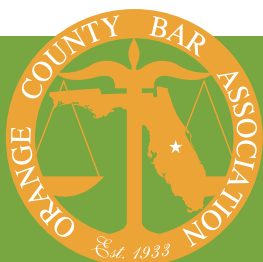


the Briefs

A Publication of the Orange County Bar Association



March 2010
Vol. 78 No. 3

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Award Recipient

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Anna Long

One of OCBA's Own "Goes Green"
John Paré



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on my cases,
not my
banking."

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DEADLINE INFORMATION

Advertising - 10th of the month prior to the month of publication
Copy - 15th of the month six weeks prior to the month of publication

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

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President's Message ● A Call to Arms

March 2010

My message this month was going to be abbreviated and short with specific instructions to further direct you to our new enhanced website. I am sure many of you have not seen the changes on our new website, including our new calendar at <http://orangecountybar.org/>, but after today I am hoping that you will take a moment to check it out. The new website, which is still a work in progress, has been spearheaded by Peggy Storch, our communications manager, with the able assistance of other OCBA staff and a dedicated programming and development team. If you see Peg, please thank her for her efforts and feel free to contact her at peggys@ocbanet.org if you have any suggestions or comments to improve the site.

I was also hoping to keep this message short in order to really Go Green and encourage you to read more of our e-mail blasts. If you don't get our OCBA e-mails you should and signing up is easy. Just send our wonderful Membership Director, Stacy Hastings, an e-mail at stacyh@ocbanet.org. If you DO receive our e-mails then I highly encourage you to actually open them and give them a glance. Based on a scientific study, our e-mails take about 53 seconds to process. Okay, so I'm completely making this up but truly you should take a moment to see what events are coming up (such as our May 1 Derby Party which will temporarily replace the OCBA Gala). And, if there are any events of interest, and there usually are, then you can easily forward that e-mail to your assistant so that the events can be added to your calendar.

But unfortunately, this message has been extended a bit longer because of an important topic which I must share with you and one that I have tried to ignore for far too long. One that I am sure you too have observed but which you thought would correct itself without your intervention.

In our home, we refer to this as the 9-1-1 scenario. In an emergency, it is suggested that you point at someone specific in a crowd (and hopefully someone that looks like they will take action), and yell "YOU call 911!" Alternatively you could just yell out for help and hope someone calls 911. But with direct communication you are more likely to get results. So today, I am counting on **YOU** to take action.

There is a problem with our judiciary. Foreclosures are at an all time high. Last year we saw over 30,000 foreclosures in Orange County alone. This year, in just the first 19 days, we saw 1,061 foreclosures of which 568 were residential homeowner occupied foreclosures. At that pace we will have well over 20,000 more foreclosures. You might say, "so what, the trend is improving." But these foreclosures are choking our civil system and creating a backlog that is only going to get worse.

To remedy the situation, the Florida Supreme Court has adopted a model administrative order that requires the parties in foreclosure proceedings to exchange financial information and attend mediations before taking up more of the court's time. A copy of the Order is available on our website. This order will be implemented in all circuits including the Ninth Circuit and the OCBA will be on the frontlines to help implement any order approved by Chief Judge Belvin Perry. But I need your input. If you are a lawyer that practices in the foreclosure arena, lender or borrower, I NEED your input. If you are a mediator and want to make sure we implement this order appropriately, please e-mail me your thoughts at woodyocba@aol.com. We have enlisted David Henry, a mediator with Swartz Campbell, LLC, who has been an active voice on this issue for over a year, to join our exploratory committee but we need more input.

With the influx of foreclosure cases, ex-parte has become a more prolonged process which runs into the short matter hearing times. I always see "Tony" a diligent attorney representing his lender clients at ex-parte. He carries with him a stack of cases that need judicial signatures.

Sometimes I wonder whether his AFLAC insurance is current as he is sure to suffer a back injury soon given the literal heavy caseload he carries, but I digress. He is just doing his job and I do not fault him. But the reality is we need more resources.

So perhaps the solution is that we start the judicial day earlier in the morning. Ah, but as Lee Corso might say, not so fast my friends. For you see our deputies can no longer provide security for any matters before 8:30 a.m. Furthermore, hearings have to be concluded by 5 p.m. because there is no overtime available for all courthouse staff, including security. But more on what you can do to address the lack of financial resources will follow just keep reading.

With hearing times scarce, this puts a premium on those times that are available. So you can imagine my shock when I recently learned, from a number of judges, that some members of our profession are abusing the system by failing to cancel scheduled hearings. It is unfathomable to me that anyone would deliberately fail to inform the court that their hearing time is no longer necessary but it happens at an alarming rate. This is the equivalent of living in a desert and watching your neighbor drain the community well to water his cactus. Each and every judge I have spoken with has expressed their frustrations with the increasing number of canceled hearings in which neither lawyer has appeared or had the courtesy to call the court with a cancellation. Pre-trial conferences are also routinely avoided by officers of the court. As members of the OCBA, our Professionalism Committee has engrained in us the concept that our judges command respect and courtesy. But to those lawyers not in our ranks, please be sure to keep them from perpetuating these abuses. Not only in our cases but others they may have. If they are from another jurisdiction don't be shy to tell them how we expect them to do it here in Orange County.

But last minute cancellations are also becoming a problem. A simple idea to institute in your practice can help. Try to make it a habit to reach out to opposing counsel two or three days before a hearing. A last minute cancellation not only wastes the hearing time but most judges actually read our pleadings and supplemental information. This is time they could be spending on other unresolved matters. Our reputations are the source of our livelihood and an appreciative judge is a better ally to your clients than a disgruntled one.

The judicial foreclosures also create an influx of mail and "emergency" phone calls that tie up the limited resources of judicial assistants. I am told that eventually the wave of foreclosures will slow down. In the meantime, don't get frustrated if you don't get an immediate response. But also, don't keep your frustrations to yourself. If you see inefficiencies or have suggestions, please let me know. This past month, Chief Judge Perry reinstituted a Commission to Improve the Organization of the Civil Justice System. In 1999, the Commission, led by past OCBA President David King, issued a report and recommendations which, at the time, made for a better judicial system in the Ninth Circuit. Eleven years later, David King is at it again leading a new group of lawyers and judges that will be

continued page 38



Diego "Woody" Rodriguez

Killinger v. Guardianship of Grable,
983 So. 2d 30 (Fla. 5th DCA 2008)

Denied certiorari petition contesting
extensive discovery in guardianship
proceeding.

Caiazza v. Tuff Realty Corp.,

805 So. 2d 29 (Fla. 5th DCA 2001)

Protected ownership of two multi-million
dollar Florida corporations.

McGhee v. Volusia County,

679 So. 2d 729 (Fla. 1996)

Clarified sovereign immunity/scope of
employment rules for deputy sheriffs.

Whigham v. Shands Teaching Hospital,

613 So. 2d 110 (Fla. 1st DCA 1993)

Reinstated multi-million dollar medical
malpractice action against blood bank.

Pixton v. Scotsman,

924 So. 2d 37 (Fla. 5th DCA 2006)

Reversed dismissal of negligence action
for failure to comply with RCP 1.070(j).

Acadia Partners, L.P. v. Tompkins,

759 So. 2d 732 (Fla. 5th DCA 2000)

Prevented multi-million dollar judgment
addition in complex business litigation.

Pettry v. Pettry,

768 So. 2d 8 (Fla. 5th DCA 2000)

Reversed conversion of rehabilitative
alimony to permanent alimony.

GEICO v. Krawzak,

675 So. 2d 115 (Fla. 1996)

Required disclosure of uninsured motorist
insurance carrier as a party defendant.

Marriott International, Inc. v.

Perez-Melendez,

855 So. 2d 624 (Fla. 5th DCA 2003)

Affirmed million dollar personal injury
verdict based on the "two issue rule".

Thomas v. Fusilier,

966 So. 2d 1001 (Fla. 5th DCA 2007)

Reversed forfeiture of \$250,000 payment
required by marital settlement agreement.

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OCBA Luncheon *March 25, 2010*

Sponsored by:



Leon H. Handley
2010 William Trickel, Jr., Professionalism Award Recipient

Leon Handley had his sights on being president of the student body at the University of Florida (UF). So, with some time left on the GI Bill, he enrolled in law school. Thus began a remarkable legal career.

While Leon never realized his dream of leading the student body, he did go on to become president of the Florida Blue Key, and for more than 50 years he has had a successful legal career in Orlando where he is known as the "Godfather" of Central Florida's legal community.

Born in Lakeland on September 9, 1927, Leon spent his early years working for his father in the warehouse of the Mine and Mill Supply Company, where he currently serves as President and Chairman of the Board. Upon entering UF, he completed his entire freshman year in one semester, earning credits by simply passing exams. Then, at only 17 years of age, Leon embarked upon a military career as he entered the U.S. Maritime Service. He went on to the Merchant Marine Academy and was soon appointed ship's officer.

Soon after World War II, he got his first taste of international travel when he was sent to post-war Italy. After leaving the Maritime Service, Leon returned to UF for a short time before enlisting in the U.S. Army. Before leaving the Army as a sergeant, he logged more international travel, including a tour through Hawaii, Korea, Japan and China.

After leaving the Army, Leon once again hit the campus of UF where he was drawn to military service – this time joining the U.S. Air Force R.O.T.C. where he became the first Air Force Cadet Colonel in Florida R.O.T.C. history. Leon managed to earn a Bachelor of Science in Business Administration, with honors, and his Juris Doctorate degree in a total of four years. At the end of his military career, he retired as Captain in the United States Air Force Reserve.

While he didn't set out to become a lawyer, Leon grew to love the profession. He began his legal career in the offices of McGuire Voorhis and Wells in 1951 and joined Rumberger, Kirk & Caldwell in 2005. His practice focuses on civil trial defense work and has tried a variety of cases ranging from small claims disputes to homicide.

Quick wit and a keen intelligence has served Leon well in his law career. He has traveled extensively, lecturing on the subject of trial practice, and he has acted as a master of ceremonies and a keynote speaker for many events.

Leon's love for travel led him to join the Travelers Century Club, an elite circle of globe trotters who have visited 100

or more countries. Age hasn't deterred Leon as he continues to check off countries he wants to visit, now numbering at 239. Just last year, Leon visited Iran, one of the 315 official destinations on the Travelers Century Club list.

Leon has been recognized by his peers and several organizations, with listings in *The Best Lawyers of America*, *Who's Who in Finance and Industry*, *Who's Who in the South and Southwest*, *Who's Who in American Law*, *Who's Who in America* and *Who's Who in the World*. He is a Fellow of the American College of Trial Lawyers and a member of The Florida Bar, American Board of Trial Advocates, Florida Defense Lawyers Association, International Association of Defense Counsel, Federation of Insurance and Corporate Counsel, American Judicature Society and the American Bar Association. He is admitted to practice before the United States District Courts for the Middle and Southern Districts of Florida, the Fifth and Eleventh Circuit Courts of Appeals and the United States Supreme Court.

Leon has also been involved in a number of local community organizations, including serving as Past President and Life Director of the Central Florida Fair, Chairman of the Board of Trustees of WMFE, Past Chairman of the Community Service Award Committee of Walt Disney World® and a Trustee of Lake Highland Preparatory School. Positions held with corporate affiliations include Past Chairman of the Board of Directors of Beneficial Savings Bank; Past President and Director of the Southern Industrial Savings Bank; Vice President and Director of Claude H. Wolfe, Inc.; President and Director of Cracker Groves of Florida, Inc., and President and Chairman of the Board of Mine and Mill Supply Co., Inc. of Lakeland.

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, March 19, 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, March 19, 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!



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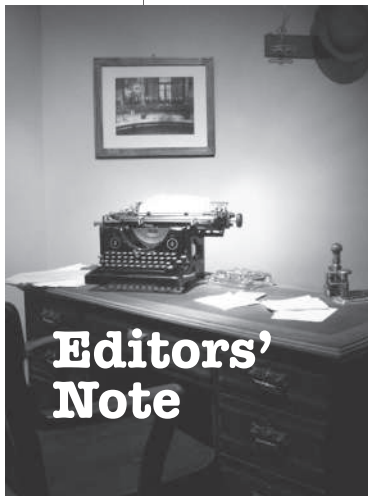
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Editors' Note

As many individuals, schools, law firms, businesses, and governments "go green," the OCBA decided to dedicate this March edition to "green" issues. This is the first ever specialty edition of *The Briefs*, and we hope you enjoy the format and topic. We are very pleased with the level of interest and response we received and want to thank everyone who submitted an article or otherwise contributed to this edition. We would like to periodically dedicate an issue of *The Briefs* to particular topics and would welcome any comments or suggestions for future specialty editions.

LaShawnda K. Jackson, an associate with Rumberger, Kirk & Caldwell, P.A., has been a member of the OCBA since 2002. **Kimberly D. Healy**, an associate with King, Blackwell, Downs & Zehnder, P.A., has been a member of the OCBA since 2002.



LaShawnda K. Jackson
Co-editor



Kimberly D. Healy
Co-editor

Law Week 2010 Volunteers Still Needed

The Law Week Committee is seeking volunteers for the following events:

The **Poster & Essay Contest** is open to all Orange County students who have the option of creating a poster or essay with the theme of "Law in the 21st Century: Enduring Traditions, Emerging Challenges." Volunteers are needed from 4:30 p.m. to 7:30 p.m. on March 31, 2010, at the OCBA to judge these submissions.

The **DUI Mock Trial** has been changed, and will be performed for high school students at the Orange County Courthouse. It teaches the consequences of driving while under the influence by way of a mock trial and a guest speaker. We need volunteers on April 9, 2010, at 1:30 p.m. to act out these parts.

The **Goldilocks Mock Trial** is geared toward elementary aged students and is entitled *Wolf v. Pig*, a script which tracks the story line of "The Three Little Pigs." We need volunteers the week of April 5th (exact dates TBD) to act

out these parts at the elementary schools.

A Day in the Life of a Judge/Bring Your Child to Work Day is a job shadowing program. Students from the Office of the Farmworkers Ministry and the Parramore Kidz Zone will team up with a Judge and shadow them for half a day. The students will be dropped off at the Judge's chamber and will accompany them to the Law Day Luncheon. Judges are needed on April 22, 2010 from 8:30 a.m. to 1:00 p.m. to host a student.

Please contact Catrina M. Chapin, OCBA Law Week Chair at 407-245-2422 or via e-mail



at cchapin@ralaw.com to volunteer or for more information about these events.

Mark your calendar!

OCBA's *Kentucky Derby Party!*

Saturday, May 1, 2010

5:00 p.m. to 10:00 p.m.

"55 West"
(downtown Orlando)

The Gala is taking a year off, but the OCBA is off to the races.

Look for your invitation in the mail soon, or see the OCBA website at www.orangecountybar.org

LEED in A Nutshell

David N. Torre



There is so much talk today about going green. What does it mean? Well, it means different things to different people. One cannot help but be confused over what is and what is not “green.” You may have noticed that many new construction projects boast about green building materials and techniques such as LEED. So, just what exactly does *that* mean?

To begin, what in the world is LEED? LEED is an acronym for Leadership in Energy and Environmental Design. The LEED rating system has rating categories for specific types of projects. They cover all phases of building design, construction, and operation. These categories include new construction, core and shell, schools, healthcare, and retail structures. Commercial and retail interiors are included in separate categories that cover interior design and construction. Finally, existing buildings are covered in categories that concern the operation and maintenance of existing LEED buildings.

So what does it take to become a LEED building? To achieve LEED certification for a newly constructed building, for example, the project must earn a certain amount of points. For the LEED rating system Version 3 launched on April 27, 2009, a building must achieve at least 40 points from seven measurement categories. Points are tallied up and building projects are awarded a distinct level of LEED certification. For a Certified ranking, a project must attain between 40 and 49 points. Silver Certification requires between 50 and 59 points. Gold Certification requires between 60 and 79, with Platinum equaling 80 or more total points.

Within each of the project's categories are detailed items that a building project can do or refrain from doing and thus earn points. Some categories have prerequisites that every building project must comply with. For example, a new construction project can earn one point under the Sustainable Sites (SS) category for choosing to develop a site previously defined by a governmental entity as a brownfield site. The purpose of this credit is to encourage the cleaning of already contaminated sites while also preventing the use of undeveloped land. However, all projects must take measures necessary to reduce pollution from construction activities by

controlling soil erosion, waterway sedimentation, and airborne dust generation. Another example is the use of rapidly renewable resources as construction materials. A project can earn a point under the Materials and Resources (MR) category for using rapidly renewable building materials and products for 2.5% of the total value of all building materials and products used in the project (based on cost). Rapidly renewable building materials and products are defined as those products made from plants that are typically harvested within a 10-year or shorter cycle.

LEED Governance

The U.S. Green Building Council (USGBC) is a Washington, DC-based non-profit organization perhaps best known for its green rating system for the construction of buildings. The Council was formed in 1993 and has seen an increase in its influence over the last several years. The USGBC boasts a membership of more than 20,000 companies and organizations with 78 local affiliates throughout the United States. There is also a local Central Florida chapter. The USGBC and its administrative affiliate, Green Building Certification Institute (GBCI), review applications for project certifications and award the corresponding level of certification based on total points attained by the building project in question. They also administer the LEED Accredited Professional (LEED AP) program. The USGBC has an individual membership of over 100,000 accredited professionals. LEED APs must pass a thorough examination covering the LEED building rating system. While use of a LEED AP is not required on building projects, the point system does award one point for projects that include an AP on the team.

LEED in the Local Headlines

Many of the biggest and most high profile building projects in Central Florida have sought out LEED certification. Some recent examples include:

- The new Amway Center – Builders are anxious to complete “one of the ‘greenest’ arenas in the country.” The arena is designed to use 20% less energy and 40% less water than an arena of similar size, which will reduce future operating costs as well. Design highlights include a reflective roof that will reduce building temperatures and cooling costs and systems to reduce storm water runoff before it makes its way to area lakes. Designers hope that the Orlando Magic’s new home will achieve at least the minimum LEED certification with the USGBC.
- The Burnham Institute for Medical Research – It was recently announced that the largest private research facility in the state of Florida attained Gold level LEED certification. Design highlights of the Burnham Institute include use of recycled building materials. Burnham also states that more than 50% of the wood used in the building was from sustainably-harvested forests and certified by the Forest Stewardship Council.
- Darden Restaurants Corporate Headquarters – The headquarters of Orlando’s only Fortune 500 company was also designed to attain Gold level LEED certification. The Darden headquarters utilizes a 114,000 square-foot glass curtainwall exterior to increase use of natural light in its office space. Landscaping for the facility includes plants and trees native to Florida to reduce the amount of water needed for irrigation. Irrespective of LEED, the new Darden building also has a 5,000 square-foot fitness and wellness center for employees.
- Orange County Morgue – Dr. Jan Garavaglia (a/k/a *Dr. G: Medical Examiner*) recently invited members of the public to view Orange County’s new morgue facility. The \$14 million building is seeking LEED certification. If successful, the building will be the state’s first LEED-certified morgue. Design highlights include flooring made of recycled beer bottles, energy-efficient motion-sensitive lights, and a state-of-the-art air purification system.

- UCF Physical Sciences I Building – This building successfully attained Gold level LEED certification. The building used native landscaping and was developed on a site that had been previously used as a parking lot.
- The Heavener Football Complex at the University of Florida's Ben Hill Griffin Stadium – The \$28 million addition to the stadium is the first building in Florida and the first athletic facility in the nation to achieve Platinum level LEED certification. To put that into perspective, there are only 130 Platinum buildings in the United States and only 141 worldwide.

Legal Implications of LEED

With any big construction project, there are many players and many moving parts. The task of attaining LEED certification undoubtedly adds a level of complexity to any project. Yet who is the responsible party if the building fails to achieve the desired LEED certification? The answer will most likely come from the string of litigation many observers feel is destined to come from the green building movement. Chris Cheatham is a DC-area attorney and LEED AP who writes an in-depth blog covering LEED issues. Cheatham contends that “*LEEDigation*” is inevitable as more local building codes begin mandating LEED compliance.

Additionally, there is a multitude of opportunities for a LEED project to go awry. “Builders roll their eyes at architects who pen aesthetic (read: expensive) green designs. Architects grumble about contractors that procrastinate on the piles of green building application documentation. Contractors worry about subcontractors that cut the costliest and greenest corners. LEED consultants say they get varied answers from a variety of Green Building Council reviewers. Tenants say their landlords control their buildings’ electrical gauges, while owners say tenants

are the ones keeping the lights on and the energy-hogging computers running,” says Cheatham.

A recent case out of Maryland has been dubbed the first LEED lawsuit. *Shaw Development, LLC v. Southern Builders, Inc.*, involved a dispute between a real estate developer and its contractor due to the inability of the building to attain LEED Silver status. The developer’s architectural contract and incorporated project manual for the multi-million dollar condominium project included language that the building was “designed to comply with a Silver Certification Level according to the U.S. Green Building Council’s Leadership in Energy and Environmental Design (LEED) Rating System.” Suffice it to say, the project did not achieve LEED Silver status. The developer sued under breach of contract and negligence. Damages were calculated according to lost tax credits the developer anticipated receiving under the Maryland green building tax incentive program. The plaintiff demanded \$635,000.

The case did not end up going to trial, but the tax incentive issue will probably appear again in other jurisdictions as green building incentives are continually waived in front of building owners. For example in *Shaw Development*, Maryland offered state tax credits of up to 8 percent of a project’s total cost for buildings greater than 20,000 square feet, and only LEED projects were eligible to apply for the credits.

However, tax credits for voluntary compliance with LEED requirements are not the only consideration. Many jurisdictions have begun incorporating green building requirements into mandatory building codes. Cities such as Washington, DC, Los Angeles, New York, and San Francisco now have adopted mandatory green building laws and codes that will require the incorporation of green building strate-

gies into all construction projects.

Locally, Mayor Buddy Dyer has instituted the Green Works Orlando program, which seeks to protect our natural resources, encourage environmentally-friendly lifestyles and business practices. On its webpage, Green Works Orlando has posted a seven-point challenge for commercial businesses to reduce energy consumption and implement other green techniques for upcoming projects. Although still voluntary, the trend towards green building codes is evident.

Going Green and LEEDing the Way

As you can probably imagine, there is a whole lot more to green building in general and LEED certification in particular. Many nuances and details are beyond the scope of this article. However, one can easily see the day when green issues become commonplace for attorneys in many types of practice areas. “Going green” is a catchphrase and can mean vastly different things to different people. Yet, that is precisely the reason why LEED certification has grown in popularity. The USGBC has standardized the concept and distilled it down to objective criteria. LEED has not only spread across the construction industry it has also created an identifiable consumer demand. One can look to the example of Starbucks Coffee Company in comparison. Before Starbucks, coffee was the textbook commodity with wide-ranging standards for quality. Most people drank whatever coffee was served at their local diner and didn’t think twice about it. However, Starbucks defined a new standard, which lead to a real consumer demand. Now, almost anyone on the street knows the difference between getting a cup of coffee and going to Starbucks. Like espresso and cappuccino twenty-five years ago, most people had no idea what a green building was let alone LEED certification. That is changing. Building owners, spurred by consumer demand, will continue to seek out LEED certification for environmental, financial, and marketing reasons.

It appears that LEED, like the grande mocha, is here to stay.

David Torre is the managing member of The Torre Law Firm, P.L., and a LEED AP. He has been a member of the OCBA since 2006. He can be contacted via email at david.torre@torrelawfirm.com.



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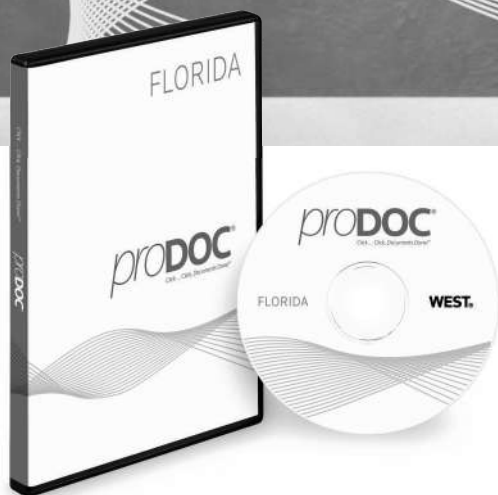
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Barry Law School is Greening the Way in Legal Education

Judith E. Koons and Jane Goddard

Barry Law School is developing innovative environmental programs – including Earth Jurisprudence and Environmental Justice – to prepare its students for the unprecedented ecological challenges of the 21st century. Barry is at the forefront of the Earth Jurisprudence movement, but not everyone knows what that means. Earth Jurisprudence seeks Earth-centered approaches to law and governance. As an integral part of the broader Earth community, humanity has a responsibility to act for the well-being of the planet and future generations. Earth Jurisprudence draws forth Earth-centered comprehensive solutions from within as well as beyond existing law.

Dean Leticia M. Diaz has wholeheartedly endorsed these initiatives. “The School of Law is proud to be part of an innovative project that is central to solving problems that will affect future generations,” said Diaz. “The success of these efforts to change the way the environment is regulated and viewed will translate into positive results for years to come. As a law school dedicated to social justice, Barry is entirely committed to these earth-centered initiatives.”

The Center for Earth Jurisprudence (CEJ), co-sponsored by Barry, is actively engaged in the mission of re-envisioning law and governance to support and protect the health and well-being of the entire Earth community. To do this, CEJ invites us to shift into ecologically-based approaches to law and governance. With this shift, humanity becomes a member of the Earth community and can uphold its responsibility to safeguard Earth for present and future generations of people and other species.

The Earth Advocacy Clinic (EAC) provides an opportunity for Barry students to learn environmental law by practicing in real cases. Clinic cases run the gamut of environmental issues. In its first year, the EAC focused on a contamination case in which a low income community of color in Manatee County was polluted by a neighboring

industrial facility. The clinic also addressed an endangered species case seeking critical habitat designation for the endangered flatwoods salamander. Embracing a commitment to social and environmental justice, the EAC utilizes the existing environmental law framework to provide remedies for clients as well as to identify opportunities for legal reform.

Barry also puts its students into action by sponsoring the annual Sr. Arlene Scott Mission Trip to New Orleans. Each May, Barry students and faculty travel to New Orleans to perform post-Katrina legal assistance work and participate in community service projects. The week-long trip combines student legal placements with evening clinical classrooms, connecting students with

local residents, attorneys, legislators, and judges. Previous mission trips in 2007, 2008, and 2009 have resulted in over 1,000 hours of pro bono work for the residents of New Orleans, and have provided students with life-changing legal and community service experiences.

In 2008, Barry hosted the first law review symposium dedicated to Earth Jurisprudence. That issue of *Barry Law Review*, with pioneering scholarship, is now available. The first issue of CEJ's monograph series *Resonances: Soundings from Law and Theology*, “The Intrinsic Value of Nature” is also available. CEJ has prepared *An Introduction to Earth Jurisprudence: Guiding Principles and Wild Law Possibilities*, written and edited by Professor Judith Koons and CEJ Program Coordinator Jane Goddard, which is being circulated this spring to environmental law professors in the United States. CEJ is also sponsoring an electronic symposium that commemorates the life and work of Thomas Berry, *Continuing the Great Work: A Tribute to Thomas Berry's Contribution to Earth Jurisprudence*.

In the fall of 2009, Barry hosted a summit, *Serving the Underserved: Improved Representation for Environmental Justice Communities*. The day-long CLE program was organized by Professors Pat Tolan and Jeanne Zokovitch-Paben and CEJ member Jane Goddard to showcase the impact of wrongful environmental practices on disadvantaged communities. A panel of clients articulated the needs of those living in harm's way, while clients, attorneys, and representatives of community organizations brainstormed ways to expand remedies and increase access to environmental justice.

CEJ is planning another event in Orlando for CLE credit. On March 26th, CEJ will present *Who's Next? (And What Will We Leave Them?): Safeguarding the Earth for Future Generations*, exploring the balance between current human needs and the needs of future generations of all species. The workshop will focus on connections between human health and the health of ecosystems, will consider means to balance human needs with preserving Earth's species and wild spaces, and will explore legal approaches to combat global warming and its consequences.

Barry recognizes its many partners in local bar associations who bring their years of experience in environmental law to our students. The selfless service of local practitioners is a key ingredient to Barry's success in environmental programming, matching a wealth of practical experience with academic innovation.

By **Judith E. Koons**, Professor of Law, and **Jane Goddard**, Esq., Program Coordinator for the Center for Earth Jurisprudence. Jane Goddard is the Director of the Center for Earth Jurisprudence at Barry University School of Law.



Judith E. Koons



Jane Goddard



Judicial News

The OJCC Orlando District Office – Extraordinary Judges of Compensation Claims Hon. David Langham

OJCC Filing Trends

The Florida Office of Judges of Compensation Claims (OJCC) is responsible for mediation, adjudication and resolution of workers' compensation benefit disputes throughout Florida. Fiscal 2009 was a busy year for the Florida OJCC. In the midst of internal innovations and process changes, much of the attention of workers' compensation practitioners and constituents, including those in the Orlando District, was riveted to the Supreme Court proceeding in *Murray v. Mariner Health*, 994 So.2d 1051 (Fla. 2008), which was argued before the Supreme Court in late Fiscal 2008. The anticipation and debate of the Court's decision ended with the publication of their decision on October 23, 2008.

Disputes related to workers' compensation claims asserted by "claimants" are pled by filing Petitions for benefits (PFB) with the OJCC Tallahassee central office. The *Murray* case was the Florida Supreme Court's first substantive analysis of a 2003 statutory amendment to the section controlling claimant's attorney fees. Since the passage of the broad statutory amendments in 2003, Florida PFB filings had decreased (52%) from 151,021 in Fiscal 2003 to 72,718 in Fiscal 2008. Some analysts believed that some portion of this decrease was attributable to the fee structure changes. During the first half of Fiscal 2009, July 2008 through December 2008, the downward PFB trend continued. Filings in the second half of fiscal 2009 increased, however, resulting in an overall 2009 statewide PFB volumes of 73,871, representing the first increase (1.6%) in annual filing volumes since the broad 2003 amendments.

The Florida Legislature addressed workers' compensation fees again in the 2009 Session, intending to legislatively reverse *Murray*. The effects of the Court's action in *Murray*, and the Legislature's action are not identical. *Murray* results in the potential applicability of hourly attorney fees for all cases between October 1, 2003, and June 30, 2009, and is controlled by the Court's interpretation of *Fla. Stat.* § 440.34 (2003). Thus the October 2008 decision in *Murray* effected a change applicable to a population of filed and potential cases for dates of accident in the past. The Legislature's 2009 statutory amendment applies only to cases in which the accident occurs after the amendment's effective date, i.e. after June 30, 2009. Thus, the *Murray* analysis of the 2003 law will control, and hourly fees will remain payable for, claims on dates of accident between October 1, 2003, and June 30, 2009. With hourly fees applicable to this potentially large volume of outstanding cases, many expected that the PFB filing rates would continue their upward trend in Fiscal 2010. However, through the first six months of Fiscal 2010, Florida PFB filings have resumed their pre-*Murray* downward trend. Overall, PFB filings in 2010 are down almost six percent compared to the same six month period (July through December) in 2009.

The Orlando District

The OJCC consists of thirty-two Judges, and operates seventeen district offices throughout Florida. These offices range in size from one to five Judges, and each District has primary respon-

sibility for adjudicating and mediating the PFB for accidents in the certain counties assigned to that District. The PFB filing volume is rarely close to uniform throughout the various Districts, and the OJCC has striven to appropriately distribute workload among these Districts and Judges. This effort has included reapportionment of districts and temporary "visiting Judge" efforts by Judges in some Districts. In Fiscal 2009, the OJCC completed deployment of video teleconference system capabilities in all Districts, facilitating assistance in busier Districts by other Judges, and without the attendant monetary and time expense of travel.

One of the 17 District Offices is in Orlando, on West Robinson Street (District ORL). This District has three permanently assigned Judges of Compensation Claims (JCC), **Judge Condry**, **Judge Farrell**, and **Judge Sculco**. District ORL includes Lake, Orange, Osceola, and Seminole counties. Seminole county was transferred to District ORL from the Daytona district in 2006-07. This re-apportionment resulted in almost four percent of Florida's population residing in Orlando's three-Judge District. With 32 Judges in the system, three percent represents an equal distribution of responsibility among the various Judges. Thus, the population per Judge is higher in District ORL than elsewhere in Florida.

Litigation in Florida workers' compensation cases is begun with the filing of the PFB. Each PFB might seek a single benefit, or many benefits. A given workers' compensation trial might decide the issues in one PFB or several PFB serially filed prior to trial. The overall number of PFB filed is therefore one measure of workload volume. A second measure of workload volume for a workers' compensation Judge is the volume of "new cases" assigned each year. District ORL has historically experienced above-average PFB and new case filing volumes. Fiscal 2008-09 demonstrated a continuation of this history. In 2009 about three and one half percent of the statewide PFB volume was assigned to each of the District ORL Judges. This is higher than the approximately three percent that would indicate an equal distribution among all Judges, but is slightly lower than might be expected in light of the significant population in the District. During Fiscal 2009, more than four percent of the statewide "new case" volume was assigned to each of the District ORL Judges. Thus, the data supports that the workload in District ORL is significant and is above the statewide averages, but is nonetheless not as high as might be predicted from a population analysis.

The vast majority of issues in PFB filed in Florida must be mediated. Further, the statute requires that mediation occur within 130 days of the PFB filing. Sherry Hires, Esq. is the state mediator assigned to Judge Condry's division, AnneMarie Kim Esq. is assigned to Judge Farrell's division, and Valerie Marshall is assigned to Judge Sculco's division. The average time between PFB filing and the initial mediation in 2009 was less than the 130 days required by statute in each of these three divisions. Significantly, 2009 marked the third consecutive year that the three District ORL state mediators each averaged less than 130 days from PFB filing to mediation. This evidences a consistent

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One of OCBA's Own "Goes Green"

John Paré

My wife Pam and I have owned our property near downtown Orlando since 1996. In 2004, we found ourselves among the many families made "homeless" by Hurricane Charlie. We were determined to rebuild on the same lot and agreed that "eco-friendly" would be part of the plan.

We located an architect with green-building credentials, gave her a concept floor plan, and this is where our "green" journey truly began. Our architect introduced us to the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) program, a comprehensive set of standards for new construction. The LEED program rates construction projects on virtually every aspect, from site selection and disturbance to the surrounding environment, to the amount of landfill waste generated, to such factors as energy and water usage. The more we learned, the more invested we became in building a home that was truly "green."

We examined products and methods, spoke to dozens of contractors and sub-contractors, and went through seemingly endless rounds of design and re-design. We ultimately selected an insulated concrete wall system--essentially, Styrofoam "blocks" into which concrete is poured to form walls. The six inch reinforced concrete walls, covered on both sides by two inches of insulating Styrofoam, provide extraordinary strength and insulating qualities. The result is the first home in the State of Florida to be certified "Silver" by the LEED program. We moved into the home in September, 2007, and have enjoyed better indoor air quality, lower utility bills, and the satisfaction of living in the home we love, while making a minimal impact on the environment. And, since installing power generating solar panels in May of 2008, there are several months of the year in which we actually have a net profit from the electricity we produce.¹

Anyone looking to improve their environmental footprint might look at a home or commercial building in three general areas: energy consumption, water consumption, and materials usage. In the first area, the best return on investment is usually insulating older windows and doors. Another good investment is solar water heating, which for a typical system costs in the neighborhood of \$3,500 and significantly reduces power consumption.



Photovoltaic cells (i.e. solar power) are a great addition, but current technology and cost make the return on investment a significantly longer proposition. The economics are such that for most of us, solar power would be an option after other improvements have been made. Other simple improvements include replacing higher-consuming devices or appliances with more efficient ones as replacement is needed. Air conditioners are a good example, as are fluorescent bulbs to replace burned out incandescents.²

Water consumption in residences is driven mostly by landscape irrigation. Choosing drought-resistant plants and limiting turf to smaller areas makes a large difference. In our landscape plan, we used a variety of different groundcover plants, and most of the planting beds utilize drip irrigation instead of traditional spray heads. For areas where grass proved difficult to grow, but

play areas for children were called for, we have since replaced turf with small sections of an artificial turf. Landscapers also recommend groundcovers such as perennial peanut or mondo grass.

Inside, water usage in our home is reduced with dual-flush toilets and new consumption habits: turning off the water while shaving

and brushing teeth and taking shorter showers. We have discussed these measures with our children (two girls, ages 3 and 7) and they now frequently remind us that water is a resource not to be wasted. They are also much more conscious of power usage and other environmental considerations.

Materials selection can have a large impact on the environment, with some materials being highly natural resource intensive and others less so. Carpet is a good example. Most modern carpet depends on petroleum for manufacture and delivery. In addition to

the natural resource use, this carpeting releases chemical fumes from both the installation adhesives and the carpet itself. (This "off-gassing"

can cause allergic and other reactions for those who are chemically sensitive. In addition, allergens can be trapped in carpet, reducing indoor air quality, a particular issue for allergy sufferers.) There are environmentally friendly carpets now available or non-carpet flooring can be used. Our home's flooring is concrete, bamboo, and cork. Bamboo products are an excellent substitute for other hardwoods, many of which are over-harvested, because bamboo is fast-growing and abundant. For those who want oak or exotic hardwoods, these are available from eco-friendly sources certified by the Forestry Stewardship Council.



After Hurricane Charley, with oak tree, August 14, 2004. (Photo: Frank George, with permission.)



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One of OCBA's "Goes Green"

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Since moving into the home, we added such green fetures as composting, the previously-mentioned photovoltaic power generation, and a rain barrel for rainwater recapture. We plan to continue adding such features as we go along. Beyond the home itself, the project has engrained environmental consciousness into our daily life. For example, we now run our dishwasher in the morning rather than at night, allowing our solar water heater to take advantage of the sun to heat the necessary water at a time when the family is out of the house.

For most of the year in Orlando's warm and humid weather, we operate with air conditioning like the vast majority of homes in our area. However, our home's insulating qualities allow us to take advantage of the weather; at certain times of the year, we open the windows in the cool of the evening, close them during the heat of the day, and the house maintains a com-

fortable interior temperature. For several months of the year, it is not necessary to use air conditioning or heat at all. When air conditioning is required, an efficient SEER 16 system does the job well. The



Paré residence, 2007. (Solar panels were added in May, 2008.) (Photo: John Paré)



Backyard (Photo: John Paré)

solar electric panels provide much of what is needed to power the house, and as noted above, there are months in which we show a net profit from electricity generation. (During the warm summer months, our electric bill averages approximately \$130 for 3,200 square feet of conditioned space.) None of the measures we have taken have reduced our comfort level in or enjoyment of the home in any respect.

Most of one's personal energy consumption comes from the home, but we all have automobiles. These are a significant environmental factor, as well. For many of us, our daily commute is a solitary drive, but our vehicles are designed to carry four or more. While my typical commute is very short, I also visit branch offices from Daytona to as far south as Bradenton. For this reason, I purchased a hybrid vehicle for use as my daily driver, and I can recommend the technology to anyone interested in reducing fuel consumption. The hybrid now accounts for

the majority of the family's mileage on the road.

For any who may be considering renovation or new construction, you will be pleased to know that there are many more options for both products and subcontractors than there were when we began our project. I would be happy to share any experiences or knowledge that might be useful. We have been immensely pleased with our home and with our decision to "go green." The greatest accomplishment of this project was bringing all these features together into a residence that gives up nothing in aesthetics, livability, or durability.

John Paré is the Deputy Attorney General for the central Florida region, and the former General Counsel of Hughes Supply, Inc., a publicly-traded Fortune 500 distributor of construction materials. While this article refers to "we" in discussing the design and construction of the home, John acknowledges that "we" really means his wife, Pam, who oversaw construction while caring for a newborn, the couple's second daughter Jacqueline. John has been a member of the OCBA since 1996.

¹Utilities are required to produce a certain percentage of their power from renewable sources. Since most do not have the capacity to do so, they purchase power and sustainable "credits" from private owners of solar panels. The utility calculates power used from, and produced into, the grid as well as power generated and used on-site. These figures are netted, with the utility paying the homeowner at a retail rate for power supplied to the grid, and a lesser rate for power produced, and used, on-site.

²Be mindful that fluorescent bulbs must be disposed of properly, as they do contain small amounts of mercury. Mercury content of the bulbs, however, is less than the amount of mercury released by traditional power-generation methods over the lifetime of an incandescent bulb.



(Photo: Peter Burg)

Past OCBA president Mary Ann Morgan and her husband Patrick Burke recently decided to go all out to create a "green" home, with the help of general contractor Greg Hardwick. Together they created a full array of energy-efficient amenities and green elements. But, "going green"



(Photo: Erika Lauren)

has not changed the warmth of the home they knew. Says Mary Ann, "Our new home looks wonderful, fits our family's lifestyle perfectly, and is far more energy efficient than the old house."

(Excerpts from "Going Green in WP" used with permission. The article appeared in *Winter Park Homes*, Issue 4, 2009.)

Going Green: **Social Responsibility** Riley Allen

“**G**oing Green” and being “Environmentally Conscious” are worthwhile goals, but sometimes we lose focus of the meaning of these words. In essence, it’s not about “Being Green” for Green’s sake or because it’s the trendy thing to do. Going Green is about being **Socially Responsible**. As attorneys practicing in Central Florida and, specifically, Orange County, we have the privilege and responsibility to uphold the law and improve the lives of our clients and fellow Central Florida residents. We do this, but it’s not nearly enough.

Given our profession, we are often viewed as leaders in our communities. To truly be leaders, we must lead by example and embrace Green initiatives. Whether one believes that CO2 emissions are causing Global Warming or believes in a pending global disaster, there can be little disagreement that we all must strive to make our communities better.

Fortunately, many Central Florida municipalities and leaders in the business community have embraced Green initiatives. Two such examples include The City of Orlando and the Orlando Magic basketball team. The City of Orlando recently unveiled its *Green Works Orlando* initiative, which is a comprehensive plan to “protect the city’s natural resources, encourage environmentally-friendly lifestyles and business practices and engage everyone who lives, works and visits Central Florida in an effort to go Green.” Last year, the Orlando Magic also launched a Green initiative to reduce waste at their games, and in the fall of 2010, will move into the new downtown Events Center, which will be the first LEED Certified¹ designed and constructed professional basketball arena in the United States. These are but two of many examples in the area.

Countless lawyers and law firms have embraced social responsibility through activities such as providing pro-bono legal services to those in

need, working with organizations like the Guardian Ad Litem program and sponsoring community initiatives. We need to add Being Green to this list. In the U.S., buildings account for 72% of electricity used, 40% of all energy used, and create 39% of CO2 emissions.

When our law firm built our 60,000 square foot building, located on South Keller Road in Orlando, we felt the sense of obligation to Go Green and make our community better. Partnering with prominent architect, Raymond Scott, we set out to design a building that “brought the outdoors in” by leveraging open spaces, natural lighting, and innovative architecture and design.

The building was constructed using sustainable Green materials and unique features that minimize our carbon footprint, such as:

- Solar window shades, passive landscaping, low wattage lighting, water usage controls on all faucets, and rainwater collected and discharged in green areas
- Trees and landscaping to shade the building and keep temperatures cool in the warm months
- Usage of natural lighting
- Low-flush toilet fixtures, waterless urinals, motion-censored sinks and low-flow showers
- Minimal paints and adhesives that contain volatile organic compounds (VOCs), which produce noxious fumes that decrease ambient air quality
- Recycled tiled carpet that is easy to remove and replace tile by tile
- Real-time system monitors that manage energy and lighting usage

While we expected the economic and environmental benefits that we’ve experienced since moving into our building, we are observing much social benefit as well. We are seeing improved staff morale and increased productivity by all.

And perhaps, more importantly, our clients are also seeing the benefits as well. As a firm focused on representing those involved in complex personal injury, insurance, and business matters, we are accustomed to seeing stress laden clients with low spirits come through the door. We are now seeing an improvement in many of our client’s emotional states as they are experiencing the same degree of calm and well-being that the members of our firm feel. There is much less anxiety

and apprehension, which is crucial given the often lengthy legal process that these clients face.

Several years ago, we set out to build a “Green” building because we had the obligation to be socially responsible.

Ultimately, we constructed a Green building that is an extension of our law firm. During this journey, we have seen much benefit and learned a lot about our firm and our clients. Hopefully, we’ve also improved our community in the process.

Riley Allen is a trial attorney and partner in the law firm of Allen & Murphy. He has been a member of the OCBA since 1967.



¹LEED stands for Leadership in Energy and Environmental Design. The LEED Certification is an ecology-oriented building certification program run under the auspices of the U.S. Green Building Council (USGBC). LEED concentrates its efforts on improving performance across five key areas of environmental and human health: energy efficiency, indoor environmental quality, materials selection, sustainable site development, and water savings.

² Statistics provided by the U.S. Green Building Council.



*We do not inherit the earth from our
ancestors, we borrow it from our children.*

~Native American Proverb

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Benefiting the Warrick Dunn Foundation

Monday, April 26, 2010

Emerald Greens Golf Resort & Country Club

Registration: 12 pm

Shotgun Start: 1 pm

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- Two golf foursomes with celebrity golfers
- Tee/green sponsorship with logo signage
- 16 invitations to private Pairings Reception, April 25, 2010
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- Included as a Hall of Fame Sponsor*

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\$5,000

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- Tee/green sponsorship with logo signage
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- Opportunity to place promotional materials in "swag bags"
- Included as a Gridiron Great Sponsor*

Foursome

\$1,500

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- Golf polo and "swag bag" for each player
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- Included as an Alumni Club Sponsor*

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TC-OCBA-03/10

Legal Aid Society ● *Florida Supreme Court Honors* News ● *Orange County Attorneys*

The Florida Supreme Court, The Florida Bar's Young Lawyers Division and the Florida Pro Bono Coordinators Association announced the attorneys who were recognized for their 2009 pro bono work. The annual project is funded by YLD and was established to encourage participation with local organized pro bono programs. Each year attorneys who contribute time at three levels, 20 to 49 hours, 50 to 99 hours, 100 or more hours receive a letter from the Chief Justice and a bronze, silver or gold pin designating their contribution. The donation of time is based on the hours on cases closed during 2009 and project work in 2009. The letter for the winners of the gold pin is personally addressed by the Chief Justice Peggy Quince. This year the letter from Chief Justice Quince and the pin is being mailed by Legal Aid to 388 attorneys who participated through Legal Aid.

The attorneys recognized are listed below:

GOLD PINS

Allen, Herbert L.
Arendas, Christine E.
Augsburger, Lisa J.
Bender, Mark C.
Bergin, Russell F. Jr.
Drean, Robert
Etzler, Mary Ann
Gangitano, James
Gilchrist, Brian R.
Glynn, Gerard
Healy, Kimberly D.
Johnston, Abigail M.
Kern, Joseph P.
Lorenz, Kimberly E.
Magee, James M.
Marques, Leticia J.
Savitz Toro, Patricia A.
Sierra, Richard D.
Stepter, Charles R.
Veliz, David W.
Waranch, Michael S.
Wesighan, Frank C.

SILVER PINS

Amos, Joseph L. Jr.
Ayers, Grady G.
Barber, Ray
Baxa, Edmund T.
Biecker, Michele A.
Bledsoe, Terry L.
Brenner, Matthew G.
Broome, Stephen F.
Caggianno, Anthony J.
Cho, Min K.
Davey, Catherine E.
Draves, Allan C.
Eichenblatt, Steven S.
Fernandez, Frank
Gibbons, Michael R.
Goodspeed, E. Givens
Hale, Maria DiBlasio
Hankins, Dana H.
Idle, Kristen K.
Johnson, Lawrence D.
Jones, Michael B.

Kelly, Douglas A.
Langley, Daniel W.
Lanham-Patrie, Elizabeth
Leong, Glenn
Linde, Christopher W.
Lindquist, Sarah A.
Mahaffey, John D. Jr.
Markman, Jeremy K.
Mitchell, Victoria H.
Morris, Michael E.
Morris-Webster, Sage
Schlereth, Kristen V.
Scornik, Esteban
Smith, Christopher L.
Stilianopoulos, Eugene
Webber, Richard B. II
Young, Art C.

BRONZE PINS

Abernathy, Nancy J.
Adams, Jackson W.
Aguilu, Felix T.
Ahlers, Mark F.
Aidif, Daniel R.
Airth, William C. Jr.
Anderson, Victoria L.
Appleton, Michael J.
Arnold, Rhiannon J.
Barber, Bethanie A.
Bartholomew, Krista M.
Bartolomei, Matthew P.
Basagoitia, Luis
Baumgardner, Theodore R.
Beechner, Laurie D.
Bello-Billini, Angel M.
Benford, John Y.
Benitez, Aly N.
Benjamin, Walter G.
Benson, Jose L.
Berman, Jed
Bishop, Randall B.
Bittakis, Megan Lubozynski
Blackmun, Sally A.
Bloom, Gwen D.
Boger, Gene S.
Bogner, James B.

Bogle, Richard B.
Bonus, Phillip F.
Boulden, John D.
Brams, Craig L.
Brandt, Chad M.
Branyon, Steven M.
Braun, Robyn Severs
Brehmer Lanosa, Linda S.
Brenner, Alana C.
Brown, David B.
Brown-Lewis, Frances R.
Brown, Thomas
Burruezo, Carlos J.
Callahan, Jane Dunlap
Cannella, David E.
Carls, David R.
Carmody, Lauren F.
Caro, Andrea
Carpenter, William N.
Channel, Warren T.
Chen, Dennis A.
Chew, Phyllis Diaz
Chien, Catherine
Chmelir, Andrew J.
Collins, David A.
Coln, Laura B.
Colvin, R. Gregory
Cooper, Mark O.
Corack, Shannon E.
Counts, Clarence W. Jr.
Cowan, Amanda Aubry
Cox, Derrick E.
Craft, Carnesha J.
Crichton, Carolyn S.
Cruzada, Kristopher M.
Cullen, Kim Michael
Cumming, Kathleen S.
Cupps Battle, Melissa J.
Davila, J. David
Davis, Keshara D.
Davis, J. Kelley
Davis, William A.
De Armas, R. David
DeGailler, Brian D.
Deisler, Sandra W.

De La Torre, Veronica
Denius, William
De Petrillo, Mary Anne
Dierking, John
Di Fonte, Christina V.
Dilts, Elizabeth R.
D'Lugo, Eve
Dobrev, Cara M.
Donahue, Carol E.
Doppelt, Ava
Draves, Donna L.
Dreher, Salaam G.
Dullaghan, Patricia S.
Earle, Steven E.
Echambadi, Malathi
Egan, Thomas F.
Egan, Sarah E.
Eisnagle, Eric R.
Estes, Theodore D.
Evans, Camille M.
Faddis, Eric H.
Ferguson, Angela G.
Fields, John D.
Fiori, Dakota M.
Ford, Daniel W.
Fox, Roberta J.
Frey, Julia L.
Gabrielson, W. Scott
Geismar, Clifford J.
Gibbs, Jon M.
Gibson, Bruce A. III
Gillen, Patrick A.
Gold, Jeanne L.
Goldstein, Joseph I.
Gonzalez, Oscar Jr.
Gordon, Charles E.
Gorman, Andrew J.
Graham, Mark L.
Greene, Wanda T.
Gridley Hetz, Shannon
Gutmacher, Jon H.
Hall, Tenesia C.
Hankins, Linda C.
Hilado, Alfred J.
Hillary, Sunny A.

Hirani, Meenakshi A.
Hockman, Marilyn J.
Holbrook, David L.
Holland, A. Daniel
Hornsby, Richard E.
Huhne, Emily R.
Ingram, J. Charles
Innes, Jonathan L.
Israel, Gary S.
Jackson, Leonard W.
Johnson, Jason W.
Johnson, Sharon V.
Jones, Barbara Fancher
Jones, Christopher G.
Jones, Jeffrey
Jones, Patricia P.
Jourdean, E'Carl
Kelaher, Neva M.
Kenney, Peter W.
Kerben, Edward A.
Kessel, Taylor C.
Kest, Kristopher J.
Khanal, Robin N.
Khoury, Susan
Killgore, Frank H. Jr.
King, Samuel P.
Kirscheman, April Sloane
Klein, Steven I.
Knapp, David D.
Koch, Sara N.
Kolin, Lawrence H.
Landt, Caroline
Latham, Terese M.
Lee, Carrie
Lee, Demone W.
Lee, R. Kimbark
Leklem, John
Livingston, Scott A.
Llabona, Lusan C.
Lombardy, Martha Lee
Long, Michael E.
Long, Sarah A.
Lopez, Ana M.
Lopez, Fermin
Lopez-Campillo, Juan C.
Lynch, Brenda S.
Lynum, E. Juan
Magill, Patrick M.
Magruder, Jerrie
Malec, Megan W.
Malik, Imran E.
Mallah, John D.

Manglardi, Michael
Mangas, C. Lee
Mangum, Kevin E.
Mansbach, Robert E. Jr.
Markman, Jeremy K.
Marsee, Howard R.
Martin, Andrea Edwards
Martin, Kristen K.
Martinez, Oneill C.
Marx, Tanjuiming A.
Matthews, Thomas M.
May, Willie G.
McArthur, Sarah L.
McClellan, Winston A.
McFarlin, Wynne
McIntyre, Pauline
McKenna, Kenneth J.
McKnight, F. Douglas
McMahon, Gregory P.
McWhirter, Diane B.
Menagh, Megan M.
Merrill, Janice L.
Metcalf, George L.
Milazzo, J. D. Garth
Miller, Carlton D.
Milliard, Astrid C.
Mitchell, Deborah I.
Moore, Thomas A.
Moore, Michael L.
Morgan, Paul J.
Morgeson, John D. Jr.
Morris, G. Clay
Morris, Wayne A.
Morsch, Mark V.
Moskowitz, Deborah L.
Moss, Cary L.
Munroe, Melissa D.
Myers, Ernest J.
Nash, Christy T.
Nebel, Michael E.
Nelson, Jennifer C.
Nelson, Lynn F.
O'Brien, Shannon M.
Ossinsky, Marc
Oster, Terri E.
Owens, Gayle A.
Ozim, Tracy Reinman
Page, Gregg A.
Pancake, Taylor C.
Panton, Jesusa C.
Pardy, Matthew D.
Pare, John Z.

Parker, Henry Clay III
Paul, Jason A.
Peppler, Thomas
Perkins, Jason A.
Philpott, Adam P.
Raleigh, Thomas L. III
Rasch, Robert
Reck, Dulcy Miller
Reisinger, Mark S.
Resnick, Michael L.
Rhodes-Cinami, Sonica J.
Richman, Scott A.
Ringers, Lynne
Roberts, Chelsie J.
Robinson, Eric D.
Rodda, Dawn R.
Rodriguez, Diego
Rogers, Kara D.
Rosenberg, Jon S.
Rutberg, Gerald
Sanchez, Desiree
Sanders, John A.
Sanders, Silvia R.
SanGermain, Lyzette
Sanks, Terry M.
Savitz, Sidney R.
Scalo, Joseph
Scherbey, Valentyna L.
Schmer, Peter
Schmidt, Juliana
Scherwin, Rachel E.
Schott, Frederic M.
Schiavo, Frank L.
Schilling, Christopher
Schneider, James J.
Schulte, J. Timothy
Schwebel, Martin D.
Sentner, Kevin A.
Sheridan, Michael T.
Showalter, Kent A. III
Shuey, Gordon A.
Sigman, Leigh A.
Sims, Ronald L.
Slaughter, David B.
Sloane, Jeremy S.
Smith, Catherine S.
Smith-Mangan, Gladys D.
Smith, Pamela J.
Smith, C. Todd
Snow, John T.
Sookrajh, Kavita
Sos, Anthony F.

Soulsby, Edward W.
Spetter, Victoria C.
Squire-Binford, Grey
Stanley, Angela J.
Stedman, Sharon Lee
Stewart, Mary M.
Stewart, Stephanie K.
Stovash, Robert J.
Sublette, William E.
Swartwood, Gregory D.
Tangel-Rodriguez, Ana
Tavrides, Matthew A.
Teany, Kirsten C.
Terenzio, Robert
Thatcher, Larri T.
Thomas, Shayne A.
Tomesko, Steven J.
Travis, Jessica A.
Tucker, Catherine A.
Turner, W. Rogers, Jr.
Tyson, Michael C.
Umansky, William D.
Uncapher, Kenneth R.
Van Valkenburgh, Mark L.
Vazquez, Suzanne E.
Vilmos, Peter
Walter, Kristen H.
Walter, Robert J.
Waranch, Nisha Desai
Warren, Charlotte L.
Wieland, Glen D.
Welch, Robert J. Jr.
Wesley, Robert
Watson, Dorothy E.
Watson, Sasha A.
Weese-Bemett, Melanie M.
Williams, Barbara J.
Williams, Susan J.
Willick, Scott R.
Wilson, Brian T.
Wilson, Sylvia A.
Wonsetler, Karen
Woods, Stephanie
Worman, Robert B.
Wozniak, Carrie Ann
Wright, Richard S.
Yates, Tad A.
Yergey, David A. Jr.
Young, William, Jr.
Zeuli, Louise B.
Zielinski, John W.
Zobel, Hallie L.

Thank you

Legal Aid Society ● 21 Florida Lawyers Receive News ● Pro Bono Awards

The Florida Bar recognized twenty-one lawyers for their work on behalf of poor and indigent clients on January 28, 2010, in a ceremony at the Florida Supreme Court.

The Florida Bar President's *Pro Bono* Service Award was established in 1981. It is intended to encourage lawyers to volunteer free legal services to the poor by recognizing those who make public service commitments and to raise public awareness of the substantial volunteer services provided by Florida lawyers to those who cannot afford legal fees.

The award recognizes *pro bono* service in each of Florida's 20 judicial circuits and one Florida Bar member practicing outside the state of Florida. It is presented annually in conjunction with the Tobias Simon *Pro Bono* Service Award, which is given by the Chief Justice of the Supreme

Court of the State of Florida. Awards recognizing *pro bono* contributions are also presented in the areas of Distinguished



Judicial Service, Law Firm Commendation, Voluntary Bar Association and Young Lawyer.

Robert Lee Dietz, a member of the OCBA in the Ninth Judicial Circuit Court, received an award. He is a board certified attorney at the law firm of Zimmerman Kiser & Sataliffe, P.A. Robert's principal areas of practice are workers' compensation, civil mediation and appellate practice. He has performed a large portion of his *pro bono* work at the Legal Aid Society. He has participated in its *pro bono* panel for more than 20 years,

while additionally providing service as a Guardian Ad Litem for children in the juvenile dependency system over the last 23 years. He has used his skills as a litigator to free children from dangerous and harmful households. Cumulatively, he has donated more than 1,130 hours to Guardian Ad Litem *pro bono* work, and he even recruits other lawyers to do *pro bono* service.

In 2008-09, Florida lawyers provided 1,545,157 hours of *pro bono* services to those in need and \$4,443,830 to legal aid organizations.

Edited excerpts from a press release submitted by **Dorohn A. Frazier**, *The Florida Bar*, January 14, 2010.

Holiday Project 2009

Darcy Fritz

The Guardian ad Litem Program would like to take this opportunity to thank some special individuals and organizations that made the 2009 holiday season memorable for children in our program.

The Kiwanis Club of South Orlando was kind enough to donate bicycles for 41 children. Members of the Kiwanis Club, as well as others from outside organizations took time out of their busy schedules to help assemble these bicycles.

We were also extremely fortunate to work with two law firms that provided children in the GAL program

with gifts for the holidays. We would like to express our gratitude to the attorneys and staff from **The Marks Law Firm**, particularly **Andrea**, as well as the attorneys and staff from **Dean, Ringers, Morgan, and Lawton, P.A.**, particularly **Sandie**. These firms donated a combined total of 90 gifts for our children. Using a "Christmas Wish List" as a guide, these individuals shopped for each child, wrapped each gift and helped the Legal Aid staff load them in preparation for delivery. Special thanks to **Ciber, Inc.**, an international system integration consultancy and outsourcing provider, for contributing to this wonderful cause as well.

As a result of these kindhearted individuals, many children received gifts this holiday season that otherwise

might not have. On behalf of the Legal Aid Society, we thank you for your contributions because they made this holiday season memorable for many. Legal Aid is proud to be part of such a giving community.

Darcy Fritz is the Guardian Ad Litem Case Coordinator & VAC Coordinator at the Legal Aid Society of the OCBA.



John Lawrence

Legal Aid Society News

● What We Do... Lawyers without Briefcases: ● A Green Path toward Paperless

Donna Anne Graf

Nature provides a free lunch, but only if we control our appetites.

- William Ruckelshaus

At first glance, when you visit the offices of the Legal Aid Society of the Orange County Bar Association you will see our *recycling* of gently used furniture, business machines, and a hodgepodge of office and IT equipment. Through the dedication of its staff, Legal Aid offers world-class legal services while working with second-hand materials. Our *pro bono* and intake components have transitioned to an essentially paperless system. Files that are referred to *pro bono* attorneys are transmitted electronically, saving time, delivery charges, and a few trees.

Because of the services we provide and the kinds of people we serve, our community partners are vast; some are traditional, some are not.

Allen H. Kupetz is the local author of *The Future of Less* (www.futureoffless.com). The future he describes is wireless, cashless, and paperless. With the kind donation of his book and a letter of recommendation to accompany our grant, the Legal Aid Society received \$10,000 from the Magruder Foundation. To be different than all other grant applications, we decided to place our grant in the book about a paperless society. We realized the irony of submitting a traditional book which

extolled the virtues, and inevitability, of going paperless, but it worked. The grant was used to purchase a new server and scanners. While Legal Aid is far from paper *free*, we are paper *less* as a result of the Magruder Foundation's generosity.

The greatest danger for most of us is not that our aim is too high and we miss it, but that it is too low and we reach it.

- Michelangelo

In 2010, the Legal Aid Society will again be seeking funding to assist with the purchase of additional scanners and related technology. I ask that you keep Legal Aid in mind if you are downsizing or upsizing. Legal Aid needs scanners, copiers, electric staplers and most kinds of business equipment. In fact, we need a phone system for a staff of over 70, two refrigerators with ice makers, three microwaves and a standalone icemaker. Should you have anything two years old or newer that you would care to "recycle" to Legal Aid, please contact JoAnn Tucker.

Some organizations go paperless because they are environmentally conscious. While the Legal Aid Society certainly would like to continue down a greener path, going paperless primarily allows an organization like ours to save money. Money not spent on sending paper across town is spent serving our clients. Time not spent on sending paper across town means faster resolution of our clients' issues. Paperless

is the means to accomplish winning outcomes for those we serve and the community we live in.

As the president of a sister non-profit, Marian Wright Edelman, once said, "We must not, in trying to think about how we can make a big difference, ignore the small daily differences we can make which, over time, add up to big differences that we often cannot foresee."

Paperless donations to the Legal Aid Society can be made by visiting: <https://secure.acceptiva.com/?cst=7a2600>

For more information on the Legal Aid Society of the Orange County Bar Association, contact Donna Graf at dgraf@legalaidocba.org. The Legal Aid web-site is available at www.legalaidocba.org. Information regarding Allen H. Kupetz is available at www.futureoffless.com. Contact for furniture and business equipment can be made by contacting jtucker-hall@legalaidocba.org.

Donna Anne Graf, manager of development of the Legal Aid Society, has been a member of the OCBA since 2008.



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Committee, Frank
Bedell



Bill Cowles, Supervisor of Elections

OCBA Luncheon January 28, 2010

The Ballroom at Church Street
Sponsored by FindLaw



Woody Rodriguez and Laurent Prosper,
Haitian Consul



CNA *Annual Valentine's Day Appreciation Luncheon*



Organized for adjustors
by Linda Bittner of CNA
February 13, 2010



Winter Wine & Cheese Social

February 11, 2010

The Black Olive

Sponsored by Westlaw

*More than 150 people
joined their colleagues at the
swank downtown restaurant
for drinks and hors
d'oeuvres.*



Managing Risks in Green Design Contracts: Sustaining the Bottom Line

Michael R. Gibbons, Esq., LEED GA¹

While the country is mired in the midst of a historically bad recession, companies continue to make headlines by announcing plans for a new sustainable headquarters building or the green retrofitting of an existing building. The federal government, meanwhile, is playing a role in encouraging sustainable development. A significant portion of the stimulus monies to be funded through the American Recovery and Reinvestment Act are earmarked for new green development projects. In the State of Florida, as of July 1, 2009, Florida law mandates that all new public buildings (whether at the municipal, county, or state level) be designed according to LEED, Green Globes, Florida Green Building Coalition, or other nationally recognized green building standards.

Although the volume of new development and major retrofit projects is down relative to what it was several years ago, a significant portion of the existing projects moving forward have a sustainable component incorporated into the development program. While many Owners, both public and private, are now targeting LEED certification as a means of demonstrating the sustainable nature of the new or renovated structure, there has been relatively little discussion of the special risks inherent in contracting for the design of a LEED certified building. The purpose of this article is to identify and examine several discrete risks that necessarily flow from an Owner's decision to contract for the design of a LEED certified building. While space constraints preclude a full examination of all such issues, this article will discuss several of the most significant issues that should

be addressed by an Owner and design professional² contracting for the design of a LEED certified building.

1. Standard of Care

Through the use of the LEED AP accreditation, many Architects today hold themselves out as having special expertise in the area of sustainable design. Owners seeking to develop a LEED certified building frequently retain a LEED AP Architect to head the design team. In the Owner-Architect agreement, the Owner will often seek to hold the Architect to a standard of care consistent with other LEED APs with significant prior experience designing LEED certified buildings. The legal issue and risk presented by this ostensibly reasonable standard of care, however, is that including such a standard in the Owner-Architect agreement may result in voiding coverage for the Architect under its professional liability policy. Many professional liability policies issued to Architects contain an exclusionary clause that voids coverage in the event the Architect insured voluntarily agrees to perform under a higher standard of care than the "ordinary standard of care."

As a result of the exclusionary language in many professional liability policies issued to Architects, it is imperative that the Owner and Architect review a copy of the Architect's professional liability policy prior to executing a contract including the higher standard of care. The last thing an Owner (or Architect) wants to do is have an agreement that requires the Architect to perform at a higher standard of care while enjoying no insurance for errors or omissions in the event of a subsequent claim by the Owner. Both

Architects and Owners are well advised to review the exclusions in the Architect's professional liability policy prior to executing an Owner-Architect agreement containing a standard of care higher than the ordinary standard of care.

2. Scope of Services

An important mistake to avoid when describing the Architect's scope of services in an Owner-Architect agreement is any conclusory statement such as "Architect shall design a LEED gold building." Many Owner-Architect agreements on LEED projects seek to capture the Architect's sustainable design undertaking by reference to a conclusory ultimate goal such as "LEED gold." The problem with the simple reference is it fails to assist the parties in thinking through and negotiating at the front end of the design contract the processes that will be utilized during the design (and construction) phases to achieve the intended level of LEED certification.

Owners and Architects should insist on a contract that describes how the LEED design will evolve during the life of the project. The contract should expressly specify that the Architect will be responsible for generating a preliminary LEED certification plan by a certain milestone in the evolution of the design (e.g. 100% schematic design). The Owner should be required to approve the content of the preliminary certification plan at the conclusion of the schematic design phase.

The preliminary certification plan describes all potential LEED credits on a matrix. The matrix as completed by the Architect would for each potential credit indicate "yes," "no," or "maybe," to describe the Owner's decision at that



time to target each particular credit. Additionally, the preliminary certification plan would identify which person on the project team would be primarily responsible for achieving the credit (e.g., Architect, structural engineer, MEP engineer, civil engineer, landscape Architect, or contractor). The preliminary certification plan serves to guide the design team as it progresses from the schematic design phase into the design development phase. As the design evolves, the Owner will be in a better position to perform meaningful budgeting exercises. There will be opportunities for the design team and the Owner to refine the original preliminary certification plan.

The Owner-Architect agreement should specify when it is anticipated the design will be sufficiently evolved to permit the creation and approval of a certification plan. The milestone for the certification plan may be set, for example, at 100% design development documents. Whenever in the evolution of the design phase the parties contemplate the creation of the certification plan, the contract language should specify that the certification plan (upon Owner approval) will be incorporated into the Owner-Architect agreement as a contract document.

continued page 34

Hearsay

"Some national parks have long waiting lists for camping reservations. When you have to wait a year to sleep next to a tree, something is wrong." - **George Carlin**



Kimberly D. Webb

The OCBA *Briefs* is going green this month! Go ahead, lift a pint, dance a jig, let out a raucous Erin Go Bragh, and then recycle this magazine after you are done, because this month the OCBA is not only celebrating St. Patrick's Day, we are also celebrating the beauty of Central Florida and the efforts that OCBA members put into conserving and protecting the environment that makes our home the beautiful place that it is.

OCBA members are passionate in their efforts to preserve Central Florida's natural wonders. For example, ask **Barbara Eagan** to discuss the importance of biodiversity, clean and sustainable energy, or about the details of the latest development project that is up for approval and you will not leave unmoved. Or take an early morning kayak trip through our beautiful waterways with **Cory Taylor**, who has been named a partner with Ruden McClosky. **Miranda F. Fitzgerald**, with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has even been named Orlando's Environmental Lawyer of the Year for 2010 by Best Lawyers.

The capacity of OCBA members to affect

the future of Central Florida's environment resources is boundless. OCBA members are at the forefront of our community's economic development and are on the front lines of efforts to preserve Central Florida's unique natural resources. For example, **Walter Ketcham**, with Grower, Ketcham, Rutherford, Bronson, Eide & Telan, P.A., has accepted the position of Chair of the Orlando-Orange County Expressway Authority, a position which holds enormous influence over environment issues in our region. In addition, **Brikena Isai Tomasic**, also of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been appointed to the Florida Bar Construction Law Committee, a committee charged with monitoring legislative and legal trends affecting the construction industry and further charged with disseminating that information. Congratulations Brikena. And **Frederick W. Leonhardt** with the law firm of GrayRobinson, P.A., has been appointed the new chairman of the President's Council, Commercial Real Estate Forum of Central Florida. Congratulations Frederick.

Not only are OCBA members active in organizations impacting our regional development, but we are doing so with environmental consciousness, as another of our members, **David Torre**, has attained the LEED AP (Leadership in Energy & Environmental Design Accredited Professional) designation from the U.S. Green Building Council. Congratulations David. After all, as Henry David Thoreau so eloquently said, "What's the use of a house if you haven't got a tolerable planet to put it on?"

Turn out those lights, get outside, and lift yourself a pint of green beer! And as you do so, I encourage you to think about what steps you and your firm can take to help preserve the natural wonder that is Central Florida. And, as always, keep sending your news, highlights, and Hearsay-worthy items to my attention at kdbwebb@gmail.com. Erin Go Bragh!

Kimberly D. Webb is an attorney with Gobel Flakes, LLC. She has been a member of the OCBA since 2002.



HOLD THE DATE

Texas Hold 'em Poker Tournament

May 13, 2010 ♠ ♦ ♥ ♣ 5:30 p.m.

Wall Street Cantina in downtown Orlando

Look for details on the OCBA website calendar!



YLS *on the move*

Social and Service Events

Sunny A. Hillary

young lawyers assisted homeless people in obtaining the documents necessary to secure housing, employment, medical treatment, and bank accounts. Thank you to **Ryan Davis**, President of the YLS, and **Taylor Kessel** for heading a group of young lawyers to take part in the IDignity program for the first time.

As you all know, Americans nationwide are sending donations to the survivors in Haiti who face the harrowing aftermath of the January 12, 2010, earthquake. In kind, the YLS Board approved a contribution in the amount of \$2,500.00 for Haitian relief efforts which was matched by the Harris Rosen Foundation through Lake Highland Preparatory School. The total contribution in the amount of \$5,000.00 will be used to help the people and the land of Haiti.

In addition to the above-mentioned contribution, the YLS will be hosting a **Happy Hour for Haiti** on March 3, 2010, at The Downtown Pour House from 5:30 to 7:30 p.m. The YLS will be collecting monetary donations for Haitian relief efforts and will match up to \$2,500.00 of all proceeds raised. Additionally, event sponsors **Dellecker, Wilson, King, McKenna & Ruffier, LLP** and **Honeywell Mediation** will be providing a \$500.00 bar tab, food, and a chance to win various raffle prizes. Please come join the YLS for this charitable benefit. For more information, contact **Doug Martin** at dmartin@dwkllaw.com.

Also, on April 30, 2010, the YLS will be joining the fight against cancer by sponsoring a team for the annual **Relay for Life®** event. Earlier in the week, there will be a happy hour to help raise funds in support of the fight against cancer. If you are interested in participating in the walk, please contact **Lisa Gong** at lgong@sao9.org or **Jessica DeBono** at debonoj@jacksonlewis.com.

Finally, many of you may have heard that the YLS is launching the first-ever **Law School Mentoring Program** with our local law schools. This program will match members of the YLS with second and third year law students for one (1) academic year beginning Fall 2010. CLE credit may be available. Keep an eye out in future e-mail blasts, *The Briefs*, and the OCBA website for more details, or contact **Kristopher Kest** at kristopher.kest@lowndes-law.com or (407) 418-6285.

The **YLS April Luncheon** will take place on **April 15, 2010**, at 11:45 a.m. at the Citrus Club. The speaker will be the recipient of the **2010 Lawrence G. Mathews, Jr., Young Lawyers Professionalism Award**, **Cara Dobrev**, the Legal Aid Society's GAL Litigation Director. The Orange County Bar Association presents this award to a young lawyer who has been practicing less than 15 years and who has demonstrated professionalism in his or her career and community. Please e-mail your RSVP to ocbayls@gmail.com. The cost is \$20 if you RSVP before March 16, 2009, or \$22 at the door; \$12 for law students, government attorneys, sole practitioners, and judges.

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.

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As you know, the annual **Evening with the Judiciary** took place on February 17, 2010 at the Winter Park Civic Center. Young lawyers and members of the Judiciary mixed and mingled in a less formal atmosphere while enjoying "Old Florida" fare including Key West crab cakes, Zellwood corn fritters, citrus pulled pork, Plant City strawberry shortcake, Orlando Brewing Company beer, and wines from Florida wineries. Thank you to **Karen Persis** for organizing another successful evening!

On February 25, 2010, members of the Young Lawyers Sections of the Orange County Bar Association and the Hispanic Bar Association collaborated for the first-ever **IDignity program**. The IDignity program is a partnership of five (5) downtown Orlando churches and volunteers with federal, state, and local agencies who established a one-stop event of facilitating the distribution of personal identification and other vital documents. After a brief training session,



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YLS, CFAWL, and the HBA raised funds for the Boys & Girls Clubs of Central Florida, the Oncology Unit of Arnold Palmer Hospital, and the Salvation Army



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Negotiating Consent Orders and Settlement Agreements with Local Environmental Agencies

Anna Long

Regardless of the issue involved, keeping a cool head and professional demeanor is critical when achieving the best possible outcome for a client when negotiating a resolution of a Notice of Violation (“NOV”) or terms and conditions of a Settlement Agreement with local environmental agencies. Before you can successfully negotiate a resolution to a NOV or the conditions of a Settlement Agreement, it is important to have a clear understanding of how each is generated.

Typically when there is a question involving compliance with local environmental ordinances or codes, the local environmental agency will issue a NOV either directly or through the code enforcement division. The NOV generally contains certain informational requirements such as: the date of issuance, the department or division issuing the NOV, the section of the code alleged to be violated, a description of the nature of the violation, as well as the location, date and time of the violation and an amount of a civil penalty, instructions for paying the civil penalty. The instructions for paying a civil penalty generally contains a due date, and instructions for filing a request for an administrative hearing before a Hearing Officer (“HO”) if the alleged violator wishes to contest the NOV, along with the time period required in which to file the protest.

If the matter set forth in the NOV is protested then the matter is scheduled before either a HO or a Special Master (SM). Upon receipt of the protest, the HO/SM sends a notice of the hearing which informs the named violator of the hearing date and time, factual description of the alleged violation, the section of the code violated, the right to present evidence and the right to be represented by counsel.

The strict rules of evidence generally do not apply during a hearing before a HO/SM. Any relevant evidence will be considered as long as it is competent. Findings of fact by the HO/SM are based upon a preponderance of the evidence of the record. In some jurisdictions, orders issued by the HO/SM are considered “final action.” In other jurisdictions, the HO/SM order is considered as a “recommendation,” requiring further “board action” before being considered final. Many local codes empower the department issuing the NOV and/or the HO/SM with the authority to levy civil penalties and/or fines. The fines and civil penalties are typically established by schedule in the local code. Assessment for continuing and repeating violations are also generally provided for in local codes or ordinances.

In addition to civil penalties, many local codes provide the issuing agency or the HO/SM the authority to require mitigation or corrective action to remediate the damaged resource. Some include “disincentives” in the form of providing mitigation land of greater value or acreage than that of the damaged resource. Financial surety requirements, timeframes for corrective action or mitigation, as well as monitoring and reporting requirements, are also typically required.

The final decision of the HO/SM or applicable local board is appealable to a court of competent jurisdiction as provided in the

Florida Constitution and specified in local code (circuit or county court). The standard of review is typically certiorari review of the record below.

Many local codes authorize the imposition of a lien on the real property that is subject of the violation. In many jurisdictions, a lien can be placed on any and all

property owned by the alleged violator, not just the property that is the subject of the NOV. The lien can be foreclosed on and the property (other than homestead) sold to satisfy the ordered fine/penalty or repair.

Settlement Agreements are often used at the local level to resolve enforcement proceedings or challenges to local government action (i.e. denial or issuance of local approvals). In resolving challenges to denial or local discretionary approvals, it is important to draft the settlement agreement in such a way to avoid challenges on the basis that the local government has illegally contracted away its police power. Settlement Agreements should be drafted to avoid having a local government promise to take a specified discretionary action in exchange for a private party's promise to do certain things. Settlement Agreements should be structured to provide that IF local government takes specified discretionary action, THEN the private party will do certain things.

In working towards resolving an NOV or negotiating the terms and conditions of a Settlement Agreement, an understanding of the facts surrounding the current NOV and your clients' compliance history is critical. Knowing the applicable law(s) and to what extent your client can/will compromise is also important, as it allows both sides to explore “options,” when they exist.

As in any scenario involving negotiated settlements, assembling a competent team results in a more positive outcome. Therefore, it is important to fill technical, legal and any other identified needs before meeting with the local agency regarding the NOV or Settlement Agreement. Knowing what the technical aspects of the alleged violations will be critical in assembling the correct team. In other words, if the alleged violations are related to illegal dumping of a hazardous waste, it is unlikely that you will have a need for a wildlife biologist, unless of course the materials were illegally placed in a wetland. An environmental engineer with a solid understanding of various remediation options would probably be a better choice. As noted above, a thorough understanding of the client's compliance history is important to know before meeting with agency representatives, as many jurisdictions assess higher fines when the alleged offense is a repeat offense.

In preparing for a meeting with the local agency representatives, it is helpful to know, to the greatest extent possible, the expertise of the agency representatives who will be in attendance, their responsibilities, the authority hierarchy within the organization and any political sensitivities in play at the time. A prepared agenda of items to be discussed, as well as a clear understanding of the options your clients is willing to live with ahead of time, will facilitate a more positive outcome. Each and every item set forth in the NOV should be discussed.

Regardless of the outcome, or if additional meetings are required, everything should be documented in writing. Oftentimes the resolution of an NOV or the finalization of a Settlement

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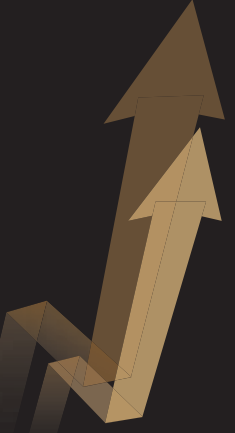
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Judicial News

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efficiency that is exemplary and is indicative of focus and persistence at providing timely service to Floridians.

Judge Farrell was appointed in December 2008, to replace Judge Thurman who transferred to District GNS in 2007. It is worthy of note that Judges Condry and Sculco managed this three-Judge docket for approximately twelve months without calling for assistance from other Judges and Districts. This effort, and their professionalism in the process is a tribute to these fine Judges. In 2009, both Judge Sculco and Judge Condry entered more trial orders than the statewide average for all Judges. Judge Farrell took the bench with only six months of the fiscal year remaining, and therefore entered fewer trial orders.

Following trial, JCC are required to enter their resulting order within 30 days. Judge Farrell led District ORL averaging sixteen days between trial and order in 2009, albeit with a more average trial volume. Judge Sculco averaged twenty days and Judge Condry rendered his trial orders in an average of twenty-five days

in 2009. These statistics are indicative of the effort and focus of all three Judges in rendering timely decisions; they are all the more impressive for Judges Condry and Sculco because of the extraordinary effort that they exerted to keep this three-Judge District functioning while awaiting appointment of a successor Judge to Judge Thurman. Overall, the Judges, mediators and staff of District ORL have done an exceptional job of persevering in the face of changes in the District structure including the addition of Seminole county, the transition of Judge Thurman to District GNS and the attendant disruption while awaiting appointment of a replacement Judge.

In addition to the responsibilities of docket and office management, the Judges in District ORL are involved in the Bar and community. In 2009, Judge Condry presented "A View From the Bench" at the Florida Bar Workers' Compensation Section Board Certification Review/Workers' Compensation Forum. In addition to his other duties, Judge Condry serves as the Administrative Judge in District ORL, and is responsible for the premises, security, equipment and staff issues. Judge Farrell teaches workers'

compensation at the Barry University School of Law, and last year he lectured in U.S. Government at Valencia Community College. Judge Sculco teaches workers' compensation at the Florida Agricultural and Mechanical University Law School.

Orange County and the surrounding area is fortunate to have public servants like Judges Condry, Farrell, and Sculco as well as mediators Hires, Kim, and Marshall.

The achievements of the OJCC generally, and District ORL specifically, are detailed in the OJCC 2009 Annual Report. This statutorily mandated report is published annually on the OJC website at www.fljcc.org.

under the "reports" tab.

The Honorable **David Langham** is the Deputy Chief Judge of Compensation Claims and is a member of the OCBA.



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Managing Risks

continued from page 26

The certification plan basically constitutes a more definitive and final version of the preliminary certification plan. It should expressly identify each of the particular credits that will be targeted (and not targeted) by the design team (as well as the contractor). Furthermore, the certification plan should expressly specify which team member is primarily responsible for achieving the targeted credit.

The LEED certification plan must be a consensus-driven document that reflects the agreement of the Owner, design team and any LEED consultant with respect to both identifying targeted credits and allocating responsibility among the team members for each targeted LEED credit. Although the process for creating a certification plan is not one most Owners are accustomed to, there are benefits for both the Owner and the Architect electing to use the certification plan model on LEED projects. First, the certification plan process demands that the Owner take its eye off the “golden prize” of a particular targeted LEED level and focus instead on the cost/benefit analysis associated with agreeing to target particular credits. Secondly, the act of allocating specific credits to particular members of the design team (and the contractor where applicable) will ultimately serve to more clearly identify responsibility and liability at the conclusion of the project if the desired level of LEED certification is not achieved. The typical green building design process is characterized by a great deal of collaboration among project team members drawn from both the design and construction professions. Without reference to a matrix allocating and specifying responsibility for particular credits, the collaborative nature of the green design process would naturally tend to produce fragmentation and diffusion of responsibility in the event of a failure to

achieve a desired LEED certification level.

Lastly, creation of the certification plan will serve to identify early on for the Owner what type of “margin for error” it has in the pursuit of its targeted LEED certification level. It is important for both the Owner and the design team to know as early as possible how great or small a margin for error exists in achieving the targeted certification level based on the LEED certification plan. It is obviously prudent for both the Owner and the design team to build as much “contingency” into the certification plan as reasonably possible by including several more targeted credits than are minimally necessary to achieve the overall targeted certification level.

3. Damages

The failure of a building to achieve LEED certification or the originally targeted level of LEED certification is likely to produce significant adverse financial consequences for the Owner. A building's failure to achieve LEED certification may result in (i) termination of leases, (ii) reduction in lease payments, (iii) breach of a loan covenant, (iv) forfeiture of government approvals, (v) loss of tax credits, (vi) lost profits from the sale of a building, and (vii) loss of reputation.

Many of the above categories, if not all, fall under the umbrella of “consequential damages.” Through the widespread use of AIA contract documents, Owners and Architects have grown accustomed to signing agreements that contain a mutual waiver of claims for consequential damages.

Owners have frequently pointed out that Owners tend to give up far more rights than Architects in the mutual waiver of consequential damages clause. Due to the substantial nature of the damages flowing from the failure to achieve LEED certification, it is unlikely that Owners will agree to completely bear all losses flowing from this event. It is, however, equally unlikely that

Architects will assume open-ended exposure to the full range of monetary damages an Owner might suffer in the event of failure to achieve LEED certification or the intended level of LEED certification. The most likely way to bridge the gap between the conflicting positions is through the use of either a liquidated damages clause or a limitation of damages clause.

In the event (as a result of design negligence) a building fails to achieve LEED certification or fails to achieve the targeted level of LEED certification, the parties may agree that a stipulated amount of liquidated damages shall be recoverable by the Owner. There may be a separate (and higher) liquidated damage figure applicable when a building completely fails to achieve LEED certification in contrast to an instance where a specific targeted level of LEED certification is not achieved. So long as the stipulated liquidated amount bears some reasonable relationship to the anticipated damages of the Owner, such a clause is likely to be enforced by a court.

The use of a limitation of liability clause may offer more flexibility to the parties and may be more useful as a means of addressing exposure for consequential damages. One approach employing a limitation of liability clause would involve simply stating, for example, that “in no event shall the Architect be liable for consequential damages in excess of the total sum of \$1,000,000.00.” An alternative clause might resemble the following: “The Architect's liability for any consequential damages suffered by the Owner shall not exceed the sum of \$500,000.00 or the available amount of Architect's applicable insurance coverage, whichever is greater.” The foregoing clause would allow the Architect to negotiate a lower “uninsured” liability limitation, while at the same time offering the Owner a potentially significantly higher limitation of liability to the extent that the Architect has in place responsive professional liability coverage in excess of \$500,000.00. By way of separate contractual undertaking in the same Owner-Architect agreement, the Owner can ensure that the Architect carries professional liability coverage substantially in excess of the uninsured limit negotiated in this clause.

¹Mr. Gibbons is a partner at the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. in Orlando, Florida. He has been a member of the OCBA since 1989.

²For ease of reference, the term “Architect” is utilized to denote all design professionals including architects and engineers.

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Green is the New Gold – “Go Green” or Lo\$e Green

Marshall Fletcher

Everything changed in 2009...budgets tightened and all expenses, especially “new items,” are closely scrutinized. Companies are now concerned about issues more urgent than sustainability. The hype about “going green” appears to be fading, right? Not so fast! Here’s what’s still going on:

- Oil prices continue to fluctuate. We probably will never see gas prices consistently below \$2.00 per gallon. Will we all be driving subcompacts as they do in European countries? Probably not, but we will continue to move toward more fuel conservation.
- Water, often taken for granted, continues to be a precious and endangered resource. After years of severe drought and three weeks away from water rationing in December 2007, my home town of Atlanta just recently was able to lift water restrictions. Other sections of the country, such as Texas, are now experiencing severe water shortages.
- Although “less paper” initiatives are now in vogue, over 40% of industrial wood harvest is used to make paper. Additionally, paper and paperboard make up over 30% of the waste stream in the United States.
- Finally, the fact remains that the highest mountain south of Maine on the East Coast is the Fresh Kills Landfill on Staten Island.

The same plethora of problems that brought us to the point of environmental instability has not changed or magically vanished during this challenging economic downturn. The good news is that the sustainability movement also has not vanished. Federal, state, and local governments are actively involved in developing sustainability models. As a direct result, one of the few areas of employment growth is in “green” jobs. The corporate world clearly envisions sustainability as being both profitable and a key component of corporate responsibility. Their commitment is phenomenal. For example:

- Coca-Cola is constructing a 100 million lb. recycling center in South Carolina.
- Nike has committed to being carbon neutral in its offices, retail stores, and business travel by 2011.

- Wal-Mart has committed to a zero waste goal by 2015.
- Subaru is working toward “zero land-fill” status at its Indiana plant – 99.8% of refuse being recycled or reused.

Why are these and many other firms taking or discussing steps to “go green”? Because:

- it’s good for the environment
- clients are demanding it
- it makes economic sense
- corporate responsibility and image

We all know “going green” is good for the environment, but are clients really demanding it? The answer from many firms is a resounding “**YES.**” You can bet companies like the ones mentioned above are seeking business partners with sustainability programs to support their efforts. One executive director told me his firm received an RFP asking each firm to discuss its sustainability program. Partly because the firm had adopted a successful “green” program, they gained a new corporate client who has generated significantly more incremental revenue than the total investment in their sustainability program. Additionally, the sense of pride and enthusiasm within the firm has been extremely rewarding. This story is not unique. More firms are receiving requests for information about their sustainability programs...and their positive responses are making a difference.

In the legal industry today, however, going green is as much about saving money as saving the environment. Most law firms are not acknowledged as being agents of change. Therefore, it is surprising to see how many law firms around the country have enrolled in the ABA/EPA Law Office Climate Challenge. The program, initiated by seven law firms in March 2007, now has over 200 firms and 600 locations enrolled. Many firms have been amazed to learn how many things they were already doing to support the environment when they evaluated the requirements to enroll in the program. To learn more about the program and see who has enrolled, visit www.abanet.org/enviro/climatechallenge/overview.shtml.

If these initiatives were not fiscally responsible, firms would not be implementing programs. Unlike the local and national



green rush of 2007 with pricey roof-top photovoltaic systems and LEED certification, the new green reality is more about the small stuff,

switching out light bulbs and turning off air conditioning, areas where significant investment is not required and cost savings can be realized.

Law firms still use an extraordinary amount of paper, a major area of opportunity. Paper purchased for printers, copiers, and marketing materials now has higher post consumer waste content. Printers are being defaulted to duplex printing. Documents are transmitted electronically whenever possible. Clients are billed electronically unless a paper invoice is requested. And the most exciting news...attorneys are actually using an entire legal pad before requesting a new one!

Recycling is another area embraced by firms. Recycle containers are placed in every office and bins are located strategically throughout the firm. If their building does not have a recycling program, firms are leading other tenants to have one established. Firms are using recyclable plates, cups, and utensils...or even better, china. It’s difficult to believe, but many firms have even eliminated bottled water. That action alone could have a major impact on the economy!

Firms are carefully evaluating energy usage. Everything is under scrutiny - turning out the lights when a room is empty, turning off computers at night, modifying the office temperature (especially on the weekends), using video conferencing, and telecommuting.

Through their efforts, firms are not only doing their part to help the environment, but also strengthening the business partnership with their clients and, in many cases, increasing firm profits.

Clearly green building, energy efficiency, recycling, and other green efforts are here to stay. Don’t wait for your clients, prospects, and employees to ask you to take action – exhibit your industry and community leadership position...“GO GREEN” now! If your existing program

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FRP Grandfathered Paralegal Work Experience Eligibility Sunsets March 1, 2011

Paralegals who wish to become Florida Registered Paralegals through their paralegal work experience under the grandfathering eligibility requirement of the Florida Registered Paralegal Program, Rule 20 of the Rules Regulating the Florida Bar, must submit their applications to the Bar by February 28, 2011. The grandfathering provision of this rule sunsets on March 1, 2011.

Paralegals are eligible to apply to the Florida Bar for registered status through one of three criteria: (1) education plus work experience under R. Regulating Fla. Bar 20-3.1(a); (2) certification by NALA or NFPA under R. Regulating Fla. Bar 20-3.1(b); or (3) grandfathered paralegal work experience under R. Regulating Fla. Bar 20-3.1(c).

Paralegals who do not have the required college degree plus requisite paralegal work experience as defined in the Rule, or who are not NALA or NFPA certified, may still become Florida Registered Paralegals under the grandfathered paralegal work experience provision. R. Regulating Fla. Bar 20-3.1(c).

To be eligible under the grandfathering provision, paralegals need to demonstrate paralegal work experience for five of the prior eight years. R. Regulating Fla. Bar 20-3.1(c). To apply, paralegals

need attestations from their supervising attorneys who must verify that the paralegal work was "specifically delegated substantive legal work performed ... under the direction and supervision of a member of The Florida Bar." R. Regulating Fla. Bar 20-2.1(c). Additionally, to qualify, the paralegals need to show that they were primarily performing paralegal work, and that the work was continuous and recent. R. Regulating Fla. Bar 20-2.1(c).

If you plan on submitting your Florida Registered Paralegal application under the grandfathering provision, calendar the February 28, 2011, date and start collecting those attestations now. As you know from working as a paralegal, deadlines approach quickly.

Under Rule 20, the grandfathered paralegal work experience provision was adopted with a sunset clause which ends this eligibility option three years from the enactment of Rule 20. Rule 20 took effect March 1, 2008. The Florida Bar Registered Paralegal Standing Committee held a Public Hearing on September 10, 2009, to discuss several issues, including whether to delete the sunset clause and make grandfathering a permanent part of the Rule beyond

the initial three year period. From testimony at the hearing and from written comments submitted earlier, it was clear that there was little support to make the grandfathering provision permanent. The support to have this provision end was overwhelming. As a result, at a meeting following the Public Hearing, the Standing Committee voted to leave the original sunset provision of the grandfathering eligibility requirement and not recommend a Rule change. Consequently, this eligibility option ends February 28, 2011.

To access Rule 20, the application, and other relevant information, go to www.floridabar.org. Click on the Professional Practice link on the left, and then click on the Florida Registered Paralegal Program link. If you have specific questions about your application, please e-mail FRP@flabar.org or call 850-561-5840 or (800) 342-8060, extension 5840.

Attorney **Carin M. Gordon** is the Chair and a Professor of Valencia Community College's Paralegal Studies Program. She is also a member of the Florida Bar's Standing Committee on Florida Registered Paralegals and has been a member of the OCBA since 2003.



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**For Re-Election to the
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Green is the New Gold

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has stalled in 2009, now is the time to get it recharged. If you would like to receive my detailed list of over 100 specific things law firms are doing to "go green," email me at marshall.fletcher@dtiglobal.com.

Marshall Fletcher is Director of Facilities Management Sales, National Accounts, Document Technologies, Inc. and is responsible for directing the Company's "green" initiative. He is a frequent speaker at ALA, LMA, and ABA events and has written articles for a number of legal publications.

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Election Ballots Have Been Mailed!

The OCBA has mailed all voting members election ballots for the OCBA Executive Council positions, Legal Aid Society Board of Trustees positions, and Young Lawyers Section At-large Board Member positions (YLS ballot sent only to eligible YLS members).

OCBA Officers

(All officer positions are uncontested.)

Vice President / President Elect - Thomas A. Zehnder

Treasurer - Kristyne E. Kennedy

Secretary - Paul J. Scheck

OCBA Executive Council

(Three (3) positions open.)

Wiley S. Boston

Marc A. Consalo

Richard Scott Dellinger

Mary Ann Etzler

R. Gavin Mackinnon

Nicholas A. Shannin

William D. Umansky



The Legal Aid Society of the OCBA, Inc.

Board of Trustees

(Two (2) positions open.)

Marc A. Consalo

William A. Davis, Jr.

Taylor C. Kessel



YLS At-large Members of the Board of Directors

(Five (5) positions open.)

Amber N. Davis

Jerry Lee Hanbery

Sunny A. Hillary

Meghan P. Kane

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Kristopher J. Kest

W. Doug Martin

Brett R. Renton

Jessica L. Young



Voted ballots must be returned to the OCBA offices no later than 5:00 p.m., Wednesday, March 31, 2010. In order for your vote to be counted, you must sign and print your name on the back of the return envelope.

Mail or bring voted ballots to: Orange County Bar Association, 880 N. Orange Ave., Orlando, FL 32801.

President's Message

continued from page 3

looking for improvements to our civil system. Look for more on this in the coming weeks but as a member of that Commission please feel free to share your frustrations or suggestions with me and I will be sure to pass those on to the group. And if you get a call from a Commission member take a moment to respond to their request for information. After all your input may make the difference.

But the place where the judiciary is hurting the most is in the pocket book. Budgets across the country are being slashed by that other branch of government that has complete fiscal control. In the words of one of our respected members of the judiciary:

Staff attorneys positions have been drastically cut and with limited exceptions, are not available to most judges. Many work on post conviction criminal matters almost exclusively. Novel or complex areas of the law go unbrieffed and unresearched because staff counsel are not available, judges working 10 hour days do not have the time to conduct the research and counsel involved in the litigation are not properly prepared.

To save more money, the Chief Judge has been forced to discontinue even minor budget detractors such as the judicial subscriptions to the weekly publication of Florida Law Weekly. And let's not even consider what this is doing to our criminal courts where state attorneys and prosecutors have seen little to no increase in salaries yet their caseload is as heavy as ever. Add to that the changes in the budgeting process for the Clerk of Courts and well you get the picture. More and more delays in our justice system.

I need **YOU** to help. We are creating an Advocacy Awareness Committee. Simply put it will help keep you informed of the issues that need the attention of our legislators in Tallahassee. Some

may be more pressing than others. And before you stop scoff at what you can I do please know that I am not asking you to travel to Tallahassee to lobby. The Committee will hopefully come up with some tools that we can use to lobby from our own hometown and yes even from our desks. Hopefully you can attend and participate in these discussions and help us protect the judicial branch from further attacks.

All of these suggestions require **YOU** to get involved. It requires **YOU** to read your e-mails and attend some meetings. It may require **YOU** to pick up the phone and make some phone calls. It may require **YOU** to change your practice habits. It may require **YOU** to volunteer your time. But it does call for you to take action and without haste!

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



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Presentation Skills ● *How to Read to Your Audience (Without Putting Them to Sleep)*



Elliott Wilcox

Have you ever heard an attorney stumbling or stammering while reading depositions to the jury? Ever felt sorry for someone attempting (but unable) to effectively read a passage to the congregation at your place of worship? Or have you ever read something aloud to a group and then thought to yourself, "They must think I'm an idiot – that sounded awful."

Reading aloud requires different skills and preparation than those required to speak to an audience or to simply read quietly to yourself. Regardless of whether you're reading stipulations to a jury, quoting from a favorite text, or delivering a prepared statement to the press corps, these tips will improve your presentation the next time you read aloud to an audience.

Read the script in advance. No matter how great your command of the English language, and no matter how well you read, you should read the document aloud *before* you read it to your audience. Words that you've read silently dozens of times before can become troublesome when spoken aloud. You don't want to stammer or trip over words in public. Find a quiet place and read the document. Not silently – read it aloud. There are several reasons why you should read the document in advance.

First, you want to ensure that the script is complete. We've all had the experience of reading through a contract or a fax, only to realize partway through that you're missing a critical page. It's better to discover the missing page in your office, rather than onstage or in the courtroom.

Second, you want to make sure that you can pronounce the words and capture the flow of the language. Think about reading any of Shakespeare's works aloud – you wouldn't want to pick up the text and just "wing it." By reading the document in advance, you will discover words you can't quite wrap your mouth around. Rather than fumbling your way around the word in public, you can practice pronouncing the word until it flows from your tongue with ease.

Third, you will discover that words written for the eye differ from words written for the ear. Things that made sense on the page aren't as clear when spoken aloud. Your job as the narrator will be to convey the writer's meaning to your audience. The audience won't be able to see the commas, parentheses, brackets, ellipses, colons, and other grammatical tools that the writer uses to promote understanding. Reading the document in advance will highlight the sections that require you to pause, change your pace, or vary your vocal inflection.

Mark up your text. As you read through the material, use pens and highlighters to add staging comments. These comments will help prevent you from speaking in a monotone voice. Highlight or underline the key words that you will want to emphasize (the words that will carry the sentence). Add dividing lines or slashes ("/") between sentences to indicate extended pauses. Add directional lines over phrases to indicate when you should raise or lower your pitch. Write phonetic (foh-net-tick) spellings of difficult words or names so you don't mispronounce them. Add staging comments like "whisper," "slow down," or

"look at the CEO" to the margins. No one else needs to read your script, so feel free to scribble all over it, adding anything that helps you get the message across.

Blow it up. Make your text large enough to read. Words that were easy to read in your office (under perfect lighting and without any performance pressure) may be more difficult to read onstage or in court. If you are printing your own script, use 18 point font size or larger. If you will be reading a passage from a book, enlarge the text on your photocopier and tape it into the book. Make the script easy on your eyes, so that you will be free to concentrate on your delivery and connecting with the audience.

Maintain eye contact. Many lawyers make the mistake of talking to the script that they're reading from. They keep their eyes on the paper the entire time and ignore their audience. Don't talk to your script. You're presenting to an audience – connect with them through eye contact. This is a fourth reason to read the material in advance. If you are familiar enough with the material, you can let your eyes wander from the page and connect with your audience. Use your finger to keep track of your place in the document, but maintain eye contact with your audience. A good rule of thumb is to look at your audience at least half the time. The best presenters can maintain eye contact with the audience over 75% of the time while reading from a script or document.

Remember, the reason that you're reading aloud is to communicate an idea, belief, or image to your audience. If you apply these tips the next time you read from prepared notes or from a document, you will help your audience pay attention to what you're saying and your presentation will be a success.

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Elliott Wilcox is the editor of *Trial Tips Newsletter*. To get a free copy of "The Art of Cross-Examination," visit www.TheArtOfCrossExamination.com

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Rainmaking 101

Listening & Speaking

Listening and speaking – actions that we normally think of as automatic and commonplace – take on new dimensions when we realize they are the very essence of “word-of-mouth” marketing. Whether the conversation is work related, involves another professional or happens in a social situation, what you say and how you say it helps others see you as trustworthy. And being considered trustworthy is key to your professional success. Fortunately, there are various techniques to turn everyday conversations into conversations that will build trust, deepen rapport and communicate key messages.

If you’ve been following these columns and are taking the recommended actions, you’ve already determined not only who your prospective clients are, but also who influences them. This completes the “Who To Talk To” part of the process. But now that you know who to talk to, what do you say? How do you take ordinary conversation and make it work for you in the context of marketing? And how do you do it without sounding like you are reciting something from a script?

The conversational strategies we teach are simple: each serves a specific purpose and has a desired outcome. Conversation left to chance yields unpredictable results; words in specific combinations have power. Just like shouting, “Help, the building is burning!” will elicit a predictable response, so can words used for marketing purposes. These conversational strategies have been road tested by hundreds of attorneys, and they work.

Over the years, we’ve put together the following list of the most important conversational strategies for marketing: the art of asking questions; the Interview; Storytelling (the stealth bomber of marketing); the Laser talk; the active use of acknowledgment; educating and upgrading conversations and powerful introductions. For now, we’ll start with the easiest strategy and a strategy that is adaptable to almost any setting, be it a new client meeting or a party down the street. It is the art of asking questions. Your conversation won’t sound canned because you improvise the script as you go.

Trust Is Key

In order for clients to hire you and to refer other clients to your firm, they must trust you. Trust is developed and earned over time, but the process starts with the way you communicate. Let’s take the initial client interview. Clients will decide whether or not to trust you based largely on how you communicate with them. Most clients have no real ability to judge the quality of your legal work – all but the most sophisticated clients have no experience in this area. But most clients are very experienced in interacting with other human beings and will bring all of that experience to bear in deciding whether or not you are trustworthy. The old adage, “They don’t care how much *you know*, until they know how much *you care*,” addresses this issue. In order for a client to feel cared for, they have to tell their story and they have to feel you are interested in them. If you care and are interested, you’ll ask a lot of questions about them -- and their matter.

How does the art of asking questions apply to social situations and, for that matter, marketing in general? As a general rule, no matter whom you meet, or where you are, people love to talk about themselves. Make it a point to ask questions of a personal nature, but don’t be overly intrusive. According to studies focused on the length of time that it takes to develop rapport, it takes about 12 minutes of conversation for a person to warm up to you and begin to trust you. Engaging someone in a conversation about themselves is an easy way to begin building trust. Avoid cross-examining them and try to remember that almost everyone has an interesting story beneath whatever exterior façade they present to the world.

Acceptable questions include those about people’s lives: what is important to them and why. Find out if they are married, whether they have children and what their children’s names and ages are. Find out about their hobbies or interests. Are they into sports? Where did they go to college? What type of work do they do? Do they own their own business – what inspired them to be an entrepreneur? Be curious without overstepping the bounds of good manners. You will be able to judge how open they are by the amount of self-disclosure they allow. If they give grudging, one-word answers to your questions, they

probably aren’t immediately trusting and it will take longer to get to know them. If they give you long, detailed answers, it’s an indication that they are beginning to feel trust for you. As you ask these questions and listen to the answers, try to do only 20 to 30 percent of the talking. Allow the person you are getting to know to dominate the conversation. Focus your attention on them exclusively.

The simplest technique for turning a normal conversation into a strategic one is to ask questions. Questions are a powerful tool for building rapport and trust. They help you learn about and form relationships with others. The information you receive and the commonalities you discover will form the foundation for the relationship that is built, **one conversation at a time**, over a long period. Work on finding out what you have in common with each individual and remember the Rule Of Seven: after about seven encounters with someone they begin to accept you as part of their world. Engaging people by asking questions can help you bridge the gap in the early stages of a relationship so that it can grow into something more substantial.

Use the art of asking questions when you take a referral source out to lunch, talk to a colleague in the courthouse or meet a prospective influencer at a social function. It is a no-fail technique for building what we call, “know, like and trust.”

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



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Shawn McNalis

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- Orange County Legal Aid Society Trustee, 2007-2009
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- Vice Chairman of Teen Alternatives, Inc., 2003-2007
Board of Directors, 2003-Present
- Orange County Teen Court Board Member, 2003-Present
- Board of Directors, Central Florida YMCA, 2003-2005
- Central Florida Criminal Defense Lawyers Association,
Former Board Member
- Orange County Teen Court Judge, 2003-Present
- Inns of Court, over five years
- Avalon Park Rotary Club, 2006-Present

New Associate

Jacqueline A. Alastra - *The Rock Law Group, P.A.*

New Partners

Trey Tate - *Broad and Cassel*

Brian Wagner - *Mateer Harbert*

Donald N. Williams - *Law Office of Piercy J. Stakelum*

Published

Partners **Richard J. Fildes** and **Ormend G. Yeilding** with Lowndes, Drosdick, Doster, Kantor, & Reed, P.A. recently authored "*Hotel SNDAs: What's In A [Brand] Name?*", which was published in *Real Estate Finance*. In their article, the authors discuss the typical terms and provisions of the Subordination, Non-Disturbance and Attornment Agreement (SNDA) and how the SNDAs differ for hotel transactions and other types of commercial real estate. Further, the authors discuss how such agreements may change due to the challenging economic climate.

Speaking Engagements

Anthony J. Diaz, Esq. was interviewed recently by Fox News Orlando to discuss family law issues regarding Tiger Woods.

Kenneth J. McKenna, a partner with the Orlando law firm Dellecker, Wilson, King, McKenna & Ruffier, recently served as a faculty presenter for the National Business Institute's seminar in Orlando on December 4, 2009. His topic was *Advanced Uninsured/Underinsured Motorist Law*.

Andrew P. Rock of The Rock Law Group, P.A., presented an update on Florida Property Insurance Law at the 11th Annual Windstorm Insurance (WIND) Conference.

Jill S. Schwartz of Jill S. Schwartz & Associates, P.A., recently presented a seminar entitled *You must remember this, a kiss is (not) just a kiss... Sexual Harassment Revisited* for the Orange County Bar Association Labor & Employment Committee.

Larry D. Smith of Smith, Toole & Wiggins, PL, was a requested speaker at the Litigation Council of America's Fall Conference in Charleston, South Carolina on October 28 - 30, 2009 on the topic, *Litigating High Profile Cases During Governmental Agency Investigation: A Multi-Prong Approach*.

Norma Stanley, a partner with Lowndes, Drosdick, Doster, Kantor, & Reed, P.A., recently took part in a financial and estate planning panel discussion put together by the Winter Park Chamber of Commerce Executive Women's Group. & Wiggins, PL, Orlando, spoke at the 2009 Litigation Counsel of America Fall Conference in Charleston, SC. He presented *Litigating High Profile Cases During Governmental Agency Investigation: A Multi-Prong Approach* to this trial lawyer honorary society, which represents less than one-half of one percent of American lawyers.

Norma Stanley, a partner with Lowndes, Drosdick, Doster, Kantor, & Reed, P.A., authored a chapter titled "Helping Clients Achieve their Estate Planning Goals" in a book titled, *Strategies for Trusts and Estates In Florida*, which was published in December 2009 by Aspatore Books (Thomson Reuters) as a part of its "Inside the Minds" series.

Social Events

May 1 - *OCBA's Kentucky Derby Party*. 5:00 p.m. 55 West (downtown Orlando).

May 13 - *6th Annual Texas Hold 'Em Poker Tournament*. 5:30 p.m. Wall Street Cantina. Sponsor: M&I Bank.

Seminars

Mar. 5 - *Practice Before the 5TH DCA Seminar*. Appellate Practice Section. 8:30 a.m.- 4:30 p.m.. Embassy Suites Hotel, Altamonte Springs. CLE: 8 general CLE hours, 1 hour of ethics, 8 appellate practice certification hours and 8 criminal appellate certification hours. To register, contact The Florida Bar.

Mar. 9 - *Naturalization*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speaker: Kira Romero Craft, Esq. For more information, please email ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Mar. 19 - *Get to Know Your Judges*. Family Law Committee Seminar. 12:00 p.m. OCBA Center. CLE pending. Speaker: Circuit Judge Maura T. Smith. Contact committee chair, Tom Marks, at tdm@markslawfla.com.

Mar. 23 - *Independent Living Services for Transitioning Foster Youth: What Every Child Advocate Should Know*. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speaker: Bethanie Barber, Esq. For more information, please email ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Mar. 30 - Solo & Small Firm Committee 1/2-day seminar (title TBA). 12:30 p.m.-5:00 p.m. Registration: 11:30 a.m. Lunch: 12:00 p.m. OCBA Center. CLE: 5.5 (including 2.0 Ethics) pending. Speakers: Victor Schultz (M&I Bank); Thomas Sinclair (Westlaw); Robert Bobroff (OBJ); Judith Equels (LOMAS). Sponsors: M&I Bank and Westlaw. For more information, contact Marie at marieb@ocbanet.org.

Apr. 13 - *Garnishment of Wages and Bank Accounts*. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speakers: Larri Thatcher, Esq., and Michael Resnick, Esq. For more information, please email ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Apr. 16 - *Get to Know Your Judges*. Family Law Committee Seminar. 12:00 p.m. OCBA Center. CLE pending. Speaker: Circuit Judge Cynthia Z. Mackinnon. Contact committee chair, Tom Marks, at tdm@markslawfla.com.

Apr. 27 - *Residential Treatment of Dependent Children*. LAS Lunchtime Training. 2:00 p.m.-1:30 p.m. Comerica Bank, 111 North Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE applied for. Speaker: Krista Bartholomew, Esq. For more information, please email ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Apr. 27 - *Ethical Uses of Technology & E-Discovery*. Solo & Small Firm Committee Seminar. 12:00 p.m. OCBA Center. Speaker: Suzanne Meehle. For details, contact Marie at marieb@ocbanet.org.

Apr. 29 - Resort Torts: Vacation, Resort and Recreational Liability. 11:30 a.m.-5:00 p.m. CLE pending. OCBA Center. Lunch provided. Speaker: John Elliott Leighton. Sponsored by: Leighton Law. For details, contact Marie at marieb@ocbanet.org.

Other News

The Orange County Office on Aging, the Orange County Library System, and Channel 9 will be presenting a monthly series of 30-minute seminars about caregiver services available for seniors in Central Florida entitled "Counsel for Caregivers: A Helping Hand of Healing." Seminars will be held at the library's downtown branch. For details, please contact: Jan Reynolds, Orange County Office on Aging, at 407.836.6553. (Feb. 18 - Elder Law 101. Speaker: Kathleen Flammia)

The Barry University Law School trial team won the 2009 Georgetown University Law Center White Collar Crime Tournament in Washington, D.C. This was Barry's first competition in the invitation-only tournament, which hosted 20 other trial teams from across the country. Additionally, in November Barry Law School celebrated the 10th anniversary of its founding.

Correction: New member name spelling correction: Jose I. Rivas, The Rivas Law Firm, P.A. The error appeared in June's issue of *The Briefs*. We apologize for any inconvenience this may have caused.

Negotiating Consent Orders

continued from page 30

Agreement can take months, even years. As a result, there is often change in agency personnel and/or the client's team. Continuity of a detailed written record of the on-going negotiations is oftentimes the only way to assure that an issue agreed upon during meeting number one ends up in the final version of the Settlement Agreement being discussed in meeting thirty two.

While the circumstances surrounding the issuance of a NOV will vary, as will the terms and conditions of each and every Settlement Agreement, the tools for achieving the most favorable results will not: Know the facts, your client and the applicable law. Remember that it is important to be able to recognize both the options and the limitations that the specific NOV or Settlement Agreement may present. Have a competent and prepared team in assembled to address the alleged violations before meeting with the agency. Treat agency staff professionally, recognize their limitations and know the organizations hierarchy. Finally, keep detailed written documentation as resolution is achieved for those matters set forth in the NOV or proposed for inclusion in the Settlement Agreement.

Anna Long is an attorney with Lowndes, Drosdick, Doster, Kantor & Reed, P.A. She has been a member of the OCBA since 2001.



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March

- 2 Intellectual Property Committee**
12:00 p.m. • Bar Center
- 3 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- 4 Federal Judicial Relations**
12:00 p.m. • Judge Conway's Chambers
- Paralegal Section**
12:00 p.m. • Bar Center
- 5 Practice Before the 5th DCA Seminar**
8:30 a.m. • Embassy Suites Hotel,
Altamonte Springs
- 9 LAS Lunchtime Training**
Naturalization
12:00 p.m. • Comerica Bank
- 10 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
- 11 Social Security Committee**
12:00 p.m. • Bar Center
- 12 Family Law Executive Committee**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 16 Professionalism Committee**
12:00 p.m. • Bar Center
- 17 Insurance Law Committee**
12:00 p.m. • Bar Center
- 18 YLS Luncheon**
Mayor Buddy Dyer
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 19 Family Law Committee Seminar**
Get to Know Your Judges
12:00 p.m. • Bar Center

- 23 LAS Lunchtime Training**
*Independent Living Services for
Transitioning Foster Youth: What Every
Child Advocate Should Know.*
12:00 p.m. • Comerica Bank
- 25 OCBA Luncheon**
*Leon H. Handley
2010 William Trickel, Jr.,
Professionalism Award Recipient*
11:30 a.m. • The Ballroom at Church St.
- 26 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 30 Solo & Small Firm Committee Seminar**
*What Every Attorney Needs to Know:
Marketing to Maintaining Trust Accounts*
12:00 p.m. • Bar Center
Sponsors: M&I Bank and Westlaw
- 31 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.

April

- 2 Paralegal Section**
12:00 p.m. • Bar Center
- 7 Criminal Law Committee**
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.
- Elder Law Committee**
12:00 p.m. • Bar Center
- 8 Social Security Committee**
12:00 p.m. • Bar Center
- 9 Family Law Executive Committee**
11:45 a.m. • Houlihan's
- Workers' Compensation Committee**
11:45 a.m. • Smokey Bones
- 13 LAS Lunchtime Training**
Garnishment of Wages and Bank Accounts
12:00 • Comerica Bank
- 14 Estate Guardianship & Trust Committee**
12:00 p.m. • Bar Center
- Judicial Relations Committee**
12:15 p.m. • Courthouse
21st Fl. Conference Rm.

Executive Council Meeting
4:00 p.m. • Bar Center

- 15 YLS Luncheon**
*Cara Dobrev
2010 Lawrence G. Mathews, Jr.,
Young Lawyers Professionalism Award
Recipient*
11:45 a.m. • Citrus Club
- Appellate Practice Committee**
12:00 p.m. • Bar Center
- 16 Family Law Committee Seminar**
Get to Know Your Judges
12:00 p.m. • Bar Center
- 20 Professionalism Committee**
12:00 p.m. • Bar Center
- 22 OCBA Luncheon**
11:30 a.m. • The Ballroom at Church St.
- 27 LAS Lunchtime Training**
Residential Treatment of Dependent Children
12:00 p.m. • Comerica Bank
- Solo & Small Firm Committee Seminar**
E-Discovery & Ethics in Technology
12:00 p.m. • Bar Center
- 28 Business Law Committee**
12:00 p.m. • Location varies.
Please contact chair.
- Labor & Employment Law Committee**
12:00 p.m. • Bar Center
Please contact chair Robert Sherry
- 29 Resort Torts: Vacation, Resort and
Recreational Liability Seminar**
11:30 a.m. • OCBA Center
Sponsor: Leighton Law
- 30 Bankruptcy Law Committee**
12:00 p.m. • Bar Center

May

Hold the Dates!

- OCBA's Kentucky Derby Party**
5:00 p.m. • 55 West (downtown Orlando)
- 13 Texas Hold 'Em Poker Tournament**
5:30 p.m. • Wall Street Cantina





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- Wrongful Death