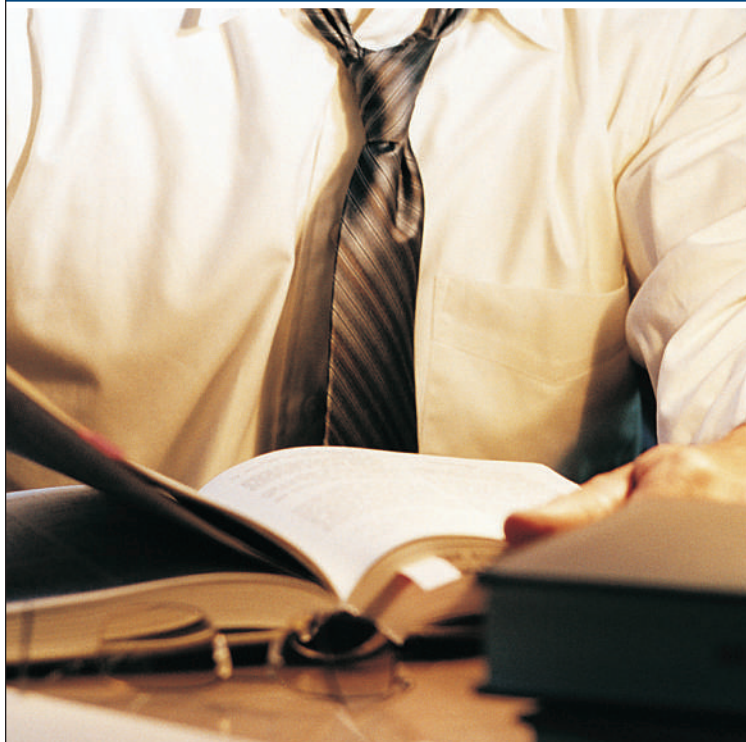




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the Briefs

A Publication of the Orange County Bar Association



June 2010
Vol. 78 No. 6

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President's Message ● It's the People ●

June 2010

Why do bar work? There are many excellent reasons: to give back to the profession; to perform another form of service with other lawyers; to improve your professional skills or the professional skills of others; to meet new people (I met my wonderful wife, Ashley, on a bar committee); to spend time or network with other lawyers who share your practice area, background, or interests; to learn something new; and a myriad of other reasons.

I appreciate and applaud the variety of the motivations which inspire bar service. But the answer that I repeatedly hear from veterans of bar work (OCBA members **Bruce Blackwell, Wayne Helsby, Mary Ann Morgan, Brian Wilson, and Heather Pinder Rodriguez** come to mind) is, "It's the people."

It's the bright, engaged people. It's the people who are truly committed to improving our profession and doing what is right.

I was reminded of this universal, "it's the people," answer recently when I attended an out-of-town bar meeting. The host was one of those people described above, and

he is bravely dealing with a very serious health issue. My friend has been very open about his struggles, but he has maintained a remarkably positive attitude. His deep appreciation for the broad support that he has received from family, friends and bar colleagues became evident during dinner when my friend stood up and eloquently toasted the attendees, which inspired others to speak openly about their feelings for the host and for the others in the room. The emotions were palpable, and it was an event I'll never forget. Most importantly, I think it will help my friend.

These types of things seem to happen more often during out-of-town meetings, where you are away from your offices and the daily distractions of the practice. That is when you establish deep connections with lawyers which enrich your life. OCBA Executive Council member, **Nick Shannin** and I shared this phenomenon last June as we watched our children play in the surf. **Woody Rodriguez** and I have developed a terrific working relationship over the past year and now have a friendship that will last for years. I am confident the same thing will happen with **Tom Zehnder** and me this year.

So please think about doing bar work (or more bar work) for whatever reason that appeals to you. I'm not promising that you'll meet a spouse or experience a profound event like those described above. But I bet that you'll feel better about the profession and about other lawyers, and that's a pretty good reason. Please let me know if you'd like to get involved with the OCBA.

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



OCBA Membership Directory



RCL Portrait Design will be at the OCBA from June 16, 2010 through June 25, 2010 to take your free professional portrait for publication in the OCBA Membership Directory.

The Directory is one of our most valued member benefits. In fact, many members use the Directory daily to locate colleagues, put a "face to a name," and conduct business. Publishing a current photo, along with your name, firm name, address and contact information would make the Directory more valuable than ever.

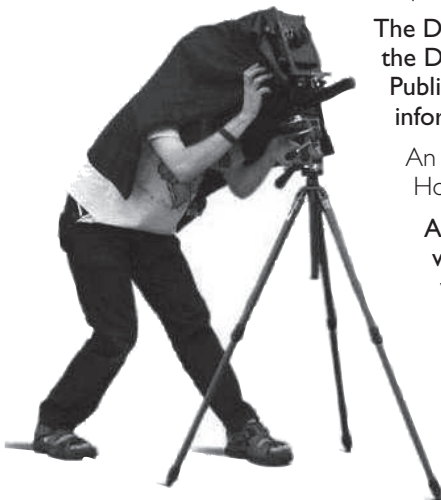
An RCL representative will contact you in the near future to schedule an appointment. However, feel free to contact RCL directly at 800-580-5562 to schedule your sitting.

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We are pleased to bring you this free member service. RCL has produced professional portraits for more than 21 state and local bar associations and 22 medical facilities across the nation.

We look forward to seeing you at the OCBA Center in June.

(For professional photos, appropriate dress is suggested. Ladies: a bold or bright colored long sleeved outfit. Gentlemen: a dark jacket and tie.)





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OCBA Luncheon *June 17, 2010*



Billy Donovan
Head Basketball Coach
University of Florida

The Orange County Bar Association is pleased to welcome University of Florida head basketball coach, Billy Donovan, as the speaker for its June OCBA Luncheon.

Billy Donovan was named head coach of the University of Florida in March of 1996. Although Donovan inherited a squad that had won just 12 games, averaged 66.8 points per game, and shot only .429 from the field the year before his arrival, his hard work and dedication (as well as that of his players) quickly elevated

Florida's basketball program to among the nation's elite.

Gator basketball has experienced unprecedented success under Donovan. His 1999 squad reached the Sweet 16, while the 2000 squad made Florida's first appearance in the national championship game. In 2005, Donovan guided the Gators to their first SEC Tournament title, adding to the two regular season SEC crowns and three SEC East titles Florida had won

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under his guidance. After winning the school's first NCAA Men's Basketball Championship in 2006, the Gators 2007 team became the first team in 15 years to win back-to-back NCAA titles. Donovan's 2007 squad won a school record 35 games, including the final 10, winning the SEC East and the SEC Tournament in addition to the NCAA title.

With the most wins of any coach in Florida basketball history, Donovan enters the 2010-11 season with 331 wins at UF and 366 wins overall. Donovan's commitment to academics as well as athletics is reflected by the fact that his teams have included numerous Academic All-Americans and Academic All-SEC Honor Roll members. Donovan's teams have also produced multiple NBA First Round Draft picks, including Al Horford, Corey Brewer and Joakim Noah, who were among the first 10 picks of the 2007 NBA Draft.

The Ballroom at Church Street

11:30 a.m. - 1:00 p.m.

225 S. Garland Avenue • Orlando, FL 32801

Please RSVP to reservations@ocbanet.org by Friday, June 11, 2010

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, June 11, 2010. The OCBA is happy to provide 10 luncheons as part of your member benefits, **but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.** Please keep us up-to-date on your reservation status!



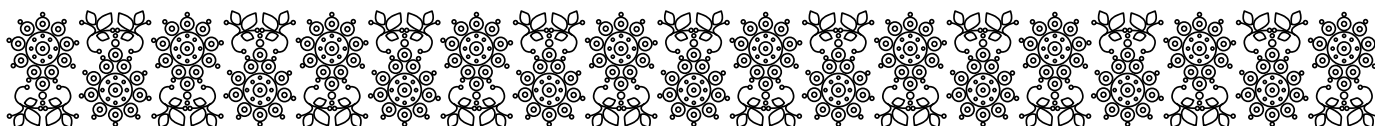
**Dr. Vandana Shiva, world-renowned environmental activist and author, in
"Ecological Integrity: Reconnecting Humans, Health and Habitat"**

Tuesday, July 13, 2010 at Sofitel Miami

Dr. Vandana Shiva and others explore the links between environment, agriculture, social justice and the health of vulnerable populations at a CEJ conference and dinner. Also featured: sustainability in Haiti, urban agriculture and eco-nutrition.

Conference \$45; dinner and keynote by Dr. Shiva, \$50; early registration for both \$80; student rates available.

Register at <http://earthjuris.org/events/>. Contact crauseo-danclair@stu.edu for more information.



Professionalism Committee ● *Remarks upon Receiving the James G. Glazebrook Memorial Bar Service Award:* ● **Your Good Name**

The Hon. Lawrence R. Kirkwood

What do people think when they hear **YOUR NAME**?
Have you ever stopped to think about that question?

It is important for everyone, but especially in our profession of law, where the general public already views us with distrust, suspicion, and untrustworthiness. So . . .

it should be done right. So, if you've had others help you prepare the work, be sure to review it before it goes out. **Never** get to a hearing or a deposition and

blame your staff for mistakes in your work product. If the work is not done properly and your name is on it, then you are the one responsible. Do not embarrass yourself. **Read your work before it goes out.** If an error is found, take responsibility, apologize, and tell everyone involved when they can expect it to be fixed. Then be certain you keep your word and meet that deadline.

3 **Be Courteous and Respectful.**

Being an attorney is a privilege. Remember to show courtesy and respect first and foremost to your clients, who may have unrealistic expectations about their case and who might need a patient, clear explanation of the situation in which they find themselves. Never use jargon or "legalese" to explain something to a non-lawyer. You don't need to impress your clients with the fact that you're a lawyer. They are keenly aware that **they need a lawyer and you are a lawyer.** Help them with their problem without making them feel inadequate.

Be courteous and respectful to your fellow professionals at all times in all ways; this includes meetings, courtroom encounters, and in written documents and letters. You don't have to make your opposing counsel look stupid to make yourself look intelligent. When an attorney treats a fellow professional with disrespect or uses a condescending tone in the courtroom, it reflects poorly on that attorney, potentially overshadowing the real issues requiring the court's attention. (An example of this might be an attorney referring to a female attorney or a minority attorney by his or her first name rather than simply referring to the attorney as Opposing Counsel, Ms. or Mr.) This type of situation happens more frequently than you might think and who do you think looks unprofessional?

Be courteous and respectful to the court. You are not going to win every time you appear in court. Most of the time you believe that your argument is the only possible way a judge could rule. If you are not happy with the results (and I am speaking of other judges' courtrooms now. . . I'm quite certain that no one ever left my courtroom unhappy), you have recourse. **Always remain professional** - file a Motion for Reconsideration, a Motion for Rehearing, or file an appeal.

Finally, be courteous and respectful to all the other people you come in contact with in the court system. When you or your assistant are rude, discourteous or impolite to a judicial assistant or to a court employee, you are building **YOUR NAME**. You can just as easily build **YOUR NAME** by being courteous and respectful. You really don't want to be known as the person who is only respectful to powerful people, but is a real pain to everyone else.

4 **Never Try to "Get Away with Anything" or "Put Something Over on Anyone."**

Be sure that the case law you rely on is current and that the precedent you quote is accurate. Don't use old case law because it favors your case and hope that because the judge trusts you, the ruling will go in your favor. The loss of your **GOOD NAME** to that judge is a very expensive price tag for one possible ruling. You do not want to be known as the lawyer whose work has to be examined from cover to cover so people don't miss the "trick" that is hiding somewhere. Always remember how important your **GOOD NAME** is not only to the judges but also to your fellow professionals. You should always strive to do more than the Rules require.

Never try to put something over on anyone, especially new lawyers. New attorneys are generally idealistic, ethical and excited to be a part of the process. Make it your personal mantra to nurture new attorneys. Be someone new attorneys can go to for advice, not someone they fear. Think back to when you were new in the profession. I'll

What *do* people think when they know your profession and hear your name?

Every possession can be taken from you, yet if you retain your good name, you can work to get new possessions. However, if you gave up your good name, your possessions would not matter because you would have lost the only "thing" that you ever had of real value. When your good name is gone, you might never get it back. Or, you might find yourself working against a negative perception for years.

For lawyers a good name consists of many things, beginning with:

1 **Your Word is Your Bond.**

The Florida Bar Ethics Rules require truthfulness with the court. But you need to extend that concept so everyone is able to trust you. When you say something to the court, to your client, or to opposing counsel, be sure it is accurate and complete.

Being trustworthy is an essential element of the practice of law, yet so much of the concept of being worthy of trust is unseen. When an attorney swears in a document that it was sent to opposing counsel at the same time it was sent to the court, this is **trust** on the part of the court and opposing counsel.

When an attorney bills a client for work on a case, the client must **trust** that the attorney actually did work on the case. Certainly, no client would consider it "work" if they discovered that the attorney had a passing thought about the case, in the shower, and added that time to the bill.

2 **Take Personal Responsibility.**

Work that goes out with your name on

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Professionalism Committee

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bet each of you has memories of an attorney who embarrassed you in court, or took advantage of a mistake you made. Emulate those attorneys who were positive influences and who reinforced your commitment to the practice of law.

5 Love it or Leave it.

The Law is a jealous mistress. This is a statement by U.S. Supreme Court Justice Joseph Story in 1829, yet it still holds true today. To be an attorney, to be a good attorney, to be a good, ethical attorney, you must work, not only with your head but also with your heart and your soul. To do this job right, you put in some long, hard hours. This is not a profession that you should pick up because of the "glamour" or the money. Television shows often make the job seem sexy, glamorous and profitable. I find it humorous that those TV attorneys have time to go drinking during every work day or every night after work, drive amazing sports cars and have very busy "personal" lives; but you never see them in the library or at the computer, doing hours of research or driving to Palatka, Wauchula, or Micanopy for depositions that take all day. The TV shows present only snippets of real life and long stretches of *drama*, adding to the public's distorted view of our profession. Even when there is a high-profile media case, the drama level cannot compete with the lawyer shows on TV. So, love the law with passion or leave it. This profession is a tough job with lots of work, in a world full of people who hate lawyers until they need one.

There are easier jobs, with a law degree, out there that take much less effort, and

require much less self discipline and self-control. Realize that every time you do good, ethical work, you lift up the profession. You make it easier for the next generation of lawyers to step up and practice, maybe without the lingering negative feelings about the profession.

REMEMBER:

YOUR WORD IS YOUR BOND.

TAKE PERSONAL RESPONSIBILITY.

BE COURTEOUS AND RESPECTFUL.

NEVER TRY TO PUT SOMETHING OVER ON ANYONE, ESPECIALLY NEW LAWYERS.

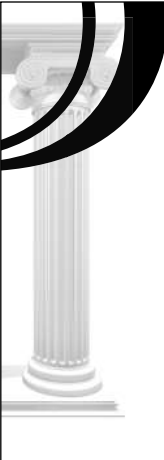
IF THE LAW IS NOT YOUR PASSION, GO AND FIND SOMETHING THAT IS AND DO THAT.

As attorneys, we have a great opportunity to make a difference in our community and in the lives of our clients. Remember, the entire profession is often judged by what any one of us might do or say at any given time. Your good name and reputation is the most valuable asset you will ever have in your life.

What do people think when they hear **YOUR NAME?**

Judge Lawrence R. Kirkwood has been a member of the OCBA since 1968.





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When people go to work, they shouldn't have to leave their hearts at home. – Betty Bender

Ericka Garcia arrived at the Legal Aid Society in August of 2009 as an Equal Justice Works Fellow, advocating as a Guardian ad Litem (GAL) attorney for foster children/youth with developmental disabilities in dependency court and/or the Agency for Persons with Disabilities (APD). **Cara Dobrev**, her supervising attorney and Legal Aid's GAL Litigation Director, stated, "Ericka's passion has made her an amazing advocate for children and her commitment has allowed her to find resources and support for the most vulnerable of them."

Ericka's daily work consists of attending court hearings and staffing, filing APD applications, and reviewing denials for appeals. She is the liaison for the Guardian ad Litem Program with the community-based Care Provider's Developmental Disability Specialist. Ericka also researches and implements alternative advocacy strategies, including school, Medicaid, and other available resources. She enjoys the relationships she is building with the community partners and *pro bono* GALs while providing them with research and assistance. In addition, she works on legislative and policy advocacy, as needed,

which adds another unique component to her arsenal.

When asked, "Why public service law?" Ericka responds, "I am a Guardian ad Litem staff attorney advocating for foster youth with developmental disabilities. Through my two-year fellowship, I hope to address several issues related to eligibility and services from the Agency for Persons with Disabilities so that when foster youth age out of foster care or return to their families, they have the services in place to live as independently as they would like."

Ericka's drive and passion is rooted in personal experience. "This issue is very personal since my 18-year-old brother has a developmental disability," she says, "and we struggle as a family with the

same issues other families deal with. However, unlike most of the foster youth I work with, my brother has a large support system."

Choose a job you love, and you will never have to work a day

in your life. – Confucius

Some people choose a job; for others, the job chooses them. In Ericka's case, it simply doesn't matter. Watching her elation as she transforms the world – one

child at a time – is enough. How could it not be? It is not work; it is time well spent doing what her education and heart allows.

Ericka graduated Magna Cum Laude from Florida A&M's College of Law in 2008. Her honors include the Business Managing Editor and Outstanding Board Member of the Law Review and a co-founder of Parents Attending Law School. Additionally, she was a Law Student Ambassador and on the Dean's List for every eligible semester, while raising a four-year-old child, wearing green and orange, and rooting for her "Rattlers" football team.

Ericka S. Garcia has published "Where do Foster Children with Disabilities Fit? How the State Legislatures Must Create the Programs for Specialized Services to Ensure the Proper Fit," 30 U. La Verne L. Rev. 131 (Fall 2008) and "Gay Co-Parenting by Law or Love?: The Necessity of Repealing Florida's Ban on Gay Parent Adoption," 27 Child. Legal Rts. J. 2 (Summer 2007).

She has been an Orange County Bar Association Member since 2009 and is married to Assistant Public Defender, Peter S. Garcia. For more information regarding Developmental Disabilities, Ericka Garcia can be reached at egarcia@legalaiddocba.org. Her Senior Legal Assistant, Sandi Sumner, is also a teacher for NAMI (National Association for Mental Illness) and can be contacted at ssumner@legalaiddocba.org.

For information about how to become a donor, please do not hesitate to contact **Donna Anne Graf**, Manager of Development, 100 E. Robinson St., Orlando, Florida 32810, 407 841-8310 x 3150, or dgraf@legalaiddocba.org.



The Garcia family



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

Ed Dimayuga and Stephanie Stewart

Permanency is the goal that *pro bono* Guardian ad Litems (GALs) strive to achieve in every dependency case.

Permanency has a great effect on the psychological well-being of children, according to Dr. Jacquelyn Olander, a neuropsychologist with Psychological Affiliates, Inc. in Winter Park. Dr. Olander notes: "Children don't understand the concrete concept of a case closing down. Instead, they get a sense of security in knowing that 'this is my home now and I am able to put down roots and don't have to worry about moving to another home.'"

Permanency was the sole focus of a recent GAL case for attorney **Sherry Kern**. While Sherry believed that a Termination of Parental Rights (TPR) and subsequent adoption were in the best interest of the child ("Jane"), Jane's natural mother disagreed and fought the procedures. According to Sherry, Jane "expressed a great desire to have a permanent family and even tried to explain it to her biological mother. She [Jane] looked forward to being adopted and having a stable home. It was very easy to advocate for what Jane wanted – a family of her own. It was obvious how much her adoptive family loved her and wanted her."

Dr. Olander has researched and regularly evaluates the effects of stress on children who have remained in abusive home situations as well as those who are forced by circumstances beyond their control to wait to be placed in permanent, safe environments. According to Dr. Olander, when achieving permanency has taken too long, children often begin to manifest emotional, behavioral, and cognitive problems. "There are two factors that interact," explains Dr. Olander. "On one side, you look at the child herself and what resources and abilities and strengths and weaknesses she possesses. On the other side, you look at the context: were the parents abusive or neglectful? Was the child exposed to or experienced domestic violence? There is a likelihood of greater negative impact with that." Children from abusive or neglectful homes often have minimal coping resources. "Sometimes it is not always bad, as sometimes a child learns that life goes on when removed from abusive parents. If it takes too long to find permanency, however, a child will not be able to learn to trust the world to meet their needs and provide them with a sense of stability."

As a neuropsychologist, Dr. Olander studies the brain's structure and function as related to psychological processes and behaviors. She notes that the process of going through radical changes has an actual physical effect on the brain. "Our brains need to grow and adapt in order to be healthy. Once we have our basic primary needs met of food and shelter and safety and sense of belonging, then we can work on those higher needs of learning, self-esteem, and self-actualization. 'Plasticity' is used to describe the way our brain changes from cognitive development, and I think that is true, too, for psychological and emotional development as well. Our environment is incredibly important in shaping our mind, behavior, emotional response, and everything else."



L. Quinones and LAS permanency attorney Edward Dimayuga

Jane's story supports this. While Jane originally had problems with lying and poor grades, Sherry notes: "She had adjusted to her new life and was doing wonderfully. Her grades were up, she had goals, and she appeared to feel loved and secure." Sherry credits Jane's adoptive family for the change. "Jane was able to overcome her fears, open up, and be the little girl she had a right to be – to enjoy life, eat well, go to school, and sleep in a safe, warm environment."

For all children, "the important theme is learning to trust yourself and to trust the world," according to Dr. Olander. "If you have a child in [foster care] too long of a time during a critical developmental stage, you may have a child who has difficulties developing healthy relationships because they don't

trust the world and the people in it to meet their needs. Our basic foundation of personality is developed in childhood, and that is carried into our adult lives. If we live in a world that is disruptive and chaotic, then we may not be free and will be bound to not being able meet needs."



Stephanie Stewart

Dr. Olander recommends that GALs help children by helping them learn about coping resources such as social supports, education, and fun. "Social supports are the people a child has in her life, and the

more people that child can trust, the more success that child will have," according to Dr. Olander. "Social supports include relatives, coaches, teachers, parents of friends, counselors, therapists, and GALs. Education helps build self-esteem and provides opportunities for children. Finally, it's important that kids have fun participating in social/physical activities. Activities like organized sports or cub scouts give kids time for free play, taking a walk, or doing an unexpected happy activity like seeing a movie or bowling. This helps children gain the feeling of accomplishment and boosts self-esteem. Permanency is key to achieving those other needs and providing stability so children can learn these coping resources and thrive."

Attorney Sherry Kern reflects on the adoption: "Jane seemed content and happy about her future. Jane was looking forward to a real 'family' vacation. ... Jane is full of hopes and dreams, many of which she can accomplish now thanks to her new adoptive family." And thanks to the advocacy of a determined GAL.

Ed Dimayuga and **Stephanie Stewart** are attorneys with the Legal Aid Society. They are members of the OCBA.

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Residential Mortgage Foreclosure: Burdens of Proof, Real Defenses, Blind Alleys, and Recent Developments **Part Two**

David Fleming and Christopher Roach¹

Due to space limitations, this article is being printed in two parts. Part One was printed in May's edition of The Briefs. Part Two begins with a continuation of the discussion of Affirmative Defenses, which was published in Part One.

D. TILA

One fairly common type of foreclosure defensive response is to make claims based on TILA, either in the form of a counterclaim or a preemptive declaratory judgment action.² Sometimes TILA provides a realistic basis for rescission or damages, particularly where mandatory disclosures are absent from loan documents provided by the original lender. However, TILA does not apply at all to regular residential loans (only to refinance or home equity loans)³ and, equally important, TILA requires a tender of the loan principal upon rescission, a prohibitively expensive requirement for all but a few borrowers.

Florida courts have dispatched dozens of TILA claims in foreclosure actions on motions to dismiss and summary judgment for the foregoing reasons.⁴ Any attorney that raises a TILA or similar claim is well advised to familiarize himself with the case law, the statute, and the associated "Regulation Z"⁵ before he gives his client false hopes or gets sanctioned.

E. RESPA

RESPA and its related regulations are designed to prohibit kickbacks and unearned fees paid to those that provide services in connection with a real estate transaction involving a "federally related mortgage loan."⁶ This prohibition includes side payments to mortgage brokers, closing agents, and other third parties, when such payments are not disclosed and are otherwise not in conformity with RESPA's strict regulations. A violation of RESPA at the inception of a real estate loan creates a right of action for damages by the borrower. At least one significant 2009 federal case emanating from the federal Third Circuit, *Alston v. Countrywide Financial Corporation*, held that RESPA created a private right of action, even in the absence of an overcharge allegation, entitling borrowers to seek treble damages for the "infected" service.⁷ A Florida decision relying on common law equity principles suggested the same remedy may be available here, as it denied a foreclosure

when the amount allegedly owed to the lender could have been offset by "additional, unnecessary insurance on the property" when the amount due in premiums was obtained in the foreclosure.⁸

A RESPA counterclaim in an ordinary foreclosure may be only of theoretical benefit. RESPA has fairly strict limitations (of one year), which likely have long passed from the time of the loan's inception to a foreclosure.⁹ There is also some disagreement in the case law about when, if at all, RESPA can defeat a mortgage foreclosure under recoupment and setoff principles.¹⁰ Many of these issues remain to be decided under Florida law.

F. Holder In Due Course and D'oench Duhme

The value of the above-discussed defenses could be suspect in many foreclosure cases, because the holder of the mortgage at the time of foreclosure is not the original mortgagor, due to a sale of the mortgage on the secondary market and/or inclusion in a mortgage-backed securities pool. In that case, the current mortgage holder can presumably claim holder-in-due-course status and not be subject to defenses of which it did not have actual knowledge at the time of the assignment. There are, however, also important exceptions. If the mortgage was in default or the assignee did not receive the mortgage in good faith, then HIDC status cannot be claimed.¹¹ These defenses will also be of questionable benefit in cases involving a failed bank that has been taken over by the Federal Deposit Insurance Company, due to the applicability of the D'oench Duhme Doctrine, which gives super HIDC status to both FDIC and any successor bank or assignee from FDIC.¹²

IV. The Impact of Mandatory Foreclosure Mediation

Most Florida circuits have an administrative order in place that requires mandatory mediation of foreclosure cases.¹³ In 2009, the Florida Supreme Court issued a model administrative order which would make foreclosure mediation a uniform, state-wide system.¹⁴ The most significant procedural difference between the model order and the administrative orders in place in most Central Florida counties is that the model order makes mediation mandatory unless the defendant home-

owner opts out, whereas the present orders make mediation mandatory only if it is requested by the homeowner. Another significant difference is that present court programs utilize a panel of mediators that have agreed to mediate for a reduced fee, whereas under the model order, fees allowed to mediators are somewhat higher and an additional administrative fee will be charged by a new administrator created by the model order, thus increasing the cost of mediation. What remains to be seen is whether there are improvements in practice under the model order that justify the additional cost, which is an issue outside the scope of this article.

Turning then to mediation of foreclosure cases, it is important to be aware that while foreclosure mediations are similar to other civil case mediations, there are some significant differences. Most homeowners that request mediation are doing so because they desire to find a way to stay in the home. Thus, there is a different dynamic in which both parties work to determine whether or not this can be realistically achieved through a loan modification. This is why the aforementioned mediation orders require the homeowner to provide detailed financial information prior to mediation, which parties are rarely required to collect and disclose in an ordinary civil case.¹⁵

In order to promote modification of home loans that are in foreclosure, the U.S. Department of Treasury has established a program, known as The Home Affordable Modification Program (HAMP), that is applicable to all residential mortgages owned, insured or guaranteed by an agency of the federal government, including FHA, VA, Fannie Mae, and Freddie Mac.¹⁶ Thus, HAMP is applicable to the vast majority of home mortgages, and lenders and servicers that have such loans are required to determine whether or not they can be modified under HAMP. Attorneys for both parties, as well as mediators, should be intimately familiar with HAMP's requirements.

HAMP's goal is to find a way to reduce the mortgage payment to 31% of the homeowner's family income, without causing the lender/investor to suffer a loss. Once available income is determined, there is a process that begins with

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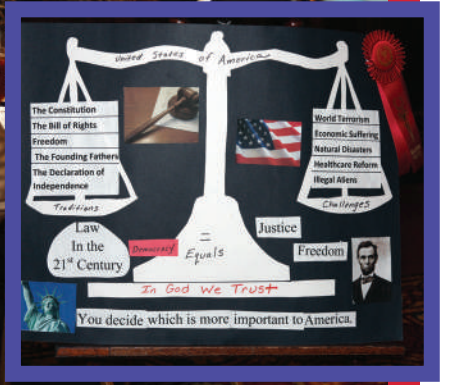
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Residential Mortgage Foreclosure

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capitalization (adding to principal) of all delinquent interest and lender expenses and then reduction of the monthly payment by: (1) decreasing the interest rate, (2) extension of the loan term, and (3) deferral of a portion of the principal balance, in that order.¹⁷ After applying the foregoing steps, if the new payment amount is within the 31% target range, then the lender performs a "net present value" analysis, which compares the present value of payments received pursuant to the modification with the present value of the collateral (home). If the former exceeds the latter, then no modification is required.

If modification under HAMP is not required, the lender or servicer may still be able to offer a modification under its own in-house program, which usually involves a temporary (usually 3-5 years) reduction in payments or another form of forbearance. Whether under HAMP or an in-house modification, there will usually be trial period of at least 3 months so that the homeowner can demonstrate ability to pay, and a down payment, the amount of which is negotiable, is often required.

Unfortunately, a failure of communication prior to mediation often results in the lender representative not having the necessary information to determine whether or not the homeowner can qualify for a modification. At the very least, this prolongs the mediation while the information is exchanged and may result in a denial of modification that is otherwise authorized. Savvy homeowner's counsel will not assume that a formal application for modification means that it has been received by the appropriate decision-maker and processed. Instead, it makes more sense to communicate with lenders' counsel prior to mediation for assurance that the right information has been received and set up for consideration.

One common complaint from homeowners and their attorneys is that lender/investors and servicers are not complying with HAMP. This state of affairs should concern lenders and their counsel. Non-compliance with HAMP can result in a loss of the federal mortgage insurance guaranty and, for servicers who have entered into HAMP servicing agreements, sizable fines and penalties. However, these sanctions are of little comfort to defendants that face the loss of their homes. Thus, the question becomes whether or not failure to comply with HAMP can be the basis

for an affirmative defense or a counterclaim – this question remains unresolved in Florida.

Some guidance is provided by cases that deal with another federal housing regulation. The Secretary of HUD has promulgated a handbook entitled "Administration of Insured Home Mortgages," which contains procedural guidelines for, among other things, handling mortgages in default. Specifically, these guidelines direct that the agency contact a mortgagor in default and make substantial efforts to try to rectify the default by assisting the mortgagor in various ways. In the 1978 case of *Cross v. Federal National Mortgage Association*, the borrower raised the lender's failure to follow these guidelines as a defense. The court stated:

It seems clear now that the HUD guidelines are not mandatory procedures constituting conditions precedent to foreclosure. However, a mortgage foreclosure is an equitable action and thus equitable defenses are most appropriate. Thus, it appears to us . . . that given the purpose of this federal Act and the recommended efforts to obviate the necessity of foreclosure, any substantial deviation from the recommended norm might be considered by the trial court under the heading of an equitable defense.¹⁸

Thus, it is unlikely that HAMP can be the basis for a counter claim, but non-compliance may well give rise to an affirmative defense that would preclude foreclosure until the non-compliance is cured. It is recommended that lenders' counsel make

their clients aware of this possible consequence of non-compliance with HAMP, which may serve the useful purpose of helping to resolve more cases at mediation.

Another common complaint from borrowers and their attorneys is that the lender or servicer is either not negotiating in good faith or does not have a representative present with sufficient authority. The good faith argument has no merit, because other than those cases in which good faith in settlement negotiations is required by law (i.e. insurance cases), there is no authority that requires a party to mediate in good faith. The only possible exception is failure to comply with HAMP in good faith, discussed above, which would be more appropriately raised directly. The matter of authority is somewhat more problematic. Under Florida Rule of Civil Procedure 1.720, which governs mediation, the failure to appear with full authority is equivalent to the failure to appear at all and can result in sanctions.¹⁹ Although there is a paucity of precedent as to foreclosure mediations, guidance can be found in other types of cases. First, proceeding with mediation without first raising this issue with the court may be deemed to be a waiver.²⁰ Second, it is difficult to prove that the person sent to represent a corporate party did not have sufficient authority, because if the mediation results in an impasse, possible settlements that might have resulted with another representative present are purely hypothetical, and the court is unlikely

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Residential Mortgage Foreclosure

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to find a lack of “sufficient” authority without a clear showing.²¹ Many lenders and servicers have mediation specialists attend mediation. These representatives can do little more than gather numbers to determine whether or not the homeowner qualifies for a modification under HAMP or an in-house program, which is accomplished by inputting the information into a computer program which provides either a simple “denied” or the terms of the modification that can be offered. This frustrates many borrowers and their attorneys. The problem is that it would be very difficult to show, at least without extensive discovery, that someone else in the organization could have offered a better or different deal, without which the authority argument will fail.

Unfortunately, neither HAMP nor any other program can help those who simply cannot afford to stay in the home due to unemployment or other reasons. In those cases, what is usually negotiated in mediation is the amount of time the homeowner will be allowed to remain. This is usually accomplished by agreement to a consent judgment with an agreed-upon sale date that is further away in time than the minimum statutory notice for sale. If proper and viable affirmative defenses or a counter claim have been alleged, there will be a better opportunity to negotiate a sale date that is more favorable to the homeowner. Some lenders and servicers also offer “cash for keys” if the homeowner will vacate the home in good and clean condition.

A final recommendation is that the negotiation process need not terminate just because the initial mediation is not successful. If the homeowner’s circumstances can be shown to have changed favorably prior to the foreclosure sale, most lenders and servicers will delay the sale and reconsider the request for modification or, if the lender refuses, another referral to mediation can be requested of the court.

IV. Conclusion

Because of the sheer volume of their respective caseloads, both plaintiff and defense counsel in contested residential foreclosures often do not assert their claims and defenses with the rigor that civil litigation demands. Likewise, some judges may be less likely to enforce strict burdens of proof when the borrower’s claims appear weak and doing so will maintain a case on a judge’s already very crowded docket. In many cases, the

simplicity of the problem – some homeowners simply cannot pay any reasonable amount for their homes due to unemployment or other misfortune – makes this an understandable form of legal “triage.” But in other cases, lenders’ counsel can and should expect a vigorous defense, and defense counsel should be familiar enough with the various tools and laws surrounding foreclosure to raise appropriate defenses and to channel appropriate cases into a settlement through mediation.



David L. Fleming of WealthCare International LLC has been an OCBA member since 2006.



Christopher A. Roach, an associate with Ruden, McClosky, Smith, et al., has been an OCBA member since 2008.

¹Mr. Fleming is a Certified Circuit Court Mediator who has over 30 years of experience with business and real estate-related financial transactions and litigation. He participates in the Ninth Circuit’s foreclosure mediation program, established by AO 2009-02.

Mr. Roach is a litigator at Ruden McClosky in Orlando with ten years of experience, whose practice focuses chiefly on business disputes and lender representation in foreclosures.

²15 USC § 1601 *et seq.*

³See 15 U.S.C. § 1635(e)(1); Reg. Z § 226.23(f)(1) ;

⁴See, e.g., *In re Tomasevic*, 275 B.R. 86 (Bankr. M.D. Fla. 2001) (holding that purchase money loan is non-rescindable and that disclosure violations do not convert a purchase money loan into a loan for which rescission is available); *Murray v. Fifth Third Bank*, 2007 WL 956916 (E.D. Mich. March 28, 2007) (holding that loan to buy home is exempt from rescission); *Moore v. Wells Fargo Bank*, 597 F. Supp. 2d 612, 616 (E.D. Va. 2009) (holding that “[i]n a scenario involving a contested rescission, such as the instant matter, if the trial judge determines that the plaintiff seeking rescission is ‘unable to tender the loan proceeds, the remedy of unconditional rescission is inappropriate’”).

⁵Codified at 12 CFR § 226.1 *et seq.*

⁶12 USC § 2602.

⁷*Alston v. Countrywide Fin. Corp.*, 585 F.3d 753 (3d Cir. 2009).

⁸*Douglas v. Deutsche Bank Trust Co.*, 995 So.2d 1144 (Fla. 5th DCA 2008).

⁹A RESPA claim for improper “fee splitting” is subject to a one-year statute of limitations. See 12 U.S.C. §§ 2607(b), 2614.

¹⁰See *In re Wentz*, 393 B.R. 545, 558 n. 13 (Bankr. S.D. Ohio 2008) (collecting cases).

¹¹*McCourry v. Beneficial Savings Bank*, 530 So.2d 981 (Fla. 5th DCA 1988).

¹²*D’Oench, Duhme & Co. v. FDIC*, 315 U.S. 447 (1942).

¹³Administrative orders have been issued for the entire Ninth Circuit (AO 2009-02) and for the Counties of Seminole (AO 09-09-S) and Brevard (AO 09-14-B) and can be found on the courts’ web sites. No such administrative orders are presently in place for Volusia County and Lake County. However, parties in those counties can still request referral to mediation under Fla.R.Civ.P. 1.700.

¹⁴Supreme Court of Florida *Admin. Rule No. AOSC 09-54* (December 28, 2009).

¹⁵Such financial disclosure should be protected by mediation confidentiality under Fla. Stat. §44.405, but it is advisable that the disclosing party confirm this by agreement with the other party.

¹⁶HAMP does not apply to so-called non-conforming or jumbo loans, but many lenders and servicers will voluntarily consider a modification of such loans using HAMP’s criteria or their own in-house version.

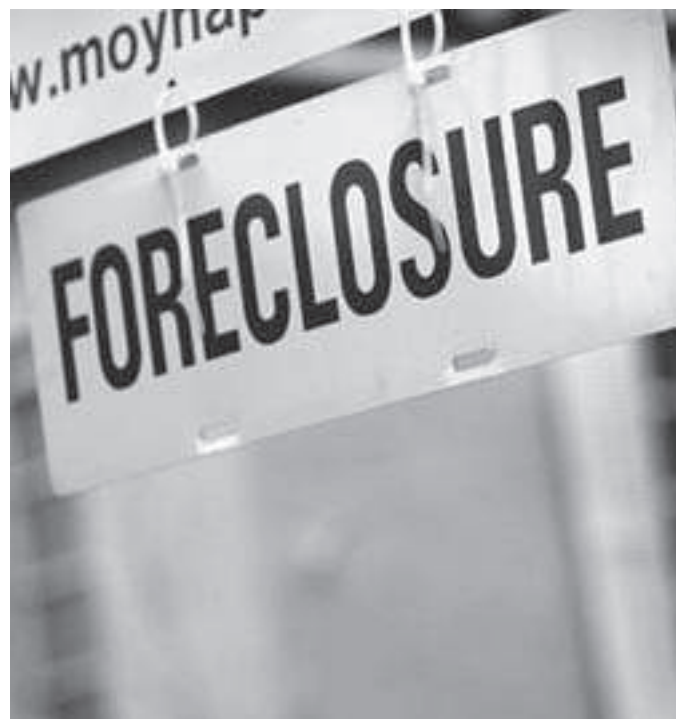
¹⁷These steps are all mandatory under HAMP. An additional step, forgiveness of a portion of the principal, is permitted but is not mandatory. Deferral is distinguished from forgiveness in that a deferral reduces the principal amount for calculation of monthly payments but does not forgive the principal that is deferred, which would be payable if the loan is refinanced or the home is sold.

¹⁸*Cross v. Federal Nat’l Mortg. Assoc.*, 359 So.2d 464 (Fla. 4th DCA 1978) (internal citations omitted).

¹⁹*Western Waste Industries, Inc. v. Achord*, 632 So.2d 680 (Fla. 5th DCA 1994).

²⁰*Id.*

²¹*Cf., Insurance Company of North America v. Gaines*, 765 So.2d 139 (Fla. 1st DCA 2000).



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Networking sites accessed over the Internet have proliferated in the last several years. There are numerous networking sites of various types. Some networking sites were designed for social purposes, such as Facebook, MySpace, and Twitter. Notwithstanding their origins as social media, many use these social networking sites for commercial purposes. Other networking sites are specifically intended for commercial purposes, such as LinkedIn. In a networking site, a person has the capability of building a profile that includes information about that person. That profile is commonly referred to as the individual's "page." The individual chooses how much of the information on his or her page, if any, is available to all viewers of the site. Some individuals provide access to no information about themselves except to those other individuals that are invited to view the information. Others provide full access to all information about themselves to anyone on the networking site. Others provide access to some information for everyone, but limit access to other information only to those invited to view the information. Additionally, some individuals set their pages to permit posting of information by third parties. Networking sites provide methods by which users of the site may interact with one another, including e-mail and instant messaging.

The Standing Committee on Advertising has reviewed the networking media, and

issues the following guidelines for lawyers using them.

Pages of individual lawyers on social networking sites that are used solely for social purposes, to maintain social contact with family and close friends, are not subject to the lawyer advertising rules. Pages appearing on networking sites that are used to promote the lawyer or law firm's practice are subject to the lawyer advertising rules. These pages must therefore comply with all of the general regulations set forth in Rule 4-7.2. Regulations include prohibitions against any misleading information, which includes references to past results, promises of results, and testimonials. Regulations also include prohibitions against statements characterizing the quality of legal services and visual or verbal portrayals that are false, misleading, manipulative, or confusing. Lawyers and law firms should review Rule 4-7.2 in its entirety to comply with its requirements. Additional information is available in the *Handbook on Lawyer Advertising and Solicitation* on the Florida Bar website.

Invitations sent directly from the site via instant messaging to a third party to view or link to the lawyer's page on an unsolicited basis are solicitations in violation of Rule 4-7.4(a), unless the recipient is the lawyer's current client, former client, relative, or is another lawyer. Any invitations to view the page sent via e-mail must comply with the direct e-mail rules if they are sent to persons who are not current clients,

former clients, relatives, other lawyers, or persons who have requested information from the lawyer. Direct e-mail must comply with the general advertising regulations set forth in Rule 4-7.2, as well as additional requirements set forth in Rule 4-7.6(c). Information on complying with the direct e-mail rules is available in the *Handbook on Lawyer Advertising and Solicitation* and in the Direct E-Mail Quick Reference Checklist on the Florida Bar website.

Although lawyers are responsible for all content that the lawyers post on their own pages, a lawyer is not responsible for information posted on the lawyer's page by a third party, unless the lawyer prompts the third party to post the information or the lawyer uses the third party to circumvent the lawyer advertising rules. Finally, the Standing Committee on Advertising is of the opinion that a page on a networking site is sufficiently similar to a website of a lawyer or law firm that pages on networking sites are not required to be filed with The Florida Bar for review. In contrast with a lawyer's page on a networking site, a banner advertisement posted by a lawyer on a social networking site is subject not only to the requirements of Rule 4-7.2, but also must be filed for review unless the content of the advertisement is limited to the safe harbor information listed in Rule 4-7.2(b)(1). See Rules 4-7.6(d), 4-7.7(a)(2) and 4-7.8(a).

[Updated by the Standing Committee on Advertising on March 9, 2010.]

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On Saturday, April 24th more than 40 Lowndes, Drosdick, Doster, Kantor, & Reed, P.A. employees, their families and friends volunteered to help three Central Florida organizations: Habitat for Humanity of Greater Orlando Area, Inc., Second Harvest Food Bank of Central Florida, and Coalition for the Homeless. Some of the key attorneys from LDDKR were Quino Martinez, Jim Toscano, and Melody James.



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The Young Lawyers Section of the Orange County Bar Association Presents

An Afternoon at the State Courthouse



This seminar provides helpful hints for area attorneys as they practice before the Circuit and County Judges of the Ninth Judicial Circuit. It is also intended to provide insight into local judicial practices and procedures, and is designed for attorneys, law students, paralegals, and other legal professionals. The seminar is open to the public.

Friday, June 11, 2010

Registration Begins at 1:00 p.m.

Seminar From 1:30 - 4:00 p.m.

Orange County Courthouse • 425 N. Orange Avenue, Orlando, FL • Jury Assembly Room - First Floor

\$10.00

Please RSVP and send payment by Friday, June 4, 2010 to:

Mike Remensnyder at miker@ocbanet.org or

OCBA, 880 N. Orange Avenue, Orlando, FL 32801

For more information please contact Jonathan Stimler
at jstimler@lseblaw.com or (407) 481-5835

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RECENT SUPREME COURT CASES Will Jay

***Burghuis v. Smith*, No. 08-1401 (U.S. Mar. 30, 2010).**

This case involved the issue of whether or not African-Americans were being systematically excluded from jury pools. At the time of Mr. Smith's trial, the system in place first required jurors to go to twelve different district courthouses for jury selection, and then sent the remainder from each to the one circuit courthouse in the county, where all felony cases were tried. Since African-American jurors were not evenly distributed among the districts, Mr. Smith alleged that this system "siphoned" off potential African-American jurors from hearing felony cases like his own. When the county, on its own, changed that practice a month after his trial, there was a small statistical improvement in the representation of African-Americans. The Michigan Supreme Court assumed, for argument's sake, that Mr. Smith had established that African-Americans are statistically underrepresented. However, the Michigan Supreme Court found that Mr. Smith failed to show that the underrepresentation was due to systematic exclusion, and the U.S. Supreme Court agreed. In an opinion by Justice Ginsburg, the Supreme Court unanimously found that Mr. Smith failed to establish with evidence, as opposed to hypothesis, that the Michigan Supreme Court had acted contrary to clearly established federal law. Justice Thomas filed a separate concurring opinion.

***Padilla v. Kentucky*, No. 08-651 (U.S. Mar. 31, 2010).**

Justice Stevens wrote the majority opinion for the Court, joined by Justices Kennedy, Ginsburg, Breyer, and Sotomayor. The majority began by explaining that it was "uniquely difficult" to classify deportation as a collateral or direct consequence of conviction, and declined to use that framework to analyze the case. The Court held that Mr. Padilla received ineffective assistance of counsel when his attorney not only failed to warn him that his drug trafficking conviction would automatically qualify him for deportation, but affirmatively assured him that he did not have to worry about his immigration status. The Court went on to hold that when the immigration consequences

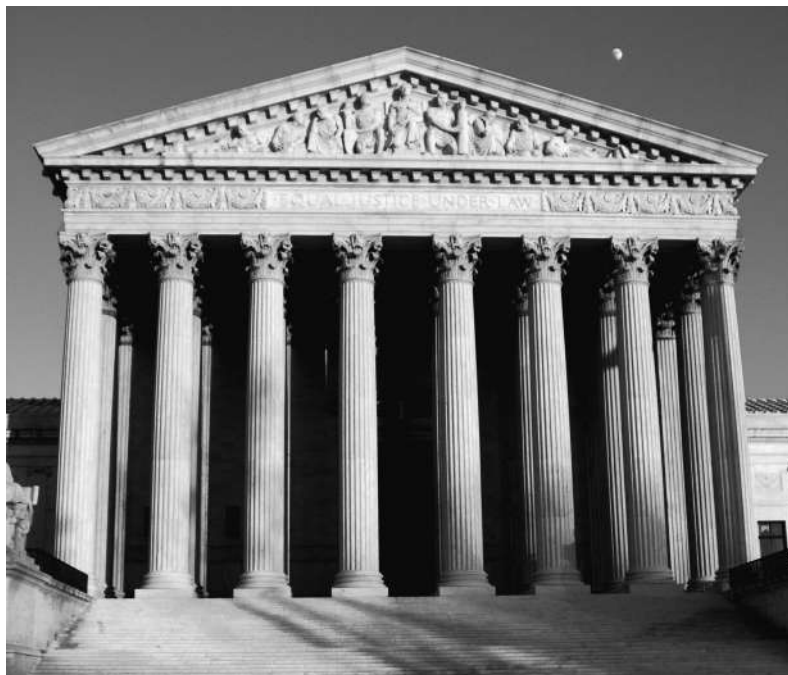
of a conviction are "truly clear," counsel is required to give competent advice about those consequences. When the consequences are less "clear," counsel must at least warn his or her client about the possibility of deportation. Justice Alito authored an opinion, in which the Chief Justice joined, concurring only in the judgment. Noting that immigration law and ascertaining the possibility of deportation are frequently far from simple, Justice Alito wrote that advising a client of possible immigration consequences and referring the client to an immigration attorney should constitute adequate representation on the part of the criminal attorney. Justice Scalia, joined by Justice Thomas, dissented from the Court's opinion, writing that, regardless of whether there are affirmative misrepresentations made by counsel, collateral consequences such as deportation are outside the scope of the effective assistance of counsel required by the Sixth Amendment. Justice Scalia was also of the opinion that the Legislature is the appropriate venue to address these issues. **Author's Comment:** It is unclear whether the Court's holding will apply to other collateral consequences of criminal convictions, because the Court stressed the strong relationship between criminal convictions and deportation.



***United States v. Stevens*, No. 08-769 (U.S. Apr. 20, 2010).**

With the exception of Justice Alito, an otherwise unanimous Court decided that depictions of animal cruelty are protected by the First Amendment and should not be included in the very limited list of types of unprotected speech, which includes obscenity, incitement to violence, and child pornography.

Will Jay is a Board Certified Criminal Trial Attorney with Carsten & Ladan, P.A. He has been a member of the OCBA since 1996.



On May 4, 2010, the Supreme Court closed its doors for good.

As an entrance, that is, through the 1,300-pound bronze doors at the top of the marble staircase underneath the pediment bearing the words "Equal Justice Under Law."

Justices Ruth Bader Ginsburg and Stephen Breyer publicly stated their opposition to the change in a press release.

Breyer voiced the main entrance and steps "are not only a means to, but a metaphor for access to the court itself."

An improved security system, part of the recent \$122 million renovation to the building, now directs visitors to an alternate entry.

Visitors, however, may still exit through the grand doors, past the monumental pillars, down the steps to the street below.



YLS *on the move*

Fun Time in the Summer Time

Sunny A. Hillary

June 14, 2010, is National Flag Day, and the week of June 14th is National Flag Week. During National Flag Week, the President may issue a proclamation urging U.S. citizens to fly the American flag for the duration of the week. This year, celebrate National Flag Day by displaying the American flag in your office or on your house.

Now, let's see what the YLS is up to this summer!

On April 27, 2010, the YLS held a **Wine Down for Relay for Life®** fundraiser at Urban Flats and raised funds in support of the American Cancer Society. Later that week, the YLS joined the fight against cancer by sponsoring a team for the annual Relay for Life® event. The American Cancer Society Relay For Life® is a life-changing event that gives everyone in communities across the globe a chance to celebrate the

lives of people who have battled cancer, remember loved ones lost, and fight back against the disease. At Relay for Life®, teams of people camp out at a local high school, park, or fairground and take turns walking or running around a track or path. This year, the YLS team camped out at Glenridge Middle School in Baldwin Park and took turns walking or running

around the track from 6:00 p.m. until 12:00 p.m. the following day. Special thanks to **Lisa Gong** for leading the YLS team and supporting this important cause.

As you read in this column last month, the **Kentucky Derby Party** on May 1, 2010, was a blast. What you didn't read was that the YLS threw an after-party bash, sponsored by **ProServe USA** (www.proserve.com). Bravo to **Jacquelynne**

Regan for helping to organize the Kentucky Derby Party and extra thanks to Jacquelynne Regan and ProServe USA for continuing the fun at Club 23! Be sure to look for the photographs from the Kentucky Derby Party in next month's edition of *The Briefs*.

The **Brown Bag Lunch with Judge John Marshall**

Kest on May 13, 2010 was another success. Judge John Marshall Kest again graciously offered his time to young lawyers to discuss the issues that they confront in hearings, in trials, and in the course of the practice of law in general. Thanks to Judge John Marshall Kest, several young lawyers' questions regarding how to handle certain awkward situations

and how to improve their hearing and trial skills have been answered. The next Brown Bag Lunch meetings will be held June 16, July 16, and August 23. Please contact Judge Kest's JA, Diane, ctjadi1@ocnjcc.org, to RSVP for the lunch and to submit questions, either under your signature or anonymously.

On May 20, 2010, **Ryan Davis** handed over the gavel to **Eric Reed**, our new YLS President. As always, this YLS luncheon was a memorable one. Ryan reviewed the many fun and charitable events that the YLS has participated in over the course of the past year, and past Presidents of the YLS came to offer their invaluable advice to Eric as he quickly takes hold of the reins.

YLS also congratulates its new President-Elect, **LaShawnda Jackson**, and the following newly-elected and re-elected members of the YLS Board of Directors: **Amber Davis, Sunny Hillary, Taylor Kessel, Kristopher Kest, and Doug Martin**.

On May 15, 2010, members of the YLS gathered at **Great Oaks Village** for another fun afternoon with the kids. Since 1924, Great Oaks Village has been home to thousands of children between the ages of 6 and 18 who were removed from their homes due to abuse, neglect or abandonment. Great Oaks Village is a wonderful campus that offers educational services, counseling services, recreational services, and independent living preparation to the children. **LaShawnda Jackson** organized this special time between the children and the members of the YLS.

On June 11, 2010, the YLS will be hosting its annual **Afternoon at the State Courthouse**. This event gives attorneys practicing before the County and Circuit Judges of the Ninth Judicial Circuit an opportunity to learn helpful hints and gain insight into local judicial practices and procedures. A tour through the halls of the Courthouse is also available. Attorneys, paralegals, law students, and other legal professionals are encouraged to attend Afternoon

the Briefs June 2010 Vol. 78 No. 6





events of the summer, it is a wonderful way for law clerks in and around Orange County to meet and talk to local attorneys and judges. If you are interested in helping to plan this year's Law Clerks' Reception,

website at www.orangecountybar.org, clicking on "Sections" in the menu bar, clicking on the "YLS Section" link to access the YLS page and then sending us a mentoring request. If you have any questions, please contact **Kristopher Kest** at kristopher.kest@lowndes-law.com or 407-418-6285.

Finally, as many of you know, the YLS has formed a **Lawyers for Literacy**

committee that is in the process of organizing a **Lawyers Spelling Bee** fundraiser this fall. The proceeds of the Lawyers Spelling Bee will benefit the literacy initiatives of the Adult Literacy League. If you would like to make a difference in a person's life by giving them the gift of literacy, then please contact **Daryl Gottlieb** at dgottlieb@fisherlawfirm.com. Or, if you are interested in tutoring an adult learner with the Adult Literacy league by volunteering only one hour per week, please go to www.adultliteracyleague.org.

The YLS **July Luncheon** will take place on **July 15, 2010** at 11:45 a.m. Please e-mail your RSVP to admin@ocbayls.org. If you RSVP before July 12, 2010, the cost is \$20 for lawyers and \$12 for law students, government attorneys, solo attorneys, and judges; a late charge of \$2.00 will be added if you do not RSVP.

If you want to find out more about our section and its committees and events, please call me at 407-388-1900 or e-mail me at sunny@brownstonelaw.com.

If you are not receiving the YLS email blasts, send an email to me or ocbayls@gmail.com to sign up.



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



please e-mail **Jacquelynne Regan** at Regan@lowndes-law.com or **Jill Davis** at [Jill Davis@lowndes-law.com](mailto:Davis@lowndes-law.com).

Summer is the time to begin

preparing for the 2010-2011 school year. For the past several years, the YLS has sponsored the **Back Pack Project** for the students of Rock Lake Elementary School. Please contact **Melanie Griffin** at mgriffin@deanmead.com or **Barbara Leach** at bleach@whww.com to donate school supplies to Rock Lake Elementary School, including crayons, pens, pencils, markers, notebook paper, sets of beginning word flashcards, construction paper, binders, scissors, protractors, tissues, notebook pencil pouches, backpacks, and more. Thanks in part to the Backpack Project and the support of the YLS, Rock Lake has risen from an "F" school to an "A" school. Let's help the students of Rock Lake continue to succeed in the 2010-2011 school year!

Many of you may have heard that the YLS is launching a **Law School Mentoring Program** with Barry Law School. This program will match members of the YLS with second- and third-year law students for one academic year beginning in fall 2010. CLE credit may be available. If you are interested in serving as a mentor or participating as a law student mentee, please contact us by going to the OCBA

YLS Kentucky Derby after-party bash!



at the State Courthouse. For more information, please contact **Jonathan Stimler** at jstimler@lseblaw.com.

We're not walking, we're not running, we're CRAWLING! Following an Afternoon at the State Courthouse, kick off the weekend with the **YLS Pub Crawl**. With more than 100 young lawyers strolling the streets of downtown last year, you do not want to miss this event! We will start off at Ember for drinks and appetizers, then head to Bullitt, and finally, The Other Bar. The event is FREE for the first 25 YLS members (donations are encouraged) and \$20 for guests and all other YLS members. All proceeds will benefit the Foundation for Foster Children. Additionally, prizes will be given away at the end of the crawl. Special thanks to our event sponsors including: **Honeywell Mediation; Kirkconnell, Lindsey, Snure, Yates & Ponall, P.A.; and, Dellecker, Wilson, King, McKenna & Ruffier, LLP**. For more information, please contact **Doug Martin** at dmartin@dwkllaw.com.

The annual **YLS Law Clerks' Reception** will be held July 21, 2010, at the Orlando Shakespeare Theater. As one of the biggest

Special Letter to OCBA Members

Dear OCBA Members,

I was honored this year when the Leukemia and Lymphoma Society ("LLS") asked me to participate in annual "Man and Woman of the Year" fundraising event. In the past I raised money for LLS by climbing Mount Ranier and Kilimanjaro in honor of friends of mine who had lymphoma and leukemia. One friend was Judge Bob Wattles, who recently lost his battle with cancer.

When I was asked to campaign for Man of the Year, I told LLS that I would raise money on one condition: that Bob Wattles be named Man of the Year instead of me. While this will be more challenging than any of my prior climbs, the reward will be that much greater.



Hon. Bob Wattles

Leukemia and Lymphoma are deadly diseases that can strike at any time. They are not restricted by age, gender, ethnicity or religion. The need to find a cure for leukemia and the other diseases that LLS works to cure is monumental.

The overall five-year survival rate for leukemia has nearly quadrupled in the past 48 years.

Even so, leukemia still causes more deaths than any other cancer among children under the age of twenty. That is why I turn to you for support. I am involved because I believe that a cure is right around the corner. I hope that you will get involved as well. I still have a long way to go. Money raised will be used for research, education, advocacy and

community service. These funds will also provide financial help for families to cover the costs of treatment and equipment.

If you would like to help in the fight against these diseases, please make a tax-deductible donation to The Leukemia & Lymphoma Society. You can do that in one of two ways:

- Make your donation check out to "The Leukemia & Lymphoma Society" (in the "memo" section of the check write "Bob Wattles") and mail to me by **June 18th, 2010** to my office at 1521 Mount Vernon Street, Orlando, Florida 32803
- Visit www.mwoy.org/cfl and look up my name. The link will take you to my campaign web site where you can make a donation.

Please do it right now, before this letter gets lost on your desk....Write the check, or go to the website.... Thanks.

Thank you very much for all of your support!

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Appellate Practice Committee



OCBA Appellate Practice Committee Granted Amicus Status by Supreme Court: *Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield*

Barbara A. Eagan and Nicholas A. Shannin

The OCBA Appellate Practice Committee took its ongoing commitment to enhance appellate practice a step farther last month. The Committee sought leave to enter an appearance as Amicus Curiae (“Friend of the Court”) in pending proceedings before the Supreme Court of Florida. On April 12, 2010, the Court granted the Committee’s request for leave to appear and permitted the filing of an amicus brief in support of the petitioner in *Strax Rejuvenation and Aesthetics Institute, Inc. v. Shield*, SCT No. 10-57. Member Nicholas Shannin, in his capacity as Chair of the Amicus Subcommittee, drafted the brief with the assistance of Vice-Chair Elizabeth C. Wheeler and Chair Barbara A. Eagan.

The committee undertook this amicus project because the decision of the Fourth District Court of Appeal in *Strax Rejuvenation* has the potential to significantly impact jurisdictional aspects of the appellate process in a manner impinging upon important constitutional rights of parties. The decision is both contrary to law and public policy.

By way of background to the case, in 2009, the Fourth District entered a decision holding “the clerk’s date stamp is dispositive on the issue of the date of filing a paper with the trial court.” *Strax Rejuvenation v. Shield*, 24 So. 3d 666, 669 (Fla. 4th DCA 2009). Appellant *Strax Rejuvenation* claimed it filed a notice of appeal of a non-final order in the circuit court on the thirtieth day following rendition of the order. After the filing, Appellant discovered the clerk’s time stamp reflected a date one day past the thirty-day limit. Despite sworn affidavits of counsel for Appellant and of counsel’s courier stating that the notice had been delivered to the clerk within the jurisdictional limits of thirty days, the Fourth District dismissed the appeal as untimely. The *Strax Rejuvenation* court decided adherence to a bright-line rule of reliance on the clerk’s date stamp, rather than permission for a factual investigation to determine the *actual* date of filing, would simplify matters. In support of its position, the Fourth District advised counsel and clerks that they would just have to “pay closer attention.”

This decision of the Fourth District removed any recourse to parties for correcting the human or machine error which can and does occur during the filing process. Because the decision impinged on a party’s rights to access to courts and implicated due process concerns, the *Strax Rejuvenation* appellant sought review before the Supreme Court of Florida.

Interestingly, during the pendency of this review, the Fifth District rendered a decision on a nearly identical issue. *Ocr-EDS, Inc. v. S & S Enterprises Inc.*, 2010 WL 838164 (Fla. 5th DCA Mar. 12, 2010). The Fifth determined it is *clearly appropriate* for a trial court to take evidence to determine whether a time stamp is erroneous, and to correct error if one is found, and certified conflict with *Strax Rejuvenation*, *supra*.

In its Amicus Brief, the Committee presented two issues: first, that the decision in *Strax* is contrary to longstanding law that appellate jurisdiction is determined by the date the notice of appeal is actually received by the clerk; and, second, that the bright-line rule will thwart even the careful appellate practitioner’s ability to prosecute a preserved appeal and expose him or her to malpractice liability. As explained in the brief in support of the petitioner, among other things, the modern practice of scanning documents into the system removes any ability of the attorney to observe the filing process, ministerial errors have occurred in the experience of most seasoned appellate practitioners, and the rights of parties are severely undermined with a bright-line rule. The Committee requested the Supreme Court quash the decision of the Fourth District as contrary to law and public policy.

Following Petitioner’s filing of the brief on the merits and the Committee’s filing of the amicus brief, the Fourth District entered another decision in *Soledispa v. La Salle Bank National Association*, No. 4D10-998 (Fla. 4th DCA 2010). As in *Strax*, the Fourth again held the bright-line rule it established previously continues to apply.

The Committee predicts the Florida Supreme Court will follow the Fifth in deciding the issue. However, those advancing cases in the appellate jurisdiction immediately to our south are advised to take whatever steps possible to verify that the date-stamp of the clerk reflects the actual date of filing. Meanwhile, we will be watching for the Florida Supreme Court to enter its clarifying decision on this important question of appellate procedure.



Barbara A. Eagan is Florida Bar Board Certified in Appellate Practice and is the founder of Eagan Appellate Law, PLLC, an Av-rated, Orlando law firm. Ms. Eagan handles appeals in state and federal appellate courts. She has been named *Florida Super Lawyer*, by Law and Politics and a *Legal Elite*, by Florida Trend Magazine in Appellate Practice. Eagan serves on the Florida Bar Appellate Court Rules Committee, among other activities. She is chair of the OCBA Appellate Practice Committee and has been a member of the OCBA since 1977.



Nicholas A. Shannin is Florida Bar Board Certified in Appellate Practice and a partner in Page, Eichenblatt, Orlando. Mr. Shannin has been named *Florida Super Lawyer*, by Law and Politics and a *Legal Elite* by Florida Trend Magazine, in Appellate Practice. Shannin is a member of the OCBA Appellate Practice Committee and has been a member of the

PARALEGAL *post*

It's an exciting time for the Orange County Bar Association Paralegal Section as we continue to innovate and focus on growth. To that end, we thank **Lori Spangler** for having served as founding President of the OCBA Paralegal Section and for her significant effort towards achieving section status for the Paralegal Committee.

We are pleased to announce that effective Thursday, May 27, 2010, **Lissa Bealke**

(GrayRobinson, P.A.) will assume the leadership role as President of the Paralegal Section. **Amy Guy** (Calandrino Law Firm, P.A.) is the Section's incoming President-Elect/Vice President, and **Christine Stram** (Broad & Cassel) will be our new Secretary/Treasurer.

The following individuals have also been selected to serve on the Section's Board of Directors: **Lori Chezem** (Akerman Senterfitt); **Phil Gordin** (GrayRobinson,

P.A.); **Michelle G. Krakar** (Roetzel & Andress); **Genti Zeqo** (Stanton and Gasdick, P.A.); **Catrina Chapin** (Special Board Member, Non-FRP). These officers and board members will continue to focus their efforts and resources on those steps essential to enabling the Paralegal Section to achieve an even higher level of service to its members and to other paralegals in the Central Florida area.

Paralegal Section 2010-2011 Officers & Board



Lissa Bealke, FRP
President
GrayRobinson, P.A.



Amy Guy, CP, FRP
President-Elect / Vice President
Calandrino Law Firm, P.A.



Christine Stram, FRP
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Catrina M. Chapin
Special Board Appointee
Roetzel & Andress



Lori M. Spangler
Ex-officio
Roetzel & Andress

Not pictured, *Board of Directors*: **Phil Gordin, FRP**, GrayRobinson, P.A.; **Michelle G. Krakar, FRP**, Roetzel & Andress



On the table was serious deliberation for judges of the 2010 LawWeek poster and essay contest!



2010 Law Week Review

Catrina Chapin

Law Week 2010 was a huge success! During our Pathways in Law program, we touched the lives of students from the Apopka Farmworkers Ministry,

Parramore Kidz Zone, and Rosemont Community Center. Students participated in a mock trial at the Orange County Courthouse, followed by a tour of the Orange County Jail. **Mayor Buddy Dyer** was our special guest at this event.

Students of East River High School were educated on the danger of driving under the influence of alcohol and drugs at a DUI mock trial program held in **Judge Bob LeBlanc's**

courtroom. Thank you to MADD and our guest speaker, Sharon Rivas, for making an impact on these students.

The students of Lake Silver Elementary School and Hillcrest Elementary School had a great time interacting with the attorneys and paralegals that performed the Goldilocks-themed mock trial entitled *Wolf v. Pig*.

The Mock Trial Program would not have been possible without our sponsors. Special

thanks to the Orange County Bar Association Foundation, Trial Consulting Group, LLC, and all of our wonderful volunteers. Please keep Law Week 2011 in mind for volunteer or sponsorship opportunities!

Catrina M. Chapin is a paralegal with Roetzel & Andress LPA. She has been a member of the OCBA since 2005.





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LAS attorneys Ericka Garcia, Krista Bartholomew, and Bethanie Barber

The GAL Program and Legal Aid supported the "Spring Swirl" benefit hosted for the Howard Phillips Center, which provides forensic interviews for abused children and counseling for child victims. The GAL Program works closely with the Howard Phillips Center on many cases to help children involved in the dependency system. Legal Aid considers the Howard Phillips Center a wonderful community resource and encourages all attorneys to become familiar with this program.

Random Shots

Law Symposium 2010

On April 14, 2010, the OCBA and Orange County Public School system (OCPS) co-hosted the thirteenth annual Law Symposium for educators. The program this year, "A Look inside the Juvenile Courts," provided current information to educators about the types of problems seen among youth today. Presenters, including judges, attorneys and others in the field of youth services, provided an overview of the courts that may have an impact on some students' lives and futures. They also discussed resources for educators. Presentations covered topics such as Teen Court; the Pathways in Law, DUI Mock Trial, and Law Week



activities; Children in Need of Services (CINS) Court; Delinquency Court; Drug Court; Dependency Court; and Truancy Court. More than 80 educators attended this year's symposium.

In celebration of this year's Law Day on May 1, 2010, the Orange County Bar Association Foundation, Inc., was pleased to present *The Importance of the Rule of Law and Fair and Impartial Courts*. The well-received presentation was to the leadership of Rotary International's local Interact Clubs, as well as Rotarians, at the local District Meeting of Rotary International on April 29. Interact Clubs are the Rotary's service club for young people aged 12 to 18 and are individually sponsored by local Rotary Clubs. In addition to the attendance of the local Interact Clubs' leadership, several international students attended through the Rotary's Youth Exchange program.

As the program's name implies, the program was to impress upon attendees the importance of the rule of law and fair and impartial courts in society. Beginning with a multi-media presentation, Foundation Vice-President **Tom Wert** gave a brief civics lesson on the foundation for the United States government, followed by the basis of the judicial branch of government. In a thought-provoking example of popular opinion and the need for the judicial branch's interpretation of the law to uphold the law, attendees were asked to vote on items such as slavery, integration, detention camps, same-sex marriage and abortion, which was followed by an interactive discussion on the need for the judicial branch's interpretation of the law.

Foundation Board Member **Cynthia Schmidt** then led participant through a case discussion of *Hood v. State*, which was recently addressed by the United States Supreme Court during April. Participants were separated into small groups, with each group lead by an attorney volunteer, including Foundation President **Jessica Hew**; Foundation Board Member **Wiley Boston**; OCBA Past President **Woody Rodriguez**; Rotarians **Bill Umansky** and **Jason Boffey**; and OCBA Member **Amy Rigdon**. As the facts and procedural issues of *Hood* were each unveiled individually by Cynthia Schmidt in conjunction with the Fifth Amendment, the groups discussed the implications of the facts as they were unveiled and how such facts changed their opinion. Ultimately, as the complete case was laid out and final decisions and opinions were rendered by the groups, it was impressed upon them that, as future jurors, it is necessary to be impartial until all facts and evidence are presented prior to the rendering of a decision.

A panel discussion moderated by Tom Wert and composed of Rotarian Judges **Bob LeBlanc** and **Rand Wallis**, Judge **Alan Lawson**, Legal Aid President **Jamie Moses**, and OCBA Past President **Bruce Blackwell** subsequently ensued. The panel discussed and answered questions based on the programming, such as why they became involved in law, why courts are important to freedom, why judges and lawyers are important in the justice system, legal experiences showing the importance of the courts, and how citizens may help preserve the court system to preserve freedom. Participants also made intelligent inquiries of the panel on various legal topics and issues.

The Foundation, whose main goals are to provide community education and funding for law and legal issues, is pleased to participate with other community organizations to provide similar educational presentations. If you are interested in participating with the Foundation or have a community organization which the Foundation may help, please contact Foundation President Jessica Hew, at jessica.hew@burr.com or Foundation Vice-President Tom Wert, at twert@ralaw.com. We look forward to working with you.



Jessica K. Hew, a partner with Burr & Forman LLP, is president of the Orange County Bar Association Foundation, Inc. She has been a member of the OCBA since 1995.



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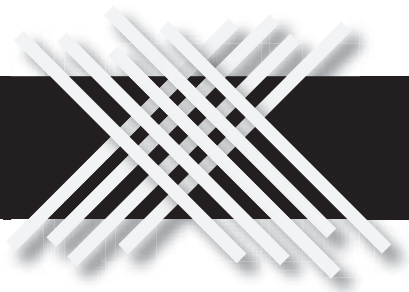
William E. MOORE

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Beyond Your Real Estate Connections

Creating Real Value in a Changing World



Jeff Streep

We, as legal and real estate professionals, are in business to create and deliver real value for clients, shareholders and our own people in a complex world that is constantly changing. The changes that have occurred over the past 3 years have created new questions from our clients which require new, improved, and innovative answers.

Now more than ever, as a direct result of the turbulent economic conditions that exist, our services go far beyond the negotiation of lease and sale contracts. We have built strong-rooted relationships with our clients that are dependent upon our evolving knowledge, expertise, and ability to adapt, overcome, and deliver results for complex and often times never-before-seen obstacles. The business relationship has transformed into a more personal relationship as we navigate through the setbacks of the economy. In doing so, we have realized the value in extending our network of relationships throughout the business community in order to ensure our client's success.

To say that our success depends on how well we connect to each other and our clients is an understatement. The legal and real estate professions have always been built on relationships. Every piece of business that we win—every deal, project, assignment, agreement, lease or sale—begins with a connection. We connect with our clients and prospects to deliver our promise of creating real value.

We connect with each other to share our expertise and create solutions that go far beyond traditional silos of geographies and business lines. Through our bold, connected business, we will continue to distinguish our firms and lead the industry through a dynamic, changing world.

Jones Lang LaSalle is committed to strengthening our relationship

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Loan Sale and Advisory Services

We provide comprehensive loan valuation, workout and restructuring advice, asset management and disposition services.



Jeff Streep is a Senior Associate at Jones Lang LaSalle and is a licensed real estate professional specializing in commercial real estate for both tenants and owners. He is an Orlando native and UCF alumnus.

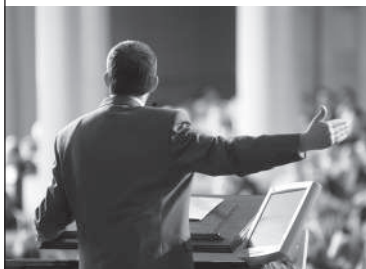
Jones Lang LaSalle's Orlando office is located at: SunTrust Center, 200 S Orange Avenue, Suite 1400, Orlando, FL 32801. 407-982-8550. www.us.joneslanglasalle.com/orlando

Connecting the Platform



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The Orange County Bar Association is pleased to provide you with a list of 2010 Preferred Vendors – a variety of businesses that have provided Central Floridians with time-tested, quality products and services, and are supporters of the Orange County Bar Association. We encourage you to take advantage of the products and services offered by these establishments. Many businesses on the list offer special promotions or discounts to help you continue to grow your practice and be successful both in the legal field and in the community.

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Presentation Skills for Lawyers

The Power of the Pause

Every single second of every single moment was filled with the sound of his voice when you think back upon it you have to admit you were just absolutely amazed I mean did this guy even need to breathe it didn't seem like it because he just kept going and going and going without regard to oxygen or audience expectations almost as if the thought of pausing would let someone else start talking and that would simply be unacceptable for him so rather than pausing for even a moment and letting you think about what he was saying he just kept talking and talking and...

Whoa, buddy! **Stop! Take a breath!**



Elliott Wilcox

One of the most powerful tools in your presenter's toolbox is the pause. That brief moment of silence after a profound thought can sometimes be more important than the words themselves.

WHY PAUSE?

Imagine reading a newspaper without a single comma, period, or paragraph indentation – just word after word after word. How far could you read before losing your train of thought? A speech without any pauses feels the same way to the listener.

Do you want the audience to remember your message? To understand it? Do you want them to take the message home and incorporate it into their lives? If so, you need to give them a chance to stop and reflect upon what you've said.

A pause lets us think. Many speakers ask their audiences rhetorical questions and then move immediately to their next subject. This robs the audience of their chance to think about how your ideas could affect their lives. Pausing for a moment lets the audience answer the question or wrap their minds around your message.

A pause lets us laugh. Many humorous moments in speeches are lost because the speaker steps on the laugh line. It may take more than a second for the audience to catch the punch line – give them the chance to laugh.

A pause helps us absorb ideas. Your message travels at the speed of sound. Even in the largest of rooms, it travels from your mouth to the listener's ears almost instantly. Sometimes, it takes a few extra seconds for the message to travel those last few inches of its journey, from the ear to the brain. If you pause for a moment, you will let your message complete its journey.

WHEN TO PAUSE

There are several opportunities in every speech where you might consider pausing:

- After you say something important.
- After you ask the audience a question.
- When you want the audience to think.
- When you ask the audience to remember a moment in their past.
- After you say something funny.
- When you hit an emotional moment.
- As a transition between points.

Look through the outline of your speech and find the moments where your audience needs to mentally "breathe." Notate your outline or make a mental note, so that you purposely pause at the appropriate moment.

HOW TO PAUSE

Most speakers underestimate the amount of time they've paused. What seems like an eternity onstage may be only two or three seconds. Here are three tips for holding the pause for maximum impact:

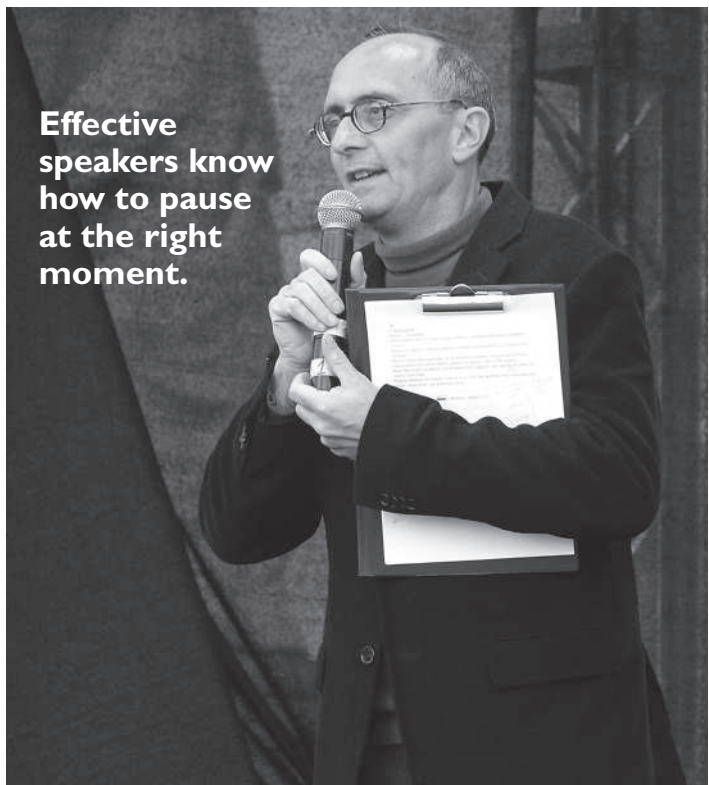
Count silently. "One Mississippi, two Mississippi, three Mississippi, four Mississippi..." and then resume.

Look around. Make eye contact with three different members of the audience before continuing. If you look to members in the far corners of the room, you'll give the impression of making eye contact with everyone in the room.

Get uncomfortable. Pause for one second longer than feels comfortable. The pause won't be nearly as long as you think it is. You'll feel uncomfortable, but your audience won't.

Effective speakers know how to pause at the right moment. They hold their pauses long enough to let the audience think, feel or laugh. If you master the skill of pausing in your presentation, you will give your audience the opportunity to walk away with your message stuck firmly in their heads.

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



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Rainmaking 101

Client Interview

In the last two columns we've discussed the use of strategic conversations, the "What To Say" part of a word-of-mouth marketing program. Specifically, we've focused on a simple technique for turning a normal conversation into a strategic conversation: asking questions. Asking the right questions of the right group of people is a powerful tool to gather valuable information, build rapport and foster trust.

The rainmaking scenario we'll focus on today involves interviewing your clients. Interviewing clients can be surprisingly fruitful – not only for the valuable information you'll learn, but also for the depth of relationship you'll create. In client development, depth of relationship translates into increased "know, like and trust," which translates into a more satisfied client. More satisfied clients tend to talk about you to their friends and associates. This leads to more referrals. Large retail and corporate institutions have long recognized the need to stay in touch with their clients and customers. Many large law firms have institutionalized feedback loops and do their best to stay in touch with their client base despite their size. This is where small and mid-size law firms have the advantage: they are small enough to deliver personalized service and can easily stay in touch with their clients. But a great many attorneys in small and mid-size firms don't make the extra effort required to get feedback from their clients on a regular basis. They rely instead on the number of complaints they hear to tell them how clients perceive their services. This is the ad hoc approach: when the number of complaints goes up, they move in to fix the problem. When they hear no complaints, they make the mistaken assumption that all is going well.

Don't assume all is well with your clients. Doing so ensures that you'll deliver an *acceptable* level of service to your clients when you should strive to *exceed* client expectations. We recommend that you regularly engage your clients in questions about your practice and their experience when dealing with you and your office. This is the best way to know how your services are being perceived.

Here's what we suggest to the attorneys we advise: do an in-person exit interview at the conclusion of substantial matters

with significant clients. You can do this by taking the client out to lunch, or you can have the conversation in your office.

If the client is someone who has recurring work that they can send you; is well-connected and has the ability to refer friends and associates; or is your main contact at an institution you represent and you want to increase the likelihood you'll get more work, take them out to lunch. If you've just gotten a good result for the client, you can create a celebratory mood at the lunch and this interview will be especially effective.

When talking with the client, choose the right time to bring up the interview questions, don't launch into them immediately. Chat casually about the matter that was just completed, discuss what's next for them, and whatever else is relevant. When the time is right, open up the conversation by saying:

"Now that we've had a chance to work together, I'd like to ask for your feedback. I'm always trying to improve the level of service we provide and the best way to do that is to find out what we did right and what we could do better to serve our clients. Can I ask you a couple of questions about this?"

In all likelihood, the clients will respond positively to the request and may even take it as a compliment that you think enough of them to ask their opinions. Continue the conversation with the following questions, keeping the tone light and fostering an open exchange.

"Is there is anything you would change about how we worked with you?"

"Were the attorneys and staff accessible to you?"

"Were they responsive to your needs?"

"Did you feel taken care of by our team?"

Take in the client's perspective and refrain from becoming defensive about any remarks or comments make. For the most part, your clients will give you positive feedback, which is valuable, but press them to give you any constructive criticism they may have. Let them know you'll use this information to improve service overall.

At the end of the conversation, if you've received mostly positive feedback, mention again that you've enjoyed working with them. Also say you'd appreciate it if the client would think of you if they have additional work or any friends that need your services. Some attorneys find it comfortable, and complimentary, to the client to say, "My practice is built on referrals from great clients like you." This final step in the conversation is critical to ensure that the clients know your practice depends upon referrals. Be sure to plant this seed – don't count on clients to think of this on their own.

The interview in all its many forms is a very powerful strategic conversation. Adopt this tradition in your office and begin booking clients for these lunch interviews right away. You'll be pleasantly surprised by how much rapport you can build, by how much useful information you receive, and by how much the referrals pick up.

Mark Powers, President of Atticus, Inc. and **Shawn McNalis**, co-authored the recently published *How Good Attorneys Become Great Rainmakers* and are featured writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.



Mark Powers



Shawn McNalis

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Larry D. Smith – *Southern Trial Counsel, PLC*

Transitions

Mr. Martin B. Unger of Unger, Unger, Stokes, Acree, et al., passed away in August 2009. He had been a member of the OCBA since 1994. Our condolences to the family.

Board Certifications

James O. Cunningham – Civil Trial Law (originally certified in 1984, recertified)

Published

David Henry of Swartz Campbell presented *Mediation Myths and Misadventures* to the OCBA Business Law Committee in March 2010.

Paul Manderlkern, a partner with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., recently authored a front-page feature story titled *Electronic Medical Records: Coming Soon To A Physician's Office Near You*, in the *National Law Journal*. The article discusses the economic incentives in the Health Information Technology and Clinical Health Act (HITECH), a part of last year's stimulus bill, for physicians to convert to the electronic medical records Act from paper records.

Dennis Wall's article discussing how *The Florida Standard Jury Instructions Committee Alters Florida Insurer Bad Faith Law with Proposed Jury Instructions*, has just been published in *Insurance Litigation Reporter*.

Speaking Engagements

Miranda F. Fitzgerald, partner with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., recently participated in the Green Attorneys Roundtable Discussion, which was sponsored by the Environmental Law Society at Barry University Dwayne O. Andreas School of Law. The speakers discussed how to prepare for careers in environmental or land use law.

Stephen Milbrath, a shareholder with Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., recently presented *Hot Topics in Intellectual Property Law 2010: Patent Law*, at the First Annual Intellectual Property Symposium presented by The Florida Bar Continuing Legal Education Committee in Tampa, FL.

Andrew P. Rock of the Rock Law Group, P.A., was a speaker at the Property Loss Research Bureau (PLRB) Conference in San Antonio, Texas. He spoke on the topic of appraisal provisions. Mr. Rock also was a speaker at the National Society of Professional Insurance Investigators Conference (NSPII) in Lake Buena Vista, FL. He spoke about the latest property insurance fraud legislation.

Seminars

June 2 – *Considerations in the Pursuit of Commercial and Business Debt*. Business Law Committee Seminar. 11:30 a.m.-1:00 p.m. OCBA Center. CLE: 2.0 (including .50 ethics). Richard B. Webber - Bankruptcy Issues; Rodger D. Moss, Jr. - Practical Tools, Depo in Aid, Asset Search, Write of Execution, Prejudgment Writs, Writs of Garnishment; David Fleming - Mediation Issues. Fee: \$35. For more information, contact Marie at marieb@ocbanet.org.

June 4 – *Sorting and Tallying Search Results and Saving Searches*. Paralegal Section. 11:30 a.m.-1:00 p.m. Lunch will be provided courtesy of Kane & Associates. CLE: 2.0. Speaker: Steve Reynolds, Digital Legal. Cost: \$20 OCBA Member/\$25 Non-OCBA Member. Contact Lissa Bealke at Lissa.Bealke@gray-robinson.com. Sponsored by Digital Legal.

June 8 – *Guardianship of an Adult, No Property*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speaker: David Yergy, Esq. For more information, please email ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

June 11 – *The Immigration Consequences of Criminal Activity*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. Speaker: Kira Romero Craft, Esq. For more information, please email ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

June 11 – *An Afternoon at the State Courthouse*. YLS. Registration and event: 1:00 p.m.-4:00 p.m. Orange County Courthouse, Jury Assembly Room, 1st Floor. CLE: 3.5 (pending). Fee: \$10. Send RSVP and payment to Mike Remensnyder by Friday, June 4, 2010, OCBA, 880 N. Orange Ave., Orlando, FL 32801. For more information, please contact Jonathan Stimler at jstimler@lseblaw.com.

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

June 18 – *Fifth District Appellate Mediation Training*. 8:30 a.m.-4:30 p.m. Hawthorn Suites by Wyndham, Orlando Airport, 7450 Augusta National Dr., Orlando, FL 32822; Phone: 407-438-2121. Fee: \$100, includes lunch and training materials. The Fifth District is the only District Court that sends cases to mediation at the appellate level. Although registration has closed, you may contact Penny Penny H. Cooper, Mediation Coordinator at 386-947-1547 or cooperp@flcourts.org, who will determine whether seminar seats are available.

June 22 – *Children's Issues Legislative Update*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32810. CLE: pending. Speaker: Cara Dobrev, Esq. For more information, please email ctucker@legalaiddocba.org or mcarbo@legalaiddocba.org.

June 25 – *To Litigate or Mitigate – That is the Question*. Solo & Small Firm Committee Seminar. 12:00 p.m. OCBA Center. CLE: 1.0. Speaker: Anthony J. Diaz, Esq. For more information, contact Marie at marieb@ocbanet.org.

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

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

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

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

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

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



Thank you to everyone who participated in the Foundation presentation for the Interact Clubs of the District Rotary Meeting on April 29, 2010. The program would not have been possible without your support.

Special acknowledgement is given to **Tom Wert**, who organized the programming and lead the first and last sessions, and to **Cindy Schmidt**, who planned and lead the second session.

The program was well received, and we have already been asked to present it to the Interact program statewide in February of 2011. We have been assured that the participants will be different, as the leadership component of the invitations will differ year to year.

I hope you will join us again in presenting this program for the Rotary in 2011.

Thanks again for your support of the Foundation's programming.

Jessica K. Hew, OCBA Foundation President



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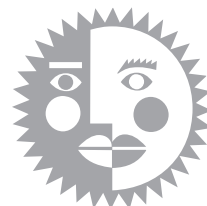
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June - July 2010

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Thursday, June 17, 2010

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June

- 1 Intellectual Property Committee**
12:00 p.m. • Bar Center
- 2 Business Law Committee Seminar**
Considerations in the Pursuit of Commercial & Business
11:30 a.m. • Bar Center
- Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judge's Conference Rm.
- 4 Paralegal Section Seminar**
Sorting and Tallying Search Results and Saving Searches
11:30 a.m. • Bar Center
- 8 LAS Lunchtime Training**
Guardianship of an Adult, No Property
12:00 p.m. • Comerica Bank
- 9 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Executive Council Meeting**
No Meeting
- 10 Social Security Committee**
12:00 p.m. • Bar Center
- 11 Family Law Executive Committee**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- LAS Lunchtime Training**
The Immigration Consequences of Criminal Activity
12:00 p.m. • Comerica Bank
- An Afternoon at the State Courthouse**
1:00 p.m. • Orange County Courthouse
- 15 Professionalism Committee**
12:00 p.m. • Bar Center
- 16 Brown Bag Lunch with Judge J.M. Kest**
12:00 p.m. • Judicial Conference Rm., 23rd Flr.
- 17 OCBA Luncheon**
Billy Donovan
Head Basketball Coach, UF
11:30 a.m. • Church Street Ballroom
Sponsored by: M&I Bank

- YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 18 Family Law Committee Seminar**
12:00 p.m. • Bar Center
- 22 LAS Lunchtime Training**
Children's Issues Legislative Update
12:00 p.m. • Comerica Bank
- 25 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 29 Solo & Small Firm Committee Seminar**
To Litigate or Mitigate – That is the Question
12:00 p.m. • Bar Center
- 30 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Committee**
12:00 p.m. • Contact Robert Sherry

July

- 1 Federal Judicial Relations**
12:00 p.m. • Judge Conway's Chambers
- 2 Bar Center Closed for the Holiday**
- 7 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judge's Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 8 Social Security Committee**
12:00 p.m. • Bar Center
- 9 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- Paralegal Section Seminar**
Boolean Searches and Searching/Working with Transcript Tools
11:30 a.m. • OCBA Center
- 13 LAS Lunchtime Training**
Dissolution of Marriage Training (2 hours)
12:00 p.m. • Comerica Bank
- 14 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse 21st Fl. Conf. Rm.
- Executive Council Meeting**
4:00 p.m. • Bar Center
- 15 YLS Luncheon**
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 16 Family Law Committee Seminar**
Short Sales
12:00 p.m. • Bar Center
- Brown Bag Lunch with Judge J.M. Kest**
12:00 p.m. • Judicial Conference Rm., 23rd Flr.
- 20 Professionalism Committee**
12:00 p.m. • Bar Center
- 21 Insurance Law Committee**
12:00 p.m. • Bar Center
- 22 OCBA Luncheon**
Attorney General Candidate Forum
11:30 p.m. • Church Street Ballroom
- 27 LAS Lunchtime Training**
Drug Issues in Dependency Court
12:00 p.m. • Comerica Bank
- 28 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Committee**
12:00 p.m. • Contact Robert Sherry
- 29 Solo & Small Firm Committee Seminar**
Substance Abuse and Mental Health
12:00 p.m. • Bar Center
- 30 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

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