

the Briefs

A Publication of the Orange County Bar Association



July 2009
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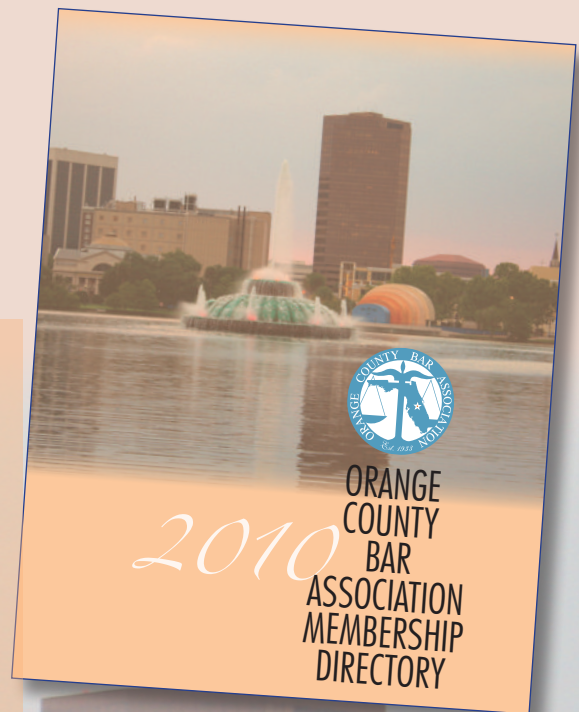
OCBA Luncheon

*Sylvia H. Walbolt
2008 Tobias Simon Award Recipient
& The Hon. Dean Cannon
Florida House of Representatives, Speaker Designate*

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If the deadline falls on a weekend or holiday, the deadline is the next business day.

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President's Message

What Can the OCBA Do for Your Business?

July 2009



Diego "Woody" Rodriguez

This past month you will have received your dues renewal and wondered what real, tangible value your continued support of the OCBA brings to you. For many years, the focus of the bar has been to promote and foster professionalism. In fact, the mission statement provides that "the Orange County Bar Association is to promote honor, dignity, truth, and professionalism within the legal community; to promote improvements in the law and aid in the administration of justice; to enhance the delivery of and access to quality legal services; to educate the public about the legal system; to provide for an inclusive bar; and to promote camaraderie, a forum for discussion on issues pertaining to the legal system and education for its members." These ideals are probably reflected in the collegiality you share at a lunch with your fellow colleagues and the judges that ultimately decide your client's fate, but it does not directly address your bottom line, your profit margins.

Each member has a reason for joining, and some reasons go more towards that bottom line than others. Perhaps you joined to receive referrals from your fellow colleagues. Others may have joined to take part in the lawyer referral program (which I still consider to be one of the best kept secrets about OCBA membership). Perhaps you joined for the free lunches and speakers. Perhaps you joined because many of the CLEs offered are free or very affordable. However, whatever your reason for joining, I know that few, if any, have ever joined the OCBA because of our great member benefits and discounts.

This year, in order to help our lawyer members navigate through these difficult economic times, the OCBA will commit its efforts to helping your bottom line. To do so, executive director **Brant Bittner** and the OCBA staff are working tirelessly to build our relationships and partnerships with service providers that impact the legal community in meaningful ways. With over 3,000 members, the OCBA will be negotiating on your behalf with the service providers that matter the most, including legal research providers, cell phone companies, banks, printers, liability insurance providers, yellow page advertisers, website development specialists, trial consultants, process servers and, yes, maybe even some court reporters. Our goal will be to provide you with a list of qualified and experienced individuals who not only provide you quality services but can also deliver some substantive discounts as a result of your affiliation with the OCBA. We have drawn the line at movie tickets, restaurant coupons, or car rental companies since those are typically covered by the "entertainment books" sold by your child's school or by a start-up entrepreneur whose parent happens to work in your office. But, I do think the OCBA has plenty of room for improvement in negotiating some practical discounts and rewards for our members.

Where do we start? The OCBA has had a model for these types of sponsorships and partnerships through our affiliation with **Westlaw**. Many of you have seen **Charlie Kiester** over the years attending our social events or at the OCBA lunches, handing out the Westlaw freebies and promoting Westlaw products. But what some of you may not know is that Westlaw, through Charlie, has made discounts available to new OCBA members and, beyond that, he provides personalized service to those who have subscribed as a result of their affiliation with the OCBA. The combination of personal service and meaningful financial discounts are what we are striving for as we build a group of reliable partners and sponsors.

Protecting your business assets and providing you with a personal connection to a professional liability carrier became another priority for the OCBA this past year. After some lengthy negotiations, I am proud to announce that we have recently brokered an exclusive relationship with **Marsh Consumer**, which specializes in professional liability insurance. Marsh stood out because it has successful, existing relationships with other local bar associations, including the Jacksonville Bar Association. **Sharon Ecker**, Marsh's representative, will be helping our member firms, whether they are small or large, to assess their coverage needs and advise them on potential modifications that might lower the firm's risk, reduce their costs or increase their coverage. Marsh Consumer's bottom line is to help our bottom line.

Likewise, we have partnered with **Margaret Atkinson of FindLaw**, which specializes in helping law firms create websites and other online marketing strategies to maximize their connectivity and exposure on the Internet. Again, our emphasis is to find quality providers with a proven track record that can provide potential savings or enhance the revenues on the business side of your practice. Mind you, we recognize that this is nowhere in the mission statement but, in these difficult economic times, I have asked **Gary Salzman** and **Wiley Boston**, both members of our Executive Council, to seek out service providers that might give our firms a better opportunity to maximize their earning potential.

To further our efforts to help your business, on Tuesday, July 28, 2009, the OCBA's Solo and Small Firm Committee will host a seminar geared toward making your practice more efficient. The committee chair, **Shane Fischer**, has organized a seminar with various speakers, including **Judith Equels** from The Florida Bar's Law Office Management Assistant Services (LOMAS). LOMAS is a free business resource from The Florida Bar that many lawyers fail to consider because they don't even know it exists. For a \$35 fee, the seminar will include a box lunch, 5.0 CLE credits, including 2.5 of the ever-elusive ethics credits, and a wine and cheese reception afterwards. Even if you are in a large firm, I would encourage you to send you managing partner or your firm administrator. There are always ideas presented that may enhance your already-successful business model.

This is just the beginning. There are a number of other providers we can contact on the OCBA's behalf to help facilitate discounts. As I referenced, we will be seeking partners in all relevant areas that impact your businesses. As a valued member, we simply ask that you assist us in identifying any potential service providers that not only provide you with great service but that you think would benefit from such a relationship and could provide our members with a substantive benefit. The OCBA will strive for win-win situations in which we can help the providers promote their services to our members but only if our members can realize a savings or economic benefit as a result of their provider's services. If you are interested in providing us with any good leads, just send me an email at woodyocba@aol.com and we'll take it from there. And, as always, thank you for the opportunity to serve.

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

Thomas v. Fusilier,

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

***Florida Emergency Physicians-Kang &
Associates, M.D., P.A. v. Parker,***

800 So. 2d 631 (Fla. 5th DCA 2001)
Protected liability on multi-million
dollar medical malpractice action.

Miller v. Jacobs & Goodman,

699 So. 2d 729 (Fla. 5th DCA 1997)
Declared liquidated damages clause
of attorney employment agreement
void and unenforceable.

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.

***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.

Whigham v. Shands Teaching Hospital,

613 So. 2d 110 (Fla. 1st DCA 1993)
Reinstated multi-million dollar medical
malpractice action against blood bank.

Petry v. Pettry,

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

Caiazza v. Tuff Realty Corp.,

805 So. 2d 29 (Fla. 5th DCA 2001)
Protected ownership of two
multi-million dollar Florida
corporations.

Owen v. Owen

867 So. 2d 1222 (Fla. 5th DCA 2004)
Reversed imputation of income with
directions to reduce by 50%.

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OCBA Luncheon *July 23, 2009*

Sylvia H. Walbolt

2008 Tobias Simon Award Recipient



Sylvia H. Walbolt is the 2008 Tobias Simon Award recipient. The award is given annually by the Chief Justice of the Florida Supreme Court to the one attorney in Florida who has given the most outstanding service in the area of *pro bono* legal assistance.

Ms. Walbolt, a shareholder with Carlton Fields in Tampa, Florida, has extensive experience handling appeals, in both federal and state court, in all areas of the law, including tort, products liability, business disputes, constitutional, and employment discrimination cases. She has appeared as counsel in more than 290 published opinions and has also appeared on behalf of *amici curiae* in many appeals. Ms. Walbolt is Board Certified in Appellate Law and in Antitrust Law. She is a former president of the American Academy of Appellate Lawyers and is a Fellow of the American College of Trial Lawyers. She received her J.D. in 1963 from the University of Florida College of Law.

Ms. Walbolt has handled numerous *pro bono* cases, including *Kelley v. State*, a death penalty case involving the State's destruction of evidence; *Colwell v. Head*, a death penalty case for a mentally ill inmate in Georgia; and *Ronnie Lee Jones v. State of Florida*, a death penalty case involving mental competency and prosecutorial misconduct.

Among many awards and recognitions, Ms. Walbolt is the 2009 Recipient of the Medal of Honor Award by The Florida Bar Foundation. The Medal is The Florida Bar Foundation's highest award given to a member of Florida's legal profession. She is also the recipient of the ABA Section of Litigation 2006 John Minor Wisdom Public Service and Professionalism Award, which recognizes outstanding contributions to the equity of justice, ensuring that the legal system is open and available to all, and the 2005 James C. Adkins Appellate Practice Award from The Florida Bar, which is presented to a member of The Florida Bar who has made significant contributions to the field of appellate practice in Florida.

Ms. Walbolt was a participant in Anglo-American Exchange in 1999-2000. The Exchange is a program that convenes every five years to allow the United States and the United Kingdom to share information as to legal developments on both sides of the ocean. Five American attorneys and five American judges comprised this country's delegation, led by Justice Anthony Kennedy and Justice Clarence Thomas of the United States Supreme Court. In addition, annually since 2005, Ms. Walbolt has been invited and has served as a participant in National Conference on Appellate Justice in Washington, D.C. She has co-authored more than a dozen published articles and been a presenter in numerous national and regional seminars.

The Hon. Dean Cannon

Florida House of Representatives , Speaker Designate



The people of District 35 elected Representative Cannon to the Florida House of Representatives in 2004. He was honored to have been chosen to serve in Tallahassee in his first run for elected office. Dean serves on the Policy Council, Rules & Calendar Council, Office of Reapportionment and is chairman of the Select Policy Council on Strategic & Economic Planning. He also served as chairman of the Orange County Legislative

Delegation. Currently, he is slated to become Speaker of the House in 2010.

Dean was raised in Lakeland, Florida, and is a graduate of Lakeland Senior High School. He continued his education at the University of Florida, receiving a B.S. in telecommunication in 1989 and a J.D. degree from the University of Florida Law School in 1992. While at UF, Dean was vice president of Florida Blue Key, a member of the Student Senate and was the Student Body president. In recognition of his accomplishments, he was named Outstanding Male Graduate in 1989 and selected to the UF Hall of Fame.

Dean was with the Orlando law firm of GrayRobinson for many years. He served as a member of several committees of the Orange County Bar Association, The Florida Bar and as co-editor of a publication of the American Bar Association.

Representative Cannon is very active in the community. He is the honorary Chairman of the Board for the Life for Kids Adoption Agency. He has also served as the General Counsel for the Orange County Charter Review Commission, a trustee of the Orlando Science Center and Chairman of the Orlando Regional Chamber of Commerce Tallahassee Community "Fly-In."

Dean lives in Winter Park, Florida, with his wife Ellen and their three children, Dean, Katherine and Sarah.

The Ballroom at Church Street

11:30 a.m. - 1:00 p.m. • 225 S. Garland Avenue
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Please RSVP to reservations@ocbanet.org by Friday, July 17, 2009

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, July 17, 2009. 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 cannot be guaranteed a seat.**

Please keep us up-to-date on your reservation status!

Professionalism Committee

Remarks of Judge Alice L. Blackwell to the Orange County Bar Association

Given on Wednesday, May 27, 2009



The Honorable
Alice L. Blackwell

Speaking about professionalism is a daunting task. Many people who are much smarter and more eloquent than I have spoken and written about professionalism. And, let's face it: those of you who are present tonight at this Installation Dinner are truly "the choir." You have taken office tonight in the various positions of leadership for our wonderful Bar Association and, by your willingness to take on these responsibilities, have shown your own commitment to excellence in our shared profession. But I have been asked to "preach" to you, so I will try to say something to you that, if not original thought, is at least heartfelt.

There are many ways to learn how to be a professional at the highest and best level. One of the surest ways is to observe other lawyers and judges who epitomize the concept. The Orange County Bar Association memorialized one of our best examples in the James G. Glazebrook Memorial Bar Service Award. Magistrate Glazebrook was truly "professional" in every sense of the word. He was an inspiration to other lawyers and judges. It is an incredible honor to be given the award that was established in his memory, and I thank you for it.

Judge Emerson Thompson, the first recipient of the Glazebrook award, is another example of a consummate professional. Many of you experienced his impeccable courtroom demeanor. He was always in complete control of his courtroom and unfailingly polite and professional on the bench. After court was over, however, he was also a wonderful colleague, especially to me as a new judge back in the early 1990s. Judge Thompson offered encouragement, advice, counsel and a listening ear when I needed help with a case. He has a devastating sense of humor, too, and he always made us laugh with his wry observations about the human condition.

Another way to learn to be a professional at the highest and best level is to talk to other lawyers about how to improve our bench and bar. I have the privilege of being associated with the two local Inns of Court: the First Central Florida American Inn of Court, comprised of lawyers who practice in many different areas of law; and the Central Florida Family Law American Inn of Court, comprised solely of attorneys who primarily practice family law.

It has been an exhilarating experience to help form and grow the Central Florida Family Law Inn of Court. The camaraderie and shared experiences of lawyers in a discreet practice area allows us to talk more specifically and in-depth about various issues. Our meetings are spirited, with attorneys grappling openly and honestly with the challenge of being an effective advocate, but also working to preserve the family relationships that will continue after the case is completed. Lawyers who are new to the family law arena can hear the most experienced family lawyers speak about the difficulty of balancing advocacy with the desire to preserve family relationships. My participation in the Central Florida Family Law Inn of Court has been one of the most professionally rewarding experiences of my career. The Orange County Bar Association's membership has ballooned since the first Inn of Court was established in the 1990s. I most strongly recommend that the leaders of our OCBA consider other practice-area specific Inns of Court as a way to promote professional-

ism and to involve more lawyers in this enriching and challenging environment.

In law school, we were taught that our system of justice depends upon two opposing lawyers advocating forcefully for their client's positions within a clearly defined structure of procedure and substantive law. We studied the development of the law, the Constitution, rules of procedure and the substantive laws in various practice areas in order to have a command of the rules that would apply to our chosen profession. We also studied the rules of professional conduct and were exposed to the limits on zealous advocacy. Upon graduation, we found employment in a law firm, a governmental agency or other legal practice, and we began the process of learning how to be that zealous advocate in the "real" world. Many of us, myself included, loved the give-and-take of trial practice – doing "battle" with words and ideas to win a critical hearing or a trial within a legal and ethical framework.

Over time, however, I believe that the best and most competent lawyers evolve from this traditional view of the legal system and approach the practice with a very different orientation. In this orientation, a lawyer no longer views the "other side" as an opponent but, rather, seeks to cooperate with the opposing lawyer and client to find a resolution of the difficulties that bring the parties to court. Attorneys who approach litigation in this manner discuss issues with opposing attorneys before filing motions, seeking information in order to understand their opponent's objectives in the litigation. Even if the attorneys and clients cannot resolve their disputes without resort to judicial intervention, attorneys who approach their clients' cases in this manner work cooperatively to prepare their cases for court.

This collaborative/cooperative approach is easiest to do when both attorneys and their clients are approaching the case with the same mindset. In family law, specific dispute resolution processes called "Collaborative Divorce" and "Cooperative Divorce" require parties and their attorneys to agree in writing to collaborative ground rules. But how does a lawyer approach a colleague in a cooperative, professional manner when the opposing attorney or client is not approaching the case in the same manner?

For me, the answer is this: you must invest your time and energy to develop a human connection with the attorney and client on the "other side" of the case. By this I mean that you must always recognize that each person involved in the case is a fully-formed human being who has some emotional investment in the dispute. You must be willing to bring to bear all of your "people skills" in your professional relationships – you must listen well, you must be willing to reconsider your own positions and reactions, and you must always treat every person with dignity and respect. This is true even when that person is not treating you with dignity and respect! How incredibly difficult it is to do, but the best lawyers and judges I have observed have been those who acknowledge and respect the humanness of the people involved in the legal interaction.

Wendy Aikin, my very good friend and, incidentally, one of the

continued page 8



the PATH
to common ground



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Professionalism Committee

continued from page 6

best lawyers I know, is an example of a lawyer who practices in a cooperative, collaborative manner. She once said to me: "Anyone can litigate. What I try to do is to develop a relationship with opposing counsel and their client. And that takes an investment of my time." When a lawyer sends Wendy one of those obnoxious letters making accusations and demands, she does not fire back a response similar in tone. Instead, she calls the attorney, makes a gentle joke about the situation, and asks what can be done to resolve the situation at hand. Almost always, Wendy is able to find a way to get the opposing lawyer to relax his or her combative attitude and work on a resolution of the problem. When she forwards the obnoxious letter or email to her client, she is able to report that the issue is handled. As a result, Ms. Aikin has earned the respect of both her clients and, not surprisingly, of her colleagues.

There is a quote from Mohandas Gandhi that I keep on my desk: "If you don't find God in the next person you meet, it's a waste of time looking for Him further." We must not use our laws and procedures as weapons, and we cannot treat legal disputes as sanctioned combat, however civilized that combat might be. The true, unrelenting effort we as lawyers must make day by day, hour by hour, and, even minute by minute, is to reach across the proverbial table and be willing to interact with the persons on the other side as real human beings, not solely as opponents. Only then have we become professionals.

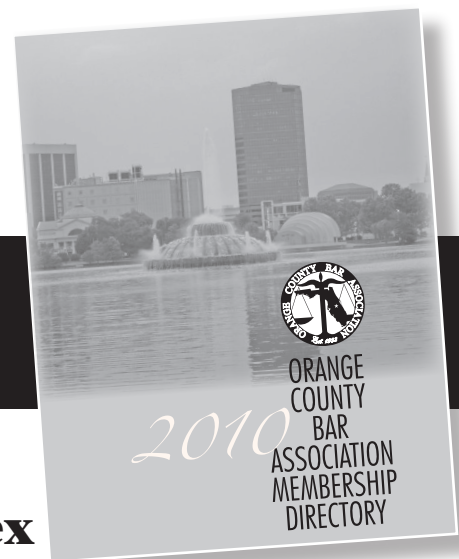
The Honorable Alice L. Blackwell, Judge of the Ninth Judicial Circuit Court, is the recipient of the 2009 James G. Glazebrook Memorial Bar Service Award. Judge Blackwell has been a member of the OCBA since 1980.



The OCBA Appellate Practice Committee held its Second Annual Dinner with the Judiciary in May. Pictured are Jim Edwards, Scott Edwards, Judge David Monaco and Judge Vincent Torpy.

Lawyer-to-Lawyer Specialty Index

List your Practice Areas &
Board Certifications in the
Lawyer-to-Lawyer Specialty Index
of the 2010 Membership Directory!



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- Questions? Call Stacy Hastings, Membership Manager, at 407-422-4551, ext. 225

Board of Governors Report : May 29, 2009

Mayanne Downs*

Dan DeCubellis

Scott McMillen

Mary Ann Morgan*

*Mayanne Downs is President Elect Designate of The Florida Bar. Mary Ann Morgan will take Mayanne's seat on the Board of Governors in July.

At its May 29 meeting in Key West, The Florida Bar Board of Governors:

International Law Section

Heard a detailed report from International Law Section Chair **Brock McClane** concerning the growth and activities of the International Law Section.

Criminal Defendant Proceeding Under False Name

Rejected a proposed redrafting of Ethics Opinion 90-6 from the Board Review Committee on Professional Ethics and adopted the draft proposed by board member David Rothman. The committee proposal required the attorney to inform the court if the client was using a false name, if the lawyer learned of that after he or she had formally appeared in the case and the client refused to correct the record. The alternative opinion provided that, "The lawyer may not inform the court of the false name except when the client affirmatively lies to the court concerning his or her true name." Both opinions require a lawyer to decline representation if learning the client is proceeding under a false name, or to withdraw if learning of the deception before formally appearing in the case.

Clients' Security Fund

Approved new rules for the Clients' Security Fund program. That includes raising the maximum amount for reimbursement when a lawyer misappropriates from a

client from \$50,000 to \$250,000, and making all payments at the end of the fiscal year. If not enough money is available to pay the full amount of the approved claims, then payments will be made pro rata based on available funds. Reimbursements in cases where fees were paid but no useful services provided will remain at \$2,500. The special committee that made the recommendations will be continued so it can study possible further refinements to the problem.

Budget

Made one final change to the Bar's 2009-10 budget, approving the budget for the Family Law Section which had not been completed when the board approved the budget in March. The budget has a slight deficit for next year, but keeps annual membership fees at \$265 for active members and \$175 for inactive members. The budget now goes to the Supreme Court.

Henry Latimer Center for Professionalism

Approved as recommended by the Program Evaluation Committee a revamping of the Bar's Henry Latimer Center for Professionalism, which will focus on preventing unprofessional conduct including a program of voluntary mentoring for new lawyers.

Fee Arbitration Program

Approved as recommended by the PEC changes for the Bar's Fee Arbitration Program, including having the ACAP program screen requests and finding ways to recruit more arbitrators for the program.

Investment Committee

Heard a favorable report from the Investment Committee, where Chair Ian Comisky reported the Bar's long-term investment fund had risen almost \$2 million as of the end of May. The committee

recommended and the board approved allowing the Bar's investment portfolio to slightly exceed its maximum target for cash holdings, which was caused by fluctuations in the stock market.

Disciplinary Revocation

Approved a recommendation from the Disciplinary Procedure Committee to change Bar rules to allow a disciplinary revocation in cases where the lawyer wishes to give up his or her license without admitting to underlying grievance charges. The proposed disciplinary revocations would be for a minimum of five years and must be approved by the Board of Governors. The rule changes now go to the Supreme Court. The board also reviewed on first reading from DPC a rule amendment requiring lawyers who wait more than three years before seeking reinstatement from a suspension to show fitness and competence to resume the practice of law. That includes a requirement that the lawyer must have taken 10 CLE credits for each year that the lawyer has been ineligible to practice and those who have been suspended for more than five years must retake portions of the bar exam.

Nominations and Appointments

Made several nominations and appointments. The board nominated Gerald Kogan of Coral Gables, Lawrence P. Kuvlin of Wilton Manors, Daryl Manning of Tampa, Richard A. Moore of Miami, T. Rankin Terry, Jr., of Ft. Myers, and Gary Winston of Miami for two vacancies on the Florida Board of Bar Examiners. The Supreme Court will make the final appointment. The board appointed Henry M. Cox, III of Jacksonville and Edith Osman of Miami to two-year terms in the ABA House of Delegates. Jay White and **Mayanne Downs** also assume positions in the ABA House of Delegates. The board appointed William J. Banks of Clearwater, Matthew Gissen of Miami, William F. Sansone of Tampa, Allen von Spiegelfeld of Tampa and **Barbara J. Williams** of Orlando for three-year terms on the Florida Lawyers Assistance, Inc., Board of Directors. The board appointed Christie Anne Darias Daniels of Miami, Dolly V. Davis of Jupiter, William Manikas of Boynton Beach, Theodore W. Small, Jr., of Deland, Eric M. Sodhi of Miami, and Daniel H. Thompson of Tallahassee to two-year terms on the Florida Legal Services, Inc., Board of Directors.

Jerome P. McCauley, C.P.A., P.A.

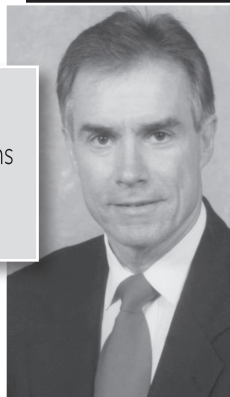
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Introduction

The Appellate Practice Committee of the Orange County Bar Association is providing readers of *The Briefs* a series of articles addressing interlocutory appeals pursuant to Rule 9.130 of the Florida Rules of Appellate Procedure. Previous articles have discussed trial court orders that have the effect of determining personal jurisdiction and the immediate right to the possession of property. This installment will address Rule 9.130(a)(3)(C)(iv), which allows for parties in a lawsuit to seek immediate appellate review in the form of an interlocutory appeal of a trial court order that determines the entitlement of a party to arbitration. This article will address procedural issues that interlocutory appeals present, the substantive law that the court will consider in reviewing the arbitration order, ways to avoid valid arbitration agreements, the scope of the district court's review, and the importance of timing.

Procedural Issues to Consider

Interlocutory appeals differ in many ways from final appeals, and those procedural niceties represent important distinctions about which the practitioner should be aware. The interlocutory appeal can best be viewed as a hybrid of a final appeal of a judgment and an original proceeding such as a petition for writ of *certiorari*. One important issue to remember is that an interlocutory appeal is, as its name suggests, an actual appeal, and not an original proceeding. This means that the process is initiated by filing a notice of appeal, attaching two copies of the order to be reviewed, with the lower tribunal within 30 days of rendition of the order. This is in contrast to an original proceeding in which the entire document, argument, record and all, is filed with the district court of appeal within 30 days of the order in question.

The only timing difference between an interlocutory appeal and a final appeal is the deadline for the filing of the initial brief. An appeal of a final judgment allows the appellant 70 days from the date of the filing of the notice of appeal in which to file the initial brief. In contrast, an appellant in an interlocutory appeal has only 15 days from the submission of the notice of appeal in which to submit the initial brief. The timetable for the filing of the answer brief and the reply brief are the same in the interlocutory appellate process as they are in an appeal of a final judgment.

Another issue to keep in mind is that unlike a final appeal, in an interlocutory appeal, the trial court retains jurisdiction during the pendency of the appeal, and the case can move forward. You can alleviate the strain that fighting a two-front war can place on a litigant by filing a motion for stay of the effect of the order, or of the entire litigation, with the trial court. If the trial court denies such a request, the order denying the motion for stay itself is subject to immediate review, which can be accomplished by filing a motion for stay with the district court and attaching a copy of the order denying the motion filed at the trial court level. Fla. R. App. P. 9.310(f).

As a practical matter, a motion for stay of the effect of an arbitration order should be filed as a matter of course, as it does not make sense for a litigant to go through the entire civil trial process before seeking appellate review of an order denying a

motion to compel arbitration. The purpose of this rule is to allow a party to obtain appellate review before going through the arbitration process. *State Department of Health and Rehabilitative Services v. Electronic Data Systems Corp.*, 664 So. 2d 332 (Fla. 1st DCA 1995). However, as surprising as it may sound, this option is available as the rule is clear that the failure to seek immediate review through the mechanism of an interlocutory appeal does not constitute a waiver of the right to seek review of that order after the completion of the litigation. *Episcopal Diocese of Central Florida v. Prudential Securities, Inc.*, 925 So. 2d 1112 (Fla. 5th DCA 2006).

Getting to the Arbitration Order

In order to obtain interlocutory appellate review of a trial court order determining the right of a party to arbitration is to obtain the order to be reviewed. The standard procedure is to respond to the service of the initial complaint with a motion to dismiss and motion to compel arbitration. The goal is to seek an order dismissing the lawsuit and ordering the case into the arbitration process. Whether the trial court's order has the effect of granting or denying a defendant's motion to compel arbitration, the order that results is subject to immediate appellate review in the form of an interlocutory appeal.

The substantive law governing arbitration in the State of Florida seems straightforward on the surface, but as is the case with so many legal issues, the actual facts of any given case can lead to the development of significant complications. As a general matter, the burden is on the party seeking to compel arbitration. The party seeking to compel arbitration must establish three elements in order to obtain an order referring the case to arbitration: (1) the existence of a valid, written agreement to arbitrate; (2) the existence of an arbitrable issue; and (3) a finding that the defendant has not waived the right to arbitration. *Bland v. Healthcare and Retirement Corporation of America*, 927 So. 2d 252 (Fla. 2nd DCA 2006). The standard of review applied by the district court in reviewing the trial court's decision regarding arbitration is *de novo*. *Id.* Therefore, no deference is paid to the trial court's determination.

The standard for determining whether an arbitrable issue exists is fairly broad because most claims that could be brought as a lawsuit can also be addressed within the context of an arbitration. The issue of waiver is generally straightforward, as a defendant is deemed to have waived the right to arbitration if it fails to raise arbitration as an issue in first responding to a complaint, and instead engages in the litigation process, or is otherwise deemed to have taken advantage of the litigation process. The issue that is most often the subject of litigation in the arbitration context is whether a valid agreement to arbitrate exists.

The primary source of contention in litigation involving whether a valid agreement to arbitrate exists is whether the agreement to arbitrate is unconscionable. Many arbitration agreements are executed between individuals and corporations. Often, the corporation provides the individual with a form to sign, in what is typically referred to as a contract of adhesion, in which the party with little to no bargaining power is forced into a situation in which it must execute the agreement as it is worded, or forego

the counter-promise, which may not be a reasonable alternative, especially in a health care setting.

In order for an arbitration agreement to be deemed to be unconscionable, there are two separate analyses that must be performed. In order to be found to be unconscionable, an arbitration agreement must be both procedurally and substantively unconscionable. *Romano ex rel. Romano v. Manor Care, Inc.*, 861 So. 2d 59 (Fla. 4th DCA 2003). Procedural unconscionability is determined by an assessment of all of the facts and circumstances surrounding the execution of the agreement. If the situation as described above exists, one where an individual with no bargaining power is forced to execute an agreement with no reasonable alternative, procedural unconscionability may exist. *Palm Beach Motor Cars, Ltd., Inc. v. Jeffries*, 885 So. 2d 990 (Fla. 4th DCA 2003). Substantive unconscionability is assessed through an examination of the actual content of the agreement itself. *Gainesville Health Care Center, Inc. v. Weston*, 857 So. 2d 278 (Fla. 1st DCA 2003). If a party secures an agreement that deprives the individual of substantive legal rights, the agreement itself may be deemed to be substantively unconscionable. One example of such an agreement is frequently found in the nursing home context, where the arbitration agreement takes away some of the nursing home resident's rights, including a waiver of punitive damages or a cap on non-economic damages. Again, only if the contract is deemed to be both procedurally and substantively unconscionable will the court find that a valid arbitration agreement is deemed void.

The Scope of What the District Court Will Consider

Many issues are raised concerning whether or not the order in question is one determining a party's entitlement to arbitration. As an example, one court has determined that an order staying arbitration is the functional equivalent of an order determining a party's entitlement to arbitration, and therefore is immediately reviewable. *Alphagraphics Franchising, Inc. v. Stebbins*, 617 So. 2d 463 (Fla. 4th DCA 1993).

However, an order that has the effect of deeming an arbitration award to be a nullity is not an immediately appealable non-final order. *District School Board of St. Johns County v. Timoney*, 524 So. 2d 1129 (Fla. 5th DCA 1988). Likewise, a trial court order that grants a motion to vacate an arbitration award and one that denies a motion to reinstate an earlier arbitration award are not reviewable as interlocutory appeals because they are not orders that determine the right to arbitration. *Parvin v. Valhalla Properties on Sand Key, LLC*, 949 So. 2d 1167 (Fla. 2nd DCA 2007). Also, it is important to recognize that while a court can review orders that have the effect of determining a party's right to arbitration, a district court will not review on an interlocutory basis matters that are collateral to the right to arbitration, such as the timing of an arbitration. *A.G. Edwards & Sons, Inc. v. Wilson*, 523 So. 2d 1150 (Fla. 2nd DCA 1987).

With the statewide increase in first-party property damage claims, one issue that has been raised is whether an appraisal that is part of a compulsory process established through the language of a homeowner's policy of insurance constitutes an arbitration under this rule. The law used to provide that an appraisal clause in an insurance policy is an arbitration agreement within the meaning of the rule, thus permitting an interlocutory review. *Florida Select Insurance Company v. Keelean*, 727 So. 2d 1131 (Fla. 2nd DCA 1999). That is no longer the law in Florida; the *Keelean* decision has been abrogated. Now, Florida courts have determined

that an order compelling an appraisal under a homeowner's insurance policy does not qualify as an arbitration for the purpose of interlocutory review. *Burnett v. Clarendon Select Insurance Company*, 920 So. 2d 188 (Fla. 2nd DCA 2006); *Cotton States Mutual Insurance v. D'Alto*, 879 So. 2d 67 (Fla. 1st DCA 2004). Likewise, an appraisal under an automobile policy of insurance does not qualify as an arbitration for the purposes of this rule. *Nationwide Mutual Fire Insurance Company v. Schweitzer*, 872 So. 2d 278 (Fla. 4th DCA 2004).

Interlocutory review of a trial court's decision on the right to arbitration is allowable even in the context in which the trial court does not enforce an arbitration agreement, but instead permits arbitration to go forward outside the four corners of the arbitration agreement itself. *BDO Seidman, LLP v. Bee*, 970 So. 2d 869 (Fla. 4th DCA 2007).

The Importance of Timing

The timing of the notice of appeal is extremely important, and the practitioner should be wary about the potential for traps. For example, the 30 days in which to file the notice of appeal begins to run from the entry of the order determining the party's right to arbitration and is not tolled by the pendency of other motions, including a motion to dismiss the litigation or a subsequently filed motion for rehearing or reconsideration. *Wegner v. Schillinger*, 921 So. 2d 854 (Fla. 4th DCA 2006).

A party can seek immediate appellate review by filing the notice of interlocutory appeal within the 30 days, or that party can wait until the end of the litigation for a review as part of the final judgment. However, what a party cannot do is file a second motion to compel arbitration simply as a mechanism to revive the 30-day time frame in which to file the notice of appeal. *Freedom Life Insurance Company of America v. Wallant*, 953 So. 2d 16 (Fla. 4th DCA 2007).

One court has determined that if a party disobeys an order to arbitrate and, as a result of that party's recalcitrance, the trial court orders that party a second time to arbitration, if the second order comes more than 30 days after the first order, it is too late to appeal the second order. *Henderson v. Tandem Healthcare of Jacksonville, Inc.*, 898 So. 2d 1191 (Fla. 1st DCA 2005). Thus, while the rule allowing for the interlocutory appeal of an arbitration order provides a valuable tool, any advantage the rule provides can be lost if the timing requirements for filing a notice of appeal are not met.

Conclusion

Rule 9.130(a)(3)(C)(iv) can provide a very effective tool for litigants who are signatories to an arbitration agreement. The rule allows for immediate appellate review of an order determining a party's right to arbitration. This means that a party can avoid the expensive process of engaging in a lawsuit in circuit court when it was the purpose of the arbitration agreement to avoid that experience in the first place. Practitioners should be aware of the particular legal nuances that are involved both in interlocutory appeals in general and in the specific case of orders determining a party's right to arbitration.

Michael R. D'Lugo is a partner with Wicker, Smith, O'Hara, McCoy & Ford, P.A. He has been a member of the OCBA since 1999.



Legal Aid Society ● *Guardian Ad Litem Pro Bono Highlight* News ● *An Unexpected Ending to a Long GAL Story*

Neal J. Blaher



Talk about not knowing what's coming down the pike.

I knew when I took the call from the Legal Aid Society's volunteer some 16 years ago, that the Guardian Ad Litem appointment I was accepting would be a bit unusual. It is not unusual in GAL cases for the parents to

be unwed, or to be a racially mixed couple. However, it is unusual to have a case involving parents who are both significantly developmentally delayed and had seven children, each one year older than the next.

The first 10 years of litigation was actually a disturbing battle. The attorneys appointed to represent the parents took the unfortunate course of taking advocacy beyond its prudent limits, to the detriment of the children. The result was that the children's placement was kept in limbo far longer than necessary.

But at long last, the battle was abandoned, and the children found homes, some together with their siblings, others not. Most of the children had turned out almost free of any of the limitations that one might have worried about from their parents' genetics. Therefore, some were adopted, while others were placed into very steady, long-term foster care homes. Only one child had to endure two or three special, therapeutic group homes so that his very serious developmental delays could be addressed.

My role during these years was a bit more varied than in my other GAL cases. However, I made a point of trying to get to know the children and their distinct abilities, limitations, and personality traits. With changes in placement and far more changes in social worker case managers, I unwittingly became a unique constant in their lives. Thus, as the children grew older and began finding some sense of stability, they came to realize that I had been around awhile, and began asking questions about some of the events from their earlier years. This was particularly the case with those who had not been adopted, but had either ended up in long-term foster care or simply aged out of the system.

By 2008, the case was finally winding down. A fully-functioning, well adjusted and now adult niece of the children's birth father had entered the picture, and a few of the older children in particular were drawn to the family tie and moved in with her. She also became a central contact point through whom most of the remaining children kept in contact with each other. This was a particularly endearing aspect of how this case had turned out, namely, despite the children being dispersed in different directions, they were bound and determined to maintain contact and some semblance of family. In the meantime, I remained involved to monitor the progress of the developmentally delayed child who was still living in a therapeutic group home and had not been adopted or aged out.

Then it happened. I received a telephone call from the case manager informing me that the oldest child – who, at the age of 22, had long been on his own and always held a leadership role among the children to fill the void of a father figure – had been killed in a car accident.

Over the years I had quipped that I would end up attending the weddings of all these children. It never occurred to me, however, that I would attend a funeral. And that is precisely what I did just a few short months ago.

What I learned and witnessed firsthand at this funeral taught me a great deal. It also made me realize that we, as Guardians Ad Litem, sometimes do more than what we might appreciate. More importantly, I learned that the lives of the people for whom we are appointed, although often difficult to begin with, can somehow turn out for the better. For despite the obvious tragedy of this death, the story that came out of it was one of extreme hope and optimism.

The funeral took place in a large, "revival"-type church hall whose significance I at first dismissed. However, the speeches I heard that day proved me to be so very wrong. This church truly had been a rallying point and source of inspiration for this young man and many other children like him who very easily could have strayed – and in this case, had in fact strayed – from the straight-and-narrow, only to return to the church as a safe haven after learning some of life's harder lessons.

This young man initially had beaten the odds of his genetic roots and foster care upbringing, done well in school, found himself a job in a basic trade, and otherwise appeared to have set out on the right path. But then he hooked up with the wrong crowd and strayed into less desirable territory, eventually spending some time in jail. When he got out, he decided he needed to do better for himself. But he did not just talk about it – he did it. And in doing so, he inspired others around him.

The accolades that poured in from the adults who had been this young man's advisers and supporters were remarkable and downright inspiring. It was impossible to fight the feelings of absolute pride in what this young man had accomplished and what he had inspired in so many of the people around him, both young and old.

But then there was an entirely separate side of the event I witnessed that day. I watched as multiple families filed in through the formal procession, and I could literally feel the closeness they shared.

First, I saw all six of this young man's birth siblings walk in together. Some of them came with the families with whom they now resided. I then saw the family of the foster parents who had provided the now-deceased boy a home, and who, after he had reached adult age, provided him with an "apartment out back" that he could use as a home in his early 20s until he got on his feet. Finally, I saw his peers huddling together in grief for the friend they had come to know, admire, and love. These three groups of "family," along with members of the church and of civic and sports organizations with which he had been affiliated over the years, literally filled this large room to pay tribute to a young man who, 15 years earlier, had been assigned to me along with his six younger siblings as just another child of unfortunate circumstances, with dim prospects for the future.

I claim little, if any, responsibility for how this boy turned out.

continued page 18

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Emigrating from Rwanda in 2003, “Carla” sought a better life in the United States. Her family was granted asylum and, together with her husband and their two daughters, they hoped to live the American dream. However, leaving Rwanda did not change her husband’s abusive and violent behavior. In fact, “Joe” became more abusive as Carla sought ways to improve herself by learning English and continuing her education. Carla initiated divorce proceedings, received an injunction against her husband, and eventually moved into a women’s shelter in order to keep herself and her daughters safe.

In May 2006, as Carla was waiting in her car at a local store for her husband to deliver her two young girls as per their visitation agreement, Carla was shot and killed. It is believed, but not proven, that Joe killed Carla. Joe was found the following day in the Jacksonville area, having committed “suicide by cop.” Amazingly, the children were found unharmed with a family friend.

“Mrs. Smith” was awakened at 6:00 a.m. the next morning by a family friend who had seen the local news and was shocked to see “Cindy,” age 7, and “Cathy,” age 8, shown in connection with the grisly shooting. Mrs. Smith immediately contacted the Orlando Sheriff’s Department and asked to take custody of the girls. She had been the family’s sponsor in Tampa Bay upon their arrival in the United States. Mrs. Smith was a close friend and knew that problems existed between the couple, but she never imagined the young family she had grown to love would be so tragically changed.

Once the girls were placed with Mrs. Smith and their dependency case opened in juvenile court, the Guardian ad Litem program became the voice for the myriad issues facing the orphaned girls. The parents’ burial, the children’s immigration status, and the unbelievable tangle of issues regarding finances were resolved. Attorney **Stephanie Stewart** contacted both parents’ employers to begin the process of filing for life insurance benefits and final paychecks. She communicated with the Bureau of Victim’s Compensation to get state funds to assist in covering funeral expenses. In addition to filing legal documents and making referrals to the proper agencies, Stephanie listened patiently to the caregiver express her grief and concerns and then made sure that counseling was in place for the family.

In discussing her role as GAL for the children, Stephanie said, “As a mother, it caused me great heartache to see that these children had their mother taken away from them, with Carla being unable to see her two beautiful children grow up. Based on my conversations with Mrs. Smith, I was able to understand who Carla was. I would ask myself, ‘What would Carla want for her children?’ and act on that.”

Because of the circumstances surrounding the parents’ lives, few possessions remained for the daughters to call their own. Stephanie,

however, believed it was important the children have some sort of tangible memory of their parents. Having been in contact with the homicide units, she knew there were items left by each of the parents. With grace and kindness, Stephanie performed a remarkable act. As she recalls, “There was no way I was going to put the children and caregiver through the grief of having to claim the items or see that they were covered in blood....” Even though there were only a few remaining photographs and pieces of jewelry, Stephanie knew they would mean the world to the children. She claimed the items and cleaned them so that the happy memories these items evoked would remain intact.

As for the children’s immigration status, it was believed that the children’s immigration documents would be among the mother’s personal effects left at the shelter. As commonly occurs in moments of confusion and exchanges among strangers, most of the family’s legal documents were lost. Attorney **Kira Romero-Craft** contacted the Orlando and Jacksonville Sheriff’s offices to inquire about the status of any legal documents belonging to the parents for clues to the children’s immigration status. Unfortunately, all that was discovered were travel documents issued in the parents’ names that had been held by the Domestic Relations court with their pending divorce. There was no question that the family was in the United States legally, but it was unknown whether the girls held legal permanent resident status.

Even though Carla and Joe were gone, the fight over the children continued. Now, the fight was over who would be able to adopt the children. Although Mrs. Smith was the first and only person to reach out and accept the enormous responsibility of caring for the girls, a family friend who lived in another state wanted to step into that role. The Interstate Compact on the Placement of Children process was initiated but never completed as it was decided that the girls should be adopted by their refugee sponsor here in Florida. The successful adoption was held in April 2008.

Kira continues to assist the family with their immigration case. The girls have received replacement legal permanent resident cards and now have met the requirements of U.S. citizenship by virtue of being adopted by a U.S. citizen.

Although Carla would not live to see her American dream fulfilled, Mrs. Smith, Carla’s refugee sponsor and the adoptive mother to her children, now 9 and 10, is ensuring that her dream lives on through her daughters and their successes.

For more information on how to assist the Legal Aid Society of the Orange County Bar Association, please contact Cathy Tucker, Deputy Director/Pro Bono Coordinator at ctucker@legalaidocba.org or Donna Graf, Manager of Development, at dgraf@legalaidocba.org

Donna Anne Graf, Manager of Development at Legal Aid Society of the OCBA, Inc., has been a member of the OCBA since 2008.



But “Will it Write”? How Writing Sharpens Decision-Making

Douglas E. Abrams

The 2004 National Football League Draft was fast approaching, and the last-place San Diego Chargers held the first pick overall. Their expected pick, University of Mississippi quarterback Eli Manning, was no stranger to the inner workings of the NFL because his father, former New Orleans Saints quarterback Archie Manning, and his older brother, Indianapolis Colts quarterback Peyton Manning, had preceded him to stardom.

Eli told the Chargers that he would not sign if the team selected him, and he intimated that he would instead re-enter the 2005 draft, expecting selection by another team. Sitting out the 2004-2005 season would mean losing a year's multimillion-dollar income in his athletic prime, but media reports indicated that the young quarterback also believed he could get a more favorable long-term contract from a team in a major media market.

The Chargers did pick Eli first. To avoid a stalemate that would leave them with nothing to show for the first round, however, they immediately traded him to the New York Giants. The rest, as they say, is history. Just ask any Giants fan about the team's 17-14 upset victory over the New England Patriots in Super Bowl XLII in 2008.

How did future Super Bowl Most Valuable Player Eli Manning reach his high-stakes decision to spurn the Chargers and threaten spending a season on the sidelines? “Eli did what I have always suggested in making big decisions,” said his father. “I’m a legal pad guy. He took out a legal pad, drew a line down the middle, and put the pluses on one side and the minuses on the other side. It wasn’t even close, so he went with it.”¹

The Discipline of Writing

This sort of written decision-making also aids presidents, legislators, judges, lawyers, business people, and others who recognize that the discipline of committing arguments to paper can focus thinking more clearly than mere contemplation or oral discussion can. As author John Updike put it, writing “educates the writer as it goes along.”² Indeed, said California Chief Justice Roger J. Traynor, writing is “thinking at its hardest.”³ “The act of writing,” concluded U.S. Circuit Judge Frank M. Coffin, “tells what was wrong with the act of thinking.”⁴

At least three recent Presidents – Richard Nixon, Jimmy Carter and George H.W. Bush – were also “legal pad guys” who methodically penned longhand lists of pros and cons to marshal their thoughts as they wrestled with major policy decisions.⁵ Other leaders reliant on such lists when mulling over vexing personal and professional decisions include Secretary of State Hillary Rodham Clinton; Secretary of Agriculture Tom Vilsack; Senator Blanche Lambert Lincoln and former Senators Lloyd Bentsen, Sam Nunn, Lincoln Chafee and Paul Simon; former Treasury Secretary Robert Rubin; former Congress member and 9/11 Commission vice-chair Lee Hamilton; former governors Michael Dukakis and Pete Wilson; and World Bank President Robert Zoellick.⁶ Even naturalist Charles Darwin made extensive notes listing the pros and cons of getting married before he proposed to his future wife.⁷

Judges offer a solid rationale for written decisionmaking. “All of

us have had seemingly brilliant ideas that turned out to be much less so when we attempted to put them to paper,” said U.S. Circuit Judge Wade H. McCree, Jr. “Every conscientious judge has struggled, and finally changed his mind, when confronted with the ‘opinion that won’t write.’”⁸

Choosing the Format

Rather than listing pros and cons in two columns to expose tentative decisions that “won’t write,” the decision maker might pen longer passages, or even an informal essay. Hand-written diagrams or flow charts might also help. Felt need and personal preference determine the format because the point-counterpoint is normally for the writer’s eyes only, unless the writer shares the document with a small circle of advisors or other colleagues.

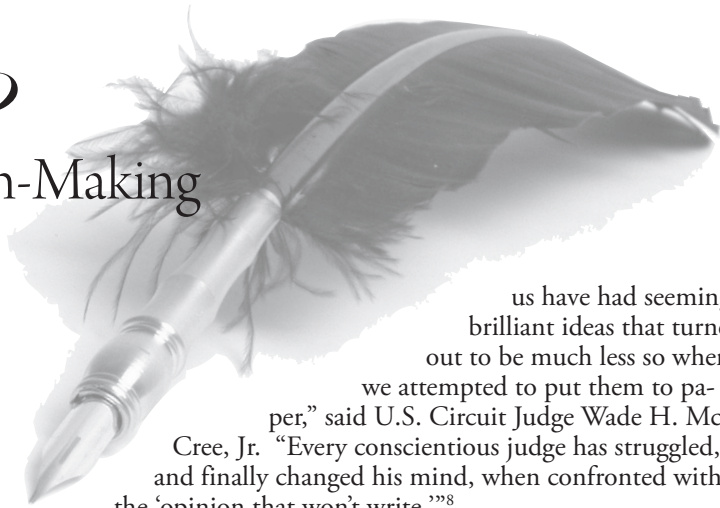
Regardless of the chosen format, writing can influence not only lawyers’ own personal and professional decision-making, but also the advice lawyers provide clients about how to reach decisions on matters within the scope of representation. Some individual and institutional clients adept at problem-solving may already understand how committing thoughts to paper induces careful reflection, but other clients may not.

Written decision making should come naturally to lawyers because it remains fundamental to the American judicial system, and thus to the way law schools teach students to “think like lawyers.” In bench trials or actions tried to an advisory jury, Rule 52(a) of the Federal Rules of Civil Procedure requires the court to “find the facts specially and state its conclusions of law separately.” Appellate courts commonly hand down decisions with signed opinions (including majority, plurality, concurring and dissenting opinions), per curiams, or unpublished opinions or orders stating reasons. These cornerstones of trial and appellate judging hold lessons fundamental to the everyday decision-making of lawyers and their clients.

Rule 52(a)

The trial court’s written findings and conclusions focus appellate review, permit application of preclusion doctrines, and inspire confidence in the trial court’s decisionmaking.⁹ But the federal courts of appeals have also recognized a “far more important purpose” of Rule 52(a), “that of evoking care on the part of the trial judge in ascertaining the facts.”¹⁰ The Supreme Court has recognized that “laymen, like judges, will give more careful consideration to the problem if they are required to state not only the end result of their inquiry, but the process by which they reached it.”¹¹

In *United States v. Forness* in 1942, the Second Circuit gave perhaps the most thoughtful judicial explanation of the prime goal of Rule 52(a).¹² The unanimous panel included Judge Charles E. Clark, the chief drafter of the Federal Rules of Civil Procedure and an acknowledged expert in their meaning and application. Writing for the panel, Judge Jerome Frank said this: “[A]s every judge knows, to set down in precise words the facts as he finds them is the best way to avoid carelessness... Often a strong



impression that, on the basis of the evidence, the facts are thus-and-so gives way when it comes to expressing that impression on paper.”¹³ Judges hold no monopoly on this knowledge.

Appellate Decisionmaking

The appellate court’s full opinion or abbreviated writing shows litigants that the court considered their arguments, facilitates further review on remand or by a higher court, and defines the decision’s meaning as precedent.¹⁴ But the written word’s capacity to sharpen the decision makers’ internal thought processes looms large, as it did in the district court. “The process of writing,” says Justice Ruth Bader Ginsburg, is “a testing venture.”¹⁵

Chief Justice Charles Evans Hughes found “no better precaution against judicial mistakes than setting out accurately and adequately the material facts as well as the points to be decided.”¹⁶

“Reasoning that seemed sound ‘in the head,’” U.S. Circuit Judge Richard A. Posner explained decades later, “may seem half-baked when written down, especially since the written form of an argument encourages some degree of critical detachment in the writer. . . . Many writers have the experience of not knowing except in a general sense what they are going to write until they start writing.”¹⁷

Conclusion: The “Human Factor”

In *Forness*, Judge Frank acknowledged that “fact-finding is a human undertaking” which “can, of course, never be perfect and infallible.”¹⁸ Writing can certainly sharpen thought in everyday decision making, but the outcome depends on prudent use of the writing and other extrinsic sources of information and reason. Listing pros and cons can orient the decision maker, but the list offers no compass pointing ineluctably to the right answer. When President Bush pondered a Supreme Court nomination in 1990, for example, he took a legal pad and carefully penned the pros and cons of naming U.S. Circuit Judge David H. Souter, whose tenure on the Court did not turn out the way the President had anticipated.¹⁹

Because so much professional and personal decision-making involves emotion and other intangibles whose force written words alone cannot capture, the outcome does not necessarily depend on which side of the ledger – pro or con – holds the longer list. Indeed, when Charles Darwin pondered whether to propose to his future wife, his list contained 13 “cons” and only nine “pros,” but he married her anyway.²⁰

The “human factor,” sometimes called a “gut feeling,” may tilt the scale and ultimately carry the day. When Thomas P. Schneider’s term as U.S. Attorney for the Eastern District of Wisconsin ended in 2001, for example, he weighed offers to join large influential law firms at handsome salaries, plus friends’ suggestions that he cap his 29-year career as a prosecutor by running for state attorney general. “As most lawyers would,” reported the *Milwaukee Journal Sentinel*, “Schneider grabbed a legal pad and divided the page into two columns: pro and con.”²¹ Then his wife stepped in. “This is not a legal brief,” she told him. “This is your life.”²²

And the rest is history, as it was with Eli Manning. Schneider rejected politics and lucrative private law practice to become executive director of COA Youth and Family Centers, an agency dedicated to improving poor Milwaukee neighborhoods by enhancing opportunities for needy children and their families. “I’ve always loved working with kids,” he says, “What I really care about is how you make a positive difference in this world.”²³

¹ Rick Cleveland, *Mannings Endure Boos, Slurs and Media Criticism . . . and Life Goes On*, JACKSON (MS) CLARION-LEDGER, May 2, 2004, at 1D.

² John Updike Biography and List of Works, http://www.litweb.net/biography/527/John_Updike.html.

³ Roger J. Traynor, *Some Open Questions on the Work of State Appellate Courts*, 24 U. CHI. L. REV. 211, 218 (1957).

⁴ FRANK M. COFFIN, *THE WAYS OF A JUDGE* 57 (1980).

⁵ *Bob Merry Takes On the Alsop Brothers*, THE HILL, May 22, 1996 (Nixon); Mindy Fetterman, *CEO’s Advise the President*, USA TODAY, June 28, 1991, at 1B (Carter); Susan Fraker et al., *B-1 No, Cruise Yes*, NEWSWEEK, July 11, 1977, at 15 (Carter); Anne Reilly Dowd, *How Bush Manages the Presidency*, FORTUNE, Aug. 27, 1990, at 68.

⁶ Ann McFeatters, *Pros, Cons of Clinton Campaign*, PATRIOT LEDGER (Quincy, Mass.), Mar. 6, 1999, at 31; Judith Nygren, *Vilsack Pursues Vision of Strong, Vibrant Iowa*, OMAHA WORLD HERALD, May 30, 1998, at 1; Jane Fullerton, *Twins In the House*, ARK. DEMOCRAT-GAZETTE, June 4, 1996, at 1E (Sen. Lincoln); Donald M. Rothberg, *With a War On, Even Democrats Want Bush For President*, LEWISTON (IDAHO) MORNING TRIB., Feb. 17, 1991, at 1A (Sen. Bentsen); Eric Schmitt, *Even G.O.P. Asking Nunn Not To Retire From Senate*, N.Y. TIMES, Oct. 2, 1995, at A10; *Chafee Says He’ll Consider Switching Parties If GOP Retains Senate Control*, THE BULLETIN’S FRONTRUNNER, June 12, 2001; Lynn Sweet, *Why Simon Won’t Run*, CHICAGO SUN-TIMES, Nov. 15, 1994, at 1; Sharon Walsh, *Rubin Will Share Helm at Citigroup*, WASH. POST, Oct. 27, 1999, at E1; Mike Dorning, *Open-Ended Impeachment Investigation Approved By House*, CHICAGO TRIB., Oct. 9, 1998, at 1 (Rep. Hamilton); Stuart K. Spencer, *Dukakis Picking His Second Place*, L.A. TIMES, July 3, 1988, at pt. 5, p. 3; Jerry Roberts, *Wannabe Wilson Searches His Soul*, SAN FRANCISCO CHRONICLE, Mar. 5, 1995, at 7; Joseph Kahn, *A Washington Veteran For Labor; A Tested Negotiator For Trade*, N.Y. TIMES, Jan. 12, 2001, at 17 (Zoellick).

⁷ *Who Was More Important: Lincoln or Darwin?*, NEWSWEEK, July 14, 2008, at 30; *Death Of Child May Have Influenced Darwin’s Work*, Nat’l Public Radio, Morning Edition, Feb. 12, 2009; *Cautious Evolution of Charles Darwin*, NORTHERN TERR. NEWS (Australia), Feb. 7, 2009, at 20; Mary Harris Russell, *View of a Remarkable Scientist*, CHICAGO TRIB., Jan. 3, 2009, at 3.

⁸ Wade H. McCree, Jr., *Bureaucratic Justice: An Early Warning*, 129 U. PA. L. REV. 777, 790-91 (1981). See also, e.g., Frank M. Coffin, supra note 4, at 57; Robert E. Keeton, *JUDGING* 137 (1990); Ruth Bader Ginsburg, *Workways of the Supreme Court*, 25 THOS. JEFFERSON L. REV. 517, 526 (2003); Kenneth F. Ripple, *Legal Writing In the New Millennium: Lessons From a Special Teacher and a Special “Classroom,”* 74 NOTRE DAME L. REV. 925, 926 (1999); Roger J. Traynor, supra note 3, at 218; Patricia M. Wald, *The Rhetoric of Results and the Results of Rhetoric: Judicial Writings*, 62 U. CHI. L. REV. 1371, 1374-75 (1995).

⁹ CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 2571, at 219-22 (3d ed. 2008).

¹⁰ *United States v. Forness*, 125 F.2d 928, 942 (2d Cir. 1942). See also, e.g., *Martin Midstream Partners v. Boone Towing Inc.*, 207 Fed. Appx. 439, 441 (5th Cir. 2006); *Chavez Properties-Airport Parking Albuquerque, LP v. Lorentzen*, 204 Fed. Appx. 745, 758 (10th Cir. 2006); *Davis v. New York City Hous. Auth.*, 166 F.3d 432, 435 (2d Cir. 1999).

¹¹ *United States v. Merz*, 376 U.S. 192, 199 (1964).

¹² 125 F.2d 928 (2d Cir. 1942).

¹³ *Id.* at 942.

¹⁴ Cf. *Baker v. Canada (Minister of Citizenship and Immigration)*, 2 S.C.R. 817 ¶ 39 (S. Ct. of Canada 1999) (L’Heureux-Dube, J.).

¹⁵ Ruth Bader Ginsburg, *Remarks on Writing Separately*, 65 WASH. L. REV. 133, 139 (1990).

¹⁶ CHARLES EVANS HUGHES, *THE SUPREME COURT OF THE UNITED STATES* 64 (1928).

¹⁷ Richard A. Posner, *Judges’ Writing Styles (and Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1447-48 (1995).

¹⁸ *United States v. Forness*, 125 F.2d 928, 943 (2d Cir. 1942).

¹⁹ Anne Reilly Dowd, supra note 5, at 68.

²⁰ William Hartston, *Ten Things You Never Knew About . . . Charles Darwin*, THE EXPRESS (England), Jan. 7, 2009, at 30.

²¹ Gina Barton, *From Courthouse to Social Service Agency*, MILWAUKEE J. SENTINEL, Nov. 17, 2002, at 1B.

²² *Id.*

²³ *Id.*

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**Legal Aid Society:
Guardian Ad Litem**

continued from page 12

But, by simply fulfilling the basic responsibilities of a GAL to identify the best placement for a child and achieve some stability in placement, we can at least offer some hope that the rest of the players will do their jobs, and that the child himself or herself will take advantage of the limited opportunities given and hopefully do something positive with those opportunities.

As I said at the beginning, I never thought I would ever be attending the funeral of a child appointed to my care. But I feel privileged and enriched for having had the opportunity to spend so many years trying to help a particular group of siblings have a better environment and thus a better chance than would be expected from the tragic cards that were dealt to them. The privilege was made even greater as a result of witnessing such an inspirational story turn out from all that.

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Neal J. Blaher is of counsel to the firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. He has been a member of the OCBA since 1988.



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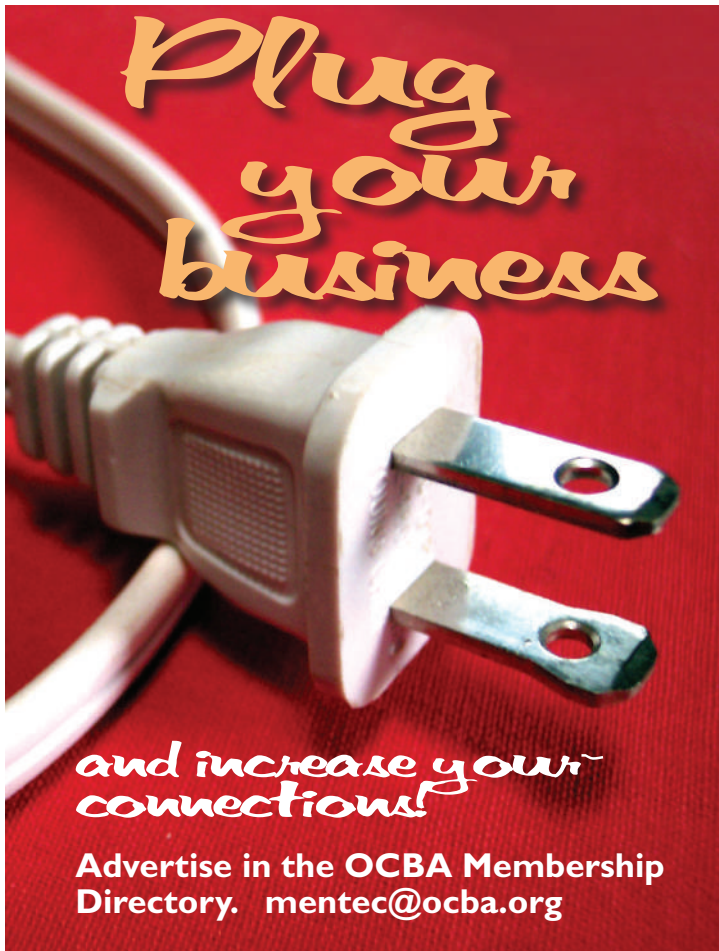
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2.

Jessica Hew, Tad Yates



3.

Kristen K. Cox, Woody Rodriguez, Vivian P. Cocotas

1. President's Award for Outstanding Service to the OCBA - Law Firm of King, Blackwell, Downs & Zehnder, P.A.
2. Outstanding Service by an Executive Council Member
3. Outstanding Service Award - Gala Chairs
4. Outstanding Service Award - Foreclosure Mediation Program
5. Crystal Gavel for Outgoing President
6. Recognition of Incoming President from the Hispanic Bar Association
7. Mrs. Virginia Rodriguez
8. Installation of OCBA Officers & Executive Council



4.

Woody Rodriguez, David W. Henry



5.

Woody Rodriguez, Tad Yates



6.

Woody Rodriguez, Cindy Duque



7.

Mrs. Virginia Rodriguez



8.

Installation of OCBA Officers & Executive Council



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2. Young Lawyers Section Oath of Office
3. 2009-2010 OCBA Foundation Officers & Board Members
4. The OCBA Foundation Oath of Office
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6. Judge Julie O'Kane, Judge Alice Blackwell, Bruce Blackwell
7. Installation Dinner & Awards Banquet Attendees

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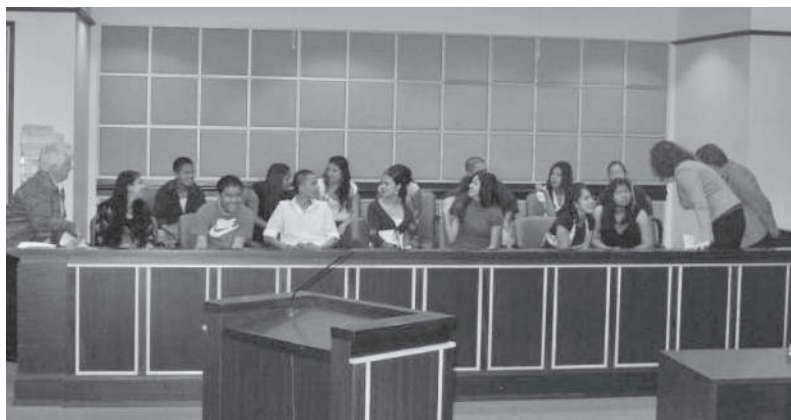
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LAW WEEK

The OCBA Paralegal Committee's Law Week Mock Trial with the Apopka Farmworker's Ministry was held in March. The youth participated with lawyer and judge advisors and served as the trial jury. Discussion, a jail tour, and lunch at the courthouse followed the mock trial.



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Hearsay

*Good night, good night!
Parting is such sweet sorrow,
That I shall say good night till it be tomorrow.*

- ROMEO AND JULIET, ACT 2, SCENE 2



Nicholas A. Shannin

Listen. Nick Shannin has come unstuck in time. Returning to my original crutch, borrowed from Vonnegut over two years ago for my first “Hearsay” column, I use it to let you know now what I have known since the end of May – that I am retired!!! Yup – my two-year tour of duty has concluded, even continued a couple of issues past the May issue while the government processed my paperwork, but the Section 8 has been granted, Toledo here I come. I am soooo ready, too – I already know when to finesse the King into an Ace-Queen tenace; and I can dutifully throw a defensive stone to shield my triangled ten from an opponent’s strike.

Fine, if I’m moving on to Bridge and Shuffleboard R Us, who will take over this column in all of its glorious gossipy grandeur? None other than “Hearsay” fave and prior OCBA social committee chair, **Kim Webb** “2.0”!

Actually, the Web 2.0 reference makes even more sense for Kim in her new role. The turn of the millennia Internet concept of “Web 2.0” is defined as the second generation of web development, characterized as facilitating communication, information sharing and collaboration. Collaborating, communicating and information sharing? Couldn’t get more pitch-on for the role of a “Hearsay” columnist! Moreover, one of the most commonly used Web 2.0 tools is Facebook, which many of you readers have used to correspond with me – and now can use to correspond with Webb 2.0 directly as well, since she, too, is a Fan of the Facebook.

Now, when Ms. Webb takes over next column, one thing that will likely change is you will find yourself in her own fresh new style, which will happen to be a moniker-free environment. No, I didn’t go Pat Riley and copyright my various nicknames ascribed to those who happened to land in my two-year run as

Mr. Hearsay. Still, just as a Bermanism sounds odd coming from another sportscaster, so it is that most of the “inside the quotes” phrases should follow me into retirement, much to the joy of many who may not have voted for the name had they been given a choice! But, since I still have the quill and a smidge of ink left, what say we go through some of “Hearsay”’s faves over the last several columns and explain the origin of the quoted portion:

- 1) My *The Briefeds*: K2 is easy enough – it’s always tricky remembering where the “y” goes in **Kristyne**’s name anyway, plus K2 (or even K-Square) takes up a lot less space.

Useful when your name comes up as often as K2’s did. Z-man or Z-pac is also self explanatory for the rare end-of-the-alphabet dweller that is our own **Tommy Z**.

- 2) The one-name crew: There are only two, and they both can be found at Rumberger. **Leon. LaShawnda**. You all know who I’m talking about – last names are entirely unnecessary with these “Hearsay” frequenters. And with LaShawnda’s ascendancy to co-editor of *The Briefs*, she’ll have the power to erase other people’s names, too, so stay on her good side!
- 3) The other new *The Brief* editor: Ok, last episode, I named her **Kim** “Don’t I get a nickname” **Healy**. Well, as parting present, yes, yes you do. “Kim Healy, Chevrolet” (sung to the tune “Don Mealy, Chevrolet,” of course!), congrats on being the last new nickname minted!
- 4) The Bar Presidents: There’s a slew, so here goes: a) Sheriff **Woody Rodriguez** – an obvious reference



to both his position and the classic protagonist from *Toy Story*; b) **Tad** “Keats and” **Yates** – thought by most to be purely a literary reference, it is actually a line from a Smiths song (“Keats and Yates are on your side”). Original *The Briefs* co-editor Z-man being a Smiths fan, Tad’s nickname was an “Easter egg” for the new editor to find in his first proofreading assignment; c) **Gene** “Splicer” **Shipley** – no one was happier to see Tad elevate to the office of president than Gene!; d) **Tom** “T.P.” **Wert** – our Citrus Sports actor had this moniker back in law school. My job was simply to bring it back to allow his mates to reminisce about all those good times with Jones and Probert; e) **Bill** “kickstand” **Sublette** – Bill will soon be helping our county’s children get the quality public education they deserve, but in the meantime he’s still stuck with the reference to his bike accessory of choice as described by TP; f) **Wayne** “’s World” **Helsby** – people don’t recall that it was the not-from-Peoria Wayne who brought the social committee concept from YLS to the OCBA; g) **Paul** “Me with better hair” **SanGiovanni** – I and this Legal Aid loyalist share many similarities, but he has twice as much hair and twice as many kids. I’ll call it even!; h) **Brian** “Beach Boy” **Wilson** – “Pet

Sounds” was ranked recently as the number three album of all time. Congrats to our Surfin’ ex-prez! i) **Mary Ann** “W’s Brother” **Morgan** – her brother’s uncanny reenactments of a certain other Nicknamer made him a celebrity too. (My nicknames are cleverer, though!) j) **Mayanne** “President-Elect” **Downs** – our OCBA pres is now one year removed from being Florida Bar president, first since, well, three entries down!; k) **Bruce** “Fish are Friends, not Food” **Blackwell** – our Florida Bar Foundation pres and all around great guy gets his name





from the character in *Finding Nemo*. Sheriff Woody approves. l) **John “Go Duke” Lowndes** - as referenced in an early “Hearsay” column, my first legal job was as a

document courier for LDDK&R. I can tell you that much dark blue and white can be found in those halls! That and someone’s shoe that kept getting sent by manila envelope via intra-office mail...; and last but certainly not least: m) **Russell**, who joins Leon and LaShawnda in “Hearsay”’s select one-name club. Don’t forget to tell Mayanne your secrets from your days as our Florida Bar President, Russell!

- 5) Da Judges: Ok, judges don’t get nicknames. So even though Judges **Maura Smith, Julie O’Kane; Jeffrey Arnold; Cynthia MacKinnon; Robert Pleus; Patricia Fawsett; Mike Murphy; John Antoon; Alan Lawson; Jay Cohen** and even Justice **Peggy Quince** all made the “Hearsay” column, their well established “Judicial Immunity” has kept them moniker-free. The one exception: The **Judges Kest**, who between them have one OCBA presidency term and three LAS presidency terms, get their unique dual status forever immortalized in their kind willingness to allow “Hearsay” to report on their continued derring-do in their collaborative efforts for Truth, Justice and the Kest way!
- 6) Noted Notables: Still more nicknames abound from the pages

past – too many, in fact, to hope to recite them here. Nonetheless, a couple must be unearthed and acknowledged – or at least explained – here: **Wiley “E.” Boston** is the obvious reference to our ACME using, Roadrunner-questing friend. Don’t you all secretly wish that one day the Coyote wins? **Ian Forsythe** and **Brian Phillips**: My Separated-at-Birth victims for the Coke Zero commercials. Tell me you don’t think of these lawyers when you see these. Brian: “It tastes just like Coke, what do you expect me to do?” Ian: “I want you to pull the knife out of my back when I turn around.” Zing!; Supafan – **Sarah Rumph** is the kind of supporter you wish your team had, but it



doesn’t – unless you’re a Gator. Keep up the great work, Lady Sarah! Another Sarah who has frequented these pages is **Sarah “neither plain nor tall” Reiner**, a reference to Newberry winner Patricia MacLachlan. **Eric** “Everything starts with an E” **Eisenaugle** has taken the “Hearsay” mention and turned it into a position on in the state legislature! The nickname stems from his double-E initials and a song of the same title. Requiring a little more explanation is **John “Sawbuck” Hamilton**. Hamilton, our famous duelist who got the short end of the stick when attempting to duel Aaron Burr (remember the hilarious Got Milk commercial?) Alex is one of two non-presidents to grace our monetary notes. Alex’s bill? The

ten. An old-school nickname for the ten? A sawbuck – so named because a carpentry sawbuck forms an “X” on each end. X = ten, Hamilton’s bill of choice and therefore John’s head-scratching nickname! Last on this list will be our poker chairs: **Shayne “Gunslinger” Thomas** and “Wild” **Bill Umansky**. The latter a reference to our Aces over Eights gunslinger, the former to one of the all-time classic Westerns, *Shane*. Wild Bill + Shayne = poker chairs of destiny!

- 7) Trivia Contests! We had lots, and most were won by either **Jamie** “I have for you 15 [crash] 10 commandments!” **Moses** (Mel Brooks’ classic, *History of the World Part I*) or **Bill “Go Rice” Davis** (my only colleague for the Central Florida Rice University Attorneys meetings!) Still, a big thanks to those who tried to beat them and a reminder – OCBA TRIVIA CONTEST coming in August. Look for details soon!

And that, my friends, is enough say “So long, and thanks for all the fish.” A special thanks to my **partners at Page, Eichenblatt, Bernbaum and Bennett** who allowed me to donate my time to this worthy cause. I’ll conclude by pulling from the earlier Shayne reference. The movie closes with Joey shouting “Shane! Come back!” as he watches him ride into the mountains. Well, I’m a ridin’ off, mi amigos, and thanks for joining me on the trip. Adios!

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.

Adios!



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OCBA *Legal Aid Society* 2008-2009 Pro Bono Awards

May 27, 2009 * The Ballroom at Church Street

Heather Pinder-Rodriguez, newly installed President of the Legal Aid Society, presented the Pro Bono Awards.



Robert L. Dietz



Joseph Neduchal, James Magee

Nick Shannin, Mary Anne De Petrillo,
Heather Pinder-Rodriguez



The Legal Aid Society Pro Bono Award Recipients

**Judge J. C. "Jake" Stone
Distinguished Service Award**
Robert L. Dietz

Law Firm Award of Excellence
Neduchal & Magee, P.A.

Individual Award of Excellence
Richard A. Culbertson
Catherine E. Davey
William A. Davis, Jr.
Thomas F. Egan
Dana H. Hankins
Allen Daniel Holland
Glenn R. Leong
Wynne E. McFarlin
Mark V. Morsch
Abigail M. Johnston
Thomas A. Zehnder

**Government Attorney
Award of Excellence**
Alana C. Brenner
Patricia S. Dullaghan

**New Attorney
Award of Excellence**
J. Giffin Chumley
Kimberly E. Hosley
Deborah S. Korleski-Poindexter

Volunteer Advocate for Children
Donna Mikulski

Kimberly Hosley



Alana Brenner



Richard Culbertson



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Donna Mikulski



Abigail Johnston



Catherine
Davey

Outgoing
President
Nick Shannin



William Davis



Dana Hankins





YLS *on the move*

Celebrating Summer

Sunny A. Hillary

As we celebrate Independence Day with family barbecues, hamburgers, and hot dogs,

a scoop (or two) of potato salad here, a handful (or three) of Cheetos there, just tell yourself what the late Erma Bombeck once said, "You may think you have over-eaten, but it is patriotism!"

Now, let's see what the YLS is doing this summer.

An Afternoon at the State Courthouse, held on June 19, 2009, was a great success! The seminar provided helpful hints for attorneys practicing before the County and Circuit Judges of the Ninth Judicial Circuit, as well as insight into local judicial practices and procedures. More than 100 attorneys, paralegals, law students, and other legal professionals attended the seminar. Thanks to **Jonathan Stimler** for chairing the event and to all those who participated.

The deadline for applications for the annual **YLS Scholarship** is July 3, 2009. As in previous years, the scholarship will be awarded to an outstanding Orange County high school senior who wishes to attend Valencia Community College for two years and then move on to a State of Florida university (e.g., University of Florida, Florida State University, University of Central Florida, etc.). If you have any questions regarding the Scholarship, please contact **Bona Kim** at 407-571-2152 or bkim@anblaw.com.

The annual **YLS Law Clerks' Reception** will be held on Wednesday, July 22, 2009 from 6:00 p.m. to 8:00 p.m. at the Orlando Shakespeare Theater, located at 812 E. Rollins Street, Orlando, Florida 32803. As one of the biggest events of the year, it is a wonderful opportunity for law clerks in and around Orange County to meet and talk to local attorneys and judges. If you are interested in attending the Law Clerks' Reception, please email **Jacquelynne Jordan** at jordanjm@lowndes-law.com.

The **Backpack Project** is back! It is time for us to provide needed school supplies to Rock Lake Elementary School. Donations can include crayons, pens, pencils, markers, notebook paper, sets of begin-

ning word flashcards, construction paper, binders, scissors, protractors, tissues, notebook pencil pouches, backpacks, and more. For more information about this project, to make a monetary donation towards the purchase of school supplies, or to drop off school supplies, please contact **Melanie Griffin** at 407-428-5106 or mgriffin@deanmead.com. Thanks in part to the Backpack Project and the continuous support of the YLS over the years, Rock Lake has risen from an "F" school to an "A" school. Let's help the students of Rock Lake continue to succeed in the upcoming school year!

As a reminder, the annual **YLS Charity Golf Tournament** is coming up in October. Another one of the biggest events of the year, it is not only a great opportunity to play a round of golf with your clients and colleagues, but all proceeds go to funding various charitable projects that the YLS organizes throughout the year, including the YLS Scholarship and the Backpack Project. Please email **Amber Nielson** at anieilson@iplawfl.com or **Sunny Hillary** at sunny@brownstonelaw.com, for more information.

The **YLS July Luncheon** will take place on **July 16, 2009** at 11:45 a.m. Please bring your law clerks to the July luncheon so that they can be introduced to, and learn about, the YLS. Email your RSVP to ocbayls@gmail.com. The cost is \$20 if you RSVP on or before July 14, 2009, or \$22 at the door.

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



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



YLS members raised money for the American Cancer Society at the '80s-themed Happy Hour at Scruffy Murphy's on May 1 and the Relay for Life of Winter Park on May 2, 2009.



YLS participants in the Relay for Life

Orange County Teen Court Awards

The Orange County Teen Court held its annual awards and graduation event at the Thomas S. Kirk Juvenile Justice Center on April 23, 2009. The highlight of the evening was the presentation of the Founder's Award in recognition of individuals who not only believe in the program but are devoted to its success.

Teen Court is a program of the Ninth Judicial Circuit that is designed to expedite the cases of first-time misdemeanor offenders and divert less serious cases away from the more formal Juvenile Court by providing a jury of teen peers for defendants appearing in Teen Court. The program provides a forum for defendants to explain their involvement in the offenses, offers a structured environment in which the words and actions of the defendants who admit their wrongful acts are evaluated and judged by a jury of their peers, and provides an opportunity for defendants to accept responsibility for

their actions by fulfilling the jury's sentence of community services hours and future jury duty assignments, both of which are designed

to be constructive and rehabilitative. Teen Court is based upon the premise that youthful offenders will more readily accept responsibility for their actions when judged and sentenced by their peers.

Three individuals received the Founder's Award this year. Attorney **Angel Bello-Billini** of the Orange County Legal Aid Society was the first recipient and has volunteered with the program since its inception in 1996. He has developed a great rapport with the teens on the jury and has always given feedback on their work in the courtroom and in the jury room.

Attorney **Patricia Savitz** of The Florida Bar was the second award recipient. She has served as a Teen Court advisor and judge since 1989, devoting hundreds of hours to the project. She has also been recognized by Legal Aid with an Individual Award of Merit for her *pro bono* work, including her work with Teen Court.

The third award recipient was attorney **Kimberly J. Mann** of the Ninth Circuit State Attorneys Office, who has been a volunteer with the program since becoming an attorney in 1999.

The Thomas S. Kirk Scholarship recipient was student Steven Seidman, who volunteered a total of 968 hours from 6th through 12th grades. This is a record for a graduating teen volunteer. Members of the Orange County Teen Court have seen Steven grow up in the program and are proud of his steadfast dedication and accomplishment. He plans to attend Valencia Community College upon graduating from Oviedo High School in June. Several other graduating seniors received stipends for their service.

Submitted by **David Medvec**, Orange County Teen Court Coordinator:



Patricia Savitz



Kimberly J. Mann



Angel Bello-Billini

David Medvec, Orange County Teen Court coordinator, presented the Founder's Day Awards.

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Area students who competed in the Law Day poster and essay contestants received awards at the April luncheon. Law Week was chaired by Executive Council member Paul Scheck (shown on right with Woody Rodriguez) and co-chaired by Catrina Chapin (shown on right with students). Judge Faye Allen and Judge Bob LeBlanc were also instrumental in organizing and conducting Law Day events.



Jane Curran, Executive Director of The Florida Bar Foundation, was the guest speaker at April's luncheon and is the 2009 Liberty Bell Award recipient.



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The 2009 Law Symposium, sponsored by the OCBA, Orange County Public Schools and the Juvenile Justice System, was held on April 15 at the OCBA Center. The program provides information about current education practices, curriculum and student issues to area teachers, guidance counselors, school principals and others in the field of education. The OCBA has co-sponsored the event for more than thirteen years.

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He's only been speaking for ten minutes, but already you're sorry you re-scheduled that root canal appointment. So far he's discussed what his plans are for the board, who he wants to partner with, how he prepared for this position, and how he wants you to help him during his term as chairman. You sit in the audience, trapped, thinking to yourself, "So what? Who cares? I've got a billing quota to make, a brief due next Tuesday, and the temperature in here is freezing. Who cares about what you want?"



Elliott Wilcox

Sound familiar? We've all listened to speakers drone on about what they've done, what they want to do, how they want to do it, and who they want to do it with (or to).

Worse yet, some of us have done the exact same thing. Whether arguing a summation, presenting a community program, or speaking with our kids, we talked about what *we* want, rather than what our audience wants.

Let's be blunt: **audiences don't care what you want.**

It's not about you. Audiences are composed of people who care about what *they* want. They want to be healthier, happier, smarter, safer, and richer. They want to be better parents, investors, communicators, leaders, or lovers. They want to be more productive, more efficient, have more pleasure in their careers, and avoid the pitfalls and perils of public and private life. Audiences listen to speakers because they want us to enhance their lives.

Do you want to be a successful speaker? Do you want the audience to listen to your every word? Would you like your audience to think, act, or feel differently when you're done speaking? You need to begin by understanding one simple fact: **It's not about you.**

Tune into W.I.I.F.M. Don't start your speech by saying, "I would like..." or "I want..." Instead, start your speech by turning the dial to W.I.I.F.M. That is the radio station every audience member is tuned into: "What's In It For Me?" Remember, you're competing with all of the other ideas and concerns spinning through your audience's minds. They're thinking about their jobs, their families, what they have to do tomorrow, who they need to talk to, bills they need to pay, whether or not they turned off the iron before they left the house this morning, and a dozen other concerns. If you can't give your audience something of value, they tune you out and switch to one those competing thoughts.

Sit in your audience. Want them to pay attention? Start by thinking about your speech from your audience's point of view. What do they want to learn? What do they want to do differently? How can you help them improve? Tune into your audience's wants, needs, and desires. Ask yourself, if I was sitting in the audience, would I be interested? If I didn't know this speaker, would I care about what he has to say? Is this a worthwhile use of my time? If you answer, "No," ask yourself, "Why not?" Are you talking about what you care about, or

are you talking about what they care about? Find out what your audience wants, and give it to them.

Provide more than they expected. If you are speaking to advertise your firm or your legal expertise, don't spend time talking about how great you are or how wonderful your firm is.

They don't care.

Instead, talk about the benefits you can provide. Can you help their business save money? Can you protect them from potential lawsuits? Can you help them plan for retirement or to avoid a messy probate situation? That is what the audience cares about.

This approach even applies to jury trials. Do you want them to find the defendant liable? To tell the plaintiff he has no case? To find someone guilty? I bet you're already ahead of me by now: **they don't care about what you want.**

Think to yourself, "If I was sitting in the jurors' seats, why would I care about this case? What's in it for me?" When you can answer that question and tie it in to the outcome your client's desires, you have a successful trial presentation on your hands.

So what do they care about? They want to walk out of that courtroom and feel they've done their civic duty. They want to think they've been fair. They want to know they've been just. Talk about what they want. Show them how their verdict prevents an injustice.

Remember: it's not about you. To present successfully, talk about what your audience cares about.

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

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Rainmaking *Begin Marketing Retreats - Part 3*



Mark Powers



Shawn McNalis

As we discussed in the first and second part of this series, holding an annual marketing retreat is one of the best strategies we know to increase your marketing effectiveness. By pausing to take a good look at your past efforts and plan for the coming year, the strategic value of your client development efforts is dramatically increased.

We have discussed why marketing retreats are valuable, who should attend, and what you should examine in your efforts to test the viability of your current marketing direction. We have also focused on how to set up a retreat and create a comprehensive agenda. In this article, we will narrow our focus to discuss specific client development ideas to place on your agenda. Ideas such as: building your reputation, energizing your bar participation, and hosting client development events. In addition we will suggest ways of using your retreat as a springboard to an ongoing structure of support for your client development efforts.

Build Your Reputation

Prior to your retreat, take a look at how you and your firm are perceived by the larger community – this is an area often overlooked by up-and-coming firms. Have you done anything lately to build your reputation? The following list of goals related to raising your profile are examples of goals our clients have actually used in their year end retreats in order to round out their agenda. Read through the list to see if any of these goals would be applicable to you and your situation. If so, add them to your agenda for discussion:

- **Increase your visibility by being quoted or mentioned in the publications your clients read**
Sample goal: Identify the publications most read by your clients, then send one press release a month on topics which are hot-button issues.
- **Increase your visibility on local or national television**
Sample goal: Cultivate television reporters and/or news anchors in your area so they turn to you for commentary on local and national events.
- **Increase individual reputations**
Sample goal: Accumulate “mentions” in trade journals or bar newsletters.
Sample goal: Cultivate placement on business or non-profit boards.
Sample goal: Begin the process of additional training and/or board certification.

Host Activities and Events

The events and activities you participate in often shape the perceptions of you and your firm held by the community at large. Read through this list and decide which event-related goals you might want to discuss at your retreat.

- **Hold a signature event every year**
Sample goal: Host a party to celebrate the firm’s anniversary every year (or host an event themed around a holiday, client appreciation or charity).

- **Begin a seminar or a series of speaking engagements**
Sample goal: Schedule one speaking engagement or seminar per quarter on issues of most importance to potential and existing clients.

Join Your Clients’ Organizations

If you are not a member of organizations other than the bar, take a look at the kind of organizations that your clients join, both business and community related. Once a member, see if you can:

- **Become a high-profile presence**
Sample goal: Arrange to speak to or teach the group on a regular basis.
- **Become recognized as an expert**
Sample goal: Write an article or column for their newsletter or trade journal.
- **Become a contributing member**
Sample goal: Sponsor hospitality suites, golf games or dinners in conjunction with special events or conferences.

Schedule Weekly Lunches

The Atticus golden rule for marketing: engage in at least three marketing contacts a week. In order to meet this standard you can:

- **Have lunch with people on your Top Twenty and Firm Team lists**
Sample goal: Meet influencers, important clients or potential referral sources for lunch three times per week (or have at least two lunches plus a dinner event every week).

Energize Your Bar Participation

If you, like most attorneys, get much of your business from other attorneys, local bar events are great places to:

- **Spend time with existing referral sources**
Sample goal: Use every event as an opportunity to invite another bar member out to lunch in the following week.
- **Sit next to new people at bar events to get to know them**
Sample goal: Meet one new person at every event who could be a potential referral source for you.
- **Participate in or lead a committee**
Sample goal: Join a committee and use it as an opportunity to contribute your talents and meet fellow members.

Play Up Your Passion for Sports

If you, or other attorneys in your firm, are sports fans, make the most of your interests and try to:

- **Schedule a regular sports-related marketing event quarterly, monthly or weekly**
Sample goal: Calendar golf or tennis on Friday

afternoons and invite different referral sources to participate.

- **Purchase season tickets**

Sample goal: Use your season tickets to cultivate important clients, as well as existing and potential referral sources.

Cross Selling Opportunities

Consider the following technique to get to know your partners' clients and cultivate further work:

- **VIP lunches, Reverse Seminars**

Sample goal: Host an event in your conference room that features one of your clients or referral sources who may have need of additional legal services in the future. Introduce the client to everyone in the firm and ask the client questions about his or her business.

Hire a Marketing Assistant

If those charged with client development are not good at initiating marketing activities and events, determine if it's prudent to recruit a paralegal or a secretary to act as your marketing assistant. This individual can:

- **Schedule marketing lunches and speaking events**
- **Coordinate your annual signature event**
- **Manage or coordinate updates to your web site**
- **Write or coordinate others to write a firm newsletter**
- **Capture new client data to gauge the effectiveness of your marketing efforts**

Create a Structure of Accountability

Though marketing is not complicated, it is daunting for attorneys who lack confidence in their client development skills. Both young and old attorneys attempting to adopt challenging new behaviors are helped when a structure of accountability is in place. Creating a structure of accountability means setting up regular meetings at which the goals established at the retreat are discussed, and progress is reviewed.

These meetings, held on a quarterly or monthly basis, offer opportunities for further learning, and advanced strategizing and brainstorming about what is working and what is not. They also provide an opportunity to identify inattention to goals early in the process. To be successful, your accountability

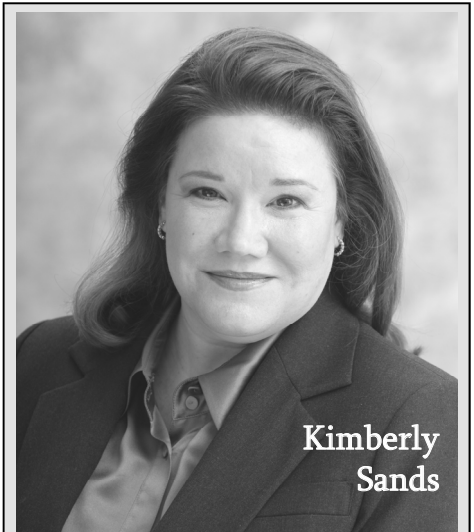
structure must have consequences for non-compliance. We recommend that a senior partner who is respected by the team conduct the meetings to give them the appropriate weight. Many firms provide additional incentive by creating bonuses based on client development goals such as originating a certain number of new clients a month. For an associate with some experience, the goal might be one new client a month. For a more experienced attorney the goal might be two new clients, depending on the attorney's level of experience, number of contacts and networking abilities.

Since partnership opportunities often depend in part on an associate's ability to bring in new business, helping an associate become a better marketer helps not only the associate but the firm as a whole.

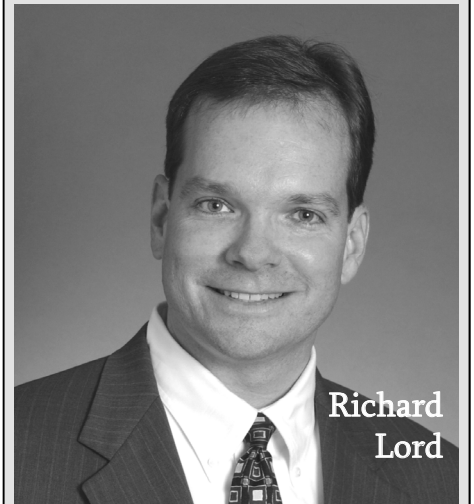
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Holding an annual marketing retreat is important to the growth of your firm. Taking consistent action on the goals you've identified in your marketing retreat is even more important. The more often the goals to raise your profile in the community cultivate new referral sources and clients are reviewed, the better.
•

Even if you do not meet your goals perfectly, go about trying to achieve them with confidence – in trying to achieve them you will do much more than you would have otherwise. Set your goals high, and provide as much internal support and education as possible, because in the words of Ralph Marston, "Your goals minus your doubts equal your reality."

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



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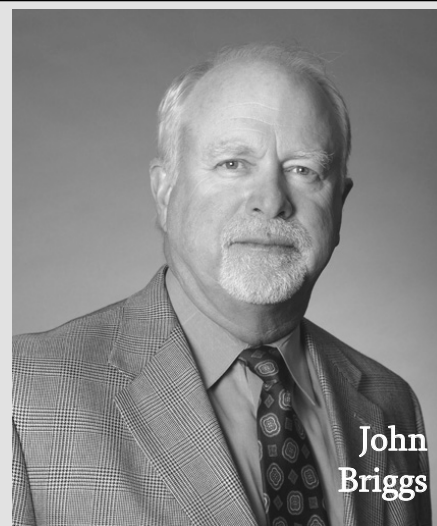
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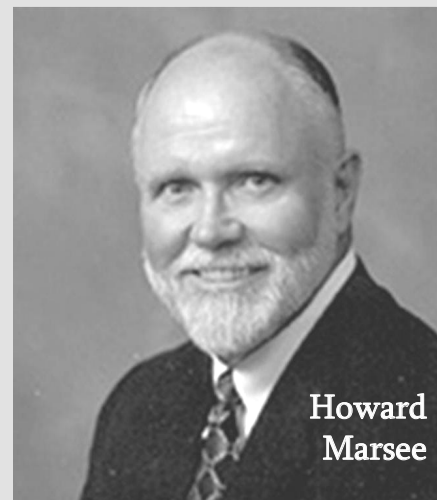
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Events

July 22 - YLS Law Clerks' Reception - 6:00 p.m. to 8:00 p.m. Orlando Shakespeare Theater, 812 E. Rollins Street, Orlando, Florida 32803. For details, email **Jacquelynn Jordan** at jordanjm@lowndes-law.com.

August 13 - Trivia Contest - TBA

Seminars

July 14 - Amendments and Updates on the New Parenting Law. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m.; Comercia Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speaker: Angel Bello-Bellini. Details: ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

July 17 - Get to Know Your Judges. OCBA Family Law Committee Seminar. 12:00 p.m. - 425 N. Orange Ave., # 2310, Orlando. Speaker: Judge Renee A. Roche. Details: Marie at marieb@ocbanet.org.

July 28 - Sexual Abuse Treatment. LAS/GAL Lunchtime Training. 12:00 p.m. - 1:30 p.m. Comercia Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Presented by The Healing Tree. Details: ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

July 28 - Starting and Managing Your Own Law Practice Seminar. Solo & Small Firm Committee. 12:00 p.m. OCBA Center. CLE: 5.0 (including 2.5 ethics). Fee: \$35. Presenters: Meenakshi A. Hirani (Meenakshi A. Hirani, Esq.); Thomas Sinclair (Westlaw); Joe Rodriguez (FindLaw); Peggy Hoyt (Law Offices of Hoyt & Bryan, LLC); Judith Equels (The Florida Bar's Law Office Management). Reception to follow. To register, contact: Marie at marieb@ocbanet.org.

August 11 - Representing a Tenant in an Eviction - LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Comercia Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speaker: Michael Resnick. Details: ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

August 25 - Normalcy for Foster Children - LAS/GAL Lunchtime Training. 12:00 p.m. - 1:30 p.m. Comercia Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. Details: ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

Notifications from the Court

Effective August 1, 2009, the Court will no longer supply VCRs to play any type of evidence recorded on VHS tapes. We will supply DVD players & monitors upon request. To request a unit, please contact our AV Department at least 24 hours in advance at AVrequest@ocnjcc.org.

The Ninth Circuit Court's Dispute Resolution Services department is accepting applications for five (5) Alternate Family Mediator positions. Interested parties may submit a letter of interest detailing their experience, specific areas of expertise and how their service will benefit the Court. Application letters must also include a current Supreme Court issued mediation certificate and resume. Packets shall be sent to: Charles Hydovitz, Director of Court Services, Ninth Circuit Court, 425 N. Orange Ave., Ste. 2130, Orlando, Florida 32801. **The deadline for submission is August 3, 2009.** Please address all questions to ctadch1@ocnjcc.org.

Correction: Due to a proofing error, Executive Council member Paul J. Scheck's name and firm name were accidentally omitted from page 5 in June's issue prior to publication. Mr. Scheck is an attorney with Shutts & Bowen, LLP. We regret the error.



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OCBA CALENDAR

JULY - AUGUST 2009

OCBA Luncheon

Thursday, July 23, 2009

Sylvia H. Walbolt
2008 Tobias Simon Award Recipient
&

The Hon. Dean Cannon
Florida House of Representatives, Speaker Designate
11:30 a.m. - The Ballroom at Church Street

RSVP by Friday, July 17 to:
reservations@ocbanet.org

July

- 1 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 2 Federal Judicial Relations Committee**
12:00 p.m. • Judge Conway's Chambers
- 3 Bar Closed for Independence Day**
- 8 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse
21st Flr. Conference Rm.
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 9 Social Security Committee**
12:00 p.m. • Bar Center
- OCBA Paralegal Committee**
5:30 p.m. • Bar Center
- 10 Family Law Committee Executive Meeting**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 14 LAS Lunchtime Training**
Amendments and Updates on the New Parenting Law
12:00 p.m. • Comercia Bank, 10th Flr.
- 15 Elder Law Committee**
11:00 a.m. • Bar Center
- Insurance Law Committee**
12:00 p.m. • Bar Center
- 16 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 17 Family Law Committee Seminar**
Get to Know Your Judges
12:00 p.m. • 425 N. Orange Ave., #2310

- 21 Professionalism Committee**
8:00 a.m. • Bar Center
- Social Committee**
12:00 p.m. • Bar Center
- 22 Labor & Employment Law Committee**
12:00 p.m. • Bar Center
- 23 OCBA Luncheon**
Sylvia H. Walbolt
2008 Tobias Simon Award Recipient
& **The Hon. Dean Cannon**
Florida House of Representatives
Speaker Designate
11:30 a.m. • The Ballroom at Church St.
- 28 Solo & Small Firm Committee Seminar**
Starting and Managing Your Own Law Practice Seminar
12:00 p.m. • Bar Center
- LAS/GAL Lunchtime Training**
Sexual Abuse Treatment
12:00 p.m. • Comercia Bank, 10th Flr.
- 29 Business Law Committee**
12:00 p.m. • Location varies.
Contact Chairperson.
- 31 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

August

- 5 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 11 LAS Lunchtime Training**
Representing a Tenant in an Eviction
12:00 p.m. • Comercia Bank, 10th Flr.
- 12 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 13 OCBA Trivia Contest**
TBA
- Real Property 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
- 14 Family Law Committee Executive Meeting**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 18 Professionalism Committee**
8:00 a.m. • Bar Center
- Social Committee**
12:00 p.m. • Bar Center
- 19 Insurance Law Committee**
12:00 p.m. • Bar Center
- 20 OCBA Luncheon**
Steve Hogan
Florida Citrus Board
11:30 a.m. • The Ballroom at Church St.
- YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 21 Family Law Committee Seminar**
Get to Know Your Judges
12:00 p.m. • 425 N. Orange Ave., #2310
- 25 LAS/GAL Lunchtime Training**
Normalcy for Foster Children
12:00 p.m. • Comercia Bank, 10th Flr.
- 26 Business Law Committee**
1:00 p.m. • Location varies.
Contact Chairperson
- Labor & Employment Law Committee**
12:00 p.m. • Bar Center
- Solo & Small Firm Committee Seminar**
12:00 p.m. • Bar Center
- 28 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

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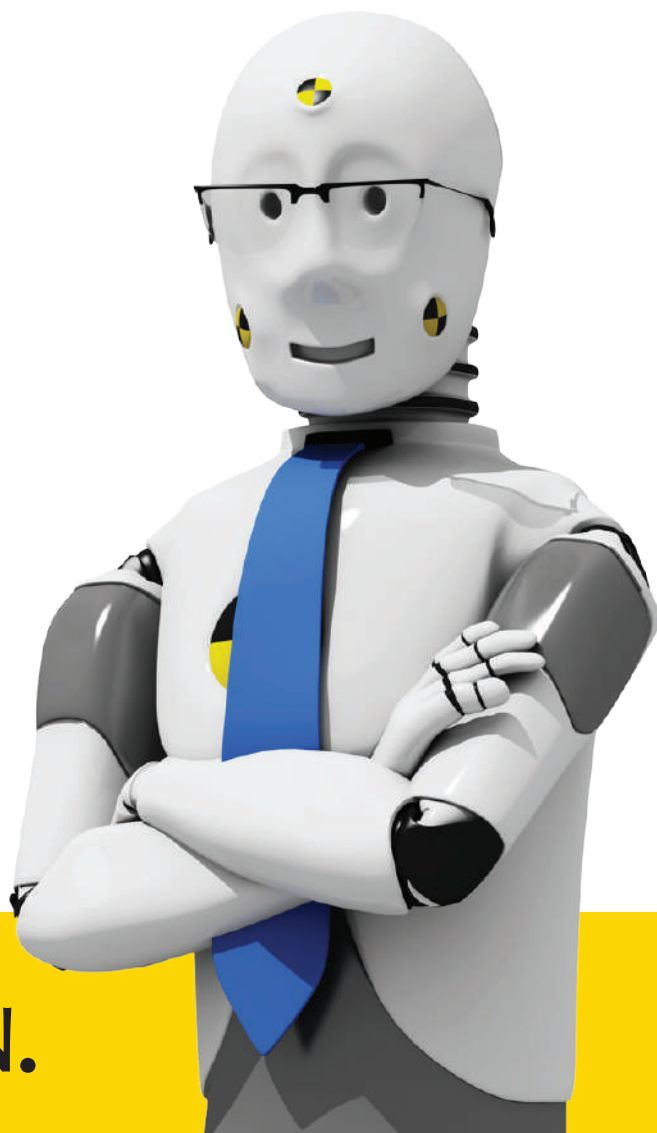
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