

the Briefs

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President's Message ● Communicating in the Age of Instant Communication

July 2010

It was not too long ago when it was a big deal to send a letter by facsimile, and some lawyers would attempt to gain an advantage by faxing a letter at 4:55 p.m., which provided a long-awaited “non-response” or demanded a response by the close of business the next day. As a young associate, I didn’t like it when the partner in charge would receive one of those faxed letters because it generally meant that one or both of us would be working well into the night. And, as it should have, that honor generally fell to the younger lawyer! In fact, I can recall sitting at my desk when a partner would appear at my office door with a faxed letter in her hand and say, “Handle this.”

In these times of instant communication and the immediate sharing of massive amounts of information, those faxed letters seem like they took place in ancient history. But I imagine that my younger friends may have the same feeling of apprehension upon receipt of e-mails from certain lawyers. Since most e-mails are written less formally than letters, there is the tendency to be less than charitable with an opposing counsel. And since most of us receive so many e-mails every day, we feel hurried to respond, particularly in light of the pressures of a modern law practice. But there is another option to responding immediately and in the same tone used by the sender.

Back when faxed letters “sent a message,” I worked for a very experienced lawyer who had a sizable temper but enough self-awareness to follow a “24-hour” rule. This rule required this elderly, respected practitioner to take his draft letter (printed on green paper to distinguish it from final copies of correspondence) and put it in the center drawer of his desk overnight. Sometimes he would decide not to send a letter or to send a dramatically changed letter; and sometimes he would sign the letter pretty much as originally written.

I realize that it might be unreasonable to follow the same 24-hour rule in today’s era of instant communication. But consider

the aggravation we all might save if, upon receipt of an incendiary e-mail, we picked up the phone and called the lawyer on the other side of the case (or even a co-counsel or a client!) and said, “Hey, I just received your e-mail. Did you really mean to say that I didn’t know enough law to stop at a red light?” My experience is that most folks will back down, and that occasionally consensus on an issue can be reached during the phone call.

I wish I could take personal credit for this suggestion, but it’s not my original idea. This suggested behavior comes, not surprisingly, from one of the first winners of the OCBA’s Professionalism Award. I had the benefit of his wisdom when we represented aligned parties in a piece of hotly contested litigation. Notwithstanding that the case involved very serious allegations of impropriety, a lot of money, and many, many lawyers from outside of Orlando, our local hero never lowered his standards of professionalism and decorum. The case ultimately settled, and his client and the rest of us were all better off as a result of his self-restraint.

This lawyer inspired me to make more phone calls and to remember the “24-hour rule.” In a way, it’s even more important during this age of instant communication to speak to our opposing counsel and clients over the phone, and if possible face-to-face, so that we can get a better idea of the situation we are facing. Sometimes it can change the tone of the case, which might be better for your client and for you. And, it could save an unnecessary trip to see the judge.

Frank M. Bedell is a shareholder with Winderweede, Haines, Ward & Woodman, P.A. He has been a member of the OCBA since 1982.



Frank M. Bedell

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Triggering Triage: Litigation Holds

Adam C. Losey

“It is not sufficient to notify employees of a litigation hold and expect that the [employee] will then retain and produce all relevant information. Counsel must take affirmative steps to monitor compliance so that all sources of discoverable information are identified and searched [and in this case, preserved.]” *Swofford v. Eslinger*, 671 F. Supp. 2d 1274, 1281 (M.D. Fla. Sept. 28, 2009) (internal citation omitted).

“The failure to issue a written litigation hold constitutes gross negligence...” *The Pension Committee of the University of Montreal Pension Plan, et al. v. Banc of America Securities, et al.*, 2010 WL 184312 (S.D.N.Y. Jan. 15, 2010) (Amended Order).

I. Introduction

The duty to implement a litigation hold to preserve information relevant to litigation arises upon the reasonable anticipation of litigation. Failure to preserve information once this duty is triggered can lead to a variety of sanctions against counsel and client, and here in Central Florida, courts properly hold counsel to task for failing to implement and monitor a litigation hold.

The reasonable anticipation standard is inherently ambiguous, and the judicial determination of when a company reasonably anticipates litigation necessarily involves a subjective ex post facto analysis. In the absence of a bright-line triggering event, such as the filing of a complaint, a court will consider a legion of variables to determine when the preservation duty arises. From a judicial standpoint, this variability is desirable, despite the potential for inconsistency. Attempts to produce clarity and uniformity through the imposition of a forced bright-line test can cause unnecessary rigidity. Much to the practitioner's chagrin, this malleability makes it difficult to determine whether a threat is serious enough to trigger preservation obligations.

II. Triggering Events

So where should you draw the line in the sand? Well, the preservation duty is certainly triggered when a complaint is filed. Most people agree that receipt of a litigation hold letter triggers the duty as well. Litigation hold letters are commonly sent by a potential plaintiff, demanding the preservation of information and typically accompanied by the standard saber-rattling. While there are situations where a litigation hold letter would likely not trigger a duty to preserve (e.g., a nuisance litigant with no actual claim sending a litigation hold letter in an attempt to extort a settlement), prudence demands the implementation of a litigation hold upon receipt of a litigation hold letter. Thus, when a lawsuit is filed or a litigation hold letter is received, a litigation hold should ordinarily be implemented as a matter of course.

But these are the easy calls. Other events prior to litigation can also trigger the duty to preserve information. For example, if an employee complains of sexual harassment or discrimination, the duty to preserve likely is triggered upon the employee's formal complaint. Determining whether an entity or individual reasonably anticipates litigation in a pre-litigation context involves the exercise of independent judgment.

This judgment is best made by attorney and client together, preferably with the involvement of an information manager with

knowledge of the client's network infrastructure. Together, attorney and client should perform a cost-benefit analysis wherein the facts at issue are scrutinized and the cost of implementing a litigation hold is weighed against the potential for spoliation and the value and nature of the information at issue.

All entities of any size, including law firms, should have a system in place where any factual situation that could trigger the duty to preserve flows to counsel. Then

counsel must take the initiative, vet the facts, and consult with information managers to make the call on whether and how to implement a litigation hold.

III. Implementing the Litigation Hold

Many so-called litigation holds consist solely of an email to various individuals directing them to preserve all relevant information in electronic format and hard copy. This approach is inadequate and begs sanctions. Here in Orlando, even in-house counsel have been sanctioned for failing to properly implement and supervise a litigation hold. See *Swofford*, *supra*. Counsel's lack of technological understanding is no defense against sanctions. See *Martin v. Northwestern Mut. Life Ins. Co.*, 2006 WL 148991 (M.D. Fla. Jan. 19, 2006) (“As an attorney . . . [h]is claim that he is so computer illiterate that he could not comply with production is frankly ludicrous. Accordingly, he should reimburse the Defendant its reasonable expenses, including attorney's fees, for his noncompliance.”).

How to properly implement and supervise a litigation hold depends entirely on the nature and volume of the information at issue. There is no such thing as an adequate formbook litigation hold appropriate for every company and situation, and you should be wary of any template-style litigation hold. However, in all situations counsel must:

- Notify all individuals dealing with relevant information to preserve such information (e.g., individuals involved in the dispute, information managers);
- Describe what constitutes relevant information in detail (e.g., a concise description of the potential or actual litigation and the type and nature of information that is relevant);
- Repeat the initial preservation notice to ensure continuing compliance (e.g., weekly or monthly, or even daily reminders if the recipient fails to acknowledge the initial notice);
- Ensure the initial hold notice is read and complied with (e.g., obtain an electronic or pen-and-ink signature verifying receipt and compliance, set up an online compliance survey);
- Direct the preservation and collection of relevant data (e.g., obtaining forensically certified copies

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Florida Attorney General Candidate Forum

Hosted by the OCBA and Tiger Bay Club of Central Florida

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OCBA Luncheon ★ Thursday, July 22, 2010 ★ 11:30 a.m. – 1:00 p.m.

Space is limited! RSVP by July 15, 2010, to reservations@ocbanet.org



The Forum, moderated by 90.7 FM Radio News Director **Judith Smelser**, will include the following distinguished participants:



Dave Aronberg (DEM) served seven years in the State Senate, where he passed major consumer protection legislation and served as part of a Medicaid task force that successfully fought for reforms to combat fraud and abuse. He led the Senate's efforts to secure federal funding for Everglades restoration. He was born and raised in South Florida, attended Harvard for college, then Harvard Law School, where he graduated with honors in 1996. As an attorney, he worked closely with Insurance Commissioner (now U.S. Senator) Bill Nelson to investigate European insurance companies that refused to honor policies sold to victims of the Holocaust. In 1999, Dave became a Florida Assistant Attorney General for economic crimes. For more information, see <http://www.davearonberg.com>.

Pam Bondi (REP) is a graduate of the University of Florida and Stetson Law School. She is an 18-year career prosecutor and a fourth generation Floridian. As an Assistant State Attorney, Pam served under five State Attorneys in the 13th Judicial Circuit, a department of more than 100 attorneys. She served as Felony Bureau Chief and a key member of internal homicide, vehicular homicide, and DUI manslaughter committees. Pam has served as the Vice Chair of the Florida Bar Grievance Committee, and in Tampa Bay United Way, the Children's Board, Junior League, and on the University of Florida Gator Club Board of Directors. For more information, see <http://www.pambondi.com>. Photo: [worwf.files.wordpress.com/2010/02/pambondi2.jpg](http://www.worwf.files.wordpress.com/2010/02/pambondi2.jpg)



Holly Benson (REP) Until announcing her candidacy, Secretary Benson served as Secretary of the Agency for Health Care Administration. Prior to that, in 2007, she was appointed by the Governor to serve as Secretary of the Department of Business and Professional Regulation (DBPR). She also served for six years in the Florida House of Representatives for Pensacola and Gulf Breeze. She is a graduate of Dartmouth College and the University of Florida College of Law and practiced municipal bond law with Miller, Canfield, Paddock and Stone, P.L.C. before her appointment as Secretary of the DBPR in 2007. For more information, see <http://www.hollybenson.com>.



Dan Gelber (DEM) was elected to the State House of Representatives in 2000, serving as the House Democratic Leader from 2006-2008. He was elected to the State Senate in 2008. Prior to elected life, he spent nearly a decade as a federal prosecutor, serving as a top deputy in that office. He was then appointed chief counsel and staff director for the U.S. Senate's investigations committee, focusing primarily on terrorism and domestic security. Dan is an AV rated attorney. He and his wife Joan Silverstein, a career prosecutor, live in Miami Beach with their three children. For more information, see <http://www.dgelber.com>.

Jim Lewis (REP) has served as an Orange County State Attorney (1981-85); a Special Prosecutor for the Governor of Florida (1985-86); the Assistant Statewide Prosecutor/ Attorney General (1987-92); an Adjunct Law Professor, Nova Southeast University (1990-present); and maintains a law practice at the Law Offices of James S. Lewis & Assoc. Jim received a B.A. degree in Criminal Justice and Public Administration from the University of Central Florida in 1978 and his Juris Doctorate from Stetson University in 1980. For more information, see <http://www.jimlewisforflorida.com>.



Lt. Governor **Jeff Kottkamp** (REP) attended FSU where he earned a Bachelor of Science degree in political science. He then attended the University of Florida College of Law where he received a J.D. degree in 1987. Lt. Governor Kottkamp was elected to the Florida House of Representatives in 2000, 2002, and 2004, and was sworn in as Florida's 17th Lieutenant Governor in January of 2007. As Lieutenant Governor, he serves as Chairman of Florida's Children's Cabinet, Chairman of Space Florida, Chairman of the Florida Sports Foundation and oversees the Department of Highway Safety and Motor Vehicles as well as the Office of Drug Control. For more information, see <http://www.jeffkottkamp.com>.

Please submit your questions for the candidates by July 19, 2010, to peggy@ocbanet.org.

Thank you for your participation. We look forward to seeing you on **Thursday, July 22, 2010**, at the Ballroom at Church Street, 225 S. Garland Ave., Orlando, FL 32801.

All candidates for the office of Florida Attorney General have been invited to participate.

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Reversed numerous provisions of trust
judgment that violated due process.

Rykiel v. Rykiel,
795 So. 2d 90 (Fla. 5th DCA 2000)
Reversed dissolution judgment due to
excessive awards against husband.

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

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

Atkins v. Atkins,
611 So. 2d 570 (Fla. 1st DCA 1992)
Reversed inadequate award of
permanent alimony.

Stockstill v. Stockstill,
770 So. 2d 191 (Fla. 5th DCA 2000).
Reversed marital dissolution
judgement for new trial due to
extensive judicial questioning.

Acadia Partners, L.P. v. Tompkins,
759 So. 2d 732 (Fla. 5th DCA 2000)
Prevented multi-million dollar judgment
addition in complex business litigation.

***Lieberman v. Dept. of Professional
Regulations,***
573 So. 2d 349 (Fla. 5th DCA 1990)
Restored a physician's medical license.

Finch v. Seminole County School Board,
995 So. 2d 1068 (Fla. 5th DCA 2008)
Affirmed denial of taxpayer challenge
to school rezoning plan.

Foley v. Foley,
34 Fla. L. Weekly D1943A (Fla. 5th DCA 2009)
Reversed unequal distribution of
marital estate.

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A Guardian Ad Litem (GAL) representing the best interests of children has many opportunities for advocacy. But many GALs often overlook the opportunity to be involved in preparing the case plan of tasks for the parents to complete that foster an effective, safe reunification of the family. The case plan can include enrollment in programs or acceptance of services. Case planning can be a quagmire for those not directly involved in the child welfare system, because it is sometimes difficult to determine why one service might be superior to another. This article sheds some light on the case planning process as well as commonly proposed case plan tasks.

Early on in a dependency case, a case plan is developed. The case plan may be determined either through a case plan conference with all parties or by the Department of Children and Families (DCF) offering a proposed case plan at the Disposition Hearing. Later in the case, amendments may be requested to address new concerns. A GAL can help ensure the right tools are put in place for the family. It is important the tasks address the reasons for removal of the child, are easily understood by the parents, and provide the name and contact information for service providers. GALs have a right to object and ask the court to add or delete tasks if they do not believe the case plan as presented to the court addresses the needs of the child or the family.

Many dependency cases involve a one-time incident or emerging pattern of domestic violence or physical abuse. It is common to recommend the Batterer's Intervention Program (BIP) for the person exhibiting the violent behaviors and a victim's class for the abused family members. However, BIP is not always the appropriate task. BIP is a twenty-six-week intensive class and should be recommended when the violence is a means of exerting control. The BIP program will not admit individuals who have significant mental health issues. For parents with mental health disorders, their psychologist can often offer treatment with their current counseling services. Anger management classes may be a better option for people who have lashed out inappropriately or have reached the end of their rope and reacted violently, but are not exhibiting other signs of battering. Also, while a victim's class can be effective to help a person spot warning signs and protect their children from future abuse, individual counseling may be a better option for addressing barriers to protecting abuse victims, depending on the individual's level of denial about the abusive situation.



"The thing that sticks out most in my mind is when I've successfully encouraged everyone to substitute mental health counseling for BIP" says **Abigail Johnston**, a *pro bono* GAL. "For instance, when a female ends up as the perpetrator because she has been battered so many times that she finally turns on her batterer – she is then classified incorrectly and the BIP recommendation is clearly not warranted. It is rewarding to help a child by ensuring the right services are given to the mother."

When a parent has unresolved mental health issues or has no explanation for his or her actions or the abuse that occurred, either a mental health assessment or a psychological evaluation may be

recommended. These are very different assessments. A mental health assessment is provided by a licensed mental health provider, often a counselor or therapist. A mental health assessment considers the person's life, stress, current economic, social, and emotional factors, and is designed to determine what services are most appropriate to help the individual and/or the family. In contrast, a psychological evaluation is performed by a doctor, usually a psychologist. A psychological evaluation includes a survey of the person's current life situation and history along with a battery of tests designed to help determine parenting skills, propensity for abuse, intellectual functioning, psychological barriers, and whether the person is being forthcoming or lying to look good based on his or her responses to test questions. The doctor recommends necessary services based on the findings of the psychological evaluation.

As *Pro Bono* GAL **Lauren Heatwole** notes, "A psychological evaluation can also help identify which type of counseling would best benefit the parents for the children, whether it be anger management, parenting classes for patience and structure, or identifying learning impediments in the children. Basically being able to better determine what the parent needs to succeed on her/his own which in turn is the best scenario for the children in any reunification plan."



Most case plans include a parenting class. There are general classes as well as age- or issue-specific classes (i.e. for children with certain medical disorders). Make sure to ask if one may be more appropriate than the other or if a general class will do.

"It is vital for a successful reunification that we match parents with the most appropriate services," says Amanda Etzkorn, RCC, Court Appointed Counsel for Parents. "A general parenting class for an infant with medical issues is not going to help resolve why the child came into care. It is helpful when GALs advocate for specific services and think outside of the box. A recent case involved a mother who is fairly low functioning and has some mental health needs on her own. The GAL's advocacy was vital to us providing a realistic case plan."

These are brief examples of some of the services available to parents. If you need any assistance in case planning, please feel free to contact any of the GAL Program Staff Attorneys at 407-841-8310.



Krista M. Bartholomew, GAL Courtroom Attorney with the Legal Aid Society, has been a member of the OCBA since 2007.



Kavita Sookrajh, GAL Courtroom Attorney with the Legal Aid Society, has been a member of the OCBA since 2006.

Donna A. Graf

"A child's life is like a piece of paper on which every person leaves a mark." – Chinese Proverb

The Chinese character for "education" is actually the combination of two characters - communication and river – which are likely based on the understanding that when we teach students, information flows beyond the point in time from which the teacher teaches. So it was for **Edward A. Dimayuga**, a Legal Aid Society attorney who followed a unique path from Tulane Law School before coming to Orlando.

教育

Ed is an attorney licensed to practice in Florida, Missouri, and Kansas. He received his undergraduate degree in philosophy and political science from Boston College. As a graduate of Tulane Law School, he received an Environmental Law certificate. After graduating law school, Ed accepted a position in the environmental law section of Shook, Hardy & Bacon, LLP in Kansas City, Missouri. He practiced for nearly three years before deciding to take a hiatus.

"My grandfather in the Philippines became ill," Ed says. "Family is very important to me; I wanted to make sure I spent time with him before he passed." After spending several months in the Philippines, a friend of Ed's presented him with an opportunity to teach abroad. He began teaching at Shenyang Normal University in northeastern China, near Korea. As the professor for the courses, "Introduction to United States Law" and "The American Constitution," Ed exposed Shenyang students to American legal, political, business, and constitutional concepts.

Ed notes:

"One of the more interesting parts of teaching in China was introducing legal concepts that we commonly take for granted in the United States. When teaching property law, some of my students were surprised that you could own land and it could be handed down through the generations. In addition, many of the students felt that the freedom of speech was a completely unnecessary right and a hindrance to the smooth function of government. It was also amusing to try to teach about intellectual property, as pirated DVDs were sold in shops across the street from the school."

When Ed returned to the United States, the Daytona Beach native moved to Orlando. As a sole practitioner, he volunteered as a Guardian ad Litem and represented children in dependency cases. He recalls his *pro bono* cases as the highlight of his caseload, stating that one of his first cases "involved a middle school child who was physically abused by his extended family. It was very gratifying to see him grow as a young man when he was finally safely placed with other family members so that he could feel comfortable and confident."

Through a friend in the Guardian ad Litem Program, Ed heard about the opening with the Legal Aid Society and became a permanency attorney. Ed's job is to ensure that dependency cases move smoothly towards a resolution regarding placement and services for the child. For those cases in which an outcome is elusive, he steps in and assists the GAL in creating a solution in the best interest of the child.

"Children need a safe place to call home," says Ed. "When they are provided this simple necessity, they thrive. As part of the GAL program, it is my duty to ensure that the children of Orange County get this opportunity. I love my job because at the end of the day I feel as if I have made a difference in the lives of these children."

Recently married and the proud father of a beautiful baby girl, Ed finds that raising his own child affects how he cares for other children. As Ed says, "Becoming a parent has only made me

more committed to the children I represent."

A Chinese Proverb says that children's lives are like a piece of paper on which one leaves one's mark. With each piece of paper on which he leaves his mark, Ed is the writer of his and many other books.

For more information on the Guardian ad Litem Department, please contact **Susan Khoury** skoury@

legalaiddocba.org. If you would like to become a volunteer Guardian ad Litem, please contact **Cathy Tucker** ctucker@legalaiddocba.org, Deputy Director/Pro Bono Coordinator. For other information or financial donations, please contact me at dgraf@legalaiddocba.org.

Donna A. Graf is Manager of Development for the Legal Aid Society. She has been an OCBA member since 2008.



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In-House Counsel Committee ● Unconventional Pro Bono Opportunities for the Conventional Corporate Counsel

Taylor C. Kessel

It probably isn't news to most of you that corporate charitable donations were down nationally in 2009, and they remain down again this year. In fact, surveys of the largest 100 United Way organizations suggest a continued decline of 2% to 5.6% in corporate giving this year. In addition, 82% of these organizations anticipate higher rates of uncollectible pledges.¹ Interestingly, the nation's economic travails have coincided with an increase in volunteerism, with many corporations asking their employees to give more of their time in lieu of large corporate donations. As in-house counsel, we are often asked to give our time to our company's charitable efforts, but it is rare that we are called on to use our specialized legal skill set to give back to the community. The strengths and talents of the in-house community are in high demand. *Pro bono* opportunities enrich the communities served, enhance the personal satisfaction of the contributing attorneys, and bolster corporate culture and morale. This article will provide you with a few local *pro bono* options to use your well-honed legal skills to make a difference in someone's life.

The OCBA Legal Aid Society

Most of you are already familiar with the Legal Aid Society and the core support it receives from local volunteers whose dedication enables it to provide civil legal services primarily in Orange County. What you may not know is that the Legal Aid Society has specific projects and cases which address the unconventional skill set and employment requirements of the in-house counsel or government lawyer. Because most in-house counsel lack traditional law firm support staff infrastructure (file clerks, runners, case management software, etc.), several Legal Aid projects eliminate the need for court appearances, pleading preparation and even ongoing client relationships. Additionally, several projects are offered on the weekends or in the evenings to cater to the unique time requirements of in-house counsel. Some of these projects include:

- Citizen Dispute Settlement-Family Mediation
- Community Education Panel
- Earned Income Tax Clinic
- Homeless Advocacy Project
- Teen Court
- Teen Parent Education Project
- Telephone Screening

Each project offers volunteer training, manuals, malpractice insurance, and other support. For more information on in-house and government attorney *pro bono* opportunities with the Legal

Aid Society, please contact Cathy Tucker, Pro Bono Coordinator, at ctucker@legalaidocba.org, or Marilyn Carbo, Pro Bono Specialist, at mcabo@legalaidocba.org. Additionally, the opportunity to participate in projects or *pro bono* cases through the Legal Aid Society is not limited to members of the OCBA. While all corporate counsel are encouraged to join the OCBA and become active with its committees (including the In-House Counsel Committee), membership is not required to participate in any of these worthwhile projects or *pro bono* case opportunities. More information is also available on the website at www.legalaidocba.org.

IDignity

IDignity is a homegrown program that provides Florida ID cards, birth certificates, and social security cards to disadvantaged individuals with assistance from legal counsel. IDignity was created to help the disadvantaged in Central Florida overcome the difficulties of obtaining the types of personal identification neces-

sary to become self-sufficient. IDignity is all about helping those less fortunate help themselves. Acquiring identification continues to become more difficult as stricter regulations are regularly implemented for Homeland Security. Each IDignity event provides service to about 225 clients and often has to turn others away due to capacity and funding limitations. Implementing the program requires the assistance of nearly 100 ded-



icated volunteers and the professional staff of various agencies. IDignity volunteers serve in a wide variety of roles including: introducing the process to clients, filling out forms for clients, assisting agencies, or shepherding clients through the process. The documents that IDignity provides are required to apply for employment or school, obtain access to most shelters, vote, seek help from many social service programs, open a bank account or cash a check, secure housing, and overcome many other obstacles to becoming self-sufficient.

As in-house counsel, you can provide a valuable service by volunteering your legal skills and valuable time to IDignity. Please be sure to look for information about upcoming IDignity events, which are generally held during the first few months of the year.

ABA/FEMA Disaster Legal Assistance Program

If you happen to be a member of both the ABA and its Young Lawyer's Division, you can participate in the ABA YLD Disaster Legal Assistance Program. This program provides *pro bono* disaster-related legal services to low-income victims of a federally

declared disaster when asked to do so by FEMA. One means of delivering legal services is through a disaster hotline, but the program also employs clinics and disaster resource centers as well. Volunteering is simple and your services will be much needed during times of emergency. As we all know, Florida has had its fair share of hurricanes and will, unfortunately, probably have more in the future. During a disaster, the hotline outsources inquiries to *pro bono* volunteers. This structure is ideal for in-house counsel, since they can provide service without having to leave their office. First-time volunteers receive training, a resource manual, mentoring, and supervision. To volunteer for this program please contact Adam Shapiro at ashapiro@pathmanlewis.com or visit http://www.probono.net/aba_oppsguide/organization.264522-ABAFEMA_Disaster_Legal_Assistance_Program_ABA_Young_Lawyers_Division_Florida for more information.

CorporateProBono.org

Corporate Pro Bono (CPBO) is a national *pro bono* partnership project and a great resource for legal departments and in-house attorneys interested in doing legal

pro bono work. Since 2000, CPBO has offered support to in-house lawyers and legal departments, providing technical assistance, online services, training, surveys, research materials, on-site *pro bono* clinics, and confidential consultation services to in-house *pro bono* volunteers – all at no charge. The Corporate Pro Bono website, www.cpbo.org, is a great place to get started if you are an in-house lawyer looking for volunteer opportunities in your area, wondering how to start a *pro bono* program in your legal department, or looking for quick answers to commonly asked questions about in-house *pro bono*. CPBO has valuable online resources, including an extensive search engine for *pro bono* projects and events in your community, best-practices profiles of the *pro bono* programs and policies of other legal departments, up-to-date news on developments in corporate *pro bono*, and a library of resources to answer any questions and concerns your legal department may encounter. CPBO.org also offers information for law firms seeking corporate partners and opportunities to partner with in-house lawyers and law departments on *pro bono* projects. This could be a great way for law firms to network and bring in

business through in-house counsel looking to make a difference.

There are many ways for in-house counsel and government attorneys to provide *pro bono* services in the local community and on a national level. All it takes is a little motivation to look beyond what is marketed to the traditional attorney. We can all agree that there is no shortage of need for our services, and providing *pro bono* services beyond the bounds of corporate charitable functions is a great way for in-house counsel to give back and make a difference.



Taylor C. Kessel, CNL Lifestyle Company, LLC, has been a member of the OCBA since 2005.

¹http://money.cnn.com/2009/02/13/news/economy/charity_donations/index.htm

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Triggering Triage: Litigation Holds

continued from page 6

of hard drives where appropriate, segregating and preserving certain emails and files);

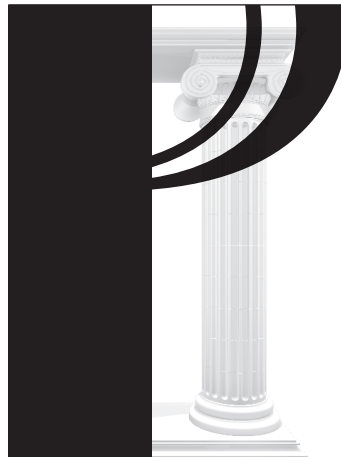
- Supervise preservation and collection (e.g., ensure the integrity of forensic images, supervise the crafting of search terms and selection of search methods used to locate relevant information);
- Understand where and how data is stored (e.g., network infrastructures, metadata).

The difficulty in implementing and supervising a hold correctly is compounded by the urgency of implementation. The duty is triggered, and information must then be preserved. There is little margin for error. The only way to implement a litigation

hold quickly and efficiently is to address the above-mentioned issues internally before the duty arises.



Adam C. Losey, Law Offices of Adam Losey, is an adjunct professor at Columbia University and is the American Bar Association's Young Lawyers Division Antitrust Vice Chair. He has been a member of the OCBA since 2009.



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For details, contact our Seminar/Events Manager at 407-422-4552, ext. 233.

Legal Aid Society's *Past Presidents BBQ*



May 20, 2010
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YLS on the move

Socialize, Participate, Volunteer!

Sunny A. Hillary

Did you know that July 25, 2010 is National Parents' Day? And did you know that the Parents' Day Council honors "Parents of the Year" at local, state, and national levels? In 1994, Congress unanimously adopted, and President Bill Clinton signed into law, a resolution establishing the fourth Sunday of every July as Parents' Day. This month, let's honor parents everywhere.

The **Brown Bag Lunch with Judge John Marshall Kest** on June 16, 2010 was another success. While Judge Kest again graciously offered his time to answer young lawyers' general questions about the practice of law, the focus of this Brown Bag Lunch was the presentation of opening statements in jury and non-jury trials. The next meeting will be held on Monday, August 23.

On June 11, 2010, the YLS, under the leadership of the **Honorable C. Jeffery Arnold** and committee chair **Jonathan Stimler**, once again hosted an **Afternoon at the State Courthouse**. The event was a hit! Many new and upcoming legal professionals were in attendance to receive invaluable, practical advice regarding the nuances of local practice in the Ninth Judicial Circuit.

Following the Afternoon at the State Courthouse, members of the YLS kicked off the weekend with the **YLS Pub Crawl!** Young lawyers crawled from Ember to Bullitt to The Other Bar and enjoyed great food, drinks, and raffle prizes. All proceeds benefitted the Foundation for Foster Children. A job well done to committee chair **Doug Martin**, and special thanks to event sponsors **Honeywell Mediation; Kirkconnell, Lindsey, Snure, Yates & Ponall, P.A.**; and **Dellecker, Wilson, King, McKenna & Ruffier, LLP**.

As for upcoming events, the annual **YLS Law Clerks' Reception** will take place on July 21, 2010, at the Orlando Shakespeare Theater. 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. To help plan

the Law Clerks' Reception, or for more information, please contact **Jacquelynne Regan** at Jacquelynne.Regan@lowndes-law.com or **Jill Davis** at Jill.Davis@lowndes-law.com.

It is the time to begin preparing for the 2010-2011 school year. For the past several years, the YLS has sponsored the **Backpack Project** for the students of Rock Lake Elementary School. Please contact **Melanie Griffin** at mgriffin@deanmead.com or **Barbara Leach** at bleach@whww.com to donate school supplies to Rock Lake Elementary School, including crayons, pens, pencils, markers, notebook paper, sets of beginning word flashcards, construction paper, binders, scissors, protractors, tissues, notebook pencil pouches, backpacks, and more. Thanks in part to the Backpack Project and the continuous support of the YLS in past 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 2010-2011 school year!

Many of you may have heard that the YLS is launching a **Law School Mentoring Program** with Barry Law School. This program will match members of the YLS with second- and third-year law students for one academic year beginning fall 2010. CLE credit may be available. If you are interested in serving as a mentor or participating as a law student mentee, please visit the OCBA website at www.orangecountybar.org, click on "Sections" and then select the YLS section to send an email to the program contact. You may also contact **Kristopher Kest** at kristopher.kest@lowndes-law.com or 407-418-6285.

And, as many of you know, the YLS has formed a **Lawyers for Literacy** committee that is in the process of organizing a **Lawyers' Spelling Bee** fundraiser this fall. The proceeds of the Lawyers' Spelling Bee will benefit the literacy initiatives of the Adult Literacy League. If you would like to make a difference in a person's life by giving them the gift of literacy, then please contact **Daryl Gottlieb** at dgotlieb@fisherlawfirm.com. Or, if you are interested in tutoring an adult learner



with the Adult Literacy league by volunteering only one hour a week, please go to www.adultliteracyleague.org.

Finally, the **19th Annual YLS Charity Golf Tournament** is coming up! The golf tournament is one of YLS's signature events. In addition to being a wonderful opportunity to play a round of golf with your clients and colleagues, all proceeds benefit the various charitable projects that the YLS organizes throughout the year, including the YLS Scholarship and the Backpack Project. To get involved and help plan the golf tournament, or for more information, please contact **Brett Renton** at brenton@shutts.com or **Jerry Lee Hanbery** at jhanbery@ufl.edu.

The **YLS August Luncheon** will take place on **August 19, 2010**, at 11:45 a.m. Please email your RSVP to admin@ocbayls.org. If you RSVP before August 16, 2010, the cost is \$20 for lawyers and \$12 for law students, government attorneys, solo attorneys, and judges; a late charge of \$2.00 will be added if you do not RSVP on time.

It is with appreciation for the opportunity and much fondness that I bid goodbye to readers of "YLS on the Move." I will be turning over the pen to my friend Jacquelynne Regan, who will author the column and serve as the YLS communications coordinator during the coming year. But I won't disappear completely – look for occasional articles by yours truly in future issues of *The Briefs*!

To find out more about our section and its committees and events, please contact your new communications coordinator, Jacquelynne Regan at Jacquelynne.Regan@lowndes-law.com. If you are not receiving YLS email blasts, please send an email to Jacquelynne Regan or admin@ocbayls.org to sign up.

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

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Orange County Clerk of Courts Moves Toward Online Foreclosure Sales

Leesa Bainbridge

The Orange County Clerk of Courts expects to have online foreclosure sales available at the myorangeclerk.com website within a couple of months, moving the auctions out of the courthouse and into a global market.

"We're very excited about offering this new service to our customers. Online foreclosure sales are beneficial to both bid-

The foreclosure caseload in Orange County has soared over the past two years. In 2006, the number of foreclosure cases hovered around 5,000. By 2009, however, the caseload had skyrocketed to more than 31,000, an increase of 5,000 cases over 2008 and more than double the caseload of 2007. Even though there was a gradual decrease in the caseload in 2010, the

Division cases. To accommodate the volume, the Orange County Clerk's Office expanded foreclosure sales to five days a week earlier this year.

"The change gives us an extra day to handle the crushing volume of cases, and also allows us to more evenly distribute the number of sales each day," Gardner says.

Once a date is set for online foreclosures

in Orange County, the Clerk will mail postcards to attorneys and plaintiffs whose sales are already on the calendar to let them know of the change. Training sessions will also be offered.

In order to bid on a foreclosed property, customers must register and deposit an amount equal to five percent of their estimated final bid. If the bid is successful, the funds will be deducted and credited toward the amount of the final sale.

Leesa Bainbridge is the Director of Communications and Public Affairs, office of the Clerk of the Circuit and County Courts, Lydia Gardner, Orange County, Florida.

Circuit Foreclosures									
	2002	2003	2004	2005	2006	2007	2008	2009	2010
Jan	513	547	423	355	348	661	1587	2392	2092
Feb	514	472	425	313	427	631	1781	2373	2277
Mar	462	442	419	374	442	692	1971	2941	1693
Apr	417	428	380	306	323	721	2073	2921	1583
May	488	410	280	379	360	729	2114	2831	1428
Jun	467	399	323	321	368	781	2303	2739	
Jul	445	445	375	332	347	972	2186	2862	
Aug	486	420	300	343	445	1058	2420	2389	
Sep	441	410	287	344	506	1031	2686	2552	
Oct	498	443	347	238	494	1355	2823	2455	
Nov	456	329	355	304	510	1349	1838	2135	
Dec	515	429	303	364	497	1371	2349	2718	
TOTAL	5,702	5,174	4,217	3,973	5,067	11,351	26,131	31,308	9,073

ders and the property owners and is far more efficient for our organization," said Clerk Lydia Gardner. Gardner added that other Florida clerks who recently moved to online foreclosures have received positive feedback.

number of foreclosures remains high due to the backlog of pending cases.

Foreclosure cases are among the Clerk's most time- and labor-intensive. Each foreclosure case requires about 5½ hours of work — easily double that of other Civil



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The Lawyer Referral Service is an excellent resource that will help you expand your client base and increase your income. In 2008, our LRS program received more than 50,000 calls for the 280+ attorneys belonging to the program. Our LRS Manager refers clients to you based on your practice area and the clients' specific need. It's a win-win situation!

For LRS application forms and additional information, go to www.orangecountybar.org, or call our LRS Manager at 407-422-4551, ext. 281.

Build your practice - Join the Lawyer Referral Service and the Modest Means Program today!



Modest Means Program

This new service of the OCBA allows attorneys to earn set fees for specific law-related cases referred to you by our Modest Means Program Manager. Clients are pre-screened by the Legal Aid Society to meet income guidelines that do not exceed one-half the Florida median income. The program seeks to serve individuals who require legal services, but who are of modest financial means.

For the Modest Means Program application and additional information, go to www.orangecountybar.org, or call our LRS Manager at 407-422-4551, ext. 281.

Types of cases referred include:

- :: Bankruptcy - Chapter 7 and Chapter 13.
- :: Family Law / Domestic Relations - dissolutions; child custody; spousal/child support; visitation; paternity; adoption; name change; and modifications and enforcement of Florida support orders.
- :: Landlord/Tenant.
- :: Simple Wills - reciprocal will package; simple planning package, including will, designation of medical agent and power of attorney; reciprocal planning package, including will, designation of medical agent and power of attorney.



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Presentation Skills ● Conquer Your Fear of for Lawyers ● Speaking in Public

Two months ago, when you agreed to speak, you thought it would be a great opportunity to market yourself and meet potential clients. But now, standing offstage as they introduce you, your mouth goes dry, your palms sweat, and your knees are trembling. The feeling of anxiety increases, and you ask yourself, "Why did I agree to do this?"

Afraid to speak in public? You're not alone. The *Book of Lists* ranks "Speaking Before a Group" as the *worst* human fear. It shouldn't be that way. Unless you're saying some final words before your execution, you don't have much to fear about public speaking. I've listened to thousands of speeches, including hundreds of first timers, and I've never seen a speaker pass out, burst into flames, or die of fright. So why do people get nervous, even terrified, when asked to speak?

When you conquer your fear of public speaking, you will enjoy three benefits. First, you will increase your credibility, because people will presume you're an expert. Second, you'll market yourself and increase exposure for yourself, your firm, or your message. Finally, you'll enjoy the adrenaline rush and personal satisfaction that comes from knowing your words made a difference in someone's life. Here are a few tips for controlling your nervousness the next time you speak to a group.

The audience is not your enemy. The audience wants you to succeed. Think back to the last time you were an audience member. When the speaker first took the stage, did you want him or her to fail? Or did you want the speaker to be entertaining, mesmerizing, educational, witty, charming, and at the top of his or her game?

Your audience feels the same way. You were invited to speak because they want you to share something of value with them. They want to learn something, to be entertained, to grow, to feel better, safer, or smarter. They want you to succeed. Even in enemy territory, they don't want your speech to fail. Imagine a Florida Gator fan listening to a speech by Bobby Bowden or a die-hard Democrat listening to George Bush. Despite the inherent hostility, they probably *still* want to be entertained, inspired, or educated. If you were stuck in the seat for the full hour anyway, wouldn't you rather see a speaker succeed? **Remember, even if they disagree with your message, the audience still wants you to succeed.**

Be a Boy Scout. The Boy Scouts have a simple motto: "Be Prepared." If you'll follow that advice, you can eliminate the most common cause of a speaker's nervousness: speakers get nervous because they're not confident about what they're going to say. Investing extra time in your preparation yields a tremendous payoff. Spend extra time to practice your speech, anticipate possible questions or objections, and know who you're speaking to. When you feel confident about your material, you'll stop worrying about what you're going to say and can focus on how you'll help your audience.

Talk to only one person in the audience. Do you feel comfortable speaking to *one* person? Could you present your speech to *one* person? Would you get flustered or forget your speech if there was only *one* person in the audience? No? Then what difference should it make if they're surrounded by hundreds or thousands of people?

Start by picking out someone in the front, making eye contact, and having a one-on-one conversation. If you only talk to one person the entire speech, he would feel uncomfortable, the rest of the audience would feel neglected, and your speech would be ineffective. To avoid that, talk with him for only a moment, then pick someone in the back left corner, and talk to her for a little while. Then shift to the front left or the back right corner, continuing to work your way around the room, always making eye contact with just one person, having a one-on-one conversation, and then

moving on.

This technique has two benefits. First, you won't feel overwhelmed by the size of the audience because you're only talking to one person at a time. Second, everyone in the room will get the impression you're talking directly to them. They'll feel a connection between themselves and the speaker. When they feel that connection, they listen more attentively and retain more of your message.

Remember, they want you to succeed. Many members of the audience will even envy your courage. Speak to your new friends in the audience, and you'll conquer your fear of public speaking.

Elliott Wilcox is the editor of *Trial Tips Newsletter*. To get your free copy of his special report, "How to Successfully Make & Meet Objections," visit www.TrialTheater.com



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Orange County Bar Association Foreclosure Mediation Training

July 20, 2010

9:00 a.m. - 5:00 p.m. • OCBA Center

Registration closes July 14, 2010

\$249 - OCBA members / \$299 - non-members
(Includes fee for required pre-seminar Internet course)

Training led by Christopher Shulman, Esq.,
Alternative Dispute Resolution Services

One-hour presentation by OCBA on Orange County RMFM

•CLE pending •CME pending

Sponsors: Acer Legal Resources, Inc. and
Andrews Agency, Inc.

Training description and objectives, registration form and
payment information, and FAQs are available online at
www.orangecountybar.org.



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Questions? Contact Stacy at stacyh@ocbanet.org.

(You may be receiving a second dues statement in the mail.
Please disregard the statement if you have already renewed!)

Resort Torts sponsored by Leighton Law

April 29, 2010



John Leighton



Summer Happy Hour & Team Trivia Contest

The date is: **Thursday, July 29, 2010**

Where: **Slingapours on Wall Street**

Time: **6:00-9:00 p.m.**

(Registration to start at 5:30 p.m.)

Price: \$75 per 5-player team
(\$5 for non-players)

RSVP by July 23, 2010, to Shayne Thomas at stthomas@ralaw.com

Space is limited, so RSVP soon.

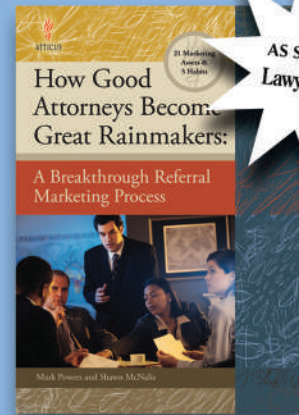
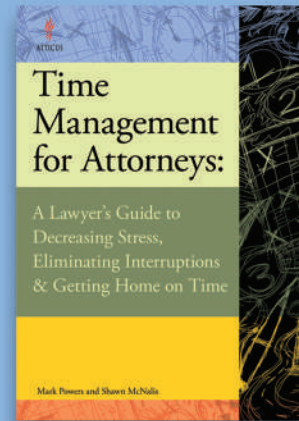
Each team must have 5 players per team. Registrations with more or less than five players will not be accepted.

For more information, call Shayne Thomas at 407.835.8551.

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Rainmaking 101



Mark Powers



Shawn McNalis

One of the most powerful ways to position yourself as an expert and increase the number of clients interested in your services is to conduct seminars, lead workshops, and speak in front of targeted groups. As part of a word-of-mouth marketing plan, public speaking can expose you to greater numbers of people, showcase your expertise, and accelerate your success.

It is important to target the proper audience for your speech, presentation, or seminar. Many attorneys, for example, market their seminars directly to prospective clients. But the direct approach may not suit you or be appropriate for your practice area. Your target audience may be attorneys with whom you desire to build credibility because of their ability to send business. Or, for that matter, non-attorney referral sources for their ability to send business. No matter who your target audience is, take the time to find the right fit from the beginning. All of your plans – including what content you will teach and how you will enroll your audience – hinge on this important factor.

Once you've determined your target audience, determine their issues and concerns. Your seminar will compete for attention with many distractions in their busy lives. Why should they take time out of their busy schedules to attend your seminar? Instead of relying on your own opinion, survey a representative mix of your target market (potential or existing clients, referral sources or other attorneys) for hot topics and issues that currently interest them. Once the topic is selected, create visual aids or a PowerPoint presentation to assist you in explaining it. Develop handouts that participants can take home with them, and include your contact information in a prominent location. Give yourself three hours of prep time for every hour on stage if you are presenting a topic familiar to you. Allow much more time if you are tackling a complex or unfamiliar topic.

● How to use Seminars and Speaking Engagements in Your Marketing Plan

To determine how to deliver your seminar, consider the four most common types of presentations. One is the *self-sponsored approach*, where you, the attorney, would sponsor and be the sole leader of the seminar. The *partnering approach*, where you co-lead the seminar with one or two other presenters, is another option. The other presenters might be partners in your firm, attorneys from other firms, or referral sources. This approach gives you the ability not only to market the seminar to your client database, but to the co-leaders' databases as well. Also consider the *third-party sponsor approach* where the sponsor promotes your seminar or adds you as a speaker to an existing program or conference. This approach can give you added credibility and increased exposure. Finally, there is the *panel approach*, which is easy to do and has the advantage of being more interesting to the audience because of the multiple perspectives presented. When you use the panel approach, each presenter has a small amount of time to present his or her view on the topic, and the audience is invited to ask questions and interact with panel members. This lively presentation approach allows the audience to tailor the presentation to their needs because of its interactive nature.

The date for your seminar should not conflict with the business cycles of your target audience. If you create a seminar for CPAs, for example, during tax season, don't expect high attendance. When you consider that many people are away during the summer and too distracted during the end of the year holidays, spring and fall are usually the best times to schedule your seminar. Do remember to schedule enough time before your seminar to send invitations or place advertising in order to fill the room.

In most metropolitan areas there are a number of different locations that can host your event. Ballrooms in large hotels or banquet rooms in a local restaurant are popular options. If you expect only a small number of attendees, your seminar could be held in the conference room at your office or at a sponsor's facility.

There are a number of ways to fill your seminar. You might create and mail invitations to people in your database of past clients and referral sources; advertise your seminar in a flyer or newspaper insert; or place an ad in a journal or newsletter your target audience might read. You could

also purchase a bar association or other organization's mailing list and send out a direct mail piece. Whatever method you decide to use, include a confirmation request – usually a phone number for participants to call and register. This will enable you to predict the amount of materials and seating to provide.

A special "offer" should be given to the audience at the end of every seminar you present. By offering something to the attendees, such as a free packet of information, you remove any hesitations an audience member may have to contact you in order to send you business, ask questions, or become a client. Begin the offer by informing the audience that since there isn't enough time to answer all of their questions, you'd be happy to offer a free (or reduced-fee) telephone or office consultation, or mail them information on your firm, or place them on your mailing list to receive your newsletter. If possible, get a list of the attendees beforehand or collect business cards at the end of the seminar.

The most important part of the seminar may well be what you do when it is over. The follow-up plan is critical to a successful seminar. This is where the full impact of all the time you've spent preparing and presenting pays off. The follow-up plan might consist of calling the attendees who are current or potential referral sources to schedule time together. Or, you might request that the seminar attendees fill out an evaluation form after the seminar and indicate whether they'd like to be contacted. Attendees could also give you their business card with any additional requests indicated on the back.

Having a successful seminar is great, but not taking advantage of the credibility and momentum you gain by not following up with attendees lessens the impact. Do yourself a favor and block time to turn those attendees into clients or referral sources for your practice. Applause from your audience is nice, but additional revenues are nicer. Earning the admiration of your audience is where you begin.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis**, co-authored *How Good Attorneys Become Great Rainmakers*, 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.

New Associates

Nathan A. McCoy - Jill S. Schwartz & Associates, P.A.

Jason S. Miller - Lowndes, Drosdick, Doster, Kantor & Reed, P.A.

New Partners

W. Scott Callahan - Roetzel & Andress LPA

Cory L. Taylor - Roetzel & Andress LPA

Published

Morey Raitskin and **Jill Davis** of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., authored a front-page feature story titled "Employers Required to Accommodate Breastfeeding Mothers," which was published in the *National Law Review*. The article discusses the Patient Protection and Affordable Care Act.

Speaking Engagements

Michael Gibbons, a LEED-certified attorney and construction law partner with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., was one of four panelists at the May 26 Green Building Forum at the Orange County Administration Center. Mr. Gibbons addressed the issue of sustainable design. The purpose of the forum was to provide information concerning green building standards and practice to obtain input in forming an Orange County Green Building Program.

Claramargaret H. Groover of Southern Trial Counsel, PLC presented an article and participated in a panel discussion from the construction owner's standpoint on Realizing "Value" from Value Engineering: Costs, Benefits, and Legal Issues, at the ABA/Forum on the Construction Industry annual meeting in Austin April 22-24, 2010.

Linda Brehmer Lanosa and **Robert D. Guthrie** of the Orange County Attorney's Office gave a presentation to city and county purchasing agents entitled *Bid Protests: Which Side of the Law Are You On?* at the 43rd Annual Conference of the Florida Association of Public Purchasing Officers in Orlando on May 4, 2010.

Howard R. Marsee of Upchurch Watson White & Max served as a panelist at the Liberty Mutual Insurance Company CEU presentation in Orlando on May 20, 2010.

Jill S. Schwartz of Jill S. Schwartz & Associates, P.A., recently spoke at the Florida Bar 10th Annual Labor & Employment Law Certification Review Course regarding *Common Law Employment Claims*.

David H. Spalter of Jill S. Schwartz & Associates, P.A. recently spoke at the Florida Bar 10th Annual Labor & Employment Law Certification Review Course regarding *Fair Labor Standards Act*.

Al Truesdell of Brown, Garganese, Weiss & D'Agresta, P.A. spoke at a seminar on *Cultural Competency in the Workplace* presented by the Volusia/Flagler Society for Human Resource Management. Mr. Truesdell is the legislative Chairperson of the Volusia/Flagler SHRM chapter.

Lawrence M. Watson Jr., principal with Upchurch Watson White & Max, addressed members of the Grand Rapids Bar Association at their ADR & Litigation Section CLE Event on March 12. Partnered with Joseph B. Stulberg, Professor of Law at The Ohio State University Moritz College of Law, the speakers shared their experiences on *Breaking Impasse: Dealing with Negotiating Tactics that Can Run Mediation into the Ground*.

Events

July 21 – Summer Law Clerks' Reception. 6:00 p.m.-8:00 p.m. Orlando Shakespeare Theater. RSVP by Friday, July 9, 2010 to Jill Davis at jill.davis@lowndes-law.com.

July 29 – Trivia Contest. Sponsored by M&I Bank. For details, contact social committee chair, Shayne Thomas, at sthomas@ralaw.com.

Seminars

July 9 – Boolean Searches and Searching/Working with Transcript Tools. Paralegal Section. 11:30 a.m.-1:00 p.m. OCBA Center. Lunch will be provided. CLE: 2.0. Cost: \$20 OCBA Member/\$25 Non-OCBA Member. Contact Lissa Bealke at Lissa.Bealke@gray-robinson.com.

July 13 – Dissolution of Marriage Training (2 hours). LAS Lunchtime Training. 12:00 p.m.-2:00 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speakers: Angelo Bello-Bellini, Tenesia C. Hall, Catherine Tucker. **Pre-registration is required.** For more information, please email ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

July 13 – ECF Training Session. Orange County Clerk of Courts. Two sessions: 10 a.m.-11:30 a.m. & 1:00 p.m.-2:30 p.m. Fee: \$10. Register by July 9. Speaker: Carolyn Weber, ECF manager. Registration form at www.orange-countybar.org. See calendar.

July 15 – ECF Training Session. Orange County Clerk of Courts. Two sessions: 10 a.m.-11:30 a.m. & 1:00 p.m.-2:30 p.m. Fee: \$10. Register by July 13. Speaker: Carolyn Weber, ECF manager. Registration form at www.orange-countybar.org. See calendar.

July 16 – Short Sales. Family Law Committee. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0. Speakers: Roland H. Acosta, Lori Matoff, Lee Anne Acosta. For details, contact Marie at marieb@ocbanet.org.

July 16 – Brown Bag Lunch with Judge J.M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, Judicial Conference Room, 23rd floor. Bring your lunch; water will be provided. To RSVP or submit questions, contact Judge Kest's Judicial Assistant, Diane, at ctjadi1@ocnjcc.org.

July 20 – Residential Mortgage Foreclosure Mediation Training, including presentation by OCBA on *Orange County RMFP* during lunch period. 9:00 a.m.-5:00 p.m. Sign-in and Continental breakfast: 8:00 a.m. Lunch provided. OCBA Center. CLE: 8.5 (including 2.5 Ethics) - pending; CME: 8.5 - pending. Fee: \$249 OCBA members / \$299 non-members. An Internet course is required before attending training session and is included in the fee. Presenter: Charles M. Shulman, Esq., Alternative Dispute Resolution Services. Live training sponsored by

Acer Legal Resources, Inc. and Andrews Agency, Inc. Additional details and registration forms available at www.orangecountybar.org. **Registration closes Wed., July 14.**

July 27 – Drug Issues in Dependency Court. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speaker: Kavita Sookrajh. For more information, please email ctucker@legalaidocba.org or mcabo@legalaidocba.org.

July 29 – Substance Abuse and Mental Health. Solo & Small Firm Committee. 12:00 p.m. Bar Center. Speaker: Michael Cohen, Executive Director of Florida Lawyers Assistance. For details, contact Marie at marieb@ocbanet.org.

Aug. 6 – Briefcasing and Exporting Data and Markups and Production Sets. OCBA Paralegal Section; Advanced Summation Training series. OCBA Center. CLE: 2.5. Fee: Cost: \$20 OCBA member / \$25 non-members. Contact Lissa Bealke at Lissa.Bealke@gray-robinson.com.

Aug 10 – Family Law Tips and Legislative Updates. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speaker: Angel Bello-Bellini. For more information, please email ctucker@legalaidocba.org or mcabo@legalaidocba.org.

Aug. 17 – Personal and Professional Effectiveness. A collaborative seminar presented by the Legal Aid Society, the OCBA, and Grant Professionals Network of Central Florida. Two sessions: 8:30 a.m.-10:30 a.m. or 1:30 p.m.-3:30 p.m. OCBA Center. Fee: Free. RSVPs required by Aug. 1. Speaker: Mark Shearon. Contact Donna Graf, LAS, at dgraf@legalaidocba.org.

Aug. 23 – Brown Bag Lunch with Judge J.M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, Judicial Conference Room, 23rd floor. Bring your lunch; water will be provided. To RSVP or submit questions, contact Judge Kest's Judicial Assistant, Diane, at ctjadi1@ocnjcc.org.

Aug. 24 – Criminal Law and the GAL. LAS Lunchtime Training. 12:00 p.m.-2:00 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speaker: Mary Ann Etzler. For more information, please email ctucker@legalaidocba.org or mcabo@legalaidocba.org. OCBA Center. Lunch will be provided. CLE: 2.0. Cost: \$20 OCBA Member/\$25 Non-OCBA Member. Contact Lissa Bealke at Lissa.Bealke@gray-robinson.com. Sponsor TBD.

Other News

Legal Aid Society – Table captains are needed for Third Annual Breakfast of Champions. If you would like to serve as a table captain, please email Donna Graf, LAS development manager, at dgraf@legalaidocba.org by **July 12, 2010**. Table captains will be asked to invite fourteen individuals, who will be notified before the event that it is a fundraiser and they will be asked to make a donation. The Breakfast of Champions will be held Wednesday, November 10, 2010, at the Ballroom at Church Street. We look forward to your participation as a table captain!

Correction: Mr. John G. Delancette, who authored *How to Deal with an IRS Determination of Employees v. Independent Contractors* for May's issue of *The Briefs*, has been a member of the OCBA since 1972, not 1992. We regret the error.

Updated Regulations from the Florida Bar The Florida Bar Guidelines for Networking Sites *Additional Time Granted for Compliance*

New rules on lawyer and law firm websites will not go into effect, and therefore will not be enforced by The Florida Bar at this time, under a June 10, 2010 order of the Supreme Court of Florida. The Court granted the bar's emergency motion to stay the effective date of amendments to the website rules.

The Court adopted new rules regulating websites in November 2009. Under the new rules, websites will be subject to the general advertising regulations set forth in Rule 4-7.2. Websites commonly include information about past results, testimonials, and statements characterizing the quality of legal services, all of which would be impermissible under the new rules. However, websites will remain exempt from the filing requirement under Rule 4-7.8. In Re: Amendments to Rules Regulating The Florida Bar - Rule 4-7.6, Computer Accessed Communications, 34 Fla. L. Weekly S627 (Fla. Nov. 19, 2009), Case No. SC08-1181.

At the direction of the Supreme Court of Florida, the Florida Bar filed a petition on June 1, 2010 to adopt additional amendments to Rule 4-7.6 regarding websites, Case No. SC10-1014. The amendments, if adopted, would provide a method by which a portion of the website would be considered information at the request of a prospective client and therefore not subject to subchapter 4-7 (the lawyer advertising rules) if specific requirements are met.

The Court's order staying the effective date of the November 2009 amendments to the website rules makes those changes effective 90 days from the Court's order in SC10-1014, which has not yet been decided. Lawyers should use this additional time granted by the Court to review

their websites and make any changes necessary to bring them into compliance with the lawyer advertising rules. Copies of the bar's motions and the court's order, as well as information on complying with the lawyer advertising rules, are available on the bar's website under Advertising Rules.

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July - August 2010

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July

- 1 Federal Judicial Relations**
12:00 p.m. • Judge Conway's Chambers
- 5 Bar Center Closed for the Holiday**
- 7 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judge's Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 8 Social Security Committee**
12:00 p.m. • Bar Center
- 9 Paralegal Section Seminar**
*Working with Summation Search Results
& Saving Searches*
12:00 p.m. • Bar Center
- Family Law Executive Committee**
11:45 p.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 13 LAS Lunchtime Training**
Dissolution of Marriage Training (2 hours)
12:00 p.m. • Comerica Bank
- 14 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse 21st Fl.
Conference Rm.
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 15 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 16 Brown Bag Lunch with Judge J.M. Kest**
12:00 p.m. • Judicial Conference Rm.
23rd Flr.
- Family Law Committee Seminar**
Foreclosure Defense Short Sales
12:00 p.m. • Bar Center

- 20 Professionalism Committee**
12:00 p.m. • Bar Center
- 21 Insurance Law Committee**
No Meeting until 9/15
- 22 OCBA Luncheon**
Attorney General Candidate Forum
11:30 a.m. • The Ballroom at Church
Street • Sponsored by Westlaw
- 27 LAS Lunchtime Training**
Drug Issues in Dependency Court
12:00 p.m. • Comerica Bank
- 28 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Committee**
12:00 p.m. • Bar Center
- 29 Solo & Small Firm Committee Seminar**
Substance Abuse and Mental Health
12:00 p.m. • Bar Center
- 30 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
Please contact chair.

August

- 4 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judge's Conference Rm.
- 6 Paralegal Section Seminar**
Briefcasing Docs & Using Production Tools
12:00 p.m. • Bar Center
- 10 LAS Lunchtime Training**
Family Law Tips and Legislative Updates
12:00 p.m. • Comerica Bank
- 11 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 12 Social Security Committee**
12:00 p.m. • Bar Center
- 13 Family Law Executive Committee**
11:45 p.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 17 Professionalism Committee**
12:00 p.m. • Bar Center
- 19 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 20 Family Law Committee Seminar**
12:00 p.m. • Bar Center
- 23 Brown Bag Lunch with Judge J.M. Kest**
12:00 p.m. • Judicial Conference Rm.
23rd Flr.
- 24 LAS Lunchtime Training**
Criminal Law and the GAL
12:00 p.m. • Comerica Bank
- 25 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Committee**
12:00 p.m. • Bar Center
Please contact chair.
- 26 OCBA Luncheon**
11:30 a.m. • The Ballroom at Church
- 27 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
Please contact chair.
- 31 Solo & Small Firm Committee Seminar**
*Quickbooks Basics (Including Trust
Accounting)*
12:00 p.m. • Bar Center



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