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The Briefs

A Publication of the Orange County Bar Association



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OCBA President
2005-2006

Tom Wert
OCBA President
2006-2007

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- Registered Respiratory Therapist



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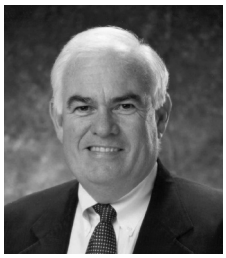
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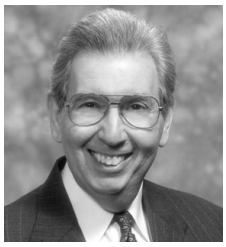
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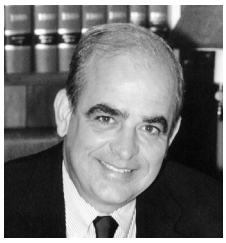
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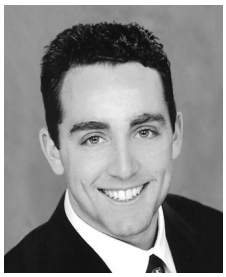
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The Briefs

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Peggy Storch

Hearsay Columnist
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Deadline for July Edition: 06/10/2006

The deadline for each edition will be the tenth day of each month. If that day falls on a weekend or holiday, the deadline will be the last working day prior.

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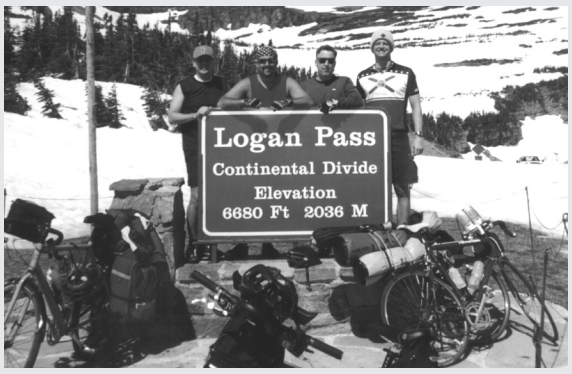
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Sublette: A Tough Act to Follow

Thomas P. Wert

I rode a bike across Montana a few years back with a guy who was destined to become like a brother to me. That guy is 2005-'06 OCBA President Bill Sublette. We were already friends at the time, but I really did not know Bill *that* well personally. I knew about his public service. We had also been Kiwanians together and I knew he liked to drink beer. Honestly, the beer thing was my primary motivation for agreeing to go on the trip with him - there's really not much to do in Montana, but there's a bar in every little town. I also knew Bill had his quirks, e.g., his custom-ordered touring bike, which he purchased without consulting *me*, had fenders and a kickstand. In the world of long distance bicycling, fenders and a kickstand are both extreme fashion *faux pas*. You might as well tie a flowery straw basket and a shiny new bell onto your handlebars and get used to saying, "I know you are, but what am I?" Nevertheless, as we trained for Montana, Bill steadfastly defended his reasons for needing the kickstand and fenders. This held true, even after a little old lady spied Bill's bike at one of our water stops and mockingly laughed, "Nice kickstand!" There was little question in my mind back then that Bill is a man who sticks to his guns in the face of adversity.



Bill Sublette, Tom Wert, Brian Wilson & Brandon Peters at the Continental Divide in the Summer of 2002.

But, what I learned during that long bike trip about Bill is that his decisions are not motivated by mere obstinance. Bill is an exceedingly determined and impassioned man. In Montana, when others quit, he rode on with a smile, six hundred miles across a hot, tedious prairie. Since that ride, it has become clear to me that Bill approaches his role with the OCBA in the very same way. Bill Sublette's drive and ambition have led the OCBA from some of its lowest times to unprecedented heights.

In last month's issue of *The Briefs*, Bill's President's Message told the story of a financial crisis endured by the OCBA in the summer of 2003. Unbeknownst to the OCBA membership and the Executive Council, the Bar had slipped into a financial hole due to the shutdown of several of the Bar's most important revenue-generating programs. Last month's President's Message went on to describe how various folks had pitched in and dug us out of the hole.

What Bill did not tell you in his President's Message is that he played a crucial role in discovering the problems and revitalizing the struggling programs. In 2003, Bill and then President Paul SanGiovanni called an emergency meeting of the Executive Council. At the meeting, Bill announced to our surprise that the Bar was bleeding money because the Placement Program and the Lawyer Referral Program were both in disarray. If Bill had not sounded the alarm at that time, I am certain we would have depleted our significant cash reserves by the end of the 2003 fiscal year to fund losses incurred by the programs that had been allowed to languish.

Brant Bittner, the OCBA staff and the Executive Council spent the next two years getting the Bar back on its fiscal feet, but it was the leadership of Bill Sublette that brought us back so quickly. I personally watched Bill almost single-handedly bring back the OCBA's Placement Program from the verge of extinction. He spent countless hours down at the Bar Center meeting with Brant and the staff modernizing the marketing of the program, revamping the fee structure and making the program competitive. The Placement Program, under the guidance of new staff member Charlotte Mason, is now exceeding all expectations.

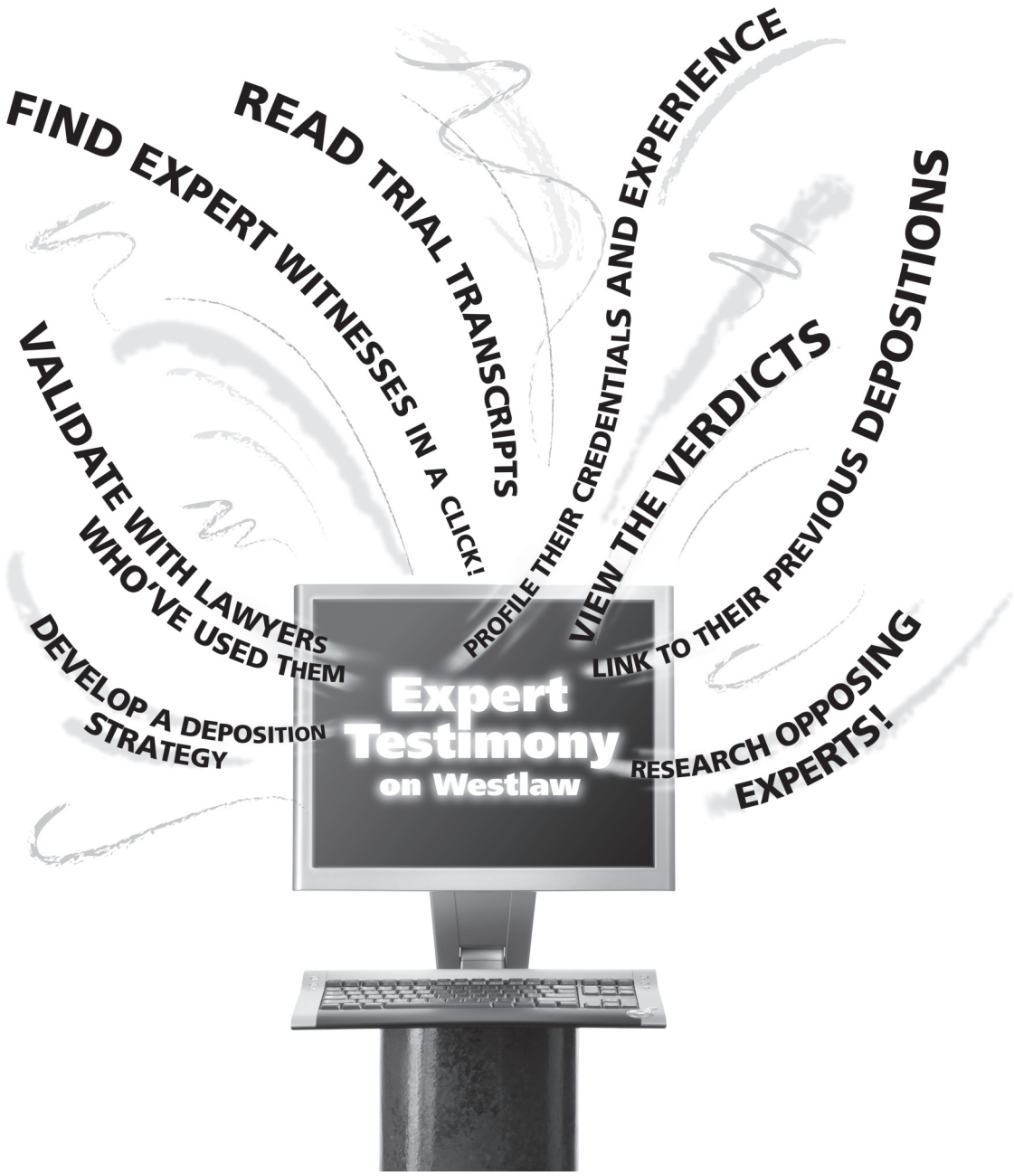
Bill's creativity and vision have also been a true shot in the arm to the OCBA membership. Frankly, things had gotten a little stale around here. Attendance at luncheons had dwindled. We were not putting on seminars with any frequency. Membership numbers, as with most voluntary bar associations, were declining. I would talk to lawyers who had not renewed their OCBA memberships and they would tell me they had not renewed because they were not sure what the Bar did for them anymore. We were getting downright boring.

Bill tackled this problem head on, reinvigorating membership. His "Speakers Series" was the most impressive and interesting list of luncheon speakers that I can remember at the OCBA. To jump start our seminars, he invited the committee chairs to dinner for a little wake-up call. In no uncertain terms, Bill told them that we actually expected them to do something. A lot of them listened and did just that! In 2005-'06, the OCBA more than doubled its seminar numbers from the previous year.

Along with Jessica Hew, Tad Yates and *The Briefs* committee, Bill also transformed *The Briefs* from an antiquated newsletter to a professional and substantive monthly magazine. Bill built an extensive calendar of social events, with a lot of help from Kristyne Kennedy, which were extremely well attended and a lot of fun. It was here that he confirmed one of my original beliefs: Bill Sublette likes to drink beer and he loves to have fun. And, it seems, everyone else at the OCBA is having fun along with him. Membership is growing for the first time since anybody can remember.

So, I tip my hat to my brother, Bill Sublette. I thank Bill for all of the energy and passion he has given to this organization over the years. He left the house in good order and the OCBA is well positioned for the coming year. We will press forward and, hopefully, we can maintain Bill's enthusiasm for years to come.

Thomas P. Wert is a partner with Roetzel & Andress, LPA. He has been a member of the OCBA since 1993.



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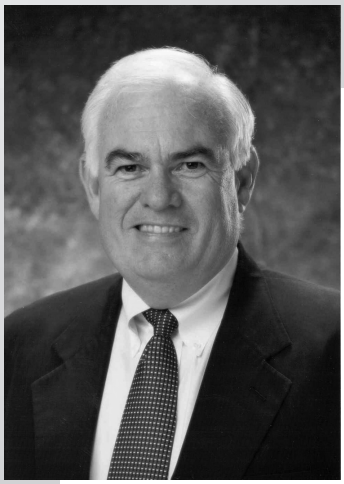
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OCBA Luncheon Speaker





June 29, 2006

Richard T. Crotty

Orange County Mayor

Mayor Crotty spent his fourteen years of legislative service as a member of both the House and Senate. The very first piece of legislation co-sponsored by Rep. Crotty changed the name of his *alma mater* from Florida Technological University to the University of Central Florida. In addition, Rep. Crotty was the prime sponsor of a bill creating the first and most successful Prepaid College Tuition program in America. Later, as a member of the Florida Senate, Senator Crotty served as his party's Floor Leader. Among noteworthy accomplishments, the Senator placed an important appropriation in the budget that funded the Institute for Simulation and Training (IST) at UCF. Subsequently, that industry has become vital to our region's success in the creation of value employment. In 1992, Senator Crotty left the Legislature, was elected Orange County Property Appraiser and, in 1995, was ranked the #1 property appraiser in the nation.

On January 23, 2001, Florida Governor Jeb Bush appointed Mr. Crotty as Orange County Chairman. Chairman Crotty was elected to a full term in September of 2002 with 73% of the vote. In 2004, Orange County citizens voted overwhelmingly to change the county leader's title from Chairman to Mayor to better reflect his function as chief executive.

Shortly after the terrorist attacks on September 11, 2001, Mayor Crotty gained international recognition for promoting our region's visitor economy on BBC World Television. He also appeared on a number of other networks regarding Orange County's emergency management during Hurricanes Charley, Frances and Jeanne in 2004.

Mayor Crotty has taken tough stands to improve transportation and school capacity, while working with regional partners to protect our valuable water supply and diversify our local economy. Mayor Crotty's top priority is effectively managing growth. He is the Chief Executive of a county government that provides complete urban services to more than 860,000 citizens, nearly two-thirds of whom live in the unincorporated areas of the county. He is responsible for the day-to-day operations of the county government, overseeing nearly 6,000 employees and an annual budget of more than $2 billion. His numerous awards include the Distinguished Alumnus and Distinguished Service Award from UCF and the Leroy Collins Distinguished Alumnus award from the Florida Community College system.

Mayor Crotty and his wife Pam live in Belle Isle with their daughter Christina and son Tyler.

Downtown Marriott Hotel • 11:30 a.m. – 1:00 p.m.

To RSVP for the luncheon, please e-mail Mike Remensnyder, Events Manager, at reservations@ocbanet.org. Phone calls will not be accepted.

To ensure proper luncheon count, RSVPs are requested no later than 48 hours in advance. Those reserving less than 24 hours in advance will not be guaranteed a name badge. If you have made a reservation and find that you are unable to attend, please notify us as soon as possible via e-mail. We appreciate your effort to keep us up-to-date on your reservation status.

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

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

Vick v. Vick,
675 So. 2d 714 (Fla. 5th DCA 1996)
Reversed for failure to consider business enhancement during marriage.

Wenzel v. Boyles Galvanizing Co.,
920 F. 2d 779 (11th Cir. 1991)
Affirmed a $2.75 million dollar personal injury award.

Boyles v. Mid-Florida Television Corp.,
467 So. 2d 282 (Fla. 1985)
Reversed the dismissal of a libel action against an Orlando television station.

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

Marriott International, Inc. v. Perez-Melendez,
855 So. 2d 624 (Fla. 5th DCA 2003)
Affirmed million dollar personal injury verdict based on the "two issue rule".

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

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

GEICO v. Krawzak,
675 So. 2d 115 (Fla. 1996)
Required disclosure of uninsured motorist insurance carrier as a party defendant.

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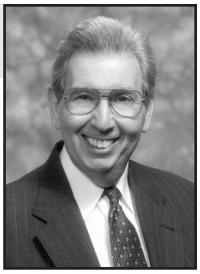
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Professionalism Committee

Lawyers Are Different From Other People



Jules S. Cohen

A prominent psychologist has found that, generally, lawyers have some personality traits that are different from other people.

Dr. Larry Richard practiced law as a litigator for 10 years, then obtained a degree in psychology and currently works for the legal consulting firm of Hildebrandt International. Richard advises law firms and law firm practice groups on achieving better results by team efforts.

Richard has given personality tests to more than 1,000 lawyers and has observed that there are certain personality traits that most lawyers have that are different from other people.

For example, lawyers rate very high in the personality trait of skepticism. They do not accept at face value what they are told. Naturally, this can be a good trait in structuring a transaction or documenting it in order to guard against dangers to the client in the future that may occur in the transaction. This trait can make lawyers argumentative.

Most lawyers also rate high in desiring autonomy. Lawyers like to make their own decisions and don't like to be told what to do.

They also rate high in having a sense of urgency, in wanting things done and wanting them done as fast as possible. This makes them impatient and result oriented. It may make them brusque, and they can be poor listeners.

They rate high in the ability to conduct abstract reasoning, which emphasizes analysis, logical thinking and coming up with solutions.

Most lawyers rate low in resilience, which results in them taking criticism and rejection badly and becoming defensive when criticized. Some lawyers are reluctant to raise their rates even when their operating expenses go up and their competition is raising rates because they are afraid that clients will criticize them for raising rates.

Most lawyers rate very low in sociability, the desire to interact with people, being uncomfortable in starting new intimate connections with others and lacking the ability to have intimate communication with people. They may prefer to spend more time dealing with information or interactions that emphasize the mind rather than the heart.

Many of these traits enable lawyers to do a very good job as lawyers.

But when you consider the high ratings in skepticism, the desire for autonomy and urgency, the skill in abstract reasoning and combine that with the low rates of sociability and resilience, you can see that most lawyers are highly skilled at logical thinking, skeptical of what they are told and of future events, do not like being told what to do, want to make their own decisions and want everything to happen fast while it may be difficult for them to have social communication with others and to take criticism well.

This may tell us something about the difficulty that some lawyers have with practicing with professionalism.

This may explain why some lawyers find it difficult to conduct their practices in a courteous and civil fashion which sometimes requires patience rather than urgency, cooperation instead of autonomy and trust rather than skepticism and honest and calm communication with adversaries.

Whether the law attracts people with these character traits or these character traits are emphasized by legal training and the practice of law may make little difference. What may be important is that when we know of the tendency of lawyers to have these character traits and the effect that these traits can have on the practice, we can think about our own personalities in regard to these traits.

If we see and understand some of these traits in ourselves, it helps explain why we behave like we do. It may focus us on the need to temper the less social of these traits and make a greater effort to handle criticism, deal with people on a more human and understanding basis, and with more patience and more trust. This may help us to connect more with other lawyers and other people and conduct our practices with more courtesy and civility.

Jules S. Cohen is a shareholder with Akerman Senterfitt. He has been a member of the OCBA since 1963.

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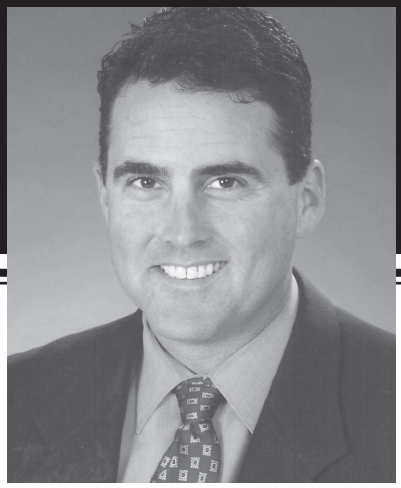
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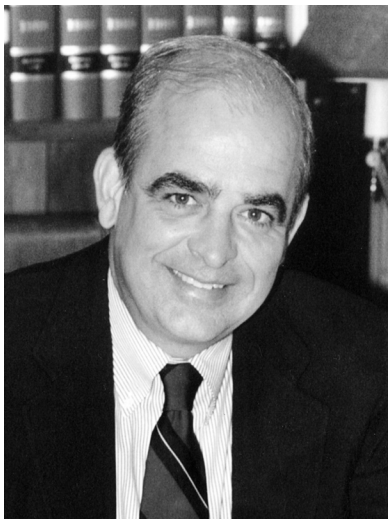


Chief Justice Barbara J. Pariente

The following article consists of excerpts from remarks made by Chief Justice Barbara J. Pariente at the State of the Judiciary Conference of County Court Judges, Amelia Island, Florida, on January 5, 2006.

With the addition this past year of 55 new county and circuit judges, and the recent addition by the Legislature of another four circuit and county judges in the 20th, our judiciary now totals 935 judges. With a bar membership of more than 70,000, we judges make up a little more than one percent of the lawyers in Florida. Whether elected or appointed, each and every one of us represents the face of the judiciary.

And when one of us missteps in our actions either in or out of court, the entire judiciary suffers. And when the public and the Legislature continue to believe that courthouses around the state are vacant on Friday afternoons or that judges take off early for a golf date, we all suffer. And when one of us is absent from the courthouse for several weeks a year, believe me we suffer. And when one of us tells a legislator that it is more important to give us a pay raise than more judges, we all suffer.



Honorable C. Jeffery Arnold

We cannot expect public trust and confidence; we must constantly earn it. Too often I fear we fail to see our justice system through the eyes of the public. This happens when we inadvertently or intentionally favor represented litigants over unrepresented litigants; when we do not respect the dignity of all that come before us, and act or appear arrogant; when we fail to give litigants a chance to be heard; and when we forget to see the effect of our actions through the eyes of children – our most vulnerable citizens.

And that is why I want to throw out a challenge to all of you to strive for excellence and professionalism every day of our lives, and to never ever forget that we chose to be public servants and we should always consider it a great honor and privilege to wear the black robes. I am proud to state that after 18 months in the making, we now have unanimous approval of the Principles of Professionalism for Florida Judges - nine principles that, if adhered to, will do much to ensure that we act as we urge lawyers to act. We, as leaders of our profession, should demand no less for ourselves than we demand for others.

For the judiciary, judicial independence and judicial accountability are not abstract principles; they are represented by each of us. And that is why I believe it is important to recognize judges who epitomize all that we expect in judicial excellence as our judicial role models.

Last year, when I spoke at the Circuit Judges Conference I spent time paying tribute to Judge Schaeffer, who is one of my personal heroes and who should serve as an inspiration to all of us.

Judge Schaeffer epitomizes everything that we want to see in a judge. In her 22 years of exceptional service she always kept her eye on what mattered and always sacrificed her personal beliefs for the greater good.

Judge Schaeffer's integrity, expertise and independence were not only evident in the courtroom but in the classroom where she spent her time educating judges on death penalty law and developing the first capital course for trial judges. And as Chief Judge for six years, she began such innovations as drug court and brought the UFC to the Sixth Circuit, making it the leading UFC Court in the state.

But perhaps Judge Schaeffer's greatest legacy was her extraordinary leadership as chair of the Trial Court Budget Commission for the critical six-year period. Judge Schaeffer exemplified judicial excellence.

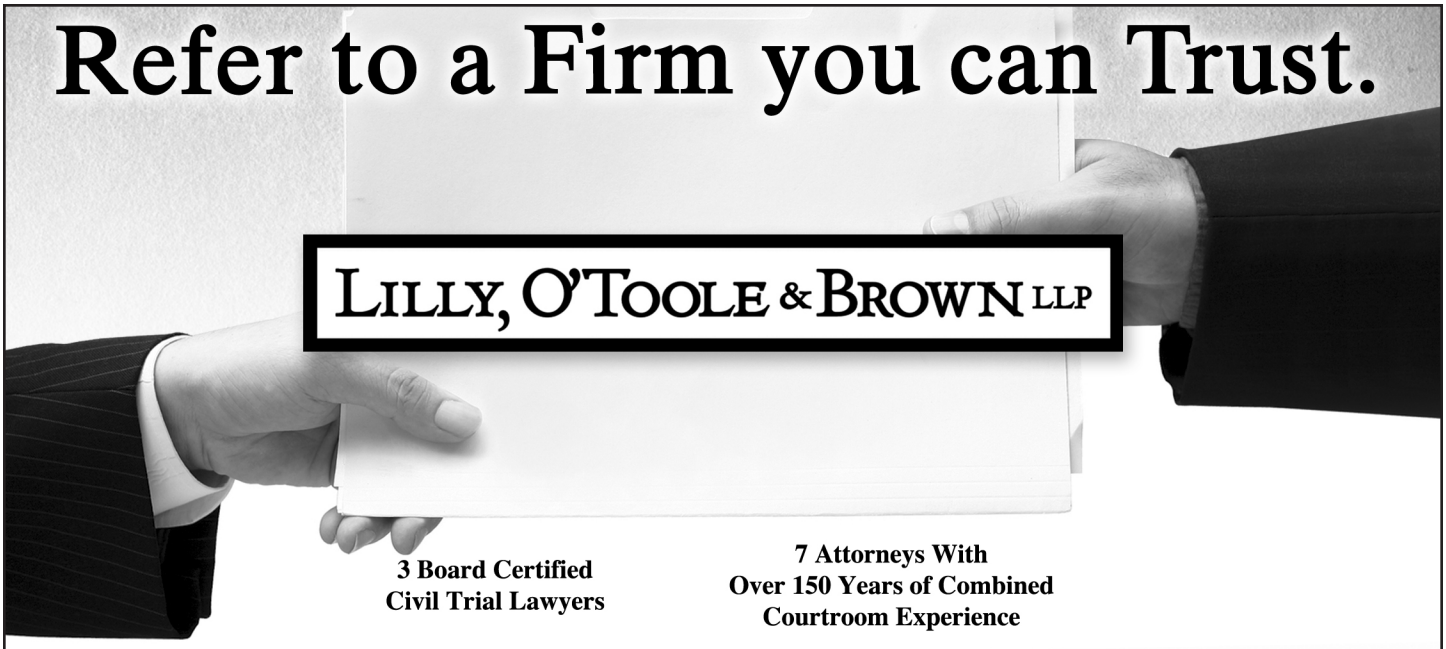
As Chief Justice, I am often made aware of judges who consistently rise above and beyond the call of duty by dedicating themselves to the legal profession and active service to their communities, and implementing innovative programs, enhancing public trust and confidence through communication and education, and serving as judicial faculty or participating in committee work.

At the Circuit and Appellate Conferences I recognized a circuit judge and an appellate judge who exemplified all these qualities of judicial excellence – Judge Terry Terrell and Judge Martha Warner. Today, I decided it was appropriate to acknowledge a *county* judge in particular who to me exemplifies judicial excellence. Although there are many tremendous county court judges, there is one person in particular that exemplifies all the qualities of judicial excellence and that is Orange County Judge C. Jeffery Arnold.

Judge Arnold has served as a county judge for 12 years and was President of the Conference of County Court Judges (2003-04). I met and worked with him during that time on issues of judicial branch funding. He was an active member

Continued on page 24

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Case Note

Florida Supreme Court Allows Assignment of Legal Malpractice Claim to Third Party Plaintiff



Robert L. Sirianni, Jr.

In *Cowan Liebowitz & Latman, P.C., v. Kaplan*,[1] the Supreme Court of Florida decided whether a potential plaintiff may assign a legal malpractice claim involving the preparation of private placement memoranda (documents explaining the details of an investment to potential investors). The Supreme Court of Florida concluded that attorneys preparing private placement memoranda owe a duty to those who rely on statements made in their memoranda. Parties may, therefore, assign legal malpractice claims to a non-client for an attorney's misrepresentation and failure to disclose accurate information in preparing private placement memoranda.

I. Assignment of Legal Malpractice Claims and Related Cases

The traditional rule in Florida and in most states is that attorney malpractice claims are nontransferable. This longstanding practice and policy applies a blanket prohibition against assignment of legal malpractice claims, allowing only clients to sue for malpractice. Malpractice is a personal tort arising from the attorney/client relationship. *Kaplan* creates an exception to the customary rule and practice.

In *Forgione v. Dennis Pirtle Agency, Inc.*,[2] the Florida Supreme Court determined that an insured's negligence claim against an insurance agent for failure to obtain proper coverage is assignable to a third party. Although the Florida Supreme Court permitted the assignment of claims against an insurance agent, the Court reiterated its agreement with the policy of foreclosing any assignment of legal malpractice claims. The *Forgione* opinion addresses the grounds precluding assignment of a claim for attorney malpractice, stating that such a cause of action is not assignable because

> Florida law views legal malpractice as a personal tort . . . involv[ing] a confidential, fiduciary relationship of the very highest character, with an undivided duty of loyalty owed to the client.[3]

In *KPMG Peat Marwick v. National Union Fire Ins. Co. of Pittsburgh, Pa.*,[4] the Florida Supreme Court considered whether an insurer/assignee and/or insurer/subrogee may assert a malpractice claim against an independent auditor for negligently performed audits and failure to detect losses, which led an insurance company to pay amounts to its insured to cover the losses. Although the Florida Supreme Court contrasted the corporate client/independent auditor relationship to the attorney/client relationship, the Florida Supreme Court declined to shield independent auditors in the same way attorneys are shielded from assignment of legal malpractice claims. In reaching its decision, the *KPMG* Court distinguished an attorney from an independent auditor, stating: "[r]ather than acting as an advocate with an undivided duty of loyalty owed to a client, an independent auditor performs a different function."[5] Because the attorney/client relationship requires "zealous" representation of a client's position in an adversarial setting, as opposed to an independent auditor who is hired to give an opinion on a client's financial statements with impartiality, the prohibition of assigning a legal malpractice claim does not apply equally to the assignment of malpractice claims against an independent auditor.[6]

II. Factual Background of *Kaplan*

Medical Research Industries, Inc. (MRI), a Florida corporation, developed homeopathic medical products. In order to secure money for company improvements, MRI's attorneys prepared private placement memoranda, offering shares in the company to potential investors. Four private placements were issued from 1996-1998, raising over fifty million dollars from about two-thousand shareholders for MRI. Later, MRI's majority shareholder, William Tishman, borrowed eighteen million dollars in unsecured loans from MRI. In the "Use of Proceeds" section of the private placement memoranda, the attorneys claimed that the capital raised in connection with the placement would be used to operate and expand MRI's business. However, the attorneys knew that a substantial amount of the money was being funneled into unsecured loans to Tishman. The Tishman loan led MRI to eventual insolvency. MRI sued Tishman to recover the loan. Unable to satisfy the judgment against Tishman, MRI executed an "Assignment for the Benefit of Creditors" to Donald Kaplan. Kaplan then sued the attorneys who prepared the private placement memoranda for legal malpractice. On appeal, the Third District Court of Appeal held that

> [the] legal services at issue [were] not personal in nature but involved the publication of corporate information to third parties, i.e., the investors [and therefore] the policies underlying the prohibition of bare assignment of legal malpractice claims are inapplicable.[7]

III. *Kaplan v. Cowan Liebowitz & Latman, P.C.*, and the Third District Court of Appeal Opinion

Continued on page 22

[1] 902 So.2d 755 (Fla. 2005).
[2] 701 So.2d 557 (Fla. 1997).
[3] *Forgione*, 701 So.2d at 559.
[4] 765 So.2d 36 (Fla. 2000).
[5] *Id.* at 37.
[6] *Id.* at 38.
[7] *Kaplan v. Cowan Liebowitz & Latman, P.C.*, 832 So.2d 138, 140 (Fla.3d DCA 2002).

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Admissions For 2005-2006 Entering Class

- 2181 applications, 204 Students Enrolled
- 50/50 Men/Women Ratio
- 24% Minority Students
- 115 Undergraduate Schools and 21 States Represented
- 42% Out-of-State Residents
- Median LSAT 150 and Median Undergraduates GPA 3.0
- 93% of all entering students received some scholarship ranging from $1,000 to $20,000

Enrollment

- 537 Full and Part Time Students
- 20% of Student Body are from Minority Backgrounds
- 50/50 Men/Women Ratio

Bar Exam Results

- 63.6 percent passage rate of first time takers of February 2006 Florida Bar Exam
- 23 point increase over past 2 years
- Finished higher than 3 other ABA Approved law schools in Florida

Barry Law Review

- God and War Symposium March 31, 2006.

National Trademark Law Moot Court Competition

- First Place: Best Oral Advocate
- Second Place Overall

ATLA Mock Trial Competition

- 2005 Southwestern Regional Champions
- 2005 Final Four out of 223 Teams in National Championship
- 2006 Third Place Southeastern Regional Competition

National Tax Law Moot Court Competition

- Best Brief

National Sports Law Moot Court Competition

- Runner-Up, Best Brief

Barry Law Hosts the United States Court of Appeals for the Armed Forces

- February 21, 2006, Barry University School of Law hosted the United States Court of Appeals for the Armed Forces with the court sitting en banc to hear oral arguments in United States v. Long.
- In addition to the oral arguments by the parties, a Second Year Barry Law student submitted an *amicus* brief and argued before the Court.

Joeseph Richard Hurt
Dean



Judicial Relations Committee

Judges and Attorneys Work Together for Good Reason



Debra W. Botwin

Good relationships take work. (Let me tell you something that you don't already know, right?) Whether it is a personal or professional relationship, good, open and honest communication is critical.

The Orange County Bar formed a committee several years ago for the purpose of encouraging good communication between the Bench and Bar. The Judicial Relations Committee's purpose is to serve as an interface and provide a forum for exercising a free flow of ideas and problem solving among trial and appellate judges and the attorneys who practice before them.

The Committee meets every other month for a brown bag lunch. In this informal setting, judges and attorneys discuss courthouse news, concerns of members of the local Bar, and issues that may affect both sides of the Bench. Representatives from various groups update the Committee on current topics of interest from the State courts, including County and Circuit courts, as well as specialty courts, such as the Business Court, the Federal Court, the Appellate Court, and the State Attorney's Office, Public Defender's Office and the Clerk of Courts. Updates can be as simple as informing members of deadlines for JNC applications for open judicial positions or providing information about all levels of staffing for a new courtroom facility at the jail. By working together with those closely involved with the courts, Committee members become part of the discussion about the challenges facing the courts, as well as part of the problem-solving group that works to handle those challenges effectively.

The Committee also offers a discrete problem-solving process by which attorneys and judges can air grievances before they develop into bigger problems. Committee members know that it can be daunting for an attorney to question how a judge may conduct the courtroom. Sometimes in such cases, if an attorney plans to practice before that judge again, a complaint could have negative consequences far into the future. Likewise, if a judge sees an attorney doing something amiss and feels the need to report it to a senior partner in the attorney's firm, serious consequences in the workplace may result. To address these issues, the Committee provides a free, professional, non-combative mediation process for individual attorneys and judges if there are ongoing, serious disputes. This all, however, is done with the utmost discretion. Committee members at large do not know whether a mediation process is being implemented or what triggers it, nor are they made aware of the participants or results. Yet anyone on the Committee can ask anonymously for a mediation intervention, and it can be done without the Committee member knowing the participants. The mediation process allows for dispute resolution without taint or publicity and is an excellent means for fostering successful, professional relationships.

When professional relationships among attorneys and judges are working well, the Committee's work has paid off. At that point, the Committee looks for other ways to serve its purpose. For example, in December 2005, the Committee, in conjunction with Barry University School of Law and the Orange County Bar Association, sponsored the CLE seminar, "Looking Behind the Jury Room Door." The seminar was for the Bench and Bar, and was based on the results of a recent one-year, 204-question survey of jurors in the Ninth, Seventh and Eighteenth Judicial Circuits. It included panels of former jurors from both criminal and civil cases, criminal defense attorneys, prosecutors and judges, as well as civil trial attorneys, plaintiff and defense. Panelists discussed their perceptions of and experiences related to what was effective in the courtroom with juries and what was not. These perceptions and experiences were contrasted with the survey results, and the outcome was a fascinating juxtaposition of conventional wisdom and real-world information. The video is available through the OCBA and is recommended for any attorney who has jury trials.

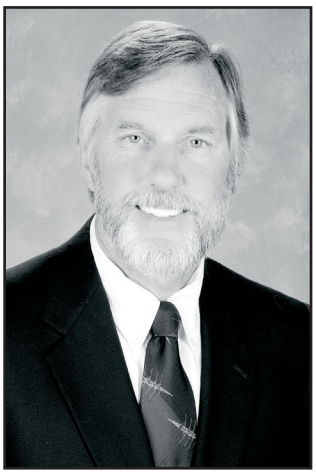
The Committee may not be well known, but it offers opportunities for judges and attorneys to exchange ideas and concerns in a relaxed and informal setting, as well as to resolve potential problems via a well-conceived, confidential mediation process.

Good relationships are worth the effort.

If you would like more information or would like to participate on the Committee, please contact its co-chairman, Kirk Kirkconnell at 407-644-7600, or Debbie Botwin at 407-894-5335.

Debra W. Botwin is a partner at Brewer | Botwin. She has been a member of the OCBA since 1989.

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That's a good word, isn't it? In fact, that's a great word. It has lots of syllables, it's fun to say, and you're guaranteed to win the game if you play it in Scrabble.

Words. For lawyers, words are our stock in trade. Big words, little words, vague words, precise words, common words, and specialized words . . . We use 'em all.

If you're sitting in your office as you read this article, you're surrounded by words. Court opinions, statute books, your own work product . . . You're surrounded by thousands (maybe millions!) of words.

If you have a love affair with words, it probably blossomed when you went to law school. Your professors forced you to master a new language, adding a plethora (now that's a good word, ain't it?) of new words to your vocabulary. After three years, you may have spent more than $100,000 cultivating your new vocabulary. With such a large investment, it's understandable that you wanted to show off your expanded vocabulary. *Res ipsa loquitor, right?*

Here's the problem: Most of the people you're speaking with have no idea what that last sentence means. You, of course, know exactly what it means. To you, "the thing speaks for itself," doesn't it? You understand a little Latin, can pepper your conversations with "five dollar" words, and use grammatical forms ("Subsets, Participles, and Parentheticals, Oh My!") that the average person isn't accustomed to.

Face it: *You don't talk like an average person anymore.*

When you're talking with average people, your $100,000 vocabulary becomes a liability. When you talk over their heads, you can't communicate your ideas. Ideas that are ill-presented are as worthless as ideas that are not presented.

Does that mean you should "talk down" to anyone who's not a lawyer? *Absolutely not.* When you talk down to people, they'll sense your condescension, and ignore your message. They may go even further, and actively argue against your message.

Don't talk down to anyone. Instead, follow this guideline: *Talk the way you would talk to an intelligent thirteen year old.*

When you talk the way you would talk to an intelligent thirteen year old, everyone can understand what you're saying, and no one feels left out of the conversation. If an intelligent thirteen year old wouldn't understand what you're saying, then neither will many of the people you're speaking with. That means you need to evaluate your word choices. Ask yourself:

- Would a thirteen year old tell you that her homework project was "byzantine," "tortuous," or "obfuscated"? Or would she say it was "complicated"?
- If your thirteen year old came home at 11:00 p.m., would you tell him that he's "flouting," "contravening," or "in breach of" his curfew? Or would you tell him to stop "defying" you and "ignoring" the house rules?
- If your teenager tells you something that isn't true, do you accuse him of making a "spurious," "specious," or "fallacious" statement . . . Or a "false" one?

Choose your words carefully. If, like many lawyers, your goal is to sound smarter than everyone else in the room, then choose words like "obfuscated," "contravening," and "spurious." But if your goal is to be *understood*, then you'll want to target your language at the level of an intelligent thirteen year old.

"But," you ask, "Won't some people feel insulted by my choice of vocabulary?"

No, they won't. In fact, they probably won't even notice. You're intelligent - are you offended by word choices like "complicated," "defying," or "false"? Even if everyone in your audience had a Ph.D. in English, they wouldn't feel insulted, because this is the level that they speak at when they want to be understood. By setting your vocabulary at this level, you won't talk over anyone's head, and you won't talk down to anyone, either.

Don't abandon your $100,000 vocabulary. If you're still making payments, you probably feel obligated to use the words. And you should . . . *But only when you're speaking to other lawyers with $100,000 vocabularies.* When you're talking to jurors, clients, or anyone else you want to persuade, talk like you'd talk to an intelligent thirteen year old. Do that, and *everyone* will understand what you're saying.

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Elliott Wilcox is the creator of Trial Tips Newsletter, a free weekly ezine for trial lawyers that reveals simple, effective, and persuasive strategies and techniques to help you win more trials, guaranteed! Sign up now for your FREE trial advocacy tips at www.TrialTheater.com.85.



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Orange County Bar Association



The Hon. Antoinette D. Plogstedt, Orange County, accepts the Law Day Proclamation at the Board of County Commissioners meeting on May 2, 2006. Orange County Mayor Rich Crotty proclaimed May 1 as "Law Day" and recognized Orange/Osceola Public Defender Bob Wesley and the Orange County Bar Association's relentless efforts to educate Orange County citizens on the legal system. Pictured with Judge Plogstedt and Mayor Crotty are County Commissioners Teresa Jacobs, Bob Sindler, Mildred Fernandez, Linda Stewart, Bill Segal and Homer Hartage.



Orange County Circuit Court Judge, the Hon. Thomas W. Turner, was the recipient of the 2006 Liberty Bell Award, which he received at April's Bar Luncheon during the Law Week celebrations. He was honored for his generous work with local charitable organizations, as well as for his activities in Mali, where he and his wife Judy worked to establish better living conditions by bringing food, clothing and medical supplies to people living in impoverished villages. Judge Turner is pictured with attorney Alyson Innes of Killgore, Pearlman, et al.



For the second consecutive year, Dellecker, Wilson, King, McKenna & Ruffier signed on as the presenting sponsor for the annual "Hearts of Gold" event benefiting the Coalition for the Homeless of Central Florida. Firm partner Brian Wilson serves on the non-profit organization's board of directors. Brian is pictured at the event with his wife Meggen.

HEARSAY

Well, folks, all I can say is that this is one of those months where there is SO MUCH to tell you about that I'll skip right past my random thoughts (enough about *me*!) and get right to it! So, here's what's new and exciting ...

Darryl M. Bloodworth, president of Dean Mead, recently became a fellow of the American College of Trial Lawyers. Fellowship in the College is extended by invitation only, and only after careful investigation, to those experienced trial lawyers who have mastered the art of advocacy and whose professional careers have been marked by the highest standards of ethical conduct, professionalism, civility and collegiality. **Daniel P. Osterndorf**, a partner with the law firm of Gronek & Latham, LLP was appointed to the Certification Board for the City of Orlando. **Ernest Deloach** with Shutts & Bowen, LLP has accepted an Adjunct Professor position at FAMU College of Law.

For the second consecutive year, **Dellecker, Wilson, King, McKenna & Ruffier** signed on as the presenting sponsor for the annual "Hearts of Gold" event benefiting the Coalition for the Homeless of Central Florida. Firm partner **Brian Wilson** serves on the non-profit organization's board of directors. The May 3rd event at the Bob Carr Performing Arts Center featured a cocktail reception, silent auction and live music. The event raised a record-setting $226,500 for programs and services that empower the region's homeless to become self-sufficient. **Rumberger Kirk & Caldwell** recently hosted the PCPBar Annual Judicial Reception on April 26, 2006, which included a presentation on the role of the African American woman in the judiciary.

Congratulations to **Paul Scheck** and his wife Virginia, who recently welcomed a new baby Scheck into the world, Joseph Edwards Scheck on April 18, 2006!

If you missed the **Ninth Annual OCBA Gala and Legal Aid Society Silent Auction**, you missed out on an incredible party! On Saturday, April 29, *everyone who is anyone* was at the sold-out charity Gala at the beautiful **Isleworth Country Club**. It was truly a magical night (seriously, I did hear someone use the word "magical" - I'm not making that up!) complete with great music, food, dancing, drinks, a live auction and plenty of good clean fun. Everyone was decked out in their finest, enjoying a grand martini bar, fine wines and cocktails, exquisite cuisine, and entertainment provided by the fabulous Derek Mack Band, while helping to raise funds for the OCBA Foundation and the Legal Aid Society. Gala Committee Co-Chairs **Nick Shannin** and **Heather Rodriguez** deserve a great big thanks for doing such a fantastic job organizing this very successful event. Additional thanks to all of the generous sponsors, volunteers, and committee members, as well as to everyone who attended in support of this very worthy cause.

Congratulations go out to all of the new officers and board members of the OCBA, YLS and other voluntary bar associations! More importantly, we should all express our appreciation toward those outgoing leaders who have devoted countless hours of their free time and worked tirelessly in these positions to help make the OCBA the great organization that it is today (in particular, if you see **Bill Sublette**, give him a big pat on the back and say "thanks, Bill!" for the fantastic job he has done over the past year as the



Kristyne Kennedy

President of the OCBA). With the help of these people, our OCBA just keeps getting better and better, and we can all look forward to more great things to come!

On that note, get ready for another year of more exciting events from the **OCBA Social Committee**! Last year's wine and cheese party, poker tournament and other events were such big hits that we will be bringing them back by popular demand. Be sure to mark your calendars for the following OCBA events: Wednesday, **July 19, 2006**: ***Summer Happy Hour and Trivia Contest***; Thursday, **September 14, 2006**: Fall Happy Hour (joint happy hour with other voluntary bar associations such as CFAWL and PCPBar); Thursday, **November 16, 2006**: ***Texas Hold 'Em Poker Tournament***; and Thursday, **January 25, 2007**: ***Winter Wine & Cheese Fest***. If you would like more information about these events, sponsorship opportunities or participating on this committee, contact me at kennedyk@jacksonlewis.com.

The **Young Lawyers' Section** is also continuing to do great work bringing fun events and activities for its members. The "Theatre with the YLS" on April 27 was a huge success - attendees enjoyed a pre-theater cocktail hour at Sam Snead's Tavern sponsored by RBC Centura Bank. After the cocktails and appetizers, theatre-goers brought their goody bags to Lake Eola, where they enjoyed the UCF Shakespeare Festival's *Julius Caesar 06*. Everyone had a great time and thought it was an outstanding adaptation of the play. Thanks to **Tenesia Connelly Hall** with the Legal Aid Society for her hard work organizing this event.

The YLS is planning many other great events for everyone this summer, so be sure to mark your calendars. Don't miss the annual **Law Clerk's Reception** on **July 13, 2006** at the Orlando Museum of Art, which is always a fun event and is open to everyone. For more information, contact **Lauren Heatwole** at lauren.heatwole@lowndes-law.com or **Taylor Kessel** at tkessel@dbksmn.com. Another great event for law clerks and new attorneys is the **Afternoon at the State Courthouse** on Friday, **July 28, 2006**. For more information contact **Jeremy Springhart** at jspringhart@raileyharding.com. Many other great YLS events are coming up, including the YLS Family Picnic (6/3), YLS Beginning of Summer Pub Crawl (6/9), Dog Day Afternoon Pet Picnic (6/24), Morning at the Federal Courthouse (6/23), Paint the Town service project (7/22), Happy Hour (7/28), End of Summer Pub Crawl (8/11) and the YLS Backpacks Service Project (8/19). For more information about these events, contact YLS President **Wiley Boston** at wiley.boston@hklaw.com.

Don't forget to keep sending any news, updates, kudos, gossip or other information to me at kennedyk@jacksonlewis.com or fax (407) 246-8441. Until next time, have fun this summer - live like you're on vacation, go with the flow, taste life like it's a treat, enjoy your friends and family and just be glad for the time together. Remember that it isn't a crime to be good to yourself, so relax and have fun!

Kristyne E. Kennedy is an attorney with Jackson Lewis LLP. She has been a member of the OCBA since 2001.



Members of the Orange County Bar, including Lori Spangler of the Public Defenders Office (left) and their family and friends, participated in the Winter Park 5K Run for the Trees last month. Proceeds from OCBA volunteers were donated to the Coalition for the Homeless.



One of the highlights of Law Week is the Naturalization Ceremony. This year, nearly 1,000 people became U.S. citizens on Friday, April 14, 2006 at the Orange County Convention Center. In addition to meeting residency requirements, individuals seeking citizenship must demonstrate good moral character, accept the principles of the U.S. Constitution, have some fluency in English, demonstrate an understanding of U.S. history and our system of government, and take an oath of allegiance.





Students from Orange and Seminole counties were honored for their winning Law Week posters and essays at the April Bar Luncheon. The winning entries were on display, and many OCBA members took a few moments to congratulate the children for their outstanding work. This year's Law Week theme was "Liberty Under Law: Separate Branches, Balanced Powers."

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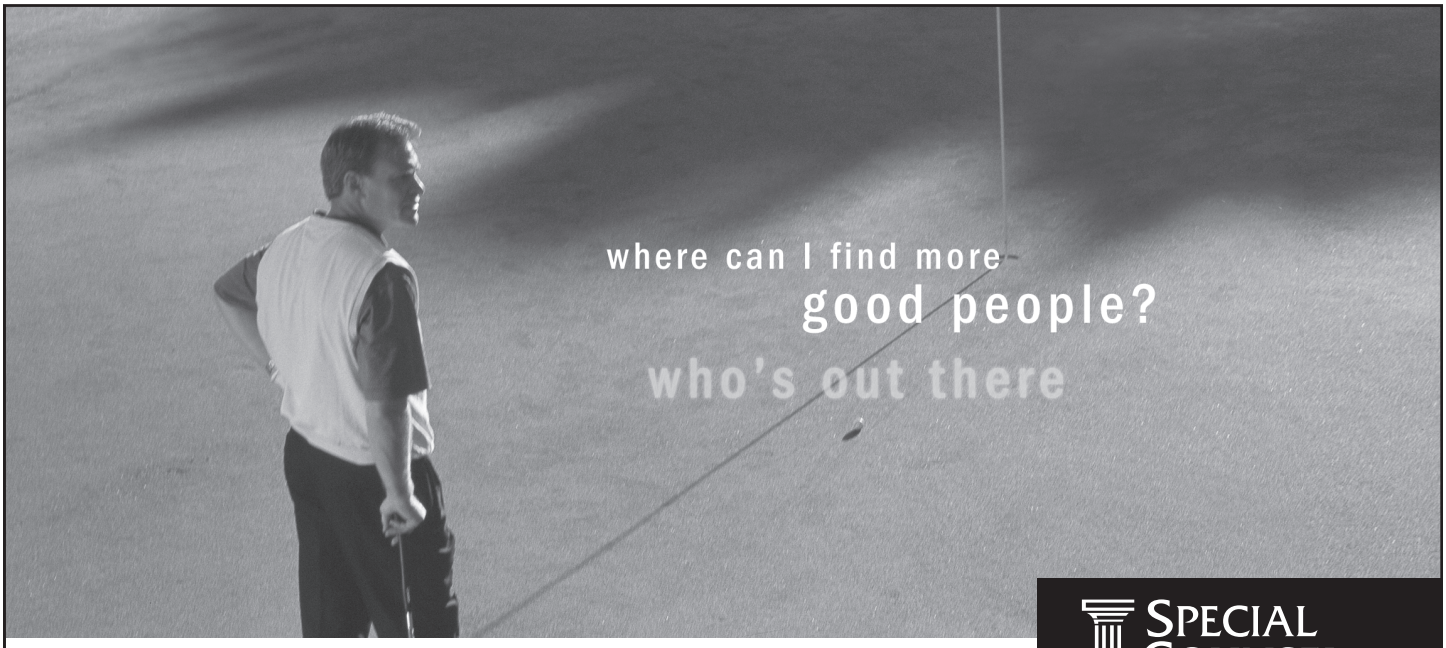
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YLS on the Move!

"Friends, lawyers, countrymen, lend me your ears..."

Judith A. Garabo

You may notice something different about this month's YLS On the Move column: a new author. By way of introduction, I'm practically a lifelong Orlando resident and a litigation associate with Greenberg Traurig. I attended both college and law school at Florida State University, which means that you won't see any encouragement of the Gators at the end of this column, even when they're playing Miami - I can still find a way to root against both teams! This is my second year on the YLS Board and my third consecutive year as its Social Chair. Being involved with the YLS has been a tremendously rewarding experience for me and I hope that I can share some of my enthusiasm with you.

One thing about which I am boundlessly enthusiastic is the summertime! It's not all about hurricanes, mosquitoes, triple-digit temperatures and sunburn. Summer also heralds the return of the summer associates. The YLS has once again delightfully overprogrammed its summer social calendar with several events designed to encourage our summer associates to return to Orlando upon graduation, including bookend pub crawls at the beginning and end of summer (on **June 9** and **August 11**), the Dog Day Afternoon Pet Picnic on **June 24**, regularly-scheduled lunches at the Citrus Club on **June 15**, **July 20** and **August 17** and happy hour on **July 28** (location to be announced). Our two very successful courthouse introduction programs will return this year as well: the Morning at the Federal Courthouse on **June 23** and Afternoon at the State Courthouse on **July 28**. This summer's Law Clerk Reception will be held on **Thursday, July 13** from 5:00 p.m. to 7:00 p.m. at the Orlando Museum of Art; anyone interested in sponsorship should contact Lauren Heatwole at Lowndes Drosdick, et al. for more information (lauren.heatwole@lowndes-law.com or 407-843-4600 x274).

Julius Caesar may have been warned to "beware the ides of March," but it was the end of April that found the Young Lawyers taking to the forum - make that the Lake Eola amphitheater - to see the Orlando-UCF Shakespeare Festival's production of *Julius Caesar '06*, after a cocktail reception at Sam Snead's Tavern sponsored by RBC Centura Bank. Two nights later, Saturday, April 29th, many Young Lawyers dressed up and boarded the party bus from the Monkey Bar to the OCBA Gala and Legal Aid Society Silent Auction at the Isleworth Country Club. The event was a huge hit - the Foundation raised a lot of money and no one was involuntarily placed in the swimming pool, which increases the likelihood of our being invited back next year.

The YLS is pleased to introduce our 2006-2007 Board of Directors, which took office on June 1. Returning members include President **Wiley Boston**, President-Elect **Liz McCausland**, Treasurer **Chelsie Roberts**, Secretary **Sarah Reiner**, Communications Coordinator **Judi Garabo**, **Ryan Davis**, **Tenesia Connelly Hall**, **Gavin McKinnon**, **Eric Reed**, **Musette Stewart**, **Chris Wasula** and **Kim Webb**, and we welcome new board members **Kristen Cox** and **Lauren Heatwole**. Other returning board members include our immediate past President (and tough act to follow!) **Tom Zehnder** and Florida Bar YLD board members **Heather Pinder Rodriguez**, **Jamie Moses** and **Nichole Mooney**.

We also have some kudos to pass along. The Florida Bar Young Lawyers Division, after having accepted nominations statewide, has chosen to honor some of our own. The YLD Diversity Award goes to **LaShawnda Jackson** of **Rumberger, Kirk & Caldwell**. The law firm of **deBeaubien, Knight, Simmons, Mantzaris and Neal** has been honored with the Quality of Life Award, and **Mary Musette Stewart** has been awarded the Lynn Futch Most Productive Young Lawyer Award. We're all very proud of our award winners and want to congratulate them, their firms and the OCBA for having among its ranks such a high concentration of exceptional young attorneys.

Dates to remember in June:

- **Saturday, June 4:** Family Day Picnic with the YLS
  Cory Taylor, clt@stumplaw.com
  Mike Foley, mtcatfish@yahoo.com

- **Friday, June 9:** YLS Third Annual Pub Crawl
  Part One: Wall Street
  Judi Garabo, garaboj@gtlaw.com
  Kristen Cox, kcox@shutts-law.com

- **Thursday, June 15:** Monthly lunch at the Citrus Club
  Kim Webb, kwebb@rumberger.com

- **Friday, June 23:** Morning at the Federal Courthouse
  Richard Dellinger, richard.dellinger@lowndes-law.com

- **Saturday, June 24:** Dog Day Afternoon
  Suzanne Paulus, spaulus@groneklatham.com
  Mike Caborn, mcaborn@whww.com

If you want more information about any of the events listed herein or have any newsworthy items you'd like to see in this column, please feel free to contact me at garaboj@gtlaw.com.

Judith A. Garabo is an associate with the firm Greenberg Traurig, P.A. She has been a member of the OCBA since 1999.

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April 29, 2006

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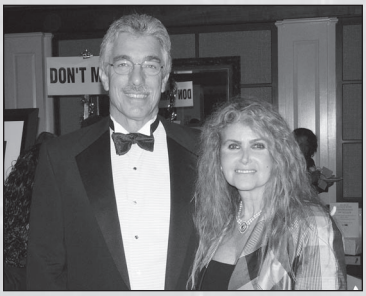
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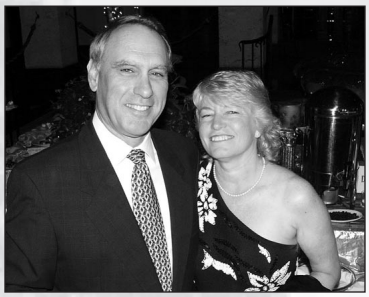


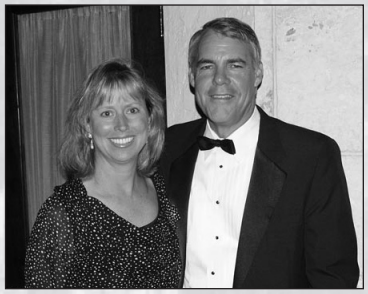








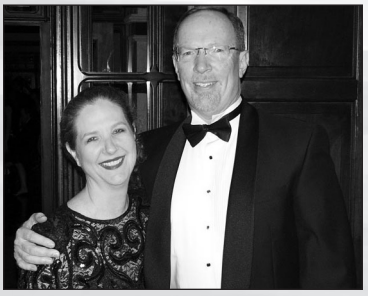
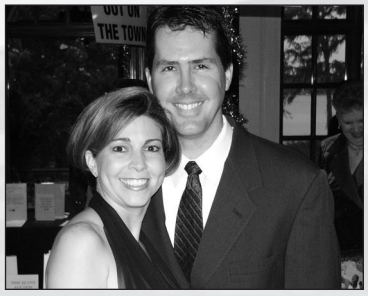











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In *Kaplan v. Cowan Liebowitz & Latman, P.C.*,[8] the Third District Court of Appeal permitted the assignment of MRI's legal malpractice claim by holding the following: first, in preparing the private placement memoranda for potential investors, the MRI attorneys are similar to the accountant conducting an independent audit described in *KPMG*, therefore "the policies underlying the prohibition of bare assignment of legal malpractice claims are inapplicable,"[9] and, second, under Chapter 727 of the Florida Statutes, an assignee for the benefit of creditors is analogous to a bankruptcy trustee, to whom legal malpractice claims may be transferred.[10] Therefore, because Kaplan, as an assignee for the benefit of creditors, was charged with gathering and liquidating MRI's assets, "[he] is no different from a trustee in bankruptcy who has full standing to bring a debtor's legal malpractice claim."[11]

The Florida Supreme Court acknowledged that by analogizing the MRI attorneys to an accountant conducting an audit, the Third District Court of Appeal

> expressly and directly conflict[ed] with [the Supreme Court's] statements in *KPMG* and *Forgione* [albeit in dictum] implying a blanket prohibition against assignment of legal malpractice claims.[12]

Based on this conflict in law, the Florida Supreme Court accepted jurisdiction. Although the Third District Court of Appeal decision also rested on an analysis of Chapter 727, the Florida Supreme Court declined to resolve the statutory issue of Chapter 727, limiting the scope of its opinion to examining the MRI attorney's duty to third parties who rely on statements made in private placement memoranda.

IV. The Florida Supreme Court Opinion in *Kaplan*

In *Kaplan*, the Florida Supreme Court adopted the reasoning set forth by the Third District Court of Appeal and receded "from the broad dicta in *KPMG* and *Forgione* purporting to prohibit the assignment of all legal malpractice claims."[13] Nevertheless, the Florida Supreme Court stressed that "the vast majority of legal malpractice claims remain unassignable because in most cases the lawyer's duty is to the client."[14] When attorneys prepare private (or public) placement memoranda,

> [they] act much as accountants do in performing independent audits. That is, they act not just for the corporation's benefit, but for the benefit of all those who rely on the representation in their documents.[15]

In order to reach its conclusion, the Supreme Court compared the role of the attorneys in *Kaplan* with the role of the independent auditor in *KPMG*:

> Like the independent auditors in *KPMG*, the attorneys intended that third parties would rely on the representations in the memoranda. The legal services at issue, therefore, were not personal but involved publication of corporate information.[16]

In addition, the Court explained that the assignment of a legal malpractice claim, such as the claim MRI assigned to *Kaplan*, would not endanger the attorney-client relationship because

> [the] attorney's services for MRI involved publication of information to third parties, [therefore] the attorneys owed a duty to the public when advising MRI and preparing the private placement memoranda."[17]

The Florida Supreme Court also examined the role of securities lawyers and the communication of investment information. The Court stated that "securities lawyers have been held to owe a duty to the public."[18] Because compliance with the securities laws present complicated questions to investors, an attorney has a unique role in communicating accurate information to investors. In order to secure the proper functioning of market transactions, the public must be able to rely on information or an opinion offered by an attorney regarding the securities laws and statutes. In this regard, "lawyers often have public duties beyond those owed to the clients."[19] Since the attorneys in *Kaplan* drafted the private placement memoranda knowing that such information would be disseminated to potential investors relying on the content of the memoranda, the services were not personal and may be assigned to a non-client plaintiff.

V. Conclusion

Kaplan creates an exception to the longstanding rule of non-assignment of a legal malpractice claim. The *Kaplan* rationale rests on the public nature of the attorney's communication which was *intended* for release to third parties–i.e., shareholders and the investing public. As the Court stated: "the documents the attorneys prepared not only were intended for release; they were released to third parties."[20] Thus, the confidentiality concerns arising from the attorney/client privilege do not apply. Additionally, because the MRI attorneys did not disclose accurate information in private placement memoranda when soliciting investors, the Florida Supreme Court permitted the assignment of the legal malpractice claim to a third party plaintiff. While the Florida Supreme Court expressed reluctance about creating a market for legal malpractice claims, most claims would be prevented so long as information is not intended for release to third parties.

Robert L. Sirianni, Jr. is an associate with the law firm of Broad and Cassel. He has been a member of the OCBA since 2004. Views expressed herein are his own and do not represent the firm.

[8] 832 So.2d 138 (Fla.3d DCA 2002).
[9] *Id.* at 140.
[10] *Id.* at 140.
[11] *Id.* at 140.
[12] *Kaplan*, 902 So.2d at 756.
[13] *Id.*
[14] *Id.*
[15] *Id.* at 758.
[16] *Id.* at 759.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*



Rainmaking

Never Stop Marketing!



Mark Powers

"Never stop marketing!" Those were my words to Marsha (not her real name), an attorney whom I was coaching. Her question was, "When can I let up on the marketing?" Marsha had been following the golden rule for marketing a law practice, which is: *Three personal marketing contacts each week, and at least twenty good referral sources, to maintain a financially successful practice.* And her practice was growing! She billed more revenue last year than any year prior, but she was getting very busy with clients, training a new paralegal, having to make time for her marketing efforts, and doing all the "stuff" of a law practice. She had more business than she could handle and wanted to back off the marketing.

But I was resolute with her, "Never stop marketing!" Why? Because once you build marketing momentum, you don't want to back off. If you stop cultivating your referral sources, when your caseload dips and you need new clients, you have to work exponentially harder to get the referral moving again. The key is to continue your marketing efforts, at least three per week, whether it's a breakfast, lunch or dinner with a referral, or a speaking event. Even just picking up the phone and connecting with a referral source is sometimes enough to keep the pump primed.

That being said, one of the most important variables in building a successful law practice is *intelligent* client selection. What do I mean by intelligent client selection? It is knowing that you cannot work with every client that approaches your firm, that you have limits and boundaries, and that your staff will burn out if you continue to try and help everyone. Providing that you are not talking about *pro bono* work, intelligent client selection looks at the ability to pay the bill; the client's attitude; how it fits into your practice areas; and it recognizes that a jerk as an opposing counsel can effect the fee. Intelligent client selection also recognizes that you don't barter the retainer.

So herein lies the rub. Marsha cannot be selective about the clients she accepts into the practice if she doesn't have enough prospects from which to choose, meaning consistent marketing is a key to a healthy and successful law practice. Marsha must always be marketing and becoming more selective with the clients she accepts.

So, what does Marsha do? Actually the solution is quite simple, not to mention profitable. The solution is to keep marketing and limit the number of clients that she accepts into the practice. Marsha needs to become even more selective than she was before. This in fact, for lack of a better term, "chokes" the front end or the client intake process. How does Marsha choke the client intake process without stopping the marketing efforts? She should raise her consultation, retainer and hourly fees. A small increase in hourly fees will have a significant impact on revenues and, in the process, weed out clients that are not a good fit for your practice. This may sound harsh, but the good news is that there are no shortages of attorneys in your community to work with clients you are unable to accept, and you will have more time and more resources to help the clients you do accept.

So, if the golden rule for a sustainable and financially healthy law practice is three referral marketing contacts per week *and* twenty good referral sources, what does this mean to you? If you have not been marketing, start now. Referral marketing is the primary form of marketing that I advocate for law practices. It is simple, inexpensive, and effective. And, when done properly, builds trust and memorable moments with your referral network.

If you are uncomfortable with marketing, get yourself trained, get a coach, join a marketing roundtable, just do something. Marketing is essential for your success and it must be focused on every week. Maintaining a consistent routine and practicing good marketing habits will serve you well.

Successful marketing is less about finesse and more about showing up. It is about persistence. It is about putting one foot in front of the next and taking action... even when you don't want to. Do something, and do it today.

Mark Powers is the President of Atticus, Inc. and a regular contributor to The Briefs. Mark co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and founded Rainmakers®, a simple process for attorneys at all levels to stay focused on marketing, creating fresh ideas, and on-going accountability to marketing. To learn more about Atticus or Rainmakers®, please visit the Atticus website at www.atticusonline.com or contact the Atticus office at 352-383-0490.



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of the Conference's Education Committee, a well-respected presenter of judicial education programs, and a long-term and active member of the Florida Judicial College's Mentor Program.

But his excellence and contributions extend beyond the conference for he is at the top of the list for long-standing devotion and contributions to the courts system as a whole. Ninth Judicial Circuit Court Chief Judge Belvin Perry states:

> Judge Arnold is considered an excellent judge in this Circuit. Judge Arnold is a hard working judge who is not afraid to take on new challenges. With everything he does, he puts his stamp of excellence.

As County Administrative Judge Carolyn B. Freeman states:

> Judge Arnold has served in all divisions of County Court. Besides being knowledgeable in the law, he is one of our more innovative judges. He spearheaded Collection Court and developed a program called "An Afternoon At The Courthouse" for all the new lawyers in our area. In addition to those programs, he also teaches at the County Conferences. Judge Arnold is a pleasure to work with and is always willing to help out with unforeseen problems, which may arise. We, his fellow judges, look forward to him being with us for many more years. He is truly deserving of this acknowledgment of his contributions to the judges in the State of Florida and his service to the people of this State.

Judge Arnold is committed to providing access to courts, as demonstrated by his involvement with Orange County Legal Aid Society (1969-present), Teen Court (1995-present) and Night Court (1996-present). He is described as a "go-to individual" who is known as a problem solver, with his efforts on behalf of Collections Court being a prime example. One colleague notes that he is "a good listener who is genuine in his interactions with others and is a pleasure to work with." His community involvement is extensive and includes volunteering with the Winter Park Little League, PTA and Habitat for Humanity.

Congresswoman Barbara Jordan once stated that "[w]hat the people want is simple. They want an America as good as its promise." The same can be said of what this State wants for its courts. They want a court – as good as its promise. A judicial system as good as its promise is known not just for speed and efficiency, but for other less quantifiable aspects of justice – things like fairness and respect, attention to human equality, a focus on careful listening and on judicial excellence and accountability. We cannot be satisfied with being quick. We must strive to be fully just to every person who enters the halls of our justice system.

We know that the courts, and that we as judges, play an indispensable role in preserving justice. Any particular case we hear may not have great historical impact, but each case is a crucial human event. And nowhere is that more true than in county court. Taken together, the decisions we make, the way we treat those who appear before us, have the potential to instill public trust and confidence in the rule of law, in judicial independence and in judicial excellence - and ultimately in the strength of our democracy. What the people want is simple. They want a court and a judiciary that is as good as its promise.

If we are to fully realize the American dream of equal justice, we must work to ensure a fully functioning and properly funded court system so that all who enter our doors have access to justice that is fair, efficient and timely.

We ask for everyone's ongoing support and assistance with the work that lies ahead, to ensure that families and businesses - all our citizens who need the courts - continue to have an adequately funded court system that ensures all Floridians equal access to timely justice, no matter where they live or what they do for a living. We need each of you to be ambassadors for judicial excellence – for each of you individually and collectively are the face of justice.

The Honorable Barbara J. Pariente is Chief Justice of the Florida Supreme Court. The Honorable C. Jeffery Arnold has been a member of the OCBA since1970.

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Is your firm part of the 100 Club? Any firm with two or more attorneys and 100% membership in the OCBA can be a member of the 100 Club. If you think your firm is eligible, e-mail a typed list of your attorneys to Susan Laviolette at susanl@ocbanet.org and she'll let you know!

Announcements

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Speaking Engagements

Stephen R. Looney, a shareholder in the Orlando office of *Dean Mead*, presented a seminar entitled "Redemptions and Purchases of S Corporation Stock" at the American Bar Association Tax Section's 2006 May Meeting in Washington, D.C. on May 6, 2006.

Jill S. Schwartz of *Jill S. Schwartz & Associates, P.A.*, recently presented lectures entitled "Statutory and Common Law Protection of Business Interests" at the 6th Annual Labor & Employment Law Certification Review Course and "Alternative Approaches To Campus Dispute Resolution" at the Valencia Conference on Legal Issues in Community Colleges.

Mary Musette Stewart, an attorney with *Dr. Phillips, Inc.* and President of the Central Florida Association of Women Lawyers, was a panelist on the radio show *Coast to Coast* in March. The discussion topic was the "Legal Gender Gap."

Published

Frank X. Rapprich, Esq., a shareholder with *Fisher, Rushmer, Werrenrath, et al.*, recently published an article entitled "What Can A Contractor Do About Skyrocketing Cost of Materials?" in the April 2006 edition of the Florida Surety Bonds Times.

Dennis J. Wall has just been honored with international recognition by the Indian Certified Financial Analysts with the publication of his article, "Expert Witness on Insurance Issues," in the Insurance Law Journal. The article was co-authored by Douglas Houser, a past president of the American Bar Association TIPS, and was featured by the Federation of Corporate Counsel in its law journal earlier in the year.

News to Note

Former Orange County Conflict Attorneys: The cutoff date for submission of invoices for services provided to indigent criminal defendants and conflict cases from the county to the state prior to July 1, 2004 must be submitted for payment by July 1, 2006. Contact John Dougherty, Orange County Office of Management and Budget, at 407-836-7320 or john.dougherty@ocfl.net.

Fifth District Court of Appeal will conduct a training seminar for mediators on August 28, 2006, from 8:30 a.m. to 4:30 p.m., at the OCBA Center. The registration fee is $100. Mediators who attended prior training sessions need not attend. The training seminar will be conducted by the judges of the court, staff lawyers for the court and qualified mediators, and will present an organized program of learning directly related to the practice of mediation at the appellate level (designed for CME credit). For more information and a registration form, go to www.5dca.org or www.orangecountybar.org.



John T. Skolfield, Jr.

In Memoriam

John T. Skolfield, Jr., formerly with Gurney & Skolfield and most recently with Skolfield Law Office, passed away at his home on March 29, 2006. He had been a member of the OCBA for 44 years. Mr. Skolfield attended Maine Maritime Academy, the University of Maine and Harvard Law School, and practiced in Portland, Maine, before moving to Winter Park in 1959. During his early years, he was an officer with both the U.S. Merchant Marines and the Navy, including serving as the Commanding Officer of the Select Naval Reserve for Central Florida. He was active in many professional and civic organizations, including the ABA, the Florida Bar, United Way and the Winter Park Chamber of Commerce. He is survived by his wife, Elizabeth R. Skolfield, and four children. We extend our sincere condolences to Mr. Skolfield's family and friends.



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ASSOCIATE POSITION - Sole practitioner with busy estate, guardianship and real estate practice needs full time personable, detail oriented associate. Candidate must have minimum 3 years experience in above fields and a dedicated work ethic. Please respond by e-mail to lynn@yergeyandyergey.com or fax to 407-843-0433.

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REAL ESTATE ATTORNEY: Lowndes, Drosdick, Doster, Kantor & Reed, P.A., an AV-rated law firm located in Orlando, Florida, seeks an attorney with a minimum of three years transactional real estate experience to assist with dynamic and expanding real estate practice. Applicant must possess good academic credentials, excellent writing skills and excellent references. Compensation will be commensurate with experience. The law firm offers outstanding financial stability with steady practice growth, sophisticated clientele, outstanding credentials and excellent facilities. Send resume and writing sample in confidence to Nicholas A. Pope, Esq. , or Jacqueline Bozzuto, Esq., Post Office Box 2809, Orlando, Florida 32802.

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CABANISS SMITH TOOLE & WIGGINS, PL a law firm with national civil litigation defense practice seeks associate attorney with 2-5 years experience. Product liability experience a plus. Send resume, transcript and writing sample to Managing Partner, P.O. Box 4924 Orlando, FL 32802-4924 or by electronic mail to sjohnson@cabaniss.net.

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2006 June - July Calendar

OCBA Luncheon • June 29, 2006

Orange County Mayor Richard T. Crotty

RSVP by June 27th to reservations@ocbanet.org

June

1 ***Elder Law Committee***
12:00 p.m. • Bar Center

OCBA Paralegal Committee
5:30 p.m. • Bar Center

2 ***CFAWL Luncheon***
11:30 a.m. • Citrus Club

Criminal Law Committee
12:00 p.m. • Bar Center

5 ***CFAWL Board Meeting***
12:00 p.m. • Bar Center

6 ***OCALSS Meeting***
5:30 p.m. • Bar Center

7 ***Social Security Committee***
12:00 p.m. • Bar Center

7/8 ***Diversity Committee***
2-day Free Seminar
"Successful Lawyering in a Diverse Society"
9:00 a.m. • Bar Center
Contact Florida Bar:
850-561-5743

8 ***Real Property Committee***
12:00 p.m. • Bar Center

Young Lawyers Board Meeting
5:30 p.m. • Bar Center

9 ***Diversity Committee***
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

10 ***2nd Annual Barrister's Ball of the Caribbean Bar Association's Central Florida Chapter***
Contact: cbacf@hotmail.com

13 ***Executive Council Meeting***
11:30 a.m. • Bar Center

14 ***Labor & Employment Law Spring Seminar***
12:30 p.m. • Bar Center

Estate Guardianship & Trust Committee
12:00 p.m. • Bar Center

Family Law Executive Board Committee
12:00 p.m. • Bar Center

15 ***Paul C. Perkins Bar General Meeting***
11:30 a.m. • Bar Center

Young Lawyers Section Luncheon
12:00 p.m. • Citrus Club

16 ***Family Law Breakfast Meeting***
8:00 a.m. • 425 N. Orange Ave., Rm. 2310

20 ***Professionalism Committee***
8:00 a.m. • Bar Center

Inn of Court
5:30 p.m. • Doc's
1315 S. Orange Ave.

21 ***Solo & Small Firm Committee***
12:00 p.m. • Bar Center

Federalist Society
12:00 p.m. • Bar Center
Robert Sirianni: 407-619-1478

26 ***CFAWL Board Meeting***
12:00 p.m. • Bar Center

27 ***Legal Aid Society***
11:45 a.m. • 100 E. Robinson St.

Technology Committee
12:00 p.m. • GrayRobinson, P.A.
301 E. Pine St., Ste. 1400

28 ***CFACDL***
11:45 a.m. • Sorosis Club

Business Law Committee
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

29 ***OCBA Luncheon***
Orange County Mayor Richard T. Crotty
11:30 a.m. • Downtown Marriott

30 ***Bankruptcy Law Committee***
12:00 p.m. • Bar Center

July

5 ***Social Security Committee***
12:00 p.m. • Bar Center

6 ***Elder Law Committee***
12:00 p.m. • Bar Center

OCBA Paralegal Committee
5:30 p.m. • Bar Center

7 ***CFAWL Bar Luncheon***
11:30 a.m. • Citrus Club

Criminal Law Committee
12:00 p.m. • Bar Center

11 ***Executive Council Meeting***
11:30 a.m. • Bar Center

OCALSS
5:30 p.m. • Bar Center

12 ***Estate Guardianship & Trust***
12:00 p.m. • Bar Center

Family Law Executive Board Committee
12:00 p.m. • Bar Center

Judicial Relations Committee
12:15 p.m. • Orange County Courthouse, 21st Floor Conference Room

13 ***Real Property Committee***
12:00 p.m. • Bar Center

Young Lawyers Board Meeting
5:30 p.m. • Bar Center

14 ***Diversity Committee***
12:00 p.m. • 255 S. Orange Ave., Ste. 1401

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Senator Skip Campbell, Jr. (D)
Congressman Bill McCollum (R)
Representative Joe Negron (R)
Representative Everett Rice (R)
Senator Burt Saunders (R)



Walter G. "Skip" Campbell, Jr., a native of New York, was elected in 1996 to the Florida Senate, where he currently serves as the Minority Leader Pro-Tempore. He graduated from the University of Florida in 1970 and from the University of Florida Law School in 1973.



Bill McCollum, a native Floridian, represented the people of Central Florida in the U.S. Congress for 20 years, retiring from the House of Representatives in 2001. He earned his bachelor's degree and law degree from the University of Florida.



Joe Negron, a native Floridian, is the State Representative for District 82, serving Palm Beach, Martin, and St. Lucie counties. He earned his undergraduate degree from Stetson University and his law degree from Emory University School of Law.



Everett Rice, former Sheriff of Pinellas County, is a State Representative in the Florida House, where he represents District 54. He received his undergraduate degree from the University of South Florida and his law degree from Stetson University. He is also a graduate of the FBI National Academy.



Burt Saunders is a State Senator representing portions of Lee and Collier counties. He attended the University of South Florida and received his law degree from William and Mary Law School; he earned a Master of Laws Degree in Ocean and Coastal Law from the University of Miami.

Please submit your questions for the candidates to Peggy Storch at the OCBA via e-mail at peggys@ocbanet.org by July 1, 2006 or via fax at 407-843-3470.

Thank you for your participation. We look forward to seeing you at the July Luncheon. RSVP to reservations@ocbanet.org.

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For further biographical information, visit the OCBA website at www.orangecountybar.org.

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