaker for the luncheon will be **Terry Coonan**, the Director of **The Center for the Advancement Human Rights at Florida State University**. Mr. Coonan will speak to us on the subject of human trafficking – an issue which he has described as “**a modern-day slavery taking place right here in Florida.**” A special thanks to **Bruce Blackwell**, who was instrumental in securing the agreement of Mr. Coonan to join us. Please mark your calendars to join us for this luncheon.

While your calendars are out, you might consider scheduling lunch with the OCBA on a few other dates. Although all luncheon dates and speakers are not yet set, several have been.

On **September 4, 2008**,¹ **Senator Bob Graham** will be our speaker. As you may know, March 2008 saw the grand opening of **The Bob Graham Center for Public Service** at Pugh Hall on the campus of **The University of Florida**. “Through teaching and scholarly research, the Graham Center will train the next generation of state and national leaders to confront issues vital to the interests of Florida and the nation. The Graham Center utilizes the rich academic resources at the University of Florida by taking a multidisciplinary approach to solving public policy problems.”² We are honored to have our former Governor and Senator join us for lunch.

Chief Val Demings, the first female Chief of Police for the City of Orlando, will speak at our luncheon on **September 25, 2008**. The OCBA will co-host this luncheon with **The Central Florida Association for Women Lawyers**. OCBA member and Orlando Mayor **Buddy Dyer** made

this historic appointment on November 30, 2007. We look forward to Chief Demings's remarks.

Our October luncheon will take place on **October 30, 2008**. **Jason Gonzalez**, General Counsel to Governor Charlie Crist, will address the OCBA on that date. This event will be co-hosted by the **Hispanic Bar Association**. Among other responsibilities, Mr. Gonzalez oversees the judicial appointment process for our State, and we look forward to his visit.

On **February 26, 2009**, Florida Supreme Court Chief Justice **Peggy Quince** will travel south to join us for our luncheon, which will be co-hosted by **The Paul C. Perkins Bar Association**. In 1993, Justice Quince became the first African-American female appointed to one of Florida's District Courts of Appeal. On December 8, 1998, she was appointed by the late Governor Lawton Chiles and then Governor-elect Jeb Bush to the Florida Supreme Court. On July 1, 2008, Justice Quince made history again, having been elected by her fellow justices as the State's first African-American female Chief Justice.

As we schedule more speakers and luncheon dates, we'll keep you posted here in *The Briefs*.

Keep an eye out for more information on upcoming social events, to include our traditional **Summer Happy Hour and Team Trivia Contest** on July 31; a **Joint Happy Hour** on November 6; the **Winter Wine & Cheese Party** on January 29, 2009; and the popular **Texas Hold 'Em Charity Poker Tournament** on March 19, 2009. Thanks to Kim Webb, who is currently serving the OCBA in her second year as Social Committee Chair.

Although the **2009 OCBA Gala** is still months away, I'm grateful to **Vivian Cocotas** and **Kristen Cox** for agreeing to co-chair that event.

Hope you are having a safe, enjoyable summer! I look forward to seeing you at our next luncheon!

¹Because of speaker availability, there will be no OCBA luncheon held in August 2008. There will, however, be two luncheons held during September 2008.

²For more information on The Graham Center, you may visit <http://www.graham.centers.ufl.edu/>.

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

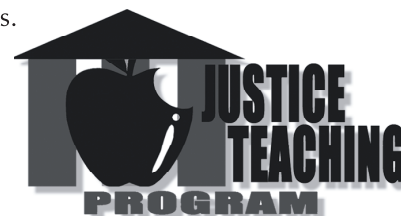
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OCBA Luncheon Speaker

July 31, 2008



Terry Coonan ***Executive Director*** ***Florida State University Center for the*** ***Advancement of Human Rights***

Terry Coonan is the founding Executive Director of the Florida State University Center for the Advancement of Human Rights. The FSU Human Rights Center offers *pro bono* legal representation to asylum-seekers, torture survivors, and victims of human trafficking. Professor Coonan teaches law and criminology at FSU, and co-directed the 2004 research project *Florida Responds to Human Trafficking*. He also leads the FSU Statewide Working Group on Human Trafficking, a Florida-wide task force that brings together law enforcement officials, prosecutors, and service providers.

Professor Coonan has trained law enforcement officers and social service providers nationwide on the Trafficking Victim Protection Act and was one of the designers of the U.S. Justice Department training curriculum on human trafficking. He has served nationwide as a DOJ trainer on human trafficking and is one of the lead instructors on human trafficking for the Florida Regional Community Policing Institute. He assisted in drafting the Florida legislation on human trafficking and is currently preparing a Statewide Strategic Plan on Combating Trafficking for the Florida Governor's Office.

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

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Hosted by the Legal Aid Society of the OCBA

Please RSVP to reservations@ocbanet.org by Friday, July 25, 2008.

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To ensure a proper luncheon count, **RSVPs** and **CANCELLATIONS** are requested no later than Friday, July 25, 2008. The OCBA is happy to provide 11 luncheons as part of your member benefits, **but no-shows incur additional charges for the Bar and walk-ups can't be guaranteed a spot.** Please keep us up-to-date on your reservation status! Thank you.



***Mitchell v. Metropolitan at
Lake Eola LLC,***

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

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,

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

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Professionalism Committee

Remarks of Judge Emerson R. Thompson, Jr. to the Orange County Bar Association given on Thursday, May 29, 2008



First, let me thank Chief Judge Perry for his remarks. They are especially meaningful to me because I have known Judge Perry since he was in law school at Texas Southern University. At that time, he was working for the Department of Health and Rehabilitative Services during his summer vacations. His father, Officer Belvin Perry, Sr., was one of the first black officers on the Orlando Police Department. Officer Perry stopped me one day on Orange Avenue as I was walking to the Orange County Courthouse. He told me he had a son in law school and wanted me to meet him. I told him I would call his son and arrange to get together. I did and we met across the street at Rosie O'Grady's. Later it was my privilege to swear in Chief Judge Perry as a member of the Bar. Little did we know that he would rise to the Chief Judge of the Ninth Judicial Circuit and head of the Trial Court Budget Commission. Among his judge friends, he is called "Chief Judge Belvin Idi Amin Dada for Life Perry." In addition, he is one of three circuit judges that the Florida Supreme Court relies upon to educate and inform members of the Florida legislature about fiscal issues facing the court system.

Although you know Chief Judge Perry as the Chief Judge of the Ninth Judicial Circuit, many attorneys have no idea what an excellent trial attorney he was. He demonstrated his skill when he tried one of the more famous, or infamous, trials in Orange County, if not the state of Florida – Judy Buenoano, the Black Widow. She was being tried for killing her husband who was a retired Air Force sergeant. She was charged and convicted with killing another husband, a boyfriend and a son. In order to bring that case to trial, Judge Perry had to obtain orders to exhume bodies in Orlando, Pensacola, and Colorado. He also had to obtain information about Agent Orange, Agent Purple, and Agent Blue. Depending upon your age, you have heard of Agent Orange as a chemical used to defoliate vegetation in Vietnam. But I had never heard of the other agents, until the trial. As an aside, the U.S. Air Force "disappeared" a colonel who had been subpoenaed to testify about the military's use of those agents.

More important, when I was a trial judge, I kept a list of the best cross-examiners that appeared before me. The list included Ed Leinster, Jim Powers, Mike Sigman and Chief Judge Perry. Thank you again Judge Perry for that outstanding introduction.

Now, I congratulate the officers who were sworn in this evening to lead the Orange County Bar Association, the OCBA Foundation, the Young Lawyers Section of the OCBA and the Legal Aid Society of the OCBA. One of the great honors of a career is to be selected by your peers to lead them. Your selection means that they trust your judgment, values and dedication to the organization. Congratulations

and never let your actions cause them to regret their faith in you.

Finally, I thank the OCBA for awarding me the James G. Glazebrook Memorial Bar Service Award. It is an honor that I will always treasure. Magistrate Glazebrook was known for his intellect, hard work, character and ethical behavior. To be recognized with the first Glazebrook Award is an honor that I will always treasure. To quote Bruce Blackwell when he received the J.C. "Jake" Stone Legal Aid Award, who quoted Louis Brandeis' address to the Harvard Ethical Society in May, 1905:

The lawyer's training and his place in the community should make him naturally an adviser and leader in movements for the public good. When public-spirited, he enters into many social, civic, educational, and philanthropic enterprises. In the free legal aid societies, the lawyer renders one of his most useful services. . . . Those who feel drawn to that profession may rest assured that they will find in it an opportunity for usefulness which is probably unequaled. There is a call upon the legal profession to do a great work for this country.

While preparing my remarks, I was reminded of the four "Bs": be brief; be clear; be sharp; be gone. Also, I approach this task with mixed emotions. Larry Mathews, who was a very active member and Past President of the OCBA, described his departure from Vietnam as a forward observer, saying he left Vietnam with mixed emotions: joy and elation. Tonight, my mixed emotions are fear and trepidation. Why? Because it is 7:55 p.m. For some of you, I am standing between you and the NBA playoff game and for others, I am standing between you and the final two-hour episode of "Lost." With that in mind, I stand up to be seen; speak up to be heard; and I promise to sit down to be loved.

There are three topics I want to touch on and how they will affect members of the OCBA. The first is the impending budget cuts facing the court system. The second is the growth of attorney discipline by judges and by The Florida Bar. And the third is the history of the Orange County Bar Association as a catalyst for change.

The Impending Budget Cuts

The impending budget cuts facing the court system are likely to get worse. As reported in the May 15, 2008 issue of *The Florida Bar News*, the entire court system lost 299 jobs or 6.8 percent of the court system workforce because the Legislature reduced the budget \$18.4 million. The district courts, where I most recently served, will lose between 40 to 50 positions. What some of you may not know is that

Continued on page 8

according to the most recent revenue projections, there may be additional cuts. A meeting will be held on June 10, 2008 to review the estimated income of the state. The revenues are not expected to reach projections. Therefore, additional personnel cuts will be made to all state budgets. So the question is: how will these cuts affect me, especially since I do not practice criminal or family law?

My prediction is that all segments of the court system will be affected. Let me share just a few examples:

The largest component of the court system's budget is personnel. Some of the personnel that may be affected are circuit court law clerks, hearing officers and magistrates. Years ago, the court system decided that because of the fiscal impact of new judges, which the Legislature could not fund because of the cost, circuit court law clerks were funded to assist judges with research. Hearing officers and magistrates were created so judges could refer cases to them to make recommendations to judges. Thus, judges could maximize their time. If those positions are eliminated, judges will have to hear cases previously heard by hearing officers and magistrates. This will affect civil lawyers and trials because judges in civil courts will be reassigned to hear cases with legislatively mandated hearing deadlines. The effect is that some cases will be lost because there will be no judicial officer or judge to hear them.

Because of the hiring freeze, a judge will neither be able to replace a judicial assistant if she retires nor have a temporary replacement if a judicial assistant becomes ill. A smaller example is that judges will have to pay for personal supplies like business cards. And my friends, the budget cuts will get worse before they get better.

As Judge Learned Hand said in 1951: "If we are to keep our democracy, there must be one commandment: thou shall not ration justice." The OCBA must join with The Florida Bar to ensure that the fiscal health of the court system is protected and maintained.

Growth of Attorney Discipline

Attorney discipline is increasing according to the local Florida Bar office. One growth area for discipline is improper use of client trust account funds. Another is substance abuse. With the emphasis by the Florida Supreme Court on professionalism and The Florida Bar's focus on ethics, why then do problems continue to proliferate?

One hypothesis is that more and more lawyers are becoming very wealthy from the practice of law. At one time, attorneys could make a good living from the practice of law, but few became wealthy. Now a lawyer can become very wealthy from practicing law. Until recently, attorneys could become comfortable practicing law, but they made their fortunes investing in businesses such as citrus, or by developing property. Now lawyers can become as wealthy as their clients by practicing law. Do not misunderstand – I do not contend that attorneys should take a vow of poverty, but when money becomes the Holy Grail, problems arise. Unfortunately, this quest for wealth can lead a lawyer to cross the ethical or professional line. An attorney may take on more work than he or she can effectively handle.

Moreover, an attorney may not be able to supervise his or her employees as closely as before.

Judges report attorneys getting more argumentative after a ruling and refusing to accept the decision of the court. In the Fifth District, we have increased the number of attorney fines and the number of rules to show cause because of attorneys' flagrant disregard for court orders. And the trend continues.

The cure: do not take on more work than you can handle and make sure that you closely supervise the staff you hire and educate them to live up to the high standards you expect. More important, uplift the attorneys who have become successful yet still remain respected for their ethical and professional behavior.

The OCBA as a Catalyst for Change

Finally, I personally want to thank the Orange County Bar Association for being a catalyst for change in Orange County. In the recent edition of *The Briefs*, you read stories about lawyers who risked personal safety to change society. Attorney Joyce Fuller did an excellent job listing some of the OCBA members who made a difference. There are some I want to bring to your attention.

Paul Perkins, who along with Justice Thurgood Marshall (then an NAACP attorney), represented defendants in Lake County. Paul had to be escorted by the FBI into and out of Lake County because of threats on his life. In Juan Williams's biography of Justice Marshall, attorney Perkins is mentioned along with pictures of the trial.

Attorney Norris Woolfork sued the Orange County School Board to get equal pay for teachers. As peculiar as it seems, black teachers were paid less than white teachers. He also sued the Orange County School Board to integrate the school system. I know it sounds strange with Ron Blocker, a black man as Superintendent, but if you check the federal court files of the Middle District, you find the case is still open and a federal committee still checks on the progress of the school system reaching unitary status. Attorney Woolfork also sued Orange Memorial Hospital to ensure that black patients received the same care as white patients. Black expectant mothers were placed in the boiler room of the hospital along with infectious patients and the morgue as they awaited delivery of their children. Because of attorney Woolfork's legal work, the hospital received and treated all patients with the same care and placed them in the same facilities.

There is also State Attorney Robert Eagan, who hired the first black assistant state attorney in Central Florida and who backed that lawyer when a judge pointedly stated that he did not want the lawyer in his courtroom. State Attorney Eagan explained that the judge would take any attorney from the state attorney's office he sent and, as long as the attorney conducted himself professionally and discharged his duties conscientiously, there should be no problem. He also made clear that if the judge continued to express concern, then the judge and the state attorney would have a problem. There were no problems. The interesting aspect

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Appellate and Workers' Compensation Committees

Recent Developments in "Heart/Lung" Claims An Addendum

— Todd J. Sanders

Overcoming the Presumption

In Part Two of this article, I discussed what some see as a conflict between recent 1st DCA opinions with respect to Florida Statute §112.18's "competent evidence" burden of proof in the context of rebutting that statute's presumption. As noted, the Florida Supreme Court in *Caldwell*¹ stated that "if there is evidence supporting the presumption the employer can overcome the presumption only by *clear and convincing* evidence." But, in *City of Tarpon Springs v. Vaporis*,² the 1st DCA stated

[a]ll that the statute requires to overcome the presumption is *competent substantial evidence* that convinces a JCC that the disease was caused by some non-work-related factor, not that it was caused by any sort of 'specific hazard or non-occupational hazard.'³

Then, in *Butler v. City of Jacksonville*,⁴ the court cited *Caldwell* and pointed out that the

presumption switches the burden of proof from the claimant to the employer and may be overcome by *clear and convincing* evidence that the disease was caused by a specific non-work-related event or exposure.⁵

I also noted that Judge Kahn was on both the *Saldana* and *Butler* panels.

It was the author's opinion that this conflict is not really a conflict at all, and that the key to which burden of proof to apply is whether there is any evidence to support the presumption. If not, the presumption can be overcome by competent substantial evidence. If there is, then clear and convincing evidence is required.

As luck would have it, shortly after the author submitted the manuscript for part two of this article, the 1st DCA issued two opinions addressing this very issue. In *Lentini v. City of West Palm Beach*,⁶ the Court explained that it was issuing the opinion "only to address the proper standard for determining whether the employer/carrier has rebutted the 'firefighter's presumption' of §112.18." The court stated that

in cases such as this, where the claimant can offer no evidence of occupational causation and relies exclusively on the statutory presumption, all that is required to rebut the presumption is 'competent substantial evidence that convinces a [judge of compensation claims] that the disease was caused by some non-work related-factor, not that it was caused by any sort of 'specific hazard or non-occupational hazard.'

The court quoted *Vaporis* and cited *Saldana*. Thus, it appears that the author's take on this issue is correct – at least for now.

Just three days after issuing the *Lentini* opinion, the court issued a corrected opinion in *Butler v. City of Jacksonville*⁷ in response to the claimant's motion for clarification. The court stated that it granted the motion to correct a scrivener's error; however, in an extraordinary step, Judge Kahn, who simply concurred with the original opinion, wrote a separate concurring opinion in the corrected version. In this concurrence, Judge Kahn agreed with the majority result because the JCC "failed entirely to credit the presumption and, in essence, treated this as a normal workers' compensation case in which causation would be an open issue."⁸ However, he took issue with "the majority's inclusion of the sentence reading '[t]he employer did not present any evidence, let alone clear and convincing evidence, that the claimant's PVD was caused by a specific non-work-related event or exposure.'"⁹ He first opined that "insofar as it purports to reflect a required quantum of proof" this "observation" by the majority "is dicta, because the employer presented no competent evidence on an issue as to which it had the burden."¹⁰ He then stated that "this statement conflicts directly with this court's pronouncement in" *Vaporis* and *Saldana*.¹¹ Judge Kahn opined that *Vaporis* "was true to section 112.18(1)," which requires "competent evidence" to overcome the presumption.¹²

Thus, it seems clear that Judge Kahn disagrees with the author's view on this matter, with the majority in *Butler*, and possibly with his fellow panel members in the *Lentini* decision. But Judge Kahn did not stop there. Noting his recognition that the Florida Supreme Court in *Caldwell* stated "that in a disability retirement case, the State must, in order to rebut the statutory presumption, 'show that the disease causing disability or death was caused by a specific, non-work related event or exposure,'" he nonetheless stated that the "language selected by our supreme court does not, with all respect, seem to have any particular reference to the statute it was construing."¹³ That is, the language did not

Continued on page 10

¹ 372 So. 2d 438, 441 (Fla. 1979) (emphasis added).

² 953 So. 2d 597 (Fla. 1st DCA 2007).

³ *Id.* at 599 (emphasis added). The court quoted this very language in *Saldana v. Miami-Dade County*, 978 So. 2d 823 (Fla. 1st DCA 2008).

⁴ 1D06-5918.

⁵ *Id.* (emphasis added).

⁶ 33 Fla. L. Weekly D1240 (Fla. 1st DCA May 5, 2008).

⁷ 2008 WL 1968312 (Fla. 1st DCA May 8, 2008).

⁸ *Id.* at *3.

⁹ *Id.* Slip Op. at 7.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

of the story is that as that black ASA, I did not learn of the conversation until I had been on the bench 10 years. An investigator who had accompanied Bob Eagan to the meeting with the judge shared the content of the meeting with me.

I also bring to your attention attorney, now federal judge, Patricia Fawsett, the first woman president of the OCBA. Her vision led to an OCBA building, instead of renting in perpetuity. Thus, the OCBA now has a permanent residence for the membership. Many of us opined that had Patsy Fawsett remained an attorney instead of becoming a federal judge, she would have become the first woman president of The Florida Bar.

Finally, I lift the memory of OCBA executive secretary Pat Sambrook who encouraged, nay demanded, that a young lawyer apply for the county court bench. When the bar office was in a building at the intersection of Washington and Magnolia, Pat Sambrook's office was fronted with a plate glass window. As I walked by there one day, she tapped on the window and gestured for me to come inside and speak with her. I did and she gave me an application for county judge and told me to complete it.

Now, I was not from Orange County and I did not attend Jones High School. Further, I was the youngest and newest of three black attorneys in Orange County. I had no intention of filling out the application because I did not think I had a ghost of a chance of being appointed. However, I did not share my thoughts with Pat Sambrook. Every day when she saw me, she would ask if I had filled out the application and returned it to the judicial nominating committee.

On the last day, she summoned me to her office and asked if I had completed the form. Then she said, "You gave me your word you would." Having been humbled by Pat Sambrook, I went back to my office and completed the application form, was interviewed and was appointed by

Governor Reubin O'D. Askew.

The OCBA has always been in the forefront of offering *pro bono* legal services to the poor, providing guardian ad litem to children and to the incapacitated, and facilitating volunteer service to the community. We all benefit from your extraordinary work. I close by quoting from attorney Jules Cohen when he received the OCBA's William E. Trickle, Jr. Professionalism Award:

You can share in this award whenever you are courteous in dealing with other lawyers, with judges, clients, your employees, parties and witnesses, when you deal honestly with everyone you come into contact with, even your opposition when you try as hard to settle a case as you do to litigate. You share in this award when you work on your *pro bono* case, when you freely give advice to a younger lawyer, when you do your work even when you don't feel like doing it, and when you strive to do a good job in everything you do in every case.

For all the work that the OCBA does for the poor and to improve the legal community, I congratulate you and I applaud you.

The Honorable Emerson R. Thompson, Jr. has served as Judge (1993 to the present) and Chief Judge (2000-2003) of the Fifth District Court of Appeal. He has served as Circuit Judge (1980-1993) and Chief Judge (1989-1991) of the Ninth Judicial Circuit; Judge of the Orange County Court (1976-1980); Assistant State Attorney in the Ninth Judicial Circuit (1973-1976); Adjunct Professor at Valencia Community College (1982-1987); and faculty member at the National Judicial College (1987-2000). Judge Thompson has been a member of the OCBA since 1974.

Appellate and Workers' Compensation Committees *Continued from page 9*

seem to have any particular reference to §112.18. Judge Kahn stated that the precedent set in *Vaporis* should be followed and that he

would have no objection, in an appropriate case, to certifying an appropriate question to the Florida Supreme Court concerning construction and application of the statute in workers' compensation cases.¹⁴

Whether this will happen is, of course, pure speculation, and reasonable minds can and will differ as to whether it is even necessary. Space considerations do not permit a discussion of this issue at present. However, it is worth noting that since *Caldwell* was decided in 1979, §112.18 has been amended several times and has been applied in a number of 1st DCA decisions in workers' compensation cases. As the 1st DCA stated in *Sam's Club v. Bair*,¹⁵

by enacting a material amendment to a statute, the legislature is presumed to have intended to alter the law unless the contrary is made clear (citation omitted). On the other hand, *once a court has construed a statutory provision, subsequent reenactment of that provision may be considered legislative approval of the judicial interpretation.*¹⁶

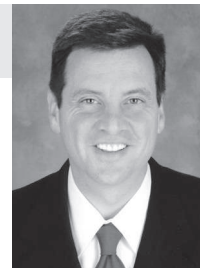
Thus, because the legislature has reenacted §112.18 several times since *Caldwell*, this may reasonably be considered legislative approval of the judicial interpretation in that case.

¹⁴ *Id.*

¹⁵ 678 So. 2d 902 (Fla. 1st DCA 1996).

¹⁶ *Id.* at 903 (emphasis added).

Todd J. Sanders has been a member of the OCBA since 2007.



A Brief History of The Bar Gala

William E. Sublette

SECOND AMENDED AND RESTATED ARTICLES OF INCORPORATION OF ORANGE COUNTY BAR ASSOCIATION FOUNDATION, INC.

ARTICLE III PURPOSES

The purposes for which the Corporation is organized are:

- 1. To educate the public about the law and the legal profession in order to develop in the public an understanding, appreciation, and respect for the law.*
- 2. To provide public education programs and materials which encourage persons in the local community to undertake a legal career or to participate in various aspects of the law.*
- 3. To provide for establishment and operation of a scholarship program, in accordance with rules and regulations adopted by the Board of Directors, to be awarded from time to time to a person or persons resident in Orange County, Florida, at the time of the award . . .*

A Brief History of the Bar Gala

Quoted above is the stated purpose of the Orange County Bar Association Foundation, a foundation formed in 1982 to serve as the philanthropic arm of the OCBA. The words sound noble and majestic, or at least as noble and majestic as corporate speak allows, yet for all intents and purposes they were empty words for the first 16 years of the Foundation's existence. That is because, for 16 years, the Foundation had no money to speak of, and no fundraising program to fund the philanthropic vision of the Foundation.

Until 1998, the Foundation operated primarily as a pass through entity through which donors could make a tax free donation to whatever cause de jour the OCBA, or that individual member contributing, had at that moment in time. After 16 years of existence, the Foundation treasury stood at \$0, with no plan in place for ever funding the Foundation in a significant manner, much less any plan to create an endowment.

All this changed in 1997-1998. Mayanne Downs became President of the OCBA and, together with Past President and Foundation President, R. Lee Bennett, they decided the time had come to take the OCBA Foundation from what was little more than a shell corporation to a truly functional, fully funded Foundation with an endowment.

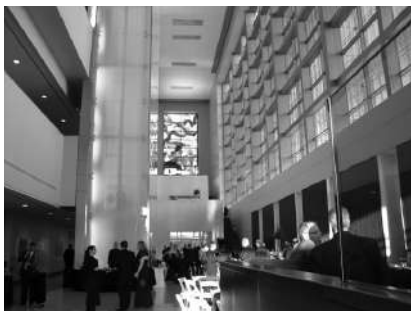
It was from Mayanne and Lee's vision for the Foundation that the annual Orange County Bar Association Gala was born. They both understood that without a fundraising plan, their Foundation vision was merely aspirational. Mayanne had also long thought that the time was ripe for the OCBA to renew the type of formal, social affair the Bar had regularly hosted in its heyday, a time when total Bar membership numbered in the hundreds, and not the thousands as it does today. She correctly believed that an annual, black tie gala would serve not only as the perfect fundraising vehicle for the Foundation, but would also serve to reinvigorate the OCBA's social calendar.

Thus, in the early summer of 1998 the first Orange County Bar Association Gala was held at the newly opened Orange County Courthouse. The first Gala was held under a large, open air tent on a beautiful May night. Gala guests enjoyed dancing under the stars to the big band beat of Michael Andres and Swingerhead in the Courthouse courtyard, and when they needed a respite they retired to the ceremonial courtroom on the 23rd floor for martinis and hors d'oeuvres while listening to a string quartet. Over 350 OCBA members and their significant others attended the inaugural OCBA Gala in 1998, and the event was widely considered to have been a smashing success.

Notwithstanding the perceived success of the inaugural Gala, though, the event raised no money. While the first Gala grossed over \$55,000, a professional party planner had been used and, as is so often the case with expensive professional party planners, most of the money raised was spent producing the event. Thus, the first Gala barely broke even once everyone was paid. As a result, the decision was made to go forward with the Gala, but in future years to form a Gala committee made up of OCBA members who would volunteer their time and talents to organize the annual Gala, thereby maximizing the money raised for the Foundation. Since that first Gala in 1998, every Gala thereafter has been produced entirely by an ever changing group of OCBA volunteers too numerous to name here. Most importantly,



Continued on page 12



however, every Gala thereafter has made a healthy profit for the Foundation, and today the Foundation endowment stands at over \$104,000.

After two years at the Courthouse, the Gala was moved to the Orlando Museum of Art, where it remained for four years. While the Orlando Art Museum was an extremely popular location, and one which the Foundation still gets requests to return to, the OCBA event planners decided to hold the Gala in a different venue every year. Over the past five years the Gala has been held at the Orlando Science Center, the Blue Zoo Restaurant, Isleworth Country Club, the downtown Trade Plaza and, most recently, at the newly opened Federal Courthouse.

For the past 11 years the Gala has been attended by a crowd of 300-500, and each year the Gala has grown in popularity. More importantly, after 11 years of successful Galas the Foundation now has the means to fund its noble mission. If you have never been to an OCBA Gala, we hope you and your firm will consider attending the 12th Annual OCBA Foundation Gala next spring or, better yet, come on board as one of the 40-50 law firms which annually underwrite the Gala. As the pictures on these pages attest, the Gala Committee can promise you a fun evening of music, wine and great food in the company of your colleagues. Perhaps most importantly, however, you will be helping to fund a great cause.

William E. Sublette is a past president of both the OCBA and the OCBA Foundation, Inc. He has been a member of the OCBA since 1988.



Venue Provision Waivers: Florida Court Adopts Standards for Their Effect and Duration

Daniel J. Gerber and Timothy N. Bench



Many contracts contain venue provisions requiring all disputes to be litigated in a certain jurisdiction. Such provisions can be waived by filing suit in a jurisdiction other than that called for by the contract. But how long does such a waiver last? Can it be extended to separate lawsuits? If so, when? These were questions that had long gone unanswered by Florida courts. However, in the recent opinion of *Texas Auto Mart, Inc., v. Thrifty Rent-A-Car System, Inc.*, Florida's Fifth District Court of Appeal has ruled that such a waiver is limited to the suit in which the waiver occurred, unless the party seeking to extend the waiver to a separate action can demonstrate either substantial prejudice caused by the first suit or a significant unfair advantage gained by the party seeking to enforce the venue provision in the second suit as a result of the waiver in the first.

The opinion was issued in the third of three lawsuits stemming from a lease agreement between Texas Auto Mart and Thrifty Rent-a-Car System for commercial property in Orlando. The agreement required that all disputes be litigated in Oklahoma, the state in which Thrifty has its headquarters. However, when Texas Auto Mart defaulted on its lease payments, Thrifty, in an effort to ensure that the Florida court would have *in rem* jurisdiction, filed an action for eviction and unpaid rent in Florida.

When Texas Auto Mart voluntarily abandoned the property, the eviction portion of the action became moot. It was no longer necessary for the Florida court to have jurisdiction over the property. Both parties allowed the Florida suit to be dismissed for lack of prosecution, and Thrifty filed a suit in Oklahoma to recover the delinquent rent.

Texas Auto Mart then filed its own suit in Florida against Thrifty, claiming fraud and breach of contract. At the time, there was no Florida statute or case law addressing the effect a party's waiver of a contractual venue provision by filing suit in another venue had on other contemporaneous or subsequent suits between the same parties. In the trial court, Texas Auto Mart argued that Thrifty had waived the Oklahoma venue provision forever by filing the first suit in Florida. Thrifty maintained that the waiver ended when the first suit was dismissed. The trial court agreed with Thrifty and dismissed the Florida suit with prejudice. Texas Auto Mart appealed.

The Fifth District Court of Appeal looked to Florida case law addressing waivers of contractual arbitration

provisions and affirmed the ruling of the trial court. It held that a party's implied waiver of a contractual venue provision lasts only as long as the suit in which it was waived. The appellate court further held that the waiver can be extended to a separate contemporaneous or subsequent suit only when the party seeking to extend the waiver can demonstrate that the first suit either caused it substantial prejudice or gives the other party an unfair advantage in the second suit. The appellate court held that Texas Auto Mart had demonstrated no such prejudice or unfair advantage gained by Thrifty.

As a result of this ruling, the Fifth District Court of Appeal has adopted the "substantial prejudice or unfair advantage" standard, previously applied to arbitration provisions, as Florida law regarding contractual venue provisions.

Venue provisions are a common part of many contracts. Situations commonly arise in which tactical considerations make it necessary or more efficient for a party to a contract containing a venue provision to file suit in a venue other than the one called for by the contract. This situation is particularly common when property leases are breached because only a court with jurisdiction over the property can physically remove a lessee. The Fifth District Court of Appeal's decision will assist any party to a contract containing a venue provision in evaluating the pros and cons of litigating in a Florida venue other than that required by the contract. The decision also outlines the effect that choosing to ignore a venue provision for tactical reasons will have upon the future enforceability of the venue provision between the same parties.

Daniel J. Gerber, a partner with Rumberger, Kirk & Caldwell, has been an OCBA member since 2007. Timothy N. Bench, a senior associate with Rumberger, Kirk & Caldwell, has been an OCBA member since 2001.



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Legal Aid Society News

Legal Aid Presents Annual Pro Bono Awards

Catherine A. Tucker



The Legal Aid Society presented its annual *pro bono* awards at an officer installation and awards banquet on May 29, 2008, at the Ballroom at Church Street. Orange County Bar Association officers and executive council members, Legal Aid Society officers and board of trustees members, OCBA Foundation officers and board members, and Young Lawyers Section officers and at-large board members were sworn in by Judge Emerson R. Thompson, Jr. at an event attended by 300 judges, attorneys and family members.

Meena Hirani, President of the LAS Board of Trustees, spoke on behalf of Legal Aid and with assistance from Nick Shannin, President-Elect, presented plaques to individuals and firms recognized for their work in 2007.

The highest *pro bono* award given by Legal Aid is the Judge J. C. "Jake" Stone Distinguished Service Award. The award is presented to the attorney who has demonstrated a commitment to *pro bono* throughout his career. To be considered, the attorney must have received an individual award from Legal Aid and have made a significant contribution to *pro bono* during his career. The award is named after Judge Jake Stone, who was a county judge serving Orange County and very active within the community.

The award was presented to Robert H. Threadgill.

Bob Threadgill began volunteering at Legal Aid when he retired as chief title attorney for the Attorney Title Insurance Fund in 1987. For the past 20 years he has donated at least one day a week to Legal Aid. He volunteered twice a week for the first 15 years and one day a week for the last five years. Bob insists that he is now really retiring and devoting his time to tennis where he was ranked #1 in Florida in 2007 and #4 in the nation in men's singles, age 85 and older.

Britt Swain received the Volunteer for Children Award. Britt, who is currently a FAMU law student, has been a

volunteer with the Guardian ad Litem Program for nine years. During that time, she has worked on cases involving children from infant to teenager. The GAL program uses the services of lay volunteers to assist the attorney volunteers with GAL cases.

The New Lawyer Award was presented to Anthony D. Conti, II, Kimberly Healy and Dulcy Miller Reck. This award is presented to attorneys who are admitted to practice for five years or less and have demonstrated their commitment to *pro bono* work. Anthony Conti of Foley & Lardner handles housing cases and has accepted nine cases since joining the panel in 2003. Kimberly Healy of King, Blackwell, Downs & Zehnder, P.A. has served as a Guardian ad Litem for the past five years and has helped 15 children.

Dulcy Miller Reck of Marriott Vacation Club International accepts GAL appointments and has assisted 17 children.

Richard B. Bogle received the Government Attorney Award. Richard has been a participant with the Homeless Advocacy Project at the Daily Bread site for 12 years. He is an Assistant State Attorney and has volunteered with the *pro bono* program for 20 years.

Law Firm Awards were presented to Fishback Dominick and

Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A. Firms are recognized for their level of participation, the case-work, and the history of the firm's participation in Legal Aid programs and in other *pro bono* work and contributions.

Fishback Dominick has eight attorneys, all of whom take cases or participate in projects. The firm was also recognized in 2002, and individual attorneys have received awards: Mark Ahler, John Bennett, Chuck Stepter and Gayle Owens.

Fisher, Rushmer, Werrenrath, Dickson, Talley &

2008-2009 Legal Aid Society Officers and Board of Trustees



Front: Nicholas A. Shannin, President; Meenakshi A. Hirani, Immediate Past President; Betty Jackson; Jamie Billotte Moses, Secretary; Patrick M. Magill

Middle: Norberto S. Katz; Aramis N. Donell; Jessica K. Hew; Heather Pinder Rodriguez, President-Elect; John "Jack" S. Lord, Jr.

Back: Thomas A. Zehnder; John R. Hamilton; Glenn A. Adams; William D. Umansky.

Not Shown: Cynthia G. Schmidt; Charles R. Stepter, Jr., Treasurer

Continued on page 16



Robert H. Threadgill receives the 2007 Judge J.C. "Jake" Stone Distinguished Service Award, the Legal Aid Society's highest recognition for *pro bono* service.



LAS President Nick Shannin presents the Law Firm Award to John Fisher, Fisher, Rushmer, Werrenrath, Dickson, Tally & Dunlap, P.A., for the firm's outstanding *pro bono* contributions.



Kurt Ardaman accepts the Law Firm Award on behalf of Fishback, Dominick, Bennett, Stepter, Ardaman, Ahlers, Bolton & Langley LLP, for the firm's exceptional *pro bono* work.

Dunlap P.A. has 26 attorneys who are all participating in *pro bono* by taking cases, participating in projects, or contributing financially. Individual members of the firm have received awards: Joe Amos, Karel Averill, Chris Ballentine, Jon Odem, Jamie B. Moses and Frank Rapprich III. The firm was recognized in 1995, 1998 and 2004.

Individual Awards of Merit were presented to 12 attorneys who have provided exceptional *pro bono* work over the years, taken more than two cases per year, or worked on cases that require an extra time commitment. Edward R. Alexander, Jr. has been a volunteer with the *pro bono* panel for over 13 years and has handled Guardian ad Litem and family law cases. He has helped more than 50 children. Charles J. Cacciabeve of Carlton Fields has handled more than 25 consumer cases such as contracts, sales and warranty disputes. William J. Dietz has donated over 460 hours on closed Guardian ad Litem cases and helped over 47 children. Frank Fernandez was admitted to the Florida Bar in 1951 and has been a member of the *pro bono* panel since the earliest days. He has helped families with guardianships and custody matters, handling over 57 cases. Orman L. Kimbrough, Jr. of Wooten, Honeywell, Kimbrough, Gibson, Doherty & Normand has handled family law cases for over 20 years. Juan C. Lopez-Campillo of Littler Mendelson PC has been a loyal participant in Teen Court. Juan has served in every capacity with the project and has provided an average of 60 hours per year. Mary A. Nardi of Nardi & Nardi has helped with Guardian ad Litem and family law cases for over 16 years. She is also one of the first GALs to serve as a surrogate parent in education-related matters for her GAL child. Michael E. Nebel of Nebel & Bachman has been a GAL for over 20 years and his firm has been recognized for its *pro bono* work. Michael has handled several GAL cases with large sibling groups. Mark S. Troum of Troum & Walsh has handled family law matters, mostly contested divorces, for over 20 years. Last year he closed two cases with more than 60 hours. Michael S. Waranch of Hurley, Rogner, Miller, Cox, Waranch & Westcott has served as a Guardian ad Litem for 14 years and helped 43 children. Richard B. Webber, II, of Zimmerman, Kiser & Sutcliffe, has helped bankruptcy clients since 1992, providing services to 34 clients.

Congratulations to each of you and thank you for your dedication to the work of the Legal Aid Society and the Central Florida community.

Catherine A. Tucker is the Pro Bono Coordinator at the Legal Aid Society. She has been a member of the OCBA since 1986.



Kimberly Healy receives the 2007 New Lawyer Award from Nick Shannin. The award is given to attorneys who are admitted to practice for five years or less.



Dulcy Reck, shown with LAS attorney Susan Khoury, received the 2007 New Lawyer Award.



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Diversity Committee

Achieving Diversity by Desire Not Design

—Aramis N. Donell



As the Orange County Bar Association enters a new administration for the 2008-2009 year, it is the ideal time to challenge Bar members individually and collectively. It is now the time to pierce the surface, go deeper and intellectualize our dialogue regarding the goal to achieve diversity within the legal profession. It is no longer adequate to simply have a *goal* of achieving diversity. It is essential to establish the *route* to achieving diversity. Mission statements, seminars and trainings ultimately result in empty rhetoric. Although they are great conversation pieces, they still have little resolve. The continued need for diversity in the legal profession is evidence that what we have been engaged in thus far needs revision.

Revision often occurs at the root, and at the root of achieving diversity is the need to *define* diversity. We must understand what diversity is and what it is not. Diversity in its most genuine form must go beyond legal mandates and social obligations. It must stand upon a foundation of integrity and internal fortitude. Achieving diversity requires having a goal that the concept, itself, becomes a natural phenomenon as evidenced by perception and a diversified presence within the legal profession. Diversity assumes every individual is unique and each individual's uniqueness adds value and success.

Understanding the concept of diversity is a complexity that is too often oversimplified. The oversimplification results in an attractive cliché or buzzword with the potential of becoming more of an irritant than an affective power base.

We eventually begin to tolerate diversity when we should be celebrating it and becoming pioneers of achievement and change.

For us to become pioneers of change and genuinely diversify our profession, a three-stage process should be followed:

- 1) Clearly define and understand what diversity is and what it is not;
- 2) Create a specific blueprint of opportunities to achieve diversity; and
- 3) Implement the plan, keeping in mind that action without desire is poison.

As we embark upon the 2008-2009 administration for the OCBA, we are at stage one and committed to expanding the knowledge base concerning the concept of diversity. The focus will be on the power of diversity, the need for diversity and the benefits of diversity. The Diversity Committee of the OCBA welcomes your participation, assistance and ideas. We are making history in the midst of a changing society. What legacy will the OCBA leave that increases genuine diversity within the legal profession?

Aramis N. Donell is an attorney with NeSmith & Associates. She has been a member of the OCBA since 2006.

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HEARSAY

In a very real sense, it will not be one man going to the moon . . . it will be an entire nation. For all of us must work to put him there.

– John F. Kennedy



Judge Belvin Perry introduced Judge Emerson R. Thompson, Jr., who conducted the officer swearing-in and gave the keynote speech at the May 29 Installation Banquet. Gene Shipley, outgoing OCBA president, enjoyed the special evening.



Incoming president Tad A. Yates and the 2008-2009 OCBA Officers and Executive Council members take the oath of office.



2008-2009 OCBA Foundation Officers & Board: Tom Wert, President; Bill Sublette, Vice President; Jessica Hew, Treasurer; Nick Shannin; Gene Shipley; Woody Rodriguez; Heather Rodriguez; Kristyne Kennedy; Wiley Boston; Judi Hayes; Judge Julie O'Kane; Yvette R. Brown; Liz McCausland; Bill Umansky.



More than 1,000 people became citizens and 2,000 people attended the 2008 Naturalization Ceremony in Orlando on May 22. The OCBA has participated in the event for the past eight years as part of its Law Week activities. Judge Bob LeBlanc gave the keynote address.

I'm baaaaaack! Tanned, ready and rested, "Hearsay" has enjoyed its one-month sojourn and returns re-invigorated for year-two-of-two of this author's stint behind the keyboard. Stories of substantive law? Look to pages left or right and you'll find one in this issue of *The Briefs*, I'm sure. Just not here. Because this is "Hearsay" – and let the name dropping resume!

It would be hard to drop a bigger name than that of our 35th President, quoted above. But, drop his name I shall, to rectify a bit of missing hearsay from year one. President's Day 2008 saw the birth of the first child to the only wedding yet covered by my version of "Hearsay." (To get a wedding in, both spouses must be OCBA members and a certain columnist has to get the invite to the reception!) The wedding I speak of was between long-time YLS'er **Judi Garabo** and her beau (and new Morgan x 2 attorney) **Ryan "Say" Hayes**, officiated by **Senior Judge Rom Powell**. Anyhow, some more-than-nine months later, the happy couple announced the President's Day birth of John "Jack" Kennedy Hayes. (Hmmm – who do you think mom and dad are voting for in November?!) New mom and dad were spotted together at the May Investiture Dinner (details below), and no happier story could I use to open up my new year of "Hearsay"!

While on the subject of JFK, I'll let our moon-promising president be the subject of this month's trivia contest: from which university campus did Kennedy make his now famous 1962 declaration that America would, by the end of the decade, put a man on the moon? The first correct answer not only gets name in lights, but also a coveted gift certificate to centrally located Wall Street Plaza! (How's that for a nice plus for year two?!)

Back to the May meeting. For those of you who missed it (what – surely you could have TiVo'd "Lost"!), the May dinner-instead-of-lunch proved to be an excellent and well attended event. For those who missed the memo, the normally oh-my-gosh-is-it-still-going May lunch was replaced by a dinner-time event, where the time it takes to swear in four boards (OCBA/Legal Aid/ YLS/ Foundation) is more easily absorbed. Nicer still was the fact that Legal Aid was able to hand out its *pro bono* awards at an evening banquet where proud spouses could be there as well. Truly a nice event that I guarantee will be repeated next year. Making this event the one you didn't want to miss, though, was the fantastic keynote speech delivered by our own **Judge Emerson R. Thompson, Jr.** accepting the Judge James G. Glazebrook Memorial Bar Service Award. In a speech both light and revealing, Judge Thompson's remarks made clear that this West Orange resident has personified professionalism throughout his trailblazing career. As a bonus, his shout out to "the **Judges Kest**" was clearly an indication that he reads this column and utilizes the nicknames provided here! When next year's speaker directly references **Kristyne Kennedy** as "K2," our job here will be done!

Nicholas A. Shannin

May had many other noteworthy events as well. At the starting gate was **Clare****margaret** “Go Big Brown” **Groover**’s 2nd Annual Kentucky Derby bash (**Alana Brenner** and **Mayor Crotty** among the attendees). The month also had the Lawyers Rock event, where **Nick Nanton**’s Entertainment Law Committee and **Kim Webb**’s Social Committee helped to raise nearly \$1,000 for charity, the lion’s share going to Legal Aid. A great time was had by all – and you haven’t really lived until you’ve heard **Rebecca** “Alanis” **Palmer** steal the mike from front man **Cannella**!

While I’m noting noteworthy events, let me mention noteworthy members of our OCBA legal community and give a May Day shout out to two paralegals who boldly go where lawyers fear to tread. Law Week will have just finished when you likely receive this magazine, and for the fifth year running, **Lissa Bealke** of GrayRobinson and **Lori Spangler** of Roetzel & Andress will have brought together the dozen disparate activities into one successful presentation of OCBA’s presence in the community. As a former Law Week co-chair myself, I can proudly say that the job is tough and thankless, yet Lissa and Lori have done it for five straight years and made our bar look great in the process. Thanks again, Lissa and Lori!

Back to Trivia: Our winner for April (Earth Day started in 1970) is our first repeat winner, **William** “Go Owls” **Davis**. Bill is the Orlando and Jacksonville manager of staff counsel offices for Nationwide Insurance and is ready for the tournament of champions. If only we had one ... and we do! **July 31, 2008**, is the date selected for the **Fourth Annual OCBA Trivia Contest**. The OCBA has been fortunate enough to have **Kim Webb** 2.0 re-up as Chair of the Social Committee. New vice-chair (they call it co-chair, but for Social, vice-chair is more apropos says moi): **Shayne** “Gunslinger” **Thomas**. She organized last year’s Third Annual Trivia Contest, which was the best attended trivia contest yet and, outside of the Gala, the largest social gathering of the year for the OCBA. Her reward: trying to make this year’s even better. Location? Slingapour’s, 17 Wall Street Plaza in downtown Orlando. Time? 6:00 p.m. And the host? Curtis Earth, Shmirtus Earth – it’s **Nick** “Move over, Trebek” **Shannin**. I remain convinced my re-appointment was no doubt to make Page Eichenblatt/Team Shannin ineligible to take home the trophy!

There’s more, but I’m outta space so you’ll have to wait until August’s column to get the goods. That and I’m still tallying votes for the best yesteryear facebook photo to be found in the 2008 Membership Directory! So stay tuned for more “Hearsay” in August, to be supplemented by your news/gossip/made-up-stuff/whatever, which you should send to nshannin@floridalawonline.com. Until the next time, stay in the shade, drink any summer beverages responsibly and I’ll see you at the Trivia Contest on July 31!

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.



Annie Hrnair, Taylor Kessel and Jeff Elkins are all smiles at the YLS-Young CPA happy hour at Brix last month.



Meena Hirani, outgoing president of the Legal Aid Society, was installed as a new member of the OCBA Executive Council. Welcome, Meena!



Paul Scheck, Cherita McDonough, Laurie and Gene Shipley, and Frank Bedell enjoyed the festivities at the May 29 OCBA Installation Banquet.



The Criminal Law Seminar organized by Bruce Blackwell and the First Central Florida Inn of Court drew more than 300 attorneys to downtown Orlando in May. Presenters included Terry Coonan, LeRoy Pernell, Denis de Vlaming and Judges John Antoon, II, Emerson R. Thompson, Jr. and Karla R. Spaulding.

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YLS on the Move!

It's Summertime

Taylor C. Kessel



By now most of you have fired up the grill and enjoyed at least some of the gorgeous Florida summertime weather. If not, you have plenty of time left in the month of July. As the heat turns up, so does the YLS summer events schedule. So let's not waste any more time and get right to what we have covered so far and what's in store for the rest of the month!

On Friday, May 9, 2008, many of you made it out for the Young Lawyers/Young CPAs Joint Happy Hour at Brix Eurobistro. Despite the heat, we enjoyed appetizers, drinks and plenty of socializing with our number-savvy counterparts.

The Great Oaks Village Fun Day/Law Day was held on Saturday, May 10, 2008. Great Oaks Village is a foster care facility that houses more than 100 abused and/or neglected children in Orange County. In addition to the usual fun in the sun and Olympic Fun Day events, YLS held a Law Day event where we held interactive sessions with the children, teaching them about the law, democracy and human rights. The day finished up with the presentation of new computers and printers to Great Oaks Village. Thank you to all those who came out and participated in The Great Oaks Village Fun Day.

May's YLS Luncheon was a time to reflect on the many events that have taken place over the past year, as well as a time to look forward at our new leadership and board members. We celebrated our Affiliate of the Year Award and thanked outgoing YLS president **Liz McCausland** for all her hard work and dedication to our section. Sixteen YLS past presidents were on hand with words of wisdom, advice and a friendly "warning" as they passed the gavel to incoming president **Chelsie Roberts**. Their presence lent a very special air to the end-of-the-year appreciation luncheon at which YLS chairs and the OCBA staff were also recognized and thanked for their contributions.

On Tuesday, May 20, 2008, ten YLS members participated in our 2007-2008 Homeless Project. YLS members cooked and served food at the Women's Residential & Counseling Center campus at the Orlando Coalition for the Homeless of Central Florida. After a fantastic food service that included some of the best cornbread in town, YLS members then provided outreach

and education to residents on issues including dissolution of marriage, custody, employment discrimination and social security disability. The YLS also donated countless single-size toiletries (bars of soap, shampoo, conditioner and hand lotion) and other much-needed items (new towels, blankets, cleaning and laundry supplies and hygiene products). It's never too late to start collecting supplies for the Coalition. Let's make next year an even greater success. For more information on volunteer opportunities, immediate supply needs or to send a monetary donation to the Coalition, go to: www.centralfloridahomeless.org.

On May 29, 2008, the OCBA, the Young Lawyers Section of the OCBA, the OCBA Foundation and the Legal Aid Society of the OCBA held their annual swearing-in ceremony for new officers and board members. **Judge Emerson R. Thompson, Jr.**, the first recipient of the Judge James G. Glazebrook Memorial Bar Service Award, was the keynote speaker. The Legal Aid Society also presented its *pro bono* awards. Be sure to congratulate all the recipients who are mentioned in a separate article in this issue of *The Briefs*.

Plan now to join us at the **YLS July 17 Luncheon** as we host all three candidates for the Ninth Judicial Circuit Court race: **John Crotty, Fred Schott and Jim Turner**. The **Ninth Judicial Circuit Elections Candidates Forum** will be held at our regularly scheduled luncheon (third Thursday of the month) at 11:45 a.m. at the Citrus Club, 255 S. Orange Ave., Orlando, FL, 32801. The cost is \$10 for government attorneys, sole practitioners, law students

and judges. For all others the cost is \$18 for RSVPs received by Monday, July 14 or \$20 at the door. Please RSVP to OCBAYLS@gmail.com.

This year's **Law Clerks' Reception** will be held on Thursday, **July 10, 2008**, from 6:00 p.m. - 8:00 p.m. at the Taproom at Dubsdread, 549 W. Par St., Orlando, FL 32804. Please join the YLS and community officials as we welcome our summer associates to the Orlando area. Sign-up forms are available on the OCBA website (www.orangecountybar.org). Please send your name and the names of your guests by

Continued on page 27



Eric Reed and daughter Megan, Tony Sos and Chelsie Roberts participated in the Great Oaks Village Fun Day.



YLS Officers & Board: Chelsie Roberts; Ryan Davis; Eric Reed; Lauren Heatwole; Liz McCausland; Bridget Labutta; Kristen Cox; Maria Hale; Jason Hill; LaShawnda Jackson; Taylor Kessel; Kristopher Kest; Heather P. Rodriguez; Melanie Shoemaker; Anthony Sos.

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YLS on the Move! Continued from page 25

Monday, July 7 to committee chair **Melanie C. Shoemaker**, Dean, Mead, Egerton *et al.*, 800 N. Magnolia Ave., Ste. 1500, Orlando, FL 32803, or contact Melanie at 407-428-5106 or mshoemaker@deanmead.com. As always, event sponsors help make so many of our activities possible! For sponsorship information, please contact Melanie or download a flyer from the OCBA website.

The annual **YLS Golf Tournament** will take place **October 3, 2008**, at ChampionsGate. This is one of the most well-attend (and most fun) events of the year, and money raised through sponsorships fund many other YLS charitable activities. If you are interested in helping to plan the event and bring in sponsors, email **Sunny Lim** at slim@sctlaw.com or **Jason Hill** at jhill@shutts.com.

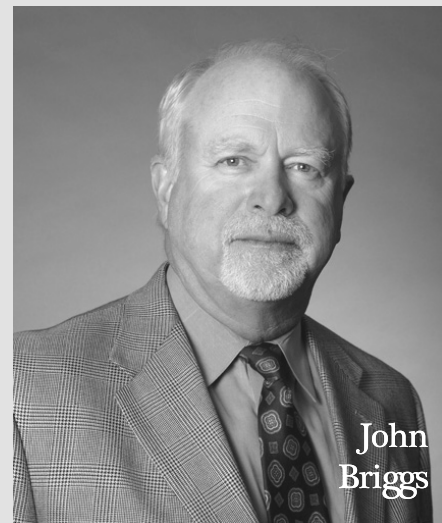
Typically, this is where I'd ask you to submit your news items to me. Instead, I must let you know that I will no longer be the "voice" of the YLS in *The Briefs*. I have thoroughly enjoyed the past eighteen months as your columnist but am also looking forward to other wonderful opportunities to stay involved as a YLS board member. I'm happy to announce, though, that "YLS on the Move" will now be in the capable hands of **Bridget Heffernan Labutta** of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. So, if you have an exciting story to share about a YLS member,



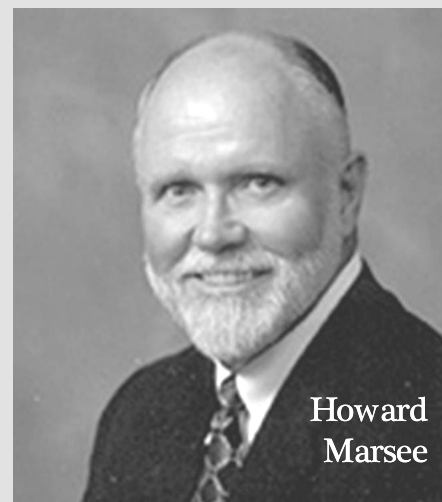
YLS Officers and Board Members: Chelsie Roberts, Ryan Davis, Eric Reed, Lauren Heatwole, Kristen Cox, Taylor Kessel, Melanie Shoemaker, Kristopher Kest, Anthony Sos, LaShawnda Jackson, Maria Hale, Jason Hill, Liz McCausland.

know of an award or accolade presented to one of our members, or would like to find out more about our section, please feel free to e-mail Bridget at blabutta@addmg.com or give her a call at 407-841-2330. And, if you are not receiving the YLS e-mail blasts, simply send an e-mail to OCBAYLS@gmail.com to sign up.

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



John
Briggs



Howard
Marsee



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Voght

YLS July 17, 2008 Luncheon

Ninth Judicial Circuit Elections Candidates Forum

Please join the OCBA Young Lawyers Section as it hosts all three candidates for the Ninth Judicial Circuit Court race: John Crotty, Fred Schott and Jim Turner.

July 17, 2008

12:00 p.m. • Citrus Club
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\$18 - advance RSVP by Monday, July 14

\$20 - at the door

\$10 - government attorneys, sole practitioners, law students and judges

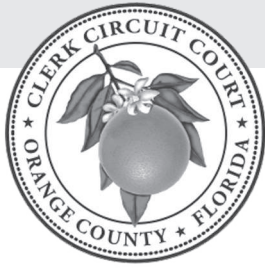
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Orange County Clerk's Office

Orange County Clerk's Office Wins 2008 Governor's Sterling Award

Lydia Gardner



Governor Charlie Crist announced that the Orange County Clerk of Courts has won the 2008 Governor's Sterling Award, joining recipients Shands HealthCare, the Ritz-Carlton, Sarasota, Hillsborough County Tax Collector, and Marion County Sheriff's Office.

Established in 1992, the Sterling Award is awarded to organizations that have successfully met the Governor's Sterling Council criteria for Performance Excellence, a roadmap that closely mirrors that of the national Baldrige Management System. The Sterling Award is the highest award an organization can receive for performance excellence in Florida.

"I am so proud of the hard work that has gone into elevating our organization to world-class status," said Orange County Clerk of Courts Lydia Gardner. "While winning an award is very gratifying, especially in the company of recipients such as Shands HealthCare and the Ritz-Carlton, the real reward is in the efficiencies we've gained by following the Governor's Sterling Council tenets. Our customer service and technology innovations are but two areas where we have soared, providing those who do business with us easier access and convenience, while also saving time and money on our end. We are committed to running this organization like a business, with business principles and ethics, and our continuing Performance Excellence journey has provided the roadmap to our success."

Customer service and innovation received some of the highest marks in the Sterling Council's feedback to the Clerk's Office. Among the innovations at the Clerk's Office that have made a significant difference:

- **Electronic Case Filing (ECF):** A pioneer program in the state, ECF allows attorneys and *pro se* litigants to electronically initiate cases and to file subsequent pleadings 24/7 from anywhere they have Internet access, thus significantly reducing the time needed to process cases and moving the Clerk's Office a step closer to its goal of being a paperless office. With more than 800 cases already filed or accessed through ECF and with more than 1,250 attorneys registered to e-file, the savings have included 198,000 in customer wait hours and an estimated cost aversion in clerk processing hours of \$9,000. An estimated 30,000 additional cases are expected in the coming year as a result of the Supreme Court's authorization

of ECF for all Civil Cases.

- **E-Commerce:** More than 50 percent of traffic ticket fines are being paid electronically, which includes payments online and at Amscot. This represents a significant increase in customer convenience and is far more cost-effective than processing payments made at the counter.
- **Collections:** Recognized as Best in Class statewide by the Governor's Sterling Council, the Clerk's Office's award-winning Collections Program brought in \$14.3 million in FY '07. The money collected is distributed to crime victims, municipalities, the Public Defender's Office and others. Collection tools include Collections Court, convenient payment plans, the ability to issue writs and suspend driver's licenses, use of a collections agency and out-calling. Since 1999, the Orange County Clerk's Office has collected more than \$8.5 million in restitution for crime victims.
- **Customer Service:** The Clerk's Office routinely exceeds its goal of a 96% customer satisfaction rating. The Office collects tens of thousands of Customer Satisfaction Surveys a year, and a Customer Service Advisory Board, which includes members of the judiciary, the OCBA, State Attorney and Public Defender offices, law enforcement and the community, meets quarterly. The Clerk's Office also participates in numerous civic and community events to answer customer questions and address concerns.
- **Community Involvement:** The Clerk's Office takes community responsibility seriously. Deputy clerks increased their United Way donations in 2007 by 32 percent, raising \$41,000. Additionally, they raised \$3,704 – the equivalent of 5,075 meals – for the Coalition for the Homeless. More than 20 deputy clerks tutor second-graders in reading at Rock Lake Elementary, and Clerk Gardner and others serve on numerous boards and speak frequently to civic groups while also sponsoring community events.

Compiled from press releases submitted by Leesa Bainbridge, Office of Communications and Public Affairs, Orange County Clerk of Courts, and Dione Geiger, Florida Sterling Council.



Presentation Skills for Lawyers



The Rules of Repetition

— Elliott Wilcox

Two hunters are out in the woods when one of them collapses. He doesn't seem to be breathing and his eyes are glazed. The other guy whips out his phone and calls the emergency services. He gasps, "My friend is dead! What can I do?"

The operator says "Calm down. I can help. First, let's make sure he's dead."

There is a silence, and then two gunshots are heard. Back on the phone, the guy says, "OK, now what?"

The first time you hear that joke, it's hilarious. The second time, it's still pretty funny. By the third time, however, it starts to lose its luster. That's the danger of repetition. Yet despite the danger, nearly every trial lawyer I've ever met lives by some variation of this theme: "You've got to repeat your most important fact three times before the jurors will remember it."

Indeed, it's true:

Repetition makes it easier for jurors to remember important details.

Repetition makes it easier for jurors to remember important details.

Repetition makes it easier for jurors to remember important details.

Every trial lawyer knows that repeating information makes it easier for jurors to remember. However, *experienced* trial lawyers also know that just because something is important once, that doesn't necessarily mean anybody wants to hear it again.

That's the paradox of repetition. Repetition helps us remember, but it can also bore us to sleep. As the trial lawyer, your goal is to repeat the information often enough that your jury remembers it, but *without* putting them to sleep. Here's the good news: You *can* repeat important information without boring your jurors, just so long as you follow a few simple guidelines.

First, modify each repetition. Unmodified repetition is a surefire cure for insomnia. The repeated information needs to be different than the first version. You can't simply repeat it, because that's not only boring, it's condescending. Basically, unmodified repetition tells your jurors, "You dummies probably didn't get this the first time, so I'm forced to repeat it for you."

To avoid that problem, make sure that your second iteration differs from the first. For example, if you made your first point with oral direct examination, consider making your second repetition with a different medium such as a demonstrative aid, video testimony, or a physical exhibit.

Second, repetitions need to get better. Each version should increase in strength. Start with your weakest

iteration. Each successive repetition should be stronger, otherwise we lose our interest. For example, you could start with the verbal testimony, then add the photo, then add the demonstrative exhibit. Or you could start with the tamest description and progress towards the strongest and most visceral description. You want to increase the intensity. If you start with a 10, your next witness can't be a 9, because even though normally a 9 might be great, it doesn't work in this situation.

It's like watching *Raiders of the Lost Ark* and then following it up with a triple-feature showing of *Indiana Jones and the Temple of Doom*, *Indiana Jones and the Last Crusade*, and finally, *Indiana Jones and the Kingdom of the Crystal Skull*. They're all enjoyable movies, but they're a bit of a letdown after watching the original. If you're gonna repeat something, the second version needs to be more memorable. Think *Godfather II* and *The Empire Strikes Back*, rather than *Jaws II* and *Rocky II*.

Third, keep it interesting. That principle is a little vague, but important nonetheless. You can repeat information all day long, just so long as you keep the jury's interest. But the moment it stops being interesting, you'll lose them. Take the *Rocky* franchise for example. All of the movies are basically the same (Rocky faces unbeatable opponent, Rocky does montage training sequence to the best workout music ever written, Rocky fights the unbeatable opponent "Yo, Adrian!"), yet despite the repetitive nature of the scripts, millions of people enjoyed all of the films. (Well, except for *Rocky V* – that one really sucked.)

The same thing is true with *Toy Story II*, *Spiderman III*, and the James Bond franchise. Not only do audiences not mind the repetition, they actually *enjoy it*, because each new version is interesting. Your jurors feel the same way. They don't mind hearing the same information a second or third time, just so long as you hold their attention.

The importance of repetition during trial can't be overstated. Jurors may miss an important point the first time it's presented, so it's usually essential to repeat the point a second or third time. However, you can't afford to lose the jury's attention by mindlessly repeating the same information over and over again. If you vary how you repeat the information, improve each repetition, and keep things interesting, then your jurors will remember all of the important details in your case.

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

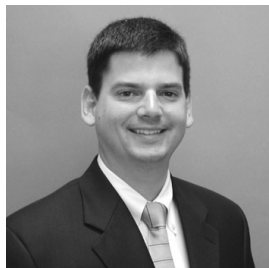


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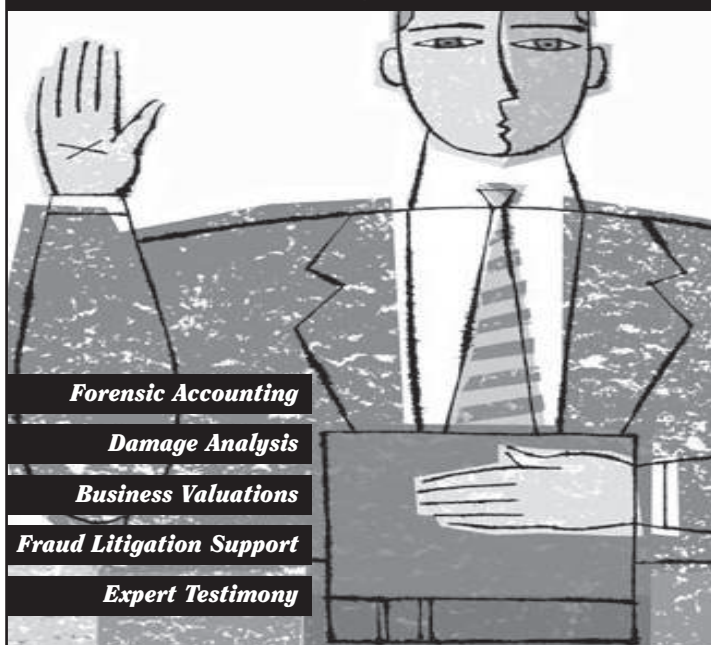
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Financial Planning

"Guaranteed Income" During Retirement Can Be Costly



Andrew C. Orr, CFP®, CLU, ChFC, AIF®

Millions of baby boomers are entering their retirement years. No longer worried about investing money to accumulate a sufficient nest egg for their golden years, these newly-retired and soon-to-be-retired are more focused on preserving what they have accumulated so their money lasts what may be 30 or 40 more years. Usually a long time horizon lessens anxiety with market loss because portfolio volatility is largely eliminated over such a long period of time. While this is true for the accumulator, it is not necessarily true for the retiree because he is no longer in a period of accumulation. Rather, he has entered the phase of de-cumulation.

De-cumulation is a period when the retiree is both investing for the long term, due to the realities of longevity, and also spending from the portfolio to provide income to live a retiree lifestyle. Additional decision-making is required of the retiree because he needs to know how much money can reasonably be withdrawn from the portfolio without spending the entire amount before he passes on. It's a somewhat uncertain decision to make because there are many variables to consider.

For example, there are the usual investment risks of up and down markets, as well as the standard asset allocation decisions to make. Mostly though, there is great fear of the retiree outliving his wealth and ending up a poor, elderly pauper with no money. These fears are very real and weigh heavily on the mind of a retiree.

Behavioral finance professors refer to this anxiety as loss aversion. It's a cousin to the type of cognitive bias, as the behaviorists call it, that you see when investors get really upset when their account balances are falling in a down market. Loss aversion is the reason for this, and it can play a costly role in the investment process if investors are not aware of it.

Life insurance companies understand this and have created products that are designed to eliminate loss aversion through the provision of guarantees. Typically these are called guaranteed lifetime withdrawal benefit (GLWB) riders. Adding these features to your 401(k) plan or to your variable annuity (a somewhat pricey tax-deferred mutual fund) costs money, however. Typically the costs range from .35% to .50% of your assets every year, thus increasing your expense ratio. The question is, are they worth adding?

A recent paper published in the *Journal of Financial Planning* studied this question. Titled "A Context for Considering Variable Annuities (VA) with Living Benefit Riders," the author appears to be surprised and a bit dismayed by his own analysis. He repeatedly says that despite the not-totally-supportive numbers he's generating on the value of VA contracts with living benefits, they should still be considered and recommended.

He first looks at whether the insurance company is, indeed, on the hook for any significant amount of risk when offering a 5% GLWB. This benefit allows the investor to start with a withdrawal income equal to 5% of the annuity value and increase this amount each year so long as the annuity account value has grown, with the insurance company guaranteeing that it will keep making those payments if the portfolio vanishes. Meanwhile, if the market goes down, that fixed withdrawal amount based on the high watermark can become 7%, 10%, 15%, 50% or even 100% of the portfolio if it were to go into a death spiral.

Pretty valuable protection, right? The author looks at two hypothetical clients: one who invested \$100,000 ten years before retirement and one who invests \$1 million and immediately begins distributions. Then he imagines that both of them retired immediately before the disastrous 1973-74 bear market. Yet, neither of them depleted their funds. Had they invested in mere mutual funds, they would have had an ending portfolio two and a half times the hypothetical fund (with the guarantee) and be paying out more each year as well.

Then the author looked at the recent 2000-2002 bear market and got a similar result. His conclusion? "Given both the severity and rarity of events such as the 1973-74 market crisis, one might be tempted to conclude that the GLWB rider expense is unnecessary since, to date, it appears that there has never been a bear market scenario in which an insurance company would have had to pay claims from its reserves under a GLWB rider." While tempting, this author says you shouldn't give in to it. After all, we might see worse returns at some point in the future.

The author acknowledges that it doesn't make a lot of sense to pay for the guaranteed income benefit rider while in the accumulation phase; instead, he says, buy it when you start taking distributions. His research really offers no compelling evidence that the insurance company is bearing much risk for the money it is collecting from investors. This is more an example of the mindset of the people who recommend VAs for a commission – the facts say that these guarantees aren't really addressing a real risk in the marketplace, but they say to buy them anyway.

Guaranteed income may sound good and may alleviate your anxiety, but the additional costs do not justify it and may, in actuality, cause you to have less spendable income in retirement than if you invested in low cost no-load index mutual funds.

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 planning firm providing comprehensive financial management services to individuals. Contact him at andrew@orrgroup.com, 321-332-7179, or www.orrgroup.com.

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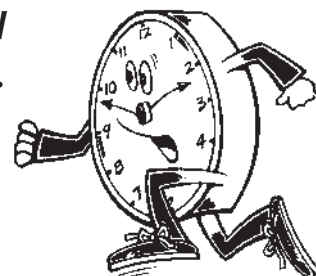
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Rainmaking

Reduce Stress by Selecting Clients Wisely: Clean Up Your Caseload – Part 1

—Mark Powers & Shawn McNalis



“I’ve got to get out,” Bill, a commercial litigation attorney, said to us recently in a shaky voice. “If you can’t help me figure out a way to sell my practice, I’ll close the doors and walk away. I’m not kidding. I can’t take it much longer.”

On the edge of a nervous breakdown, this attorney had come to us seeking a way out of what had become an unbearable situation. He felt ground down by the unrelenting demands of his practice. Now in his mid-fifties, this attorney had a little money set aside and not surprisingly he wanted out.

His is an extreme example, but it is safe to say the number of attorneys who feel seriously stressed is reaching near epidemic proportions. In fact, according to a study done by Johns Hopkins 51% of attorneys experience stress at rates significantly higher than the “normal” population.¹

Is it natural that attorneys across the board are afflicted with such anxiety? Or is there something about the make-up of attorneys that predisposes them to higher rates of stress? Perhaps there is.

Another John Hopkins study of all types of graduate school programs done in 1990 came to the conclusion that graduate students who are optimists outperform pessimists by a wide margin, with one exception – students in law school.² Pessimism is rewarded in law school. It’s further reinforced when an attorney goes into practice.

This is not news to many of you who have observed this phenomenon in either yourself or your peers. Pessimists anticipate the worst, which is a valuable trait when working with troubled clients. Those who anticipate the worst tend to plan for it and are better prepared than those attorneys who expect a rosy outcome. Pessimists aren’t quick to believe everything they are told and maintain a certain amount of skepticism – again very valuable when questioning a witness or listening to their own clients. Success favors the pessimist in the legal profession.

Unfortunately, the traits that make a good attorney don’t always make a good business person. The attorney who is not buoyed by the natural sense of optimism which supports and sustains most other professionals lives in constant fear that his or her practice may not survive. Driven by a sense of impending doom and underscored by the lack of true business training attorneys receive, these attorneys tend to make poor business decisions; among the worst is their failure to effectively screen new clients. Unfortunately, practicing “threshold law” – working with anyone who crosses your threshold – often feels like the right thing to do but invariably leads to further distress because of the many problematic (non-paying and uncooperative) clients who get in the door.

What does this mean to you? If you were to apply

Pareto’s Principle, also known as the 80/20 Rule, to your client base, you would probably discover that 80% of your income comes from 20% of your clients. Hidden in your client list, this 20% is the smallest, but most significant segment, of your client base; it generates the largest share of your revenues but takes up only 20% to 40% of your time. This is worth repeating: your best clients, the top 20% whom we’ll call your A and B level clients, take up only 20% to 40% of your time yet are responsible for 80% of your revenues.

The remaining 80% of your clients take up a great deal of time and generate only 20% of your income. Why? These are the problematic clients who will agree to pay you but, after taking up a great deal of your time, often neglect to do so. Their poor payment habits are significant because not being paid not only adds to the stress you feel, it further reinforces your pessimism and subsequent disillusionment with the practice of law.

Take a look at the following checklist of symptoms signaling an overload of problematic clients. If you check off even *one* of these symptoms, it’s time to reengineer your new client screening process because the effects of practicing threshold law have already disrupted your practice and will only get worse.

Symptoms of a Practice with Many C and D Level Clients

- ☐ High outstanding receivables – doing quite a bit of work that you or your team will not be paid for
- ☐ Clients who leave prematurely or often threaten to seek the services of another attorney
- ☐ Clients who often fail to show for scheduled appointments
- ☐ Clients who often fail to bring requested documents or to follow direction
- ☐ Staff who feel abused by clients who misdirect their anger and scream at them or act unreasonably
- ☐ Experiencing a constant sense of crisis and tension that is attributable to specific clients and/or specific opposing counsel
- ☐ Staff and attorneys who dread going to work and dealing with certain clients
- ☐ Staff and attorneys who often feel they can’t meet the high expectations of some clients

Continued on page 35

¹ Raymond P. Ward, *Depression, The Lawyers’ Epidemic: How You Can Recognize the Signs* (2005), at www.legalunderground.com/2005/03/lawyer_depressi.html.

² Richard G. Uday, *That Frayed Rope*, ST. B.J., Aug./Sept. 2003.

Announcements

New Associate

Brett M. Norvig - *Page, Eichenblatt, Bernbaum & Bennett, P.A.*

Senior Associate

Brett A. Marlowe - *Page, Eichenblatt, Bernbaum & Bennett, P.A.*

Speaking Engagements

Earnest DeLoach, Jr. of DeLoach Law LLC was the featured speaker at the FAMU College of Law Black Law Students Association Spirit of Service Awards on March 14, 2008. DeLoach Consulting also sponsored a seminar on April 12, 2008, at FAMU College of Law entitled *Life After Law School*, addressing the dos and don'ts of first year legal practice and life.

Jon H. Gutmacher was a guest speaker at the annual meeting of the Florida Association of Licensed Investigators (FALI) at the Rosen Plaza Hotel on May 23, 2008. Mr. Gutmacher's presentation was on the lawful use of deadly and non-deadly force in Florida and weapon issues particular to licensed investigators. Mr. Gutmacher is author of the book *Florida Firearms – Law, Use & Ownership*, an NRA Certified Firearms Instructor and has lectured throughout Florida on legal issues dealing with weapons and self defense.

Frank Rapprich of Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A. spoke to construction project managers, engineers and contractors on April 29, 2008, with a presentation titled *What To Do When Construction Projects Go Bad*.

Dennis Wall of Winter Springs and Orlando addressed *Hurricane Insurance Preparation for the 2008 Hurricane Season* on May 6, 2008, in Gainesville, FL. Mr. Wall also addressed members of the OCBA Business Law and Construction Law Committees on *An Occurrence in Florida: The CGL Decisions of the Florida Supreme Court* on May 28, 2008. GrayRobinson, P.A. in Orlando hosted the meeting. Mr. Wall is the author of *Litigation and Prevention of Insurer Bad Faith*, Second Edition, with 2008 Supplement in process.

News to Note

YLS Backpack Project - YLS is collecting school supplies now through the end of July for its annual Backpack Project to benefit Rock Lake Elementary School. Please bring new supplies to the OCBA office, Mon. - Fri., 9:00 a.m.-5:00 p.m., or drop off at the YLS July 17 Luncheon or the OCBA July 31 Luncheon. For a list of needed supplies, please go to www.orangecountybar.org. For more information or to help with collection and delivery, contact Vanessa DiSimone at (407) 246-6584 or vdismone@whww.com.

2008-2009 OCBA Social Calendar

Mark your calendar now for these annual social events! **Summer Happy Hour and Team Trivia** (July 31, 2008); **Joint Happy Hour** (Nov. 6, 2008); **Winter Wine & Cheese Party** (Jan. 29, 2009); **Texas Hold 'Em Poker Tournament** (Mar. 19, 2009); **12th Annual OCBA Gala** (TBD).

Judicial Candidates Forum

YLS Ninth Judicial Circuit Elections Candidates Forum. Thurs., July 17, 2008; Citrus Club; 12:00 p.m. Please join the OCBA YLS as it hosts all three candidates for the Ninth Judicial Circuit Court race: John Crotty, Fred Schott and Jim Turner. \$18 (advance RSVP by Monday, July 14); \$20 at the door; \$10 government attorneys, sole practitioners, law students and judges. Please RSVP to OCBAYLS@gmail.com.

Upcoming Seminars

Tues., July 8 - Representing a Tenant in an Eviction. LAS. 12:00 p.m.-1:00 p.m.; First Presbyterian Church, Downtown. CLE: 2.0.

Tues., July 22 - Focus on Treatment: An Overview of Drug Court. LAS. 12:00 p.m.-1:00 p.m.; First Presbyterian Church, Downtown.

Tues., Aug. 26 - Guardian Advocate. LAS. 12:00 p.m.-1:00 p.m.; First Presbyterian Church, Downtown. CLE pending.

Tues., Aug. 26 - Residential Treatment and Dependent Children. LAS. 12:00 p.m.-1:00 p.m.; First Presbyterian Church, Downtown. CLE pending.

Side Bar

Jessica K. Hew

The **Central Florida Gay and Lesbian Law Association** (CFGLLA) announces that its next Networking Gathering will be held on July 25 at 5:30 p.m. The venue is still being determined. Please go to www.cfglla.org for the latest information, including applications for membership.

The **Central Florida Paralegal Association, Inc.** (CFPA) announces two upcoming seminars: *Corporate Governance for Non-profit Entities* on July 22, 2008, and *Accident Reconstruction 101* on August 5, 2008. For information about luncheons, meetings and mixers, please visit the CFPA website at www.cfpa-inc.org.

If you have any news to share from local voluntary bar associations, please e-mail Jessica K. Hew at jhew@grahambuilder.com.

Rainmaking *Continued from page 33*

- ❑ Staff and attorneys who never hear “thank you” or any acknowledgement for their efforts – even when major victories occur for certain clients

If you check off more than one of these symptoms, it's time to take control of a situation you may have unwittingly created by not screening for clients who will pay you, cooperate with you and appreciate your efforts. Experience in working with hundreds of attorneys over the years has shown us that you owe it to yourself, your team and your firm's bottom line to raise your standards. Start now by being more selective in choosing with whom you will work. In Part 2 of this article we will discuss the steps you can take to systematically clean up your caseload.

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 Practitioner." They are featured marketing writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticsonline.com or call 352-383-0490 or 888-644-0022.

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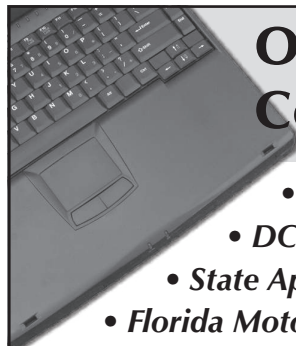
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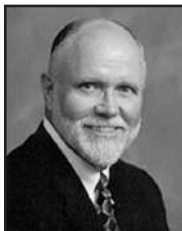
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TRIAL ATTORNEY: A small A-V rated law office in Winter Park, FL, seeks an experienced trial attorney to join the firm. The ideal candidate will possess a minimum of 4-6 years of experience in litigation. Excellent legal research and writing skills, as well as strong personal initiative, are sought. Excellent salary and benefits commensurate with experience. E-mail resumes to rmm@dempsey-law.com or fax to (407) 422-8556.

COMMERCIAL LITIGATION AND CREDITOR'S RIGHTS: AV rated well-respected law firm seeks associate with 2 to 5 years experience for Orlando office. Applicants must be a member of the Florida Bar and possess superior communication skills. Send letter of interest (not just a cover letter) and resume to alfred.frith@rissman.com.

AV RATED WINTER PARK Medical Malpractice Defense firm seeks associates with 2-5 years experience. Competitive salary and benefits. Send cover letter and resume to Larry D. Hall, Hill, Adams, Hall & Schieffelin, P.A., P.O. Box 1090, Winter Park, FL 32790-1090.

FAMILY LAW ATTORNEY: Established firm with unique media marketing campaign is looking for an experienced family law attorney to join our firm or have your 1 or 2 lawyer firm merge with us. All replies confidential. Reply to BRIEF'S Box #490.

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THE LAW OFFICES OF LARRY M. ROTH, an Orlando, Florida "AV" rated firm, has a full time opening for a paralegal/legal assistant. Experience is preferred in product liability defense law. Office located in College Park. Salary negotiable. Forward resume and salary requirements to Debbie Peshek, P. O. Box 547637, Orlando, FL 32854-7637, or email to DPeshek@roth-law.com.

BELL, ROPER & KOHLMYER P.A., an AV rated defense firm, seeks a motivated attorney with 7 to 10 years civil litigation experience, for a position handling products liability & civil rights litigation. Competitive salary & benefits commensurate with qualifications. Please forward resume in confidence to Hiring Partner, Bell, Roper & Kohlmyer P.A., 2707 E. Jefferson St, Orlando, FL 32803 or via email to tobjio@bellroperlaw.com.

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OFFICE FOR RENT: One large executive office and assistant/secretarial space for rent. Downtown location on East Robinson Street. Includes common conference rooms, kitchens, reception area and phone system. Also includes receptionist services for an additional fee. Call Hardy Vaughn at (407) 898-3911 or (407) 256-4488.

DOWNTOWN ORLANDO: 5 large offices in modern office tower, 4 with panoramic views. Close to courthouse. Kitchenette. Library and Reception area to share. 2-year lease required. 407-423-0029 x112. Ask for Javier.

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For Sale

Orlandoattorney.com for sale. Great domain name, it has been good to me! Please contact Susan Barnes at 407-599-5923.

LAW OFFICE FURNITURE/FURNISHINGS FOR SALE: Attorney cherry desk with matching computer table; credenza; custom oak semi-circular reception station; maple conference table; reception area furniture; 4 secretarial stations w/chairs; wall hangings; several lateral file cabinets; miscellaneous shelves for supplies, etc.; break room items including table & chairs, refrigerator, etc. Call for specifics - 407-812-9600.

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2008

July - August Calendar

OCBA Luncheon • Thursday, July 31, 2008

Terry Coonan

Executive Director, Center for the Advancement
of Human Rights, FSU

RSVP to: reservations@ocbanet.org

July

- 1 Criminal Law Committee**
12:00 p.m. • Bar Center
- 4 Independence Day**
Bar Center Closed
- 7 Executive Council Meeting**
4:30 p.m. • Bar Center
- 8 Legal Aid Society Lunchtime Training**
Representing a Tenant in an Eviction
12:00 p.m. • First Presbyterian
Church, Downtown
- 9 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse, 21st Flr.
- 10 Legal Aid Executive Meeting**
8:00 a.m. • 100 E. Robinson St.
- Social Security Committee**
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Orlando Brewery
- YLS Law Clerks' Reception**
6:00 p.m. • Dubsdread
- 11 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 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
- 17 YLS Luncheon**
Judicial Candidates Forum
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- Social Committee**
5:30 p.m. • TBD

- 22 Legal Aid Society Lunchtime Training**
*Focus on Treatment: An Overview
of Drug Court*
12:00 p.m. • First Presbyterian
Church, Downtown
- 23 Labor and Employment Law Committee**
12:00 p.m. • Bar Center
- 25 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 30 Business Law Committee**
12:00 p.m. • TBD
- 31 OCBA Luncheon**
Terry Coonan
11:45 a.m. • The Ballroom at
Church Street
- Fourth Annual Trivia Contest**
6:00 p.m. • Slingapour's

August

- 3 Criminal Law Committee**
12:00 p.m. • Bar Center
- 8 Workers' Compensation Committee**
11:45 p.m. • Smokey Bones
- 12 Executive Council Meeting**
4:30 p.m. • Bar Center
- 13 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- 14 Legal Aid Executive Meeting**
8:00 a.m. • 100 E. Robinson St.
- Real Property Law Committee**
12:00 p.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- YLS Executive Board Meeting**
5:30 p.m. • 300 S. Orange Ave.,
#1300
- 15 Family Law Committee**
8:00 a.m. • 425 N. Orange Ave.,
#2310

- 19 Professionalism Committee**
8:00 a.m. • Bar Center
- Legal Aid Society Board Meeting**
11:45 a.m. • 100 E. Robinson St.
- Entertainment Law Committee**
12:00 p.m. • Bar Center
- 21 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- Social Committee**
5:30 p.m. • TBD
- 26 Legal Aid Society Lunchtime Training**
Guardian Advocate
12:00 p.m. • First Presbyterian
Church, Downtown
- Legal Aid Society Lunchtime Training**
*Residential Treatment and
Dependent Children*
12:00 p.m. • First Presbyterian
Church, Downtown
- 27 Business Law Committee**
12:00 p.m. • TBD
- Labor and Employment Law Committee**
12:00 p.m. • TBD
- 28 New Member Orientation**
Happy Hour
4:00 p.m. • Bar Center
- 29 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- There will be no OCBA Luncheon
in August. There will be two
luncheons in September:
Thursday, September 4 and
Thursday, September 25.**

Please visit the
OCBA website
for updates:
www.orangecountybar.org



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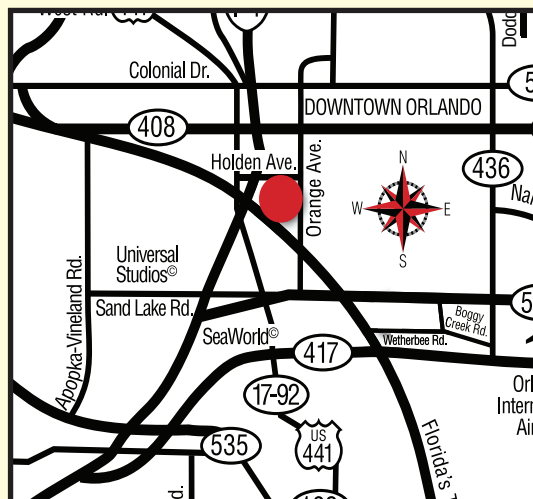


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