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The Briefs

A Publication of the Orange County Bar Association



2007-2008
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Table of Contents

President's Message — 3
Who We Are
C. Gene Shipley

OCBA Luncheon Speaker — 5
Thomas D. Hurlburt
United States Marshal, Middle District of Florida

Editors' Note — 7
Brief Improvements
Jessica K. Hew, Tad A. Yates

Professionalism Committee — 9
Professionalism: Ethics Rules and "Much More"
Brikena Isai Tomasic

In Memoriam — 11
The James G. Glazebrook Memorial Bar Service Award
Jessica K. Hew

Judicial Relations Committee — 12
Judicial Relations Committee Works Hard to Build Relationship Between Bar and Bench
Jeffrey R. Jontz

Legal Aid News — 15
The Legal Aid Society Introduces the New GAL Courtroom Model

Feature Article — 17
Big Bombs Need Long Fuses: Preparing for Effective Mediation
David W. Henry

Presentation Skills — 19
Don't Tell 'em Everything You Know
Elliott Wilcox

Hearsay — 20-21
Nicholas A. Shannin

YLS On the Move — 23
Transitions
Judith Anne Garabo Hayes

Rainmaking — 25
Laser Talk
Mark Powers

Financial Planning — 31
The Shrinks Meet at Wall Street
Andrew C. Orr, CFP®, CLU, ChFC, AIF®

New Members — 35

Announcements — 36

Classifieds — 37

OCBA Calendar — 40



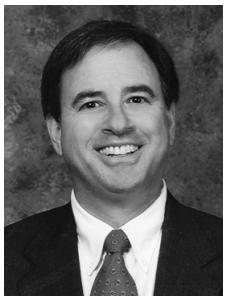
Page 5



Page 9



Page 11



Page 12



Page 17

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The Briefs

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DEADLINE INFORMATION
Deadline for August Edition: 7/1/2007
The deadline for each edition is the first day of each month. If that day falls on a weekend or holiday, the deadline is the prior working day.

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Visit the OCBA's Website: www.orangecountybar.org



Who We Are

C. Gene Shipley

The mission of the OCBA is to promote honor, dignity, truth, and professionalism within the legal community; to promote improvements in the law and aid in the administration of justice; to enhance the delivery of and access to quality legal services; to educate the public about the legal system; to provide for an inclusive bar; and to promote camaraderie, a forum for discussion on issues pertaining to the legal system and education for its members.

No, that's not a list of goals and objectives I originated in preparation for my initial President's Message. In case you've not heard it recently, or ever, that's the Mission Statement of the Orange County Bar Association. It is the guide by which each of us is to conduct ourselves as representatives of the OCBA. It's who we are. Therefore, the Mission Statement encompasses my list of goals and objectives for the OCBA as your President this year.

Beginning with the first objective, to promote honor, dignity, truth and professionalism within the legal community, the OCBA certainly has long-established committees, awards and events to facilitate this goal. The OCBA Professionalism Committee sponsors and co-sponsors numerous CLE seminars promoting professionalism and legal ethics. The judiciary in Orange County and neighboring counties have also joined the OCBA by placing plaques in their hearing rooms and courtrooms stating, "Professionalism Demands Courtesy," a gift from the OCBA given to each judge at his or her investiture. Your Executive Council also recently voted to create the fourth OCBA sponsored professionalism award in honor of the late Judge James G. Glazebrook, and all awards annually identify members from the bench and bar who best exemplify these qualities. Nevertheless, I still can't help but believe there's more that the OCBA, corporately and individually through its members, can do to promote honor, dignity, truth and professionalism. For those of you who agree we should never be satisfied in this pursuit, I welcome your comments and suggestions.

The OCBA is actively serving the Central Florida community through its second objective, to promote improvements in the law and aid in the administration of justice. The OCBA Citizen Dispute and Family Law Mediation Service (CDS) holds mediations four nights every week at the Bar Center. This is a free service offered to Orange County Citizens for resolving disputes short of formal legal action. OCBA members volunteered last year to serve as mediators for 516 mediations. With more than 270 mediations already scheduled during the first five months of 2007, we're well on our way for another record year. In 2006, the tireless OCBA staff also responded to over 18,629 calls through its Lawyer Referral Service (LRS). After screening the calls, OCBA members provided no less than a 30 minute consultation to 2,003 clients from around the world, all at an initial consult fee of only $30. Of course, these referrals resulted in a recorded $1,373,693 in fees for those OCBA members who participated in 2006. In the first five months of 2007, we have already eclipsed the first five months of last year, recording 1,174 cases taken and $556,216 in fees earned by participating OCBA members. And I could double the size of this President's Message by describing all of the activities and programs sponsored by the Young Lawyers Section of the OCBA (YLS), but special mention must be made of the thousands of dollars given through college scholarships to numerous Orange County students every year.

The OCBA also enhances the delivery of and access to quality legal services through its LRS and CDS, and by placing approximately 60 legal assistants, receptionists and other legal support personnel with its members every year through the OCBA Placement Service, which is offered at a cost to members of 5% of the staff's annual salary, rather than 10% or more charged by other private companies. Of course, far and away the most significant contribution by our members to our community is through *pro bono* services facilitated by the Legal Aid Society of the Orange County Bar Association. In 2006, Orange County Bar attorneys handled over 2,728 cases, provided over 20,000 hours of free legal services on cases closed, and donated approximately $450,000 to the Legal Aid Society.

Many in our community have similarly appreciated OCBA volunteers who educate the public about the legal system throughout the year. We speak to students every week through Teen Court and to local educators at its annual Law Symposium, attended by over 200 teachers and others in the Orange County School District. We volunteer countless unreported hours through Justice Lewis' Justice Teaching program and various High School Mock Trial Competitions. And we could double the content of *The Briefs* with stories of how children, their parents and our community are reached by our members, our Judicial Honorary Members and our Affiliate Members through our Law Week activities such as DUI Mock Trials, Goldilocks Mock Trials, the Poster and Essay Contest, Judicial Job Shadowing, and the Naturalization Ceremony. Truly, the OCBA is a national leader among local bar associations in "walking the walk" when it comes to community service.

The OCBA is inclusive, inviting CFAWL, the Paul C. Perkins Bar Association and the Hispanic Bar Association to participate in and co-sponsor three monthly luncheons, and inviting their Presidents to sit as non-voting members of the OCBA Executive Council. This year, we have also offered all affiliate bar associations the opportunity to include their

Continued on page 4

President's Message *Continued from page 3*

activities on the OCBA calendars, which are distributed to our members.

Hopefully, you take advantage of OCBA luncheons; the per plate costs to the OCBA each year alone exceeds our annual membership fees, which are still some of the lowest in the nation for local bar associations. You may have been one of the over 450 members who joined my wife and me at the Tenth Annual OCBA Gala, the most attended Gala ever. Thanks to some outstanding initiative and leadership in our Social Committee, the OCBA offers numerous other events throughout the year to promote camaraderie among its members, including the Trivia Contest, the Texas Hold'em Poker Tournament, the Winter Wine & Cheese Party, and several other happy hours throughout the year. And the activities and philanthropic events sponsored by the YLS always keep all of our members, well, young.

Lastly, the OCBA is ambitious in its objective of providing a forum for discussion on issues pertaining to the legal system and education for its members. This is accomplished regularly through the luncheons and other activities and events identified above. Most significantly, this is promoted through the 24 OCBA Committees, most of which hold meetings and/or luncheons monthly, write substantive legal articles published in *The Briefs*, and sponsor one or more CLE seminars taught by "the best of the best" of our membership and offered to all OCBA members at a fraction of the costs of other CLE seminars promoted by the Florida Bar and other commercial entities.

That's who we, the over 3,000 members of the Orange County Bar Association, are. Imagine who we could be if we all strived consistently to promote honor, dignity, truth, and professionalism within our local, State and national legal community; if every member intentionally served others to promote improvements in the law and aid in the administration of justice; if we strengthened our current programs and developed new programs to enhance the delivery of and access to quality legal services; if every OCBA member volunteered at least once over the next year to educate the public about the legal system; if we all promoted the ideals and activities of the OCBA, now celebrating its 75th year of service, to all attorneys and other legal professionals in our community; and if we continue to enjoy meeting together, socially and professionally, encouraging each other to further build upon the unequaled reputation so many before us have established.

I'm proud and humbled to serve as your President of the Orange County Bar Association this next year. And I'm excited to discover who we will become over the next year and beyond.

C. Gene Shipley is a shareholder with Nardella Chong, P.A. He has been a member of the OCBA since1998.

Legal Aid Society Board of Trustees 2007-2008



(Back) Heather Pinder Rodriguez; Meenakshi "Meena" A. Hirani, President; Esther M. Whitehead, Ex-officio; Aramis N. Donell; Betty Jackson.

(Front) Tad A. Yates; William D. Umansky; Patrick M. Magill; Nicholas A. Shannin; Thomas A. Zehnder; John "Jack" S. Lord, Jr.

Not pictured: Glenn A. Adams; John R. Hamilton; Norberto S. Katz; Jamie B. Moses; Cindy Schmidt; Charles R. Stepter, Jr.;



Meenakshi "Meena" A. Hirani (right), 2007-2008 LAS Board President, assumes the responsibilities handled by last year's President, **Esther M. Whitehead**. The LAS Board of Trustees is responsible for helping to shape the future direction of the Society and ensuring its continued service to the community.

OCBA Luncheon Speaker





June 28, 2007

Thomas D. Hurlburt, Jr.

United States Marshal

Middle District of Florida

United States Marshal Tom Hurlburt has served in the Public Safety arena for over 35 years. Tom was a member of the Orlando Police Department for 28 years, retiring as Chief of Police.

Marshal Hurlburt was appointed Director of Public Safety for Orange County by then Mayor Mel Martinez, who now serves as one of Florida's United States Senators.

As Director of Public Safety, Tom was responsible for the management and overall direction of the Orange County Fire Department, the Department of Corrections, the Office of Emergency Management and the Drug Free Community Office. These departments total over 2,500 employees. Tom served as Orange County's Public Safety Director until he was nominated by President George Bush to serve as the United States Marshal for the Middle District of Florida.

Marshal Hurlburt is a graduate of the FBI National Academy, the Senior Management Institute for Police in Boston and the FBI National Executive Institute in Quantico, Virginia.

Tom is the recipient of the National Distinguished Leadership Award along with many other awards.

The Ballroom at Church Street • 11:30 a.m. - 1:00 p.m.
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Main Entrance:
Garland Ave. between Church St. and South St. • Enter through the doors between the pillars at the front.

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Surface Parking Lot - Garland Ave. between Pine St. and Central. Rates vary.
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SunTrust Bank Parking Garage - South St. and Boone Ave. Rates vary.
Church Street Parking Garage - Hughey Ave. and Bob Snow Ln. Rates vary.

Please RSVP for the luncheon no later than June 22, 2007.
RSVP to Wendy Mazlin, Events Manager, at reservations@ocbanet.org.

To ensure proper luncheon count, RSVPs are requested no later than 5 days 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.

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.

Mitchell v. Metropolitan at Lake Eola LLC,
32 Fla. L. Weekly D365 (Fla. 5th DCA 2007)
Reduced lis pendens bond from $600,00 to $20,000.

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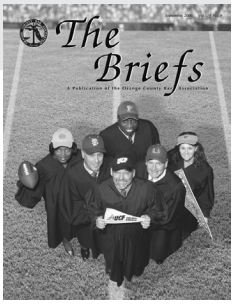


Kristyne E. Kennedy



Thomas A. Zehnder

Editors' Note



Brief Improvements

Jessica K. Hew, Tad A. Yates

Two years ago, Bill Sublette, the then-incoming OCBA President, had a vision that had been discussed since Paul SanGiovanni was the OCBA President two years prior. The vision was simple: to develop a new, professional publication to showcase the OCBA and its members, and to do so while being cost efficient to our members as stewards of the OCBA funds. While the vision was simple, the work was challenging.

We took on the challenge in May of 2005 with the "new magazine" unveiling in January of 2006. We had more meetings and learned more than we ever thought we would want to know about publishing. It was a big undertaking, but, with the tireless help of OCBA staffers Peggy Storch, Communications Manager, Brant Bittner, Executive Director, and Jeff Browder and the staff of Browder Printing, we took a "scary Halloween looking newsletter" to a real magazine - one with substantive and personal information, presented on glossy paper with a color cover.

The membership feedback was positive, and the membership helped by providing valuable suggestions. Some were simple, such as Bill Davis's requesting identification information of the particular volume on the footers of the pages. Others were more challenging, such as Virginia Townes's "face-off" with Jim Markel as to substantive issues of arbitration jurisprudence. These are the things that you saw. What you did not see was the most popular question and comment we received: how were we paying for this?

The answer is advertising, pure and simple. All of the advertising, from the full-page, color ads of OCBA members and firms, such as George Indest's Health Law Firm that has graced the inside front cover for many months, and service providers to the OCBA, such as Andrew Orr, and down to the classified ad lines, all generate the revenue we use to produce and publish *The Briefs*. In fact, we are pleased to announce that the latest financial figures we have indicate that the March 2007 issue posted a historic net profit of $2,680.55, and we have been able to grow into a 40+ page publication.

Where does this all lead? We hope to have more improvements. Our first forthcoming change, approved by the Executive Council several months ago, was the reduction in the number of issues to match our OCBA schedule. We have eliminated the December issue, and will instead have a "Holiday" issue. Our second change is an improved relationship with Browder Printing to help *The Briefs* manage its growth. Our third, and most exciting change, is the announcement of our retirement as your Co-editors, together with the introduction of your new ones, Kristyne Kennedy and Tom Zehnder.

Kristyne and Tom have already begun looking at making *The Briefs* even better! We are promised there will be more pictures (but fewer of Tom Wert with his retirement from the presidency!) and more articles, both substantive and personal. Both photographs and articles will still be accepted for publication consideration on an on-going basis. We may also see the emergence of a new column or two and an increase in circulation.

It was our pleasure to serve the OCBA as the Co-editors for *The Briefs* during this exciting period of change. We thank the membership for working with us and providing us with your comments and submissions. More importantly, we thank you for welcoming us into your in-box each month.



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Professionalism Committee

Professionalism: Ethics Rules and "Much More"



Brikena Isai Tomasic

I graduated from law school last year and was accepted into the Florida Bar last October. Needless to say, my first few months of practice have been filled with learning new and exciting things. In addition to making my way through the analysis of different legal issues, I have been working on trying to find my voice, my identity as an attorney. Prior to law school, I held various jobs. However, I have concluded that being an attorney is like nothing I have done before. That is because being an attorney is more than just a job; it is a profession, with all the privileges and responsibilities that go with it. One of those responsibilities is to practice with professionalism. The word professionalism can be easily articulated. But how do you define it? How do you make it a reality in your everyday practice?

When I first graduated, I had this notion that professionalism just meant following the ethics rules. In law school, we spent considerable time studying the rules of ethics, trying to understand the interplay of different rules, and analyzing the case law interpreting them. I continue to think that the rules of ethics play a fundamental part in what it means to be an attorney. These rules are the backbone of our practice. They are at the core of every decision we make as attorneys. However, I have come to the conclusion that to be a true professional, an attorney must not stop there. The rules of ethics are the baseline; they are the minimum standard that an attorney should follow to be a professional. Professionalism is ethics rules and much more.

As a new attorney trying to establish my identity as a professional, I have struggled with the "much more" part. What does "much more" mean? Are there any books I can read to figure it out? Is there a set of rules I can follow to comply with the "much more" part of professionalism? And then, the answer came to me. It was not from a book, an article or a set of rules that someone wrote. The answer took shape in front of my eyes while I was recently attending a high school mock trial competition. As a judge at the competition, I was to grade the students' performance on how well they knew the case, raised their objections, and thought on their feet. The kids were tremendously talented and I was very impressed with them. But what struck me the most was how respectful they were to each other and the judge, how polite they were to the witness while firmly making their case, and how they shook the opposing counsel's hand at the end of the trial. Sitting in the jury box, I suddenly realized that "much more" is not something you are taught. You do not have to have a college or law school degree to understand it. It is something that comes from within. The "much more" part of professionalism is simply a sense of respect and fair play.

Our profession is unique in that we function as part of the adversarial system. Our mission is to zealously represent our client. In that pursuit, an attorney's mandate is to diligently obtain the facts, thoroughly research the law, and firmly present the best legal arguments possible. Along the way, however, an attorney's duty as a member of the bar and an officer of the court is to always remember not to personalize the argument, not to let respect and civility fall by the wayside, and not to bend the rules of fair play and just take a short cut. As a young attorney striving to practice with professionalism, these are the goals that I should always keep in mind and work hard to achieve in my practice.

In a world saturated by messages coming from the media, our profession has not been spared. Shows from "Boston Legal" to "Shark" portray attorneys as aggressive, and willing to bend rules and to play dirty. These television characters, caricatures designed to create ratings, affect the public perception of what it is that attorneys do day in and day out. The truth, however, is much different. The majority of attorneys work very hard for their clients while at the same time maintaining great standards of professionalism. I am blessed to be surrounded by, and to work every day with, consummate professionals. As a new attorney, my focus will be to practice with professionalism, lead by example, and spread the word about the wonderful examples of professionalism I see every day.

Brikena Isai Tomasic is an associate with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. She has been a member of the OCBA since January 2007.

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The James G. Glazebrook Memorial Bar Service Award



Jessica K. Hew

It was with deep regret that we learned of the untimely death of the Honorable James G. Glazebrook on Thursday, May 3, 2007, in Boston, Massachusetts. Judge Glazebrook, 52, suffered internal bleeding that triggered a fatal heart attack while he was admitted in Massachusetts General Hospital to undergo colon surgery. He was buried in Massachusetts on Tuesday, May 8, 2007, and is survived by his wife of twenty years, Joni, and two daughters, Daisy, 18, and Becky, 15.

In 1977, Judge Glazebrook received a Bachelor of Arts, *cum laude*, with Departmental Honors in Philosophy from Middlebury College in Vermont, and was a visiting student at Harvard University during the Spring Semester of 1976. He subsequently obtained his *Juris Doctor* from Case Western Reserve University in Ohio in 1980, where he served on the Editorial Staff of the Law Review and Editor of both the *Journal of International Law* and the *Canada-United States Law Journal*. After graduating, Judge Glazebrook served as a Law Clerk to the Honorable John A. Reed of the United States District Court for the Middle District of Florida until 1983.



Moving to New York City, Judge Glazebrook maintained a private civil practice through 1990. He then returned to Orlando as an Assistant United States Attorney, where he prosecuted crimes for the United States. In 1996, Judge Glazebrook was appointed to the bench as a Magistrate and served until his untimely death.

Steve Branyon of the Middle District recalls Judge Glazebrook fondly. "I knew Judge Glazebrook from the time he was an assistant U.S. Attorney through his tenure as a magistrate judge. I considered him one of the most positive and upbeat persons I have ever known. As a jurist, he was unfailingly patient and considerate with litigants and attorneys. We will all miss him tremendously."

The Honorable David Baker, Magistrate for the Middle District, reflected upon Judge Glazebrook's commitment to the law. "Judge Glazebrook built a national reputation among Magistrate Judges for expertise in handling social security appeals. This is a significant part of the docket for Magistrate Judges and is also a difficult part of the docket because the cases, regardless of their merits, almost all involve people under difficult circumstances. Judge Glazebrook made extra efforts to study and develop the law in this area and spoke at national seminars on the subject."

Judge Baker also reflected upon Judge Glazebrook's efforts with Court administration. "Several years ago, Judge Glazebrook undertook the arduous task of attempting to reconcile and harmonize all of the 'standard' case management orders used by the federal judges in the Orlando Division. Longtime litigators will recall how many disparities had crept into the Orders over the years. Some of us thought getting all of the judges to agree on common language and procedures was impossible, but Judge Glazebrook diligently and carefully worked through the differences and coaxed all of the judges to adopt uniform language. This was a quiet task, unseen outside the Court, and is a good example of the dedication displayed by a wonderful jurist."

Throughout his public service career in Orlando, Judge Glazebrook was a constant supporter of the OCBA and the pursuit of the law. He served as the Chair of the National Conferences of Trial Judges for the American Bar Association from 2001-2002, and traveled with the ABA delegation in 2002 and 2004 to Algeria. In addition to attending OCBA functions, such as the annual Dinner with the Judiciary, Judge Glazebrook was also active with the local Inns of Court and the Federal Bar Association.

Past OCBA President Mayanne Downs recalls when she asked Judge Glazebrook to co-chair the State and Federal Trial Practice committee: "He enthusiastically agreed, and offered up the courthouse for our regular meeting place. He was always available for swearing-ins, for panel discussions, for help filling out seminars, for chairing committees, and for help in advancing the bar's interest with the judiciary. He was a regular attendee at bar luncheons, often being the only federal representative available."

In fact, Middle District Court Judge Anne Conway stated, "He never said no."

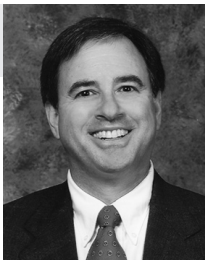
It is for these reasons that the OCBA Executive Council is pleased to announce the founding of *The James G. Glazebrook Memorial Bar Service Award*. This award, suggested by Mayanne Downs, will be administered by the OCBA Professionalism Committee in honor of Judge Glazebrook for his service to and support of the OCBA. It will recognize those members of the local judiciary for being so generous with both their time and talents for the betterment of the local legal community.

Continued on page 22



Judicial Relations Committee

Judicial Relations Committee Works Hard to Build Relationship Between Bar and Bench



Jeffrey R. Jontz

Relationships aren't built overnight. It takes time to build a relationship where people trust each other, are willing to work together, and feel that they can be open in their communications. One of the reasons the Orange County Bar Association has been so successful over the years, and has won so many state and national awards, is because the people in the Association are willing to take the time to build those relationships that result in a smoothly working organization.

For many years, the Orange County Bar Association has had a Judicial Relations Committee for the purpose of ensuring good relations and communications between the bench and the bar. The committee, at a base level, serves as an outlet for information. It is a place where the Judges, the Clerk of Court, the State Attorney's Office, the Public Defender's Office, and the Bar in general can share information about what is going on in their respective worlds. The committee meets six times a year. The judges and attorneys discuss courthouse news, matters of concern to members of the local bar, and issues that may affect both the bench and the bar. The committee discusses current topics of interest in the State courts (including county and circuit courts), as well as specialty courts, such as the Business Court. The State Attorney's Office, the Public Defender's Office, and the Clerk of Courts also contribute helpful updates. Important new decisions that affect various groups are discussed. The committee may discuss such matters as deadlines for JNC applications for open judicial positions. This information-disseminating process enables all of the affected groups to be current on what is going on in the court system, and for committee members and their related groups to become part of the discussion about the issues facing the court system, as well as to provide possible solutions to problems that may have arisen or be expected to arise.

Beyond the basic information-sharing function, the committee also serves the purpose of being able to iron out irritations that develop in the system. It often is difficult for an individual attorney to question the demeanor of a judge or to question the way a judge may run his or her courtroom. Similarly, there are situations where the conduct of an individual attorney or attorneys in general before a particular judge or the judges in general is creating an individual irritation or a problem with the way the court wishes to operate. Often raising these concerns or irritations individually can have negative consequences for the parties and their future relations. Certainly, a lawyer complaining against a judge could have long term consequences for that attorney in future appearances before the court. Certainly, if a judge complains about an individual lawyer, that can have serious consequences for that lawyer in his or her firm. However, if these matters are brought to the committee, and are aired in discreet conversations among committee members about how to approach the problem and resolve the matter for the best of all, then the problem is hammered out as an organizational solution, without the necessity of involving individual personalities and without creating individual animosities.

The committee also provides a free, professional, non-combative mediation process for individual attorneys and judges if there is an ongoing serious dispute. All of this is done with confidentiality and discretion. Committee members at large are not aware when the mediation process is being implemented, nor are they aware of the participants or results. Anyone on the committee can ask for a mediation intervention that can be done without the committee member knowing the participants. The mediation process allows for dispute resolution without attribution or publicity and is an excellent means for fostering successful professional relationships.

The committee also puts on seminars concerning bench - bar relations. In 2005, the committee, together with Barry University School of Law and the Orange County Bar Association, sponsored a CLE seminar entitled: "Looking Behind the Jury Room Door." The seminar was for judges and lawyers alike and was based on the results of responses from over 200 jurors in the 7th, 9th, and 18th judicial circuits. Information about seminars in 2007-2008 will be advertised in this magazine, as well as on the OCBA website and in Discovery e-mail blasts.

This is a committee whose work is based on relationships. Good relationships allow the process to work smoothly most of the time and enable the parties to solve problems when they arise. The time and effort in building a good relationship between the bench and the bar is well spent.

The committee's chair person this year is Debra W. Botwin with Brewer Botwin. Any OCBA member who is interested in becoming involved with this committee may contact Debra at 407-894-5335 or dwbotwin@hotmail.com.

Jeffrey R. Jontz practices with Swann & Hadley, P.A. He has been a member of the OCBA since 1972.



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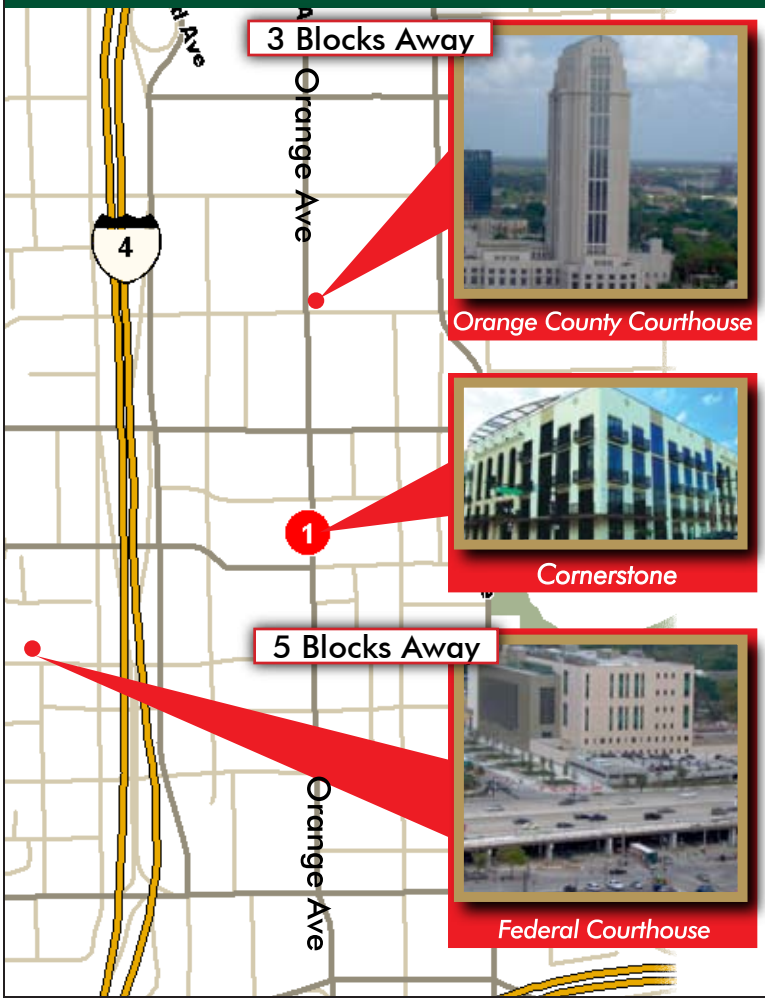






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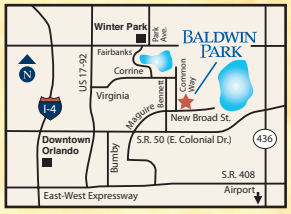
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OCBA Legal Aid News

The Legal Aid Society Introduces the New GAL Courtroom Model

Legal Aid Society of the OCBA

If you have been to the Juvenile Justice Center recently for a dependency hearing, you may have noticed a change in the courtroom. Legal Aid now has a Guardian *ad Litem* (GAL) Program staff attorney assigned to each dependency judge. In Judge Dawson's Courtroom, you will find Kavita Sookrajh, and in Judge Adams' Courtroom, you will find Krista Bartholomew. This new courtroom-centered approach was designed with the goal of providing greater assistance to both the volunteer GALs and the Court.

First-time GAL Jennifer Tomsen observed, "Starting as a new GAL was somewhat intimidating. There was a lot to learn, very quickly. Having a program attorney available who knows the ropes has been invaluable. It has been great to have someone accessible who's willing to help with questions and to just be a guide to the process. The [GAL program staff] attorney who has worked with me on my case has been a fantastic resource."

Legal Aid receives funding for the GAL Program through a contract with the State of Florida. The contract requires Legal Aid to use its best efforts to ensure that the GAL Program or a volunteer GAL is present at all hearings in cases where a GAL has been appointed. The two courtroom attorneys, Kavita and Krista, are there not only to assist GALs with attendance at hearings, but also to serve as a resource to the appointed GALs and the Court on some of the more complex issues involved with dependency. They are also present to help connect the volunteer attorney GALs with the lay GAL volunteer assistants, known as VACs (Volunteer Advocates for Children), the GAL Program staff case coordinators or with the GAL Program staff attorneys specializing in specific areas of the law. The courtroom attorneys, VACs, case coordinators and staff attorneys with the GAL Program are available to work hand-in-hand with GALs and provide assistance with a variety of things such as co-counseling a case, visiting the child on a regular basis, locating services the GAL feels the child needs, or researching complex legal issues involving education, immigration, developmental disabilities, independent living and termination of parental rights.

Abigail Schroeder, an attorney who has been taking GAL appointments for seven years now, thinks this is a positive move for the Program. "I must say that I do enjoy having someone from the GAL program present at the hearings as a resource and a back-up, if needed," she says. "On the one case, it was helpful to have someone else there while I had to testify. When I was first starting out as a GAL, it would have been very helpful to have someone there for guidance and assistance as I got myself into some hot water several times simply because of my lack of experience. Now that I've been a dependency attorney, I've learned a little more, but two heads are always better than one!"



Krista Bartholomew
Legal Aid Society
Guardian *ad Litem*
Program staff attorney



Kavita Sookrajh
Legal Aid Society
Guardian *ad Litem*
Program staff attorney

When asked how this new courtroom model is working from the Court's perspective, Judge Daniel Dawson said he is "extremely pleased" and notes: "It's really been a tremendous help to have someone from the Program present during the hearings. The kids are being served much better and it's easier for me to have that extra voice when questions come up."

In April, the GAL Program expanded its coverage to include hearings held before Magistrate Friedman, who said he thinks the new model "provides a good benefit to the Court because you have an added resource knowledgeable in the law and able to provide insight to the Court on areas like developmental disabilities, education, social security, immigration, and so on. This focus on the needs of the child creates a nice balance to the holistic approach the Court needs to take. I only hope we can continue to find more attorney volunteers to expand the program to help more children in the system."

Polly McIntyre has been handling dependency cases for 26 years and has worked on many sides of the system. She indicated, "I really enjoy having a GAL 'troubleshooter' in the courtroom to help solve issues as they come up. This new system improves communication between the judges, lawyers and children and in the end protects the rights of children better."

DCF Attorney Claudia Hernandez, when interviewed, stated that having the courtroom GAL Attorneys present was a "help to her CWLS experience."

Any attorney volunteering with the Guardian *ad Litem* Program can contact either of the Program attorneys prior to hearings for input or information, to have volunteers assigned to work with them on their cases, or to discuss any legal issues arising from these cases. Court Administration has very generously found a room in the courthouse for Legal Aid staff and volunteer GALs to use if needed for meetings with the children, caseworkers and others. If you need to use the room, please contact either Krista or Kavita and they can assist you.

Contact information: Attorneys Kavita Sookrajh or Krista Bartholomew can be reached through their Legal Assistant, Lina Fairchild at 407-841-8310 ext. 3162 or at ksookrajh@legalaidocba.org or kbartholomew@legalaidocba.org or lfairchild@legalaidocba.org.

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Feature Article

Big Bombs Need Long Fuses: Preparing for Effective Mediation



David W. Henry

"Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough."

- Abraham Lincoln

Most articles on the mediation process discuss the tools of the mediator, and the various psychological and interpersonal dynamics that take place during a mediation session. Articles on practice skills and good lawyering *in preparation for successful* mediation are hard to find. A Google® search by this author using "mediation + preparation" uncovered nothing instructive in the first few pages of hits. Legal publication databases researched in Lexis turned up nothing as well. If, as many lawyers say, the mediation session is the most important day in the life of the case short of trial, why is there so little easily accessible material on how lawyers should prepare for a successful mediation? I think we may do ourselves and our clients a disservice by *not effectively* preparing for mediation.

This article submits that we do not teach or train lawyers how to prepare for mediation and offers this criticism: most of the time we do not think much about preparation apart from the logistics of the mediation session. Who, when, and where are usually the chief concerns. Of course the overwhelming majority of cases settle at mediation so the argument is, "Well we must be doing enough preparation since the process seems to work." Yet, what about the 20 or 30 percent of the civil cases that do not settle. Is there something that might have been done? *Why don't these cases settle?* Can we reduce the impasse percentage? Even a slight increase in the number of settlements at mediation will have a profound impact on our clients, the cost of litigation, the dockets and the burden on the judiciary as a whole.

I submit that perhaps some of the mediations that reach impasse might not have done so, and that the cause of some failed mediations may have its origins in the *inactivity* of the attorney in the weeks *before* the mediation conference. You can have a new boat and the right bait, but if you haven't checked your tackle and gear beforehand, you may not be able to hook any fish. Mediation preparation is a meaningful (and also billable) activity that is perhaps too often ignored.

Early Preparation - The 90 Days Prior to Mediation

Litigators are calendar-driven animals and so our plan for improving mediation preparation is tied to the lawyer's calendar. Each of the steps we suggest will be tied to a date prior to the mediation. The timing is of course subjective and the time frame is admittedly flexible, but the key is to begin thinking in stages. After discussing mediator selection, the balance of this article assumes that a date has been set by the parties or the court.

Selection of the Mediator

The parties normally agree on the mediator and the date at or near the same time so this is usually not a hard issue. I support the perhaps counter-intuitive argument that absent a mutually agreeable "clear choice" between all sides, defer to the other side. You can use the mediator's connection if any to the opposing side to communicate negative information, gain leverage, or soften the terms. Absent a real concern over unethical bias or bad past experience, I almost always defer to opposing counsel regardless of what side I am on; my evaluation doesn't depend on what others think, but opposing counsel and his client *might* be influenced by a friendly face. If I insist upon a mediator that they dislike or distrust for any reason, the intellectual underpinning of the process is destroyed. The mediator must be *perceived* as neutral or favorable by the other side to be the best communicator of your message.

Identify the "Right" Participants

If you represent a corporation or other entity, the day-to-day representative for litigation purposes is not always the best representative for mediation. Think about who will be there when doing the initial scheduling and approximately two months prior to the mediation; be sure to confirm who will attend. Politely insist that key decision-makers who initially promised, will participate *in person*. Waiting until a week prior to know your mediation representative is someone different than you thought is potentially ruinous on several levels. Push back hard if the client wants to send simply a "face" who you know does not have discretionary decision-making capability. Do not let the best mediation representative slip through your fingers. Tell reluctant senior management that while the day-to-day can be delegated, settlement decisions demand their personal attention and that only with them are creative solutions possible.

Step outside the four corners of the case. Is someone other than the day-to-day litigation representative a better choice? Do they really speak for the will of the company? Has the litigation representative made a poor decision to litigate and is now hesitant to cut his losses for fear of repercussions by superiors? In one trademark case we handled the parties seem intractable until we managed to get the two corporate presidents in one room eye-to-eye. Turns out neither party was enthusiastic about litigation but lower level managers assumed that litigation was the only way to resolve the tradename dispute. A deal was struck because we made sure to have the company presidents communicate directly in a way that had not been possible while the day-to-day litigation coordinators were running the show.

Continued on page 18

Get to the key decision makers and politely but firmly insist that they attend the mediation session in person. Mediations that lack key decision-makers are like team sports with the star on the bench. You might still get the desired victory (settlement) but if you lose (impasse) you are forced to wonder how it might have been different if the preferred players had been in the game. On the other hand do not assume the higher the rank, the better they will be at mediation. They may lack the ability to focus on the litigation and not have litigation risk assessment experience. Corporate counsel might be better than a temperamental owner. These are not always easy issues. Sometimes having two representatives is good practice, because they can act as ballast for one another and sell the deal to the company when they go home.

Make sure every *other* party has the right representative. There is no mystery here. Ask the other side who is attending, and if they are not known to you, ask opposing counsel to explain what they do and their position in the company. Be blunt. Tell them that you are committed to having informed decision-makers and you expect the same of them. You need to make the inquiry several weeks prior to mediation so that if you or opposing counsel needs to make a change in participants, it can be accomplished without necessarily moving the mediation date and creating a scheduling problem for others. If the other side appears content to send someone you perceive to be less than ideal, use the mediator to diplomatically ask questions and receive commitments. This is a delicate issue but given the cost, it makes senses to address attendance rather than ignore the problem.

Don't Confuse Business Savvy with Mediation IQ

Once the representative is chosen, you must begin an aggressive period of education sixty to ninety days *before mediation* or longer for exceptionally large or complex cases. Educate the client on the case, the exposure, the parties likely to appear and the potential range of demands. Do it in writing. Too many lawyers send a suit report with a cursory overview of the case to the mediator a few days prior, telephone the client perhaps a week prior to "confirm" the date and time, and perhaps have a short phone call on what to expect. This may be standard practice and minimally passable in small cases that we expect to settle, but it is far from good practice. One danger is assuming the client really understands his or her own case. That assumption is flawed because many lay people, even otherwise sophisticated business owners, simply do not understand the summary judgment process, rules of evidence, limitations on testimony, *Daubert* motions, fee exposure, the time needed to prepare for trial, and have no real experience in assessing litigation risk. Even if you have written frequently to the client along the way, psychologists will tell you that most clients filter out the bad news in letters. Hence, the need to reaffirm the good, bad and ugly with the client.

Expectations may be unrealistic for any number of reasons. Make sure that you start managing the expectations early in the process and that your reporting is consistent with the expectations you have outlined. Some clients confuse their own personal success or expert knowledge of their products and services with expertise in evaluating their case. You are the only professional expert in this area. They are at best amateur evaluators. Evaluating the case is your job and the hardest thing we do. Do not let the client's optimistic perception of the case color your independent evaluation. All clients need to be educated about the case and the mediation process beginning approximately 90 days prior to mediation. The message you send at this early stage will then be reinforced as the mediation nears unless there are some new developments that change the calculus.

For starters send a multiple page "internal memo" to the client with a comprehensive discussion of the mediation process 90 days out. Ten to fifteen days later send a detailed discussion with the pros and cons of the case and the potential risks, costs and rewards. If the client has been harboring wild ideas that are unrealistic, it is better to air the perceptions or misperceptions weeks prior to mediation as opposed to two days beforehand.

Mediation Preparation from the Plaintiff's Perspective

The challenges and issues to be considered by the Plaintiff and Plaintiff's counsel are different from those of the Defendant in several ways. In multi-party cases the Plaintiff's attorney may have failed to have advanced the case against each Defendant *before mediation* to the point where there is little measurable benefit to settlement for a particular party apart from defense costs. In multi-Defendant cases you must give each Defendant a reason to settle NOW. This is not always easy and so you run the risk of losing sources of funds ("checkbooks") at mediation. Perhaps you do not need every Defendant to contribute, just the target. But consider this: if you ignore one or more parties before mediation, you are hard pressed to all of a sudden claim they are important "contributors" who must be in the game at mediation.

The solution is to begin thinking about mediation while you still have time to exert settlement pressure. Again, 75-90 days or more before the mediation date, pursue your discovery motions, set hearings to dispose of motions to dismiss, and request depositions. You likely will not (and probably should not) complete discovery, get every document, or take every deposition but you must advance your cause to that critical point where liability and damages against each party are articulable. To use a chess analogy, think of the defendants collectively as the various pieces on the other side. Some of the defendants are more difficult to attack and more valuable in terms of contribution to settlement. You may not have time to move your pieces deep into the board or into a threatening position but you can try to capture a few pawns or move a few pawns down the board and create some noticeable pressure. The other side will take notice even if the only risk is that of losing a few pawns. Try to put some kind of litigation pressure on as many of the co-defendants (pieces) as possible. Discovery motions, hearings, and 30(b)(6) depositions (an under-utilized tool) all force the Defendant to pay attention and trigger involvement by the defendant-client and his attorney.

Continued on page 24



Presentation Skills for Lawyers

Don't Tell 'em Everything You Know

Elliott Wilcox



Congratulations! Your [Chamber of Commerce, Rotary group, professional association, etc.] just asked you to speak at their upcoming annual convention. They want you to speak about your area of expertise and educate their members about avoiding the most common legal problems you handle. You're excited, and you should be. Just make sure you bring a lot of business cards with you, ok? After all, the room is going to be **filled** with potential clients. Once they hear you talk about your area of expertise, they'll realize that you're the solution to their legal problems and will want to hire you right on the spot!

You want to be completely prepared, so you'll be doing a lot of research and reading a ton of caselaw, right? To get ready for this important presentation, you'll probably learn ***everything*** there is to know about the topic, won't you?

Of course you will. That's why, before you start writing your speech, you'll want to pay attention to this important warning: The danger of knowing *everything* about your topic is that you're going to be tempted to tell your audience *everything* you know about the topic.

"But wait a second," you say. "It's taken me **years** to become an expert in this topic area. I've had to specialize in this area for years, reading tons of caselaw, statutes, and legal commentaries. By the time this presentation comes around, I'll probably know more about that topic area than almost anyone else on the planet. The reason they're inviting me to give this presentation is because I know so much about the topic, right? Won't they want to learn everything I know about the topic so they can have the same expertise?"

Nope. The *last* thing your audience wants to hear is everything you learned about the topic to become the expert. Have you ever Googled your speech topic? There are *millions* of pages worth of information available on the subject. That doesn't include the countless cases, articles, and commentaries you've read through. No matter how much time they've given you to speak, there's simply too much information available about the topic for you to tell them everything you learned. *They don't need all of that information*.

"But if they don't need all of the information," you ask, "why are they inviting me to speak to them? I thought they wanted to learn about the topic?"

Yes, they **do** want to learn about the topic, but they don't want you giving them a book report on the subject. They want the information, but they need it organized, they need it sorted, they need the highlights, and they want the important issues outlined for them. Your goal as the speaker should be to focus the topic down to a manageable amount of information. If you try to tell them everything you know about the topic, your presentation is going to devolve into a meandering stream of consciousness, their eyes will glaze over, and you'll bore them to tears.

But you already knew that, didn't you? You've had similar experiences in your life, when someone tried to tell you more than you ever wanted to know about a topic. Just think back to the last time your car wouldn't start. You didn't want the mechanic to tell you how he became ASE (Automotive Service Excellence) qualified or how a fuel injection system operates, did you? Sure, he needed to know all of that information to fix your car, but it didn't matter to you, did it? No, you just wanted him to fix your car.

The same thing is true with your audience. They don't want to hear everything you know about the topic. They don't want to learn how you became the expert. They don't want to hear about how the caselaw has evolved over the past several years, either. They just want to hear how you can help them with their legal problem.

To make your presentation a success, narrow your topic and focus the presentation on addressing *their* problem. When you speak in terms of their needs and interests, you'll grab their attention and deliver a more powerful presentation. Examine each portion of your presentation and ask, "Do they *need* to know about this to solve their legal problem?" If not, ask yourself why you're presenting it to them. Pick the few important points that your audience *needs* to know, and then illustrate those points with stories or anecdotes.

Don't approach your presentation from the perspective of a lawyer preparing to argue issues to an appellate court, trying to address *every* possible issue that might arise. Instead, approach your presentation from the perspective of an individual or a business looking for the solution to a problem. Rather than telling them *everything* you know, eliminate the unnecessary topics and focus your presentation on solving their problem. When you do that, your presentation will be a raving success!

Elliott Wilcox is the editor of Trial Tips Newsletter. To collect your free special report, "How to Become the Best Trial Lawyer in Your Courthouse - The Top Ten Tips for Trial Lawyers," send an email with the subject line "OCBA" to FreeTips@TrialTheater.com

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The Young Lawyers Section's An Evening with the Judiciary is always a huge success. The April 24, 2007 event held at Doc's Restaurant was no exception! A few more photos for your enjoyment...



Donna L. Draves; Hon. C. Jeffery Arnold; Irene B. Pons; Hon. Anthony H. Johnson; Lori M. Caldwell-Carr and Amy R. Steiner



R. Gavin MacKinnon and Thomas A. Zehnder



Kristyne E. Kennedy and Hon. Alan S. Apte



Thomas A. Zehnder; Kenneth P. Hazouri and Shayne A. Thomas

HEARSAY

Unstuck in Time

Listen: **Nick Shannin** has become unstuck in time. Up is down, night is day and a guy is now in charge of the Hearsay column. After Lady **Jessica** and the Fabulous **Kristyne**, history clearly favors the ladies in this role: Rona Barrett, Joan Rivers, Lucy Spiller, Gladys Kravitz - this is a realm that has been mostly dude-free, but no more. I do have the slightest of pedigrees. A good law school friend was Justin Walker, who is the son of Mike Walker, whose two-page spread of rather interesting tidbits (and even more interesting pictorals) is a longtime staple of the *National Enquirer*. Not that I'd know anything about that, but Justin's dad is proof that a fella can pull off a column like this if the pay is right. And let me tell ya', they doubled Kristyne's per-column fee to lure me in (it was a nice round number), so buckle up and let's face these things with a sense of poise and rationality, shall we?

First, the Ch-ch-ch-ch-changes. Other than me subbing in for K-square (**Kristyne Kennedy**'s long-time moniker dating back to at least May '07), there are, of course, a gazillion office-holders who have either hung up the gavel or newly acquired one. I'm sure they are covered elsewhere in this mag, but here's some highlights if not. **T.P. Wert** is moving into the best job ever: Immediate Past President. The year of the Tom may be over, but the year of the Gator is not, with Florida faithful Tom being followed by Orange and Blue diehards for the next two years: **Gene** "St. Cloud and Proud" **Shipley** gets to take the helm, with **Tad** "Keats and" **Yates** moving up to the President-Elect spot. (Hey, moms and dads of the preschool crowd: Tell me that the Blue Doodlebop doesn't sound like a dead ringer for Tad. Hmm, never seen him go to Nickleodeon, but....) With Gene and Tad at the top, we know these two things: 1.) Youth is indeed served; and 2.) I should get lots of good Hearsay columns over the next couple of years! Looking for a great two years, guys!

Other orgs have also undergone their changes. Your new CFAWL leader is **Sarah** "neither plain nor tall" **Reiner**, with her President-Elect being **Keersten Martinez**. Paul C. Perkins will have a new leader by the time you read this, but I'm going to print before their late-May elections, so you'll have to wait 'til next month's column to see whether **Clarence Counts** or **Donell Hicks** won, and whether **Bill Cowles** had to be called in to resolve a post-election dispute! Either way, **LaShawnda Jackson** will have an able successor follow her illustrious term.

All politics all the time? Whadaya think this is - Maxwell's column? We can do the society thing here, too. First off, for those who missed the Social Shindig at the Bank of America Center, you missed a good time. Thanks to CBRE Richard Ellis, America's Capital Partners and **Kenn Gluckman**'s ultra-cool set-up for solos, the Law Offices of America, for sponsoring the free and fun get together. (Pictures may be placed about this column. I have no knack for lay-outs, lay-ups or lay-overs, so we'll just have to go on faith that the secret forces behind *The Briefs* inserted some pretty pictures here.) While on



Nicholas A. Shannin

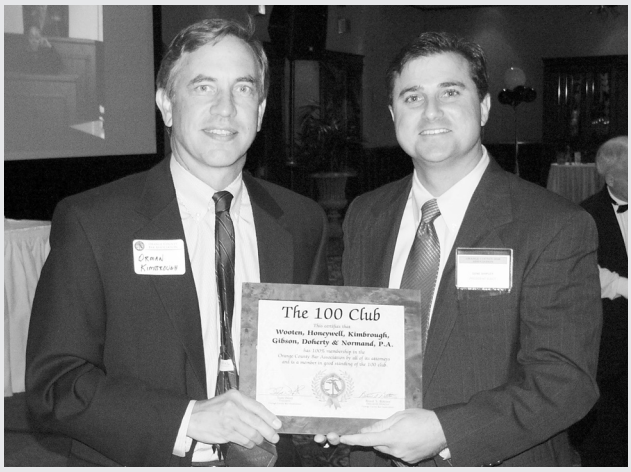
the society-thing, I'll tell you that most weddings will not be covered here, but if they involve two lawyers, it's got a shot. When the Marryin' Sam is **Senior Judge Rom Powell**, it's got a better shot. And when the bride and groom invite me and have an open bar, making the column is a Justinian Ga-Ron-Tee. I speak here of **Ryan** "Don't call me Rutherford" **Hayes** and **Judi** "Anchorlady" **Garabo Hayes**, who tied the knot in a loverly ceremony at the History Center followed by a spin around the Citrus Club. Congrats Ryan and Judi, our favorite Katharine-loves-Spencer pair. By the way, don't forget to mark your calendars for next month's OCBA 3rd Annual Summer Happy Hour and Trivia Event, which will be on Wednesday, July 18th, from 6:00 p.m. to 9:00 p.m. at Slingapour's in the Wall St. Plaza. Teams are limited to 5 players and the cost per team is $5 for OCBA members and $10 for non-members. For more info, contact this year's event chair, Shayne Thomas, at sthomas@ralaw.com.

YLS is having the Great Oaks Village day on June 23rd, so if you're looking for a way to brighten 100 kids' day at the same time, contact LaShawnda at ljackson@rumberger.com for more details. Yes, the YLS gets its own column, but I go to press later than it does, so I figured I'd throw it in here. It's not like I'm taking up space reminding you that the Law Clerk Reception is always a par-tay and it'll be on July 11th from 5:30 p.m. to 8:00 p.m. at CityArts Factory, 29 S. Orange Ave., Orlando. As a bow-tied partner-type once told me, it's a great event to go canoodling for associates. Ain't sure what the pluperfect of canoodle is, but it sounds like a win-win for the happily employed and the wanna-be-happily-employed alike!

Kudos: **Stanton Cobb** was elected to the Florida Board of Managers for the American Academy of Matrimonial Lawyers. Also, **David Adkins** of Dean Mead was elected to serve as a Vice President for the Central Florida Estate Planning Council. Do-Gooder alert: Orange County Mayor **Richard Crotty** has appointed **Brian** "too cool for the Beach Boys" **Wilson** to serve as a County Representative on the Central Florida Regional Commission on Homelessness. Currently, Wilson is Vice Chair of the Coalition for the Homeless of Central Florida. Way to go, ex-prez Brian.

There are more tidbits that I was supposed to get to about other boards of directors, etc. Maybe next month! Still, there's room for more in July's column, so if you've got Dirt, UFO sightings, or other local lawyer news, please e-mail it to me directly at nshannin@floridalawonline.com and I'll be sure to either put it in next month's column or ignore it, depending on the level of elasticity to the accompanying check. Enjoy June everyone, stay cool and see you in July!

Nicholas A. Shannin is a Board Certified Appellate Attorney and a partner with Page, Eichenblatt, Bernbaum & Bennett. He has been a member of the OCBA since 1995.



Orman L. Kimbrough, Jr. accepts a 100% Club certificate on behalf of Wooten, Honeywell, Kimbrough, Gibson, Doherty & Normand, P.A.



Judi Garabo and Ryan Hayes's wedding was cause for celebration! Pictured here are Sarah Reiner, Liz McCausland and Nick Shannin.



Paul Scheck and Nick Shannin partied at the Members-only Happy Hour on May 9th.



Mike Phipps, Brant Bittner, Tom Wert, Tad Yates and Linda Bittner also attended the event at the Bank of America Building.

In Memoriam: The James G. Glazebrook Memorial Bar Service Award *Continued from page 11*

Judge Glazebrook was buried in May and a memorial service was held on June 9, 2007, at Knowles Memorial Chapel on the campus of Rollins College in Winter Park, Florida. If you would like to send condolences to the family, please send to the Glazebrooks via the U.S. District Court:

Joni, Daisy and Becky Glazebrook
C/O United States District Court
George C. Young U.S. Courthouse
and Federal Building
80 North Hughey Avenue, Room 300
Orlando, Florida 32801

In particular, Joni Glazebrook would appreciate OCBA members with remembrances of Judge Glazebrook to send them for Daisy and Becky's scrapbooks.

The last personal conversation I had with Judge Glazebrook was as we were underneath the I-4 overpass; he was walking back to the courthouse and I was walking to my vehicle after an OCBA luncheon. Our conversation was about Tad Yates' and my future roles with the OCBA as we were no longer going to be co-editing *The Briefs*. While discussing our forthcoming roles of President-Elect and Secretary, respectively, Judge Glazebrook was very supportive and offered encouragement. That conversation sums up for me what *The James G. Glazebrook Memorial Bar Service Award* will be all about.

Jessica K. Hew is a partner with Graham, Builder, Jones, Pratt & Marks, LLP. She has been a member of the OCBA since 1995.

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ORPHANS' COURT DIVISION

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FILE NO: 20060658

TO: STEVEN D. VAUGHN, SR.

TYPE OF ACTION: PETITION FOR APPOINTMENT OF PLENARY GUARDIANS OF THE PERSON AND ESTATE OF AN ALLEGED INCAPACITATED PERSON

NOTICE

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YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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YLS on the Move!

Transitions

Judith Anne Garabo Hayes

It's summertime again and that can only mean one thing - the YLS membership practically doubles as the onslaught of summer clerks begins. There are several exciting events lined up, including the Summer Law Clerk Reception on July 11th (**Taylor Kessel** is your contact at tkessel@dbksmn.com) and the YLS Monthly Luncheon on June 21st at the Citrus Club. This will mark the first luncheon presided over by **Liz McCausland**, your 2007-08 YLS President. Come and find out what's in store for the upcoming year!

Something I would have mentioned in last month's column if I had actually written last month's column (and thank you, **Wiley Boston**, for the heartfelt President's message that appeared in this space!) is a small tribute to a young lawyer who is no longer with us. **Scott Pignone** was a member of the YLS and an assistant state attorney whom I was fortunate to have called a friend, and we're all, collectively, shocked and saddened by the sudden loss of this bright young attorney who had such a promising future ahead of him. Our most heartfelt sympathies go out to his family. The YLS plans to make a donation to the Scott Pignone fund, which will aid young assistant state attorneys and public defenders with student loan forgiveness.

I would be remiss if I didn't also mention the untimely loss of another friend to the Young Lawyers. **United States Magistrate James G. Glazebrook** passed away after complications from surgery on May 3, 2007, while in Massachusetts with his family. Magistrate Glazebrook was always accessible and eminently collegial. He could always be counted on to attend the Evening with the Judiciary and the Summer Law Clerk Reception. Personally, I appeared before Magistrate Glazebrook last year on a case involving show horses, and Magistrate Glazebrook shared his own experience in riding dressage for a number of years. It was an all-too-rare glimpse into the personal life of a member of the judiciary, and I believe that it helped get my client and the opposing party closer to an eventual settlement. Magistrate James G. Glazebrook will be missed by the Young Lawyers Section.

This is my last column as your YLS Communications Coordinator and, ironically, my first one with my married byline. June is a transition month for the bar, and that brings with it some changes. There is a whole slate of new officers and new programs, and for some of us, it marks a transition of sorts. As one of a handful of attorneys transitioning out of the Young Lawyers and into the "Big Bar," it feels somewhat bittersweet. The Young Lawyers Section, in its purest form, is a breeding ground in which young lawyers are encouraged to develop leadership and professionalism skills that will serve them well into their futures, both professionally and personally. While it tends to devolve, at times, into a purely social organization, the YLS continues to operate as an incubator for the Big Bar. I'm grateful for the friendships I've forged and skills I've developed as a member of the YLS, and while I hesitate to admit, publicly, that it's time for me to age off, I'm happy to step into the Big Bar where I see so many of the smiling faces I've come to call friends after having served together with the Young Lawyers in years past. It's a rite of passage and a timely one at that. I'll be heading up some of the OCBA Social Committee events this year (like the Wine and Cheese Reception and the Fall Joint Happy Hour) and will co-chair the 2008 OCBA Gala along with my partner in crime, Kristyne Kennedy. You may even see my new name as a byline in *The Briefs* here and there. It's been a pleasure writing this column for the past year.

Drum roll, please! It's my pleasure to introduce your new *YLS On the Move* columnist, Taylor Kessel of deBeaubien, Knight, Simmons, et al. Taylor is already hot on the trail of the latest YLS news, but if you've got something juicy, drop him a line at tkessel@dbksmn.com.

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

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Your goal is to get the case on the radar of the defendants. The more they think and study the case on any level for whatever reason the better chance they will begin to evaluate risk and begin to discuss money for settlement. The mechanism for highlighting your case in their eyes is not critical. In a multi-party case, if you give the appearance of focusing only on the target, i.e., the king or queen, the opposing rooks and knights may not feel threatened and thus be less inclined to pay. If there is little perceived danger there is little motivation to flee, that is, to pay money to avoid conflict. Your goal is to create some sense of urgency or opportunity for everyone.

Understand Who Has the Checkbook

Some Plaintiff's attorneys fail to spot payment and collection problems. There are at least three different problems to be anticipated. One client may be insured and thus has little economic stake in the outcome, in which case the real settlement decision is not their own. Second, the Defendant may be judgment proof but appears solvent. Third, one of the defendants may have a right of indemnity or reimbursement from another party and thus has tactically decided to substantially discount their contribution to mediation, assuming someone else will pay on their behalf. If you have ignored indemnity issues and are assuming each of multiple defendants will contribute equally, you may have gravely miscalculated the dynamics and your pre-mediation strategy might be entirely counterproductive. You may be wasting effort and applying pressure where none is needed, or where there is a dry well.

If the Defendant is insured and there are serious coverage problems, understand that insurance coverage problems are not only the insured's problem; they are everyone's problem. A Plaintiff who does not understand the coverage issues must have either a very wealthy Defendant or runs the risk of prosecuting the case in a way that actually worsens the risk of collection. Your theory could be altered and the pleadings changed. You cannot work around the coverage problem creatively unless you understand the issues thoroughly. With Rule 26 disclosures in federal court and statutory insurance disclosure and discovery rules, there is simply no excuse for a Plaintiff who does not evaluate the insurance coverage available to the defendants. If there are serious coverage problems that you do not well understand, get some help evaluating the meaning of the policy terms. Here again advance preparation is key. Waiting two weeks before mediation to evaluate the defendants' insurance coverage is horrid. If you need to consult with an insurance coverage expert, you may not have time. If you do not have all of the policies, two weeks will not be enough time to get them. Insurance carriers are notoriously slow at delivering policies. Use of §627.4137, Fla. Stat., is encouraged since it provides a 30-day deadline for disclosure. The statute is too often neglected particularly in commercial cases.

Make Meaningful Demands

You do not want defendants to lose confidence in the process. If the goal is to force the other side to pay attention, sending demands that are viewed as absurd causes higher level managers to disengage and lowers the likelihood that significant dollars are marshaled to settle. In a rare case, some feigned or apparent irrationality might actually be a useful negotiating tool, but that is not often going to produce short-terms results. If you are going to sell "crazy litigant" to the other side, it will take a long time to be believed. Rational parties will assume that even irrational people will ultimately make a rational economic decision, so any irrational economic or non-economic terms are at first discredited. Some problematic non-economic terms include demands coupled with "public apologies" in business disputes, "life-time" freebies, or requiring the Defendant to notify past customers or certain groups of people. If non-economic terms are critical, the Plaintiff's counsel has to make that point early and often. Outside employment cases where hiring and termination decisions may take place, demands requiring individuals to resign, public apologies, or newspaper placements and the like signal a lack of client control. This in turn causes parties to harden or to believe that no settlement is possible. If the demand includes what defendants view as "silly" or unusual terms because the Plaintiff needs to emotionally vent, explain that confidentially to the defense side so they do not become disheartened and so you do not dissuade upper level managers from attending, and marshaling funds.

Assessing the Impact of Significant Litigation Events

Timing is key. If you have won a big hearing or had some major development you must give the other side time to digest the event. Bad news travels slowly in litigation because everyone in the communication chain has to posture and frame the bad news up the reporting line. This takes more time than you think. Then even after they hear the bad news, the reality of the situation is not apparent. There may be disbelief, deflection and not acceptance.

Anyone who has been deep sea fishing knows that any good fisherman trying to land a big fish has to let the big catch run line off the reel and let the fish run off the end of the boat. By pushing settlement early, sometimes you are trying to land a fish with far too much fight left in his tail. The line will snap. On the other hand, if you wait too long and the parties have expended most of their money, a settlement will not produce huge savings and positions may have hardened. The timing of the mediation is not always given due regard.

Big bombs need a long fuse. If you are trying to settle a big case as a Plaintiff you have to expect that it will take time for the fuse to burn and for the risk to be appreciated by the key decision-makers. The only good way to shorten the fuse is with an extremely well done mediation package that answers all of the questions and is inherently credible, not overstated. You have to have a firm grip on the pen to write a large check.

Sometimes you have to let the Defendants graze on the litigation landscape a little longer before they get fat enough to slaughter. You will want to leave enough time following mediation to deal with unexpected twists and turns that

Continued on page 26



Rainmaking

Laser Talk



Mark Powers

A particularly frustrating experience, not uncommon among lawyers, occurs when a friend or family member refers a potential client to one of your competitors. They don't do this because they think the other attorney is better, but because they don't really know what you do.

In previous columns we've discussed the many strategic conversations that attorneys who are successful rainmakers incorporate into their client development efforts. Another conversational strategy every attorney should be familiar with is called the Laser Talk. At first glance, the Laser Talk is nothing more than a brief description of what a lawyer does for a living - a response to the question, "What do you do?" that is asked hundreds of times in any attorney's lifetime of social, personal and business encounters.

To some, these may seem like casual inquiries, but the savvy marketer recognizes these questions as marketing opportunities and the chance to deliver an answer that goes beyond the typical, uninformative, "I'm an attorney" response. Why would a lawyer want to describe his or her practice this way? To increase what we call *top-of-mind-awareness*. A well-spoken Laser Talk – and by this we mean a Laser Talk that doesn't sound phony or canned – allows you to speak powerfully, passionately, even humorously about what you do. The real estate attorney's Laser Talk that starts out with, "I'm a dirt lawyer," tends to provoke greater interest than "I'm an attorney," any day of the week. Likewise, the collaborative law attorney who opens with, "I'm a recovering litigator," or the estate planning attorney who responds with, "I help people who don't want to outlive their money," tend to be much more memorable and attract more business.

In the current climate of increased competition, being memorable should not be underestimated. Not unlike products that rely on branding to communicate their message and attract their market, successful attorneys rely heavily on referrals and this means people must remember them, want to use their services and/or tell others about their services. A verbal form of branding, the Laser Talk is an important part of a word-of-mouth marketing program that depends upon relationship building and top-of-mind awareness for its success.

Perhaps even more important than the power of the Laser Talk to communicate a message and brand the attorney, is the thought process that must precede its creation. To follow the Laser Talk formula, you must answer the following questions:

1. Whom do you help? (This is your target market.)
2. What problems do you resolve? (These are the services you offer.)
3. What makes you uniquely qualified to do so? (This is your USP or unique selling position.)

In effect, the Laser Talk is a miniature marketing plan as it forces you to identify your target market, articulate the service you provide, and highlight what makes you unique among your peers. Deceptively simple in appearance, these are all the basic elements of a marketing plan. Very few attorneys, unless they are working with an advisor, ever attempt to create a marketing plan, let alone boil it down to a brief, concise description intended to be spoken in a variety of different social and business situations. But great rainmakers know attracting clients starts with this kind of analysis – identifying those you want to work with and figuring out how they benefit from your services, then crafting language that communicates the message with great clarity. The attorney who says, "I work with high net worth individuals and families to protect their wealth and pass it on to their children intact," is pinpointing the client and speaking directly to his or her concerns. A statement like this has much greater impact than simply saying, "I'm an estate planning attorney." It will also linger longer in the mind of the potential client or referral source that is assaulted with thousands of marketing messages every day. Whether you recognize it or not, you are part of the vast marketplace competing for business and you want your message to stand out.

In order to have your Laser Talk stand out, lead off with an interesting or provocative opening such as, "I practice preventative law," or "I'm the business owner's best friend," to engage your listener. When you launch your Laser Talk this way you can then fill in the rest of the information as the listener asks questions. Use the next couple of sentences to say more about whom you help, how you help and what makes you unique.

Narrowing your focus to a particular practice area helps to foster the idea that you are unique and an expert in your field. Except for small-town general practitioners, narrowing your practice to a couple of complementary areas allows you to market it more powerfully. Different Laser Talks are created for each area and delivered to suit different audiences. For example, a real estate attorney who also offered estate planning services would have two Laser Talks: one to describe his real estate services and another to describe his estate planning services. Then he'd modify the delivery depending on whether he was speaking to a colleague or a potential client.

Once you've identified the markets you serve and the services offered, it is important to further distinguish yourself in the eyes of a potential client or referral source. How do you do this? By including in your Laser Talk some aspect of your personal history, training, family background, life experience or special interest that differentiates

Continued on page 32

surface in your analysis of the case. Perhaps there is a Defendant that you discover has not been pressured prior to mediation or does not understand their own liability, and now you want to focus your attention on them to force them to increase their offer. You will need a few weeks after mediation to do this. Do not set a mediation at the very end of the discovery period. Leave yourself some time for unexpected discovery.

Manage Client Expectations

Your communication while in suit should have been thoughtful and measured. As Plaintiff's counsel, elicit authority to make a premediation demand 30-60 days prior to mediation. Make it too early, and it shows weakness. Make the demand too late, and it looks hurried and perfunctory. If the demand is two days prior it cannot be effectively communicated or analyzed. The demand will flush out client control issues. You may need to bring in a colleague, a spouse, a partner or other decision maker to help persuade the plaintiff-client to make an offer. Better to know early that you have a problem client. Force them to think about a resolution *before* mediation. Mediations could be significantly advanced if both sides spent 1-2 hours before mediation discussing just what might take place and running through the anticipated offers and demands with clients. Don't wait until the conference call three days prior to mediation to find you have an intractable, irrational or otherwise problematic client. Talk about demands and anticipated counter-offers 30 days or more before mediation starts. You will need time to engage someone else in the process if you have a problem client. Perhaps someone else will need to be present at the mediation session. You cannot likely make those arrangements the week prior to mediation. You have to diagnose apparent stubbornness or irrationality early to ensure voices of reason can be brought to bear.

Bad Mediation Summaries are Ruinous

Do not send the client the same optimistic premediation summary that you send to the mediator. The danger is that the client will read it and believe it. Send them a different report with all of the bad news. The client version should have the good, the bad, and the ugly. The mediator will only get the high points. If your only communication in writing to the client before the mediation is the favorably skewed mediation summary you send the mediator, you will have done yourself and the client a grave disservice. You have to manage expectations. Overly optimistic summaries are a recipe for disaster at mediation.

Mediation from the Defense Perspective

Defendants have their own challenges leading up to mediation. Do I have enough information on liability and damages to give my client good advice? If there is insurance involved, did I give the carrier a report four to six weeks prior so that they could set a reserve and get authority from superiors?

If you are recommending the Defendant consider a large settlement be sure to alert the client or insurer weeks, if not months, prior so that higher level corporate officials or liability insurance claims personnel have the opportunity to approve and analyze your recommendation. Big checks take a lot more time to write than small ones.

Multi-party Considerations

Most defense attorneys do not prepare the other defendants for mediation. This is a chronic shortcoming. Defense attorneys simply fail to work on the other parties likely to contribute. This is no doubt owing to customary collegiality and well settled trial strategies that have no application to mediation. Often times there is a spirit of cooperation and a "no-finger-pointing rule" between defendants. That is fine at trial. This is mediation. The *quid pro quo* for that "hold your fire" agreement is continual good faith, meaning a rational approach to the litigation. Irrational, ill-prepared or plainly clueless defendants who you believe are not inclined to pay "their fare share" *at mediation* are not entitled to the benefit of your silence. Being foolish or stupid is not a defense to payment unless *you allow it to happen*. Use the Plaintiff's attorney to pressure anyone you feel is not willing to fairly contribute. For whatever reason too many defendants take a lackadaisical attitude toward the mediation preparation being undertaken (or not) by co-defendants. This may be the biggest single mistake we see in the realm of mediation preparation.

There is only one good way to find out if the co-defendants share your views and expectations. Ask them. Telephone calls 30-40 days prior to mediation (or more in big cases) are critical. Do my co-defendants have insurance coverage? Have they told their insurers about the mediation date? Some attorneys are inexplicably bad at communicating with carriers. Do they have coverage they do not know about? Commercial insurance for trade slander, unfair competition, tradedress, and other business claims is woefully ignored by attorneys and under-reported to insurers. There may be claims that are covered under coverage part B of the CGL policy. Don't be afraid to make the coverage argument for the co-defendant. If they don't have coverage and you do, guess who has the biggest problem at mediation?

Ask for the opinion of the other defense attorneys. Tell them that you need their help to prepare and their evaluation. Ask who they are bringing to the mediation. Suggest they bring someone "equal" in dignity to your representative.

Drive Nails Into Co-Defendants with the Velvet Hammer

Flush out the ill-prepared, uninformed or irrational defense players well in advance of mediation by well timed questions in advance of mediation, forcing them to explore the merits and aimed at gaining consensus before the actual mediation conference. Ask them to consider a pre-mediation joint defense offer. Whether they make an offer is unimportant. It provides a basis for discussing expectations. Discuss contribution percentages and probable exposure. Again, the discussion will reveal perceptions related to liability and

Continued on page 33

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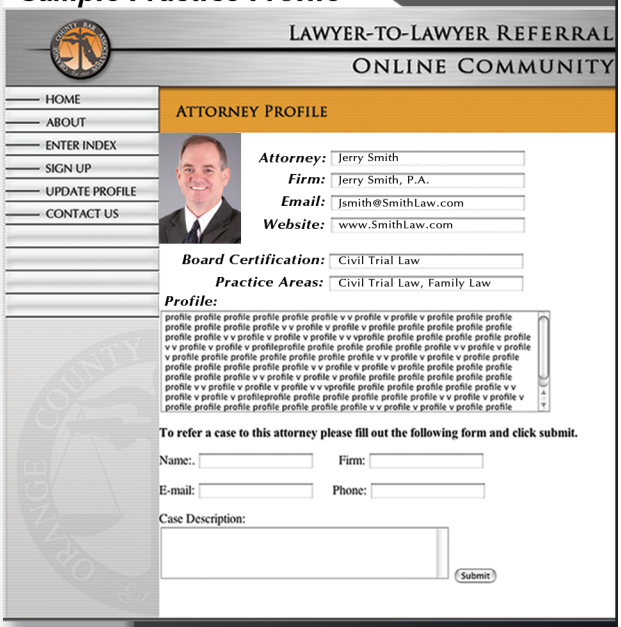
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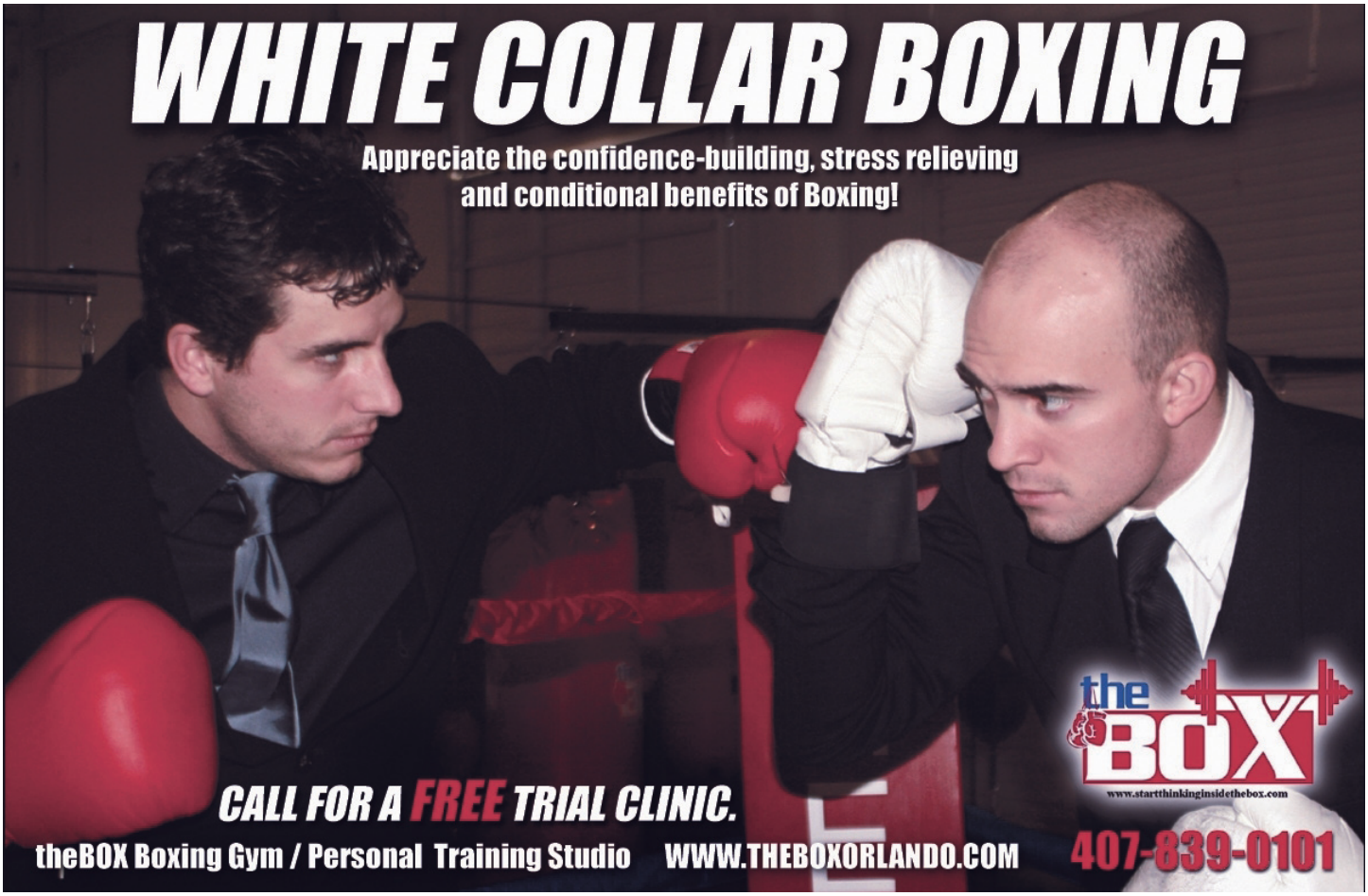
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2007 Law Symposium

An Annual Education Program for Orange County Public Schools

The Law Symposium, sponsored by the Orange County Bar Association, allows Orange County Public School (OCPS) employees to increase their knowledge and awareness of legal issues and the legal system and to discover how these directly affect our schools and students. The symposium has been designed to provide OCPS employees with an opportunity to be informed by, and engage in dialogue with, those most closely related to and knowledgeable of the law and the justice system.

The OCBA has sponsored the symposium for the past thirteen years. Speakers include judges, law enforcement and juvenile justice personnel, and attendees include principles, guidance counselors, social workers and teachers. The OCBA's immediate past president, Tom Wert, made a presentation to the group of about 100 attendees this year and received, on behalf of the OCBA, the following letters of thanks.

April 5, 2007

Dear Mr. Wert and Mr. Bittner,

I was present at yesterday's law symposium for Orange County School staff members and I wanted you both to know that I really enjoyed every session and learned something from each speaker. I have ranted and raved [about] the symposium all day to anyone that would listen. My principal has assured me that not only will she be going, but she is going to make sure that our school is well represented next year. I cannot express how deeply I appreciate the information concerning law cases that involve the educational system. Once again, thank you.

La Donna Johnson
Intermediate Resource Teacher
Deerwood Elementary, Orlando

April 5, 2007

Dear Mr. Wert,

This is the second time I have attended the Law Symposium and I wanted to thank you for taking the time, and going to the expense of presenting this program to educators. I have learned a lot from these presentations and have thoroughly enjoyed them. I recommend them to my fellow teachers and hope that you will continue to share in the education of our students. Thank you again.

Sincerely,

Suzanne Hurley
Curriculum Resource Teacher
McCoy Elementary School, Orlando

April 6, 2007

Good Afternoon:

I want to thank you for putting on a wonderfully informative event for us. This was my first attendance and I am just absolutely impressed from it!

Warm Regards,

Roger C. Walker
Orange County Public Schools

April 6, 2007

Tom,

Just wanted to say thank you for the Law Workshop on Wednesday. It was a great day and I hope you will pass this along to the other attorneys.

Thanks again,

Beth Kinzler
Orange County Public Schools

April 6, 2007

Dear Mr. Wert;

This is a note of thanks for the excellent symposium which was provided for Orange County Public School employees. The speakers were excellent and extremely informative.

Sincerely,

Phyllis Mills, MSW
Orange County Public Schools

April 5, 2007

Hello Mr. Wert,

Thanks for a wonderful, informative, and interesting symposium you spear-headed yesterday. The information I received is very applicable to my job as an educator with Orange County Public Schools. As an administrator who oversees students on 29 school sites, invariably I come across issues similar in nature to those that the presenters addressed. I feel more empowered now that I have the additional information you made available to us.

Sincerely,

Arlene Thomson, Ed.D. MSW
ESE Program Specialist, Central Learning Community



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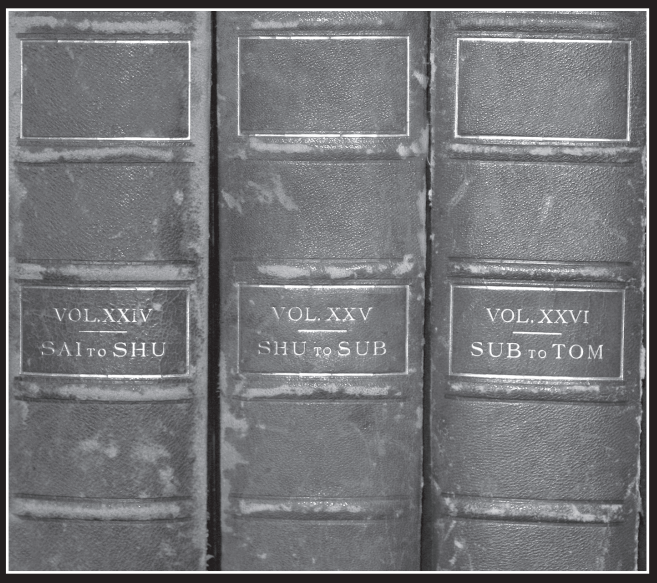
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Financial Planning

The Shrinks Meet Wall Street



Andrew C. Orr, CFP®, CLU, ChFC, AIF®

Behavioral finance is the fastest growing area of economics. Quite simply, the academics try to figure out why our behavior is not meeting the opportunities that exist for success in finances. In other words, most employees have a 401(k) plan, but most don't fully utilize it rationally to achieve the desired results (i.e., a fully funded nest egg by the time you need bifocals). Enter the "behavioral" gurus.

What are some of the irrational things that most investors do to hamstring their success? Here are some examples listed on www.thefreedictionary.com:

Overconfidence – Most of us are too confident in our abilities to invest regularly or, certainly, to beat the market as a whole. As finance professor Hersh Shefrin wrote in 2000, "There are two main implications of investor overconfidence...investors take bad bets because they fail to realize that they are at an informational disadvantage...[or] they trade more frequently than is prudent, which leads to excessive trading volume."

Anchoring – The use of irrelevant information as a reference for evaluating or estimating some unknown value or information. People base decisions or estimates on events or values known to them, even though these facts may have no bearing on the actual event or value.

So, investors tend to hang on to losers and will wait for the investment to break even at purchase price. Thus, they anchor the value of their investment to the value it once had, and instead of selling it to realize the loss, they take on greater risk by holding it and hoping it will go back up to its purchase price.

Mental Accounting – This is an economic concept which contends that individuals divide their current and future assets into separate, non-transferable portions. Individuals assign different levels of utility to each asset group, which affects their consumption decisions and other behaviors. The importance of this theory is illustrated in its application towards the economic behavior of individuals, and thus entire populations and markets. Rather than rationally viewing every dollar as identical, mental accounting helps explain why many investors designate some of their dollars as "safety" capital, which they invest in low-risk investments, while also treating their "risk capital" quite differently.

The research findings are now making their way into your financial lives, whether you know it or not. This can be seen mostly in 401(k) retirement plans.

Target-date Lifecycle Portfolio Options. These offer a "set it and forget it" approach to investing. With target-date funds, there is no need to become a Wall Street guru to invest well. There is less need to fear the market, fear your investment strategy, or worry about some of the more common mistakes made when investing. Professionals have already done the work of constructing a portfolio for you and have done it better than the average employee would have done it.

My only beef is that these options are generally 100% actively managed and, thus, at a higher cost with a lower chance of beating market returns as a whole. However, newer open-architecture plan designs allow for plan sponsors to use 100% passive options, such as those provided by Vanguard or Dimensional (see below).

Automatic enrollments are another result of behavioral finance research. Now there is no need to ask your boss to put you into your 401(k) plan, because you may be auto-enrolled at an amount that is typically 3% or 4% of pay. Don't worry; it's for your own good! Participation rates have dramatically improved in auto-enroll 401(k) plans and many Fortune 500 companies have elected this feature. The option fortunately helps overcome investor inertia. How can you amass a nest egg if you never jump into the plan in the first place?

Automatic increases are a new development that goes along with the auto-enroll feature. With this your rate of savings automatically notches up annually by a pre-determined 1% or 2%. The idea is for employees to not just get into the plan, but to contribute the right rate of savings over the years, which typically means 10% to 20% for most of us. If we are auto-enrolled at 4% of pay and we just stay there for ten years, that is one thing. However, if we are auto-enrolled at 4% and then adjust upward every year, for the next nine years, that is another.

Ongoing employee behavioral management is becoming the norm. An actual investment adviser is on hand to provide guidance and/or there is a comprehensive financial education initiative that is run alongside a retirement plan. With education, it is best not to have a product salesman onboard. Instead, choose a registered investment adviser and a fee-only planner for unbiased advice that is held to a fiduciary standard. This goes for investing in or out of a retirement plan.

Open-Architecture 401(k) and Required Fee-Disclosure

At the end of the year, full 401(k) fee-disclosure will be required. This is good news for all who participate in a plan; however you may have to dig deep to find out what you are paying in a large bundled plan from an insurance company. Why? They are allowed to bury the truth in small print. This is why open-architecture 401(k) platforms are

Continued on page 32

Rainmaking *Continued from page 25*

you from your peers. For example, the criminal attorney who mentions that he is passionate about criminal law because of his own mistakes as a teenager, or the family lawyer who mentions that her own divorce left her with great compassion for those going through the process, leaves a more memorable, meaningful and human impression. Often what you would consider a weakness or a flaw in your background is what makes you more appealing to a potential client.

Begin to experiment with your Laser Talk as you meet people in the courthouse, at social gatherings or business meetings. Follow the formula previously described to begin. Once you can identify your clients, your services, how you help people and what makes you unique, put your own spin on the phrases and tie them together in a natural sounding talk that takes no more than 30 seconds. Be creative, be humorous, but be clear: the Laser Talk is a powerful tool in cultivating clients. Choose your words carefully.

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.

Financial Planning *Continued from page 31*

becoming more and more popular.

The "open" applies to the fact that all costs are fully disclosed and never buried in unreadable disclaimers. Plus, the costs are far reduced as these 401(k) providers disconnect themselves from the fund choices. And, with open-architecture a company can have whatever funds it wants and not just the lineup offered by its provider at higher costs. Now employers can deliver proven science and academic research on market returns by building a purely 100% passive fund lineup using Dimensional funds or Vanguard funds to offer to employees. You will not find this lineup in bundled platforms as the costs are far lower than active funds and, thus, so too are the profits to the 401(k) provider.

For more information on open-architecture, visit our website, www.orrgroup.com, www.401(k)asp.com, or www.dailyaccess.com.

Andrew C. Orr, CFP®, CLU, ChFC, AIF®, is an independent, fee-only financial planner located in Orlando. He is President of ORRGROUP, a registered investment adviser and financial life planning firm providing comprehensive financial management services to individuals and businesses. For more info, visit: www.orrgroup.com.




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damages. If one party seems intent on low-balling the money and wants a picnic at mediation, quietly encourage others to stick some fire ants in their basket. Have the Plaintiff propound some new discovery, ask for depositions or do something that forces the "problem" Defendant to look at the case differently. Many times the impediment to settlement is in the defense camp, not with the Plaintiff. Figure out who the unfriendly campers might be well before the mediation conference and apply behind-the-scenes pressure. If you do not start the dialogue 30 or 40 days out or more, you will not have time to shape or change impressions and thinking.

If you have developed a good relationship with Plaintiff's counsel, you are now in a position before mediation to mortgage that equity. Make the plaintiff's attorney an ally in settlement by telling them that other defendants are not likely to contribute or have taken hard line positions. A good plaintiff's attorney will protect the source and thank you for the advance warning. If he or she knows early enough, the Plaintiff's attorney can file motions, initiate discovery or do something to change the dynamic. This is not "finger pointing." We are not giving away defense secrets on the merits or providing useful documents that the Plaintiff does not have. Rather we are urging that one obtain and share perceptions about exposure and reveal to Plaintiff's counsel what we *think* will be someone else's behavior at mediation. Telling the plaintiff's counsel, "I don't think Co-Defendant Jones is going to contribute any significant sum," is a useful piece of information for mediation but gives away nothing related to the merits. There isn't anything that we share in these phone calls that would *impact the merits* of the case. We are sharing perceptions about the existence or non-existence of *consensus* among the parties, which is not "finger-pointing" because it is wholly irrelevant to resolution by litigation.

Conclusion

The tasks to be performed 30, 60 or 90 days prior to a mediation session are not discussed in articles or CLE materials. Mediation is often described as a "break" from the litigation and that mindset is not conducive to careful planning and analysis. Mediation is a substitute dispute resolution process, taking the temporary place of the litigation process. Unfortunately, because the mediation process itself has few rules, there is less preparation. Like a good day of fishing, the key to a good day at mediation is preparation before you hit the water. Make telephone calls to all of the attorneys *two or three months* prior to the mediation. At a minimum give or get a demand. In multi-party cases, figure out where the obstacles to settlement lie. Identify the potential impediments to settlement and problem decision-makers 30-60 days prior to mediation when you can still do something about it. Be a polite busy-body. Find insurance coverage for others early in the case. Encourage "sleepy" defendants to file discovery motions directed to the Plaintiff or give them ideas for additional work they have not thought to undertake. Use your good relationship with the Plaintiff's attorney to nudge him or her into action that stirs the co-defendants into evaluation mode.

Try to "premediate" with your client by proposing offers or demands. If you have a corporate client, make sure you have the true and best voice of the company. Find out before hand if there is a consensus as to approach and case value among aligned parties. If your cost and benefit figures are wildly different than others with ostensibly the same information, this suggests some work is needed to explain the discrepancy *before mediation*. If you have worked hard prior to the mediation, there will be fewer surprises or at least anticipated obstacles and thus an increased chance for consensus leading to settlement.

Focusing on your client's wants and needs is too simplistic. The truly effective lawyer knows beforehand how the other parties are likely to react to one another and which party may be the most difficult player. It is not important for the client to "like" the way mediation unfolds. Mediations are not birthday parties: surprises at mediation are bad. If the mediation unfolds in a way that is close to the client's expectations and the expectations of the other parties, everyone will have less anxiety and have affinity for a deal, because their experience is intellectually "shared." Lawyers and clients should understand that some cases impasse before the mediation starts. Settlements at mediation have their start in the preparation that gets done in the weeks and months in advance of the mediation session.

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David Henry is a shareholder at Allen Dyer Doppelt Milbrath & Gilchrist in Orlando, and a Board Certified Civil Mediator. He has been a member of the OCBA since 1989.

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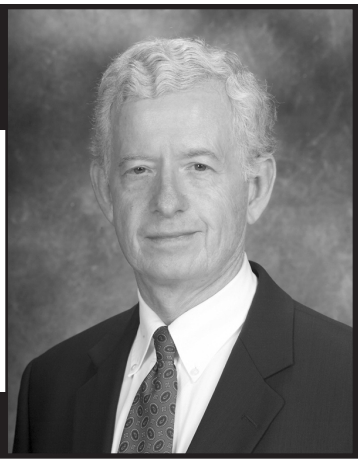
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Is your firm part of the 100 Club? Any firm with two or more attorneys and 100% membership in the OCBA can be a member of the 100 Club. If you think your firm is eligible, e-mail a typed list of your attorneys to Susan Laviolette at susanl@ocbanet.org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

Announcements

New Associate

Ramon A. Castillo - *Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A.*

Speaking Engagements

Robert Dietz of Zimmerman, Kiser & Sutcliffe of Orlando spoke at the Tampa Bay Risk & Insurance Management Society March meeting on the topic, "Maximizing Your Results in Your Workers' Compensation and Litigation Mediations." Dietz is a Florida Supreme Court Certified Circuit Civil mediator and Diplomat member of the Florida Academy of Professional Mediators.

Claramargaret Groover presented "Escalation of Construction Costs: Can it be Controlled?" as part of a panel at the Hospitality Construction Expo held May 15 in Chicago, Illinois. Ms. Groover focused on contractual and risk management issues that arise during each phase of design and construction and how early and efficient consideration of these issues can help to avoid or mitigate the often costly impacts to the project.

Samuel King and **Kenneth McKenna**, partners with the Orlando law firm Dellecker, Wilson, King, McKenna & Ruffier, recently served as faculty presenters for the National Business Institute's seminar entitled, "Settling Uninsured and Underinsured Motorist Claims." The seminar addressed the latest in coverage and legislative trends as well as topics that included dealing with comparative negligence, handling claims involving multiple tort-feasors, bad faith claims and interpreting exclusions and limitations of coverage.

Dennis Wall of Orlando, Florida, spoke on Saturday, April 21, 2007, to the American Bar Association at the Ritz Carlton on Amelia Island, Florida. He was invited by the Property Insurance Law Committee of the ABA to speak on the topic, "Payment of Undisputed Minimum Amounts," in hurricane claims and other property claims.

News to Note

Seminar - Survey of Insurance Issues Everyone Should Know presented by the Insurance Law Committee; June 21, 2007, 12:30 p.m. - 3:00 p.m.; OCBA Center, 880 N. Orange Ave., Orlando. CLE: 3.0 General; 1.0 Ethics. Topics will include: Construction insurance; coverage for business torts; conflicts for defense counsel provided to defend the policyholder; employers practices liability insurance; homeowner's insurance issues; PowerPoint presentation - Recent Cases and Hurricane Katrina Catastrophe Claims. For registration information, please go to: www.orangecountybar.org.

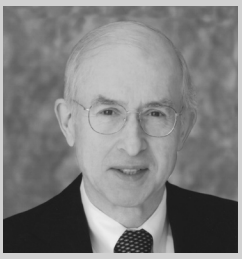
Seminar - 8th Annual Capital Cases presented by the Commission on Capital Cases; June 15, 1007, 7:30 a.m. - 5:15 p.m.; Walt Disney Swan-Dolphin Resort. CLE: 8.0 (death penalty); 8.0 (ethics - on DVD). Speakers: **Justice Charles T. Wells** - Florida Supreme Court; **Judge Adalberto Jordon** - U.S. District Court – Southern District ; **Judge David M. Gersten** - 3rd DCA; **Judge O.H. Eaton, Jr.** - 18th Judicial Circuit. See OCBA website at www.orangecountybar.org for registration information.

Law Clerk Position - Fifth District Court of Appeal, Daytona Beach. One-time limited position: August 2007 - December 2008. Primary selection criteria: Class rank; law review or comparable; writing and research experience. State of Florida applications are available at any Florida State Employment Office, at the Fifth District Court of Appeal or by accessing the website at www.flcourts.org.



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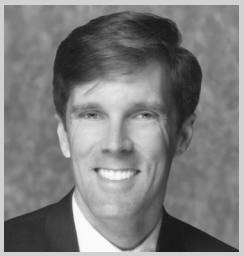
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BOGIN, MUNNS & MUNNS, an AV rated Orlando firm seeks bi-lingual attorney with 3-5 years experience in plaintiff personal injury including trial experience. Outstanding opportunity to join growing dynamic firm with excellent benefits and compensation package. Send resume in confidence by e-mail to bmm@boginmunns.com or fax to 407-578-2128.

A-V RATED LAW FIRM IN ORLANDO seeks attorney with three or more years of experience in wills, trusts, and probate. Experience in corporate transactions also helpful. Outstanding opportunity for growth and advancement. Creative compensation packages available. Send resume in confidence to Briefs reply box 320.

DOWNTOWN ORLANDO AV-rated civil litigation firm seeks associate attorney with 2-5 years litigation experience. Send resumé, writing sample and brief cover letter outlining past successes and salary requirements to: jean@shrlaw.com or fax to (407) 926-7461.

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AV RATED WINTER PARK MEDICAL MALPRACTICE DEFENSE firm seeks associate with 0-3 years experience. Competitive salary and benefits. Send cover letter and resume to Larry D. Hall, Hill, Adams, Hall & Schieffelin, P.A., P.O. Box 1090, Winter Park, FL 32790-1090.

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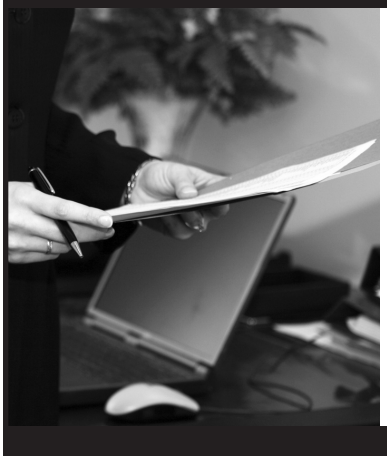
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2007 June - July Calendar

OCBA Luncheon • June 28, 2007

Thomas D. Hurlburt, Jr.
U.S. Marshal, Middle District of Florida

RSVP by June 22nd to reservations@ocbanet.org

June

19 ***Legal Aid Society Board Meeting***
11:45 a.m. • 100 E. Robinson St.

Professionalism Committee
12:15 p.m. • Bar Center

20 ***Solo and Small Firm Committee***
12:00 p.m. • Bar Center

21 ***YLS Luncheon***
11:45 a.m. • Citrus Club

Insurance Law Committee Seminar
Survey of Insurance Issues Everyone Should Know
12:30 a.m. • Bar Center

Inn of Court Annual Dinner
6:00 p.m. • University Club

22 ***Labor and Employment Law Committee***
12:00 p.m. • Bar Center

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

26 ***Technology Committee***
12:00 p.m. • GrayRobinson

27 ***CFACDL***
11:30 a.m. • Sorosis Club

Business Law Committee
12:00 p.m. • Baker & Hostetler SunTrust Bldg.

28 ***June Luncheon***
Thomas D. Hurlburt, Jr., U.S. Marshal Middle District of Florida
12:00 p.m. • Ballroom at Church Street

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

30 ***Florida Bar Young Lawyers Division***
(with the Florida Skin Cancer Foundation)
Hat, Shirt & Squirt 5K Run
7:00 a.m. • Orlando World Center Marriot Golf Course
www.hatshirtsquirt5k.com

July

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

OCALSS
5:30 p.m. • Bar Center

4 ***Independence Day - Bar Closed***

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

Federal Judicial Relations
12:00 p.m. • Bar Center

6 ***Diversity Committee***
8:00 a.m. • Bar Center

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

9 ***Central FL Family Law American Inn of Court***
5:30 p.m. • TBA

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

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

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

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

Judicial Relations Committee
12:15 p.m. • Courthouse

YLS Law Clerk Reception
5:30 p.m. • CityArts Factory
29 S. Orange Ave., Orlando

12 ***Legal Aid Society Executive Meeting***
8:00 a.m. • 100 E. Robinson St.

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

CFPA Luncheon
12:00 p.m. • Café Annie's

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

13 ***Workers' Compensation Committee***
11:45 a.m. • Smokey Bones

17 ***Legal Aid Society Board Meeting***
11:45 a.m. • 100 E. Robinson St.

Professionalism Committee
12:15 p.m. • Bar Center

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

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

Summer Happy Hour & Team Trivia
6:00 p.m. • Slingapour's

19 ***YLS Luncheon***
11:45 a.m. • Citrus Club

Paul C. Perkins Bar
12:00 p.m. • Bar Center

20 ***Family Law Committee***
8:00 a.m. • 425 N. Orange Ave. Room 2310

YLS Monthly Gathering
5:30 p.m. • TBA

24 ***Technology Committee***
12:00 p.m. • GrayRobinson

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

Business Law Committee
12:00 p.m. • Baker & Holstetler SunTrust Bldg.

26 ***July Luncheon***
Speaker TBA
11:30 a.m. • The Ballroom at Church Street

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

LRS Committee Meeting
12:00 p.m. • Bar Center

Labor & Employment Committee
12:00 p.m. • Bar Center

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