

the Briefs

A Publication of the Orange County Bar Association



October 2009
Vol. 77 No. 10

Inside this Issue:

OCBA Luncheon

Betty Martinez Lowery
Senior Manager, Minority Business Development
Walt Disney World® Resort

*Jurors Who Tweet, Blog & Surf—
Deciding and Discussing Your Case, Part I*
James A. Edwards

President's Message

Care to Learn More About Your Judges?
Diego "Woody" Rodriguez

OCBA Foundation News

The OCBA Foundation: Working for You
Jessica K. Hew



For the first time in its history, the OCBA is hosting a *three-day* Bench Bar Conference for members and area attorneys! If you've never attended a Bench Bar conference – or even if you have – the forum provides judges and attorneys an opportunity to meet informally to discuss issues important to both the Bench and the Bar.

Daily Schedule

9:00 a.m.-10:00 a.m.	Registration/Breakfast
10:00 a.m.-12:00 p.m.	Session I
12:00 p.m.-1:00 p.m.	Registration/Lunch
1:15 p.m.-3:15 p.m.	Session II
3:15 p.m.-3:30 p.m.	Registration/Break
3:30 p.m.-5:15 p.m.	Session III
5:15 p.m.-5:30 p.m.	Break
5:30 p.m.-6:30 p.m.	Wine & Cheese Reception

All sessions will be held at the OCBA Center
880 N. Orange Ave., Orlando, FL 32801

In addition to gaining valuable insight from members of the judiciary, each session offers attendees an opportunity to interact with other colleagues. Breakfast is offered with Session I, lunch with Session II and a reception follows Session III. An All Day Pass provides access to all three events, which will be catered by Arthur's. Each session provides 2.5 CLE credits.

*Early Registration
Deadline: October 16, 2009*

Wednesday, October 28, 2009

Session I	County Criminal
Session II	Circuit Criminal
Session III	Federal

Thursday, October 29, 2009

Session I	County Civil/Business
Session II	Circuit Civil
Session III	Appellate

Friday, October 30, 2009

Session I	Probate/Guardianship
Session II	Family Law
Session III	Juvenile

Member Early Registration:

\$50 per session
\$125 per All Day Pass (3 sessions)

Non-member Early Registration:

\$75 per session
\$200 per All Day Pass (3 sessions)

Member Late Registration:

\$100 per session
\$175 per All Day Pass (3 sessions)

Non-member Late Registration:

\$125 per session
\$250 per All Day Pass (3 sessions)

Seating is limited. Payment must be sent with registration.
Registration form and additional details are available online at www.orangecountybar.org.

Finch v. Seminole County School Board,
995 So. 2d 1068 (Fla. 5th DCA 2008)
Affirmed denial of taxpayer challenge
to school rezoning plan.

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

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

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

***S.C. Read, Inc. v. Seminole County
School Board,***
932 So. 2d 1255 (Fla. 5th DCA 2006)
Dismissed sunshine law challenge to
school rezoning plan.

Owen v. Owen
867 So. 2d 1222 (Fla. 5th DCA 2004)
Reversed imputation of income with
directions to reduce by 50%.

***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.

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

***Florida Emergency Physicians-Kang &
Associates, M.D., P.A. v. Parker,***
800 So. 2d 631 (Fla. 5th DCA 2001)
Protected liability on multi-million
dollar medical malpractice action.

Chaffin v. Overstreet,
982 So. 2d 11 (Fla. 5th DCA 2008)
Reversed numerous provisions of trust
judgment that violated due process.

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Table of Contents:

President's Message

Care to Learn More About Your Judges?
Diego "Woody" Rodriguez

OCBA Luncheon

Betty Martinez Lowery
Senior Manager, Minority Business Development
Walt Disney World® Resort

Editors' Note

Going Green
LaShawnda K. Jackson and Kimberly D. Healy

Professionalism Committee

Nominations are now being accepted for the 2010 Professionalism Awards

Judicial Relations Committee

2009 Bench Bar Conference
Debra Wilkinson Botwin

OCBA Foundation News

The OCBA Foundation: Working for You
Jessica K. Hew

Legal Aid Society - Pro Bono Highlight

The Teen Parent Education Project
Krista Bartholomew and Stephanie Stewart

Legal Aid Society - What We Do

Pay it Forward
Donna Anne Graf

Diversity Committee

A Challenge for Diversity
Aramis N. Donell, Esq.

Jurors Who Tweet, Blog & Surf—

Deciding and Discussing Your Case, Part I
James A. Edwards

News from the Clerk of Courts

Electronic Case Filing Has Gone Paperless

SideBar

Kristyne E. Kennedy

Hearsay

Kimberly D. Webb

Trivia Contest Photo Spread

YLS on the Move

National Boss Day
Sunny A. Hillary

What Happened to the Immunity in 776.032?

Jon H. Gutmacher

Rainmaking

Word of Mouth Marketing
Mark Powers and Shawn McNalis

Presentation Skills for Lawyers

Who Are You Trying to Persuade?
Elliott Wilcox

New Members

Announcements

Classifieds

OCBA Calendar

the Briefs

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DEADLINE INFORMATION

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

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

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Designer: Catherine E. Hebert Cover: MorgueFile

President's Message

Care to Learn More About Your Judges?

October 2009

The OCBA is undertaking a new program this October – the Bench Bar Conference. Portions of this program will sell out even as you read this article. The concept of bringing judges and practitioners together is nothing new in Central Florida. The OCBA Judicial Relations Committee, chaired by **Debra Botwin**, meets on a monthly basis and routinely invites judges from different practice areas as its guest speaker. Likewise, the OCBA Young Lawyers Section, led by YLS President **Ryan Davis**, hosts the annual Evening with the Judiciary in the spring. That event allows lawyers, both young and experienced, to meet judges in a social setting. The YLS also presents An Afternoon at the Courthouse, the brainchild of Circuit Court **Judge Jeffery Arnold**, which educates young lawyers, law students, and paralegals on the professional culture we have cultivated and expect of our professionals in Orange County courtrooms. Finally, at every OCBA luncheon, judges from all practice areas willingly attend and sit at tables alongside the lawyers that appear before them.

However, none of these programs has been as ambitious as what we are attempting to undertake this year with our **Bench Bar Conference**. The concept for this program was brought to the Executive Council's attention through the diligent efforts of **Marie Marrero**, the OCBA's CLE and events manager. Marie presented us with a model program that could be replicated based on the Bench Bar conferences assembled by the Palm Beach and Hillsborough County Bar Associations. The concept was simple – gather judges and lawyers together to create a better judicial environment. Lawyers learn from the most authoritative local source as to what judges expect in their courtroom while having an opportunity to voice any concerns or raise any issues about procedures which may impair the administration of justice. Our local judges in the Ninth Judicial Circuit are some of the best members of the judiciary in the state, and barring those with scheduling conflicts, every judge we approached, including **Chief Judge Belvin Perry**, has agreed to participate.

With input from Debra Botwin and the Judicial Relations Committee and through the collaborative and diligent efforts of the program's co-chairs, **Meena Hirani** and **Penelope Perez-Kelly**, the planning and organization for this program have transformed a simple idea into a major CLE opportunity. From October 28 - 30, the OCBA Center will become an educational mecca for those litigation attorneys willing to learn about the environment that impacts their clients on a daily basis. Likewise, judges will educate the professionals that appear before them and gain insight into some of the concerns practitioners share.

Each two-hour session will include a panel of judges. Most sessions have a practitioner as the moderator. The three daily sessions are then organized in accordance to practice areas. For example, on Wednesday, October 28th, the three sessions will focus on criminal lawyers and feature presentations from county criminal, circuit criminal, and federal court judges. On Thursday, the emphasis will be on civil practitioners, with presentations from county civil, business court, circuit civil, and appellate court judges. On Friday, judges from the probate, family, and juvenile divisions will be on hand to make presentations and answer your questions.

Each individual session provides CLEs and a ticket for a breakfast, lunch, or reception catered by **Arthur's Catering**. Then there are the discounts. As an OCBA member, you get a discount. If you choose to attend all three sessions in a day and buy the one-day pass, you get a second discount. And if you RSVP by October 16th, you get the early bird discount. Similar programs are available for about \$400 per day from those other CLE providers and typically don't include the food or drinks. The OCBA's package, for members that register by October 16th, is only \$125 for an all-day pass (3 sessions) and just \$50 for an individual session.

Here's the catch. To make this interactive, we are holding this at the OCBA Center, which means our seating capacity is limited to 75 attendees per session. You will not be in a cavernous auditorium trying to voice your question. Nor will you be lost walking around a convention center hall trying to find your next meeting room. Our only concern is parking and, while the OCBA has some parking in the back, we do ask that you either carpool with others attending from your office or that you consider parking in the Wachovia Bank lot located across the street from the OCBA. Because of the limited spots per day, we expect this heavily promoted series of seminars will sell out quickly. So how do you sign up? Just visit the OCBA's homepage and look for the gray box on the lower right of the screen, or contact Marie Marrero at mariem@ocbanet.org for more information.

So, what happens if you can't attend? This year, we have undertaken a partnership with **Florian "Flo" Boehm of Boehm & Boehm**, a legal videographer, to videotape our seminars. Boehm & Boehm offers professional quality videotaping of any event, including depositions, and he has agreed to provide his services at a discount in exchange for advertising in *The Briefs*. We will be able to offer high-quality DVDs if you can't attend the conference in person. You will miss out on the interactive aspects of the program, the camaraderie, and the great food from Arthur's Catering, but you will still get the same CLE credits and you can watch the seminars from in the comfort of your own home. Moreover, I should mention that membership in the Judicial Relations Committee, as with any committee, is free for all OCBA members. If you would like more information about its next meeting, contact committee chair Debra Botwin at DWBotwin@hotmail.com.

A New Section is Coming, A New Section is Coming. . .

Okay, so it does not have the same sense of urgency exuded by Paul Revere's historical run. At the September OCBA luncheon, the OCBA approved and created the Paralegal Section of the Orange County Bar Association. We believe this is a first not only for our bar association, but for any in Florida. On March 1, 2008, The Florida Bar created the Florida Registered Paralegal Program, which created a regulated class of paralegals who voluntarily undergo continuing education, and the OCBA approved



Diego "Woody" Rodriguez

continued page 8



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OCBA Luncheon *October 22, 2009*



Betty Martinez Lowery
Senior Manager, Minority Business Development
Walt Disney World® Resort

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Betty Martinez Lowery proactively provides leadership in establishing key partnerships with minority organizations and develops meaningful, long-lasting and key partnerships within the Hispanic/Latino, Native American and Women markets. She has successfully identified opportunities for new and valuable relationships with organizations like the National Association of Latino Elected and Appointed Officials (NALEO), the National Association of Hispanic Real Estate Professionals (NAHREP), the Association of Latino Professionals in Finance and Accounting (ALPFA), the National Society of Hispanic MBAs (NSHMBA), the American Society of Women Accountants, the Society of Women Engineers (SWE) and more. In her role, she continually utilizes and lends her expertise and passion for diversity and inclusion and education and equal opportunity by collaborating with Walt Disney World and The Walt Disney Company partners to expand support and bring added value in the relationships with minority organizations. Betty's commitment and insight have paved the way for the advancement of many Hispanic/Latino, Native American and Women-based organizations and firms to do business with Disney. She believes in the power of relationships and of promoting and nurturing mutually beneficial, fruitful collaboration.

Betty has more than 20 years of experience in education and human and public relations, with an emphasis on cross-cultural communications. Before joining the Disney team, Betty worked as a consultant where she specialized in diversity and inclusion training and organizational development and human resource/relations consulting. She provided services to such organizations as Progress Energy, Aramark, Leadership Florida, The Orlando Economic Development Commission, The City of Tarpon Springs, Seminole County Public Schools and Walt Disney World (WDW), to name a few. Betty's modules on the Cycle of

Socialization and on privilege, commonly referred to as The Race, are currently used by WDW in their diversity and inclusion training programs.

Betty's prior experience included nine years as the executive director of the greater Orlando Region of the National Conference for Community and Justice (NCCJ), a national human relations organization dedicated to fighting bias, bigotry and racism and to promoting understanding and respect among all races, religions and cultures. In that role, Betty managed a staff of nine full-time employees and was responsible for raising and managing a \$1 million annual budget. While in this role, Betty received the *President's Award for the Pursuit of Excellence*, the first such recognition ever presented to an NCCJ executive director. Her accomplishments included bringing the nationally recognized Dismantling Racism Institute program model from St. Louis to Central Florida. NCCJ partnered with WDW, which provided \$200,000 in seed money, and the program was successfully launched to meet the unique and multicultural needs of Central Florida's diverse community under the name of the "Building an Inclusive Community Initiative." In 2000, this initiative was recognized by the *Orlando Sentinel* as a best practice for the new millennium.

Before assuming the leadership role she held with NCCJ, Betty was an administrator for ten years with Orange County Public Schools where she assumed a variety of leadership roles. She oversaw the district's *Community Resource Volunteers* program, *Un Poquito de Español* program, and later led the district's diversity and inclusive classroom initiatives where she provided programming and training for school administrators, teachers and other school staff. Ultimately, Betty assumed leadership in the district's Community Relations office and served as the district's spokesperson. She was the founder of the nationally recognized and award winning

Language Bank, a program providing translation and interpretation services in 68 languages to the children and families of Orange County through the services of trained volunteers. This program later became a model that was replicated in school districts throughout the nation.

Prior to joining the Orange County Public School system, Betty taught Spanish and remedial reading in a K-5 private Christian school for three years. It was this experience in teaching that led her to the conclusion that she could have the greatest impact on the lives of children by "teaching the teachers." This discovery ultimately changed the course of the rest of Betty's life. Betty often quotes the Swahili greeting commonly used when two folks meet that asks "How are the children?" She believes this is one of the single most important questions that can be asked in any society. She tries to view all children as "at promise" and believes in the inherent power of this view.

Betty was the host for two seasons of *Family Works*, a magazine show focusing on all issues related to the family that aired locally on PBS. She also worked for six seasons as host and executive producer of *Vision*, a community-affairs show that

continued page 6

The Ballroom at Church Street

11:30 a.m. - 1:00 p.m.
225 S. Garland Avenue
Orlando, FL 32801

Please RSVP to reservations@ocbanet.org
by Friday, October 16, 2009

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, October 16, 2009. The OCBA is happy to provide 10 luncheons as part of your member benefits, **but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.** Please keep us up-to-date on your reservation status!



Editors' Note

Going Green

In March of 2010, the OCBA will publish its first ever **specialty edition** of *The Briefs*. As many individuals, law firms, businesses and governments are going "green," the OCBA has decided to dedicate its March edition to "green" topics and issues. We are currently accepting substantive "green" legal and industry articles, as well as other submissions describing

your experiences with going "green" in your personal lives, law firms, law schools or businesses.

If you are interested in contributing to *The Brief's* "green" issue, please contact Kim Healy (khealy@kdbzlaw.com), LaShawnda Jackson (ljackson@rumberger.com) or Peggy Storch (peggys@ocbanet.org). The deadline for all submissions is **January 15, 2010**.

LaShawnda K. Jackson
Co-editor



Kimberly D. Healy
Co-editor

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

OCBA October Luncheon Speaker

continued from page 5

aired on WRDQ Action 27 (the local ABC affiliate's sister station). *Vision* focused on issues of community concern in order to find solutions.

Betty is the published author (Gessler Publishing) of a Spanish-language textbook, *El Arco Iris de la Amista*. Also, she is currently working on her first novel, a semi-biographical story of her experience as a survivor of the Cuban communist revolution and her family's immigration to the United States as refugees in the early 1960s. In 1998, Betty was recognized by *Orlando Magazine* as "Mother of the Year." In 2002, Betty was recognized by Out and Equal Workplace Advocates, one of the nation's leading lesbian, gay, bisexual and transgender (LGBT) organizations, for her role as the first "straight" ally to co-chair the Out and Equal Conference. In 2003, Betty was awarded the Outstanding Service award by the Jewish Federation of Central Florida for her advocacy and inclusion work in the aftermath of the 9/11 attacks. In August of 2005, Governor Jeb Bush appointed Betty to serve on the advisory board for the state of Florida's Early Learning Coalition. In 2007, Governor Charlie Crist reappointed her to a four-year term. She also serves on the boards of the Hispanic Chamber of Commerce, the National Association of Women Business Owners, the Association of Latino Professionals in Finance and Accounting and the WMFE Board of Directors. Betty is also the chair of the Hispanic Heritage Scholarship Fund, which has awarded in excess of \$309,500 to 115 students since its inception in 2001. In 2009, she was recognized by *La Prensa* newspaper with the Lifetime Award for Achievement and Excellence and by *Ahora Orlando Magazine* as one of Orlando's Top 25 most influential Hispanics.

Betty has been married to Darrell Lowery for 34 years. She is the proud mother of four grown children and five grandchildren ranging from 13 years to 3 years in age. She readily concedes that she is an obnoxiously proud grandmother.

Co-hosted by the Hispanic Bar Association of Central Florida.

ATTENTION ALL CENTRAL FLORIDA ATTORNEYS:

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Please submit your written nomination** by **October 31, 2009** to
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Recipient will be announced at
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** Please include your paralegal's name, how long he or she has worked at your firm/corporation, as well as a detailed explanation of the talents or qualities that make this paralegal unique.

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Professionalism Committee

Nominations are now being accepted for the:

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WANTED: Attorney with 15 or more years professional experience; highly principled; highly respected by peers in his/her area of practice; highly reputed for professional conduct; active in the bar and community.

WANTED: Attorney with less than 15 years professional experience; highly principled; highly respected by peers in his/her area of practice; highly reputed for professional conduct; active in the bar and community.

WANTED: Member of the judiciary; highly reputed for encouraging, promoting and improving the level of professionalism in the practice of law; and for service to the bar and the community.

Please submit your nominations for the OCBA William Trickel, Jr. Professionalism Award (15 years or more in practice); the Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award (less than 15 years in practice); and the James G. Glazebrook Memorial Bar Service Award (jurist). Please help us honor our worthy jurists, friends and peers by making your nominations. The **deadline** for nominations is **Friday, December 4, 2009**.

Please submit your nomination(s) for these awards in conventional format by filling out an application form, (available on the OCBA website), or by submitting an e-mail or letter. Clearly identify your nominee, indicate for which award you are making the nomination and explain why your nominee embodies the qualities worthy of receiving the award. Ensure that you provide your contact information so that we may contact you if we have questions. Also, let us know if you desire to have the committee consider a previously submitted application. Forward your nomination(s) or any question(s) regarding the awards to either:

Brant Bittner, Executive Director
Orange County Bar Association
880 N. Orange Avenue
Orlando, FL 32801
Phone: 407-422-4551
Fax: 407-843-3470
Email: brantb@ocbanet.org

Howard D. Friedman, Chair
OCBA Professionalism Committee
2000 E. Michigan St.
Orlando, FL 32806
Phone: 407-836-7544
Fax: 407-835-5103
Email: ctgmhfl@ocnjcc.org



General Magistrate Howard D. Friedman, Chair of the OCBA Professionalism Committee, has been a member of the OCBA since 2005.

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President's Message

continued from page 3

and created the Paralegal Section. The concept was brought to the Executive Council's attention under past OCBA President **Gene Shipley**. After the bylaws were retooled ad nauseum, through the persistence, vision, and patience of two OCBA members in particular, founding President **Lori Spangler** and founding Vice-president/President-elect **Lissa Bealke**, this concept is now a reality. Lori and Lissa have worked tirelessly on the OCBA's behalf to help organize Law Week for at least five of the past six years. The other founding members of this new section include Secretary/Treasurer **Christine Stram** and board members **Amy Guy**, **Phil Gordin**, **Cyndee Dahlman**, **Christina Lee**, and **Catrina Chapin**. Please encourage your paralegals to become registered with The Florida Bar and join the OCBA Paralegal Section. For more information, please contact Lori Spangler at lspangler@ralaw.com.

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

Judicial Relations Committee

2009 Bench Bar Conference

Debra Wilkinson Botwin



The Judicial Relations Committee is one of several committees of the OCBA that has lunch meetings the first Wednesday of every other month at the Orange County Courthouse. This informal BYOB (Bring Your Own Brown Bag) is a setting where judges and attorneys can discuss current topics of interest and courthouse news that applies at large to the general bar. However, the OCBA will take these informal meetings to a new level.

Later this month, the OCBA is sponsoring its first Bench Bar Conference, which will be held over the course of three days at the OCBA center. Each day will consist of three sessions with jurists from various courts conducting each of the sessions. During each session, panels of jurists from each segment of the court will give attendees general guidance, discuss their preferences for procedures, and field questions and comments from the audience. Attorneys who attend will get

information about what the judges for a particular practice area need, like, and want from the litigants that come before them. The OCBA is offering CLE credit for each session.

On Wednesday, October 28th, Session I will be a discussion with county criminal judges; Session II will be with circuit criminal judges; and Session III will be with federal judges. Thursday, October 29th will include panels from the civil/business court, circuit civil, and appellate practice. The final conference day will include judicial panels from the probate/guardianship court, family law court, and juvenile court.

Each day, Session I will begin with breakfast, Session II will include lunch, and Session III will be followed by a wine and cheese reception. All meals will be catered by Arthur's. The judiciary and bar will be able to socially engage in a lovely

setting at the Orange County Bar Association center located at 880 North Orange Avenue.

The OCBA is continuing to lead the Florida legal community with its innovative programming. For more information about this seminar, contact the OCBA at 407-422-4551. For information about the Judicial Relations Committee (JRC), call Debra W. Botwin at 321-206-1713. Because of Veterans Day, the next meeting of the JRC will be held on Thursday,

November 12, 2009, in the 21st Floor Conference Room at the Orange County Courthouse.

Debra Wilkinson Botwin, Debra Wilkinson Botwin, LLC, has been a member of the OCBA since 1989.



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Patrick C. Crowell, P.A., 4853 S. Orange Avenue, Suite B, Orlando, Florida 32806

The Orange County Bar Association Foundation, Inc.'s ("Foundation") mission is "to educate the public about America's rich Constitutional heritage and respect for the law."¹ The Foundation, which was formed in 1982, is the not-for-profit endowment arm of the Orange County Bar Association. In conjunction with the need to educate the public, the Foundation began an ambitious fundraising program in 1996 under the direction of former OCBA president, **R. Lee Bennett** to raise an endowment to allow the Foundation to help fund community educational needs. The Annual OCBA Gala is the predominant donor to the Foundation's endowment.

Although the Foundation is still working toward reaching its endowment goal of \$300,000, the Foundation has contributed to many worthwhile community education projects. These projects include: Teen Court in Orange County's juvenile courts; a public school Drug Awareness program; advertising to promote the bicentennial of the Bill of Rights; an annual teachers' symposium on the Declaration of Independence, the Constitution, and Bill of Rights; the Boy Scouts of America's Law Explorers Post; the Crime and Consequences program of Orange County Public Schools; legal forums for Orange County residents; Boone High School's Mock Trial Team; Florida Law Related Education Association's mock trial competition; Winter Park High School's Forensic Debate team; and the OCBA's Law Week.

In addition to fundraising to help financially support education-related programming, the Foundation also provides services to aid educational goals. So far this year, the Foundation helped the Crime and Consequences program; began a mentoring program with Rollins College for fifteen pre-law students; and participated in the Central Florida Association for Women Lawyers Community Outreach Fair. The Foundation also acts as a conduit for the OCBA Young Lawyers Section Scholarship Program, through which college scholarships are awarded to local high school students who have overcome great adversity in their short lives.

The Foundation is also fortunate to work with other

charitable organizations. Currently, the Foundation will be partnering with the Orlando Breakfast Rotary Club's Blues & Brews event, consisting of blues music, beer tasting, great food, and an auction, on October 23, 2009, at the Historic Dubsdread Ballroom. Although Orange Center Elementary School is the primary beneficiary of the event, the Foundation will have discounted tickets available for purchase by OCBA members and will receive a portion of all tickets sold to OCBA members. (Please see below.) The Foundation will also work with Orlando Breakfast Rotary at its Law Day program at Orange Center Elementary later in the school year.

Internally, the Foundation is currently working on several projects. The Bylaws and Mission Review Committee, chaired by **Cindy Schmidt**, is working on refining and updating the Foundation's documents and goals. **Wiley Boston** is chair of the Finance Committee, which is working on reviewing and managing the current endowment. The Events Committee, chaired by **Kristyne Kennedy**, is working with the Orlando Breakfast Rotary on the Blues & Brews event. Co-chairs **William Umansky** and **Thomas Zehnder** are the liaisons for the Rollins College Mentoring Program.

2009-2010 Foundation Officers and Board

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As a member of the OCBA, you are the Foundation! If you are interested in any of these programs or getting involved with the Foundation, please contact **Jessica K. Hew**, Foundation President, at jessica.hew@burr.com or 407-647-4455. We hope to see you at Blues & Brews!



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

¹Thomas Wert, *chART*, Summer 2007 at 31.

Join the Foundation at the Orlando Breakfast Rotary Club's Blues & Brews, benefitting Orange Center Elementary School, from 6–10 p.m., Friday, October 23, 2009, at the Historic Dubsdread Ballroom. It is an evening to enjoy live blues music and pairings of food from Orlando's top caterers and restaurants with brews from around the world and an incredible live and silent auction. OCBA members are offered a reduced price ticket of \$20, with a portion of the ticket price directly benefitting the Foundation. Please contact Jessica Hew at jessica.hew@burr.com or 407-647-4455 for more information or for tickets. Tickets will also be available for purchase at the OCBA's October luncheon.



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Ms. Roth graduated from Stetson University College of Law, *magna cum laude*, in 2002 and completed a judicial clerkship for the Honorable Paul H. Roney of the U.S. Court of Appeals, 11th Circuit. She also completed a litigation practicum at the U.S. Attorney's Office for the Middle District of Florida, Appellate Division.

Ms. Roth is admitted to practice in all State Courts in Florida and the United States Court of Appeals for the 11th Circuit.

She is a member of The Florida Bar, St. Petersburg Bar Association, National Asian Pacific American Bar Association, and a founding member of the Asian Pacific American Bar Association of Tampa Bay.

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Legal Aid Society ● Pro Bono Highlight

News ● The Teen Parent Education Project

Krista Bartholomew and Stephanie Stewart

Many people are facing credit issues these days, but teenagers? The prevalence of damaged credit among teen parents came as a surprise to attorney **Camille Evans** when, during one of her lessons at Evans High School, many of her Teen Parent students disclosed that they or someone they knew was facing this exact problem.

In fact, in some instances, family members had used the children's names to receive basic utilities like water and electricity and had not paid the bills, thus leading to the children having bad credit. As Camille reflects: "While in the back of their minds they knew it was unacceptable, many seemed resigned to it just being a way of life. I immediately told them that this was wrong. I told them to contact the credit bureaus as well as the utility companies to contest. The fact that this was an option was a surprise to them." Because of this experience, Camille has become even more determined to provide the teen parents at Evans with not only the legal implications but their real life applications. "I want them to really understand what it takes to be a parent and be a success, as well as the broad impact of many of the decisions they will have to make."

The purpose of the Teen Parent Education Project is just that: to provide a general legal education on issues that may impact teen parents' lives and to assist the teen parents in identifying potential legal problems in their lives.

The Teen Parent Education Project was originally an Equal Justice Works fellowship project at Legal Aid through which monthly classes were taught at BETA Center, a local non-profit organization that provides shelter and services for pregnant and parenting teens, including child care courses and an alternative school for teens in grades 7 through 12.

When the fellowship concluded, the program was expanded to other Orange County high schools and became one of several projects OCBA members could participate in for *pro bono* credit. The Teen Parent Education Project is one way members offer their services to the community. The project is unique because the attorneys involved have the opportunity to wear many hats and work directly with a high-risk population. *Pro bono* attorneys involved with the project are placed in various Orange

County high schools that have expressed an interest in participating in our program. The attorneys go out to their assigned high school once a month to teach a topic of law. The attorney coordinates the lessons with the Teen Parent teachers at their matched high school. The topics covered by the attorneys in the project are: role of the law in our lives; parental responsibility; child support; child custody; emancipation; domestic violence; and public benefits. Any issues that the students raise, such as the credit problem Evans students were experiencing, are also covered. Expectant mothers and fathers as well as current parents attend these classes.

Specific goals of The Teen Parent Education Project are to enable the teen parents to make informed decisions and protect their legal rights; to stabilize the economic and legal situations of the teen parents and their children; and to break the cycle of poverty and poor decision-making for their children. The needs of the teens are often far reaching in terms of education on their rights and responsibilities. **Nikie Lomax**, one of the project's participating *pro bono* attorneys, states: "The project works because a teen who is about to be a parent often doesn't know what to expect, so they don't know what to ask. The teen parent curriculum provides them with information and resources, thereby empowering them to be better parents." When teen parents understand their responsibilities under the law and the ramifications of their actions, they will be more likely to create a stable and legally appropriate environment for their child. The goal is to assist these parents with legal issues now so they won't end up with a life full of legal problems in a few years.

Participating Teen Parent teachers speak very highly of each of the *pro bono* attorneys, commenting on how invaluable the attorneys' participation is in making a difference in the lives of these teens. The teachers involved in these classes have reported seeing an increased awareness among the students, an increased interest in doing what is "right" in terms of the law and their children, and an improved confidence in their ability to handle complex family situations that may arise. Likewise, participating attorneys agree that the effect of the project on the students is tremendous. Attorney **Salaam Dreher** states: "I found the program to be very rewarding for me and very informative for the students. In my opinion, the best part of the program is the knowledge these teen parents receive. The excitement is seeing the light bulb come on. They finally understand that they are not just responsible for changing the baby's diaper; they are also responsible for making all of the decisions regarding the best interest of the child."

When asked about her participation in the project, Nikie responded: "I continue to participate in the project because it allows me to have more of an impact on the lives of teens who are about to embark on the incredible journey of parenthood. My work in this project affects their lives and the lives of their children. The goal is to educate the teens and have a significant impact on their understanding of their parental rights, responsibilities and duties, which will hopefully impact their parenting skills and increase their child's chance for a happier, more fulfilling life."

continued page 20

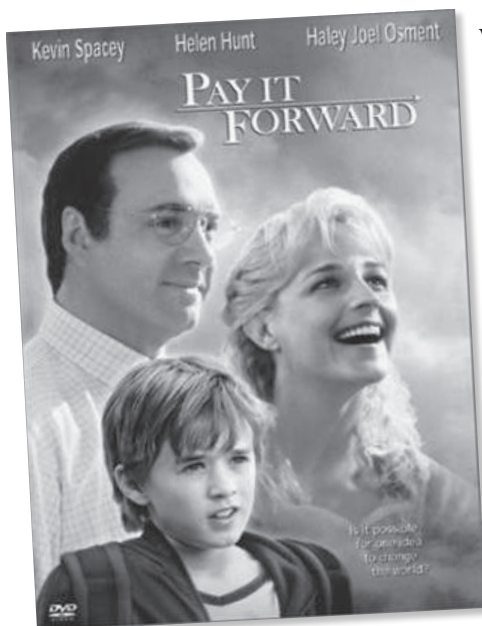
Pay It Forward is a book written by Catherine Ryan Hyde, but it is also an idea. It's an action plan within a work of fiction. But does it have to be fiction? We at the Legal Aid Society hope not.¹

The premise of the novel *Pay It Forward* is one that any person can implement in his or her own life, at any time. It begins with doing a favor for another person – *without any expectation of being paid back*. Indeed, one would request that the recipient of that favor do the same for someone else, ideally for three other people. The unconditional favors can be large or small. As the fictional twelve-year-old Trevor observes, "It doesn't have to be a big thing. It can just seem that way, depending who you do it for." Trevor's concept of paying it forward comes from an extra credit assignment given to him in school. His teacher asks the students to "*Think of an idea for world change, and put it into action.*"²

We at the Legal Aid Society ask you to do just that! Our annual fundraising event is called the "Breakfast of Champions." Pick ten influential clients, business associates and members of your social networks, and invite them to our breakfast so that you and nine Orange County residents can become educated about the types of work the Legal Aid Society performs. Putting aside changing the world, this event will foster your attorney-client relations, build respect and admiration and make clients, business associates and members of your social networks feel important. Simply put, the "Breakfast of Champions" makes good business sense!

Legal Aid is a non-profit charity created in 1961. More than forty-eight years have passed without the need to fundraise in this capacity. Economic times have caused us to take a look at the ways monies are brought in and spent, stretching every penny to its max. This year, cut backs arrived at our door from each historical source of funding. While **Mary Anne De Petrillo** and our board members are great stewards of monies placed in their care . . . we need more.

This generation of donors wants accountability – they want to know that donations are used efficiently and appropriately toward achieving a goal. This new generation of donors has created enormous change in the Non-Profit Organization (NPO) sector. More and more NPOs are finding that they need to proactively communicate with donors and that the traditional moral reasons for giving, in and of themselves, are no longer sufficient to raise funds. Donors are considering "strategic philanthropy" and looking for returns on their philanthropy: How effective is the NPO? What result has the NPO been able to achieve and over



what time horizon? These donors want to know that their contribution makes a direct and personal difference.

Various motivational theories exist to explain why people donate their time and/or money to charitable causes. Using the behavioral reasoning theory, a person's beliefs and values establish the initial motivation to donate. Invariably, the decision to donate to a charitable cause is based upon the potential donor's consideration of three criteria: (1) Will the donation of time and/or money make a positive difference? (2) Does the charity serve a worthy cause? (3) Do I have the time or the money to donate?

Our Board of Directors, along with each and every employee of Legal Aid, shows their collective belief in Legal Aid by personally donating time and money to their organization. Please give us an opportunity to convince you that the Legal Aid Society is an invaluable organization worthy of your charitable consideration. The "Breakfast of Champions" will help you to understand how poverty affects the lives of Orange County's residents by giving you a glimpse into their lives and the meaningful difference Legal Aid has made. Last year, more than 380 people attended the "Breakfast of Champions." This year, more than 45 Table Captains have agreed to participate.

The event will take place at Church Street Station on November 12, 2009. Legal Aid needs event sponsors to help defray the cost of the event, as well as ten to twelve more Table Captains. The event starts at 8:00 a.m. and ends at 9:00 a.m. sharp, with registration at 7:30 a.m. There is no charge to attend; we simply request that as a Table Captain you commit to bringing ten folks and provide us with their names and food selections by October 22, 2009. Our goal is to fill the room at Church Street Station and effectively show the community "who we are and what we do." After all, it is one way to "pay it forward."

To register to become a Table Captain, or for more information about the "Breakfast of Champions," contact Donna Graf, Manager of Development, at 407-841-8310 ext. 3150, or dgraf@legalaidocba.org.

Donna Graf, Manager of Development at the Legal Aid Society, has been a member of the OCBA since 2008.

¹www.payitforwardfoundation.org

²www.payitforwardfoundation.org



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Diversity Committee

A Challenge for Diversity

Aramis N. Donnell, Esq.

Diversity in action requires both diverse membership and diverse leadership. Organizations and professions only succeed in their goals to achieve diversity when the leadership adequately represents the diversity of its membership. Leadership is not limited to title and status. True leadership lies in the power to influence the direction of the organization and profession. Without influence, there is no relevant impact. Goals of diversity must encompass a sincere desire to diversify the mindset of the group. Simply tolerating differences translates into diversity being a chore. Celebrating and inviting differences, on the other hand, offer evidence of genuinely diverse organizations and professions.

The term diversity is all too often tossed around as a buzz word with self-serving motives. Diversity is a concept that requires a paradigm shift. We must move from the ideology that the *mere presence* of a few members of a diverse group equates to diversity. It requires us to arrive at the sacred place of intimacy – the mind, heart, and soul of people. Simply put, we have to care and keep caring. We haven't cared until we understand diversity in terms of value and realize it is required for survival. Inherent in goals of diversity is the acceptance of the principle that it is an ongoing process and not a destination.

Diversity can best be understood as a person who has a need to feel needed and a need to feel understood. When we lack understanding of the concept of diversity, we in turn see no value in it. We use a "checklist" to determine whether we have met the requirements to carry the label of a diverse company, organization, or profession. Check lists offend the very spirit of diversity and cause us to err in our thinking once the checklist is complete.

The installation of our current OCBA president, Diego "Woody" Rodriguez, as the organization celebrates 76 years, marks a moment of celebration in the name of diversity. I challenge us all to elevate the moment of celebration to higher ground as a legacy of diversity. I challenge us to embrace his diverse ideas and experience in addition to his presence. Most importantly, I challenge us to mark and identify the future leaders of the organization who will add to the rich diversity he provides. That is the ongoing process of diversity. Are we up for the challenge?

The OCBA's Diversity committee is excited to impact the legal profession and bring to life the dreams of diversity and equality. Please feel free to contact me at aramis.donnell@gmail.com if you have suggestions and want to offer input.

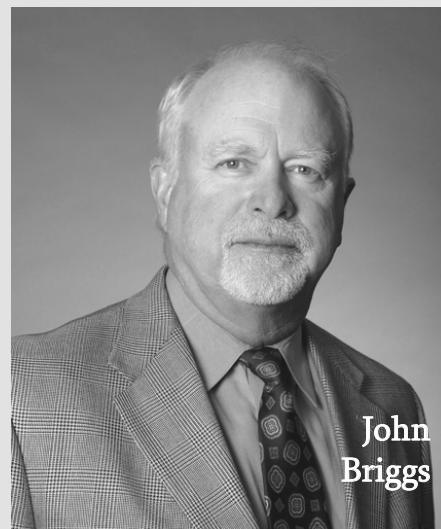
Aramis N. Donnell, Esq., Attorney at Law, has been a member of the OCBA since 2006.



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Jurors Who Tweet, Blog & Surf – Deciding and Discussing Your Case, Part I

James A. Edwards

Overview: *Using a variety of devices, jurors are accessing the internet to gather and share information about the cases they are deciding. Sometimes, it is a single, curious juror; other times the internet sleuthing takes on more importance than the evidence presented in court. Jurors are also sharing their current jury experiences in real time in almost a “play by play” manner. There have even been instances of jurors polling their fellow internet users on how they should vote. Those jurors who tweet, blog and surf are causing serious problems in jury trials. This article looks at some problems, provides background on various internet and social networking sites, and suggests some solutions.*

What’s going on in the jury room?

Civil cases: In Arkansas, a jury trial resulted in a \$12.6 million judgment against Stoam Holdings, a building products company. It quickly came to light that a juror, Johnathan Powell, had been posting Twitter messages, known as “tweets,” regarding the trial as the case proceeded. The defendant requested a mistrial, pointing to a few particularly troublesome tweets: “oh and nobody buy Stoam. It’s bad mojo and they’ll probably cease to exist, now that their wallet is 12m lighter.” And, “So, Johnathan, what did you do today? Oh nothing really, I just gave away TWELVE MILLION DOLLARS of somebody else’s money.”

Criminal cases: After eight weeks of a federal prosecution for alleged criminal irregularities in internet pharmacy sales, the court learned one juror was conducting independent internet research. It seemed to Judge William Zloch that he could solve the problem easily by dismissing the offending juror. However, when the entire panel was questioned, it turned out that eight more jurors were also engaged in surfing the web using their handheld phones, Blackberrys, or i-Phones. A mistrial was declared. *United States vs. Hernandez et al.*, (Southern District of Florida Case No. 06-600027 (March 2009)). Imagine the public and private resources wasted, not to mention the delays caused to other trials.

What were you thinking? Who me?

Recent occurrences suggest that jurors and potential jurors who are really into social networking and blogging and surfing the web have no concept that they are doing anything wrong when they gather and share information via the internet. In May of this year, Al Roker, the NBC *Today Show* weatherman, was called for jury duty and began sending out a stream of “tweets” on Twitter.com that started the night before he was to report. Mr. Roker was excited and positive about jury duty. Once at the courthouse, his tweets included photos of his fellow potential jurors taken in the jury assembly room. When some of his 40,000 followers on Twitter.com saw what he was doing, they told him directly that he shouldn’t be doing it. His initial response was that he was doing nothing wrong and that he had been told only that he couldn’t take photos in the courtroom. Roker later realized the errors of his tweeting and apologized on Twitter and on the *Today Show*.

So, what’s the big deal?

A basic premise of conducting jury trials is that the jury’s decision must be based only upon a controlled, limited set of facts presented in court, which facts are to be evaluated using specific legal standards set forth in the jury instructions. The rules of evidence recognize that there is a lot of “information” out there, but that only some of that information is relevant and reasonably reliable enough to use for decision making. A second premise

underlying the right to a fair trial is the importance of jurors keeping an open mind on the case until all the evidence is in. Are these tech-savvy jurors threatening the fundamental right to a fair trial by their independent internet activities? Is their over-sharing overstepping the boundaries of proper conduct?

Gathering information: Articles, reports, and blogs on a nearly endless variety of topics are available on the internet. Information on a single topic ranges from highly technical to very simple explanations. The information sources also range from peer reviewed journals to highly interactive community bulletin boards. These resources may contradict, confuse, or confound the expert testimony already presented in court; none are subjected to *Frye* or *Daubert* scrutiny, and they may contain information which has been offered and specifically excluded by the court.

A primer on web-based resources for the internet challenged.

To find information on the internet about any topic, you start by going to a search engine, such as Google, MSN or AOL, and typing in your search words that describe what you want to find. The search engine will provide a list of specific articles, information on experts, medical topics, engineering concepts, law firm or company web pages, and other sources of information. Search engines lead to a variety of sources, including general encyclopedic sites, governmental sites, specialized medical or technical sites, legal terminology resources, and so on. Take a tour of what is available when you enter the search term “fibromyalgia” on any search engine, then follow through to several of the thousands of resources identified.

By accessing governmental or quasi-governmental websites, a juror could find out who owns which companies and how each company is doing. Or, maybe a quick look at the company’s website would be interesting? Or the lawyer’s website? A curious juror could look up a party’s convictions, arrests, and police information. Court web pages offering information about a party’s current or prior litigation is easily obtained.

If the medical expert’s testimony was too hard to follow, a quick trip to WebMD.com **might** seem in order. That site provides a wealth of medical information on injury causation, disease, diagnosis, treatment, and prognosis. But, is it relevant, accurate and reliable enough on which to base a jury’s verdict? If internet gathering of information is not prohibited, how can the attorneys properly present and argue their cases when they don’t even know that members of the jury have found their own web-based “expert” whose “testimony” conflicts with everything that has been said in court?

The judge always tells the jury in a sensational case to skip the evening news and not to read newspaper articles dealing with the

trial. But, nobody said there was anything wrong with going on the internet to read archived stories on the newspaper's website or the local television's web page. Regardless of when the news report was first released, it becomes "permanent" if it remains available forever on the web. Reports are often made close in time to events, "breaking news" before the reporters have enough time to really gather facts – accuracy questionable? Some news reports refer to matters specifically excluded from this trial by this judge.

Do jurors dream of fame in high profile cases?

Jurors improperly sharing information

Social networking and blogging

Everybody is familiar with sharing information by sending an e-mail or a text message about a topic. It can be sent to one person or to a group of people on a list. Social networks and blogs allow the sharing of the same information on the internet instantaneously among a huge audience. Here is some information about better known social networking sites.

MySpace was begun in 2003. Each subscriber gets a discreet page or site, with its own URL, where he or she can post an almost endless variety of personal information and pictures that can be "shared" or viewed by others. The MySpace website is searchable to find specific people or those with specific topical posts. The subscriber can employ different security levels to screen who may view posted information. Current "members" are estimated at 150 million.

Facebook was begun in 2004 for use by students at Harvard. Using a free subscription, a user sets up a home page or "wall" which includes chosen information about the user. Others can ask to be treated as the host's "friend" and, if the request is granted, the posts made by the "friend" on the friend's website are automatically added to the first user's "wall." Thus, by accessing a person's Facebook page, you can track not only what the user is discussing, often short messages about daily events from going to a ball game to

getting really drunk, but also whatever the "friends" are posting. Photographs are often shared. Incredibly personal information is often posted for the "friends" to see. Access to a person's Facebook wall is controllable by the user choosing various levels of security or clearance for different "friends." Ask any mother whether she has full access to her daughter's Facebook, then ask the daughter. All your friends get the "news" as soon as you post it, both on your "wall" and on their own "wall." Everything you share with your "friends" is then shared with their "friends" and so on. Personal information can be shared far beyond belief. Current frequent or active Facebook users are estimated at 170 million.

Twitter – According to its website, "Twitter is a service for friends, family and co-workers to communicate and stay connected through the exchange of quick, frequent

answers to one simple question: "What are you doing?" The user creates a personal account and profile.

Once signed in, you tell the world what you are doing, but your response is limited to 140 characters. Your message is referred to as a "tweet." Others on Twitter "follow" you and you can "follow" them. You can block others or be blocked from "following." It is a new status symbol to have a large number of "followers," and reaching the milestone of 100 or 1,000 "followers" is noteworthy for individuals in Twitterdom. Celebrities such as Al Roker or Ellen DeGeneres have tens or hundreds of thousands of "followers." Twitter seems to be a favorite mode of jurors to communicate in real time what is going on during their jury service. Photographs can be posted along with comments. Those following a user can also be directed with a link to other websites with related content from the same user, such as videos posted on YouTube.

YouTube – This site's trademarked catch phrase is "Broadcast Yourself" and accurately describes what the site is about. Anybody can shoot video, upload it to YouTube, describe it and make it available to the world. Those interested in a cer-

continued page 22



Kimberly Sands



Richard Lord



Michelle Jernnigan

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News from the Clerk of Courts

Electronic Case Filing Has Gone Paperless

Attorneys and *pro-se* litigants are no longer required to file a paper copy of documents submitted electronically to the Orange County Clerk of Courts, pursuant to the terms and conditions set forth in Supreme Court Administrative Order AOSC09-24.

The Administrative Order is effective immediately. Previously, those submitting documents through Electronic Case Filing were required to also file a paper backup copy.

The Administrative Order does not alter or supersede any procedure established by the judges of the Ninth Judicial Circuit requiring paper copies of proposed orders and envelopes.

More than 4,940 attorneys have registered for Electronic Case Filing, allowing them to:

- Electronically initiate cases and file subsequent pleadings 24/7

- Complete the process from intake to issuance in hours vs. days
- Receive electronic notice of any action in their cases
- Save money on staff, gas, postage, and other costs
- Be green

More than 8,050 cases have been e-filed to the Orange County Clerk's Office, as have more than 358,970 documents. Currently, all Circuit Civil cases can be e-filed and other case types will be added in the coming months.

For more information, please contact: Carolyn Weber at 407-254-9460 or cweber@myorangeclerk.com, or contact ECF Support at Support@myorangeclerk.com.

Submitted by the Orange and Osceola Clerk of Court's office.

LAS: Teen Parenting Project

continued from page 13

In addition to Legal Aid's Teen Parent Project Coordinators, **Stephanie Stewart** and **Krista Bartholomew**, seven *pro bono* attorneys participated in teaching classes at nine different schools during the 2008-2009 school year. A total of 33 separate classes were taught at the various schools, with a total of 122 hours spent teaching Orange County teen parents. Due to high positive reaction from the school system, as well as increased attorney interest, the Teen Parent Project hopes to expand to 15 Orange County high schools this fall. The high schools participating in the project are Colonial, Evans, Apopka, Winter Park, Olympia, Edgewater, Oakridge, Timber Creek, and Wekiva.

The Legal Aid Society would like to extend our sincere appreciation to those *pro bono* attorneys participating in the project: **Julie Jo Adams, Melissa Cupps, Salaam Dreher, Camille M. Evans, R. Kimbark Lee, Nikie N. Lomax** and **Lee Lombardy**.

Krista Bartholomew and **Stephanie Stewart** are Guardian ad Litem Program attorneys with the Legal Aid Society. Both Krista and Stephanie have been members of the OCBA 2007.



Krista Bartholomew



Stephanie Stewart

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OCBA Luncheon • August 20, 2009 • The Ballroom at Church Street Sponsored by Florida Citrus Sports

Steve Hogan, CEO of Florida Citrus Sports, spoke to 300 OCBA members and guests about the importance of building community through sports, the importance of supporting a variety of downtown entertainment venues, and the growth of Florida Citrus Sports over the years.

John E. Fisher, founding shareholder of Fisher, Rushmer, Werrenrath, Dickson, Tally & Dunlap, P.A., received The Florida Council of Bar Association Presidents "President's Award for Most Outstanding Bar President" for his leadership of and service to the Council.



Although Steve Hogan remained neutral, team rivalry was not without its place!



Cheering FSU are Woody Rodriguez, Steve Hogan, Heather Rodriguez and Judge C. Jeffery Arnold.



In recognition of his support to the Legal Aid Society, Senator Lee Constantine received an award from Norberto Katz.



Representing UF are Tad Yates, Tom Wert, Steve Hogan, Nick Shannin and Liz McCausland.

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Jurors Who Tweet...

continued from page 19

tain topic simply enter search terms in the ever-present search box and then choose which videos to view. To help the user, others have "voted" on the video, which may indicate its quality or the frequency with which it has been viewed. Entering a variety of terms related to "jury service," "jury duty," and "jury verdict," returned more than a thousand results, ranging from "I have jury duty tomorrow" to "I am on jury duty" to "Jury returns verdict against Westboro Baptist Church." And of course, some lawyers are kind enough to share their own triumphs on YouTube. Millions of people worldwide visit YouTube daily. Is there something on YouTube about your trial?

Blogs – There are many types of "blogs." Originally the term "blog" referred to the online equivalent of a single author's journal in which he or she wrote regarding something of interest to the author. Those blogs can be about certain topics, such as matters of law, cycling, medicine, the author's fascinating or boring life, etc. Reportedly, a Boston physician being sued for malpractice was a frequent blogger. He decided to blog before trial about defense strategies, his lawyer's advice, and tips from his jury consultant on how to testify. He continued his blogging during trial about the plaintiffs' lawyer and even members of the jury. How fun was that when it turned out plaintiffs' counsel had been following the blogs and got to question the blogging baby doctor in court? *From lawbooks to*



Facebook: What you need to

know about using social networking sites. J.G. Browning, *Voir Dire* Vol. 16, Issue 1, Spring 2009.

Another type of blog is a collection of public opinions which are posted following news stories posted on a newspaper or television website. For example, most Casey Anthony stories on Orlandosentinel.com are usually followed by a number of comments from readers who express their own take on the story, Casey's innocence or guilt, etc. Is this what jurors should be looking at during trial?

Using the foregoing foundation about different avenues of gathering and sharing information on the internet, Part II of this article will explore a variety of significant past problems that have arisen and will offer proactive solutions to consider for your next jury trial.

James A. Edwards is a partner with Hewitt Wolensky, LLP. He has been a member of the OCBA since 1980 and is a Board Certified Civil Trial Lawyer by The Florida Bar.





On August 20, 2009, fifteen pre-law students from Rollins College met with OCBA President Woody Rodriguez and Executive Director Brant Bittner to learn about *pro bono* opportunities with the bar and at local law firms. Dr. Newman, director of the Rollins program, was enthusiastic about introducing the students to the legal profession. Woody spoke about volunteer opportunities with LRIS, Legal Placement, CDS/Family Law Mediation, membership and events, while Cathy Tucker, Deputy Director/Pro Bono Coordinator at the LAS, provided information about the many possibilities at Legal Aid.



Lawyers and summer law clerks from Baker Hostetler recently helped construct a Habitat for Humanity townhome at the Staghorn Villas project on Silver Star Road. Pictured from left to right: Solomon LaGuerre, Molie DuBose, William Brown, Danielle Brown, Jorge Castillo, Andrew Fisher, Robert Thielhelm, Jr., Andrew Layden.

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October 17, 2009

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For details or sponsorship information, contact event co-chairs Jonathan Stimler (jstimler@lseblaw.com) or Ray Noble (ray@noblelawfirm.com).

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Side Bar



Kristyne E. Kennedy

She's back! That's right, folks – I couldn't stay away from The Briefs altogether, so I agreed to take over as the SideBar columnist. Here's what's happening in the other local voluntary bar associations:

FBA: The **Federal Bar Association** (FBA) will host its Annual State of the District luncheon on Thursday, October 15, 2009, beginning at 11:30 a.m. This event will be held in the lobby of the Federal Courthouse.

HBACF: The **Hispanic Bar Association of Central Florida** (HBACF) would like to thank everyone who participated in and contributed to its first *Scholarship Night with the Judiciary* held on July 30, 2009. The evening was a huge success, bringing in over \$4,000 for the HBACF's newly established scholarship fund. HBACF would like to send special thanks to the generous sponsors of the event as well as the eighteen judges who attended in support of the legal education of local Hispanic law students and the betterment of our legal system. This year's \$5,000 scholarship is being made possible through the HBACF's fundraising efforts and additional generous donations received from the Hispanic Heritage Scholarship Fund of Metro Orlando and other members and friends of the HBACF. The scholarship will be awarded to a deserving Hispanic Barry University law student who has demonstrated outstanding leadership and involvement on campus and in the general community.

CFAWL: On August 26, 2009, the

Central Florida Association for Women Lawyers (CFAWL) hosted its first annual Community Outreach Fair (the "COF"). The purpose of the COF is to educate the Central Florida community about various non-profits in the local area and ways we can become actively involved with them. The event was free to all attendees who enjoyed desserts and appropriately paired wines. Attendees were given a "passport" listing all of the organizations and encouraged to visit every organization to have their passport stamped and become eligible for various door prizes. Upcoming luncheons/events: Mark your calendars so you don't miss CFAWL's upcoming luncheons which are: October 2, 2009 (Florida Hospital-New Cancer treatments and protocols), November 6, 2009 (Anne Franklin-Piper presenting "Holding on to your money when Uncle Sam wants to take more of it") and December 4, 2009 (Holiday Games and Rock Lake Children). Future programs you won't want to miss include a chocolate-making party at Farris and Foster's in Baldwin Park on November 10, 2009 and CFAWL's annual holiday party on December 10, 2009.

FDLA: The **Florida Defense Lawyers Association** (FDLA) named Francis E. Pierce III, a partner at the Mateer Harbert law firm, as its new president. Pierce has been involved with FDLA for more than 30 years. Founded in 1967, the FDLA was formed to bring together civil defense

attorneys and to provide a forum for its members to exchange information and elevate the level of trial practice – thereby promoting the improvement of justice in Florida. "During my term, I want to see members get the most 'bang for their buck' – the best return on their investment," said Pierce. As president, he will uphold the Association's founding principles as both a professional and family-friendly organization, but will also strive to cultivate a high level of practical educational and networking opportunities.

CFPA: The **Central Florida Paralegal Association** sponsors monthly Networking Luncheons throughout the Central Florida area in three different locations: downtown (2nd Wednesday of each month), Maitland/Winter Park (2nd Thursday of each month), and North Orlando/South Seminole (final Friday each month). You do not have to be a member to attend; all are welcome. For more information see the CFPA website at <http://www.cfpainc.com/cfpaevents.html>.

This column is designed to provide information about news and events from other local voluntary bar associations in our community. Please send news or information from your organization to me at kennedyk@jacksonlewis.com.

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



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DAN H. HONEYWELL

The OCBA 5th Annual Happy Hour & Team Trivia Contest

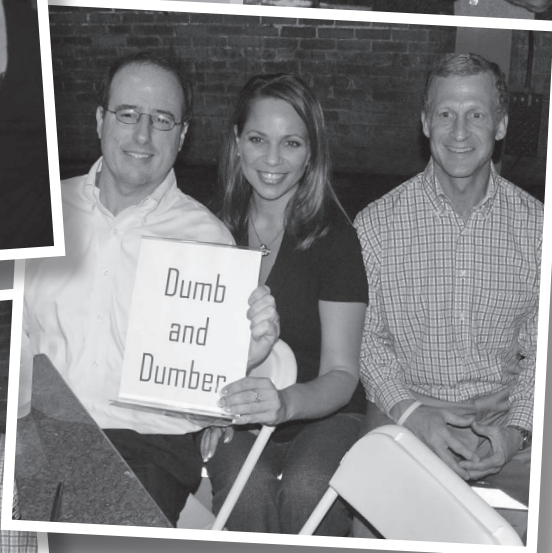
August 13, 2009 • Sligapour's • Sponsored by ProServe

Co-event chairs Shayne Thomas and Bill Umansky, along with emcee Tom Wert, put everyone through their paces with challenging questions that had some folks scratching their head. Despite the fierce competition, everyone had a great time! Big thanks go to Rob Bamberg and John Brady of ProServe.



Winning Team - The Michael Vick Humane Society: Brian Bennett, Nick Shannin and Bret Yaw of Page, Eichenblatt, Bernbaum & Bennett, P.A., and Bill Davis, managing attorney for the Orlando Law Offices of Patricia E. Bologna-Garagozlo.





Hearsay

*When witches go riding,
and black cats are seen,
the moon laughs and whispers,
'tis near Halloween.*

October is here! I don't know about you, but around my house, the air is starting to change. Oh, I know, it's still hot out. We are in Florida after all. But there is a definite and tangible change in the air. Thoughts are turning to cooler weather and longer nights, to ghosts and goblins and bags of sweet candy. The moon takes on a spooky glow. Everyone is in the mood to scare and be scared. Halloween is almost here. And so the holiday season begins.

What's your favorite Halloween tradition? Going trick-or-treating? Watching scary movies? Do you throw a big Halloween party? Or are you that coolest of neighbors who transforms your home into the neighborhood haunted house for one awesomely spooky night each year? There is something so exciting about Halloween night; about knowing that, for that night, anyone can transform themselves into someone or something else - into whatever imaginary character or creature they choose to become for that briefest of times.

As all you Facebookers out there know - I was recently enthralled by the movie marathon running on one of the old movie TV channels. On Judy Garland day, I finally saw *Meet Me in St. Louis*. You know, the one with Judy Garland's beautiful debut of what has become of the song that has become a holiday classic, "Have Yourself a Merry Little Christmas." But it wasn't just a Christmas movie. There were plenty of Halloween pranks and hi jinks going on in the film too. Bragging rights and eternal glory to the first person who can name what the children threw in the faces of their neighbors during the fantastic trick-or-treating scene in that movie. Okay, eternal glory may be an exaggeration, but definitely a shout-out in "Hearsay." My email is below. Meanwhile, for those of you who do not yet Facebook - now is a great time to join and take advantage of membership in the OCBA Facebook group to start or join a discussion, get up-to-date

information on OCBA events, and check out photos of your friends and colleagues at OCBA functions. And, while you're there, be sure to visit the OCBA fan page and become a fan so that all your friends and relatives can see what great things are going on at the OCBA.

Speaking of trivia, after much fanfare, guess who brought home the gold (well, gold-ish trophy anyway) from this year's OCBA Trivia Event? Drum roll please.... Yes! The "Michael Vick Humane Society" team stepped it up this year and took top honors, led by the teams inimitable captain and former "Hearsay" scribe, **Nick Shannin**. Second place went to **Zimmerman, Kiser & Sutcliffe's** team "We Used to Know That..." Taking third place was "Billin' Time" from **Broad and Cassel**. And bringing up the rear with the dubious honor of coming in dead last was the "Master Debaters" team led by captain **Ian Forsythe**. Cheers to all the competitors and spectators! And congratulations to **Tom Wert** in his inaugural role as emcee of the event and to Social Committee chair extraordinaire, **Shayne Thomas**, for a fantastic night! And keep your ears open for news regarding the Social Committee's next great event - the Joint Happy Hour on November 3rd at Embers.

Although **Fisher Rushmer's** team did not bring home the trivia trophy this year, they still have lots to cheer. Congratulations to the firm's founding shareholder and former OCBA President, **John Fisher**, for having received the Florida Council of Bar Association Presidents annual "President's Award for Most Outstanding Bar President." The award recognizes former voluntary bar association presidents who have continued to offer important service to the bench, bar and public. Well done!

The attorneys at **ShuffieldLowman** have been pretty busy this summer too! Congratulations to **Courtney Milam** on her recent LEED (Leadership in Energy and Environmental Design) ac-



Kimberly D. Webb

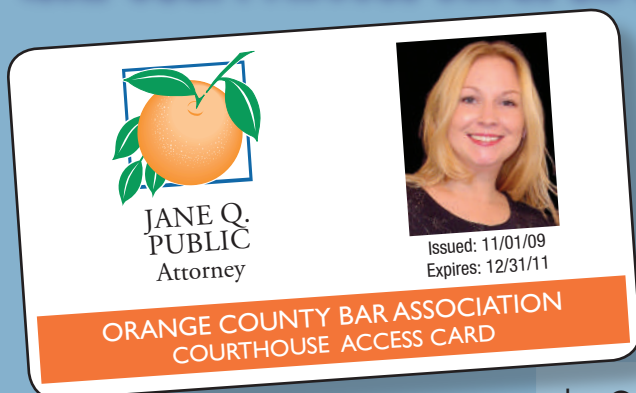
creditation. LEED is a green building certification system, providing third-party verification that a building or community was designed and built using strategies aimed at improving energy savings, water efficiency, CO2 emissions reduction, indoor environmental quality, and stewardship of resources and sensitivity to their impacts. In a time where the necessity of "going green" is becoming ever more clear and imperative, we are proud to see our OCBA members taking the lead! (No pun intended). I wonder if those skills and resources proved helpful to fellow ShuffieldLowman attorney **Douglas A. Goldin** in his search for a new home. Goldin's search for a new home will be featured on the program "House Hunters" in an episode to air in either November or December on Home & Garden Television (HGTV). Good luck with your move!

Speaking of attorneys on the move: Congratulations to **Terryl Blackmon Walker** on her recent appointment as Managing Attorney for **Progressive Insurance Company's** Orlando House Counsel Office. Congratulations also to **Ingrid Keller** on the establishment of her new practice, **Law Offices of Ingrid A. Keller, P.A.**, in Clermont. But if you really want to see some attorneys "on the move," get out and join **HurleyRogner** in Baldwin Park on October 2, 2009, as the firm joins forces with the Mid-Florida Chapter of the National Multiple Sclerosis Society for the Hurley Rogner City Stride 5k where, I am told, you can run, walk, dawdle or mosey around the lake while you help raise funds to battle MS. For race information, registration, donations and sponsorship opportunities, go to: www.hrmcw.com/5k.

As always, keep sending your information, pictures, Hearsay-worthy items, and trivia answers to me at kdbwebb@gmail.com.

Kimberly D. Webb has been a member of the OCBA since 2002.

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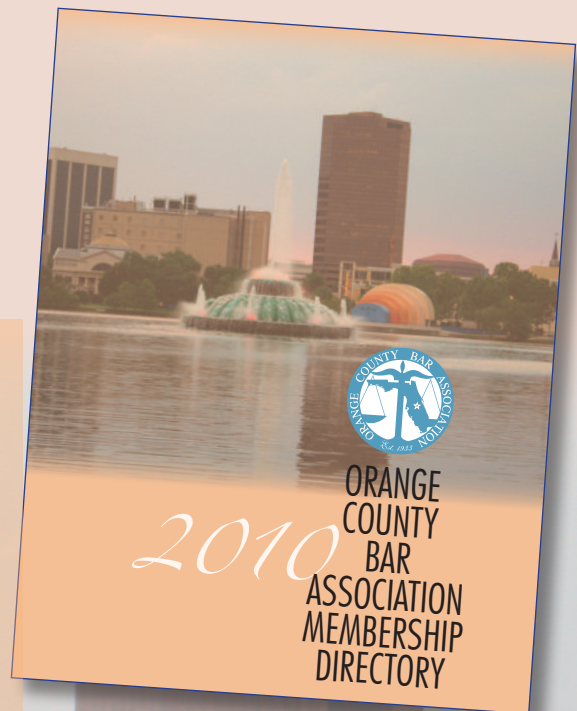
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YLS on the move

National Boss Day

Sunny A. Hillary

Just a reminder that National Boss Day falls on Friday, October

16th this year! In 1958, Patricia Bays Haroski, a secretary in Illinois, registered "National Boss Day" with the U.S. Chamber of Commerce, and in 1962 Illinois Governor Otto Kerner officially proclaimed the day. Was Ms. Haroski just a super secretary who worked for a super boss? Well, she was an appreciative daughter who wanted to honor her boss – her father – whom she worked for at State Farm Insurance Company. She chose October 16th because it was her father's birthday.

Can you believe it is already October?

On September 17, 2009, the YLS had the honor of hearing **State Representative Eric Eisnagle** of District 41 share his experience as a young lawyer and a legislator at its monthly luncheon. Formerly an associate attorney at a national law firm, Eric was elected to the Florida House of Representatives on November 4, 2008. He currently serves on the Criminal and Civil Justice Policy Council, the Civil Justice Policy Committee, and the Health Care Regulation Committee. Eric talked about several bills he has passed as a freshman legislator and his active role in protecting funding for education during the 2009 Session.

Also at the YLS luncheon, the YLS Scholarship was presented to **Christopher Ortega**. A recent graduate of Colonial High School, Christopher impressed the YLS Scholarship Committee with his honesty and his determination to go to college. Christopher will be able to attend Valencia Community College for two years and then move on to a State of Florida university (e.g., University of Florida, Florida State University, University of Central Florida).



The YLS Scholarship was designed to be awarded to a deserving graduate of an Orange County high school from the proceeds of the YLS Charity Golf Tournament. Thank you to **Bona Kim** for leading the YLS Scholarship Committee and congratulations to Christopher!

The September 17, 2009, **YLS Social** was a smash! More than 100 young lawyers gathered in Thornton Park to mingle, first at Graffiti Junktion and then at Burton's. Thank you to **Doug Martin**, his committee and sponsors, the YLS, and Dellecker, Wilson, King, McKenna & Ruffier, for another good time.

Thanks to all who participated in the **18th Annual YLS Charity Golf Tournament** on October 2, 2009, at the beautiful Shingle Creek Golf Club. This event is always one of YLS' biggest events of the year. It is not only a great opportunity to play a round of golf with your clients and colleagues, but it also helps to fund all of the charitable projects that the YLS organizes throughout the year, including the YLS Scholarship and the Backpack Project. This year's chairs were **Amber Neilson** and **Sunny Hillary**.

Thanks to **Kara Rogers** for planning the annual **YLS Family Fun Day** on October 3, 2009, at the Central Florida Zoo! The YLS Family Fun Day is an opportunity for fellow YLS and OCBA members and their families to enjoy an educational and entertaining

experience with various mammals, reptiles, amphibians, and birds from around the world. If you missed this year's event, please contact the YLS about future family fun day events.

The College Park Jazz Fest will take place on October 10, 2009, and the **Second Annual YLS Pre-Jazz Bash**, hosted by Dellecker, Wilson, King, McKenna & Ruffier, LLP, will be part of the evening's festivities. The Pre-Jazz Bash begins at 5:00

p.m. and the concert starts at 6:00 p.m. on Edgewater Drive between Smith and Rugby streets. Bring your picnic basket and grab a blanket or lawn chair, then sit back and enjoy an evening under the stars and the music of two-time Grammy nominated jazz saxophone legend Sam Rivers. For details, contact **Tony Sos** at asos@dwklaw.com or 407-244-3000.

The YLS **October Luncheon** will take place on **October 15, 2009** at 11:45 a.m. Email your RSVP to ocbayls@gmail.com. The cost is \$20 if you RSVP before October 13, 2009, or \$22 at the door; \$12 for law students, government attorneys, sole practitioners, and judges.

If you want to find out more about our section and its committees and events, please call me at 407-388-1900 or email me at sunny@brownstonelaw.com. If you are not receiving the YLS email blasts, send an email to me or ocbayls@gmail.com to sign up.



Former Orlando Magic player Nick Anderson, a community outreach participant and advocate, spoke at the August YLS luncheon. He's shown with YLS President Ryan Davis and Treasurer Lauren Heatwole.



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

What Happened to the Immunity in 776.032?

In 2005, the Florida Legislature passed Florida Senate Bill 436, popularly referred to as the “Stand Your Ground” law. In a nutshell, this law eliminated the “retreat rule” when using deadly force in lawful self-defense, created some important absolute presumptions that gave a person the right to use deadly force in specified situations and, most importantly, from the standpoint of this article – granted immunity from arrest and prosecution through the newly created Section 776.032, Florida Statutes.

The pertinent portions of 776.032 are as follows:

(1) A person who uses force as permitted in s. 776.012, s. 776.013, or s. 776.031 is justified in using such force and is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer . . . As used in this subsection, the term criminal prosecution includes arresting, detaining in custody, and charging or prosecuting the defendant.



Why was this section so important? Florida law protects the right to possess firearms and to appropriately act in one's own defense. Article 1, Section 8 of the Florida Constitution guarantees Florida residents the right to “keep and bear arms in defense of themselves.” Florida Statutes § 790.33 preempts the area of firearms and ammunition regulation to the Legislature. Moreover,

Florida Statutes § 790.06 requires the issuance of a concealed weapons permit to all citizens of the United States who qualify. As of August 31, 2009, more than 627,000 active concealed weapons permits were issued to Floridians, and more than 368,000 firearms were purchased from federally licensed dealers just in Florida. These Florida firearm owners carry a lot of votes, and they are justifiably worried about what might happen to them in the criminal justice system if they have to use their firearms in lawful self-defense.

As much as Florida law might seem to favor firearms ownership and lawful use, mandatory minimum sentencing requirements are absolutely draconian to someone faced with defending themselves with a weapon. Aggravated assault carries a mandatory minimum sentence of three years in state prison. When combined with the firing of a “warning shot,” the mandatory sentence bumps up to twenty years! The passage of Section 776.032

was designed to prevent lawful users of self-defense from getting swept up in the thicket of the criminal justice system. It was supposed to grant immunity from arrest and prosecution when lawful self-defense was used. However, without a pre-trial mechanism in place to determine whether this statutory immunity is applicable to the facts of a given case, the purported “immunity” is a practical failure for any individual forced to defend the appropriateness and lawfulness of his or her actions in a court of law.



Jon H. Gutmacher

How Section 776.032 should be applied remains open for debate. The First District Court of Appeal was the first to venture an opinion on this subject in *Peterson v. State*, 983 So.2d 27 (Fla. 1st DCA 2008). Peterson had been charged with attempted first degree murder. In his motion to dismiss the criminal charges, Peterson argued that his actions constituted lawful self-defense and that Section 776.032 entitled him to immunity from prosecution. The trial court held an evidentiary hearing and applied the same procedures and burdens of proof applicable to a motion to suppress a confession, since Section 776.032 does not specify when or how the appropriateness of immunity is to be determined. After the trial court determined that the facts, as presented, did not establish a basis for applying self-defense immunity as a matter of law, Peterson appealed. *Id.* at 28.

The First District Court of Appeal specifically approved the procedure employed by the trial court, rejected the State's argument that the motion had to follow Rule 3.190(c)(4), of the Florida Rules of Criminal Procedure, and held that in making the changes to Chapter 776, Florida's Legislature had intended to establish a “true immunity and not merely an affirmative defense.” Because of this, a trial court was required to:

[D]ecide the matter by confronting and weighing only factual disputes. The court may not deny a motion simply because factual disputes exist. . . . Likewise, we hold that a defendant may raise the question of statutory immunity pretrial and, when such a claim is raised, the trial court must determine whether the defendant has shown by a preponderance of the evidence that the immunity attaches.

Id. at 29.

While *Peterson* remains the law in the First District, the Fourth District Court of Appeal has taken a contrary position. In *Velasquez v. State*, 9 So.3d 22, 23 (Fla. 4th DCA 2009), Velasquez claimed immunity to a charge of attempted murder and filed a motion to dismiss supported by affidavit. The trial court held a full evidentiary hearing on the motion, determining by virtue of the strong contrary evidence put on by the State, that the Defendant “had not established by a preponderance of the evidence that he was immune from prosecution under section 776.032.” The Fourth District certified conflict with *Peterson*, finding that a motion to dismiss under the immunity statute must be decided in the same way as a “(c)(4) motion” under Florida Rule of Criminal Procedure 3.190. Since the State had presented evidence disputing the factual basis of the immunity,

continued page 35

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Immunity

continued from page 32

the motion to dismiss was properly denied. *Id.* at 24. The Fourth District has since reaffirmed its holding in *Velasquez* in *Dennis v. State*, 34 Fla. L. Weekly D537 (Fla. 4th DCA 2009), with the Fourth District stating: “a motion to dismiss based on statutory immunity is properly denied when there are disputed issues of material fact.”

With the exception of the Third District Court of Appeal, each district has weighed into the debate concerning the appropriate standards applicable to invoking the self-defense immunity created by Section 776.032. In *Gray v. State*, 34 Fla. L. Weekly D1089 (Fla. 5th DCA, May 29, 2009). The Fifth District Court of Appeal squarely sided with *Peterson* holding that the trial court properly applied a preponderance of the evidence standard in denying a motion to dismiss based on Section 776.032. However, the Court refused to determine an issue not raised in either *Peterson* or *Dennis*, namely whether the burden of proof on immunity belonged to the State or the defendant. In *State v. Horn*, 2009 WL 2602222 (Fla. 2nd DCA August 26, 2009), the Second District Court of Appeal aligned itself with the First District, and certified conflict with *Velasquez*. In *Hair v. State*, 2009 WL 2513475 (Fla. 1st DCA August 19, 2009), the First District Court of Appeal reaffirmed its position in *Peterson*. And, in *Govoni v. State*, 34 Fla. L. Weekly D1688 (Fla. 4th DCA August 19, 2009), the Fourth District Court reaffirmed that immunity must be denied when the State files a traverse to the material facts alleged.

Without the Florida Supreme Court’s intervention, it is unclear which district has employed the correct analysis, if any. Assuming the *Peterson* court was correct in using the format of a motion to suppress a confession to analyze the applicability of self-defense immunity, then the State bears the burden of establishing, by a preponderance of the evidence, that a defendant did not act in self-defense. See *Bevel v. State*, 983 So.2d 505, 515 (Fla. 2008) (State must demonstrate by preponderance of evidence that defendant knowingly waived *Miranda* rights). Unfortunately, both the *Peterson* and *Velasquez* decisions refer to the defendant’s failure to establish his or her immunity defense by a preponderance of the evidence. If a motion to suppress standard was applicable, these decisions should have said that the State met its burden, establishing that immunity did not apply by a preponderance.

If there is no procedure on how to handle a self-defense immunity claim, how have courts handled other immunity claims, such as those who claim a Fifth Amendment issue?

The starting point for any immunity question, assuming “true” immunity rather than “qualified” immunity, is the case of *Kastigar v. United States*, 406 U.S. 441 (1972). In *Kastigar*, the United States Supreme Court held:

Once a defendant demonstrates that he has testified, under a state grant of immunity, to matters related to the federal prosecution, the federal authorities have the burden of showing that their evidence is not tainted by establishing that they had an independent, legitimate source for the disputed evidence. . . . This burden of proof, which we reaffirm as appropriate, is not limited to a negation of taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony. *Id.* at 460.

The holding in *Kastigar* was acknowledged by the Florida Supreme Court in Florida in *Holland v. State*, 773 So. 2d 1065, 1072 (Fla.

2000), and followed in *Zile v. State*, 710 So.2d 729, 733 (Fla. 4th DCA 1998), wherein the Fourth District Court of Appeal stated: “This burden of proof, which we reaffirm as appropriate, is not limited to a negation or taint; rather, it imposes on the prosecution the affirmative duty to prove that the evidence it proposes to use is derived from a legitimate source wholly independent of the compelled testimony.”

Therefore, if Section 776.032 immunity is a “true immunity,” as the Legislature obviously intended it to be, and *Peterson* held it to be, it seems that formalized rules or not, Florida courts have not had any problems following the procedure set out in *Kastigar*. But, what if the “immunity” in 776.032 is not a “true immunity”? What if it is a “qualified immunity” as in a federal civil rights action under 42 USC 1983? Or, what if it’s a “statutory immunity” comparable to the Foreign Sovereign Immunities Act (FSIA), in 28 USC 1330?

In that sense, a parallel could be drawn to the procedure in a “true immunity” case, since a defendant who asserts a qualified immunity defense under the Civil Rights Act “is not required to meet its (summary judgment) burden for a claim of immunity. It is sufficient that the movant in good faith pleads that it is entitled to absolute or qualified immunity. Once the [movant] asserts this affirmative defense, the burden shifts to the plaintiff to rebut it.” *Hathaway v. Bazany*, 507 F.3d 312, 319 (5th Cir. 2007). Furthermore, the qualified immunity defense “protects all but the plainly incompetent or those who knowingly violate the law.” *Henry v. Purnell*, 501 F.3d 374, 377 (4th Cir. 2007).

On the other hand, if we take the approach available under the federal Foreign Sovereign Immunities Act, we find a somewhat similar scenario where the initial burden of going forward rests with the party asserting immunity and then shifts to the party opposing it:

[A]lthough a party claiming FSIA immunity retains the ultimate burden of persuasion on immunity, it need only present a prima facie case that it is a foreign state; and, if it does, the burden shifts to the party opposing immunity to present evidence that one of the exceptions to immunity applies. *Kelly v. Syria Shell Petroleum Dev.*, 213 F.3d 841, 847 (5th Cir. 2000).

However, unlike *Kastigar*, in an FSIA hearing the burden of proof always rests with the party asserting the immunity. *Keller v. Central Bank of Nigeria*, 277 F.3d 811, 815 (6th Cir. 2002).

In conclusion, the existing case law fails to resolve those issues pertinent to the immunity question. The practical effect of this inconclusiveness is to create confusion at the trial court level, forcing a potentially innocent defendant into a full-fledged criminal trial. Since *Velasquez* certified direct conflict with the opinion in *Peterson*, the logical conclusion is that sooner or later the Florida Supreme Court is going to have to settle the debate, determine which party really has the burden of proof, and clarify the procedure to be used. Likewise, if the self-defense immunity granted by Florida Statutes § 776.032 is to be more than a collection of empty words, then a defendant must have a direct remedy by interlocutory appeal, prohibition, or certiorari if his or her motion to dismiss is denied. Otherwise, the improper denial of a motion to dismiss forces a defendant into a trial. The questions involved are too important to be ignored. The sooner the Florida Supreme Court resolves the issues, the better.

Jon H. Gutmacher, Jon H. Gutmacher, P.A., has been a member of the OCBA since 1995.

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Rainmaking Word of Mouth Marketing



Mark Powers



Shawn McNalis

With the exception of legal skills and managing your time well, the most important skill in assuring your success is the ability to attract good paying clients. Without good (translate: profitable) clients coming through the door on a regular basis, your law practice cannot survive.

Over the next few months, we will introduce you to a step by-step process for increasing your client base. The techniques discussed are practical and have been time tested in the real world. When you see a tip that you like – try it on! We also recommend the suggested exercises at the end of each lesson and, if you work them throughout the series, you will see the real benefits. Most of the suggested exercises are brief. In order to complete them, block out time on your calendar – then honor that appointment with yourself.

Rainmaking Lesson One

If you review the key elements involved in word-of-mouth marketing, it will come as no surprise that most of the elements involve communication and building relationships. And quite honestly, these are areas where most attorneys excel. “Word-of-mouth marketing” means just that – get the word out about you and your practice to others. Successful marketing often comes down to knowing *Who To Talk To*, *What To Say*, and *How and When To Say It*. Many attorneys fail to market themselves because they miss one of these steps.

Word-of-Mouth Marketing Process



To start, focus first on the *Who To Talk To*. Think about your practice for a minute – who do you need to talk to in order to generate more business? Your clients? Your friends? Your business associates? Not knowing the answer to this question has stopped many good attorneys from making their first marketing effort, yet it is not a difficult question to answer.

It all begins with a profile of your clients. Until you truly know the clientele you serve, you won't know who influences them to do business with you. If, for example, you are an estate-planning attorney, you may prefer to work with high net worth individuals

who own their own businesses. These individuals typically have a strong relationship with their CPA, their financial advisor and their investment broker. If you happen to have a good relationship with one of these professionals, they would be in a position to recommend your services. They would be a referral source, or an influencer, because of their ability to influence clients to use your services.

Who Is Your Ideal Client?

If you understand the profile, otherwise known as the demographics, of your ideal clients, you can work backward, as just demonstrated, to determine who influences them.

It is important to note that you will have a different primary client or “target market” for each of your practice areas. In addition, some attorneys, real estate attorneys for example, may have institutional clients that send them work – such as banks. If this is the case, consider the characteristics of the target institutions, as well as the characteristics of the decision-maker inside the institution.

But let's take this one step further. When you start examining the characteristics of your clientele, you will begin to notice that not all clients are equally desirable. Some pay their bills promptly while some don't pay at all. Some clients respect your advice and even recommend you to others, while others are uncooperative and require an extraordinary level of maintenance.

Think about it. Don't you have both good clients and “problem clients”? This occurs in all practice areas and the inability to distinguish between the two carries with it a high, hidden cost, but more about that later. As an important part of your personal marketing program, you must sharpen your ability to identify the “good” clients. To help you do that, complete the actions outlined in “The First Step” below.

Don't be deceived by how simple this exercise looks – the profiles of the individuals and institutions that you serve are the foundation of your word of-mouth campaign.

“Word-of-mouth marketing will produce the highest quality client.”

The First Step

1. Make a list of all your current clients. Rank them with an “A,” “B,” “C” or “D” rating.
2. Use the list of attributes provided to help you identify the client characteristics for each of your practice areas.

In doing this exercise, many attorneys are surprised to discover that most of the information about their client demographics is easily retrieved from their memory. But, if you want more precision, go through your files to look at the information you have collected on your clients through the last 90 days.

continued page 38

Rainmaking

continued from page 37

Practice Area:
Client Attributes
Age or Range:
Income:
Occupation:
Value of Home:
Asset Value:
Family Size:
Size of Business:
Where They Live:
Where They Work:
Title:
Gender:
Education Level:

It is a good idea to cut out this article and this exercise and begin a rainmaking workbook for yourself. In the next issue we'll discuss how to profit by focusing on your "A" and "B" clients. Most attorneys find this an eye-opening experience – we think you will, too!

Mark Powers, President of Atticus, Inc., and **Shawn McNalis**,

co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and are featured marketing writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

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Presentation Skills *Who Are You Trying to Persuade?*

One of the first and most important rules of effective advocacy is this: “**Know Your Audience.**” Before you walk into any advocacy situation, you should be able to answer three important questions:

1. Who are you speaking to?
2. Who are you trying to persuade?
3. Why?

Often, there are several audiences, not all of whom are physically present in the courtroom: the judge, the jury, opposing counsel, your client, the opposing party, the appellate record, the press, yourself, the local bar, the general public, family or friends, your law partners, courtroom observers, etc.

But which audience will you be addressing? Which audience do you need to persuade? Many lawyers make the mistake of not understanding which audience they’re supposed to be addressing. Here are a few guidelines to help you evaluate your audience and ensure that you do your best to persuade them.

Learn as much as you can (ethically) about your audience.

Google them. Take a look at MySpace or Facebook. Talk to colleagues. Read the judge’s previous opinions. Know the appellate court’s composition and the direction they’ve been heading.

Look directly at the person you’re trying to persuade. Don’t make the mistake of talking to your notes or talking to your flip-chart. Make direct eye contact with whoever you need to persuade. If the eyes are the “window to the soul,” you don’t want to shut the blinds.

Remember why you’re there. Don’t make the mistake of arguing to impress your client so that it looks like you’ve put on a “good show.” You’re there to win. If that means you need to be understated, be understated. If that means you shouldn’t cross-examine a witness, say: “No questions.” If that means you need to let your partner handle a witness, sit silently and let him conduct the cross. At the end of the day, your client doesn’t want a show – he or she wants to win.

Don’t argue to the press. When the cameras enter the courtroom, your ego can push aside your common sense. There’s nothing wrong with wanting your moment in the spotlight, but don’t let it happen to the detriment of your client’s wellbeing. If you need to argue to the judge or the jury, that’s who you need to address. Don’t fall into the trap of talking to the cameras or acting larger than life so that it will play well on the evening news. Keep your eyes and argument focused on the decision-maker in the case. (“Mr. Wilcox, can you speak up? The TV cameras can’t capture what you’re saying?” “With all due respect, your Honor, I’m not talking to them. I’m talking to these folks in the jury box, and they can hear me just fine.”)

Use language that includes everyone in your argument. For example, I like football analogies, but not everyone I’m trying to persuade enjoys (or understands) them. That doesn’t mean I completely exclude them from my argument, it just means that I don’t exclusively depend upon them. I find other arguments to

include so that there’s something for everyone to use.

Don’t assume. We don’t all rely upon the same assumptions, so make sure you understand which assumptions your audience will depend upon when making their decisions. It’s dangerous to assume that your audience sees the world the same way that you do. Are you assuming that the judge knows all the details and procedural history of the case? Are you assuming that the jurors know what an “element” is? Are you assuming they know who the “plaintiff” is and who the “defendant” is? Don’t automatically assume that they do.

Envision the conversations they’ll have when the case is over.

What groups do your audience members belong to? How strong an influence do those groups play upon the person’s decision making? Will they face social ostracism if they decide the case a particular way? After the trial is over, the jurors will talk to their friends and family about what happened. They’ll have to explain their decision. Envision that discussion, and then imagine what arguments you can give them so that they can defend their decision.

Know their reasons for deciding. What needs does your audience have? A judge wants to reach a fair decision; to be upheld on appeal; to follow the law. The jurors want to do their duty, to reach the right verdict, and to protect their preconceived thoughts and beliefs. The audience will change their opinion for *their* reasons, never for *your* reasons. They need to act consistently with their beliefs and attitudes. They don’t want to appear incongruent or intellectually dishonest. Give them a reason to decide in your client’s favor that also upholds their personal belief system, and they’ll be more likely to vote for you than if they have to jump through loops of logic to justify their decision.

If you treat all of your audiences the same, you will be far less effective than you should be. Treat every speaking situation and every persuasive opportunity as if they were unique, investing time to learn about your audience and what matters to them. If you do, you’ll be far more persuasive than anyone else in the room!

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



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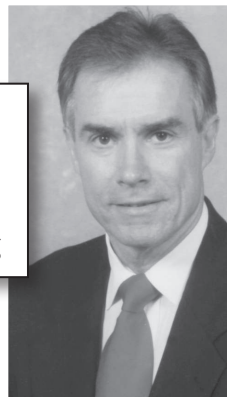
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Speaking Engagements

Linda S. Bittner, CNA Insurance Managing Trial Attorney, presented *Medicare, Medicaid and Mediated Settlements* on September 9, 2009, at the Maitland offices of Upchurch Watson White & Max Mediation Group.

Jon H. Gutmacher was a featured speaker at the Florida Association of Private Investigators Annual Conference on August 21, 2009, at the Grand Hyatt Tampa Bay, in Tampa. He presented *Everything You Need to Know about Firearm and Weapon Laws*.

Published

Dennis Wall, Winter Springs and Orlando - West Publishing Company recently published the 2009 Supplement of *Claim Handling Issues and Property Insurance Coverage Issues: Exclusions*. Dennis is the co-author of *CAT Claims, Insurance Coverage for Disasters* published by Thomson West.

Seminars

Oct. 13 - Family Law and Domestic Violence. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. Speaker: Tenesia Hall, Esq. Details: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Oct. 20 - Navigating Interagencies. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. 1.50 CLE pending. Speaker: Kavita Sookrajh, Esq. Details: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Nov. 10 - Solo & Small Firm Committee Seminar. 1:00 p.m., OCBA Center. Details: Marie Marrero at mariem@ocbanet.org.

Nov. 10 - Representing Undocumented Children. LAS Lunchtime Training 12:00 p.m. - 1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. 1.50 CLE pending. Speaker: Kira Romero Craft, Esq. Details: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

Nov. 13 - Appellate Practice Committee Seminar. *Appellate Writs: Extraordinary Remedies for Extraordinary Problems*. 1:00 p.m. OCBA Center. Contact Marie Marrero at mariem@ocbanet.org.

Nov. 18 - An Occurrence in Florida: Property Damage - CGL Decisions of Supreme Court. Insurance Law Committee. 12:00 p.m., OCBA Center. Speaker: Dennis J. Wall. Details: Marie Marrero at mariem@ocbanet.org.

Other Seminars of Interest

Oct. 23 - Barry University School of Law will present

the 2009 Environmental Justice Summit on October 23, 2009, from 10:00 a.m. to 5:00 p.m. Registration and coffee: 9:00 a.m. The program consists of panel discussions about various aspects of environmental justice and the need for expanded action in this field. The summit is open to lawyers, students, activists, and the community. A wine and cheese roundtable will conclude the event. CLE, including ethics, is pending. Pre-registration is encouraged. To register or for more information, contact Jane M. Goddard at 321-206-5788 or jgoddard@mail.barry.edu.

Oct. 15 - The Orange County Office on Aging, the Orange County Library System, and Channel 9 will be presenting a monthly series of 30-minute seminars about caregiver services available for seniors in Central Florida entitled "Counsel for Caregivers: A Helping Hand of Healing." Seminars will be held at the library's downtown branch. For details, please contact: Jan Reynolds, Orange County Office on Aging, at 407.836.6553. (Oct. 15 presentation: *Where do I go for Senior Services?* Speaker: Mabel Jackson.)



Courtesy: **Marc R. Jacobs**, Michelman & Robinson, LLP

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October - November 2009

OCBA Luncheon

Thursday, October 22, 2009

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October

**2 YSL 18th Annual
Charity Golf Tournament**
8:00 a.m. • Shingle Creek Golf Club

3 YLS Family Fun Day
11:30 a.m. • Central Florida Zoo

7 Criminal Law Committee
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.

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

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

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

**Family Law Executive
Committee Meeting**
11:45 a.m. • Houlihan's

**13 Judicial Assistants /
Magistrate Assistants
Luncheon / Family Law Committee**
12:00 p.m. • Bar Center

LAS Lunchtime Training
Family Law and Domestic Violence
12:00 p.m. • Comerica Bank, 10th Flr.

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

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

15 YLS Luncheon
11:45 a.m. • Citrus Club

Appellate Practice Committee
12:00 p.m. • Bar Center

20 Professionalism Committee
12:00 p.m. • Bar Center

LAS/GAL Lunchtime Training
Navigating Interagencies
12:00 p.m. • Comerica Bank, 10th Flr.

22 OCBA Luncheon
Betty Martinez Lowery
Senior Manager, Minority Business
Development
Walt Disney World® Resorts
11:30 a.m. • The Ballroom at Church St.

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

**28 Bench Bar Conference
(3-day conference)**
9:00 a.m. • Bar Center

**29 Bench Bar Conference
(3-day conference)**
9:00 a.m. • Bar Center

**30 Bench Bar Conference
(3-day conference)**
9:00 a.m. • Bar Center

November

3 Joint Happy Hour
5:30 p.m. • Ember

4 Criminal Law Committee
12:00 p.m. • Courthouse
23rd Flr. Judges' Conference Rm.

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

5 Federal Judicial Relations
12:00 p.m. • Judge Conway's Chambers

**10 Solo & Small Firm
Committee Seminar**
1:00 p.m. • Bar Center

LAS Lunchtime Training
Representing Undocumented Children
12:00 p.m. • Comerica Bank, 10th Flr.

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

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

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

Judicial Relations Committee
12:15 p.m. • Courthouse
21st Flr. Conference Rm.

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

**Family Law Executive
Committee Meeting**
11:45 a.m. • Houlihan's

Appellate Practice Committee Seminar
*Appellate Writs: Extraordinary Remedies
for Extraordinary Problems.*
1:00 p.m. • Bar Center

17 Professionalism Committee
12:00 p.m. • Bar Center

18 OCBA Luncheon
11:30 a.m. • The Ballroom at Church St.

Insurance Law Committee Seminar
*An Occurrence in Florida: Property
Damage – CGL Decisions of Supreme
Court*
12:00 p.m. • Bar Center

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

Appellate Practice Committee
12:00 p.m. • Bar Center

20 Legal Aid Volunteer Luncheon
11:30 a.m. • Bar Center

Family Law Committee
12:00 p.m. • 425 N. Orange Ave., #2310

25 Business Law Committee
12:00 p.m. • Location varies.
Please contact chair.

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

26 Thanksgiving Day - Bar Closed

27 Thanksgiving Holiday - Bar Closed

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