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The Briefs

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MAIN OFFICE • 220 EAST CENTRAL PARKWAY • SUITE 2030 • ALTAMONTE SPRINGS, FL 32701

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MICHAEL L. SMITH
J.D., R.R.T.

- B.S., Nova Southeastern University

- J.D., Stetson Univ. College of Law

- Registered Respiratory Therapist

- Licensed in Florida

- Board Certified by the Florida Bar in Health Law



JOANNE KENNA
J.D., R.N.

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The Briefs

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Co-Editors

Kristyne E. Kennedy & Thomas A. Zehnder

Affiliate Bar Editor

Jessica K. Hew

Features Editor

Judith Garabo Hayes

Communications Manager

Peggy Storch

Hearsay Columnist

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Deadline for Dec./Jan. Issue: 11/1/2007

The deadline for each edition is the first day of each month. If that day falls on a weekend or holiday, the deadline is the prior working day.

Publication of advertising herein does not imply any endorsement of any product, service or opinion advertised. The opinions and conclusions, including legal opinions and conclusions contained in articles appearing in *The Briefs*, are those of the authors and do not reflect any official endorsement of these views by the Orange County Bar Association or its officers and directors, unless specifically stated as such.

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Visit the OCBA's Website:
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To Enhance the Delivery of and Access to Quality Legal Services

C. Gene Shipley

The commitment of Orange County Bar Association members to serve all in our community, including those with the greatest need but the least means, is the most significant contribution our members collectively give to Central Florida. There is nothing that fulfills the mission of the OCBA more than the *pro bono* service we provide through the Legal Aid Society of the OCBA.¹ Still, attorneys and attorney critics alike recognize an unmet need of the working poor in Central Florida, those whose total family income is greater than the level required to qualify to receive Supreme Court sanctioned *pro bono* services from our attorneys, but whose income is still not sufficient to afford hiring legal counsel.²

It is impossible for anyone to ignore the unmet needs of families and individuals whose annual income is just over twenty-five percent (25%) of the State poverty level. We've seen firsthand the gap left in our Mission Statement, "... to enhance the delivery of and access to quality legal service . . .," every time the OCBA received a call from an elderly neighbor of modest means, discouraged from formally devising his family possessions, from designating a medical agent or power of attorney; or when we learned of a child taken from an unrepresented, working parent by an opposing spouse who could afford legal counsel; or when we received a plea from a tenant who could not budget for food on the table and simultaneously pay an attorney to defend a wrongful eviction lawsuit.

Firmly committed to serving all in Central Florida, the OCBA's leadership has tackled the challenge of providing the working poor access to quality legal services. We are proud to introduce you to the OCBA Modest Means Program. This program consists of a panel of attorneys who have volunteered to offer their legal services for a greatly reduced hourly fee, as compared to the normal market rate for legal services. Through Modest Means, those seeking counsel in a select number of cases, and whose annual income rests between twenty-five percent (25%) and fifty percent (50%) of the State poverty level, can now receive affordable, quality legal services.³

Here's how it works. The attorneys who volunteer to serve through the Modest Means Program agree to charge a maximum hourly rate of \$100 and receive a retainer set at a level expected for handling the average legal task requested. The scope of legal services provided under the Modest Means Program is necessarily limited to certain debtor, estate planning, family law and landlord tenant cases:

- A flat rate of \$1,000 is charged for legal services required in Chapter 7 Bankruptcy cases (\$2,000 for Chapter 13);
- A flat rate of \$100 to \$350 is charged for estate planning services ranging from creating a simple

will to a reciprocal planning package, including designation of medical agent and power of attorney;

- A fee of \$100 per hour with an \$850 initial retainer (for the first 8.5 hours of legal service) is charged for representing clients in most common family law cases (dissolutions, child custody, spousal/child support, visitation, paternity, adoption, and name changes);⁴ and
- A fee of \$100 per hour with a \$350 initial retainer (for the first 3.5 hours of legal service) is charged for representing clients in landlord-tenant cases, and for modifying and/or enforcing Florida Support Orders.

Our colleagues at the Florida Bar quickly recognized the OCBA for pioneering the expansion of access to counsel by the working poor. We are proud to announce that the Modest Means Program just received a significant grant from the Florida Bar Foundation – \$5,000.00. As Modest Means enters its second year, this grant will be used to spread the news throughout Central Florida about the OCBA's commitment to our community by producing and distributing flyers about the Modest Means Program to our courthouses; the LAS; local churches, synagogues and other places of worship; and our local government agencies.

George Bernard Shaw once said, "Some men see things as they are and say 'Why?' I dream things that never were, and say, 'Why not?'" Please join me in thanking Glenn Adams, Frank Bedell, and our own Executive Director, Brant Bittner, for their vision and commitment to enhance the delivery of and access to quality legal services in our community. As we approach our 75th year, the OCBA will continue to expand and fulfill this mission through the Modest Means Program, the Legal Aid Society and our Lawyer Referral Service. If you are interested in serving on the Modest Means Panel and/or through any of the many other programs facilitated by the OCBA and LAS, please contact Norma Paradiso at the OCBA at 407-422-4551.

¹ Through The Legal Aid Society of the OCBA in 2007, OCBA members volunteered over 20,000 hours on closed *pro bono* cases and projects, providing free legal services to 1,300 new clients in 2,100 cases.

² *Pro bono* legal services provided by our members at no charge are defined by the Florida Bar to low income families and children whose annual income does not exceed twenty-five percent (25%) of the State poverty level: \$12,769 (\$1,064/mo, \$246/wk) for individuals, \$25,825 (\$2,152/mo, \$496/wk) for a family of four

³ For example, individuals earning an annual income between \$12,769 (\$1,064/mo, \$246/wk) and \$18,540 (\$1,545/mo, \$357/wk), and a family of four earning a combined annual income of between \$25,825 and \$30,912 (\$2,576/mo, \$594/wk) now qualify to receive reduced-fee legal services through the OCBA Modest Means Program.

⁴ Guardianship and domestic violence injunctions cases do not qualify for the Modest Means Program.

C. Gene Shipley is a shareholder with Nardella Chong, P.A. He has been a member of the OCBA since 1998.

***Mitchell v. Metropolitan at
Lake Eola LLC,***

947 So. 2d 1263 (Fla. 5th DCA 2007)
Reduced lis pendens bond from
\$600,000 to \$20,000.

***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".

Savoie v. Southeast Bank, N.A.

529 So. 2d 1275 (Fla. 5th DCA 1988)
Reversed and remanded mortgage
foreclosure for exercise of option
to purchase.

Pettry v. Pettry,

768 So. 2d 8 (Fla. 5th DCA 2000)
Reversed conversion of rehabilitative
alimony to permanent alimony.

Wenzel v. Boyles Galvanizing Co.,

920 F. 2d 779 (11th Cir. 1991)
Affirmed a 2.75 million dollar
personal injury award.

Winn v. Winn,

669 So. 2d 1155 (Fla. 5th DCA 1996)
Reversed "woefully inadequate"
permanent alimony.

McGhee v. Volusia County,

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

Brewer v. Flankey,

660 So. 2d 761 (Fla. 5th DCA 1995)
Reversed final judgment establishing
a prescriptive easement.

Rykiel v. Rykiel,

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

Acadia Partners, L.P. v. Tompkins,

759 So. 2d 732 (Fla. 5th DCA 2000)
Prevented multi-million dollar
judgment addition in complex
business litigation.

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October 25, 2007



Raquel ("Rocky") Rodriguez

McDermott Will & Emery, LLP

Raquel ("Rocky") Rodriguez is a partner in the law firm of McDermott Will & Emery LLP based in the firm's Miami office. She is a member of the Trial Department.

Rocky's practice focuses on commercial, international, real estate, constitutional and election litigation, dispute resolution and strategy; crisis and risk management and avoidance; government ethics advice and investigation; economic development and incentives; in-bound and out-bound transactions

and inter-governmental relations.

Prior to joining McDermott, Rocky served as General Counsel to Florida Governor Jeb Bush. Earlier, she had been a shareholder in the Miami and Washington, D.C. offices of a major international law firm. She has also served as executive director of a London-based multinational association of independent law firms.

Rocky has published articles in numerous legal publications, and she is a frequent speaker and panelist on a wide range of legal topics at seminars and continuing legal education events. She has also been an adjunct professor of law at the University of Miami School of Law.

Rocky is AV-rated in the *Martindale-Hubbell Law Directory* and has been listed in *Florida Trend's Legal Elite* (government lawyers) in 2005 and 2006. In July 2000, she was profiled in the *Miami Today* article, "The Achiever." She received the Dade County Bar Association and Eleventh Judicial Circuit "Put Something Back" Exceptional Participation *Pro Bono* Service Award for representing Cuban refugees at Guantanamo Naval Base in litigation against United States Attorney General Janet Reno in 1996.

In law school, Rocky was a member of the *University of Miami Law Review* and the Order of the Coif, and she was class valedictorian.

Rocky is admitted to practice in Florida, as well as before the United States Supreme Court; United States Court of Appeals, Eleventh Circuit; United States District Court, Southern District of Florida. For many years, Rocky was active in the American Bar Association and held many leadership positions, including Chair of the Young Lawyers Division, Executive Council member of the Section of International Law and Practice and the House of Delegates. Since 2003, she has been a member of the Florida Bar Judicial Nomination Procedures Committee.

Rocky is a graduate of University of Miami School of Law, J.D.(*summa cum laude*), 1985, and University of Miami, B.A. (*summa cum laude*), 1982. She is fluent in Spanish and speaks French.

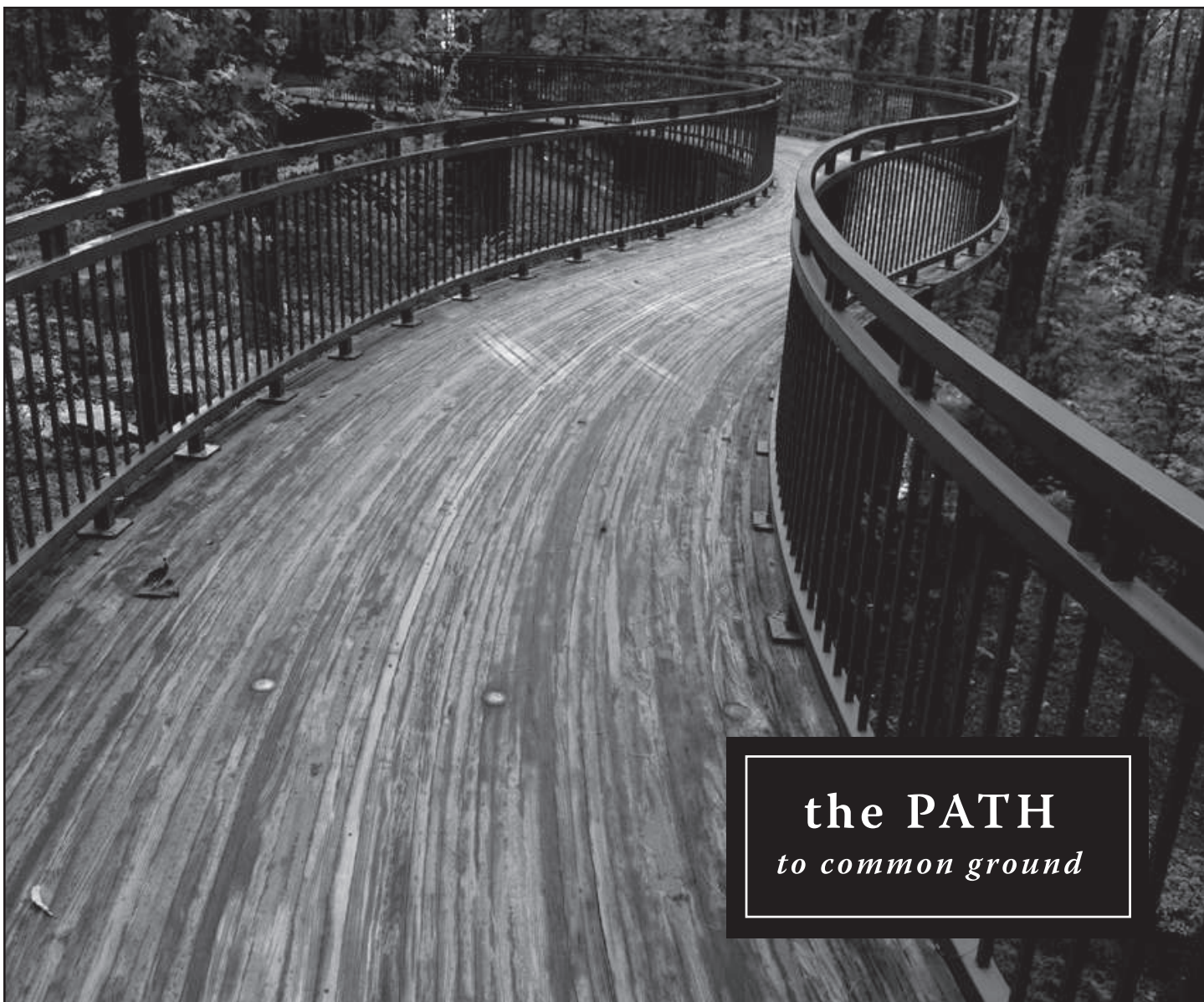
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RSVP to Wendy Mazlin, Events Manager, at reservations@ocbanet.org.

To ensure proper luncheon count, RSVPs are requested no later than 5 days in advance. Those reserving less than 24 hours in advance will not be guaranteed a name badge. If you have made a reservation and find that you are unable to attend, please notify us as soon as possible via e-mail. We appreciate your effort to keep us up-to-date on your reservation status.



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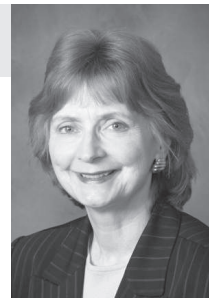
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Professionalism Committee

Lawrence G. Mathews, Jr.

Hon. Maura T. Smith



The Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award is given each year to the OCBA Young Lawyers Section member who best exhibits ethical conduct, service to the profession and the community, and career success. It is named after Larry Mathews, who was the embodiment of those virtues. He had a resume as long as your arm - Executive Editor of the University of Florida law review, Chair of its Moot Court Team, recipient of every honor imaginable in law school. He was a combat officer with the 101st Airborne Division of the U.S. Army in Vietnam, married the incomparable Michele Mathews, had two sons, and started his legal career at Gray, Harris & Robinson. With his firm, Smith, Mackinnon & Mathews, he served as the lead trial lawyer for Harcourt Brace Jovanovich, Orlando's then only Fortune 500 firm, in its historic \$2 billion takeover battle in 1987 with Robert Maxwell, chairman of British Printing and Communications Corp. Larry won the case. He went on to form Mathews, Smith and Railey. Larry mentored new lawyers, teaching them to give to the community and pride themselves on taking their legal aid cases - including Mayor Buddy Dyer, Commissioner Ted Edwards, former YLD President Frank Bedell and, I'm proud to say, me.

Board certified in civil trial law, Larry was chair of the local chapter of the American Board of Trial Advocates, President of the OCBA, member of The Florida Bar Board of Governors, Chairman of the Florida Board of Bar Examiners, special counsel to Senator Bob Graham in Washington, D.C., and Chair of the Grievance Committee and the Federal Judicial Nominating Commission. The professional list goes on.

Larry was the kind of lawyer we all want to be. He walked

into the courtroom without fear and without notes. He had an amazing ability to organize and eloquently articulate his thoughts. He had a lightning quick mind and wit. He was a master at his craft. He was just plain impressive. And, if he were alive today, there's a good chance he'd know you - or, at least, where you went to school. I wish you had known him. He was cool, fun, loved Key West and Jimmy Buffet and ran eight Boston Marathons in little over six-minute miles. He was a consummate mentor and he enjoyed it. Larry would tell you when you needed to get your diplomas reframed, and leave little notes in your office to let you know if your dying potted plants looked awful. People liked him and respected him.

When he was President of the OCBA, he approved the formation of our Young Lawyers Division in 1988. He noted at the time that his first exposure to professional activities was through the YLD of The Florida Bar, which allowed recently admitted practitioners to make new associations and contribute to the profession. He said it had proved to be a wellspring of leadership for state and local bars. That is what our Young Lawyers Section does. Past recipients of this award include Tom Zehnder, Tad Yates, Nicholas Shannin and Diego "Woody" Rodriguez. I am looking forward to seeing who will get this award in 2008. Please forward nominations by December 1, 2007, to: Brant Bittner, Executive Director, OCBA, 880 N. Orange Avenue, Orlando, FL 32801 or Brantb@ocbanet.org. Nomination forms can be found on the OCBA website at www.orangecountybar.org.

The Honorable Maura T. Smith serves in the Ninth Judicial Circuit. She has been a member of the OCBA since 1982.

GOT PROFESSIONALISM? *Time is Running Out!*

There are less than 60 days to make your nominations for the
2008 OCBA Professionalism Awards!

William Trickel, Jr. Professionalism Award
Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award
James G. Glazebrook Memorial Bar Service Award

Nomination Deadline: December 1, 2007

See the OCBA website at www.orangecountybar.org for criteria, nomination forms and submission details. If you have questions, please call Brant Bittner, Executive Director, at 407-422-4551.



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Florida Offers of Judgment in Federal Court - Enforceable or Not?

Richard E. Mitchell, Daniel E. Traver and Michael D. Porter

Florida state court practitioners routinely use Section 768.79, *Florida Statutes*, to establish a basis to recover attorneys' fees and costs following favorable judgments.¹ For example, if a defendant makes an offer of judgment to a plaintiff, the plaintiff has 30 days to accept the offer and thereby end the lawsuit. If the plaintiff fails to accept this offer, however, and the actual final judgment is at least 25 percent less than the defendant's offer, the defendant can seek to recover its attorneys' fees and costs from the date of service of the offer.²

Although practitioners have successfully employed the Offer of Judgment statute in state court in cases without an independent contractual or statutory basis for such an award, Section 768.79's application and enforceability in federal court remains an unsettled matter. This article will review recent local federal court decisions which suggest that practitioners should exercise caution in advising their clients regarding the validity of such offers of judgment in federal court cases.

At the outset, it is worth noting that some confusion has arisen because the *Federal Rules of Civil Procedure* also have a rule entitled "Offer of Judgment." Rule 68, *Federal Rules of Civil Procedure*,³ allows a defendant, and only a defendant, to serve an offer of judgment on a plaintiff at any time more than 10 days before trial. If the plaintiff fails to accept within 10 days, and then obtains a *less* favorable judgment than the one it was offered, the defendant can recover its costs from the date

of the offer of judgment.

With mixed results, practitioners have sought to employ the benefits of Florida's Offer of Judgment statute in federal court diversity actions, in which the federal court applies Florida substantive law. While we shall avoid delving too far into the murky landscape of the Erie Doctrine for fear of triggering unpleasant memories of law school civil procedure classes, some analysis of the Supreme Court's decision in *Erie v. R.R. Co. Tompkins*⁴ is important to evaluate the issue at hand. In sum, *Erie* stands for the proposition that federal courts sitting in diversity jurisdiction cases must apply state substantive law and federal procedural law.⁵ The distinction between substance and procedure has, of course, spawned a library full of judicial decisions and law review articles.⁶ For purposes of our discussion though, the question is a relatively simple one: does the Florida Statute directly conflict with the Federal Rule? If so, our federal courts cannot apply the Florida Statute to allow the recovery of attorneys' fees and costs.⁷

At first blush, the Florida Statute and the Federal Rule share some notable similarities. For example, each provides a plaintiff a finite opportunity to entertain an offer of judgment before trial which could spell an end to the case. Further, each creates a framework by which a defendant can recover some of its costs if it ultimately does better than an unaccepted offer of judgment.⁸

Continued on page 10

¹ Florida's Offer of Judgment Statute provides, in pertinent part:

In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by her or him or on the defendant's behalf pursuant to a policy of liability insurance or other contract from the date of filing of the offer if the judgment is one of no liability or the judgment obtained by the plaintiff is at least 25 percent less than such offer, and the court shall set off such costs and attorney's fees against the award.

§ 768.79(1), Fla. Stat. (2006) (emphasis added).

² Rule 1.442(c), *Florida Rules of Civil Procedure*, also places additional conditions on the content of a valid offer of judgment. Numerous Florida courts have addressed the proper form and content of an offer of judgment, and practitioners are advised to craft the form of their offers of judgment or settlement carefully, and in accordance with this continually-developing line of case law. This topic, however, is beyond the scope of the present article.

³ Rule 68 provides, in pertinent part:

At any time more than 10 days before the trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property or to the effect specified in the offer, with costs then accrued. If within 10 days after the service of the offer the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof and thereupon the clerk shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence thereof is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the

offer, the offeree must pay the costs incurred after the making of the offer.

Fed. R. Civ. P. 68 (2007).

⁴ 304 U.S. 64 (1938).

⁵ *Esfeld v. Costa Crociere, S.P.A.*, 289 F.3d 1300, 1306 (11th Cir. 2002). When a federal court proceeds on federal question grounds, *see* 28 U.S.C. § 1331, *Erie* is not implicated and federal law controls.

⁶ *See, e.g., Esfeld*, 289 F.3d at 1306 ("Yet the distinction between substance and procedure can be far from self-evident and ever since *Erie*, the [Supreme] Court has struggled to provide criteria to determine when federal law may be used in diversity cases.") (internal marks and citation omitted).

⁷ Indeed, the Supreme Court made clear in *Hanna v. Plumer*, 380 U.S. 460, 469-70 (1965), that *Erie* does not apply when a state law conflicts with a federal rule of procedure or statute unless the federal rule or statute at issue is unconstitutional or violates the terms of the Rules Enabling Act. That is to say, "if a Federal Rule of Civil Procedure controls an issue, it preempts conflicting state law in a case brought under a court's diversity jurisdiction, provided that the rule is both constitutional and within the authority Congress delegated to the Supreme Court in the Rules Enabling Act to prescribe rules of practice and procedure." *Yossifon v. City of Cocoa Beach, Florida*, No. 6:02-CV-06ORL28KRS, 2006 WL 2130909, at *5 (M.D. Fla. July 28, 2006).

⁸ § 768.79(7), Fla. Stat.; *see also* Fla. R. Civ. P. 1.1442(h). As an aside, Section 768.79 is considered substantive for *Erie* purposes. *See McMahon v. Toto*, 311 F.3d 1077, 1081 (11th Cir. 2002) (concluding *sub silentio* that Section 768.79 is substantive for *Erie* purposes but procedural for choice of law purposes); *see also All Underwriters v. Weisberg*, 222 F.3d 1309, 1311 (11th Cir. 2000); *but see Keese v. Bank of America, NA*, 371 F. Supp. 2d 1370, 1376 n.3 (M.D. Fla. 2005) ("The Court has doubt that Section 768.79 should be considered 'substantive' for *Erie* purposes.").

There are some critical differences, however, such as the fact that the Florida Statute allows either a plaintiff or a defendant an opportunity to utilize an offer of judgment, while the Federal Rule only permits a defendant to make an offer and is triggered only if the plaintiff ultimately prevails, albeit with a less favorable result than the offer.⁹ For example, if a state court defendant meets the requirements of the Florida Statute and obtains summary final judgment, the defendant may seek to recover its attorneys' fees and costs against the plaintiff. On the other hand, a federal court defendant in an identical situation could not invoke the Federal Rule to obtain the same result. Further, unlike the Florida Statute, the Federal Rule applies only to costs, not attorneys' fees.¹⁰ As attorneys' fees routinely exceed recoverable costs in civil actions, this is a significant distinction.

Two recent decisions issued by the Middle District of Florida indicate that the Florida Statute is simply not enforceable in federal court. In *Yossifon v. City of Cocoa Beach, Florida*, the Court determined that the Florida Statute does not apply in federal court under any circumstances based on the statute's plain language. Specifically, the Court noted that the Florida Statute only applies to "civil action[s] for damages filed in courts of this state."¹¹ The Court concluded that "the meaning of 'courts of this state' is Florida state court and does not include federal courts in the state of Florida."¹² Hence, this opinion is significant because it stands for the proposition that the Florida Statute does not apply in federal court regardless of the jurisdictional basis for the underlying suit.¹³ This issue is currently pending before the Eleventh Circuit.¹⁴

The *Yossifon* Court further held that under the factual circumstances of that case, the Florida Statute directly conflicted with the Federal Rule, thus rendering the Florida Statute unenforceable.¹⁵ Because *Yossifon* involved an offer of judgment made by a defendant who prevailed on all counts,

the Court concluded that "application of [the Florida Statute] would entitle the [Defendant] to an award of attorneys' fees to which it would not be entitled under [the Federal Rule] because it is a prevailing defendant."¹⁶ In reaching this conclusion, the Court distinguished the holding of *McMahan v. Toto*,¹⁷ in which the Eleventh Circuit upheld an award of attorneys' fees under the Florida Statute, because there was no indication that "the question of conflict between [the Florida Statute and the Federal Rule] was presented by the parties or considered by the court."¹⁸

In a similar case, *Keese v. Bank of America, N.A.*, also from the Middle District of Florida, the Court held that the Florida Statute "must yield" because it conflicts with federal statutory and case law regarding when a prevailing defendant in an employment discrimination case may recover attorneys' fees from a plaintiff.¹⁹ The Court noted that the Florida Statute, "if applied, would expose plaintiffs to greater risk and upset the substantive balance of interest embodied in Title VII."²⁰

The arguments presented in *Keese* and *Yossifon* in support of the proposition that Section 768.79 conflicts with Rule 68 are well-reasoned and compelling. Nevertheless, it is worth noting that authority to the contrary also exists.²¹

Accordingly, we should all be aware of and carefully follow this unsettled point of law when advising our clients as to the enforceability of Florida Offers of Judgment in federal court cases. This analysis and advice should be undertaken and given early as it directly impacts important decisions in cases where diversity jurisdiction exists, such as the decision of whether to advise a client to remove their case to federal court given the client's potential loss of the substantial benefits of the Florida Statute in cases where no other basis for the recovery of attorneys fees exists. In this circumstance, it is resoundingly true that an ounce of (written) prevention will be better than a pound of cure.

⁹ *Delta Air lines, Inc. v. August*, 450 U.S. 346, 354 (1981); *accord Tanker Mgmt., Inc. v. Brunson*, 918 F.2d 1524, 1527 (11th Cir. 1990).

¹⁰ *Id.* ("[A]ttorney's fees are not recoverable as part of costs under Rule 68 unless the underlying statute that creates the cause of action expressly provides that attorney's fees are recoverable as costs.")

¹¹ *Yossifon*, 2006 WL 2130909, at *1.

¹² *Id.* at 2. It is unclear whether the same reasoning applies to cases initially filed in Florida state court but later removed to federal court. *Id.* at 3 ("Although removal and remand of cases between federal courts and Florida state courts prevents the federal court system and the Florida court system from remaining totally separate from one another, the instant case has had no effect on the Florida court system because it was originally filed in this federal district court and has remained here.") (emphasis added). However, in *Jones v. United Space Alliance, L.L.C.*, 6:04-CV-78-ORL28KRS, 2006 WL 2166709 (M.D. Fla. July 31, 2006), the Court found that the Florida Statute did not apply to a case initially filed in state court but later removed to federal court based on the fact the Florida Statute conflicts with the Federal Rule.

¹³ In *Keese*, the Court suggested in *dicta* that "[o]ne might argue that Rule 68 applies to the exclusion of Section 768.79 because Rule 68 is not 'outcome determinative' and is part of the housekeeping rules of federal courts, a judicial system distinct from state courts." 371 F. Supp. 2d at 1376 at n.3.

¹⁴ See *Ewoldt v. Robinson*, 3:03-CV-1073-HES-TEM (M.D. Fla. 2007), appeal docketed, 07-11079 (11th Cir. Mar. 12, 2007).

¹⁵ *Yossifon*, 2006 WL 2130909, at *7.

¹⁶ *Id.*

¹⁷ 311 F.3d 1077 (11th Cir. 2002).

¹⁸ *Yossifon*, 2006 WL 2130909 at *7 n.7 ("A court decision that does not consider an argument that may be lurking in the record cannot be considered to have decided the question that was not presented.")

¹⁹ *Keese*, 371 F. Supp. 2d at 1377.

²⁰ *Id.*

²¹ See *Strait v. Busch Entm't Corp.*, No. 8:05-CV-1864-T-24MAP, 2007 WL 496605, at *1 (M.D. Fla. Feb. 12, 2007) ("Plaintiffs argue that [the Florida Statute] does not apply, because (1) it is procedural in nature, rather than substantive, for *Erie* . . . purposes; and (2) the plain language of the statute shows that it only applies to cases litigated in Florida's state courts. The Court rejects these arguments."); *Pinchinat v. Graco Children's Products, Inc.*, No. 2:04-CV-252-FTM-29-SPC, 2005 WL 1459409, at *1 (M.D. Fla. June 20, 2005) ("[T]he Court finds that defendant is entitled to fees and costs under Section 768.79."); *Walker v. Bozeman*, 243 F. Supp. 2d 1298, 1304 (N.D. Fla. 2003) (holding that the provisions of [the Florida] statute are fully applicable in federal diversity actions).

Richard E. Mitchell is a partner at GrayRobinson; Daniel E. Traver and Michael D. Porter are associates with GrayRobinson. Mr. Mitchell has been an OCBA member since 2002, Mr. Traver since 2005 and Mr. Porter since 2006.



Tico Perez Receives 2007 Liberty Bell Award



Hector A. Tico Perez and Brian T. Wilson, OCBA Past President

Each year, during Law Week, the OCBA proudly presents the Liberty Bell Award to an outstanding Orange County citizen who not only has strong ties to the community, but embodies the idealism symbolized by the Liberty Bell. The OCBA is pleased to present the 2007 OCBA Law Week Liberty Bell Award to Tico Perez.

History and Symbolism of the Liberty Bell

The Liberty Bell was created in 1751 to commemorate the 50th anniversary of William Penn's charter, Pennsylvania's original constitution. It bears an inscription from the book of Leviticus, 25:10, "Proclaim liberty throughout all the land unto all the inhabitants thereof."

Legend has it that its chime changed the world on July 8, 1776, when it rang from Independence Hall in Philadelphia summoning the citizenry to hear the first reading of the Declaration of Independence. But, the Bell achieved iconic status when pre-Civil War abolitionists used it as a symbol of their movement to free American slaves. After the Civil War, Americans sought unity through the Liberty Bell and the Bell toured the country to help heal the wounds of war. From 1915 until 1920, a replica of the Liberty Bell toured the country to promote women's suffrage. It traveled the country with its clapper chained to its side, silent until women won the right to vote. On September 20, 1920, it was finally rung at Independence Hall to celebrate the passing of the 19th Amendment.

To this day, oppressed groups travel to Philadelphia to proclaim their call for freedom at the foot of the Liberty Bell.

This Year's Award

This year's recipient of the Liberty Bell Award is Tico Perez, who has spent his entire life serving liberty and freedom throughout our community. Tico has spent the last 20 years in the legal profession as a business lawyer, but most of us know him by his service. His personal community service endeavors are, quite frankly, too numerous to detail, but here are a few:

- Member of the Board of Governors of the State University System of Florida
- Member of the National Executive Board of the Boy Scouts of America and President of Southern Region (13 Southern states) of the Boy Scouts of America
- Past member of the University of Central Florida Foundation Board of Directors and the Board of the Alumni Association.
- Past member of the Board of Trustees of the University of Central Florida
- Past President of the Orlando Utilities Commission
- Past President of the United Arts of Central Florida
- Past-Chairman of the Orange County Arts and Cultural Affairs Advisory Council
- Past-Chairman of the Greater Orlando Regional Chamber of Commerce
- He was named one of the ten most influential men in Central Florida by the *Orlando Business Journal* and one of the 174 most influential people in Florida by *Florida Trend Magazine*.

His drive, enthusiasm and compassion are unparalleled, and his leadership in the name of liberty and justice are, quite simply, outstanding. Congratulations, Tico!

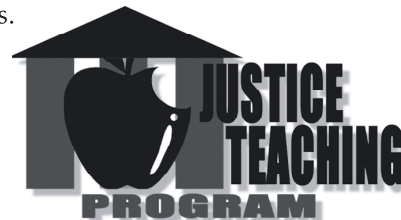
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Education Advocacy for Children in the GAL Program

Legal Aid Society of the OCBA

Rhonda E. Parnell's newest GAL child is a 15-year-old girl with emotional, behavioral, and learning disabilities. In the three months since she was removed from her home, she lived in three different placements, in three different counties and attended three different schools. Because the school transfers were between counties, the delivery of the youth's transcripts took longer than usual. Lacking information about her needs, the new school was ill prepared to deal with the child's perpetual disobedience. The youth accumulated so many absences, that failure to attend alone was enough reason to request the child be retained for another year.

On average, every time a youth in foster care changes placements and schools he or she loses six months academic progress. Couple the trauma of three schools in three months with the needs the child already had and Ms. Parnell knew that it was essential to find help for this child in school immediately. Ms. Parnell is no stranger to the practice of dependency law. Serving as an attorney for the state, parents, and as an Attorney *ad Litem* and Guardian *ad Litem*, she has the experience to effectively advocate for the best interest of a child. Yet, in every GAL case, there are unique issues that may require the *pro bono* GAL to seek assistance and support.

With the youth in a stable placement, Ms. Parnell contacted the Guardian *ad Litem* Program's Education Attorney, Sarah Koren, near the end of the summer to assist with getting the child registered in school and back on track. Ms. Parnell explains that because she had the "contacts in various counties to be able to get the answers needed," Legal Aid's Education Advocate was able to initiate the process required to address the child's special education

and behavioral needs. The GAL Education Attorney was "someone familiar with the education lingo, tests, procedures, etc.; someone to hold your hand and help navigate the education issues related to the child," explains Ms. Parnell. Together, Ms. Parnell and Ms. Koren are working with the school to develop an educational plan for the child that is appropriate and will ensure the youth's future educational success.

The GAL Education Attorney is available to guide *pro bono* GALs through the ins and outs of education law and policy. Sometimes all that's necessary is additional guidance and training to give the *pro bono* GAL the information necessary to independently advocate for their clients. For other cases, Ms. Koren's direct involvement is necessary. Ms. Koren assists GALs by reviewing a youth's cumulative school file, requesting psycho-educational testing for a youth, deciphering previous testing information,

and determining what services may be needed for the youth. By attending educational planning meetings, Ms. Koren is able to ensure the appropriateness of the services provided and the assigned placement. The GAL program also assists with youth in jeopardy of expulsion or excessive suspension by working with the school to create behavior plans for the student.

"The invaluable assistance of the educational advocate has provided me the opportunity to advocate for the child's educational needs through the court system," according to Ms. Parnell. If you would like to obtain assistance from Ms. Koren, the GAL Education Attorney, please contact the Guardian *ad Litem* Program at 407-841-8310 x 3176.

Submitted by the Legal Aid Society of the OCBA.



Rhonda E. Parnell



Listening to Lawyers

Lydia Wants To Hear From You

Lydia Gardner, Orange County Clerk of Courts, invites you to attend a special, 45-minute feedback session immediately following the October 25th OCBA Luncheon at the Ballroom at Church Street.

Share your thoughts and learn about plans for expanding Electronic Case Filing to Circuit Civil cases and other upcoming changes.

Please RSVP to Wendy Mazlin at wendym@ocbanet.org by October 22nd.

Questions? Contact Leesa Bainbridge, Director of Communications for the Clerk of Courts, at 407-836-2053 or lbainbridge@myorangeclerk.com.

SAVE THE DATE!!!

November 29, 2007

Immediately Following the OCBA Luncheon

1:30-3:00 p.m.

Church Street Ballroom

"GAL 101—THE BASICS"

For Attorneys Serving as GALs in Dependency Cases

Speakers: Diego "Woody" Rodriguez, Esq.

Christi Adams, Esq.

Cara Dobrev, Esq., GAL Program Litigation Coordinator

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Berges v Infinity, 896 So. 2d 665, 677 (Fla. 2004)

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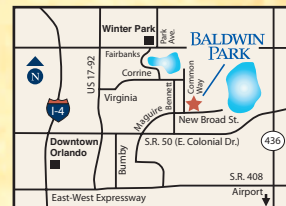
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Feature Article

Who's Really Running the Nursing Home?

Nathan P. Carter



A maze of corporate entities may obscure who actually operates the facility where your client was injured. But if you follow the money, you can find out who's in charge and hold them accountable.

In the last five years, most of the nation's large nursing home chains have undergone major corporate restructuring. The goal: separating the chains' real property and assets from their operations to avoid financial liability for legal claims, including those alleging negligent care or abuse of residents. States like Arizona, California, Florida, and Texas – which have significant elderly populations – have been affected most by this trend, but homes in other states are following suit.

Nursing home corporate structures used to be different. In the 1990s, most of the national nursing home chains operated in a similar manner. These for-profit chains included Beverly Enterprises, Mariner, Extendicare, HCR Manorcare, Kindred, Genesis, and LifeCare. Most of them divided up the country and each state into regions, and each region contained a handful of nursing homes.

Typically, a regional vice president or manager would oversee the facilities in each region. Each facility's executive director or administrator would report directly to the regional head, who would in turn report to the next person in the hierarchy, who usually worked out of that chain's corporate headquarters.

At that time, it was apparent that the large chains owned and operated all the facilities – they made no attempts to hide it. Most facilities' names contained the name of the chain, as did their policy and procedure manuals, admission packets, promotional materials, and other documents.

After several major chains were hit with Medicare fraud investigations or were forced to file for bankruptcy protection, the business model began to change. Virtually all of these national chains have undergone extremely complex business transactions in which they were sold, merged, or parceled out into different entities – or otherwise drastically changed.

Now, it is difficult, if not impossible, to identify the entity that owns, operates, and controls any skilled nursing facility. A nursing home and its literature no longer bear the name of its owner and operator. The business model is focused on shielding the true corporate owners from liability or responsibility for their residents' injuries.

Most nursing home chains in Florida have set up a dizzying array of corporations designed to funnel money

from one entity to another, so it is difficult to uncover all the responsible entities, much less to keep them in a lawsuit as named defendants.

In the typical corporate setup, a facility's real estate, buildings, and assets are “purchased” by an outside entity, usually a limited liability corporation (LLC). Most of the real estate is then placed into various forms of protected real estate investment trusts (REITs). The REIT owns the property passively and usually leases it out to other entities, creating an argument that the real estate owner has nothing to do with the activities on the property – and therefore no liability.

The purchasing LLC leases the facility to another holding entity, which may be another LLC. That LLC then enters into subleases with several entities that are created to operate the facility. Usually these are LLCs as well. Therefore, the LLC acting as the licensee (or entity licensed with the state as the owner or operator) of the facility has no real assets, no property, and little to no insurance.

Typically, the licensee is bound by a “management agreement,” a “financial services agreement,” or an “ancillary services contract” to collect rent and other expenses from residents and forward as much of this money as possible up the chain to the controlling entities.

Presuit investigation

Nursing home chains often ignore the rules of discovery and refuse to turn over relevant documents in their possession. If you conduct your presuit investigation thoroughly, you may be able to catch the defendant in a blatant discovery violation and use it to your tactical advantage.

Before filing suit, gather as much information on the facility as you can find. The following sources may yield useful information:

- state Medicaid cost reports/home office reports and federal Medicare contracts
- the secretary of state's Web site and uniform business reports that include names of LLC members or corporate officers/directors
- state licensure files, including applications to the state, change-of-ownership documents, and other related documentation
- for a publicly traded corporation, Securities and Exchange Commission filings and reports, 10ks or annual reports, statements of corporate officers, and stock values

Continued on page 16

- the facility's admission packet, brochures, pamphlets, and other promotional literature
- Google searches on the nursing home facility and the entities that own or manage it (Searching all the names that appear in the Medicaid cost reports is a great starting point.)
- copies of court files, especially depositions, from other cases involving the facility you are investigating, as well as other facilities owned or managed by the same entities
- conversations with other attorneys who have previously brought claims against the facility
- conversations with former employees of the facility (if your state allows)
- the local property appraiser's office or Web site regarding the facility site

From this information, you can construct a working chart of the corporate hierarchy operating the facility. As your case progresses, you can add to, edit, and improve this chart.

Formal Discovery

Your first step in formal discovery should be to put together a series of requests for document production. My firm typically staggers these and sends them as the case progresses, because sending one massive set of requests may invite boilerplate objections.

This plan has another strategic advantage. If a defendant objects to several separate requests, you have the option of filing multiple motions to compel. This can send a message to the judge that the nursing home is not complying with discovery rules.

Request all the information you attempted to gather during your presuit investigation, because the documents the nursing home provides in discovery may not match what you have already obtained.

For example, in a recent case, my clients provided the admission package they signed when they put their mother in a facility. Its cover page displayed a large logo of the chain that was operating the facility. When the nursing home produced the admission package to me in discovery, the cover page had been ripped off. Fortunately, when we deposed the admissions coordinator in that case, she recognized the cover page and admitted that it was usually part of the package given to new residents.

My firm usually waits until later in the case to request certain additional documents. They include:

- copies of the master lease and any subleases
- copies of all management agreements, ancillary service contracts, and financial services agreements between the facility and all related entities
- all the facility's budget information, including the annual budget, monthly reports, budget variance requests, per-patient-day (PPD) data, and the staffing budget
- the governing body documentation and information

(According to 42 C.F.R. §483.75(d) (2006), all facilities must have a governing body to establish and implement policies and appoint the administrator.)

- copies of bank documentation, promissory notes, loan applications, guarantees, and any other documents that relate to the capital that was borrowed to set up the facility and its sister facilities – as part of the entire operation's management
- all e-mails between any and all staff in the facility and any outside entity or person

If you suspect that the defendant nursing home will deny that some documents exist, it may be wise for you to hold off on requesting them until after you depose the person responsible for custody of the documents, to confirm that they do in fact exist and to obtain the exact names of the documents. That way, the defense cannot object to a request or say that the documents do not exist. In fact, referencing the page and line where the deponent described the information you are requesting significantly improves the chances that the judge will grant your motion to compel.

Depositions

These cases are won or lost during the depositions. Keep in mind that you are trying to show that the facility is part of a larger chain and that the critical decisions are made at a higher level by people who work outside the facility. Also remember that you need to show that these decisions affect patient care both directly and indirectly, so you can establish the outside entities' duty to the nursing home's patients and liability for breach of that duty.

The best examples of corporate – level decisions that directly affect patient care are budgeting and establishing policy and procedures. By setting, monitoring, and controlling the budget, the corporate or "management" office directly controls the number of staff available to care for residents. The fewer staff working per shift, the less care each patient receives.

Also, when the corporate office creates, provides, and implements the policy and procedure manuals for the facility, they are clearly setting standards for all types of patient care. By failing to provide adequate policy and procedures for the facility, or by failing to ensure that policy and procedures are followed by staff, the corporate office breaches a duty of care to the residents.

This focus will help you avoid the defense argument that you are simply trying to "pierce the corporate veil." You are pursuing direct liability against outside entities for their own tortious conduct, not simply blaming high-level corporate officers for the actions of their employees.

The corporate officers may also be personally liable. Managing members of LLCs and directors of corporations are directly liable for their own tortious conduct and cannot hide behind corporate names and mazes. In *Canavan v. National Healthcare Corp.*, the court held that the managing member of the LLC managing company was personally

Continued on page 18



What We Do . . .

A Few Good Lawyers

Robert B. Storrs, Jr.



Brandy's life has been filled with challenges that no child should ever have to face. Her father, who was the single parent for Brandy and her brother, was diagnosed with a degenerative disease in 2001. Only 12 years old, Brandy became his primary caregiver. When her dad died, two of his acquaintances took custody of the children, though they never obtained legal guardianship. Brandy's life became a nightmare. Her identity (and her brother's) was stolen and used to commit fraud. Her social security benefits were wasted, while Brandy went without medical care, school supplies or proper nutrition. To avoid creditors and prosecution, her caretakers moved eight times in one school year. Brandy struggled to keep up her education, but fell farther behind with each abrupt change. For five years, she was literally a "lost child," living in confusion and fear.

Eventually the law prevailed. Her custodians were arrested for fraud, and Brandy, at age 17, was finally placed with people who treated her like a member of a real family and offered a healthy, nurturing and stable environment. But her life was still in a shambles. She had a lot to overcome.

She worked hard for the next eighteen months, made

excellent grades in school, and graduated on time. And while she was concentrating on her education, the Legal Aid Society was working to help her sort out the other problems in her life. Attorney Jenn Wimberly worked to get Social Security benefits restored. Other OCBA attorneys helped to resolve the myriad of issues resulting from the theft of her identity.

Last August, Brandy celebrated her 18th birthday . . . by enrolling in college. It's quite an accomplishment. It hasn't been easy. Her GAL, Cara Dobrev, litigation coordinator for the Legal Aid Society's *Guardian ad Litem* program, worked hard to provide much of the stability and support Brandy needed to meet challenges and accomplish her goals.

Brandy is a fighter . . . and a winner. But she is also a living example of the wonderful things that can be accomplished

when attorneys go the extra mile in the cause of Justice.

Congratulations, Brandy!

Thanks, Cara.

Robert B. Storrs is the Director of Development for the Legal Aid Society of the OCBA. He has been a member of the OCBA since 2007.



Brandy and her GAL, Cara Dobrev

Photo by Kathryn Kelly Photography

***Remember when
a few good lawyers
could make
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liable for his negligent conduct in setting the facility's budget and staffing levels. (889 So. 2d 825 (Fla. Dist. App. 2004).)

It is wise to depose witnesses from the bottom up, casting a wide net. Start with the certified nurse's aides (CNAs) and other nursing assistants who took care of the patient in your case. Then focus on how the facility operates day to day. Usually, the corporate lawyers brought in to defend the outside entities and their executives do not even bother to attend the depositions of frontline staff. Fortunately, this allows you to uncover a lot of critical information about corporate involvement.

Nurses and assistants. The CNAs, licensed practical nurses (LPNs), and registered nurses (RNs) will probably tell you that "corporate nurses" come in at least once a month to review patient charts and talk with the staff. They may also conduct mock surveys, mock investigations, and staff meetings. The facility nurses often do not even know the names of the people who come in – they simply refer to them as "corporate."

In some cases, you will get lucky and the nurses' pay stubs will reflect the names of the outside companies. In Florida, however, most of these companies have become savvy enough to pay salaries through the licensee LLC. Request pay stubs for all employees you depose.

Try to cover every aspect of the facility's day-to-day operations with the CNAs, LPNs, and RNs. Ask who pays them, what the 800 numbers are for payroll or employee questions, who provides their benefits packages, who administers the health plan, who they answer to, who that person answers to, and who the administrator answers to.

Show the nurses and assistants copies of the policy and procedure manuals and have them acknowledge that these are in fact the facility's documents, that they dictate patient care and serve as a useful tool, and that patients are put at risk when these policies and procedures are not followed. They will agree that these documents directly affect patient care.

They may say the manuals are issued by one of the outside management companies. Even if it is not clear that the outside company developed the manual, the staff probably will tell you that they did not create it, but received it from "corporate."

Directors of nursing. The director and assistant director of nursing can be critical witnesses. They usually have a little more insight about how the facility is truly run.

Sometimes the director of nursing is paid on an incentive or bonus system. This can be fertile ground: Have the person explain his or her bonus plan in detail. It may hinge directly on keeping the resident census as high as possible and keeping the budget as low as possible. The budget criteria typically are enumerated in writing by somebody outside the facility. The director may also be able to verify that the administrator has to answer to an outside authority.

Facility administrator. The administrator's or executive director's deposition is absolutely critical, because it often reveals that the outside management companies and other entities actually operate the facility and therefore have a duty to protect residents.

When deposing the administrator, the key is to uncover how limited his or her autonomy and control of the facility are. Establish these limits by asking detailed questions. (See pages 56-57.) (Publisher's note: see side bar, opposite.)

Continued on page 20

Ask Detailed Questions in Depositions

Nathan P. Carter

Facility administrator

- Can you negotiate your own lease for the facility?
- Can you enter into contracts with outside vendors for supplies?
- What is the most money you can spend at one time?
- Can you implement your own policy and procedures?
- Can you create your own budget, or is it subject to outside review and approval? (Ask the administrator to explain this process in detail.)
- Can you borrow money from a bank to operate the facility?
- Do you have the authority to sign contracts to bind the company?
- Could you negotiate with another management company if you were not happy with the one running the facility?
- Are you a member, manager, or other officer of the parent company?
- Are you a member of the facility's governing body?
- Have you ever attended a governing body meeting?
- Do you have any ownership interest in the LLC operating as the licensee?
- Have you ever signed any Medicaid cost reports or other documents that were submitted to the state or federal government?
- Have you ever signed the plan of correction? (After the state agency conducts an annual survey and notifies the facility of deficiencies, the facility is required to respond with a formal document sometimes called a plan of correction.)
- Who provides the insurance plan for the employees?
- Who administers the health and payroll benefits?
- Who hired you, and who has the authority to fire you?

Continued on page 20



Appellate Practice Committee

Take the Appellate Challenge! Part Two

——— *Marcia K. Lippincott and Michael R. D'Lugo*



We hope you enjoyed the first part of our appellate challenge published in last month's *Briefs*. The challenge continues with an additional five questions and answers regarding the filing of a Notice of Appeal.

Questions

6. You represent a defendant sued for breach of contract that requires mediation/arbitration. You move to refer the matter to mediation/arbitration and this motion is denied. You also move to dismiss the action and this motion is denied. After denial of the dismissal, you renew your motion to refer the matter to mediation/arbitration. Your renewed motion is denied and you timely appeal within 30 days of this order. The plaintiffs move to dismiss the appeal. What will the appellate court do?

7. You lose a Rule 1.540 proceeding and timely file a motion for rehearing. Within 30 days from the order denying rehearing, you appeal. Your opposition moves to dismiss the appeal. What will the appellate court do?

8. You represent the plaintiff in a medical malpractice action against a doctor and hospital. The trial court enters summary judgment in favor of the hospital, and two days later enters summary judgment in favor of the doctor. You timely move

for rehearing as to both judgments and the trial court denies the motions in one order. You appeal within 30 days of the order denying rehearing, and identify the orders you are appealing as the judgment in favor of the doctor and the order denying rehearing. You realize your mistake and file an amended notice of appeal to include the judgment in favor of the hospital and a motion to amend. The hospital objects and moves to strike the amended notice. What will the appellate court do?

9. One of two defendants appeal a final summary judgment entered against it in favor of the plaintiffs. You represent the plaintiffs and you timely file a notice of cross appeal. The order you are appealing is a summary judgment entered against the plaintiffs involving the other defendant. Both orders are contained in the same document. The defendant involved in the cross appeal moves to dismiss your cross appeal. What will the appellate court do?

10. The trial court awards temporary parental responsibility of a child to his mother. You represent the father and immediately move for rehearing. The trial court denies your motion and you appeal within 30 days of the order denying rehearing. The mother moves to dismiss the appeal. What will the appellate court do?

Answers on page 26

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Like the nursing director, the administrator may be on a bonus system controlled by someone outside the facility. The facility budget and staffing, which clearly affect patient care, may also be controlled from the outside.

Also, it is worth asking deponents for all their e-mail addresses. In some instances, the facility's administrator and director of nursing maintain e-mail addresses that include the name of the entity claiming it has nothing to do with the facility – for example, john.jones@managementcompany.com.

After deposing all the facility – level witnesses, continue to move up the chain. You must learn exactly whom the administrator deals with outside the facility. This will determine whom you depose at the corporate level: the person the administrator said he or she dealt with the most. This person may be a regional vice president.

Regional vice president or manager. When deposing this corporate figure, establish the extent of his or her involvement in and control over the facility. Also find out exactly what entity this person works with and to whom he or she reports. Usually, these corporate players work extensively by e-mail and will admit that they e-mail documents and reports back and forth between the corporate level and the facility level. You can then obtain these documents in a request to produce.

Corporate-level clinical nurses. Identify the people at the corporate level who deal with clinical and patient care issues. They are typically called “clinical resource nurses,” “quality assurance consultants,” or some other euphemism designed to downplay their involvement. Depose those who visited the facility and ask for details about exactly what their job entailed and what forms or written documents they created.

For example, if you have a case involving dehydration and bedsores, ask the patient care person: If you were in the facility reviewing charts on a regular basis, wouldn't it be part of your job to notice if patients were suffering from severe bedsores or significant dehydration? If so, wouldn't it also be part of your job to report those problems to XYZ Management Co.? And wouldn't your company then have a duty under the management/consulting contract to provide recommendations to the facility on how to improve these problems?

Chief financial officer. It is important to depose the CFO or the person with the most knowledge of the facility's financial operations, the management companies, and other companies. It may be worth the expense to hire a forensic accountant or other expert witness with knowledge of the health care industry. This expert can help analyze all the Medicaid cost reports and other documents before the corporate-level depositions.

In these depositions, you can usually establish that the local facility is paying the outside entities an exorbitant amount of money for all sorts of services. You can also show that all these outside entities are essentially the same entity. The same group of managers, directors, or officers often runs all the LLCs involved.

Also depose the other corporate executives that have been mentioned in your previous depositions. The state secretary of state's Web site may list member managers for each LLC. Depose as many as possible; with each, you can add more information to your chart, revealing a clear picture of how the facility operates.

Continued on page 25

Ask Detailed Questions in Deposition

Continued from page 18

- Who approves and pays for the ads for job openings?
- Who determines the reimbursement levels for the facility?
- Who conducts comparative salary surveys?
- Who conducts benefit packet surveys in the community?
- Who conducts consumer satisfaction surveys?
- Who provides policy and procedure manuals for the facility?
- Who provides all the forms for the facility that are directly involved with patient care, including the medication administration record (or MARS), progress notes, requisition forms, and staffing charts?
- Who hires the medical director and pays his or her salary?
- Who signed the contract with the medical director?
- Do “corporate” nurses come to the facility on a regular basis and look at patient charts? If there were problems with patient care, would they know about them?
- Does the facility have formal risk-management protocols? Who sets them?
- How is risk management centralized, what is the hierarchy, and who is involved?
- Do you ever send incident reports to anyone outside the facility? Who, when, and why?
- If so, and you say you run this facility, why aren't you involved in this process? Why do you send confidential incident reports with confidential patient information to an outside entity?

Corporate-level Deponents

- Go through most of the same questions and areas of inquiry with a corporate deponent that you covered with the facility administrator, establishing the administrator's true lack of authority.
- Establish a detailed hierarchy of the management-level company, and obtain a list of all titles or positions as well as the name of the person who holds each position. Also, get a detailed description of each person's role and responsibilities.

Continued on page 25



Workers' Compensation Feature

Claimant Fraud in the Workers' Compensation System

Terry S. Ford



In litigation, the parties have a right to expect that all statements are truthful, responsive, and complete. However, in the workers' compensation system claimant malingering, exaggeration, and dishonesty have remained a significant problem. In an attempt to discourage the filing of fraudulent workers' compensation claims, the Florida legislature enacted §440.105 and §440.09, Florida Statutes (1994). §440.105(4)(b) provides "[I]t shall be unlawful for any person to knowingly make, or cause to be made, any false, fraudulent, or misleading oral or written statement for the purpose of obtaining...any benefit or payment under this chapter." §440.09(4)(a) states "[A]n employee shall not be entitled to compensation or benefits under this chapter if any judge of compensation claims...determines that the employee has knowingly or intentionally engaged in any acts described in §440.105...for the purpose of securing workers' compensation benefits." These Sections are collectively referred to as the "fraud defense." Although the defense has been challenged on constitutional grounds, the courts have consistently upheld its constitutionality. See *Medina v. Gulf Coast Linen Services*, 825 So.2d 1018 (Fla. 1st DCA 2002)(holding defense does not violate due process, the right to a jury trial, the right of access to courts or separation of powers); *Wright v. Uniforms for Industry*, 772 So.2d 560 (Fla. 1st DCA 2000)(holding defense does not violate the double jeopardy or excessive fines clauses of the state and federal constitutions).

To successfully assert this defense, the employer/carrier must establish, by a preponderance of the evidence, that the claimant knowingly or intentionally made a false, fraudulent, or misleading oral or written statement for the purpose of obtaining a workers' compensation benefit. *Singletary v. Yoder's and Ameritrust Insurance Corp.*, 871 So.2d 289 (Fla. 1st DCA 2004); *Village of North Palm Beach v. McKale*, 911 So.2d 1282 (Fla. 1st DCA 2005). Courts have held that statements regarding medical histories, prior accidents, and the extent of current injuries are relevant to a workers' compensation claim. *Village Apartments v. Hernandez*, 856 So.2d 1140, 1141 (Fla. 1st DCA 2003); *Lee v. Volusia County School Board*, 890 So.2d 397 (Fla. 1st DCA 2004). These oral or written statements are relevant whether made to health care providers or during testimony given at a deposition or merits hearing, and if made for the purpose of securing workers' compensation benefits. *Id.* at 1141. It is not necessary that the false, fraudulent, or misleading statement be material to the claim. *Village of North Palm Beach*, 911 So.2d at 1283. If the defense is successfully asserted, the claimant forfeits all workers' compensation benefits, not just those benefits that may have been obtained by virtue of the fraud. See *Rustic Lodge v. Escobar*, 729 So.2d 1014 (Fla. 1st DCA 1999); *Wright*,

772 So.2d 560 (Fla. 1st DCA 2000). Since a finding of fraud has drastic consequences, judges of compensation claims are hesitant to find fraud unless the facts clearly support such a defense. Employer/Carriers have been most successful in uncovering fraud with immediate and thorough investigations including recorded statements, discrete surveillance, background checks and meticulous depositions. However, counsel for the employer/carrier must be mindful of the time requirements for asserting the defense. When the fraud defense is raised, it must be asserted in a timely fashion to provide the claimant appropriate notice and an opportunity to be heard. If the defense is not timely raised, it will be disallowed as violating the claimant's due process rights. *Issac v. Green Iguana, Inc.*, 871 So.2d 1004 (Fla. 1st DCA 2004)(holding that the fraud defense was not timely asserted when the employer/carrier knew of the fraud before the pre-trial conference and at least 8 months before the merits hearing but failed to raise the defense until the day of the merits hearing).

The fraud defense is being asserted more routinely by employer/carriers in the workers' compensation system. Although the courts seem to be willing to deny benefits based on a meritorious fraud defense, employer/carriers should be mindful that minor inconsistencies and exaggerations are typically not considered fraudulent. Therefore, the defense should only be asserted if the facts of the case warrant it. Also, solid evidence of fraud can be extremely valuable when attempting to settle a claim. Therefore, after weighing the risks and benefits of disclosing the evidence of fraud before the merits hearing, it may be advisable to disclose the evidence early on to obtain a modest settlement and avoid litigation costs. However, the attorney for the employer/carrier should consult the Florida Rules of Professional Conduct before raising a fraud defense. Specifically, Rule 4-3.4(g) and (h) state a lawyer shall not "present, participate in presenting, or threaten to present *criminal (or disciplinary) charges* solely to obtain an advantage in a civil matter." Nonetheless, if fraud is a civil defense to the claim, there is no ethical violation in raising the defense provided the inquiring attorney only raises the civil defense and does not in any way threaten criminal prosecution. See *Florida Bar Staff Opinion* 25110, December 2, 2003.

This article is for general information and should not be construed as legal advice or legal opinion on any specific matter. Each legal matter may differ in the facts and circumstances, so before taking legal action, consult an attorney.

Terry S. Ford is an associate in the litigation department at Fowler White Boggs Banker. He has been a member of the OCBA since 2007.

HEARSAY



Congressman Lou Frey, Jr., founder of the Lou Frey Institute for Politics & Government, spoke about the critical need for civics education in the State of Florida at August's luncheon.



Lou, who was introduced at the luncheon by his daughter Julia L. Frey, a Past President of the OCBA, enjoyed a chance to meet with colleagues and friends.



Former OCBA President Bruce B. Blackwell spoke at August's luncheon about the importance of maintaining an independent judiciary and asked members to consider making a contribution to LawyersAction.



The OCBA Business Law Committee, chaired by Trevor Arnold, invited Jim Payne of WESH 2 News to speak about the local housing crunch at the committee's August meeting.

There is no season when such pleasant and sunny spots may be lighted on, and produce so pleasant an effect on the feelings, as now in October.

– Nathaniel Hawthorne, from his *American Notebooks*, Volume XI

Ah, yes, October. No leafpeeping going on here at the border of Climate Zone 10 where the deciduous come to die, but there are many other joys of this special time Nathaniel loved so. First is the joy of a gazillion bite-sized Snickers and other dentist-employing treats that will inevitably come our way in the name of sparing our children from eating them all. ('Tis a parents sacred duty!) Also producing a pleasant effect on the feelings: Nate's friend Sam apparently waited until the fall harvest to brew Hearsay's favorite 12-ounce weight, appropriately named Octoberfest. Conveniently packaged six at a time in handy Orange and Blue carrying cases, I'll take our brewer/patriots' offerings against anything the umlaut-wielding beirgarteners wish to put against it! Last but not least, October and its season means that football is back, as proudly demonstrated by our judiciary on last month's cover. Because this column must be submitted a full month before the month of publication, I haven't gotten to see the season truly start, but I can surely risk a discussion of Michigan utterly dominating their pay-for-play week one visitors, the Appy State Mountaineers, right? Right?

Anyway, enough of the season's greetings - let's get to a little Hearsay, shall we? Kicking it off was our East of Eola friends at the Land of Lowndes who pledged some serious coin to the Red Cross, giving \$25,000 last month with the pledge to do the same in '08, '09 and '10. The twisters that came through in February reminded us all of the important mission that this noble organization carries out for us in times of need. Way to go, LDDK&R.

On a smaller scale but no less worthy, do-gooder **John** "Ctrl+'e" **Paré**, our regional Deputy Attorney General, has taken over as President of Big Brothers Big Sisters of Central Florida. If this edition comes out by October 9, join him at the Colonial Lanes for the annual "Bowl for Kids Sake," which sounds like a good excuse to put on a dandy pair of red and black bowling shoes and dust off the old Pete Weber autographed 16-pound Rhino to show the kids how its done. You can reach John at john.pare@myfloridalegal.com for details.

Lastly, while I'm discussing do-gooders, I'll make my first personal privilege since taking over this Ms. Lonelyhearts column to mention my own favorite charity's recent Nick-included activity. On August 23, 2007, I had the opportunity to play emcee to West Orange Habitat for Humanity's Home at Last Project. Four mayors and military dignitaries, including Lt. General Jay Garner, attended this event to raise funds to raise a roof for Army Sergeant Joshua Cope, a soldier and recent father who lost both legs above the knee in service in Iraq. Whether or not you have a West Orange connection, if you have skills in disabled accommodations or, more importantly, skills in locating donatable land or services, e-mail me at nshannin@floridalawonline.com, and more details can be found at www.woh4h.org.

Alright, enough do-gooder yapping – let's talk about someone who's just plain good. Kudos to our own ex-prez **Mary Ann** "Ginger

Nicholas A. Shannin

who?" **Morgan** of Billings, Morgan, Boatwright and Hernandez, who is one of only four female attorneys in the state to land on the Lawdragon 500 leading plaintiff's lawyers list. Yes, I don't normally do "lists," but one makes an exception for the "only 500 in America" sort of honor. Clearly, a good year in the Morgan family, what with brother John turning his clever strategemy of imitatin' Dubya into a 4th place finish on ABC's "The Next Best Thing." Clearly it was his appearance at the OCBA lunch to salute outgoing Prez **Bill** "kickstand" **Sublette** that got Mary Ann's brother off in the right direction!

In a mix of kudos and do-gooder, **Tommy Boroughs**, a partner at Holland & Knight, has been appointed as one of 21 members for our Governor's Action Team on Climate Change. Hmm, Action Team kinda has a superhero sound to it. Well, if his team can bring about the statewide greenhouse gas reductions they seek to achieve, Justice League status won't be far behind.

Literati! We interrupt this Hearsay column to ask any and all published, semi-published, or those who would-be-published whether Kathy Bates didn't break out the sledgehammer to contact Social Chair **Kimberly Webb** 2.0 to participate in the most intellectual social event ever – the inaugural OCBA Book Signing & Happy Hour to take place on February 21, 2008. You author types can reach her at KDWebb@littler.com. A little less brainy, the OCBA Texas Hold 'Em Tourney is slated for November 15 of this year, where I will be defending my title of quickest distributor of chips to other players in the west. "Sheriff **Woody**" **Rodriguez** and **Steve** "have I mentioned my disdain for U.S.C. lately?" **Jacobs** will reprise last year's uber-successful tourney. Stay tuned for details or e-mail Steve at sjacobs@dbksmn.com.

Last but not least, while on the subject of pursuits intellectual, **Jamie** "I give you 15 [crash], 10, 10 commandments" **Moses** has organized the previously non-existent Appellate Practice Committee of the OCBA quickly, such that they are already co-sponsoring a statewide seminar on November 16, 2007. As an appellate lawyer myself, I urge all you trial guys to consider showing up for "The Art of Objecting: A Trial Lawyer's Guide to Preserving the Error for Appeal." Wordy, yes - but useful? Absolutely: if you don't preserve it, we can't appeal it! Contact Jamie at jmoses@fisherlawfirm.com for more details.

Alright, that'll do for another fun month of Hearsay. But before I go, I'll give you trivia heads another one. No Internet usage! Here goes: name the 19th century pioneer who helped found the American version of an organization discussed earlier in this Hearsay column? First correct response gets the incredibly sought after prize of mention in the next *Briefs*! Good luck, and in the meantime, please send your kudos, gossip or other interesting information my way to nshannin@floridalawonline.com. Enjoy October - with or without the Sam Adams varietals – and I'll see you back here in November. Cheers!

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



OCBA President Gene Shipley welcomes the sponsorship of The Staubach Company, a real estate services company. Pictured with Gene is a company Vice-president, Mark Stratman.



Stephen R. Caplan accepts a 100% Club certificate on behalf of Schlegel Caplan, LC at the August OCBA luncheon. OCBA Vice-president Tad Yates does the honors.



The firm of Fowler White Boggs Banker P.A. joined the 100% Club in August. Seliena K. Crampton was on hand to accept the certificate from Tad.



OCBA members traveled to Oxford, Mississippi for the UF v. Ole Miss game. Pictured are Scott Reed, Tom Zehnder and Tad Yates with Gator great, Chris Doering.

With each corporate deposition, identify in detail every entity to which that witness belongs as a partner, member, manager, officer, or director. You might find an intricate web of companies that are all related. Get their mailing addresses. Most of them operate from the same address and sometimes even the same suite number.

You may want to consider sending an investigator to the address to take a picture of the building directory in the lobby. It can come in handy at trial when one of the corporate officers testifies under oath that he or she does not know where ABC Consulting Co. is located, when it is in fact in the same office where the officer works every day.

Discuss the facility's ancillary services. Nursing homes often contract with outside companies for psychotherapy, occupational therapy, wound care, and supplies, and these vendors are owned and operated by the same people operating the facility. Through the expert witnesses, you may be able to show that the facility is paying greater than market rate for these services, which helps defeat the arguments that they are arms – length transactions and that these are truly independent companies.

Find out who entered into these ancillary services contracts. Usually it is one of the upper – level corporate executives and not the facility administrator. This will help you show that the corporate executives find every possible way to bilk the facility out of profits while avoiding responsibility for patient care.

The facility in your case may be one of several owned, operated, and managed by the same group of entities. In depositions, ask how the other facilities are run. Obtain copies of the management contracts and other agreements with the sister facilities in the region. By showing that all the facilities are run in the same manner, by the same people, and with the same contracts and agreements, you can quash the claim that the nursing home is a stand – alone “mom-and-pop” operation.

The management companies sometimes have Web sites and promotional literature that tout their services to other facilities, describing the “excellent patient care” they provide and their “hands-on management techniques.” Such examples can be devastating in the corporate – level depositions.

By the time you depose these executives, they may have claimed absolutely no involvement with the facility. They want to testify that they are simply providing “accounting services” or the like, but when their own Web site and marketing materials contain mission statements that talk about “providing quality patient care,” you can nullify that argument.

Although nursing home litigation has become much more complicated and costly, it can still be rewarding. Careful case selection and tenacious discovery are the keys to success.

As trial lawyers who believe in protecting people from injuries caused by corporate greed, we have a professional and moral obligation to pursue these cases more than ever before. We need to prove to the callous nursing home industry that we will continue to protect the vulnerable elderly patients who cannot protect themselves.

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Nathan P. Carter is a partner in Colling Gilbert Wright & Carter. He has been a member of the OCBA since 2005.

Ask Detailed Questions in Deposition

Continued from page 20

- Gather names of all corporate entities involved with the facility, and get details on what they do for the facility, what services they provide, who hired them, and who negotiated the contract. (The Medicaid cost reports will contain a list of “related party transactions” that will list several other entities about which you should inquire.)
- Get a detailed description of the entire organization. Ask what other facilities are also “managed” by this company, how many facilities, where they are located, and whether they all have the same management agreements and the same policy and procedures in place.
- Explore the relationship between your facility and that company. Ask when it began, who decided to hire the management company, who negotiated the terms, and who signed the contract. Usually no one from the facility had anything to do with these decisions, which is further evidence of outside control.
- Explore the terms and responsibilities under any management agreement or contract in place between the facility and the corporate office.
- Explore the details of the budget process. Ask the deponent to explain the process from start to finish, including how it is created, who is involved, what the main expenses are (staffing is key), who approves the final budget, who has authority to deviate from budget, and what budget variances there are (as well as how and by whom they are approved). Are there monthly reports or updates? Who creates them, and who receives them?
- You can use these same points to inquire about the policy and procedure manuals. Also ask: Do you expect staff to follow the policy and procedures you provide? Can they be disciplined for not following them? Do you agree that they affect patient care?

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YLS on the Move!

Not Slowing Down Yet!

Taylor C. Kessel



Fall is finally here and hopefully it will bring with it some cooler weather and round-the-clock sports for all the enthusiasts out there. October also brings the start of another exciting season of Orlando Magic basketball, and we look forward to a successful playoff run this year. The Young Lawyers Section of the OCBA is also maintaining its busy schedule throughout the fall season.

On behalf of the YLS, **LaShawnda Jackson** recently attended the Bithlo Boys & Girls Club Career Day to represent the legal profession. More than 30 elementary school children from the local Bithlo community attended the event. LaShawnda discussed the various types of law, her typical job duties, and some other related legal topics - the favorite being the average salary for attorneys. Also in attendance were representatives from the nursing profession, the Orange County Chamber of Commerce, the Sheriff's Office and a State Representative. Many thanks to LaShawnda for her community involvement and for representing both the YLS and the OCBA in such a great manner.

YLS is also planning some great events during the pre-holiday season. On October 6, 2007, YLS will be working with Habitat for Humanity. For details, contact **Shane Fischer** at shane@fischer-law.com or 407-650-5509.

The Legal Aid Society continues its series of Tuesday lunchtime trainings with two offerings for *pro bono* attorneys in October. On October 9, from Noon to 1:30 p.m., attorney **Michael Resnick** will present *Representing a Tenant in an Eviction* (1.0 CLE pending). Then, on October 23, from Noon to 4:30 p.m., attorney **Jennifer Wimberly** will present *Public Benefits and Dependent Children*. Training sessions are held at the First Presbyterian Church, Eddington Ministry Center, 106 East Church Street, Orlando, FL 32801. The programs are free for all OCBA attorneys and for non-OCBA attorneys who participate in the LAS's *pro bono* program. Lunch will be provided for attendees who pre-register! For additional information or to pre-register, please email ctucker@legalaidocba.org, mcabo@legalaidocba.org or mrvanderhorst@legalaidocba.org. (Be sure to plan ahead for training sessions on November 13 and 27. Check this column next month or visit the OCBA website for details.)

The 16th Annual Young Lawyers Golf Tournament is upon us! This hugely popular event will be held on Friday, October 12, 2007, at the International Course at Champions Gate. The format this year will be a shotgun start beginning at 8:00 a.m. Breakfast and lunch are included in the registration fee. For more information on participating in or sponsoring this event, please contact committee chairs **Elizabeth J. Anderson** at eanderson@sctlaw.com or **Sunny**

Lim at slim@sctlaw.com.

Continuing a string of successful events, the next UF Law Happy Hour will be held Thursday, October 18, from 6:00 p.m. to 8:00 p.m. at Urban Think! Bookstore, 625 East Central Boulevard, Orlando. Renowned UF College of Law Professor, Michael Seigel, will be signing his book at this event. If you'd like to attend, please RSVP to **Sarah Rumpf** at srumpf@cfl.rr.com.

Westlaw will sponsor the annual Law Student Reception - also on Thursday, October 18 - from 5:30 p.m. to 7:30 p.m. in the atrium of the new Federal Courthouse, 401 West Central Boulevard, Orlando. There's no fee for law students; OCBA members pay \$5 and non-members pay \$15. Please RSVP by October 16 to Wendy Mazlin, OCBA Events Manager, at wendym@ocbanet.org. For more info, contact **Nicole Smith** at nsmith@nardellachong.com or 407-786-2700. You won't want to miss this very special event!

Without pause, the YLS slides into the third weekend in October by renewing its traditional Annual Joint Happy Hour with the Young CPA's section of Central Florida. The event will be held on Friday, October 19, from 5:30 p.m. to 7:30 p.m. (location TBD). In years past this has been a great way to mingle and network with other young professionals in the area. For more info about this and other YLS social events, contact **Jason Hill** at jhill@shutts-law.com or **Kristen Cox** at kcox@shutts-law.com.

Looking for a publication opportunity? The Florida Bar Young Lawyers Division is currently accepting submissions for its quarterly newsletter, *Across the Bar*. If you have an article or photos that would be of interest to young lawyers across the state, please send them to **Chelsie Roberts** at croberts@fordharrison.com for publication consideration.

Until next time, if you have any questions or want to find out more about our section, please contact me, **Taylor Kessel**, at taylor.kessel@gmail.com or 407-422-2454.

Taylor C. Kessel is an associate at deBeaubien, Knight, Simmons, et al. He has been a member of the OCBA since 2005.

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Answers

If you believed that filing a Notice of Appeal is a task for your paralegal, the first five questions and answers of this challenge have hopefully changed your mind. If not, perhaps this next series will convince you that an appeal worth bringing belongs in the hands of an appellate specialist.

Unless a Notice of Appeal is timely filed, the appellate court has no jurisdiction to proceed with the appeal and it will be dismissed.

Question #6: The appellate court will dismiss this appeal. Multiple motions regarding mediation/arbitration are not authorized and if an appeal is not taken within 30 days of the entry of the first non-final order regarding the topic, the appellate court has no jurisdiction. *Wegner v. Schillinger*, 921 So. 2d 854 (Fla. 4th DCA 2006).

Question #7: The appellate court will dismiss this appeal. A motion for rehearing does not toll the time to appeal and an appeal filed more than 30 days after an order denying a Rule 1.540 motion will be dismissed. *Catalano v. Catalano*, 516 So. 2d 77 (Fla. 5th DCA 1987).

Question #8: The appellate court will deny the amendment and strike the amended notice of appeal. You will not be

permitted to appeal the judgment in favor of the hospital. A notice must give sufficient information to determine what order is being appealed. *Cobb v. St. Joseph's Hospital, Inc.*, 550 So. 2d 1 (Fla. 2d DCA 1989).

Question #9: The appellate court will dismiss your cross appeal. The judgment entered against the plaintiffs and in favor of one defendant is not an inherent part of the order entered against the other defendant and in favor of the plaintiffs. Thus, this was not a cross appeal; rather, it was an untimely appeal. *Florida Windstorm Underwriting etc. v. Gajwani*, 934 So. 2d 501 (Fla. 3d DCA 2005).

Question #10: The appellate court will dismiss this appeal. A motion for rehearing does not toll the time for an appeal of a non-final order. Rather, a notice of appeal must be filed within 30 days of the filing of a non-final order. *Deal v. Deal*, 783 So. 2d 319 (Fla. 5th DCA 2001).

Next month the challenge will continue with questions and answers concerning other elements of the appellate process.

Marcia K. Lippincott, Marcia K. Lippincott, P.A., and Michael R. D'Lugo, a partner with Wicker, Smith, O'Hara, McCoy & Ford, P.A. Ms. Lippincott has been an OCBA member since 1992 and Mr. D'Lugo has been a member since 1999.

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Special Section

Sandy Britt: Our Home-grown Hero

Jessica K. Hew

Every parent loves and adores their child. Sarah Arnold, a litigation assistant at Graham, Builder, *et al.*, is no exception. She loves and adores her only son, Sandy Britt. Sandy is a hero, and not just to Sarah. Although Sandy died on Sarah's birthday, August 21, 2007, he is recognized for his sacrifice on the altar of freedom. You see, Sandy died by an improvised explosive device in Baghdad, Iraq, while on patrol supporting Operation Iraqi Freedom.

Sandy, born in England, settled with Sarah in Lake Mary, Florida. While at Lake Mary High, he played on the soccer team. After graduation, Sandy enlisted in the Navy, where he was a Diver, Second Class, performing underwater demolition. After honorable discharge from the Navy, Sandy came back to Central Florida to work in local police efforts. Wanting more, Sandy enlisted with the U.S. Army. At the time of his death, he was an infantry squad commander serving as a Noncommissioned Officer with the rank of Staff Sergeant with the 1st Battalion, 325th Airborne Infantry Regiment, 2nd Brigade Combat Team, 82nd Airborne Division in Fort Bragg, N.C. Sandy was only 30 years old.

Sarah last spoke with Sandy on August 19th, two days before he died. She was going to send him some items that he missed – special toothpaste and magazines. Since his death, she has received many calls and letters from military and civilians alike, all telling her what an exemplary soldier Sandy was and how much he will be missed.

Service to his country was not Sandy's only passion. Sandy loved joking around, martial arts, surfing, and the beach. Because Sandy loved the beach, Sarah last saw Sandy in Myrtle Beach in June while he was home from Iraq. He loved his family. In fact, his last words as relayed to Sarah were, "Tell my wife and son, Taylor, and mom that I love them." He then died from wounds sustained from the IED.

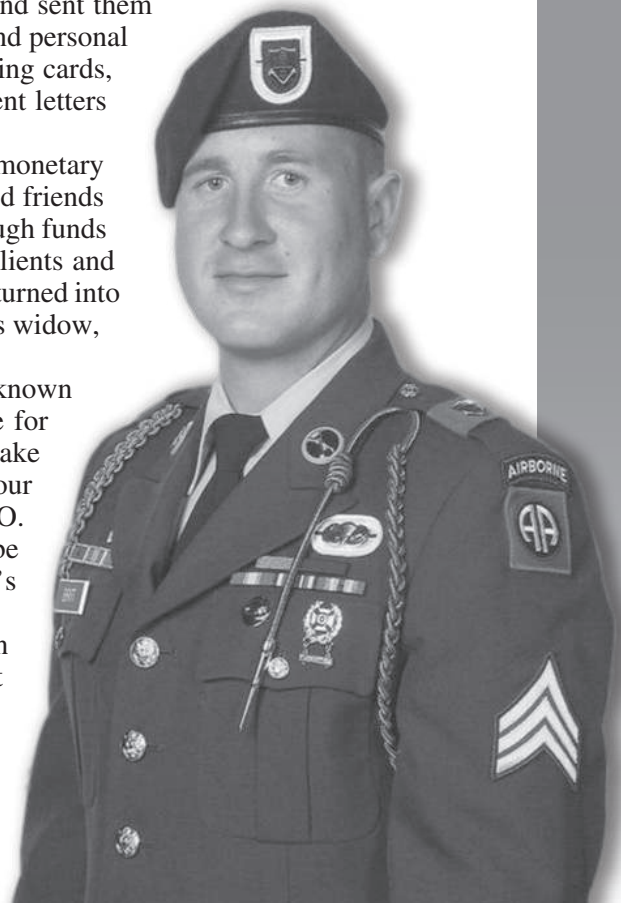
Previously, the Graham, Builder, *et al.*, family had adopted Sandy and his unit. Starting before Sandy's deployment, the Firm's employees bought Sandy's unit's "Yellow Ribbon" magnets, and support then blossomed. The Firm regularly collected items and sent them to Sandy for his unit. Some items were necessities, such as socks and personal hygiene products, while others were fun, such as candy, gum, playing cards, books and magazines. Legal assistant Sandie Wade's son even sent letters - Sandy was his pen pal.

Upon learning of Sandy's death, the Firm went into action. A monetary collection began to have food delivered to Sarah and her family, and friends descended on her home to comfort her. By mid-day, there were enough funds to send two weeks' worth of dinners. As the day wore on, Firm clients and friends began sending funds as well. A simple food collection fund turned into the "Sandy Britt Memorial Fund" to benefit Sandy's loved ones: his widow, Valorie, and five-year-old son, Taylor.

The Firm continues to receive funds, from known and unknown senders. Many donations are accompanied by notes of condolence for Sandy's loved ones. If you wish to contribute to the Fund, please make your check payable to the "Sandy Britt Memorial Fund," and send your donation in care of Samuel Nelson, Esq., Graham, Builder, *et al.*, P.O. Drawer 1690, Winter Park, Florida 32790. Condolences may also be sent to Sarah, her husband, Steve, Valorie, and Taylor at the Firm's address.

Sandy's last wishes were followed – he wanted to be buried in Lake Mary, his hometown. He was honored by friends and family at his funeral, complete with full military honors. Nationally, Nancy Grace of CNN selected Sandy as one of her "American Heroes."

Sarah says, "My son will always be a hero to me."



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

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Side Bar

Jessica K. Hew



There is a bit of fall in the air! It's not just football being welcomed back, either! There are a number of annual events coming up with our affiliate bars.

CFAWL's annual New Member Reception will be held at the Downtown Orlando Marriott on October 11, 2007, from 5:30 p.m. to 7:30 p.m. This well attended event is a good way to learn about CFAWL while networking with CFAWL members. If you are interested in the event, contact **Sarah Reiner** at SReiner@moran-shams.com.

PCPBar will be involved in election protection for the 2008 election, including election day, by monitoring a precinct via "Adopt-A-Precinct." PCPBar is seeking poll workers to assist in this effort. Training will begin soon on this very important community project. For information or to volunteer, contact **Aramis Donell** at adonell@circuit9.org.

PCPBar is also working with The Coalition for the Homeless of Central Florida. As a part of their Annual Celebration, the Coalition will embark on an awareness campaign to bring light to the negative impact of violence against women and children. Naomi Judd, a nationally renowned entertainer, speaker, writer and humanitarian, will join the Coalition at the 2nd Annual Celebration luncheon on **Tuesday, November 27, 2007**, from 11:00 a.m. to 1:00 p.m. at the Rosen Centre Hotel on International Drive. For details, contact Debbie Melton with the Coalition at Debbie.melton@cflhomeless.org or 407-426-1265.

CFPA, Inc., will participate in the Alzheimer's Memory Walk 2007 at Lake Eola, on Saturday, October 6, 2007. Join Team CFPA - Dogs are Welcome! CFPA will also be collecting toy donations beginning in November for its annual community service project - XL 106.7 Baby DJ Toy Drive - in an effort to help bring joy this holiday season to needy children here in Central Florida. Please visit the CFPA website at www.cfpa-inc.org for more details.

Please welcome CFPA's new Officers and Board of Directors for the 2007-2008 term: **Cassie Snyder**, CP, President; **Timothy Martin**, CP, CFLA, Vice President/President Elect; **Maria Vargas**, ACP, CFLA, Secretary; **Esther Woolsey**, CP, Treasurer; **Anne Hughes**, CP, NALA Liaison; **Luci Daniell**, Parliamentarian; Board of Directors: **Ken Blanning**; **John Starks, Jr.**; **Janet Mahindroo**, ACP, CFLA; **Regina Barbour**, CP; **Nikki Rodeman** and **Theresa Thomas**. Congratulations!

Have a great October, including that "adult holiday" that's supposed to be for kids: Halloween!

Jessica K. Hew is a partner with Graham, Builder, Jones, Pratt & Marks, LLP. She has been a member of the OCBA since 1995. Please send your submissions to Jessica at jhew@grahambuilder.com.

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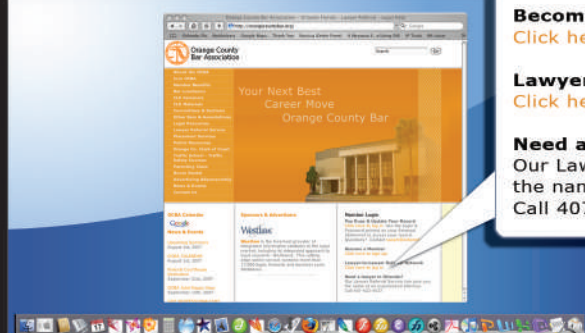
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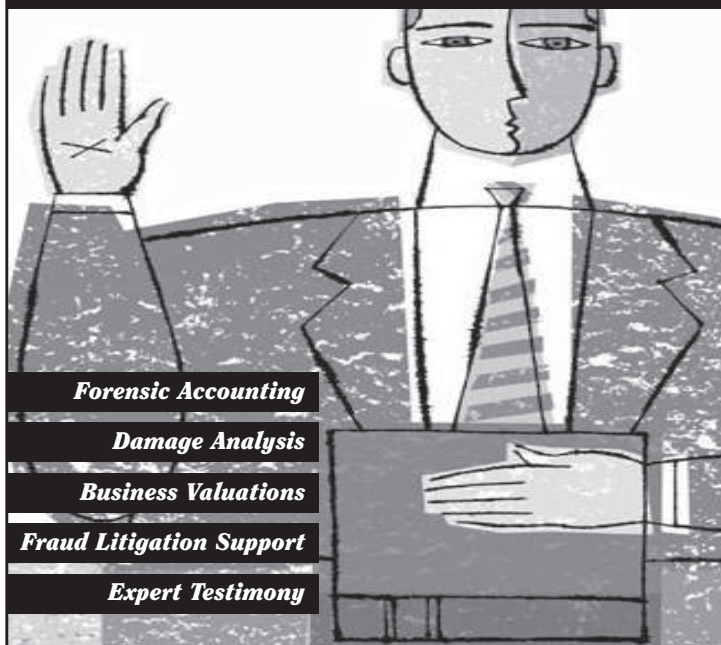
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Don't Think About a Purple Elephant!

Elliott Wilcox



There's something strange about how our brains work. For some reason, our brains don't seem to comprehend the word "don't" very well. In fact, our brains have the power to completely ignore that single word while still hearing every other word in the statement. It happens on a subconscious level. When we hear the word "don't," we ignore that word and follow the rest of the command. If you've ever coached sports, you probably noticed the difference between telling an athlete, "don't fumble the ball" vs. "protect the ball." When you tell a player, "don't fumble the ball," he's more likely to drop it. For some reason, "don't" gets lost in the shuffle, leaving only the command: **"FUMBLE THE BALL!"**

The reason that happens is because our minds latch onto the strongest image available. You use words to create verbal images. The verbal images you create will determine whether your listeners focus on what you are asking for, or if they focus on the complete *opposite* of what you are asking them to do. Here are some other examples of how words can affect imagery and outcomes:

WRONG PICTURE: "You're going to be meeting with our #1 client. Don't screw it up."

RIGHT PICTURE: "You're going to be meeting with our #1 client. I know you're going to handle things professionally."

WRONG PICTURE: "The game is on the line. If I miss this kick, we lose the game."

RIGHT PICTURE: "I'm going to split the uprights, and we'll win the game."

WRONG PICTURE: "These are our most expensive wineglasses – whatever you do, don't drop them."

RIGHT PICTURE: "These are our most expensive wineglasses – hold onto them carefully."

Do you feel the difference between the right picture and the wrong picture? You know that if you tell a guest, "These are our most expensive wineglasses – whatever you do, don't drop them" that the glass will soon shatter to the floor. But when you phrase the same request *positively*, it completely changes the picture you create in someone's mind. Changing the image changes the outcome.

As a lawyer, you are a wordsmith. It is your responsibility to craft words with care and precision, creating verbal pictures that achieve your desired results. Regardless of whether you're speaking to judges, jurors, or other decision

makers, you want to maximize the persuasive impact of your messages. One simple technique you can apply to achieve that goal is to create the right pictures in your audience's mind. You can do that by phrasing your language in the form of positive images, rather than negative images.

Unfortunately, lawyers are notorious for using negative language. Think about criminal defense attorneys, for example. They don't want their jurors to focus on the fact that their client isn't testifying, because they're afraid the jurors will think the defendant isn't testifying because he's guilty. But what do these attorneys do? They tell the jury, "Don't hold it against my client if he doesn't testify." Translation? "If he doesn't testify, hold it against him."

Prosecutors and plaintiff's lawyers make the same mistake. They regularly ask the jury, "Don't hold us to a higher burden of proof than required by law." What do you think the jury is going to do after hearing that?

Judges aren't exempt, either: "Objection sustained. The jury must disregard that statement. Don't pay any attention to that evidence." If you had all day to think about it, you couldn't come up with a better way to highlight that statement for the jury.

To improve the persuasive power of your next presentation, focus on telling your listeners what you want them to do, not what you *don't* want them to do. You can start by reading through the outline or script for your next presentation and highlighting every occurrence of the word "don't." Ask yourself, "What do I want the audience members to do?" Once you have that image clearly in your mind, you can find a better, more positive way to make the same point. The picture that you paint in your audience's mind is likely to be fulfilled, so it is important to determine what type of image you're creating. Don't ask for things you don't want - or, better said: ask for things you want. Focus on creating a positive image, and the persuasive impact of your presentations will improve immediately.

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Elliott Wilcox is the editor of *Trial Tips Newsletter*. To obtain a free special report, "The Top Ten Tips for Trial Lawyers," send an email with the subject line "OCBA" to FreeTips@TrialTheater.com.



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Rainmaking

Market Yourself through Storytelling

Mark Powers



You've heard me say this before: the least expensive, most ethical and effective way to market yourself and your law firm is through a well-structured word-of-mouth marketing program. Unlike print or television advertising, it produces enough trust to generate the highest quality and least price-sensitive clients. When referred clients show up at your office because someone said you were good at what you do, studies show they are more motivated, more likely to pay and will be more loyal in the long run.

What you haven't heard me mention is that word-of-mouth marketing is also effective because it taps into a very basic urge. An urge most of us find irresistible. What is it?

It's the urge to tell our stories; to talk about what's happening with the world, the workplace, and, especially, with our lives. Consequently, the river of information flowing through everyday communications the world over is enormous. And on close examination, the narrative device used to convey much of the information will be some form of a story.

As it turns out, this is no accident. Listening to stories is how we learn.

"Stories are one of the oldest and most persistent forms of communication," explains Richard Stone of the StoryWorks Institute, located in Winter Park, Florida. "In fact, they are so much a part of us that the human brain is hardwired to learn best when stories carry the message." A look around will confirm his words. In our modern society stories are everywhere. They provide the plots for books, movies, theater, and television shows. The twenty-four hour news channels bring you the *stories* of the day. The best teachers, leaders and communicators have always recognized the importance of storytelling and have used them to convey lessons, messages and inspiration. A well-told story has the power to evoke images and fill the listener with emotion.

Because of this, stories achieve what no other form of communication can. Harness the power of storytelling in your word-of-mouth marketing program and capitalize on the receptivity built into those you want to educate about your service. Use stories in conversations with potential clients to demonstrate your expertise, with referral sources to illustrate how you can help their clients, and in social settings to educate people about your firm. "Look for the drama in your everyday actions to formulate your stories," says Stone. "Just as a good author can find a story where others see only the commonplace deeds of ordinary people, it's possible for each of us to frame our work in heroic terms. Stories are your narrative assets."

According to Stone, a well-crafted story about why you became an attorney, why you are compelled to help people or how you fought to succeed in spite of great difficulty becomes an important conversational strategy. These stories are verbal commercials for you and your services. These narrative

assets are the hidden gems of your word-of-mouth marketing program.

How can you harvest the wealth of experiences you've had in order to craft your own stories?

Read the following prompts and write down the ideas that come to mind when you hear them:

- I became a lawyer because...
- I'm passionate about my practice area because...
- The type of people (your primary client) I like to help is...
- The reason I like to help these people is...
- I make a difference for people because...
- The most interesting problem or challenging conflict I've had to resolve is . . .

The stories you tell, whether short or long, reflect your values and your ideals – and often are successful because they do this indirectly. At Atticus we call stories the "stealth bombers" of marketing because you can convey a great deal of information about yourself and your practice and entertain your listener at the same time. Your stories are powerful teaching tools and can teach people about you as a lawyer, demonstrating what you value, whom you help and how you help. Stories that are humorous show that you are human. You don't have to be the hero in every story; stories that are self-deprecating can be engaging, humbling and among the most memorable.

The spirit of your legal approach and the values that form that approach are encoded in your conversations - make powerful stories, or your "narrative assets," one of your most powerful rainmaking assets. Beyond this, Richard Stone suggests we are each driven to create the story of our own life and practice. "Fundamentally, every business is a stage for the enactment of human myths. We found, lead, manage, nurture, serve, suffer with, and exalt our businesses not just to create wealth and financial security. At the heart of every such pursuit is something much more essential and innate to the human spirit - the need to create a story with a satisfying ending."

In your marketing game plan, I recommend having at least three stories you can identify by name that share information about the kind of client you serve, illustrate why you are great at what you do, or allow the listener to relate better to you. As Stephen Covey, the author of *Seven Habits of Highly Effective People*, said: "They don't care how much you know, until they know how much you care."

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

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Book Review

Business and Commercial Litigation in Federal Courts, Second Edition

Joseph E. Foster



When Bob Haig asked me to review his magnum opus, Business and Commercial Litigation in Federal Courts, Second Edition, published in 2005 through the joint efforts of West and the American Bar Association Section of Litigation, I quickly ascertained that: (a) it was very long and, (b) it had no pictures. Luckily, my firm had a cadre of dedicated summer associates, eight this year. Shamelessly utilizing my senior status at Akerman Senterfitt, I prevailed on Patricia M. ("Patti") Flanagan (3L - Stetson University) and Kimberly A. Lopez (3L - University of Florida) to use the treatise and then report to me on what they thought of it. After using it, they said:

All lawyers have their own series of start-to-finish research tools that they are accustomed to using in their practice. However, it is time for lawyers involved in federal practice to add a new book to their repertoire: *Business and Commercial Litigation in Federal Courts, Second Edition*. This treatise is a novelty among the resources available. The assemblage of authors by the editor-in-chief Robert L. Haig, himself an accomplished author and partner at Kelley Drye & Warren, LLP in New York City, is spectacular. Among the series' authors are 17 distinguished federal judges, the cream of the commercial litigation bar, and some of the most renowned lawyers practicing in the federal courts. Under Haig's guidance, the works of the 199 seasoned authors come together as a cohesive whole. It is unlikely that any book on your shelf – or in your library – covers federal civil procedure and substantive law, in areas most commonly encountered by commercial litigators, quite like this one. By leading the reader to key statutes, major cases, and other secondary sources, this new tool allows readers to gain efficient and effective access to the answers they need.

There are many aspects of treatises which will persuade lawyers for or against incorporation into their collection. Three things make this series stand out: 1) the focus of the subject matter on federal practice, 2) the expertise and credibility of the authors of the various sections, and 3) the broad scope of the topics covered.

This eight-volume series, with 96 chapters, is essentially a step-by-step how-to guide on litigating commercial cases in federal court. The beginning chapters steer you through various federal procedural matters, pleadings, discovery, motions, trial, and appeal. Subsequent chapters contain an

extensive range of substantive topics encountered in commercial cases. But, the chapters do more than simply recite the law. Throughout the book, the authors have focused on the interplay between the rules of procedure and substantive law, the strategies to be considered, and the advantages and disadvantages of certain actions. With such depth and overview, the series is the essential tool for both the federal court neophyte and the veteran litigator.

The Second Edition includes several tools that take the guesswork out of finding what you need. The topical index and table of cases provide a great starting point for any research task. There is a separate volume for tables and indexes that provides easy navigation within the confines of the eight volumes. The table of laws offers an index based on the commonly used names of federal rules and laws, and provides a comprehensive list of sections in which the rule or law is cited. There is also a separate appendix with tables of all jury instructions, forms and rules, and cases included in the treatise.

Business and Commercial Litigation in Federal Courts, Second Edition, is a must have for lawyers involved in federal practice. Whether for the in-depth analysis, or for the broad scope of topics covered, it is bound to be one of your most useful tools. If all else fails, the pristine presentation of eight volumes of hardcover, navy blue and gold books on the office bookshelf will surely give off an air of accomplishment and success!

After reading their review, and going through the books myself, I find myself in complete agreement with Patti and Kimberly. Bob Haig's master work is a great asset for your litigation library.

Joseph E. ("Ed") Foster is a senior partner at Akerman Senterfitt in Orlando. He has been a commercial litigator at Akerman Senterfitt since 1979 and is listed in *Chambers USA: America's Leading Lawyers for Business*. He has been a member of the OCBA since 1980.

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Financial Planning

Skill or Luck?

Bill Miller Gives His Two Cents on Index Funds



Andrew C. Orr, CFP®, CLU, ChFC, AIF®

In an interview with *Money Magazine* for its July 2007 issue, Bill Miller, manager of the Legg Mason Value Trust Fund (Ticker: LMVFX) describes his improbable 15-year streak of outperforming the S&P 500. Miller's incredible run has many industry insiders and investors scratching their heads in bemusement as to whether his success is attributed to pure luck, calculated skill, or even poor benchmarking (Legg Mason's Value Trust Fund had risk levels - standard deviation - of a value index, but was compared against the S&P 500).

While Miller credits his own past success in the active management arena to a "modicum of skill," he recommends that investors buy index funds. Specifically, Miller told *Money* that a "significant portion of one's assets in equities" should be comprised of index funds. "Unless you are lucky, or extremely skillful in the selection of managers, you're going to have a much better experience going with the index fund," Miller adds.

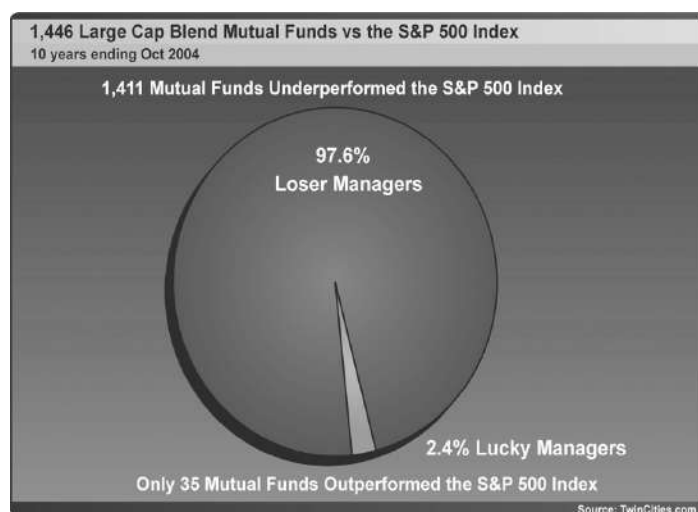
While musing on the extent to which luck played a factor in his record-breaking 15-year streak, he claims that "on a purely random basis, the odds of 15 consecutive calendar years [of beating the market] would be a couple million to one." If Miller's gauge of the likelihood that an investor might choose a successful manager is this hopeless, then clearly it makes more sense to steer clear of actively managed funds altogether and direct all investable assets into low-cost index funds – an investment that will always match the index and eliminate the extra expenses associated with active management, including excessive fees and taxes.

Miller's recent comments resonate with a similar message he delivered in a *Wall Street Journal* interview he gave in January 2005. Specifically, in regards to his "then 14-year streak," Miller confessed to the *Journal*, "[a]s for the so-called streak, that's an accident of the calendar. If the year ended on different months it wouldn't be there and at some point the mathematics will hit us. We've been lucky. Well, maybe it's not 100% luck – maybe 95% luck." The mathematics did catch up with him and Miller's streak ended with a resounding thud in 2006. That year, Miller's fund earned 6.57%, while the S&P 500 returned 15.79%.

Miller, the most famed poster boy for active investing, asserts that risk should be diversified across actively managed funds in addition to index funds. Yet he points out that the problem with active investing is that investors change their managers too often, seeking to capture short-term performance. He asserts that over 10-, 15-, or 20-year periods, "the odds that you will get a manager who can outperform the index over those time periods are about one

in four."

Research does not bear out this figure. A study conducted by TwinCities.com and based on Morningstar data shows that over the 10-year time period from October 1995 to October 2004, the odds of finding an active manager that beat the S&P was less than 3 in 100 - a far cry from Miller's "one in four" estimate. The results of the study are shown in the figure below.



Although Miller suggests some investment in actively managed funds, the daunting odds of beating the indexes appear to suggest that the more rational method is to invest in a risk-appropriate, globally diversified blend of index funds. An investor who does so would avoid gambling away any portion of his or her fortune on a manager whose predictions offer little hope of panning out.

Miller himself acknowledges the challenge of beating indexes because index funds' cost-efficiency facilitates higher expected returns. "Costs are lower, not just in management fees, but also lower in trading costs," Miller asserts.

Armed with a keen awareness of the difficulty of happening upon – and sticking with – an active manager who will defy the odds and deliver a successful long-term track record, investors would be wise to heed the words of Bill Miller – reigning king of active investing – and invest in index funds.

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

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Brian D. Stokes - The Unger Law Group, P.L.

Speaking Engagements

Keith Hammond with Jackson Lewis, and **Lori Milvain** with Latham Shuker *et al.*, recently participated with other attorneys on a panel discussion at the East Orange Chamber of Commerce regarding issues pertaining to small businesses, including employment laws, trademark, copyright and patent laws.

Lora Dunlap and a colleague with Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A. made a presentation to risk managers, claims adjusters and other insurance professionals on August 9, 2007, in Orlando. The topic of discussion was "Understanding the Current CGL Policy." The CLE seminar covered the commercial general liability policy that is maintained by many business owners in the state of Florida.

News to Note

The **OCBA 75th Anniversary Committee** is seeking volunteers for its History Project. The History Project will encompass the compilation of OCBA history and publication of relevant historical articles about past activities and members in *The Briefs*. Please contact Woody Rodriguez at dwrodriguez@aol.com if you are interested in volunteering or have any questions.

Seminar: The Legal Aid Society continues its free **Lunchtime Trainings for Pro Bono Attorneys** series on the following dates: **Oct. 9 - Representing a Tenant in an Eviction.** Michael Resnick, Housing Attorney; 1.0 CLE (pending). **Oct. 23 - Public Benefits and Dependent Children.** Jennifer Wimberly, Public Benefits Attorney; **12:00 p.m. - 4:30 p.m.** (Please note longer time for training); 4.0 CLE (pending). **Nov. 13 - Temporary Custody/Chapter 751.** Catherine Tucker, *Pro Bono* Coordinator; 1.5 CLE (pending). Seminars are held from 12:00 p.m. to 1:30 p.m. at the First Presbyterian Church, 106 E. Church St., Orlando, FL 32801. Pre-registration is **required** for the free lunch and requested for training. For details, visit the OCBA website or e-mail Cathy Tucker at ctucker@legalaidocba.org or Misha Vanderhorst at mvanderhorst@legalaidocba.org.

Seminar: The OCBA Appellate Practice Committee will co-host **The Florida Bar Continuing Legal Education Committee and the Appellate Practice Section's** presentation: *The Art of Objecting: A Trial Lawyer's Guide to Preserving the Error for Appeal.* Date: **Nov. 16, 2007**; Location: Rosen Centre Hotel, 9840 International Dr., Orlando, FL 32819-8122. Course Classification: Intermediate Level. To register, go to: www.FLORIDABAR.org.



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Lost Will

SEARCHING FOR WILL of Richard J. Hillman. Anyone who may have an original or copy of the Last Will and Testament of Richard J. Hillman is requested to contact Attorney Edward C. Czopur at 330-726-2441. Attorney Czopur's address is 945 Windham Court, Suite 3, Youngstown, OH 44512. Richard J. Hillman last resided at 223 Yarmouth Road, Fern Park, FL 32730 and is recently deceased.

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2007

October - November Calendar

OCBA Luncheon • Thursday, Oct. 25, 2007

Raquel "Rocky" Rodriguez
McDermott Will & Emery, LLP

RSVP by Oct. 19th to reservations@ocbanet.org

Luncheon Sponsored by

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October

- 16 Professionalism Committee**
8:00 a.m. • Bar Center
- Legal Aid Society Board Meeting**
11:45 a.m. • 100 E. Robinson St.
- Entertainment Law Committee**
12:00 p.m. • Bar Center
- Inn of Court**
5:30 p.m. • Dubsdread
- 17 Solo & Small Firm Committee**
12:00 pm. • Bar Center
- Insurance Law Committee**
12:00 p.m. • Bar Center
- 18 YLS Luncheon**
11:30 a.m. • Citrus Club
- Paul C. Perkins Bar**
12:00 p.m. • Bar Center
- Westlaw Law Student Reception**
5:30 p.m. • Federal Courthouse
- 19 YLS Joint Young CPA Happy Hour**
5:30 p.m. • TBD
- Family Law Committee**
8:00 a.m. • 425 N. Orange Ave.
- 24 Labor & Employment Committee**
12:00 p.m. • Bar Center
- Business Law Committee**
12:00 p.m. • Baker & Hostetler SunTrust Bldg.
- 25 OCBA Monthly Luncheon**
Raquel "Rocky" Rodriguez
11:30 p.m. • Ballroom at Church Street
- Listening to Lawyers**
Focus Group with Clerk of Court
1:00 p.m. • Ballroom at Church Street

CFAWL New Member Reception
5:30 p.m. • TBD

- 26 Bankruptcy Law Committee**
12:00 p.m. • Bar Center
- 29 CFWAL Board Meeting**
12:00 p.m. • Bar Center
- 30 Family Law Committee Judicial Assistant Luncheon**
11:30 a.m. • OCBA Center
- 31 Business Law Committee**
12:00 p.m. • Baker & Hostetler SunTrust Bldg.

November

- 1 Estate Guardianship & Trust Committee Seminar**
1:00 p.m. • Bar Center
- Elder Law Committee**
12:00 p.m. • Bar Center
- Federal Judicial Relations**
1:00 p.m. • Judge Conway's Chambers
- 2 CFWAL Luncheon**
11:30 p.m. • Citrus Club
- 6 OCALSS**
5:30 p.m. • Bar Center
- 8 Legal Aid Society Board Meeting**
11:45 a.m. • 100 E. Robinson St.
- Real Property Law Committee**
12:00 p.m. • Bar Center
- Social Security Committee**
12:00 p.m. • Bar Center
- YLS Executive Board Meeting**
5:30 p.m. • Bar Center
- 9 Workers' Compensation Committee**
11:45 a.m. • Smokey Bones

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

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

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

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

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

15 YLS Luncheon
11:30 a.m. • Citrus Club

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

Texas Hold 'Em Poker Tournament
5:30 p.m. • Tanqueray's Bar & Grille

16 Family Law Committee
8:00 a.m. • 425 N. Orange Ave.

Legal Aid Society Volunteer Appreciation
9:30 a.m. • Bar Center

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

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

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

Inn of Court
5:30 p.m. • Dubsdread

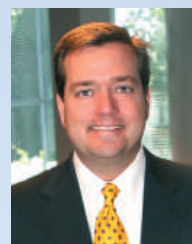
21 Solo & Small Firm Committee
12:00 pm. • Bar Center

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

22-23 Thanksgiving Holiday
Bar Center Closed

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