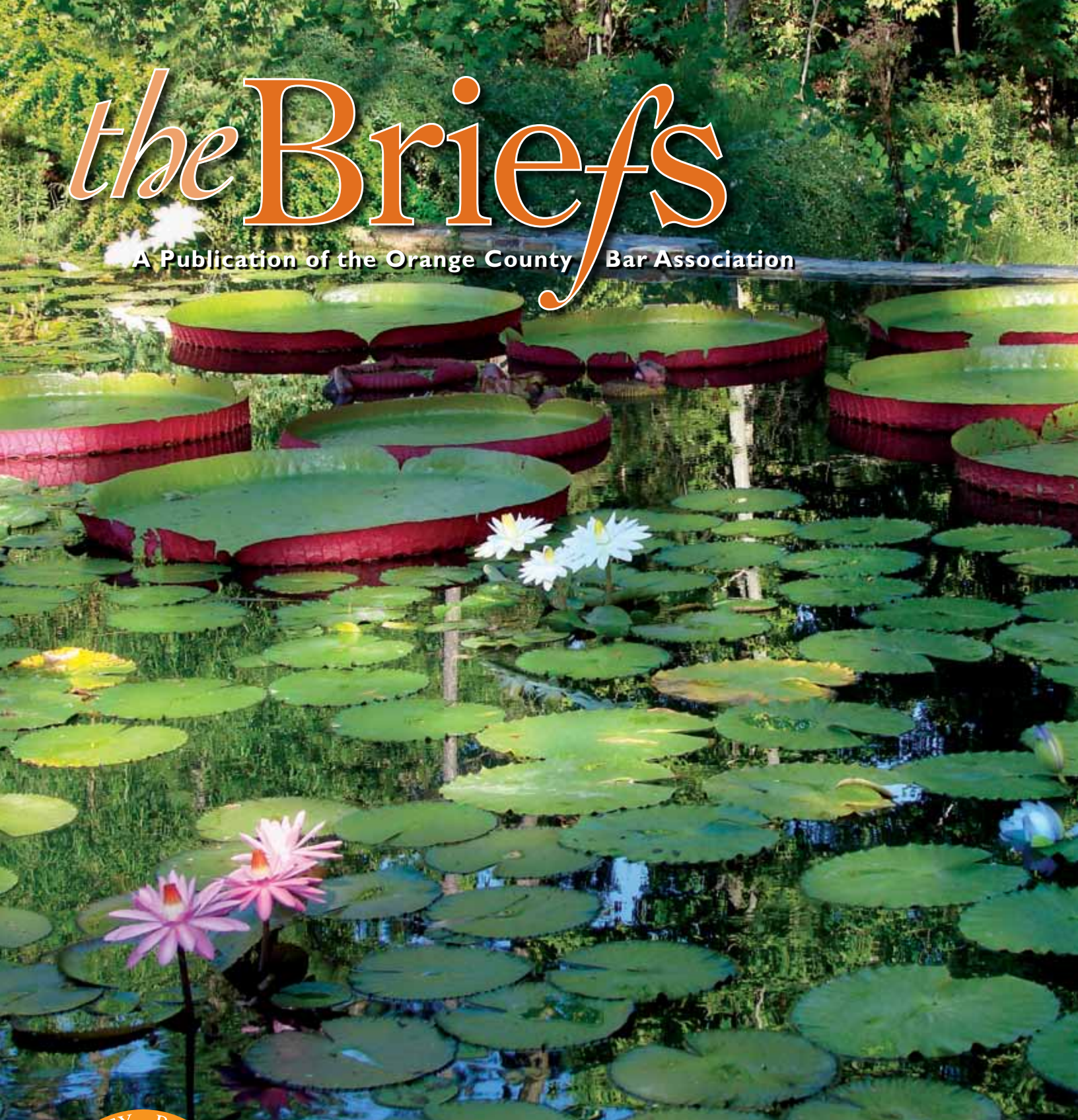


the Briefs

A Publication of the Orange County Bar Association



August 2013
Vol. 81 No. 8

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

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President's Message

August 2013



Paul J. Scheck, Esq.

Be a Part of the OCBA's Commitment to Education

Let us think of education as the means of developing our greatest abilities, because in each of us there is a private hope and dream which, fulfilled, can be translated into benefit for everyone and greater strength for our nation. – President John F. Kennedy

The month of August means different things to different people. For college and NFL football fans, it means that our favorite teams are reporting to camp to begin their preparations for the upcoming football season. For many, it means the last chance for a summer vacation to the beach or the mountains. For families in Orange County, it also means our kids will be returning to school over the next few weeks and, for better or worse, a degree of normalcy and routine will be returning to our daily and weekly schedules.

As the father of three children in the Orange County public school system and member of the foundation board at my children's school, I know first-hand how essential it is for outside organizations to provide additional resources to our children's teachers and administrative staff. Our teachers and administrators are doing an incredible job of trying to do more and more with ever-decreasing supplies and funding, but they need our help. Helping to fill this void in the educational system is one of the bedrock principles on which the OCBA and its programs are founded. For instance, the OCBA's Foundation focuses its efforts on community education and helping our citizens (including students) gain a better understanding of the judicial system. It supports the Florida Supreme Court's call for attorneys to volunteer to assist in teaching civics at Florida's schools through the "Justice Teaching Program." Through this program, Orange County students are taught about our system of government and the basic principles underlying our constitutional institutions and structures. Similarly, through the Foundation's "Training Symposium for Teachers," local educators meet to learn methods for teaching students about the law, including how laws affect individuals and the community. The Foundation has also been a long-running partner with "A Gift for Teaching," a charity that provides school supplies to teachers and classrooms in need. We at the OCBA believe that we are playing our small but important part in helping to ensure that President Kennedy's call of developing the greatest abilities in our children through education is being fulfilled. If you feel called to work with the Foundation in educating our local students and teachers, please contact the OCBA for more information.

Similarly, the OCBA, in conjunction with the Legal Aid Society of the Orange County Bar Association, Inc., provides free, weekly educational seminars to Orange County homeowners with a pending foreclosure case. These homeowners, who are facing the daunting foreclosure process, are provided with an overview of the foreclosure process and its legal implications for them. They are also educated about their options, including mediation, which can help them negotiate a resolution with their lender. Educating homeowners about the foreclosure process, and the options to resolve foreclosures, provides real benefits to all parties involved as resolution discussions, either in mediation or independent of mediation, are realistic and productive. The OCBA seminar also provides homeowners with contact information for *pro bono* programs and services available locally, and informs them on how to avoid foreclosure fraud.

Furthermore, the OCBA is also focused on educating our own members, including our newer members. In June, several members of our judiciary, along with our Young Lawyers Section (YLS), hosted our annual "An Afternoon at the State Courthouse" for more than 80 new practicing attorneys at the Orange County Courthouse. This program, involving several of our local judges, provided helpful hints for area attorneys in their practice before the circuit and county judges of the Ninth Judicial Circuit, as well as providing insight into local judicial practices and procedures.

Just a few days ago, the OCBA hosted its inaugural "New Lawyer Training" program in which our new lawyers and recent law school graduates participated in a dynamic, intensive, two-day training program designed especially for young lawyers. In this program, participants learned from the clerk of courts office, public defender, the state attorney, local judges, and well-respected attorneys how to navigate the court system and become professional, confident, and successful members of the Orange County legal community.

I hope you will agree that the OCBA is committed to the education of our fellow citizens, as well as our own members. So, as our children begin a new school year (and college football looms right

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Michael M. Kest, Esq.

For the Padawan and the Master:¹ What You Don't Know You Don't Know.

When I first sat down to write this article, my intention was to provide new law school graduates (and hopefully new members of the bar) some help on figuring out the things that they don't know that *they don't know*. After I began writing, I realized that my recommendations could be just as useful for those getting ready to hire and, hopefully, mentor these new legal minds. I have been practicing in Florida for four years and while I would not consider myself a "new" attorney, I am still close enough to that time that I remember many of the things I didn't know when I started.

To the new graduates, you have likely taken the bar exam and are probably waiting for the results. Whether you join a large firm, hang out your own shingle, or do something in between, you will learn very quickly just how much you don't know. This is not to say that your law school failed you. It did not. After you are sworn in, you have the basic skills necessary to handle any case in any court in the state. This does not mean, however, that you are competent to do so. Let me explain. Your education taught you the skills to analyze and research an issue and determine whether there is any legal merit to a client's position.

But what happens next? That's where things get a bit more complicated. Let's say you determine that a client has a legitimate legal claim. Now what? Do you take the case? How do you determine whether the damages merit going forward with the case? Are you going to take the case on an hourly basis or contingency fee? Once you have made that decision, do you know how to draft an appropriate retainer agreement? Next, you will need to draft a complaint. Unless you took a writing class after having taken "research and writing," you will probably be asking yourself: How do I draft a complaint? If I figure that out, what's next? I have to file it of course! But...uh...how do I do that? Do I simply walk into the clerk's office and hand it to them, or is there something more to it? Are there filing fees and if so, how much? *In what court* do I file the case? How do I get a summons, and once I do that, how do I get the defendant served, and once I do that, "*how do I find the Count, and once I find the Count, how do I find you, and once I find you, how do we escape...*"²

My point is not to scare all the new attorneys joining our ranks but to explain that there are a lot of things that you didn't learn in law school

that you will need to learn to run a successful practice. For those seasoned attorneys getting ready to hire new lawyers, it is also important to remember how much the new lawyers will need to learn. And remember, all of the above is before the case has even really started.

So now what? There are hundreds, maybe thousands, of these kinds of questions throughout the course of a lawsuit that, as seasoned attorneys, we "inherently" know the answer to. But did we always? Of course not. Someone had to teach us, and it was probably not our law school and it was definitely not the bar.

So where did we get that information? Mostly from others in the legal profession, be they attorneys, judges, judicial assistants, clerks, or legal assistants. Whether those folks were bosses, mentors, friends, or family, we wouldn't be where we are today without them. It is important for those hiring new attorneys to remember that their new hires are like babes in the woods (well-trained babes, but nonetheless...). In other words, sometimes some handholding is necessary. The bad news is that at the beginning, new attorneys will have to be taught almost everything. The good news is that while the learning curve is steep, these new graduates will pick it up quickly.

As this is the professionalism section of *The Briefs*, the natural question might be: What does all of this have to do with professionalism? Simple: The first step to being a professional is knowing the rules and procedure. Professionalism has as much to do with competence as it does with demeanor. Consistent violations of procedure cause prejudice to your client and breed distrust with opposing counsel. Whether you intend to violate the rules or not, when you are consistently late with discovery, fail to send copies of proposed orders to opposing counsel, fail to coordinate hearings, use speaking objections at depositions, or any number of violations of the rules, you are seen as unprofessional. Intentional or not, the effect is the same. Unfamiliarity with the rules does not excuse this kind of behavior and will not earn you trust with the court and opposing counsel.

So what is the take-away from this? First, for those looking to hire new attorneys, try to be a mentor as much as a boss. Asking your associates what they don't know can be helpful, but sometimes they won't even know what to ask. Instead,

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OCBA Luncheon Thursday, August 22, 2013



Justice Ricky Polston

Justice Ricky Polston Chief Justice, Florida Supreme Court

Chief Justice Ricky Polston, who grew up in Graceville, Florida, received his juris doctor, with high honors, from Florida State University in 1986; graduated summa cum laude from Florida State University with a bachelor of science degree in 1977; and graduated with an associate of arts degree from Chipola Jr. College, 1975.

His offices and positions include serving as a Florida Supreme Court Justice from October 2, 2008, to the present; judge of the First District Court of Appeal from January 2, 2001, through October 1, 2008; practicing private law from 1987 to 2000; serving as an adjunct law professor at Florida State University from 2003 to the present; being a Certified Public Accountant from 1978 to the present; and practicing public accounting from 1977 to 1984.

Justice Polston has been admitted to practice before United States District Court, Northern District of Florida; United States District Court, Middle District of Florida; United States District Court, Southern District of Florida; United States Tax Court; United States Court of Appeals, Eleventh Circuit; United States Court of Federal Claims; United States Court of Appeals for the Federal Circuit; and the United States Supreme Court. He served as a Certified Circuit Court Mediator (1997-2003). He also served on The Florida Bar Appellate Court Rules Committee (2003 - 2006).

Justice Polston has received numerous honors and awards, including being the valedictorian of Graceville High School, 1973; being named Florida State University Most Outstanding Accounting Student, 1977; being a member of Beta Alpha Psi Honorary Accounting Society, 1977; serving on the Florida State University College of Law, Law Review 1985-86; and belonging to the Order of Coif.

His legal recognitions and associations include receiving a Martindale-Hubbell AV rating and Bar Register Preeminent Attorneys; being a member of the Tallahassee Bar Association and the Tallahassee Inns of Court (alumni, former treasurer); and serving as treasurer of the Florida Conference of District Court of Appeal Judges from 2006 - 2008.

Justice Polston is active in his church, serving as an elder, deacon, chairman of deacons, and teacher of various student and adult classes. He is also a member of the Florida Institute of CPAs and the American Institute of CPAs.

Justice Polston and his wife, Deborah Ehler Polston, are the parents of ten children, including six adopted children from one sibling group.

The Ballroom at Church Street

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

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Please RSVP by Friday, August 16, 2013
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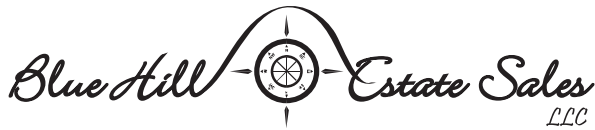
Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, August 16, 2013. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

Please keep us up-to-date on your reservation status!

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Professionalism Committee
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when you give new associates a project, be it filing a new action, getting ready for a hearing, or interviewing a new client, try to walk them through the steps of the process. Remember, short of researching an issue and writing a memo, they probably did not learn in law school how to do what you are asking of them.

For new attorneys, my advice is to get involved. Don't be afraid to ask questions when you need to do so, but try to figure out as much as you can on your own. When asking questions, focus more on learning where to find information than on the answer to any particular question. There are lots of programs out there to help you learn the actual "practice" of law. Don't simply rely on your firm to teach you. The Florida Bar has the Lawyers Advising Lawyers (LAL; formerly SCOPE) program, which allows you to call an experienced attorney in a particular area of law. Check The Florida Bar website for all kinds of other resources. The OCBA is starting the New Lawyer Training Program to help teach these exact kinds of things. In addition, handouts from Judge John Kest's Brown Bag Lunch series offer invaluable practice tips and can be found on the OCBA website. The Inn of Courts has a young attorney mentor program. The YLS is a great example of young lawyers helping young lawyers. Getting involved in any of the numerous committees of the OCBA can be extremely helpful. While the Professionalism Committee is a good

place to start, there are many other options. For those entering solo or small firm practice, get involved with the Solo and Small Law Firm Committee. Interested in appellate practice? Join the Appellate Practice Committee. You can find a committee for almost any kind of law you are going to practice. Folks involved with committees become a great source of knowledge.

So congratulations to all the new attorneys out there. Remember, none of us knew everything when we first started. Questions will come up on a daily basis when you first start practicing. The key is to find some good resources and hopefully a mentor to help you storm the castle walls of the practice of law.

Michael M. Kest, Esq., is chair of the Professionalism Committee. He has been a member of the OCBA since 2012.

¹A padawan is an apprentice from the *Star Wars* series of movies, the master being a Jedi.

²As stated by Inigo Montoya prior to storming the castle in *The Princess Bride*, one of history's more quotable movies.



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President's Message
continued from page 3

around the corner), please remember that educational opportunities are all around us here in Orange County. I encourage each of you to explore ways to use your talents and gifts to be a part of that educational process. Best wishes to you for a blessed and safe August!

Paul J. Scheck, Esq., is a partner with Shutts & Bowen, LLP. He has been a member of the OCBA since 1993.

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Orange County Clerk's Office Expands Call Center, Branch Hours

The Orange County clerk of courts is restoring its call center operation to seven-and-a-half hours a day and its Goldenrod Road branch business to five days a week now that the Florida legislature has approved a stabilized funding model for clerks.

"I am delighted that our call center will again be able to assist customers all day and that the Goldenrod facility will be open each weekday," said Interim Clerk of Court, Colleen M. Reilly. "It's difficult to scale back services when faced with budget cuts, so it is wonderful to be able to restore services."

The call center expanded its hours from 8:30 a.m. to 4:00 p.m. on July 8, and Goldenrod will become a Monday-Friday operation on Aug. 5, open from 8:00 a.m. to 4:00 p.m. The Goldenrod customer service center does a brisk business and is the eastern-most Orange County clerk of court location in the county. The call center is staffed with deputy clerks who are trained to answer a wide variety of calls.

The clerk's office scaled back each of these operations while struggling with legislative budget cuts.

The legislature this year returned clerks' offices

statewide to a more stable funding model. Even though the approved budget has been significantly reduced, the stability of the funding model gives us confidence in our ability to restore service while operating within our allocated budget.

"Technology has changed the way the Orange County clerk of courts does business," Reilly said, "allowing for 24/7 services that include paying traffic tickets, looking up court information, and filing documents online. While in many ways that makes our customers more self-sufficient, it also means our accessibility to customers during business hours is crucial."

"Restoring services we had to cut gives us the best of both worlds. We can better assist customers during the day while expanding electronic options for customers who prefer to do business online," Reilly added.

The call center can be reached at 407-836-2000, and the Goldenrod branch is located at 684 South Goldenrod Road in the Pinar Plaza.

Submitted by Leesa Bainbridge, Orange County Clerk of Courts Office, 407-836-2053.

Orange County Clerk's Office Shares Next E-Portal Phase

The Orange County Clerk's Office will begin processing Criminal, Traffic, and Juvenile cases through the Florida Courts E-Filing Portal by the October 1, 2013 deadline.

All Florida Bar attorneys must file subsequent pleadings in these cases beginning October 1, as mandated by the Florida Supreme Court. New case initiation in Juvenile Dependency cases also must be filed through the portal.

Civil cases have been filed through the portal since April 1, 2013. Therefore, many attorneys are already registered to do so. If you are not registered to file through the portal, please do so at <https://www.myflcourtagency.com/> to begin familiarizing yourself with the system.

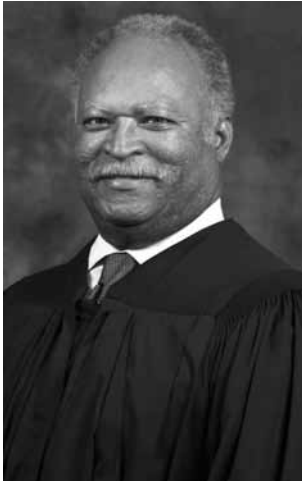
The Florida Bar will provide out-of-state attorneys appearing pro hac vice with a unique number they can use on the portal in lieu of a Florida Bar number.

We are again partnering with the Orange County Bar Association to help test the system and to get valuable feedback. This approach proved fruitful during the Civil rollout earlier this year.

The Florida Court E-Filing Authority has a wealth of information at Florida Courts E-Filing Authority website http://www.flclerks.com/eFiling_authority.html, including instruction manuals, videos, and FAQs.

Submitted by Leesa Bainbridge, Orange County Clerk of Courts Office, 407-836-2053.

The Florida Bar FoundationNews



Hon. Emerson R. Thompson, Jr.

Senior Judge Emerson R. Thompson, Jr. took office July 1, 2013, as president-elect of The Florida Bar Foundation, a statewide charitable organization that provides leadership and funding for justice in Florida.

Thompson has served on the Foundation board since 1995 and previously served from 1991 to 1993. He has served on several Foundation committees, including the Investment, Legal Assistance for the Poor/Law Student Assistance, Medal of Honor Award, and Improvements in the Administration of Justice committees.



Tad A. Yates, Esq.

Orlando criminal defense attorney Tad A. Yates, Esq., has been appointed by The Florida Bar to serve a three-year term on the board of The Florida Bar Foundation. Yates is a past president of both the Orange County Bar Association and the Legal Aid Society of the Orange County Bar Association, Inc. He is also a past member of the board of the First Central Florida American Inn of Court.

The Florida BarNews



Felipe Guerrero, Esq.

Felipe Guerrero, Esq., an attorney with the law firm of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. in Orlando, was selected to be an Inaugural Fellow in The Florida Bar Leadership Academy. Membership to the Academy is extremely competitive; Guerrero was selected as one of 59 inductees out of hundreds of applicants from throughout the state of Florida.

Approved by The Florida Bar Board of Governors this year, the program lasts one year, and its goal is to reach out to lawyers from across the state of Florida and help give them the skills and resources to become leaders – not only in the legal profession, but in their communities. The program includes six meetings at locations throughout the state beginning at the Bar's Annual Convention, June 26-29. The curriculum will focus on developing skills and networking opportunities within the legal profession and having the fellows create projects to put their new skills to use.

Fellows of the Academy have the opportunity to network, interact, collaborate, and build relationships with state and national bar executives.

Guerrero said, "I'm very happy to be a part of the Academy. This will strengthen my leadership skills, help my connections grow, and put me in a position to give back to the legal community in a meaningful way."

Diversity is an important component of the program and fellows were chosen to create a Leadership Academy class that reflects the different regions and populations of the state.

Marc Chapman, Esq., president of Dean Mead, commented: "Guerrero is a perfect fit for the inaugural class. He places a high priority on giving back to his profession through leadership in the Hispanic Bar Association of Central Florida and volunteering for a number of community service projects that benefit those who are less fortunate. His focus on mentoring and passion for learning are just a couple of the traits that demonstrate his commitment as a young leader paving the way for diverse lawyers throughout the region."

Guerrero received his law degree in 2005 from the University of Florida Levin College of Law and his undergraduate degree from the University of Central Florida in 2001.

With more than 95,000 members, The Florida Bar is charged by the Supreme Court of Florida with the regulation of the practice of law in Florida as well as promoting the administration of justice. For more information about the Leadership Academy, visit www.floridabar.org/leadershipacademy.



Robert L. Dietz, Esq.



James A. Edwards, Esq.

Security at Mediation: Revisiting the Issues and Planning for the Future

The January 30, 2013, tragedy in Phoenix involving participants at a mediation provides an opportunity to revisit how mediators enhance safety at the mediations they conduct.

Based on news reports, an office furniture contract with less than \$20,000 remaining at issue was the source of the litigation that resulted in the scheduling of mediation at the mediator's law firm office. The plaintiff was *pro se*. A shootout erupted in the law firm's lobby when the plaintiff apparently decided to resolve matters violently, resulting in the death of the president and CEO of Fusion Contact Center and his attorney, and, later, the self-inflicted fatal gunshot wound of the alleged assailant. Another victim was shot in the hand after being caught in the line of fire.

The perception has been that "life or death" cases are most conducive to violence in a mediation setting. Family law, hotly disputed liability injury or death cases, workers' compensation, cases alleging fraud or dishonesty, and residential foreclosures have been identified as being most ripe for violence. A contract to refurbish and move cubicles and furniture in an office somehow doesn't fit the image.

Follow-up interviews indicated that the alleged assailant was litigious and had anger management issues. That doesn't much help narrow the pool of candidates for violence from the rest involved in mediations. It also doesn't take into consideration the possibility that participants could be mentally ill, on or off mood altering medications, or have a pre-existing psychiatric problem that would make them prone to violence, even though there had been no indications thus far in the litigation.

It would seem that everyone would be protected if the mediation was located at a place that required going through metal detectors and security. However, most courthouses do not have the facilities for a large number of mediations to be scheduled there. If you don't have access to metal detectors and security personnel, how do you take appropriate steps to enhance safety for all the parties in conducting and finishing a mediation?

The first step should be taken well in advance of the day of the mediation. When the mediation is first scheduled, inquire of the parties and pay particular attention to who will be attending the mediation. Is there a history of violence between the parties (most prevalent in, but not limited to, family law matters) or is a party prone to violence

or irrational behavior? The attorneys may or may not be aware of this information, but the mediator is almost certainly not going to know this. This requires inquiry to the attorneys on the part of the mediator. The staff person scheduling the mediation is not the one to ask.

The initial engagement letter of the mediator should raise the issue of potential violence with the attorneys. Include language like:

"The comfort and safety of all participants is important. If there are any special needs to be addressed, please let us know. Likewise, if this is one of those cases where there is even the slightest concern about safety or potential issues of violence, let us know in advance and discuss this with your clients as well."

If the attorneys identify that a particular party could be a security risk, one option would be to have it participate by telephone or better yet, by some form of online video conference such as Skype or some other more sophisticated system. This may or may not be possible under the rules of the court that has jurisdiction over the mediation; however, it is certainly worth seeking a ruling from the presiding judge to depart from the normal routine. After all, the judge would love to see the case get resolved at mediation, rather than having to deal with this same potentially violent person whether in or out of court.

The second step is to think through the ingress and egress of the mediation participants to the location of the mediation. While separate parking locations may not be possible, the mediator can certainly control the location of the parties after they arrive in the mediator's office or the location of the mediation. The first party to arrive can be moved into a conference room that it will use for private sessions. This prevents the potential for confrontation in the lobby, particularly when there is the chance that a party could arrive before its attorney. Staggered exit times at the end of the mediation not only relate to parties running into each other in the bathroom or on the elevator, but in the downstairs lobby or in the parking lot. If one party is the perceived security risk, it should leave last.

The third step relates to the location of the parties while the mediation is being conducted. Having the parties in pre-determined break-out locations without the knowledge of the location of the other(s) only provides a minimal amount of se-

curity. In a small office, the process of elimination will narrow down the alternative locations of the other party rather quickly. The longer the mediation goes, the more chance that the parties will be outside of their private session locations for legitimate reasons (bathroom breaks, refilling coffee cups in the kitchen, making telephone calls or copies, etc.) and have the opportunity to learn the location of the other parties. In these days of far-from-sound-proof walls, voices will also carry and tip off the location of mediation participants (this should also be a concern for everyone involved as it relates to confidentiality!). In many mediators' offices, the conference rooms for breakouts have been placed close together so that the mediator won't have so far to travel.

The fourth step is to analyze your ability to physically separate the parties within your office. Just as most offices today do not have a secured inner office beyond the receptionist's location, the inability to cordon off space within offices, either through the use of doors with locks or doors which require being "buzzed in," leaves all the participants in the same space. This creates security issues should there be a threat. Consider installing locks on office doors adjacent to conference rooms as this may provide some level of temporary security if something should happen. While "open" floor plans have been popular in cubicle-driven office layouts with enclosed offices only around the perimeter, they are a nightmare from a security standpoint as they provide total accessibility between the rooms being used by the mediation parties.

The fifth step is to determine whether the mediation itself could cause the escalation of emotions to reach the boiling point. When the parties are together, whether in general session or due to the type of mediation or style of the mediator, the tone of the proceedings must be carefully monitored. Venting, in particular, has a tendency to ramp up the emotions of parties. While this may be necessary to the long term success of the mediation, it cannot be uncontrolled. Whenever possible, venting should only be done in private session, so that the target of the venting is not accessible to the party that is becoming more and more agitated the longer they vent. If you know of this potential in advance, you can discuss whether there should even be a general or joint session.

The attorneys in general session must also be mindful of the possible ramifications of inflammatory speech in their presentations. Calling somebody a good-for-nothing, lying, cheating, stealing, piece of trash

may not be the best way to win friends and influence people; worse, it may provoke a violent response. Attorneys who come to mediation planning not to settle must be particularly careful in what they say and how they go about implementing their strategy since talk of "nuisance value" may set off plaintiffs who feel they have been injured, wronged, or both, and that their case is more worthy than being characterized as "a nuisance."

The sixth step is to have a plan if a party becomes a security risk to another party during the mediation. The endangered party should immediately leave (without advising the other party). Participation may be able to continue by cell phone. This may solve the problem in mediations where the parties once they reach settlement would never have to see each other again. Their signatures can be obtained by having them sign it at their attorney's office as soon as possible after the mediation is completed or by faxing or scanning/emailing it to the attorney. Suspending the mediation (certainly an option) may result in both parties heading for their cars at the same time, with the resulting risk.

An extremely pro-active approach to dealing with serious security concerns is the presence of corporate security or law enforcement officers at a mediation. This raises issues that go beyond securing the safety of the participants. Threats that are conveyed at mediations raise different professional ethical issues (depending on whether the mediator is an attorney, a psychologist, or some other professional) which are also impacted by your state requirements for the conduct of mediations (the major issues are typically the definition of a "threat" and whether there is a complete absence of bargaining ability, an impeding power imbalance, or both, when there are threats of violence). These issues would be best served by discussion in another article.

It should be noted that there is a Florida ethics opinion (MEAC 97-004) that indicates that a mediator should not mediate a case if an armed, uniformed deputy is necessary for the mediation to be conducted. (The Florida Supreme Court Dispute Resolution Center noted in its website summary of this ruling that 2004 and 2006 changes may impact this outcome.) The case involved a deputy who physically entered the room and sat down in the middle of the interaction between the mediator and the parties in the general session (apparently asked to be present by the judge on the case who was concerned about a prior threat of violence between the par-

ties). The mediator asked the deputy to leave, he did, and the mediation was completed (although unsuccessfully).

There is a significant difference (at least in our minds!) between a case where corporate security is "in the area of the mediation" and has no access to confidential communications, and where a deputy is sitting in the general session because of concern that one of the parties is in a compromised safety situation that would not even allow the deputy to be outside the room. It is also probable that the non-corporate party did not know that there was security in the area of the mediation (does this even matter?). Similarly, how would a mediator conduct a mediation inside a jail if the presence of law enforcement officers, by itself, even without access to the confidential communications of the participants, was enough to require the mediator to terminate the mediation? It is fair to assume that there are many situations that would have uniformed, law enforcement officers in the vicinity of where a mediation was being conducted.

Having a plan does not stop with having security personnel present. Every mediator's office or place that a mediator uses (court reporter offices, city halls, rental offices, hotels, etc.) should have a plan on how things will be handled if a security issue presents itself. Some venues already have that type security plan in place. But for small offices that are typically not considered public meeting places, a plan may need to be implemented. Your office staff should be advised in advance to call 911 if they believe violence is occurring. It is far better for the mediator to send the police away with the parties never even knowing they were called, than to wish the police were there. Consider the use of code words spoken over the telecom system with different levels of urgency, on a scale from the "receptionist needs assistance" to "drop what you are doing and immediately move to a secured area or get out of the building." The party that is a perceived security risk is not going to be familiar with what is said over a telecom in that place of business. As a result, it may sound routine to announce that a package from a specific city should be picked up or that one being mailed to that specific city needs to go out in that day's mail. Or a fictional name may be used as if someone is being paged for a telephone call. If the receptionist has a computer terminal or even a cell phone, e-mails or text messages may accomplish the same thing.

All employees should know what they are

continued page 35



William B. Young, Jr., Esq.

Variable Annuities: Sadly, Not Much Has Changed in Six Years

I wrote about variable annuities (VAs) for an article that first appeared in the July 2007 issue of *The Briefs*. At the time, there was rampant misinformation and omission (read fraud) surrounding the sale of these products to elderly retirees. Guess what? There still is. And why? Elderly retirees were then and still are ripe for the picking and the local “financial advisor” (read insurance salesman) knows just what buttons to push.

Back when I wrote the first article, the financial markets were at the tail end of a dramatic run up following the infamous tech bubble burst in 2000. Interest rates were low and retirees who depend on their investments for income could not get by on the traditional FDIC-insured certificates of deposit offered through the local bank. Well, here we are in 2013, at what I believe to be the tail end of another dramatic run up following the more infamous “Great Depression” of 2008. Sadly for investors, much of what happened in 2000 happened again in 2008...only worse. It makes me think of that often misquoted saying by George Santayana who said: “Those who ignore history are doomed to repeat it.” Actually he said: “Those who cannot remember the past are condemned to repeat it,” but you get the idea. Financial markets and economies, in general, are cyclical. Those same folks who owned equity-based variable products watched almost half their investment disappear in 2000 and did so again in 2008. The market cycles are so eerily similar and the products, although arguably improved in terms of features, benefits, and disclosure requirements, are still grossly inappropriate for most elderly retirees. Since most of what I wrote in 2007 sadly still applies today, the remainder of this article is a slightly edited version of the July 2007 article with updates where needed.

Like many investors, elderly retirees got burned when the unprecedented rise in the stock market during the 1990s gave way to dramatic declines in early 2000. Elderly investors who typically invested in FDIC-insured bank certificates of deposit had been lured into the equities markets with dreams of wealth and a better retirement. Sadly, when the markets corrected, those dreams became a nightmare, forcing many retirees back into the workplace or into a greatly reduced quality of life. As such, many will never again invest directly in the stock market and for good reason – they don’t have time to recoup their losses.

Retirees represent a large portion of investible assets, a fact not lost on the investment industry.

Realizing that retirees, many of whom reside in Florida, had lost their faith in the stock market, brokerages and insurance companies needed a new way to access the retiree market and their money. In response, the two industries joined forces to create and market products that would accomplish two goals: 1) be palatable to retirees and 2) generate fee and commission income for the firms and their sales force. One such product is the tax-deferred variable annuity (VA).

As the remainder of this article will discuss, VAs are rarely suitable for elderly retirees. VAs are contracts with insurance companies sold through broker-dealers that permit the individual to invest in stocks, bonds, or mutual funds. Most VAs are extremely complex and expensive products that are sold by brokers who receive high commissions. In fact, VAs are some of the highest paying products a broker can offer (as much as 10% of the principal investment). However, because of the complexity of the product, the brokers often know more about their commission payout than they do about the product’s features. This has led to widespread abuse, particularly among the elderly population.

In many respects, VAs function like traditional investments only with an added insurance feature. The purchase amount is allocated to subaccounts that closely resemble mutual funds. The value of the annuity appreciates or depreciates depending on the performance of the underlying subaccounts. Management fees are assessed against the subaccounts much like mutual fund expense ratios. However, the insurance company also charges a Mortality and Expense risk charge (M&E), which is typically around 1.25% per year. This fee is used almost exclusively to pay broker commissions and provide profit to the insurance companies. Combined with other administration fees and subaccount management fees, the expense associated with a VA can cost the owner upwards of 2.5% annually as compared to approximately 1.5% for a comparable mutual fund.

So why are retirees so susceptible to being sold VAs? For one thing, they are marketed by touting the “guaranteed” return feature. This is particularly appealing to elderly retirees who previously lost money in the market or who are looking to preserve their retirement nest egg. Unfortunately, the salesperson often fails to disclose that the owner or third-party annuitant must die before receiving the guaranteed return of principal. This “guarantee” is of little use for those in need of their funds while they are still living.

Another of the common sales practice abuses occurs when a customer is persuaded to exchange one VA for another. This is an all too common practice, particularly among the elderly, who often blindly follow the advice of their financial advisor. Approximately 70% of annuity purchases are the reinvestment of proceeds from the sale of existing annuities. Annuity switching, much like “swapping” of mutual funds or the “twisting” of insurance policies, is typically of greater benefit to the salesperson than to the investor. When the VA is switched, the broker receives the high commission. Meanwhile, the investor is subject to starting over with the maximum declining sales charge period and surrender charges with no appreciable increase in benefits. This can become a recurring nightmare for those individuals who need access to their money and can’t afford to pay large redemption fees.

Abuse also occurs any time an investor is persuaded to purchase a VA within a qualified plan or tax-advantaged account. For obvious reasons, there is little justification for placing tax-deferred funds in a tax-deferred vehicle such as a VA. The higher costs and disadvantages associated with the VA make it a highly suspect choice for tax-deferred funds held in IRAs or ERISA accounts. Broker commission is usually the primary motivator, and any such transaction should be highly scrutinized.

Many retirees are persuaded to purchase a variable product because they want to avoid losses, but because VA subaccounts operate like mutual funds, their use and recommendation by salespeople are subject to the same suitability requirements as any other investment. In most cases, elderly retirees need conservative investments as they cannot afford to lose their principal. Unfortunately, many brokers ignore this basic rule and invest the subaccounts in aggressive growth funds, subjecting the retiree to market risk and potential investment losses. The suitability issue is further aggravated by the fact the insurers often do not supervise the representatives who ultimately sell their products. The supervision is left to independent broker-dealers and insurance agencies, and history has shown that type of supervisory system is wholly inadequate to protect the elderly investor.

Widespread abuse in the sale of VAs has led to a litany of investor complaints. A search of the internet will reveal countless articles about annuity fraud, many of which deal with the impact on the elderly. In response to investor complaints, the Securities and Exchange Commission (SEC) and the Financial Industry Regulatory Authority (formally NASD, before the merger of the NASD and the NYSE) examined broker-dealers who sell variable insurance products. A summary of their findings was published on June 9, 2004, and can be found on the Financial Industry Regulatory Association website (<http://www.finra.org/newsroom/newsreleases/2004/p002822>)¹

The joint report covered five areas: 1) Suitability, Sales Practices, and Conflicts of Interest; 2) Supervision; 3) Disclosure; 4) Books and Records; and 5) Training. A thorough discussion of this report is beyond the scope of this article, but it’s worth noting that the report found that recommendations to purchase variable insurance products are often made without the broker-dealer taking into account several factors which, if they had been considered, would have made the products unsuitable. Those factors include the customer’s age, financial or tax status, investment objectives, investment sophistication and ability to understand the complexity of the products, risk tolerance, need for liquidity, and lack of need or desire for life insurance.

After the report was released, the financial services industry had no choice but to address sales practice abuses. The industry also realized it needed to create more investor-friendly products to attract



Editors’ Note:

The November 2013 edition of *The Briefs* will be devoted to **veterans and military service issues**. The editors welcome submissions on topics including the laws and institutions that affect service men and women and their families, and personal stories about the military and civilian services undertaken by OCBA members. If you are interested in submitting an article, topic idea, or photos, please contact communications manager Peggy Storch at peggys@ocbanet.org.

The submission deadline for final articles is September 15, 2013.

Ian Forsythe
Vincent Falcone
Carrie Ann Wozniak
Elizabeth Collins Plummer

new capital. Accordingly, many of the newer VAs have shorter early redemption periods, increased benefits, and pay lower commissions. Unfortunately, abuses such as non-disclosure and switching still occur. Also, realizing there was a stigma attached to VAs, the industry came up with another product, the indexed annuity. Unfortunately, indexed annuities have many of the same negative characteristics and, thus, should not be sold to retirees. Further, depending on the mix of features, an indexed annuity may or may not be a security, and the typical indexed annuity is not registered with the SEC and is outside the jurisdiction of the securities regulators. This provides greater freedom for the unscrupulous salesperson, which means abuse is sure to follow. Additional index annuity information can be found on the SEC website at <http://www.sec.gov/investor/alerts/secindexedannuities.pdf>.

In conclusion, while VAs are not unsuitable for everyone, the complexity of the product, the high costs, the questionable or limited benefits, and the lack of liquidity clearly make the product unsuitable for the majority of elderly retirees. If an attorney has an elderly client who was sold a VA, the attorney should ask the following questions to determine suitability: 1) What is the age of purchaser? (over 70 is almost always suspect); 2) Does the client need current income? (if so, the product is probably unsuitable); 3) Was the product purchased in a qualified plan? (if so, it is unsuitable per se); 4) Was one annuity switched for another? (if there was no appreciable improvement in product benefits, unsuitable); and 5) Was the client told the return was guaranteed or the client could not lose the principal? If the answer to any of these questions is yes, the client may have a viable claim for rescissory and/or compensatory damages.

William B. Young, Jr., Esq., is a partner with Colling, Gilbert, Wright & Carter. He has been a member of the OCBA since 2003.

¹See, Joint SEC/NASD Report on Examination Findings Regarding Broker-Dealer Sales of Variable Insurance Products (June 2004).



Coravious Cowart, Esq.

Multi-disciplinary Team Staffing

As the mental health attorney with the Legal Aid Society's Guardian ad Litem program, I focus on cases where the youth has one or more severe mental health diagnoses. Because of the extreme behaviors that some of these youth exhibit, special out-of-court meetings are held to address their needs and treatment options. A multi-disciplinary team (MDT) staffing is one example of such a meeting. Community Based Care (CBC) of Central Florida notifies the GAL program of the dates and times set for staffings. Crystal Williams at the GAL office forwards these meeting notices to the GALs.

An MDT staffing takes place when a child needs a higher level of care than he or she is currently receiving. They are typically held when a youth's behaviors are severe enough to warrant a therapeutic placement that includes the tools necessary to address the youth's needs. This staffing brings a group of people to the table – the dependency case manager, a representative from the Community Based Care Agency, the current caregiver, a clinical person who has been working with the youth, and the Guardian ad Litem – to help decide what treatments are in the best interest of the child and to provide recommendations about what assessments need to be done. An MDT staffing is also required to determine the continuation of a child's therapeutic level of care, which may include placement of the child in specialized therapeutic group care and/or a residential treatment center. The children in these levels of care are required to have an MDT staffing every 90 days.

How can you, as Guardian ad Litem, best advocate for these youth at an MDT staffing?

Before the staffing

- Visit and remain in contact with the youth.
- Speak with the youth's case manager.
- Speak with the youth's therapist, if the youth has one.
- Speak with the youth's caregiver.

During the staffing

- Advocate for the youth to receive therapy if the youth is not already in therapy.
- Advocate for the creation of a treatment plan that will include:
 - ❑ consideration of the youth's physical, behavioral, and psychological needs;
 - ❑ service agencies and other support systems that will work with the youth; and
 - ❑ written objectives of what the youth will accomplish.
- Advocate for the youth to receive Social Security benefits.
- Ensure that the youth's clinical recommendations are being followed.

One of our *pro bono* GALs who is familiar with this process is Elise Ezzo, Esq. Elise has served as a GAL since 2000, represented over 50 children, and contributed more than 1,700 hours of *pro bono* time. She is not afraid to take on the tougher cases and often attends MDTs for her GAL children who have serious mental health diagnoses. Elise is heavily invested in her GAL youth and always advocates for them to receive the most appropriate services. It is because of the work of GALs such as Elise that our GAL youth are able to get the proper mental health services they need.

For more information on multi-disciplinary teams, contact ccowart@legalaidocba.org. To make a donation to the LAS, contact Donna Haynes at dhaynes@legalaidocba.org.

Coravious Cowart, Esq., mental health attorney with the Legal Aid Society, has been a member of the OCBA since 2011.



Kate E. York, Esq.

Delinquency/Dependency Crossover Project

We use the term “crossover children” when we refer to those youth who are simultaneously involved in dependency and delinquency proceedings. These children often face unique challenges because of this dual involvement. In Orange County, dependency and delinquency proceedings are completely separate from one another. There are different judges, different attorneys, and different social workers trying to help or rehabilitate the child. If there is not a free flow of communication between the dependency and delinquency sides, duplication of services, inappropriate or excessive probation terms, or unnecessary detention may result. Foster children are at great risk of being treated more harshly in delinquency court if there is no one present who really knows what is going on in their lives to advocate for them in that forum.

A Guardian ad Litem for a crossover child can immeasurably improve the child’s outcomes in delinquency court simply by providing moral support and serving as a voice for the child in court. If you are a GAL, you are the person who knows the child’s background and struggles. Your participation can help keep a child from commitment or from unnecessary or excessive probation. This is exactly what Christi Adams Lawson, Esq., GAL for foster child Brittany, did. Christi has served as a GAL since 2002, accepted 28 *pro bono* cases, and provided more than 425 hours of *pro bono* service.

Brittany entered the foster system at age sixteen, after her mother refused to allow her to return to their Orlando home. Brittany’s relationship with her mother was emotionally damaging, primarily

because of the mother’s struggle with mental illness. While in the dependency system, Brittany’s mother accused Brittany of attacking her, causing Brittany to enter the delinquency system. Luckily for Brittany, her GAL was by her side in court to let the delinquency judge know about Brittany’s past, her volatile relationship with her mother, and the mother’s mental health issues. Ultimately, Brittany’s charges were dropped and she was able to successfully move on with her life. She is now eighteen, lives in her own apartment, and is working on her GED. Hers is a success story, largely because of her determined and compassionate Guardian ad Litem.

To get involved as a crossover child GAL, please contact Kate York, Esq. at the Legal Aid Society of the OCBA. Kate is the GAL staff attorney who specializes in assisting *pro bono* GALs with crossover cases. If you are already a Guardian ad Litem and your child has “crossed over,” meaning he or she has picked up a delinquency charge, please do not hesitate to contact Kate as well. She can assist you in determining the next steps that need to be taken to help the child in delinquency or dependency court.

Kate can be contacted at kyork@legalaidocba.org; for donations to the Legal Aid Society, please contact Donna Haynes at dhaynes@legalaidocba.org.

Kate E. York, Esq., Legal Aid Society, has been a member of the OCBA since 2011.



Donna A. Haynes

Children Learn What They Live

Coravious Cowart, Esq. was born to Oletha Cowart in the small city of Albany, Georgia. His life started off a bit shaky. Coravious was raised by his maternal grandmother, Ossie Cowart, from the age of nine months until he reached adulthood. The care and guidance she provided set him on solid footing and prepared him for all his future endeavors. As the son of a drug-addicted mother and father, Coravious was familiar with the dependency system. He started thinking about a career in the law as a criminal defense lawyer or a forensic scientist when he was fourteen years old. Not a science or biology buff, Coravious' interests shifted toward politics, which in turn led him to the law. His favorite show was, and continues to be, *Law & Order*.

Coravious successfully reached his goal of becoming a public interest lawyer. He is now working for the Legal Aid Society where he advocates daily to ensure that abused and neglected children get the proper mental health services they need. Coravious works specifically with foster youth who have one or more severe mental health diagnoses. He realized that although he is a former dependent youth, he was fortunate to have been raised by his grandmother and did not have to bounce from foster home to foster home. He had a support system that provided stability, love, and the care he needed to thrive.

Lives full of strife and uncertainty often lead to dysfunction as an adult. Mental health issues, untreated, continue to buckle the fabric of our society. Cycles of poverty, abuse, and neglect often contribute to mental health issues. Providing mental health counseling and education can break that cycle.

Coravious is working with "Joe," a thirteen-year-old who has been in the dependency care system since he was seven. Joe was physically abused and neglected. He was scratched, bruised, and had other bodily injuries and appeared very thin and fragile, suggesting that he was not being properly cared for. As a result of this and the parents' failure to comply with services offered, Joe's parents' rights were terminated.

Joe also has myriad mental health conditions, most likely as a result the abuse he suffered. He has had ten different placements throughout the state since coming into the foster care system, including living in foster homes, group homes, and therapeutic placements. Some of Joe's frightening behaviors include property destruction, threaten-

ing to harm himself and others, attempting to set homes on fire, and creating a homemade knife. Joe was desperately in need of mental health treatment. For his safety and the safety of those around him, Coravious recommended that Joe be placed in a setting designed to provide the proper education, supervision, and medication he would need to break these learned behaviors. The goal was to create positive changes in this child's life and break the cycle of poverty and criminality. Joe needed, and continues to need, monitored services for his mental development.

Joe's case exemplifies the type of complex cases that are handled in-house by our eight Guardian ad Litem staff attorneys. Legal Aid is also fortunate to have many experienced *pro bono* attorneys who serve as GALs for children with serious mental health conditions such as ADHD, multiple personality and bi-polar conditions, conduct disorder, and reactive attachment disorder. Coravious is available to assist any *pro bono* GAL who may need litigation or case management support with his or her representation of a child who has been diagnosed with one of these conditions.

Some lives are shaped by those they know and love, the way Coravious' life was shaped by his beloved grandmother. Other lives are shaped by virtual strangers who have insight into what one is going through. Coravious, through the work that he is doing, has certainly influenced Joe's life by seeking and obtaining medication, counseling, and education for this "forgotten" child.

We learn what we live. Grandma Ossie should be very proud of Coravious. She raised an exemplary young man. Coravious' mother, Oletha Cowart, changed her own life. Through education and hard work, she recently earned a master's degree in psychology and works as a child counselor. She has been clean and off drugs for years and helps others who are, as she had been, in the same cycle of poverty and drug addiction. Like the poem *Children Learn What They Live*, Coravious' career choices led him to Legal Aid, where he has had the opportunity to champion positive, enduring changes in Joe's life.

Children Learn What They Live
by Dorothy Law Nolte, Ph.D.

If children live with criticism,
they learn to condemn.

If children live with hostility,
they learn to fight.

If children live with fear,
they learn to be apprehensive.

If children live with pity,
they learn to feel sorry for themselves.

If children live with ridicule,
they learn to feel shy.

If children live with jealousy,
they learn to feel envy.

If children live with shame,
they learn to feel guilty.

If children live with encouragement,
they learn confidence.

If children live with tolerance,
they learn patience.

If children live with praise,
they learn appreciation.

If children live with acceptance,
they learn to love.

If children live with approval,
they learn to like themselves.

If children live with recognition,
they learn it is good to have a goal.

If children live with sharing,
they learn generosity.

If children live with honesty,
they learn truthfulness.

If children live with fairness,
they learn justice.

If children live with kindness and consideration,
they learn respect.

If children live with security,
they learn to have faith in themselves and in those about them.

If children live with friendliness,
they learn the world is a nice place in which to live.

If you would like more information about Coravious Cowart or the work he does at the Legal Aid Society of the Orange County Bar Association, Inc., contact ccowart@legalaidthocba.org.

The Legal Aid Society is soliciting sponsors and table captains for the 2013 Breakfast of Champions. For information, or to make a donation to Legal Aid, please contact Donna Haynes at 407-515-1850, or dhaynes@legalaidthocba.org. We need your help!

Children Learn What They Live, Copyright © 1972 by Dorothy Law Nolte

Donna Haynes is the LAS manager of development and has been a member of the OCBA since 2008.

You are invited to join members of the **Robert Mansbach Lawyers' Literary Society of the OCBA** this coming year for stimulating reading and lively discussion! Our first meeting will be held on at noon, Wednesday, September 11, 2013, at the OCBA Center. Please feel free to bring your lunch.

Robert Mansbach Lawyers' Literary Society
of the
Orange County Bar Association
Reading List 2013-2014

Date	Author	Book	Discussion Leader
September 11, 2013	Adam Johnson	<i>The Orphan Master's Son</i>	Dotty Green
October 9, 2013	Geraldine Brooks	<i>Year of Wonders; A Novel of the Plague</i>	Matthew Brenner
November 13, 2013	Mo Yan	<i>Shiifu, You'll Do Anything for a Laugh</i>	Karen Jennemann
December 11, 2013	Ayn Rand	<i>Anthem</i>	Lawrence Kolin
January 8, 2014	Jane Austen	<i>Sense and Sensibility</i>	Dennis Wall
February 12, 2014	Hilary Mantel	<i>Bring Up the Bodies</i>	Robert Hoofman
March 12, 2014	Robert Louis Stevenson	<i>Kidnapped</i>	Scott Willick
April 9, 2014	Alexandre Dumas	<i>The Black Tulip</i>	Anna Palmer Darkes
May 14, 2014	Monsin Amid	<i>The Reluctant Fundamentalist</i>	Stuart Bernstein
June 11, 2014	Julian Barnes	<i>Sense of an Ending</i>	Neal Blaher



Keith Kanouse, Jr., Esq.

Balancing Judicial Criticism Rules with First Amendment Protections in the Internet Age – Part 2

This is the second part of a two-part series exploring First Amendment issues regarding an attorney's use of social media. The first part, "Challenges of Balancing Social Media Advertisement Rules with First Amendment Protections," examined Florida Bar regulations of an attorney's use of social media for commercial speech. This second part examines Florida Bar regulations of an attorney's use of social media for political speech.

We are now just a couple years away from entering the third decade of the commercialized Internet.¹ Just in the last decade, we have seen the rapid creation and growth of social media, such as Facebook, Twitter, and blogs. Social media has allowed Internet users, especially those with minimal technical expertise, not only to access information but to create information online. This easy ability to voice one's opinion online and reach the world is an extremely powerful tool.

Governments also understand the power of social media as many of them look to censor such form on communication, especially in time of unrest. Iran², Egypt³, and more recently, Turkey⁴ have moved to censor Twitter with their recent unrests. Governmental censorship of free speech is not new to this modern era – our nation has its roots in speech critical of the government in 1776's pamphlet, "Common Sense."⁵ However as the author, Thomas Paine, was concerned about the possible retribution from the British government for its treasonable content, "Common Sense" was originally published anonymously.

Our Founding Fathers feared the power of the government and understood that free speech and the ability to criticize the government was necessary for government to be accountable to its citizenry. The First Amendment to our Constitution specifically mandates that the government "*shall make no law....abridging the freedom of speech...*"⁶

Three separate but equal branches of government form both our state and federal government. The judicial branch is outlined in Article III of the United States Constitution, and nowhere in the Constitution does it provide for any extra protection for the judicial branch from a citizen exercising his or her speech. A judge is a government official like a governor, the President, a senator, or an IRS agent. Yet, while there is no precedent of sanctioning a citizen for non-threatening speech against any other government official, there are

situations in which attorneys have been sanctioned for criticizing a judge outside of a contemptible setting.

The rise of social media has seen a rise in the ability for an attorney to be heard in his or her criticism of a judge. In the past, such criticism may have been oral hearsay to which no legal action was taken against the attorney. With the permanency of social media, the main hurdle is authenticating that the post was indeed made by the attorney, as the contents of the post will likely not be in dispute.

Today's age of social media provides the evidence for The Florida Bar and the judiciary to more easily sanction an attorney for exercising his or her free speech. While in the past such criticisms may have remained among an attorney's inner circle of colleagues, family, and friends, social media has allowed criticism to easily enter the public realm. Because of this increased capability to sanction, it is time for The Florida Bar to take another look at the legality and purpose of sanctioning one of its members for exercising his or her free speech against a government official.

First Amendment Rights Curtailment via Contempt

Both federal⁷ and Florida⁸ law provide a judge the authority to fine or imprison an attorney for being in contempt of court. Under Florida law, "any act calculated to obstruct, hinder, or defy a Court in the administration of justice, or which is calculated to lessen its authority or its dignity, is a contempt. The test is not the physical propinquity of the act to the court, but its tendency to directly affect the administration of justice."⁹

The contempt constraint of one's First Amendment rights is narrowly tailored because it can occur only when the attorney is a party that is still being litigated. This ability to sanction under contempt is not in dispute for this article. The issue addressed here is what powers, if any, the judiciary should have in sanctioning an attorney outside of a contemptible setting.

Attorney Fined for Criticism of a Judge Outside of Contempt

Technology, especially through social media, allows effective and inexpensive communication to be disseminated to a worldwide audience. Blogs are one form of social media that allow its authors to expand on a topic in a longer format through an online publication. Not only can blogs be used

continued page 28

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Lindsay Oyewale at: lno12@dbksmn.com

or Jessica Hew at: jhew@burr.com

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FAMU College of Law has provided the location for the picnic

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Jessica K. Hew, Esq.

Second Annual Central Florida Diversity Mentoring Project

Join us for food, fun, and camaraderie on September 21, 2013!

The Central Florida Diversity Mentoring Project had its inaugural picnic at Florida A&M University Law School in September of 2012. A steering committee of the Orange County Bar Association Diversity Committee, OCBA Young Lawyers Section, Hispanic Bar Association of Central Florida, Central Florida Gay and Lesbian Law Association, Greater Orlando Asian American Bar Association, Central Florida Association for Women Lawyers, Paul C. Perkins Bar Association, Barry University Law School, and Florida A&M University School of Law are again joining forces to present the second annual Diversity Mentoring Picnic on Saturday, September 21, 2013, from 1:00 p.m. to 4:00 p.m. on the FAMU campus.

The picnic's informal setting offers law students, attorneys, and judges from Central Florida an opportunity get to know each other in a carefree, comfortable environment. The picnic also allows future and current law students and young lawyers the chance to learn about our area's legal community, establish relationships with practicing attorneys, and meet

and exchange contact information with mentorship partners. The mentor-mentee relationship is likely to engage the participants in far-reaching discussions about the profession, particular areas of law, business matters, and work-life balance issues. A list is being compiled of attorneys who would like to serve as mentors, and attendees are encouraged to take advantage of this valuable opportunity to become involved in our legal community.

For the event to enjoy success now and in the future, it is critical that private firms and organizations support the event financially and, importantly, provide mentors to the students and young lawyers who attend. With the enthusiastic support of Central Florida's legal community, success going forward is assured!

If you are interested in sponsoring the Diversity Mentoring Project, becoming a mentor, or serving on the steering committee, please contact one of the co-chairs: Jessica K. Hew, Esq. (jhew@burr.com), Harley Herman, Esq. (hsh54@dbksmn.com), or Lindsay Oyewale, Esq. (lno12@dbksmn.com).

Jessica K. Hew, Esq., a partner at Burr & Forman LLP, is co-chair of the Central Florida Diversity Mentoring Project. She has been a member of the OCBA since 1995.

Outtakes from Diveristy Picnic 2012



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¹"Profile of Legal Malpractice Claims: 2008-2011," American Bar Association, September 2012.

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Michael M. Brownlee, Esq.

Interview with the Honorable Jacqueline R. Griffin

The Honorable Jacqueline R. Griffin received an undergraduate degree from the University of North Carolina at Greensboro, and a master of arts in teaching as well as her juris doctor from the University of Florida.

Q: *When did you decide to pursue a legal career?*

A: This is actually a funny story. Before I became a lawyer, I was a teacher. I had a job teaching high school Spanish and, during the evening, I worked as a librarian at the naval base in Winter Park, Florida. One night, I came across a book titled *How to Get Into Law School*. I thought, "I



Hon. Jacqueline R. Griffin

can do this." Shortly thereafter, I took the LSAT. After the LSAT, I lived with a very nice family in Madrid, Spain, and took classes at the University of Madrid. I was in Madrid when I received my LSAT scores and decided to apply for law school. I needed a typewriter to complete my application and, after much searching, found a little secretarial school somewhere in

Madrid. The school was kind enough to let me use one of its typewriters. I applied to only one school, the University of Florida, and I got in. The rest is history.

Q: *In your time as an attorney and judge, what have you found to be the greatest strengths of the American judicial system?*

A: Our legal system is the best in the world. It is brilliantly conceived and ensures complete judicial independence, which is the most important attribute of any legal system. Judges must be able to make decisions based only on the facts and law before them without being influenced by external forces.

Q: *What do you think are the greatest weaknesses of our legal system?*

A: Currently, I think the greatest weakness is a product of our difficult economic times. The courts are underfunded, and litigants short on money cannot adequately access the legal system.

Also, in some states judicial independence is being threatened by "judicial performance evaluation commissions." These commissions are well-intentioned attempts to educate the public on judges' performances before either judicial elections or merit retention votes. In some states, a commission may be comprised of a majority of laypeople. In others, the majority is made up by judges and attorneys. The commissions decide on certain criteria which will be used to evaluate judges and the results are usually published before it's time to vote. I think the problem with these commissions is the chilling effect they are likely to have on judicial independence. If judges know their staying power depends on pleasing a commission, there is a significant risk that their decision making will be influenced. Even if it is not, there is a risk it will be perceived that way by litigants. Of course, there is always the chance that members of a commission will have certain agendas, and a judge's "performance" will be evaluated according to whether his/her jurisprudence comports with a given agenda instead of according to the quality of a judge's work. Luckily, Florida has resisted attempts to institute variations of judicial performance evaluation committees.

Q: *Who has been the greatest influence in your career?*

A: Charlie Wells. He was a partner at my first firm, Maguire, Voorhis & Wells. I was amazed at his creativity in solving legal issues. He left the firm to form Wells, Gattis & Hallows and I went with him.

Q: *What do you wish attorneys would do better in pleadings and in the courtroom?*

A: Prepare. Research sufficiently, analyze adequately, and know the evidentiary record.

Mr. Brownlee: Sounds reasonable. Thank you, Judge Griffin!

Michael M. Brownlee, Esq., practices at Brownstone P.A., an appellate litigation firm. He has been a member of the OCBA since 2009.

Hearsay...



Christine A. Wasula, Esq.

While many of our members are taking their annual vacations and trying to relax during these hot summer months, there is no rest for this dedicated *Hearsay* columnist, because the professional accomplishments of our OCBA members just won't stop!

Let's start with **Suzanne E. Gilbert, Esq.**, a partner in the Orlando office of **Holland & Knight, LLP**, who is frequently mentioned in this column. Suzanne has been elected vice president-Florida of The Eleventh Circuit Historical Society, Inc. and will be responsible for overseeing the organization's preservation efforts related to the Northern, Middle, and Southern Districts of Florida. The purpose of The Eleventh Circuit Historical Society is to keep a record of the history of the courts of the Eleventh Circuit as institutions and of the judges who have served these courts.

Terry Sanks, Esq., **David Maire, Esq.**, and **Enrique Mora, Esq.**, with **Beusse Wolter Sanks Mora & Maire, P.A.**, have been recognized as "IP Stars" by *Managing Intellectual Property* magazine. This first-ever listing of "IP Stars" highlights the country's leading intellectual property attorneys and is based on surveys and interviews with peers and in-house counsel. Terry was recognized for his patent prosecution, trademark, copyright, unfair completion, trade secrets, licensing, and litigation practice, while both David and Enrique were recognized for their strong patent prosecution practices.

Ty G. Roofner, Esq., counsel in the Orlando office of **Burr & Forman LLP**, has been selected among the *Orlando Business Journal's* 40 Under 40. This honor annually recognizes 40 young leaders who demonstrate professional excellence and a commitment to the Central Florida community.

Andre T. Young, Esq., a partner at **Young DeLoach, PLLC**, has been elected president-elect 2014-2015 to the Paul C. Perkins Bar Association.

Claramargaret H. Groover, Esq., of counsel to **Becker & Poliakoff**, received the Messerly Memorial Award from Division 12: Owners and Lenders, for Outstanding Steering Committee Member of 2012-2013 at the ABA Forum on the Construction Industry's annual meeting in Dana Point, California. Claramargaret has also been appointed co-chair for the Forum's fall 2013 meeting in Washington, D.C. Topics will include public-private partnerships, design-build, and international construction contracting.

Frederick W. Leonhardt, Esq., a partner at **GrayRobinson, P.A.**, recently joined Governor Rick Scott and other Florida business leaders on a mission to strengthen the economic partnership with Chile. As chairman of GrayRobinson's Policy Board, Frederick has been a strong supporter of the governor's plan to promote the state of Florida as a business destination.

Felipe Guerrero, Esq., with the Orlando office of **Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.**, was selected to be an Inaugural Fellow in The Florida Bar Leadership Academy. For more information about Felipe and the academy, please see page 9 of this issue.

Last but not least, we would like to congratulate the following Orlando attorneys who were recognized as leaders in their field in the 2013 edition of *Chambers USA: America's Leading Lawyers for Business*:

William Boyles, Esq., GrayRobinson, P.A.
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Thomas Maurer, Esq., Foley & Lardner LLP
Environment

Susan McKenna, Esq., Jackson Lewis LLP
Labor & Employment

Selection was based on technical legal ability, client service, diligence, and other qualities most valued by the client. Congratulations to these OCBA members on their outstanding accomplishment!

With my column complete, I'm off to lay around by the pool and enjoy these lazy days of summer. Nah, just kidding, I'm going back to work!

As always, if you have any newsworthy items about yourself or your fellow OCBA members, please send them to our communications manager, Peggy Storch, at peggys@ocbanet.org, or to me at chris@tadyates.com. See you next month!

Christine A. Wasula, Esq., currently of counsel at the Law Office of Tad Yates, P.A., has been an OCBA member since 2003.

Next in importance to freedom and justice is popular education, without which neither freedom nor justice can be permanently maintained.

— James A. Garfield

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Special Feature

Balancing Judicial Criticism - Part 2

continued from page 18

for purposes of advertisement, but they can also allow a person to raise issues and concerns on a variety of topics. Blogs and other publicly accessible websites provide first-hand feedback on an organization or person and help to hold them accountable, such as for rating college professors¹⁰ or home improvement contractors.¹¹

One Florida attorney, Sean Conway, was apparently fed up with what he perceived as a judge's mistreatment of lawyers and unreasonable orders and wrote a blog post to voice these concerns.¹² These allegations included the judge refusing defendants and attorneys reasonable time to prepare for trial, and then insisting that if they wanted to prepare, they waive their constitutional right to a speedy trial. Mr. Conway said: "She was giving people one week to prepare for trial and as soon as the blog exposed it through powerful words she stopped it. And that's why I stand by what I did."¹³ The "what I did" to which he was referring was to call the judge an "evil, unfair witch," "clearly unfit for her position," "seemingly mentally ill," and described her "ugly, condescending attitude" on JAABlog in October 2006.¹⁴

The Florida Bar took notice of this blog, investigated, and found probable cause for Mr. Conway to be in violation of the Rules Regulating Florida 3-4.2, 3-4.3, 4-8.2(a), 4-8.4(a), 4-8.4(d).¹⁵ Mr. Conway initially consented to a reprimand from the bar last year, but the Florida Supreme Court, which reviews such cases, demanded briefs on First Amendment issues.¹⁶ The ACLU of Florida in an amicus brief argued that Mr. Conway's statements were protected speech that raised issues of legitimate public concern.¹⁷ The Florida Supreme Court ultimately accepted Mr. Conway's earlier reprimand agreement with the bar, which had argued in its brief to the Court that the online "personal attack" was "not uttered in an effort to expose a valid problem" with the judicial system, and so the statements "fail as protected free speech under the First Amendment."¹⁸

The comments that Mr. Conway made were not in the courtroom where First Amendment protections are highly curtailed under contempt of court. Mr. Conway did not make comments that jeopardized any duties to attorney-client confidentiality or other fiduciary duties. His comments were mostly an opinionated – in harsh, salty terms – critique of the performance of the judge, with Mr. Conway giving specific facts that led him to this opinion.

In a more recent situation, The Florida Bar confirmed that it has opened two investigations into the conduct of JAABlog's founder, Bill Gelin, Esq., specifically related to his blog. In 2012, posts were made that pointed to unfavorable coverage of a Palm Beach County judge in the *Palm Beach Post*, including allegations of possible campaign finance violations during her 2010 run for office.¹⁹ Within weeks of that article's appearance, Gelin received letters from the bar asking him whether he wrote the posts about the judge.²⁰

Attorney Norm Kent, who is representing Gelin, said his client does not have to answer.²¹ In a letter dated May 14, 2013, Kent chided the bar for questioning Gelin without explaining what bar rule he is alleged to have violated.²² The bar has rules barring lawyers from bringing the profession into disrepute and criticizing judges with false or reckless statements, but Gelin said they do not apply to the posts on JAABlog. "As long as I tell the truth and it's accurate, I can say whatever I want," Gelin said.²³

Nova Southeastern University law professor Bob Jarvis said the bar's action may provide a long-needed test case to determine just how far a lawyer can go in exercising his or her First Amendment right to criticize judges without jeopardizing his professional standing.²⁴

The Judiciary is Co-equal Branch of Government

The argument can be made that such fines are allowed since an attorney is an officer of the court who took an oath to "maintain the respect due to courts of justice and judicial officers."²⁵ However, the attorney also took an oath to "support the Constitution of the United States and the Constitution of the State of Florida."²⁶ The question is: "Does a judicial officer receive protection against criticism not found for any other government official?" Apparently, The Florida Bar and Florida Supreme Court has said, "yes."

The courts have given much more latitude to the government in regulating free speech when the government is the employer, such as when sanctioning judges, public defenders, or other public employees for their speech. This latitude is similar to the private sector, where employees can be fined for their speech, such as when a coach, player, or owner criticizes the officiator in a professional sports league. The government, however, did not employ Mr. Conway and Mr. Gelin.

Can Mr. Conway's name-calling be seen as over-the-top and disrespectful? No doubt. However, it is inherently American

for individuals, including government officials, to criticize (sometimes even being over-the-top and disrespectful in such criticisms) political bodies, policies, politicians, bureaucrats and, yes, the courts (even in a presidential State of the Union Address²⁷). Limits to such criticisms can be found under libel laws and could apply to an attorney's criticism of a judge.

Mr. Conway's speech, however, was not commercial speech that has curtailed protections. His speech was political speech that is the most highly guarded form of speech. Core political speech consists of conduct and words that are intended to directly rally public support for a particular issue, position, or candidate. The U.S. Supreme Court suggested that core political speech involves any "interactive communication concerning political change."²⁸ Discussion of public issues and debate on the qualifications of candidates, the Supreme Court concluded, are forms of political expression integral to the system of government established by the federal Constitution.²⁹ Restrictions placed upon core political speech must weather strict scrutiny analysis or they will be struck down.³⁰

Mr. Gelin was not using opinion but involved posting links to existing negative coverage and allegations, including some from major publications, about a judge in his blog. He also provided a link to a complaint filed by a past campaign consultant to the judge alleging unpaid expenses and consulting fees from the judge's successful 2010 county court campaign totaling \$30,292.45.³¹ Mr. Gelin's posts were meant to communicate his concerns regarding a political, elected official.

In the text of the First Amendment, no deference is given to one branch of government over another,³² and political speech is given the highest deference. Some criticism by individuals and the media is needed to keep the government accountable to the citizenry, and fining citizens for speech would limit such criticisms.

While the vast majority of judges and attorneys are good at their jobs and are true professionals, incompetence exists on both sides of the bench. An attorney who repeatedly practices in front of a judge is in the best position to analyze the judge's actions and criticize such actions. Such criticisms may act as a public service to those who do not interact with the specific judge, and such speech may be needed to hold government officials accountable. This public criticism can be in lieu of or in tandem with any formal complaints through the judicial governing body.

Moving Forward

The judiciary should remove itself from regulating an attorney's speech when such speech is not in a contemptible setting. The current speech restrictions upon an attorney's criticism of a judge are inconsistent with the ability of a private citizen to criticize any other government official. The lifting of such restrictions does not necessarily mean that the floodgates will open on attorney criticisms of the judiciary. An attorney's right to openly voice such criticisms does not mean an attorney should or will voice such criticisms. An attorney's reputation is seen by many as his or her most important asset. Therefore, attorneys are likely to balance their criticism of a judge against the potential of being seen as unprofessional and face the blowback by colleagues, the judiciary, and past, current, and future clients. It is time for the judiciary to allow attorneys to freely voice their opinions about the judiciary and for those attorneys to then face the reputational consequences for such speech.

Keith Kanouse Jr., Esq., is attorney with The Tech Law Firm. He has been a member of the OCBA since 2012.

¹Zimbeo, <http://www.zimbeo.com/Manzanar+National+Historic+Site/articles/yZeHp6jmHrZ/History+Of+The+Internet>.

²Lev Grossman, *Iran Protests: Twitter, the Medium of the Movement* (July 17, 2009), *Time*, available at <http://www.time.com/time/world/article/0,8599,1905125,00.html>.

³Leslie Horn, *Twitter Confirms Egypt Ban* (Jan. 26, 2011), *PC Mag*, available at <http://www.pcmag.com/article2/0,2817,2376704,00.asp>.

⁴Victor Kotsev, Turkey vows to attack social media, strengthen police (June 18, 2013), *USA Today*, available at <http://www.usatoday.com/story/news/world/2013/06/18/turkey-vows-to-strengthen-police-powers/2433709/>.

⁵Thomas Paine, *Common Sense: Addressed to the Inhabitants of America, on the Following Interesting Subjects* (1776).

⁶U.S. Const. amend. I.

⁷18 U.S.C. 401-403; Fed. R. Civ. P. 42.

⁸Fla. R. Crim. P. 3.830, 3.840.

⁹*Ex parte Crews*, 173 So. 275, 279 (Fla. 1937).

¹⁰Rate My Professor Home Page, <http://www.ratemy-professor.com>.

¹¹Angie's List Home Page, <http://www.angieslist.com/>.

¹²Jonathan Turley, *Florida Supreme Court Upholds Sanction Against Lawyer Who Called Judge a "Witch" on a Blog* (Sept. 30, 2009), <http://jonathanturley.org/2009/09/30/florida-supreme-court-upholds-sanction-against-lawyer-who-called-judge-a-witch-on-a-Blog/>.

¹³*Id.*

¹⁴*Id.*

¹⁵<http://jonathanturley.files.wordpress.com/2009/09/2007-04-03-letter-notifying-conway-of-bar-investigation.pdf>.

¹⁶John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar* (Sept. 12, 2009), *N.Y. Times*, available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html?scp=3&sq=schwartz&st=cse&r=0>.

¹⁷Brief for the Supreme Court of the State of Florida as Amicus Curiae, *The Florida Bar v. Conway*, Case No. SC08-326 (2008), available at http://jaablog.jaablaw.com/files/34726-32374/aclu_amicus.pdf.

¹⁸John Schwartz, *A Legal Battle: Online Attitude vs. Rules of the Bar* (Sept. 12, 2009), *N.Y. Times*, available at <http://www.nytimes.com/2009/09/13/us/13lawyers.html?scp=3&sq=schwartz&st=cse&r=0>.

¹⁹Rafael Olmeda, *Courthouse blogger faces Bar scrutiny after criticizing judges* (May 17, 2013), *Sun-Sentinel*, available at <http://www.sun-sentinel.com/news/palm-beach/fl-jaablog-bar-complaint-20130518,0,7441301.story>.

²⁰*Id.*

²¹*Id.*

²²*Id.*

²³*Id.*

²⁴*Id.*

²⁵Oath of Admission to The Florida Bar, available at <http://www.floridabar.org/tfb/TFBProfess.nsf/5d2a29f983dc81ef85256709006a486a/04e9eb581538255a85256b2f006ccd7d>.

²⁶*Id.*

²⁷Steve Padilla, *Obama's State of the Union address: Criticism of the Supreme Court campaign finance ruling* (Jan. 27, 2010), *L.A. Times*, available at <http://latimesblogs.latimes.com/washington/2010/01/obamas-state-of-the-union-address-criticism-of-the-supreme-court-campaign-finance-ruling.html>.

²⁸*Meyer v. Grant*, 486 U.S. 414, 108 S. Ct. 1886, 100 L. Ed. 2d 425 (1988).

²⁹*Buckley v. Valeo*, 424 U.S. 1, 96 S. Ct. 612, 46 L. Ed. 2d 659 (1976).

³⁰http://en.wikipedia.org/wiki/Freedom_of_speech_in_the_United_States#Core_political_speech.

³¹JAABlog, *Lawsuit!*, <http://jaablog.jaablaw.com/2013/04/09/aa.aspx>.

³²U.S. Const. amend. I.

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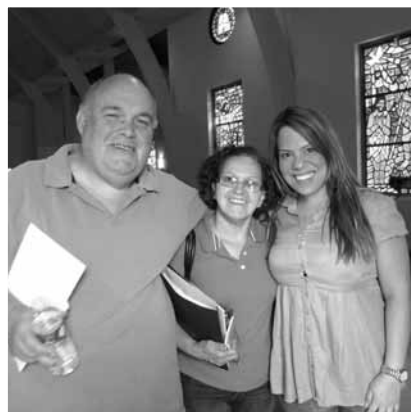


Joseph "Rusty" P. Carolan III, Esq., an Orlando-area attorney and shareholder with the law firm of Winderweedle, Haines, Ward & Woodman, P.A., partnered with his firm colleagues, and with the accounting firm of Cross, Fernandez & Riley, for a June 22 Volunteer Day at the Community Food & Outreach Center located at 150 W. Michigan St., Orlando, Florida.

AILA Citizenship Day 2013



Lay volunteer and non-immigration attorney training session



Two of the legal permanent residents who were assisted with citizenship applications

American Immigration Lawyers Association's Citizenship Day 2013 was hosted by the Legal Aid Society of the Orange County Bar Association and Justice for Our Neighbors, a faith-driven ministry that provides legal services to immigrants and refugees. Attorneys and lay volunteers assisted 46 low-income legal permanent residents apply for U.S. citizenship.



Volunteer working with an applicant



YLS on the move



Jill D. Simon, Esq.

On May 3, 2013, the OCBA YLS and CFAWL received a county **Partner in Education Award** during a ceremony held at Sea World hosted by the Orange County Public Schools. On June 13, 2013, the OCBA YLS and CFAWL also received a statewide **Partner in Education Award** at a ceremony hosted by Florida's Commissioner of Education, Dr. Tony Bennett. While the OCBA YLS and CFAWL have previously been recognized at the county level, which itself is a tremendous honor, 2013 marks the first year that the organizations were recognized at the state level for their work at **Rock Lake Elementary School**. Rock Lake Elementary is a Title I school where 95% of the student body lives at or below the federal poverty line and many students are homeless. During 2012-2013, the OCBA YLS and CFAWL hosted several projects benefitting the school: The **Back Pack Project** equips students with all the supplies they need for a successful year of learning; the **Angel Tree Project** gifts students who would not otherwise be remembered at the holidays with presents and personal necessities; **Teach-In** engages attorneys to serve as volunteer teachers while educating students about the legal profession and encouraging students to follow their dreams. The OCBA YLS and CFAWL donated turkeys at Thanksgiving so that students' families had a Thanksgiving meal, and the two organizations have made monetary donations to provide books and other prizes to incentivize students' learning. The Central Florida legal community is very proud of the OCBA YLS and CFAWL and all that they have done to help the deserving students of Rock Lake Elementary School.

The **YLS June Luncheon** was held on June 14, 2013, in the jury room at the Orange County Courthouse. The luncheon featured a CLE and roundtable discussion with members of the judiciary, including **Judge Alan S. Apte**, **Judge Jeanette Dejuris Bigney**, **Judge Andrew L. Cameron**, **Judge Heather L. Higbee**, **Judge Adam McGinnis**, and **Judge Donald A. Myers, Jr.** The attendees and judges discussed the expectations of ethical conduct and the practice of professionalism. The YLS thanks **Deborah Cook, Esq.** for planning this unique and valuable luncheon.

On Friday, July 12, 2013, **Judge John Marshall Kest** presented his monthly **Brown Bag Lunch** on *Opening Statements and Closing Arguments: Primacy, Recency and Tips from the Bench*. In addition, Judge Kest treated everyone to ice cream cones in celebration of the anniversary of the ice cream cone. Brown Bag Lunches are held month-

ly at the Orange County Courthouse from 12:00 to 1:15 p.m. The next Brown Bag Lunch is scheduled for **August 8, 2013**, on the topic: *How to Use Depositions at Trial*. For more information, please contact Judge Kest's Judicial Assistant, Diane Iacone, at 407-836-0443 or ctjadi1@ocnjcc.org. If you're interested in reading about past topics, login to the OCBA website members' area and look for the link: Judge John Marshall Kest's "Brown Bag Lunch" teaching material. You'll find material from October 2010 through January of this year!

The **YLS August Luncheon** will take place on **August 16, 2013**, at the Citrus Club from 11:30 a.m. to 1:00 p.m. Casual attire is perfectly appropriate. For a three-course meal, the cost is only \$10 for all young lawyers and judges. Please RSVP to yls.ocba@gmail.com **no later than August 13, 2013**. A late charge of \$4 will be added for all RSVPs made after the deadline. YLS is charged for anyone who RSVPs, so show up if you RSVP, or let us know if you cannot make it. We look forward to seeing you at the luncheon!

The **22nd Annual YLS Charity Golf Tournament** will be held on **Friday, September 27, 2013**, at the Ritz-Carlton Golf Club. There will be a shotgun start at 8:00 a.m. Each year, more than 140 lawyers, judges, and other leaders in the community play in this highly entertaining golf tournament, which is followed by a buffet luncheon and awards ceremony. If you are interested in playing, sponsoring, or volunteering for the committee, please contact **Jerry Hanbery** at jlhanbery@gmail.com.

Mark your calendar and be on the lookout for details about these two upcoming events: **August 6, 2013 – Happy Hour** benefiting the **Back Pack Project** to be held at Urban Flats, downtown Orlando, and **August 22, 2013 – YLS and Young CPA Joint Happy Hour**. Details will follow in upcoming YLS email blasts. And, if you're not receiving the blasts and would like to be added to the list and find out more about our section and its committees and events, please email yls.ocba@gmail.com.

Jill D. Simon, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been a member of the OCBA since 2009.



Lisa M. Marcum, FRP



David C. Knapp, Esq.

A Friendly Reminder: It's Function Over Form, Not Form Over Function

With the ever-increasing capabilities of case management and document assembly software – and the use of computers in general – it is all too easy for attorneys and paralegals alike to be lulled into complacency by technology. Instead of carefully drafting pleadings and transactional documents, legal professionals are depending more and more on forms. Gone are the days of starting from a blank page. Even small firms and sole practitioners who don't use “fancy” case management tools are no strangers to form banks and the practice of “recycling” documents from old cases.

With all of the tools attorneys and paralegals now have at their fingertips to increase their efficiency and accuracy, you would think pleadings and documents would now be near perfect each and every time. Unfortunately, the opposite may be true. Technology has the potential to make all of us more careless and even a little remiss. How often have you received a document riddled with not just typing and grammatical mistakes, but also with factual errors? Sometimes you will even receive a document that contains references totally unrelated to the instant case. And we have all received motions at one time or another that refer to an outdated rule or case or, worst of all, a motion that does not even make sense. In many of these circumstances, the document was clearly recycled, and the drafter failed to review and edit the document properly.

While errors like these are embarrassing, they normally do not have a major effect on the outcome of a case. Sometimes, however, they do. Further, they affect the reputation of the lawyer whose name is on the pleading, as well as his or her law firm. In the worst case scenario, an error can actually get you or your firm's name memorialized in a published opinion to be read by the entire Florida Bar over and over again.

A recent example of a case where an improperly edited form got an attorney's name and firm memorialized in print is *Bradshaw v. Boynton-JCP Assoc. Ltd.*, 2013 Fla. App. LEXIS 5705 (Fla. 4th DCA April 10, 2013). In April of this year, Judge Robert M. Gross of Florida's Fourth District Court of Appeal wrote a unanimous opinion in which the court reversed a final judgment awarding attorney's fees to a defendant, because the underlying offer of judgment was “apostrophe-challenged.”¹ The award of attorney's fees was overturned “because ambiguities in the offer

prevent[ed] its enforceability” – specifically, ambiguities as to whether the drafter intended references within the offer to apply to singular or plural defendants or plaintiffs.²

The court also explicitly noted that the offer of judgment appeared to be a form and that the drafter had not engaged in sufficient editing.³ As a result of the court's ruling, defense counsel had to explain to his client that the only reason he was not going to recover his attorney's fees was that counsel had taken a shortcut by using a form and, worse, counsel had not been smart enough to know where to place an apostrophe.

The *Bradshaw* opinion should be a reminder to all attorneys and paralegals of the dangers associated with using forms and the importance of always editing all final documents. Forms are only meant to be rules of thumb. In our haste to get our work done and keep costs down for clients, it is easy to rely on forms that have been used successfully many times. However, not properly editing those forms can compromise the result we are seeking and damage our reputation and that of our firm.

While *Bradshaw* is a recent case pointing out the dangers of forms and failing to carefully edit pleadings, it is by no means the only such case. In 2009, our own U.S. District Court judge, Gregory Presnell, made headlines when he reprimanded a local attorney for filing a motion “riddled with unprofessional grammatical and typographical errors that nearly render the entire Motion incomprehensible.”⁴ Judge Presnell even edited and red-lined two of the plaintiff's previously-submitted pleadings and attached them as exhibits to his September 15, 2009, order.⁵ The order not only denied plaintiff's motion, but further ordered plaintiff's counsel to: (1) re-read the Local Rules and Federal Rules of Civil Procedure in their entirety; (2) “personally hand deliver a copy of [the] Order, together with the Court's exhibit attached thereto, to his client;” and (3) file a notice certifying that he had complied with the order.⁶

Florida attorneys and paralegals are obviously not the only legal professionals who sometimes fail to sufficiently edit their documents. In July 2012, the North Carolina Court of Appeals dismissed an appeal, and in doing so strongly chastised counsel (who had been practicing for 30 years) for submitting a brief with numerous misspellings, typographical errors, improper punctuation, and incorrect grammar and sentence structure.

Trevarthen v. Treadwell, 727 S.E. 2d 406 (N.C. App. July 3, 2012). The appellate court noted that the initial brief had no fewer than 55 misspelled words, all of which could have been corrected by utilizing a quick “spell check.”⁷ The opinion also indicates that, although the brief relied on a single case and a single statute, counsel misspelled the name of the case and failed to provide a single correctly formatted citation to authority in his entire brief.⁸ Worst of all, counsel repeatedly misspelled the name of the trial judge who issued the order on appeal.⁹ The appellate court concluded that all of these errors not only “impair[ed] the readability” of the arguments and “clouded” the court’s understanding of appellant’s arguments, but also that counsel’s “apparent disregard for the clarity and accuracy undermine[d] [counsel’s] professionalism and disrespect[ed] this Court’s time.”¹⁰

Trevarthen makes it clear that in a field where documents and the written word are the primary tools for making an argument and establishing your client’s position, there is no room for typographical or grammatical errors. Not only do they affect an attorney’s ability to properly represent his or her client, but they significantly affect the attorney’s reputation and his firm’s reputation for professionalism before the court. Numerous errors show a lack of care and can lead judges to question whether the underlying legal research and arguments are likewise incorrect and incomplete.

Although forms can be useful and have their place, remember to always personally review and edit every document you file with the court. Computers, with their case management software, document assembly software, grammar tools, and spell checking are great aids, but they can never replace the careful review and insight of a good lawyer and paralegal. While a computer can generate a form and store case information, it cannot completely conform a document to your specific case. More importantly, it cannot ensure that your form or pleading complies with any and all local rules that might apply. When you have drafted a document and finally gotten it done, sometimes the last thing you want to do is read the document over one more time to check for spelling mistakes, grammar, and accuracy. However, it is something that every attorney and paralegal must do. Therefore, the next time you prepare a document, make yourself invaluable to your clients, protect your own reputation and that of your firm, and do

what computers cannot – read over your document one more time and make sure that it is function over form, and not form over function.

Lisa M. Marcum, FRP, and **David C. Knapp, Esq.**, practice with McDonald Toole Wiggins P.A. Lisa has been a member of the OCBA since 2012, and David has been a member since 1998.

¹*Id.* at *1.

²*Id.*

³*Id.*

⁴Order entered in *Nault v. Evangelical Lutheran Good Samaritan Found.*, Case No. 6:09-cv-1229, Document 23 & 23-2 (M.D. Fla. Sept. 15, 2009).

⁵*Id.*

⁶*Id.*

⁷*Id.*

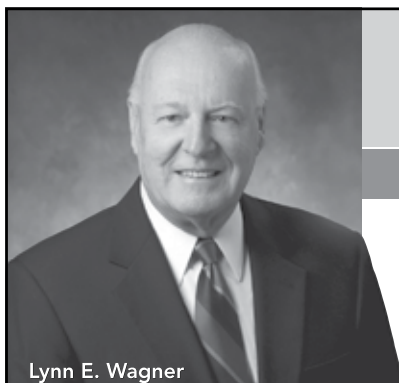
⁸*Id.*

⁹*Id.*

¹⁰*Id.*

REMINDER:

The Courthouse Resource Room will be closed through November 1, 2013, while it is being used as an additional hearing room for foreclosure matters. The CRC will reopen to the general public upon the completion of the 14th floor build-out. If you have any questions, please contact Julio Semino at 407.836.0403



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Michael Hammond, Esq.

The Art of Storytelling

We are now well into the “What to Say” series of articles in our ongoing discussion of word-of-mouth marketing. The last article focused on the Laser Talk, the first of a trio of strategic conversations. This article is about the second strategic conversation – the art of storytelling.

“Tell Me a Story ...”

Pat Conroy, the well-known American novelist, once said: “The most powerful words in the English language are, ‘Tell me a story.’” Why do stories have such power over us? Perhaps it’s because long before humans were writing, we were telling stories and these stories – told, memorized, repeated, and embellished over millennia – became the wellsprings of human development. Our innate love of telling stories seems to be almost as powerful as our love of listening to them.

In the modern world stories are everywhere. They provide the plots for books, movies, theater, and television shows. The twenty-four hour news channels bring you the *stories* of the day. The best teachers, leaders, and communicators have always recognized the importance of storytelling and have used them to convey lessons, messages, and inspiration. Just think about Daniel Day Lewis’ portrayal of Abraham Lincoln in Steven Spielberg’s recent Academy-award-winning movie. A well-told story has the power to conjure strong images and evoke a powerful emotional response in the listener.

Think about it. Whether we’re meeting an old friend for a drink or a complete stranger on a plane, our interaction is largely defined by the exchanging of personal stories. Dr. Jonathan Gottschall, an English professor at Washington & Jefferson College and the author of *The Storytelling Animal: How Stories Make Us Human*, said in a recent interview: “We live in stories all day and we dream in stories all night. ... Storytelling is a key competence because it’s the most powerful method we know of riveting the attention of others and of connecting with them emotionally.”

What’s Your Story?

Because telling and listening to stories is hard-wired into our psyche, they are one of our most powerful forms of communication. Harness the power of storytelling in your word-of-mouth marketing and you will tap into the innate receptivity of those you want to educate about who you are, what you do, and why. Use stories in conversations with potential clients to demonstrate your expertise, with referral sources to illustrate how

you can help their clients, and in social settings to educate people about your firm.

Richard Stone of the StoryWorks Institute, advises lawyers to “Look for the drama in your everyday actions to formulate your stories. Just as a good author can find a story where others see only the commonplace deeds of ordinary people, it’s possible for each of us to frame our work in heroic terms. Stories are your narrative assets.”

According to Stone, a well-crafted story about why you became an attorney, why you feel compelled to help people, or how you fought to succeed in spite of great difficulty becomes an important conversational strategy. These stories are like verbal commercials for you, your practice, and your brand. Once discovered, these narrative assets can become the hidden gems of your word-of-mouth marketing program.

Finding Your Voice

How do you transform your own many and varied experiences into well-crafted stories?

Read the following prompts, and write down the first ideas that pop into your mind when you hear them:

- I became a lawyer because...
- I’m passionate about my practice area because...
- The type of people (your primary client) I like to help is...
- The reason I like to help these people is...
- I make a difference for people because...

Recall other stories that convey your effectiveness as a lawyer. Don’t bore your listeners with a thinly disguised list of your accomplishments; instead, tell them about how your clients have actually benefited from your professional skills. Tell them a story about:

- A case you just won
- An award you just received
- Your background or upbringing

While not yet full-blown stories, whatever came to mind as you read these prompts could be promising and may warrant further thought and development. Once you’ve found your basic story idea, it’s important to flesh it out, expand upon it, and add color to it. To add structure to your story, think about the three elements of every typical tale – context, characters, and climax.

One criminal defense attorney tells his story this way: "When I was young, I got into trouble with the law. But before I went too far, an attorney who was an old family friend intervened and set me straight. My practice is dedicated to that man – I want to do for other people what he did for me."

Stealth Storytelling

We call stories the "stealth bombers" of strategic conversations. On the surface they may enlighten or entertain the listener, but they also educate them, connect them to your background, highlight your values, and reveal your motivations. In short order, the information these brief narratives provide can portray you as an empathetic human being and, because they require a certain amount of self-disclosure, deepen your intimacy with the listener.

Whether you employ long, rambling stories or simply divulge small glimpses of your personal history, having a variety of brief narratives you can use at different times and in various situations can be a valuable addition to your marketing assets. Stories can be helpful in conversations with potential clients trying to gauge your breadth of experience and your depth of compassion. Stories assist prospective referral sources trying to determine how well you would serve the clients they could refer to you. In social settings, stories educate people about who you are and what you do.

Remember, stories that are humorous show that you are human. You don't have to be the hero in every story. In fact, stories that portray you in a self-deprecating light can be engaging, heartwarming, and among the most memorable.

The Three Cs of Storytelling

Way back in 1982 in his watershed book, *Megatrends*, John Naisbitt posed a paradoxical prophecy: "The more high tech we cre-

ate, the more high touch we want." How much more high tech have we become in the last thirty years? How much more do we yearn for high touch today? For human connection? Perhaps this accounts in some way for the psychic pull and the mesmerizing effect that storytelling still has on us.

Jim Blasingame, a leading expert on small business and entrepreneurship, says that we should deliver high touch to our clients through the telling of stories and reminds us of the "Three Cs of Storytelling:"

Connect – Use stories to connect with prospects and convert them to clients.

Convey – Use stories to convey your experience, expertise, humanity, and values.

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Michael Hammond, Esq., is a "founding father" of Atticus and is a Certified Practice Advisor. A licensed attorney since 1983, he has spent his entire career either practicing law or supporting and promoting the practice of law. Michael has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. He is currently a featured writer 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.

Special Feature

Security at Mediation

continued from page 11

to do and where they should go in each situation, not just from their desks, but from wherever they may be in the office at the time of an emergency. They should know the locations of the offices with locks on the door, office exits, where corridors lead, and the fire escape stairwells. Just as in any preparations made for fires, a meeting point in a secure location outside the office suite should be identified so that law enforcement and first responders can determine who is missing and may still be in the office.

Violence in mediations (or, for that matter, in other law office activities such as depositions) is not going to go away. Mediators must be prepared to recognize the behaviors and triggers for violence and prevent the parties from pushing the buttons to detonate it. Preventative action and planning before the mediation will improve your chances of not being caught in the middle of a tragic situation. And remember, some cases should not be mediated.

Robert L. Dietz, Esq., is a shareholder at Zimmerman, Kiser & Sutcliffe, P.A. He has been a member of the OCBA since 1991.

James A. Edwards, Esq., is a shareholder at Zimmerman, Kiser & Sutcliffe, P.A. He has been a member of the OCBA since 1980.

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Speaking Engagements

Jimmy D. Parrish, Esq., BakerHostetler LLP, co-presented a discussion on the impact of bankruptcy on real estate transactions, including providing a working knowledge of what to expect, what to do, and who to call, in a talk held on June 19, 2013.

Dennis J. Wall, Esq., of Winter Springs, presented the June 4-4 Webinar, "Forensic Examination of Insurance Policies," to the Clearwater Bar Association.

Events

Aug. 22 – *OCBA Luncheon*. Florida Supreme Court Justice Ricky Polston. 11:30 a.m. Church Street Ballroom. Sponsored by BMO Harris Bank.

Sept. 21 – *Diversity Mentoring Picnic*. 1:00 p.m. FAMU. For details, please see ad in this issue of *The Briefs*.

Sept. 26 – *OCBA Luncheon*. Barbara Jenkins, PhD., Superintendent, Orange County Public Schools. 11:30 a.m. Church Street Ballroom. Co-hosted by Central Florida Association for Women Lawyers. Sponsored by Westlaw.

Sept. 27 – *22nd Annual YLS Charity Golf Tournament*. 8:00 a.m. shot-gun start. Ritz-Carlton Golf Club. For details, see ad in this issue of *The Briefs*.

Seminars

Aug. 8 – *How to Use Depositions at Trial*. Brown Bag Lunch with Judge J. Kest. 12:00 p.m. – 1:15 p.m. CLE: 1.5. Orange County Courthouse, 23rd Flr., Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. To register, contact Diane Iacone at ctjadi1@ocnjcc.org.

Aug. 13 – *Defenses to Garnishments & Debt Collection*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Speaker: Michael Resnick, Esq., CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8310, ext. 3121.

Aug. 27 – *General & Special Education: Improving Outcomes for Dependent Youth*. LAS Lunchtime Training. 12:00 p.m. – 1:30 p.m. Speaker: Tenesia C. Hall, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Aug. 27 – *Florida Bar Dispute: Arbitration Procedures*. Solo & Small Firm Committee Seminar. 11:45 a.m.-1:00 p.m. Speaker: Louise Zeuli, Esq. CLE: pending. OCBA Center. To register, contact ocbasolos@gmail.com.

Sept. 10 – *Immigration Relief for Youth: Special Immigrant Juvenile Status and Deferred Action for Childhood Arrivals*. LAS Lunchtime Training. 12:00 p.m. – 1:30 p.m. Speaker: Camila Pachon Silva, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Sept. 12 – *Use of Evidence at Trial: How to Lay Predicates and Offer Evidence*. Brown Bag Lunch with Judge J. Kest. 12:00 p.m. – 1:15 p.m. CLE: 1.5. Orange County Courthouse, 23rd Flr., Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. To register, contact Diane Iacone at ctjadi1@ocnjcc.org.

Sept. 12 – **Major Seminar: Defeat from the Jaws of Victory: Stuff Litigators Should Know to Resolve Cases Involving Insurance... and Avoid Ethical and Procedural Land Mines**. Insurance Law Committee. 9:00 a.m. – 12:00 p.m. OCBA Center. CLE: pending. Speakers: Frank Pierce, Esq.; Scott McMillen, Esq.; Richard Lord, Esq.; David Henry, Esq.; Deborah Moskowitz, Esq.; Jason Lazarus, Esq.; and Dave Place of Synergy Settlements. Fee: \$35 for OCBA members; \$50 for non-members. Breakfast included. To register, please go to the OCBA Store at www.orangecountybar.org/store.

Sept. 16 – *Advanced Topics in eDiscovery*, presented by Elijah, Ltd. 11:00 a.m.-1:00 p.m. Speakers: Rick Weber, Elijah CSO; Adam Losey, Esq.; and Josh Brown, Esq. Panel discussion moderated by Samir Mathur, IT-Lex. CLE: pending. Cost: Free. To register, contact Chris Newton at chrism@elijah.com.

Sept. 17 – *Outlook® for the Legal Profession: Managing Client, Case & Contact Information*. Solo & Small Firm Committee Seminar. 11:45 a.m.-1:00 p.m. OCBA Center. CLE: pending. Speaker: Adriana Linares of LawTech Partners. To register, contact ocbasolos@gmail.com.

Sept. 20 – **Major Seminar. Family Law in the Current Economy**. Family Law Committee. 8:00 a.m.-1:30 p.m. Speakers: Hon. Sally D.M. Kest; Samuel J. Weiss, Esq.; John W. Foster, Esq.; Susan Savard, Esq.. Judicial Panelists: Hon. Sally D.M. Kest, Hon. Heather Higbee, and Magistrate Howard Friedman. CLE: 5.0 pending. Fee: \$45 for OCBA members; \$55 for non-members registered by Sept. 10th. Late registration (including walk-ins): \$55 for OCBA members; \$65 for non-members. To register, please go to the OCBA Store at www.orangecountybar.org/store.

Sept. 24 – *GAL 101: Understanding the GAL's Role at Each Stage of a Juvenile Dependence Case, Beginner Level*. 12:00 p.m.-1:30 p.m. Speakers: Ericka Garcia, Esq.; Sally McArthur, Esq. CLE pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Sept. 30 – **Major Seminar. Attorney's Fees Issues**. 12:00 p.m.-4:30 p.m. OCBA Center. 12:00 p.m.-4:30 p.m. CLE: 4.5 General; 4.5 Ethics; 3.5 Board Certification in Business Litigation; 3.5 Board Certification in Civil; 3.5 Board Certification in Construction. Speakers: James Hauser, Esq.; Philip Calandrino, Esq.; Nicholas Shannin Esq. Fee: \$45 for OCBA members; \$60 for non-members. Lunch is included for registrations received by Sept. 26. To register, please go to the OCBA Store at www.orangecountybar.org/store.

Aug. 12, 26, Sept. 4, 9, 18, 24 – *eFiling Portal Training – Criminal Division, Appellate and eService*. Presented by Caroline Weber, Florida Clerks and County Comptrollers. 2:00 p.m.- 4:00 p.m. OCBA Center. CLE: 2.0. Fee: \$10. Registration required. Contact Marie West at mariew@ocbanet.org.

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OCBA Calendar

AUGUST - SEPTEMBER

OCBA August Luncheon

August 22, 2013

Chief Justice Ricky Polston

Florida Supreme Court

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August

2 New Lawyer Training Program – Day One
8:00 a.m. • OCBA Center

3 New Lawyer Training Program – Day Two
8:00 a.m. • OCBA Center

6 Professionalism Committee
12:00 p.m. • OCBA Center

7 Business Law Committee
12:00 p.m. • OCBA Center

8 Brown Bag Lunch with Judge J. Kest
How to Use Depositions at Trial
12:00 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.

Social Security Committee Meeting
12:00 p.m. • OCBA Center

9 Criminal Law Committee
12:00 p.m. • OCBA Center

12 Estate, Guardianship & Trust Committee
12:00 p.m. • OCBA Center

**eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

13 LAS Lunchtime Training
*Defenses to Garnishments
& Debt Collection*
12:00 p.m. • Marks St. Senior Center

Social Committee Planning Meeting
11:45 a.m. • Location Varies

14 OCBA Executive Council
4:30 p.m. • OCBA Center

16 YLS Luncheon
11:40 a.m. • Citrus Club

22 OCBA Luncheon
Chief Justice Ricky Polston
Florida Supreme Court
11:30 a.m. • Church Street Ballroom
Sponsored by BMO Harris Bank

**26 eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

27 LAS Lunchtime Training
*General & Special Education: Improving
Outcomes for Dependent Youth*
12:00 p.m. • Marks St., Senior Center

Solo & Small Firm Committee Seminar
*Florida Bar Disputes:
Arbitration Procedures*
11:45 a.m. • OCBA Center

28 Appellate Practice Committee
12:00 p.m. • OCBA Center

Elder Law Committee
12:00 p.m. • OCBA Center

September

2 OCBA Office Closed
Labor Day Holiday

3 Professionalism Committee
12:00 p.m. • OCBA Center

4 Business Law Committee
12:00 p.m. • OCBA Center

**eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

9 Estate, Guardianship & Trust Committee
12:00 p.m. • OCBA Center

**eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

10 LAS Lunchtime Training
*Immigration Relief for Youth: Special
Immigrant Juvenile Status and Deferred
Action for Childhood Arrivals*
12:00 p.m. • Marks St. Senior Center

11 Lawyers Literary Society
12:00 p.m. • OCBA Center

Veterans Committee
12:00 p.m. • OCBA Center

OCBA Executive Council
4:30 p.m. • OCBA Center

12 Brown Bag Lunch with Judge J. Kest
*Use of Evidence at Trial: How to Lay
Predicates and Offer Evidence*
12:00 p.m. • Orange County Courthouse
23rd Flr., Judicial Conf. Rm.

Insurance Law Committee Major Seminar
*Defeat from the Jaws of Victory: Stuff
Litigators Should Know to Resolve Cases
Involving Insurance... and Avoid Ethical and
Procedural Land Mines*
9:00 a.m. • OCBA Center

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

16 Elijah, Ltd. Seminar
Advanced Topics in eDiscovery
11:00 a.m. • OCBA Center

17 Solo & Small Firm Committee Seminar
*Outlook® for the Legal Profession: Managing
Client, Case, and Contact Information*
11:45 a.m. • OCBA Center

18 Elder Law Committee
12:00 p.m. • OCBA Center

**eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

20 Family Law Committee Major Seminar
Family Law in the Current Economy
8:00 a.m. • OCBA Center

YLS Luncheon
11:40 a.m. • Citrus Club

21 Diversity Mentoring Picnic
1:00 p.m. • FAMU

24 LAS Lunchtime Training
*GAL 101: Understanding the GAL's Role at
Each Stage of a Juvenile Dependency Case –
Beginner Level*
12:00 p.m. • Marks St. Senior Center

Paralegal Section Meeting
12:00 p.m. • OCBA Center

**eFiling Portal Training –
Criminal Division, Appellate and eService**
2:00 p.m. • OCBA Center

25 Appellate Practice Committee
12:00 p.m. • OCBA Center

Judicial Relations Committee
12:00 p.m. • Orange County Courthouse
23rd Flr., Judicial Conf. Rm.

26 OCBA Luncheon
Barbara Jenkins, PhD.
Superintendent, Orange Co. Public Schools
11:30 a.m. • Church Street Ballroom
Sponsored by Westlaw

27 YLS 22nd Annual Charity Golf Tournament
8:00 a.m. • Ritz-Carlton Golf Club

Bankruptcy Law Committee
12:00 p.m. • OCBA Center

30 Attorney's Fees Issues Major Seminar
12:00 p.m. • OCBA Center

Please check the OCBA website calendar for updates on events and seminars.