

the Briefs

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H A P P Y
N E W Y E A R



January 2014
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december 2

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GAL 101: Best Interest Advocacy In and Out of Court

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Advertising - 10th of the month prior to the month of publication

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President's Message

January 2014



Paul J. Scheck, Esq.

Happy New Year... Time for Resolutions

New Year's Day now is the accepted time to make your regular annual good resolutions. Next week you can begin paving hell with them as usual. – Mark Twain

Welcome to 2014! I hope that everyone had a blessed time with family and friends over the holidays and experienced the joy of giving to others. I was reminded during this past holiday season how precious it is to spend time with the ones we love, how many blessings we have that we take for granted each day, and our great obligation and call to help those less fortunate.

January and the New Year is a time for many of us to make resolutions. As you contemplate your resolutions for the upcoming year, or perhaps as you lament the resolutions you have already broken as referenced by Mark Twain above, I want to share with you that the OCBA has resolved to make 2014 a great year for its members and our community. This resolution gets kicked off later this month when the OCBA commences another class of its nationally recognized Leadership Law Program. For those who may not be aware, Leadership Law consists of five monthly sessions providing leaders of our business community with the opportunity to discover how legal issues affect their lives and their businesses. These business leaders are given the opportunity to meet, network, and share ideas with some of the most well-respected and influential judges and attorneys in Central Florida, while learning about the law. The topics to be covered this session include: *Civic & Judicial Politics: How They Impact Business; Juvenile Justice Center & Delinquency Court; Criminal Matters & Body Language Workshop; Hot Issues: Federal Employment & Bankruptcy Laws; and The Judicial System: Jury Selection, Small Claims & Traffic Court & Tour of the Orange County Corrections Facility*. The next class begins on January 24th, and we have resolved to make this program the strongest yet.

The OCBA has also resolved to provide its members with the best Bench Bar Conference in the history of Central Florida. This event will be held at the Loews Royal Pacific Hotel at Universal Orlando on April 11th. This conference will offer attendees up to 7.0 CLE credits presented by highly regarded members of the judiciary from Orange, Osceola, and Seminole counties, as well as esteemed judges from the federal bench. Participants will be able to select from more than 60 break-out sessions presented in one fun-filled day. Within this framework, attendees will have the

flexibility of either focusing on one of the specialty tracks for the entire day or choosing specific sessions that meet one's professional needs in such practice related areas as technology, family law, business law, intellectual property, estate/probate, bankruptcy, civil/personal injury, criminal/juvenile, appellate, employment, and paralegal matters. You will not want to miss this unique and long-anticipated opportunity, so please look for more information at upcoming luncheons and register at the OCBA Store today.

I would also like to ask each of you to consider adding an additional resolution to your list this year: accepting at least one, if not more, *pro bono* cases; becoming active in one of the OCBA's many and diverse substantive law committees; or attending one or more of our monthly luncheons.

As lawyers, we are often faced with the reality of spending too much time working and not enough time engaged in the many other demands of an active, well-rounded lifestyle, such as spending time with our families, exercising, vacationing, or engaging in social activities. After balancing the demands of work and personal lives, many of us simply feel like we do not have the time to provide *pro bono* legal services or become involved in bar activities. Believe me, as a husband and the father of three children between the ages of 7 and 13, I understand what you are facing and the decisions and choices you make on a daily and weekly basis. However, we as lawyers should strive to overcome any obstacles to providing ongoing and meaningful *pro bono* service or commitment to our legal community. We should do this not only because we have a recognized ethical obligation to do so, but also because we have skills as lawyers that can serve the good of those who could not otherwise afford legal services, or to other members of our legal community who would benefit from our experience and insights. Please consider adding one of these to your list of resolutions for the upcoming year.

So, as the New Year is upon us, I wish all of you blessings and prosperity in the weeks and months ahead. I also look forward to working with each of you in making all of the above OCBA resolutions come true!

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



Judge James F. Holderman

Q & A: Chief Judge James F. Holderman on Dealing with Difficult Judges – Part 3

This concludes the three-part interview with Chief Judge James F. Holderman, district judge of the U.S. District Court for the Northern District of Illinois.

Q: How much training are federal judges provided with regard to proper conduct on the bench? What form does this training take? Should there be more training and, if so, what kind of training should be provided?

A: The Federal Judicial Center (FJC), the education and research arm of the United States courts, conducts a multi-day training program for new judges, which includes sessions on the Code of Conduct for United States Judges, including additional ethics education for judges and court personnel. The FJC has several publications available to judges and their chambers staff on proper conduct, including proper conduct with respect to social media. The FJC also conducts refresher courses for all judges every two years. Plus, each circuit has a periodic judicial conference where such issues are discussed. Also, every circuit has an assigned judge who is a member of the Committee on the Code of Conduct who will informally answer any judge's questions about proper conduct of a judge on or off the bench. I believe that the training, the programs, the published information, the continuing education, and the advice available to us federal judges are all excellent. Additionally, the Seventh Federal Judicial Circuit has published "Standards for Professional Conduct" which include, "Court's Duties to Lawyers," "Judges' Duties to Each Other," and "Lawyers' Duties to Other Counsel."

Q: How would you define the term "black robe fever?"

A: "Black robe fever" is the problem that unfortunately exists within the minds of some judges who have forgotten one or more of the following: their humility, humanity, manners, or civility, or have forgotten what it was like to be a lawyer. They may lack patience, they may lack compassion, or they may lack an appreciation that the power of the law is based on the public's respect for the law and the fairness with which the law is administered. We judges must always remember we have to earn the honor of being called "Your Honor" every moment of every day in everything we do.

Q: There are occasions when a judge is being so difficult that a recusal motion may be appropriate. What are the most appropriate ways to raise the subject of

recusal with a judge? Are formal recusal motions always required?

A: Procedures vary from court to court even within the federal court system, but if a judge is already sensitive to a possible recusal issue that is also a concern to a lawyer representing a party before that judge, sometimes raising the concern in an unfiled letter to the judge, with copies to all counsel, is an unobtrusive way to communicate to all counsel and the judge without a lot of publicity.

If the judge is not sensitive to a lawyer, or disagrees with counsel as to the need for recusal, then a formal motion may be required and should be drafted respectfully by counsel with the best interests of the client ethically in mind.

Q: What do you consider to be the judge's role in promoting civility and professionalism in the cases that are tried before you?

A: We judges must promote professionalism and civility in all that we do. We judges are not only leaders of the profession; we are the guardians of justice. In short, we must provide due process of law in an atmosphere of fairness and respect so every party who does not prevail, though unhappy with the result, will feel the process was fair. Professionalism and civility are key components of the due process of law.

Q: How do you communicate expectations you have of lawyers who appear before you?

A: I communicate my expectations of counsel through my web site and my staff answering counsels' inquiries about my expectations. Plus, many lawyers who practice before me on a daily basis know, and are able to tell others, about my expectations. They know I expect nothing beyond what I expected of myself when I practiced law.

Q: Some lawyers have suggested that judges should take lawyers who engage in discourteous behavior into chambers for private admonishment. Have you ever done this? Do you think it is wise? What are the risks? Are there other methods that would be preferable?

A: Admonishing counsel is always an unpleasant task. I would prefer, as do most if not all judges, that lawyers conduct themselves in accordance with proper professional conduct.

As far as admonishing counsel in open court or in chambers, it depends on the circumstances of

continued page 6

OCBA Luncheon Thursday, January 23, 2014



Jeffrey S. Bromme, Esq.

Jeffrey S. Bromme, Esq.
Senior Vice President
Chief Legal Officer
Adventist Health System

Jeffrey S. Bromme, Esq., joined Adventist Health System (AHS) as senior vice president and chief legal officer in 2009. AHS is the largest Protestant non-profit healthcare system in the United States, owning or operating about 45 hospitals in 10 states, in addition to skilled nursing facilities and numerous other locations for the delivery of healthcare. Florida Hospital in Orlando is the flagship facility for AHS.

Prior to joining AHS, Jeff practiced law at Arnold & Porter LLP in Washington, D.C., first as an associate from 1987 to 1994, and then as a partner. From 1997 through 1999, he served as general counsel to the United States Consumer Product Safety Commission. Jeff had a general litigation practice with emphasis on environmental and bankruptcy law before joining AHS. He graduated with high honors from the University of Texas School of Law in 1986, where he was an articles editor on the *Texas Law Review*. He spent one year as a law clerk for Judge Will Garwood, U.S. Fifth Circuit Court of Appeals. He is married to Nichole, and they have three children: Max, Juliet, and Leif.

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and walk-ins cannot be guaranteed a seat.

the situation. If by the words "private admonishment" the lawyers are suggesting *ex parte*, I have never done that, nor can I conceive I ever will, because I always have all counsel, though not necessarily the parties, present whenever I talk with any counsel in any case before me. Let me explain.

If, in a jury trial, counsel were to engage in conduct that I believe requires a quick comment from me warning counsel "not to do that again," I usually ask counsel to join me at a sidebar while the jurors remain in the box. Such sidebars take less than a minute. If I believe a lawyer's comments or conduct during a jury trial requires more than a quick warning by me, and that fairness requires I give the lawyer an opportunity to explain his or her actions, I will recess the trial, send the jury out, and have the discussion in open court with clients present before I consider an admonishment. After hearing from the lawyers, if I believe an admonishment is appropriate, I will deliver that admonishment in open court, on the record, outside the jury's presence, but with clients present. If after the trial presentations have concluded and the lawyers and I are in the off-the-record jury instruction conference, or when the

jury is deliberating, I will hold a chambers conference with just counsel, no clients present. At that time, if I believe the lawyers, especially a young lawyer, could benefit from a critique by me, I will gather all counsel, not clients, and will discuss the case, counsels' comments, conduct, and presentations with an eye toward what, in my opinion, the lawyers did well and what they could have done better.

I do not think it is wise for a judge and a lawyer to have a private discussion pertaining to a case or the lawyer's conduct in the case. The risks are many. The lawyer may misconstrue or misrepresent the judge's remarks. Such private meetings between the judge and one side's counsel appear to other counsel and the public that favoritism is being bestowed. Judges must always maintain the appearance of neutrality and maintain necessary decorum to ensure the public's and the bar's respect for the judge's fairness and integrity.

Q: Judge Holderman, thank you for your candid and insightful remarks.

A: It was my pleasure. Thank you.

Judge James F. Holderman is an active district judge of the U.S. District Court for the Northern District of Illinois who served as the chief judge of that court from July 1, 2006 to July 1, 2013. He served as president of the Richard Linn American Inn of Court from July 1, 2012 to July 1, 2013, and has been a member of the Chicago American Inn of Court since its founding in 1988.

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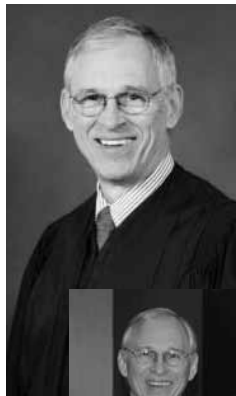
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The Honorable A. Thomas Mihok Receives ABOTA Jurist of the Year Award

The Central Florida Chapter of the American Board of Trial Advocates (ABOTA) recently named the Honorable A. Thomas Mihok as the recipient of its 2013 Jurist of the Year Award.

The award was presented on November 14, 2013, at the Embassy Suites Hotel in downtown Orlando.

The Jurist of the Year Award is given to members of the judiciary who promote the efficient administration of justice and who model the ideals of the judiciary. Judge Mihok, who was appointed to the circuit bench in September of 1995 by then-Governor Lawton Chiles, has established a reputation as a fair and effective judge. During his extensive judicial career, which includes being re-elected three times without opposition, he has worked in the criminal, civil,

domestic, and juvenile divisions of the circuit court. He has also served as an associate judge on the 4th and 5th District Courts of Appeal.

"It is truly an honor for me to be chosen for this award by the Central Florida Chapter of ABOTA – a group of attorneys who set the standard for

professionalism, competence, and ethics in the practice of law," said Judge Mihok. "There are many fine judges in the Central Florida area, and for me to be selected as jurist of the year for 2013 is the capstone of my judicial career."

Judge Mihok graduated from the United States Naval Academy in 1967, and then received his juris doctor from Stetson University College of Law in 1975, where he was managing editor of the *Stetson Intramural Law Review*.

After graduation, he worked as an assistant U.S. attorney for three years and then in private practice until 1995.

Off the bench, Judge Mihok has been actively involved in the community. He has served as president of the George C. Young Inn of Court and as vice president of Habitat for Humanity of Orlando as well as on various boards. He is an adjunct professor of law at Barry University, where he teaches trial advocacy. He has also been a faculty member of the Florida College of Advanced Judicial Studies.



The Hon. A. Thomas Mihok was presented with the Jurist of the Year Award by the Hon. John Marshall Kest.

Courtroom Dedicated in Honor of Judge W. Rogers Turner

On Friday, October 25, 2013, a ceremony was held at the Orange County Courthouse to dedicate Courtroom 19-C in honor of Judge W. Rogers Turner. Judge Turner served on the bench of the Ninth Judicial Circuit Court for 34 years. Chief Judge Belvin Perry, Jr., speaking before a packed courtroom, recounted how Judge Turner had been a fair and effective judge who set the standard for timeliness and efficiency in his courtroom.

The Honorable William Rogers Turner was born in Tallahassee and grew up in Lakeland, Florida. In 1954, he graduated from Lakeland High School. He attended Emory University and obtained an A.B. degree in 1958, following which he graduated from Stetson University College of Law in 1961.

W. Rogers Turner enlisted in the United States Coast Guard Reserve, where he was commissioned as a legal officer and served for eight years, eventually attaining the

rank of lieutenant. Before going into private practice, he served as a law clerk for three District Court of Appeal judges.

In 1965, Judge Turner was named staff attorney for the Florida Constitution Revision Commission. The following year, he accepted a position as a trial lawyer with the firm Gurney, Gurney & Handley, where he handled mainly insurance defense work.

In the fall of 1968, at the age of 32, Judge Turner was elected to the Criminal Court of Record of Orange County. In 1972, Judge Turner ran unopposed for the circuit court and would be reelected four times thereafter. From 1981 to 1983, he served as chief judge of the Ninth Circuit. He retired in January of 2003. During his extensive judicial career, he oversaw cases in every judicial division except juvenile. His judicial legacy is marked by a desire to efficiently dispense justice and a firm adherence to the rule of law.



The Hon. W. Rogers Turner with his wife, Mrs. Judie Turner, and the Hon. Belvin Perry, Jr.

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Christi L. Underwood Appointed to the Ninth Judicial Circuit Court

Christi L. Underwood was appointed by Governor Rick Scott to serve as a judge of the Ninth Judicial Circuit Court in September. Judge Underwood, of Winter Park, had been a sole practitioner since 2002, primarily as a mediator as an arbitrator. From 1992-2002, she practiced with Foley & Lardner, LLP, as a commercial and construction litigator, and from 1989-1992, she practiced with Maguire, Voorhis & Wells, P.A. Judge Underwood is a board certified construction lawyer. She received her bachelor's and law degrees from the University of Florida. She fills a vacancy created by the resignation of Judge Frederick Rand Wallis.



The Hon. Christi L. Underwood

Governor Scott said, "Through her decades of practicing law, Christie has exhibited the qualities that make for a fair and capable judge. I am certain she will continue to demonstrate knowledge of the law and judicial restraint while serving the citizens on the Ninth Judicial Circuit bench."

CourtNews

The Court Resource Center (CRC) has reopened to the general public. Hours of operation will continue to be from 7:30 a.m. to 4:30 p.m., Monday through Friday. We appreciate your patience while the CRC was closed and was used as a temporary hearing room for the foreclosure division.

Editors' Note

The Briefs editors are soliciting articles on technology and the law for the March 2014 issue.

Topics for consideration include, but are not limited to: policy; ethics; professionalism; regulation; impact of technology and globalization on the legal profession; digitally stored information; data protection; privacy; internet security; client communication; obligations related to metadata (information that is embedded in electronic documents); online marketing; outsourcing; use of social media related to investigative and background research; blogging and its risks; data breaches, including cloud security, computer security, and network security; use of open-source file storage (i.e., Dropbox); identity breaches; court technology; electronic discovery; and accessibility of documents.

Please feel free to develop your article along any theme or topic of your choice. Limit substantive articles to no more than 1,800 words, and personal experiences related to technology and the law to no more than 750 words.

Submissions are due by January 15, 2014. Please send your article to Peggy Storch, communications manager, at peggys@ocbanet.org.

If you have questions, please feel free to contact us at any time.

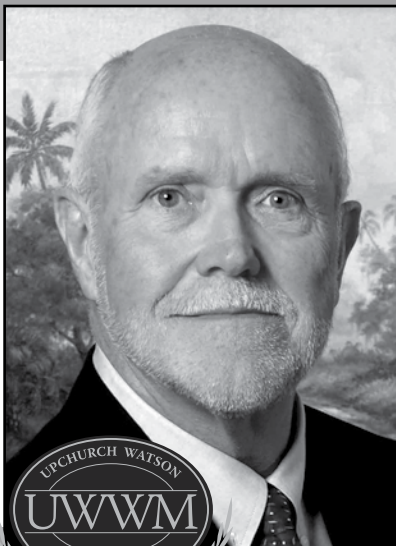
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Ryan Santurri, Esq.

The Importance of Patent Marking

A U.S. patent provides its owner with the right to exclude others from practicing the patented invention. When the patent owner's exclusionary rights are violated (i.e., the patent is infringed), the patentee can sue the infringer for damages and injunctive relief.¹ While most patent owners know of the right to sue infringers for damages, some may not realize the importance of patent marking to their damages claim. "A patentee who makes or sells its own invention is obligated to comply with the marking provisions to obtain the benefit of constructive notice."² If a patentee does not mark its patented products, no damages accrue until *actual* notice of infringement is provided to the infringer by the patentee.³ Many patentees may not know about marking, or may have specifically chosen not to mark products in the past, but given the changes to the law implemented by the America Invents Act (AIA), every patentee who can mark should do so.

False Marking Suits Made Patent Marking Too Risky

Patent marking statutes serve the important purpose of giving the "public notice of patent rights."⁴ The marking requirements also serve an important function for patentees – providing constructive notice of the patent. To encourage accuracy and public confidence in the patent system, the Patent Act includes provisions to deter inaccurate or false marking because it can "deter innovation and stifle competition."⁵ As a mechanism to police false marking, the Patent Act allows for false marking *qui tam* actions to be filed.⁶ However altruistic the original intent of the false marking provisions, several years ago false patent marking became a noteworthy topic for many patent owners when decisions by the Federal Circuit seemingly opened the floodgates for filing false marking suits as a money-making endeavor. These false marking suits created panic for some patent owners and caused many to stop marking their products altogether.

Until 2011, *any* person or entity could file a *qui tam* action for false patent marking.⁷ The basis for false marking actions is the claim that the patent owner marked (with a U.S. Patent number) an "unpatented article" and therefore was liable for a fine that is to be split between the named plaintiff and the United States government.⁸ At the time, an "unpatented" article could include "products that were once covered by now-expired patents."⁹ Thus, any product marked with an expired patent could trigger a suit for "false marking." In *Forest*

Group Inc. v. Bon Tool Co., 590 F.3d 1295, 1304 (Fed. Cir. 2009), the Federal Circuit ruled that the penalty for false marking could be up to \$500 *per falsely-marked product*. The Federal Circuit's interpretation of 35 U.S.C. § 292 transformed a relatively innocuous false marking action into one that could be very lucrative. In turn, this created a cottage industry of individuals and entities that searched for products with expired patents and filed suit. Thousands of false marking suits were filed, and millions of dollars were spent by companies in fighting and/or settling false marking claims. Many companies responded to the surge of false marking suits by not marking products or even removing patent markings from their products and literature. For some patent owners, the time and expense of analyzing every one of their patents and products for proper marking was not worth the potential exposure of a false patent marking suit.

The AIA Clears the Way to Mark Products without Fear

On September 16, 2011, sweeping changes were implemented to the false marking statute as a result of the AIA. Rather than allowing any person to file suit, the language of 35 U.S.C. § 292 was amended by the AIA to limit potential plaintiffs to only the United States and any person who suffered a "competitive injury" as a result of the false marking.¹⁰ Even if a suit is filed to remedy a "competitive injury," the damages from such a suit are limited to the actual damages resulting from the injury rather than accessing a per-article fine.¹¹ Additionally, the AIA added 35 U.S.C. § 292(c), which expressly excludes a product marked with an expired patent from the false marking statute. The AIA also introduced "virtual" marking, codified in 35 U.S.C. § 287(a), which helps a patent owner streamline its marking process by directing the public to a website address which associates a patent (or patents) with the patent owner's covered products rather than physically marking the product. With these changes, much of the risk once existing from false marking has been eliminated.

Now that the AIA has gone into effect, patent owners should begin (or resume) marking of all products subject to their patent(s) to provide the public with constructive notice and ensure that, if a lawsuit is filed, the patentee can recover damages from the time infringement began. Constructive notice is provided as soon as the patented

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Lost and Destroyed Wills – Part 2

Erika Kane, Esq.

Section 733.207, Florida Statutes, provides that in order to establish and probate a lost or destroyed will, the specific content must be proved by the testimony of two disinterested witnesses or, if a correct copy is provided, the content must be proved by one disinterested witness.¹

Before attempting to prove the specific content of a lost or destroyed will, one must overcome the legal presumption that when an original will is known to have existed, but the will cannot be located and its loss cannot be explained after the decedent's death, it is assumed that the decedent purposely destroyed the will.² The presumption of revocation, which is created when an original executed will is lost or destroyed, can only be overcome with the introduction of competent substantial evidence that the decedent never intended to revoke the will.³

Witnesses

Once the existence and due execution of the will in question has been proven and the legal presumption of revocation has been rebutted, the question of the contents of the will becomes material.⁴ The proponent of the will must introduce two disinterested witnesses to provide testimony proving the specific content of the lost or destroyed will. Only one disinterested witness is needed if a "correct copy" of the will is provided to the court, as set forth in section 733.207, Florida Statutes. The term "disinterested witness," as it is used in the establishment of a lost or destroyed will, is defined as a person who has no private interest or stake in the outcome of the matter in which he or she offers evidence.⁵

Testimony of Disinterested Witnesses

Florida Probate Rules provide that the testimony of each disinterested witness in a proceeding to establish a lost or destroyed will must be reduced to writing and filed with the court.⁶ The disinterested witnesses must present corroborating testimony at a hearing in order to establish the content of a lost will.⁷ The absence of this testimony is fatal to the attempted probate of a lost will.⁸ However, affidavits may be used as evidence in any will contest if the witness has died or moved from the state.⁹

A proponent of a lost will must not only present the testimony of two witnesses as to its execution, but must also demonstrate that the witnesses have knowledge of the contents of the will. If not, the testimony of two disinterested witnesses precludes

the admission of the lost or destroyed will into court.¹⁰ This is exemplified in *Brennan v. Honsberger*, which held that the lower court erred in admitting a will into probate where the proponent failed to provide at least one disinterested witness to prove the execution *and* content of the will, along with the correct copy of the will they introduced to the probate court.¹¹

Correct Copies

The Florida Supreme Court determined in *In re Parker's Estate* ("Parker") that the term "correct copy" means "a double of an original instrument, such as a carbon or photostatic copy."¹² A correct copy must conform "to an approved or conventional standard."¹³ The document introduced in *Parker* was a preliminary, handwritten draft of a typewritten original of a lost will. The court determined that the draft was not a "correct copy."¹⁴ It was insufficient, even though the missing will only slightly differed from the draft introduced, because a legal description of real property and an address for one or two of the named beneficiaries had changed.¹⁵ A draft of a will, even if it contains an accurate and correct reflection of the contents of a lost will, is not "a double or a true transcript of an original writing" as it is not identical to the will that the decedent had approved and signed.¹⁶

While the correct copy must be identical to the executed will, there is no requirement that a copy needs to contain the signatures of the testator or the witnesses.¹⁷ This is because the purpose of introducing a correct copy is not to prove the execution of the will; instead, the correct copy is used to prove the content of the lost will.¹⁸ Furthermore, the missing will must be executed properly in order to probate a lost will.¹⁹

Computer-Generated Copies

Computer-generated copies of wills and codicils are considered to be a type of "correct copy" under section 733.207, Florida Statutes.²⁰ This was decided in *Smith v. DeParry*, where the computer-generated copy contained language identical to the executed will and was generated from the same computer hard drive.²¹

The *DeParry* court held that the lower court misconstrued the definition of "correct copy" set forth by the Florida Supreme Court in *Parker*. The lower court misinterpreted the language in *Parker*, when it read that "an identical copy such as a carbon or photostatic copy" as "exclusive."²²

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Judicial Relations Committee



Michael M. Brownlee, Esq.

Interview with the Honorable Jay P. Cohen

Mr. Brownlee: Describe your path to the appellate bench.

Judge Cohen: I finished my undergraduate work at the University of Florida in 1974, and received my law degree from UF in 1978. I began my legal career in Sarasota County, but moved to Orlando in 1980, where I was a prosecutor for two years. In 1982, I entered private practice and handled some criminal defense work, juvenile dependency cases, and domestic relations. Eventually, I branched out into personal injury and commercial litigation.



The Hon. Jay P. Cohen

I was appointed to the county court bench in 1990 and served in the traffic, criminal, and civil divisions. During my time as a county court judge I initiated a volunteer-based mediation program, which is alive and well today. In 1993, Governor Chiles appointed me to the circuit court bench, where I was assigned to the domestic relations, juvenile, criminal, and civil divisions in both Orange and Osceola counties. Finally, Governor Crist appointed me to the appellate bench in January 2008.

Q: What do you wish you knew before becoming a judge?

A: That sometimes managing cases and people is not as exciting as practicing law!

Q: What do you consider the greatest strengths of the American legal system?

A: The jury system. In my opinion, the jury gets it right most of the time and, for the most part, it guarantees a fair trial.

Q: What do you consider the greatest weaknesses of our judicial system?

A: Funding is a serious problem. Unfortunately, due to budget constraints, especially in Florida,

the courts are forced to operate with a “triage” mentality. By that I mean the courts are forced to prioritize in terms of the severity or perceived importance of a case. The resources simply don’t exist for us to give every litigant the time and energy we would like, which is too bad.

Q: What do you wish attorneys would do better?

A: Prepare. It’s half the battle. I always say that chance favors the better-prepared. Also, in terms of the appellate bar, I would encourage attorneys to be more selective about requesting oral argument. Just because you’re the appellant doesn’t mean you should request oral argument as a matter of course.

Q: Do you have any advice for young lawyers?

A: Yes. It takes years to build a reputation, and seconds to ruin it. Always be mindful of professionalism.

Q: What do you like to do in your spare time?

A: I like to exercise, play golf, and cook.

Q: What is your favorite sports team?

A: My favorite college team is the Gators. I’m also a Dolphins fan. Actually, one of my first jobs was selling hot dogs at Dolphins games.

Q: What is the last movie you saw?

A: *Cars*. Before you tease me you should know my grandson lives with me, although I really did enjoy the movie.

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



David P. Hathaway, Esq.

15 Tips for a Successful Mediation – Part 4

The following is a continuation of the article, *15 Tips for a Successful Mediation – Part 3*, which appeared in the November 2013 issue of *The Briefs*.

Tip #13: Knowing When to Pass the Reserve.

As mentioned previously, a party should come to mediation with a starting number, a target point, and a reserve (the lowest number to accept or the highest amount to pay). Because there is a negative bargaining zone in most mediations, at the end of the day a party is going to be forced either to walk away, or to go past the reserve. People go past their reserve all the time because most cases settle at mediation despite a negative bargaining zone, but this is not an easy decision.

To help your client decide, consider his or her risk tolerance. Some clients hear their chance to win is less than 50% and are seriously frightened, whereas others are inspired for the challenge (remember the famous line by Jim Carrey in *Dumb & Dumber*: “So you’re saying there’s a chance!”) Some have a stomach for driving a hard bargain and others do not.

In fact, bargaining is much more prevalent in some parts of the world than others. According to one source, 75% of Americans pay the fixed price for goods without negotiating, whereas in Israel, only 11% pay the fixed price. Some clients have an immediate financial need for the settlement and others do not. Some clients need mediation more for venting than for money. Also consider the relationship between the person in attendance and the money. Is it their money, are they acting in a fiduciary capacity, or is this public money? Is it the culprit sitting in the next room, or is it the president of the company who has to answer to the board of directors? If you have a married couple in the room and it’s the husband’s case, the wife may want to settle, but if it’s the wife’s case, the husband may want to keep fighting. You might even have other factors at play, such as an impending sale of the company, where the prospective buyer has instructed the seller to settle the lawsuit prior to closing, no matter what the number.

Remember that under Fla. R. Civ. P. 1.720 as amended effective January 1, 2012, a party must have a representative attend mediation with full authority to settle “without further consultation,” although you probably would never know whether the person in the other room was mak-

ing phone calls to consult with others. Phone calls actually can be helpful, to the extent the caller is obtaining a higher settlement limit, but they can also be harmful, as people on the other end of a phone may be less inclined to compromise because they have not endured the difficulty of the bargaining process, which itself is part of what gets cases settled. Also consider whether these parties will ever see each other again and, if they are going to remain in the same industry, how future business may be impacted. By the end of the day, the plaintiff should be well-equipped to decide whether to settle for a bit less, and the defense to decide whether to pay slightly more than what the case is arguably worth.

Tip #14: Take Your Time With Settlement Agreements.

The worst mistakes at mediation involve settlement agreements. A risk manager once said that legal representation is like an airline flight: the takeoff and landing are the most dangerous. If the conflict check and engagement letter are part of your takeoff, the settlement agreement and disengagement letter are part of your landing. Be absolutely sure of the wording of the settlement agreement, because what appear to be minor issues can have major effects.

There was a story once where a lawyer representing the State of Florida agreed that all amounts collected as of a particular date would remain the property of the state. Later, it was determined that although the state had been billing prior to that date, nothing had yet been collected, so the state inadvertently settled for nothing.

Another time, where the liability to make installment payments was only for the corporation and not the individual officers and directors who had been joined in the suit, the young defense attorney drafting the settlement late at night wrote, “Defendants shall pay...,” which included the individuals.

For every settlement agreement, be sure to consider what terms apply to which parties to the case, and consider requesting releases even for client-related persons who are not parties. In one case, a plaintiff settled a case against his business partner who had allegedly been paying kickbacks with corporate funds to vendors who were personally close with him, and then the plaintiff immediately sued the vendors to collect the same amounts that had already been settled by the business partner.

Consider whether releases should be general or limited, and try to do some thinking in advance so you are not pondering these issues for the first time at 11:00 p.m. on the day of mediation.

Ask yourself whether the parties should stipulate that the settlement agreement is confidential, because whereas generally the conversations at mediation are confidential, the agreement itself is not. See Fla. Stat. § 44.405.

Ancillary documents may be necessary to effect the agreement, such as stock transfers and collateral. Be very careful of settlements involving the transfer of real property, because the issues can be very complex with regard to title searches, unpaid assessments or dues, preparation of deeds in other states or foreign countries, how the transaction will be treated by the IRS, land valuation concerns, exchange rate of foreign currency, hiring out-of-state law firms to prepare transfer instruments, metes and bounds questions, outstanding tax certificates, payment for appraisals and closing costs, unforeseen encumbrances or environmental issues, possible renters, dealing with possession after settlement but prior to conveyance, the timing of the closing, and many other issues that often cannot be adequately addressed at a mediation conference.

Under Rule 4-5.6(b) of the Rules of Professional Conduct, a settlement cannot include any promise not to represent a related party in the future. Non-disparagement clauses can be very risky. One woman settled a case for \$10 million and later gave a television interview about the "f--ing doofuses who fired me." She instantly became a defendant in a \$10 million breach of contract suit.

If at all possible, you should never agree to a concept in principle and then draft the contract later; it has to be signed at mediation or else the parties may change their mind after the stress of the mediation has worn off. Mediation works in part because of the difficulty of the process, but even though everyone may be tired after a long day, it is crucial to take your time with the settlement agreement.

Tip #15: Keep Mediation in Perspective.

As a lawyer, your job is to obtain the best possible outcome for your client under the facts and law, within the rules of professionalism. You should strive to "own the facts" and recognize that the devil is in the detail. The better you know the case, the better chance you have to resolve it favorably for your client. Your goal

is to win, but truth be told, your job is not to win. In fact, it is often best not to keep score of how many times you feel your client "won" or "lost."

There are many factors that contribute to the outcome of a case that we cannot control. It is important to keep the client's expectations reasonable, if possible. Mediators often say that the sign of a good mediation is where both sides walk away grudgingly satisfied or even somewhat dissatisfied with the result, but relieved that the case is over. Clients who think lawyers want cases to continue so they can keep billing hours are wrong. Lawyers are always representing their clients' best interests, not their own. No one can deny that the stress and time commitment in a case multiplies after mediation fails and the parties begin preparing for trial.

Lawyers also need to keep their own expectations in check. Some lawyers strike a bargain at mediation and feel proud that they did the best they could, whereas others are always disappointed that they were denied the feeling of a complete victory (sometimes called a "winner's curse").

Mediation is not a perfect science, and neither side will know whether it could have done better unless the mediator tells them. Keep in mind that the most a lawyer can ever reasonably expect to do at mediation is to pull the other party to its reserve number or slightly beyond. If you get your opponent to move 10% off his or her reserve, great. A move of 15% is outstanding. You will probably never get 25%, but the fact is, you really will never know. If you can get the case settled for a number that is acceptable to your client without the risk of trial, you are doing your clients a tremendous service. By keeping mediation in perspective, you will be more apt to reach successful settlements for your clients.

David P. Hathaway, Esq., is a shareholder in Dean Mead's Orlando office. He has been a member of the OCBA since 2002.

The object of a New Year is not that we should have a new year. It is that we should have a new soul and a new nose; new feet, a new backbone, new ears, and new eyes. Unless a particular man made New Year resolutions, he would make no resolutions. Unless a man starts afresh about things, he will certainly do nothing effective.

— G.K. Chesterton

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Robert B. Morrison, ASA BV/IA

No Silver Bullet in Value Question Concerning Dissolution, Buy-Sell, Gift & Estate, and Bankruptcy Litigation: Is 50 Percent of 100 Percent Equal to 50 Percent?

Attorneys making business valuation professional assignments frequently face the situation of a 50 percent interest in a business entity that has only one other owner: the other 50 percent as an investor. This scenario arises in divorces (corporate and marital), in buy-sell situations, for gift and estate tax purposes, and in bankruptcy litigation (fraudulent conveyance claims) and can present unique challenges. Resourcing the right valuation professional avoids resolution of problems when it comes to issues such as: Should the value be determined based on the assumption that the other 50 percent owner will/would be the buyer of the interest, or not, and what implications does the answer to that question have on the valuation assignment?

The answer to those two questions is very simple: It depends. It depends on what the appropriate level of value should be. It depends on what the appropriate standard of value should be. Finally, it depends on whether any contractual or statutory provisions trump generally accepted business valuation standards. Working with a highly educated, experienced, most strongly credentialed business valuation professional will ensure analysis with the most current and complete methodology to support your matter.

Levels of Value

There are four basic levels of value when considering interests in business entities:

- **100 percent control:** The holder of 100 percent of the outstanding equity of a business may do what he or she wants with the assets and cash flows of the business (subject to loan covenants and statutes). He/she has complete control over all business and strategic decisions. He/she can provide liquidity by selling assets, borrowing funds, or selling equity in the company. In valuing a 100 percent controlling interest, the valuation analyst may consider an asset or stock transaction as the 100 percent controlling interest, and the owner can choose to do either.
- **Less than 100 percent control:** Owners of interests of between 50 percent and 100 percent of the equity interests have varying degrees of control over the assets, cash flows, and decision-making of business enterprises, depending on the terms of the governing ownership agreement (i.e., stockholder, partnership, or operating) and on local stat-

utes. The ownership agreement may require a super-majority or even unanimous vote for certain actions. The ownership agreement may grant all major decisions to a single or limited number of individuals regardless of their ownership interest (e.g., general partner of a limited partnership; manager of a limited liability company). In the absence of an ownership agreement, statutes may impact how this issue is addressed. In any event, when valuing such an interest, the valuation analyst must remember that he/she is valuing a security, not the assets of the company, introducing the concepts of illiquidity and lack of marketability in addition to possible lack of control.

- **Non-controlling, marketable (also known as non-controlling, as if freely traded):** As the name suggests, the holder of a non-controlling, marketable interest lacks the prerogatives of control enjoyed by the holder of the controlling interest(s) in the company. The interest, however, is marketable in that there is an efficient, ready market through which the interest may be sold with minimal cost or impact on the value of the interest. Another issue to be addressed by the valuation analyst is whether the interest, while marketable, is also liquid. There are many publicly-traded stocks that are marketable (registered and quoted, for example, on NASDAQ) but, because of the nature of the company, its stock, and the size of the interest, are illiquid.
- **Non-controlling, non-marketable, illiquid:** This level is most synonymous with a small, "minority" interest in a privately-held company. The size of the interest is so small that it not only lacks control, but it also lacks any influence with the controlling owner(s). It is non-marketable because there is no market or quotation platform through which the interest may be marketed. It is illiquid because there is no demand for the interest and there is no liquidity event on the horizon.

Note that the subject interest in the 50 percent/50 percent scenario "falls-through" the levels of value cracks: It has no home. Therefore, conflict emerges regarding the appropriate level of value. It lacks the majority necessary to control the company's decisions related to operations and capitalization; however, it does have the ability to cause dead-

lock, possibly forcing the company into a statutory dissolution or statutory appraisal.

There is a tendency by the selling investor to view the value of his/her interest as pro-rata, or strictly in accordance with the 50 percent share of the value of the company as a whole, ignoring the fact that his/her interest is an ownership interest in the assets and equity of the company, not an ownership interest in the assets themselves. The selling investor will argue that the obvious buyer is the other 50 percent investor, giving the other investor complete control, thereby eliminating the need for assessing discounts for lack of control and lack of marketability (and for illiquidity). This argument implies that the investment or synergistic standard, or definition, of value is most appropriate.

Standards of Value

In the business valuation profession, the standard of value is the definition of value. The four primary standards of value are:

- **Investment Value (also known as strategic or synergistic value):** the value to a particular investor based on individual investment requirements and expectations;
- **Fair Market Value:** the most commonly understood definition of value that involves hypothetical willing sellers and buyers negotiating at arm's length and not under compulsion;
- **Statutory Fair Value:** defined pursuant to state statutes, such as Section 607.1301 of the Florida Statutes, with the explicit provision that discounts for lack of control and lack of marketability are prohibited for a company with 10 or fewer owners;
- **Accounting Fair Value:** a concept similar to fair market value, where the "willing buyer" is replaced with a "market participant," and the resulting value is considered an exit value; and
- **Liquidation Value:** the net amount that would be realized if the business is terminated and the assets are sold piecemeal. Liquidation can be either "orderly" or "forced."

The most common and widely recognized standard of value is fair market value, unless there are facts and circumstances to suggest, or that dictate, an alternative standard of value applies. The definition of fair market value is *"the price, expressed in terms of cash equivalents, at which property would change hands between a hypothetical willing and able buyer and a hypothetical willing and able seller, acting at arm's length in an*

open and unrestricted market, when neither is under compulsion to buy or sell and when both have reasonable knowledge of the relevant facts." Even this seemingly straightforward concept is debated. In a divorce, both marital and corporate, is the seller truly a willing seller? Is the buyer truly a willing buyer? Are both truly free of compulsion? Clearly, the answer is "no," so different valuation analysts will handle the situation differently. To avoid or minimize this inconsistency, the business valuation analyst should ask counsel what statutes or case law exists that may control how value is to be defined under the specific facts and circumstances of the instant assignment. The profession's standards allow, in fact require, that valuation analysts defer to local regulatory or statutory authority where appropriate.

In the 50 percent/50 percent scenario, where the selling investor argues that the obvious buyer is the other 50 percent investor and, as a result, the other 50 percent investor will gain control, the selling investor is arguing for an investment value – value of the subject interest to a specific buyer who owns a unique ability to create synergistic value from that interest because of the fact that he/she happens to own the other 50 percent. Stepping back from the details a moment, two questions arise:

- Why would the other 50 percent investor (potential specific buyer) pay the seller for something that the potential specific buyer brings to the table (i.e., a synergistic opportunity to create a 100 percent controlling block)?
- Why would the potential specific buyer pay more than that which a hypothetical (not specific) buyer would negotiate and pay based on his/her assessment of lack of complete control, potential for deadlock, illiquidity, and large block size?

On the other hand, if there is a potential specific buyer who can pay more than the population of hypothetical buyers, why wouldn't the seller recognize that as an opportunity to maximize the price he/she receives for his/her interest or, at least, use that information in negotiations with the population of hypothetical buyers to enhance their offers?

There is no silver bullet for this conundrum. Answers must be found in the critical analysis of the specific facts and circumstances surrounding the subject interest and the company in which the interest is held and of the specific rights and obligations that attach to the interest or, as often

is the case, of the terms of any governing agreements or statutes.

Contractual and Statutory Considerations

Frequently, the 50 percent/50 percent scenario arises in situations where there is a buy-sell agreement or some other contractual provision that determines the "price" at which the remaining investor or the company will purchase the exiting investor's interest. All too frequently the relevant wording is either too vague, and/or is conflicting, leaving the business valuation analyst to determine the appropriate level of value and standard of value.

In instances where a buy-sell agreement does exist, there is a natural presumption as to the identity of the buyer (i.e., the other investor or the company). If, however, the buy-sell requires that the price be fair market value, and the accepted definition and application of fair market value forbids the presumption of a specific buyer, what is the appropriate level of value?

Conclusion

Valuing a 50 percent interest in a closely-held company with two 50 percent owners can present numerous complexities for the valuation analyst and can lead to wildly divergent opinions of value. To be sure, some of the difference in value conclusions results from differences in valuation assumptions related to profitability, risk, and growth. However, very frequently the more significant contributors to the difference are differing assumptions related to the appropriate level and standard of value.

In its purest sense, the concept of fair market value does not presume any one specific buyer, but rather a population of prospective hypothetical buyers who will negotiate at arm's length, with the resulting "price" reflecting the true market value of the business interest. Reality, however, often introduces an environment where the required elements of fair market value are infringed, do not exist, or are subject to debate. In the final analysis, where the ultimate value ends up is a function of the appropriate standard and level of value given the facts and circumstances of the subject interest at hand.

Robert B. ("Bob") Morrison, ASA BV/IA is the Managing Partner of Morrison Valuation & Forensic Services, LLC in Orlando. Bob is the elected chair of the Business Valuation Committee of the American Society of Appraisers (ASA) and is the vice-chair of the International Institute of Business Valuers. Bob holds the Accredited Senior Appraiser certification and the Intangible Asset specialty designation conferred by the American Society of Appraisers.



Donna A. Haynes



Kavita Sookrajh, Esq.

Changing a Life – One Adoption at a Time

One definition of “family” contained in the *Merriam-Webster Dictionary* is: “the basic unit in society traditionally consisting of two parents rearing their children.” For youth in the child welfare system, “family” may come to mean something other than the traditional definition. Some children are never reunified with their birth parents. Their family then becomes the foster parents, group home parents, relatives, and non-relatives who care for them during the course of a dependency case. But when youth make connections with individuals who want nothing more than to make that child a member of their “family” forever, then the highest form of permanency is achieved for that child: adoption. Some share a genetic bond with their adopted family, but often that is not what is most important to the child. When GALs help children find forever families, what GALs have helped them find are people who will be in their lives no matter what, to love them and be by their side through all the challenges that lie before them.

National Adoption Day is celebrated in November throughout the United States in an effort to raise awareness of the number of children in foster care who are waiting for adoption. Locally, Orange County celebrated National Adoption Day with a ceremony held on Friday, November 22, 2013, in the Jury Assembly Room of the Orange County Courthouse. Judge Robert Evans presided over the event and finalized the adoption of 15 children into 11 families. Each of those 15 children had an attorney GAL who protected their best interests and fought for their right to have a forever family.

One of the children adopted that Friday was Rachel. GAL program courtroom attorney Kavita Sookrajh, Esq., served as her GAL. Rachel is seven years old and came into care when she was three. Born to drug-addicted parents, she was neglected and not properly cared for. She was found among debris and discarded drug paraphernalia and not in the cozy home one envisions for any child, let alone a three-year-old child who could not care for herself.

Removed from her parents, Rachel was placed with a relative caregiver who ultimately became her permanent guardian. Although Rachel was secure in that permanent guardianship, there was always a lingering doubt that a parent may return and upset the sense of stability the child had come to depend upon. Adoption, unlike permanent

guardianship, allows children to breathe a sigh of relief. No one can take that security away from them. They have a legal family.

As her GAL, Kavita made certain Rachel received the services and dedicated care she needed to help her deal with issues of trust. Rachel has grown to love and adore her new and safe home environment, which now consists of everything a child her age should have – food to eat; a safe, comfortable, clean home; education; and extras such as karate lessons and puppies. Because of Kavita’s advocacy, and the State’s intervention, Rachel is a happy child who now has the opportunity to flourish. Kavita arranged for the adoption to take place on National Adoption Day.

Rachel is only one of the thousands of children whose lives Kavita has touched during the more than 20 years she has dedicated to serving children in the child welfare system. Her calling came when she was in college and had the opportunity to volunteer at a foster care youth shelter. Upon becoming a lawyer, Kavita worked as an attorney for the Department of Children and Families, prosecuting child abuse cases on behalf of the State. In 2006, she joined the Legal Aid Society as a courtroom attorney for Legal Aid’s Guardian Ad Litem Program. The work that she performs on a daily basis causes her to reflect on the plight of Florida’s most vulnerable citizens. She understands the importance of adoption and the difference it can make, saying: “I will never forget those days of service at the youth shelter. I experienced the raw emotions of a sad child who simply wanted a family of his own.”

Kavita marvels at how fortunate she was to have had that initial opportunity to volunteer. “It was that experience that created the path for me to focus my career on child advocacy. Although I’ve been called upon to handle enormous caseloads involving complex termination of parental rights cases, the ultimate reward was seeing so many of those children ultimately find adoptive families.”

Sometimes a GAL has to take the position that for reasons of safety and stability, some children should not go back to a parent or parents and must be removed from the home. As Kavita has found, “It is not an easy task to alter the course of a child’s life. It is not a task for the faint of heart. But to have the chance to make such a profound change in that child’s life is an experience unlike that of anything else, and I feel privileged to have

been given that opportunity. An adoption is the only way to achieve this 'sense of belonging' for children, thus breaking the cycle of poverty and avoiding additional harm."

On National Adoption Day, Community Based Care of Central Florida and other community partners rallied around the families to celebrate their special day by providing food, a photographer, and a caricature artist. The event was a huge success. Disney is one of our community partners – they, along with Community Based Care of Central Florida – have made this a special day. Disney donated a Disney Duffy Bear for each adopted child to commemorate the special day.

Kavita has come full circle since her days as a shelter volunteer. She touched the lives of children there and continues to do so through her dedicated work at Legal Aid. But even as Kavita watched Rachel tightly hold a Disney Duffy Bear on National Adoption Day, she knew that another child was entering the system and that her work would continue.

Donna A. Haynes is the Development Manager and **Kavita Sookrajh, Esq.,** is the GAL Program courtroom attorney at the Legal Aid Society of the Orange County Bar Association, Inc. They have been members of the OCBA since 2008 and 2006, respectively.



Reina Kivinski adopted Sophia (age 1) and Alexa (age 4).



The Marin family at the Osceola Courthouse adoption ceremony. With Karl Radka (on right), Vice President, Community Impact and Leadership Development at Community Based Care of Central Florida.

The Gonzales family: Cheryl and Richard Gonzales adopting 10-year-old Jayden during National Adoption Day at the Orange County Courthouse organized by Community Based Care of Central Florida



Photos: Community Based Care of Central Florida.

Jennifer Downs adopts 17-month-old Jaxson.



Orange County Bar Association Election Notice

Election of Officers and Members of the Executive Council of the OCBA

The following positions are open for election:

Vice President / President-Elect (1-year term)
Treasurer (1-year term)
Secretary (1-year term)

Three (3) Executive Council Seats (3-year term)
June 1, 2014 through May 31, 2017

Election of Trustees of the Board of Trustees of the Legal Aid Society of the OCBA, Inc.

The following positions are open for election:

Two (2) Board of Trustee Seats (3-year term)
June 14, 2014 through May 31, 2017

Election of At-Large Members of the Board of Directors of the Young Lawyers Section of the OCBA

The following positions are open for election:

Five (5) At-Large Board Member Seats (2-year term)
June 1, 2014 through May 31, 2016

- Anyone interested in running for any of these positions should file a written petition at the OCBA office, 880 N. Orange Ave., Orlando, FL 32801, signed by not less than five (5) members of the OCBA. Blank petitions are available at the OCBA office and on the website at www.orangecountybar.org
- **Petitions must be received no later than 5:00 p.m. on Friday, January 31, 2014.**
- Petitions may be mailed or couriered to the OCBA at the above address. Nominees must endorse their written acceptance on the petitions and may NOT accept nominations for more than one (1) office.
- No nominations for the office of Vice President shall be accepted unless the nominee has served on the Executive Council at least one (1) year.
- Thereafter, the nominating petitions will be canvassed and tabulated by the President and Secretary, who shall thereupon certify the names of all members who have been properly nominated.
- **Voting shall be conducted ONLINE BY SECRET BALLOT.** Each voting member will receive secure access to the ONLINE BALLOT via an EMAIL sent to the member's EMAIL ADDRESS listed in the BUSINESS EMAIL ADDRESS LINE of the member's membership record. Voting will begin on Monday, March 3, 2014. (A printed ballot will be sent only to members who do not have an email address.)
- **Please update your BUSINESS EMAIL ADDRESS by February 10, 2014.** Go to the OCBA website, login, and go to "Edit your information."
- **Voted ballots must be cast ONLINE (or printed ballots received in the OCBA Office) no later than 5:00 p.m., Monday, March 31, 2014.**
- If you need to update your BUSINESS EMAIL ADDRESS and do not have your login or password, please contact the membership department at karenf@ocbanet.org, or the communications department at peggy@ocbanet.org. Call: 407-422-4551.



Kavita Sookrajh, Esq.

Beyond the Dependency Trial Court: GAL Advocacy at the Appellate Level

Being a guardian ad litem is a very rewarding form of *pro bono* work for a local attorney to engage in and, in particular, GAL appellate participation can have a significant impact on securing permanency for a child. OCBA members and certified appellate lawyers John Hamilton, Esq., and Tom Young, Esq. were instrumental in helping the Legal Aid Society establish an impressive panel of *pro bono* attorneys who are willing to assist GALs in dependency case appeals. Since creating the panel, we have been successful in appeals of dependency adjudications, termination of parental rights judgments, and many other Chapter 39 matters, thus ensuring the safety and protection of Florida's children. The Legal Aid Guardian ad Litem Program's appellate success story encompasses a near-perfect appellate record each year.

While there are many tips for GALs to achieve success at the appellate level, a primary one is to ensure that the trial court's record is complete, thorough, and protected. The GAL, who has party standing by statute, should immediately begin laying the foundation at the trial level in a Chapter 39 proceeding. Objections and responses should be made timely and expeditiously during trial. Arguments at the trial court level should point out the applicable case law that would govern the court's ruling, with an explanation of how the current case applies. Statutory record cites are vital as well, and provisions exist within Florida Statutes Chapter 39 that govern every stage of the dependency proceedings. It is always important in appellate work that appellate time frames are observed, as they run swiftly once the initial brief is filed. Oral arguments may occur upon a party's request. Termination of Parental Rights judgments account for the vast majority of what is appealed, and they operate under expedited time frames within the District Court of Appeal (DCA) so the case will move quickly. The final decision can result in either the trial court's judgment being affirmed, reversed, or reversed accompanied by a remand with instructions.

Once a Notice of Appeal is filed in a dependency case, the Legal Aid's GAL Program is alerted so we can quickly make contact with the *pro bono* GAL to ascertain whether he or she wishes to handle the appeal or have us secure the services of another *pro bono* attorney to represent that GAL for purposes of the appeal. In either instance, the GAL Program staff attorneys remain in contact with the GAL, and/or *pro bono* attorney repre-

senting the GAL, should any questions arise on juvenile dependency practice or procedure.

There are several dedicated, local appellate attorneys who have chosen to do their *pro bono* work by assisting us with appeals of juvenile dependency cases. These attorneys are usually board certified in appellate work. As a part of their representation, these attorneys have gone to the Fifth DCA and argued critical issues that impact the welfare of dependent children across the state. They have prepared lengthy arguments for presentation to the DCA on involved and complicated cases, with little advanced preparation time. The *pro bono* appellate attorneys consult closely with the *pro bono* GAL to ensure their interests are fully represented at the appellate level. They keep in close contact with the GAL and make sure they are fully informed of the progress of the appellate case from beginning to end. Once the decision comes out from the DCA, the appellate attorney advises the GAL of the outcome and the next steps procedurally.

If a *pro bono* GAL decides to handle an appeal himself or herself, he or she will have full support through Legal Aid's GAL staff. The GAL can elect to have a staff attorney co-counsel the appellate case.

GAL appellate work continues to be a "win-win" situation for everyone involved, most importantly, the children. This work achieves permanency, safety, welfare enhancement, and success for all children in care in a permanent way. We would like to thank the following *pro bono* attorneys who have helped to establish the success of our appellate program:

John Hamilton, Esq., Thomas Young, Esq., Nick Shannin, Esq., Christi Lawson, Esq., Barbara Eagan, Esq., Brenda Lee London, Esq., David Knapp, Esq., Jamie Moses, Esq., Christopher Carlyle, Esq., James Gangitano, Esq., Elizabeth Wheeler, Esq., William Pence, Esq., Kimberly Healy, Esq., Susan Fox, Esq., Michael Brownlee, Esq., Derek Angell, Esq., and Christopher Killer, Esq.

For more information on *pro bono* appellate work, contact Susan Khoury, Esq., the Guardian ad Litem Program Director, at skhoury@legalaid-ocba.org. For additional *pro bono* opportunities, contact Catherine Tucker, Deputy Director/Pro Bono Coordinator, at ctucker@legalaidocba.org.

Kavita Sookrajh, Esq. GAL Program courtroom attorney with the Legal Aid Society of the Orange County Bar Association, Inc., has been a member of the OCBA since 2006.

Legal Aid Society Celebrates National Pro Bono Week

The Legal Aid Society of the Orange County Bar Association, Inc. celebrated National Pro Bono Week with its One-on-One Advice Clinic at the Marks Street Senior Center in Orlando on October 26, 2013. Nineteen attorneys volunteered to participate and gave advice to 43 clients throughout the day-long event.

National Pro Bono Week focuses the nation's attention on the increased need for *pro bono* services during challenging economic times and celebrates the outstanding work of lawyers who volunteer their services

throughout the year. In Florida, a dozen legal services providers, colleges, and community organizations provided programs, including webinars and training, ask-a-lawyer forums, family law clinics, and bankruptcy law clinics, among others.

The goals of National Pro Bono Week include recruiting more *pro bono* volunteers and increasing legal services to poor and vulnerable people, mobilizing commu-

nity support for *pro bono* work, fostering collaborative relationships, and recognizing the *pro bono* efforts of local attorneys.

For more information, please contact Catherine A. Tucker, Esq., Pro Bono Coordinator/Deputy Director at the Legal Aid Society.



Kersten Morgan, Esq., immigration attorney, with client



Richard E. Hornsby, Esq., and Esther M. Whitehead, Esq.



Jean Marie Moses, Esq., and John B. Dorris, Esq.



Attorneys from front to back, Dina Castillo Ward, Esq., immigration attorney, and Don Petersen, Esq., consumer attorney



Brett Bressler, Esq., Amanda M. Sampaio, Esq., and Nicholas A. Buoniconti III, Esq.





Anastasia Akinchenko, Tark R. Aouadi, Esq., Nitti Sharan, Esq., of LawyersToday.com, Nick Shannin, Esq.



Lauren McCorvie, Esq.
YLS President



Nick Shannin, Esq., the Hon. Roy Dalton, Michael Valenzuela, BMO Harris Bank



Nick Shannin, Esq., Mark Lang, Esq., Mark Lang & Associates



Hispanic Bar Association of Central Florida

OCBA Luncheon

October 24, 2013

The Ballroom at Church Street

Co-hosted by the Hispanic Bar Association
of Central Florida

Sponsored by BMO Harris Bank



Paul Scheck, Esq., OCBA President, Miguel
Alexander Pozo, Esq., Hispanic National Bar
Association President



Kimberly Lopez, Esq.
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Felipe Guerrero, Esq.



Ana Tangel-Rodriguez, Esq.



Jo Ann Tucker-Hall
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Michael Valenzuela



Mary Ann Morgan, Esq.

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OCBA Preferred Vendors

The Orange County Bar Association is pleased to provide you with a list of 2014 Preferred Vendors – a variety of businesses that have provided Central Floridians with time-tested, quality products and services, and are supporters of the Orange County Bar Association. We encourage you to take advantage of the products and services offered by these establishments. Many businesses on the list offer special promotions or discounts to help you continue to grow your practice and be successful both in the legal field and in the community.

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YLS Mock Trial & Halloween Party

October 29, 2013

Women's Residential and Counseling Center



4th Annual YLS Lawyers for Literacy Spelling Bee

October 24, 2013

**Downtown Doubletree
by Hilton**

Winners: Terri Spoon and
Michael Grossman, Esq.,
representing the YLS team!



YLS on the move

On October 10, 2013, **Judge John Kest** presented his monthly **Brown Bag Luncheon** on “Real Life Professionalism and Ethics in the Trial Practice.” **Judge Robert Egan** and **Judge Julie O’Kane** joined Judge Kest for the presentation.

The **YLS October Luncheon** was held on October 18, 2013. **Judges John and Sally Kest** spoke about mentoring in honor of the kick-off for this year’s YLS Mentoring Program, and mentor-mentee pairs were invited to attend the luncheon and orientation session. The YLS Mentoring Program is off to a great start, and 73 mentor-mentee pairs have been matched. Thank you to **Skinner Lou- is, Esq., Stephen Oakley, Esq., Jessica Travis, Esq.,** and the YLS Mentoring Program committee for their hard work on the luncheon and kickoff. As always, the YLS would like to thank its luncheon sponsors: **BMO Harris Bank, Cross, Fernandez & Riley LLP, Florida Lawyers Mutual Insurance, ProServe USA, Raymond James, Ricoh Legal, Smith Group Investigative Services, US Legal, and West-law.**

The **4th Annual YLS Lawyers for Literacy Spelling Bee** was held on October 24, 2013 at the downtown Doubletree by Hilton. One hundred people attended the event to watch seven pairs of spellers compete. The winners were **Terri Spoon** and **Michael Grossman, Esq.,** representing the YLS, and in second place were **Hugh Mills** and **Norman Moss** representing SeaWorld Orlando. Over the past four years, this annual event has raised more than \$100,000 for literacy education for adults and families thanks to the support of the legal community. The YLS would like to congratulate the planning committee on a successful event: **Melinda Wimbish, Esq. (co-chair), Davis Lewis, Esq. (co-chair), Eric Elms, Esq., Kayla Mudge, Esq., Amanda Perry, Esq., C. Andrew Roy, Esq., and Jennifer White, Esq.** The YLS would also like to recognize the Capital Bee sponsor, **SeaWorld Orlando,** and our volunteer officials: **Judge Bob LeBlanc,** Ninth Judicial Circuit Court (emcee); **Jim Payne,** WESH TV (judge); **Dr. Thaddeus Seymour,** president emeritus, Rollins College (judge); **Tim Bottorff,** head librarian, Universal Orlando Foundation Library, Rosen College of Hospitality Management, UCF (pronouncer); and **Erica Lee,** WLOQ, “Wake Up with Erica” (beekeeper).

On October 29, 2013, the YLS hosted a **Mock Trial and Halloween Party** for the children at the Women’s Residential and Counseling Center (WRCC). The WRCC is a 138-bed facility for women and children. Last year, more than 80 percent of the women who came to the WRCC were victims of crime, predominantly domestic violence. Many of the moms at the WRCC cannot afford to

buy their children Halloween costumes or provide their children with a traditional Halloween. At the party, volunteers provided the children with new Halloween costumes, and the children were treated to crafts, games, candy, and other treats. The mock trial presented the case of the *Big Bad Wolf vs. Curly Pig* and taught the children about trials and the court system. The YLS would like to thank mock trial participants for their captivating performances: **Christine Lomas, Esq., Michael Barber, Esq., Brendan Lynch, Esq., Melody Lynch, Esq., Kristopher Kest, Esq., Colby Ferris, Esq., Lorraine Pitre, Esq., and Amy Rigdon, Esq.** The children/jury decided in favor of Curly Pig (Brendan Lynch) and his attorney (Kristopher Kest). The YLS would also like to thank the dozens of volunteers who helped with the Halloween party, and the Florida Bar YLD for awarding the YLS the grant that made this event possible. Most importantly, thank you and congratulations to the event’s planners: **Karen Persis, Esq., Jen Morando, Esq., and Jamie Blucher, Esq.**

The YLS’ **October Facebook-Like Campaign** was a success! For every new “like” the YLS Facebook page received during the month of October, the YLS donated \$1 to the Legal Aid Society of the OCBA. Thanks to 683 new “likes,” the YLS donated \$683, and reached its goal.

Below are some upcoming events and activities you won’t want to miss!

The first 2014 **Brown Bag Lunch with Judge John Kest** will be held on **January 9, 2014,** from 12:00 p.m.-1:15 p.m. in the 23rd Floor Judicial Conference Room at the courthouse. The 1.5 CLE topic will be “Bench Trials – How to Keep the Judge’s Attention.” Although not required, RSVP would be helpful so that materials can be prepared. Please contact Judge Kest’s judicial assistant, Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org. Be sure to bring your lunch; bottled water will be provided. On **February 13, 2014,** Judge Kest will speak on the topic “Pre-Trials and Case Management: Uses, Expectations and Requirement,” so mark your calendar!

Our next monthly **YLS Luncheon** will be held on **January 17, 2014,** from 11:30 a.m.-1:00 p.m. at the Citrus Club, 225 S. Orange Ave. in Orlando. Casual attire is perfectly appropriate. For a three-course meal, the cost is only \$10 for all young lawyers and judges. Please **RSVP no later than January 14** to yls.ocba@gmail.com. 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!

continued page 30



Jill D. Simon, Esq.

Energy Specialist Jay Dyer, PE, joins Peninsula Forensic Engineering



Peninsula Forensic Engineering is pleased to welcome Mechanical Engineer and Certified Energy Manager Jay Dyer, PE, to its professional services team.

Jay Dyer brings 20 years proven experience and expertise in engineering and energy management for large commercial energy users from across the nation to Central Florida.

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YLS on the move

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Details are being finalized for our next big event – **Evening with the Judiciary** – to be held in late February. This annual event is always a smashing success and lots of fun! Look for further news in next month's *Briefs* and in your YLS email blasts.

If you're not receiving email blasts and would like to be added to the list and find out more about our section, our committees, and our upcoming 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.

Estate, Guardianship and Trust Committee

continued from page 12

The *DeParry* court determined that a carbon copy or a photostatic copy is not the only type of copy that can be used to prove the content of a lost will or codicil under section 733.207.²³ In *DeParry*, the appellate court concluded that the definition of "correct copy" is not as "restrictive" of an interpretation as the lower court in *DeParry* held.²⁴ Instead, the court found that the reference to "an identical copy such as a carbon or photostatic copy" in *Parker* was only an example of some types of identical copies rather than the only form of "correct copies."²⁵ With advancements in technology, the number of types of correct copies will increase. The *DeParry* court compared the case before them, which was decided in 2012, with the *Parker* case, which was decided in 1980 when the use of personal computers was rare.²⁶

The *DeParry* court dismissed all counterarguments about the easiness of altering language on computer-generated documents. The court maintained that people can just as easily alter carbon and photocopies. It held that "the possibility that an unscrupulous few may misuse a particular form of technology is not a reason to reject that technology entirely."²⁷ With the advent of new technologies, it is certain that future problems will arise on the determination of "correct copies," but the law is clear that all types of correct copies must be identical to the decedent's executed will.

Conclusion

The proponent of a lost or stolen will has many hurdles to clear. First, one must introduce competent, substantial evidence to overcome the rebuttable presumption that the decedent revoked his or her will. Then one must establish the content of the lost or stolen

will. If there is a correct copy of the will in question, then the proponent of the will must introduce the testimony of one disinterested witness about the terms of the lost or destroyed will. Only certain copies are admissible. The copies must be identical to the original will, such as a carbon copy or a computer-generated copy. If no copy exists, however, the proponent of the will must provide the testimony of two disinterested witnesses in order to establish the contents of the will.

Erika Kane, Esq., Kane and Koltun, Attorneys at Law.

¹⁸ Fla. Jur 2d *Decedents' Property* § 302 (2013); § 733.207, Fla. Stat. (2012).

²¹ *In re Estate of Parker*, 382 So. 2d 652 (Fla. 1980).

³ *Id.*

⁴ *In re Deane's Estate*, 153 So. 2d 26 (Fla. 3d DCA 1963).

⁵ *Smith v. DeParry*, 86 So. 3d 1228 (Fla. 2d DCA 2012).

⁶ Fla. Prob. R. 5.510.

⁷ *Brennan v. Honsberger*, 101 So. 3d 415 (Fla. 5th DCA 2012).

⁸ *In re Estate of Kero*, 591 So. 2d 675, 677 (Fla. 2d DCA 1992).

⁹ Fla. Prob. R. 5.510.

¹⁰ *Honsberger*, 101 So. 3d 415; see also § 733.207, Fla. Stat. (2012).

¹¹ *Id.* at 416.

¹² *In re Parker's Estate*, 382 So. 2d 652, 653 (Fla. 1980).

¹³ *Id.* at 652.

¹⁴ *Id.* at 654.

¹⁵ *In re Estate of Kero*, 591 So. 2d at 676 (analyzing and differentiating the case at hand from the District Court of Appeal's decision in *In re Estate of Parker*, 369 So. 2d 1034, 1035 (Fla. 4th DCA 1979), rev'd, 382 So. 2d 652 (Fla. 1980)).

¹⁶ *In re Parker's Estate*, 382 So. 2d at 654.

¹⁷ *In re Estate of Kero*, 591 So. 2d at 676.

¹⁸ *Id.*

¹⁹ *Id.* at 677 (relying on *In re Sisselman's Will*, 23 Fla. Supp. 30 (Fla. Dade Cty. Ct. 1964)).

²⁰ *DeParry*, 86 So. 3d at 1228.

²¹ *Id.* at 1233.

²² *Id.* at 1234.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.* at 1235.

products are marked in a “substantially consistent and continuous” manner; thus, the constructive notice period (and therefore the damages period without actual notice) begins from the date on which products are consistently and continuously marked.¹² The marking requirements also apply to third parties authorized to make or sell products under the patent, including licensees, though courts have demonstrated some flexibility in analyzing patent marking by third parties.¹³ When considering the sufficiency of marking by third parties, courts apply a “rule of reason” to determine whether marking has been substantially consistent, including considering reasonable efforts made by the patentee to ensure proper marking by authorized third parties.¹⁴

The Type of Patent Claim is Important for Marking Purposes

Different types of patent claims, namely method versus product claims, dictate different notice requirements and marking protocol. When the patent covers a product or device, the marking statute requires that the patented product or its packaging be marked with the word “patent” or the abbreviation “pat,” followed by the number of the patent(s) that apply.¹⁵ Alternatively, a patentee can “virtually” mark a product by marking a website address on the product where the details associating specific products with the patents can be found. If the patent claims only methods or processes, the marking requirements of 35 U.S.C. § 287 do not apply and damages begin to accrue upon infringement regardless of notice.¹⁶

Marking requirements get more obtuse when considering the product and method claims within the same patent or lawsuit. The question (as framed by Federal Circuit decisions) boils down to which patent claims of which patents are asserted in an action. The Federal Circuit has held that if the patent-in-suit includes both method and product claims, but only the method claims are asserted, there is no obligation to mark under 35 U.S.C. § 287.¹⁷ This is true even in instances where the patent claims a method of making a product that could be physically marked with the patent number covering the method.¹⁸ The Federal Circuit has further distinguished between the assertion of method and product claims by holding that the assertion of two patents, one that solely claimed methods while the second patent claimed only products, did not require marking for damages to accrue for the method claims.¹⁹ In contrast, where both product and process claims of the same patent were asserted, marking was required on the product to recover damages related to infringement of the product or to the method claims.²⁰

Practical Advice for a Marking Program

Because of the dichotomy between marking requirements on product versus method claims, a patentee may be forced to choose between asserting both types of claims versus method claims alone. In theory, such a decision could have a huge impact, as it can change the date when damages begin to accrue and may even impact the overall damages theory of the case. Given the importance of marking to a potential damages claim, the best practice is to mark all products covered by the patent as soon as products are on sale (or as soon as the patent issues if products are already on sale). If the patent includes both a product and a method of making or using the product,

the patentee should also mark the product itself if possible. For patentees with expansive patent portfolios, or who continue to expand their patent portfolio, virtual marking is likely the best option because it will allow those patentees to keep the patent markings updated. For patentees who license their patents, the license agreement should require marking, as well as require samples from the licensee on a regular basis to ensure that the product is being properly marked. The patentee may also want to consider a provision in the license that requires virtual marking, and using a website for virtual marking that is controlled by the licensee to ensure proper marking. By taking these steps, the patentee ensures that if an infringement occurs, the patentee has all possible remedies available.

Ryan T. Santurri is a registered patent attorney and a shareholder at the law firm of Allen, Dyer, Doppelt, Milbrath and Gilchrist, P.A. Mr. Santurri is Board Certified by The Florida Bar in Intellectual Property Law. He has been a member of the OCBA since 2006.

¹²35 U.S.C. §§ 271, 281

²*Maxwell v. J. Baker, Inc.*, 86 F.3d 1098, 1111 (Fed. Cir. 1996).

³*See American Medical Sys., Inc. v. Medical Eng'g Corp.*, 6 F.3d 1523, 1536 (Fed. Cir. 1993).

⁴*Forest Group Inc. v. Bon Tool Co.*, 590 F.3d 1295, 1302 (Fed. Cir. 2009).

⁵*Forest Group*, 590 F.3d at 1303 (citing Donald S. Chisum, *Chisum on Patents* § 20.03[7][c][vii] (2009)).

⁶*See* 35 U.S.C. § 292.

⁷*See* 35 U.S.C. § 292 (2010).

⁸*See id.*; *see also Clontech Labs, Inc. v. Invitrogen Corp.*, 406 F.3d 1347, 1352 (Fed. Cir. 2005).

⁹*Pequignot v. Solo Cup Co.*, 608 F.3d 1356, 1362 (Fed. Cir. 2010) (superseded by statute).

¹⁰35 USC §§ 292(a), 292(b).

¹¹35 U.S.C. § 292(b).

¹²*American Medical*, 6 F.3d at 1537.

¹³*See Maxwell v. J. Baker, Inc.*, 86 F.3d 1098, 1111 (Fed. Cir. 1996); *see also Lans v. Digital Equipment Corp.*, 252 F.3d 1320, 1328 (Fed. Cir. 2001) (holding that the failure to mark by a patentee's licensees barred the accumulation of damages).

¹⁴*See Maxwell*, 86 F.3d at 1111-1112.

¹⁵35 U.S.C. § 287(a).

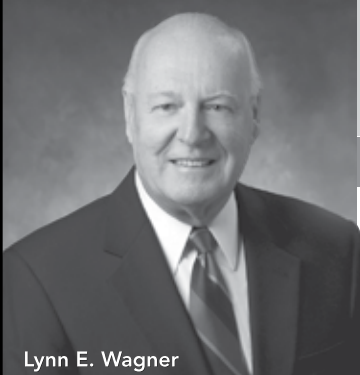
¹⁶*See Crystal Semiconductor Corp. v. Tritech Microelectronics Int'l, Inc.*, 246 F.3d 1336, 1353 (Fed. Cir. 2001) (citing *American Medical*, 6 F.3d at 1538).

¹⁷*See Crown Packaging Technology, Inc. v. Reexam Beverage Can Co.*, 559 F.3d 1308, 1317 (Fed. Cir. 2009); *see also Hanson v. Alpine Valley Ski Area, Inc.*, 718 F.2d 1075, 1082-1083 (Fed. Cir. 1983).

¹⁸*See State Contracting & Engineering Corp., v. Condotte America, Inc.*, 346 F.3d 1057, 1074 (Fed. Cir. 2003).

¹⁹*See State Contracting*, 346 F.3d at 1074.

²⁰*See American Medical*, 6 F.3d at 1538; *see also Devices for Medicine, Inc. v. Boehl*, 822 F.2d 1062, 1066 (Fed. Cir. 1987).



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Hearsay...



Christine A. Wasula, Esq.

As we begin 2014, New Year's resolutions creep into our thoughts. Many of us contemplate resolutions to help us live longer and healthier lives, such as to quit smoking, lose weight, or exercise regularly. Some of us resolve to enjoy those leisure activities we've always put off. A few of us, imbued with the spirit of generosity, consider donating our time and money to charitable, social, and political causes.

As you look back on the past year and consider the future, I urge you to consider the examples set by the following OCBA members, some of whom have been honored as leaders in their fields, and others who have been recognized for their volunteer contributions to our community. Both categories are worthy of imitation.

Ava Doppelt, Esq., a shareholder with the law firm of **Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.**, was honored by *Who's Who Legal*, which identifies the foremost legal practitioners in 32 areas of business law. Nominees are selected based upon comprehensive, independent survey work with both general counsel and private practice lawyers worldwide. Significantly, it is impossible to buy entry into this publication. Ava is a Florida Board Certified Intellectual Property Law attorney who advises clients on trademark, publishing, entertainment, licensing, franchising, and copyright matters.

Christi L. Underwood, Esq. was appointed to the Ninth Judicial Circuit Court by Governor Rick Scott. Christi has been a solo practitioner since 2002, primarily as a mediator and an arbitrator. Prior to starting her own firm, she practiced with Foley & Lardner, LLP and Maguire, Voorhis & Wells, P.A. She is a Florida Board Certified Construction Lawyer who received her bachelor's and law degrees from the University of Florida. Christi fills the vacancy created by the resignation of Judge Frederic Rand Wallis.

Aaron J. Gorovitz, Esq., a partner with **Lowndes, Drosdick, Doster, Kantor & Reed, P.A.**, was honored with the 2013 Personal Empowerment Cornerstone Award at the Central Florida Urban League's Annual Cornerstone Awards & Gala, which was held at Walt Disney World's Contemporary Resort. The Cornerstone Gala celebrated individuals and organizations that have made significant contributions to the community within the four areas of empowerment that are the cornerstones of the Urban League: Personal Empowerment, Youth Empowerment, Economic Empowerment, and Health Empowerment.

Warren T. Channell, Esq., an attorney with the **Channell Law Firm, P.A.**, has been elected

to the Board of Directors of Matthew's Hope, a ministry serving the homeless of West Orange County.

Benjamin W. Newman, Esq., a shareholder at **GrayRobinson**, was nominated to attend the 2013 Central Florida Political Leadership Institute, held at the Roy E. Crummer Graduate School of Business at Rollins College in Winter Park. The 2013 Central Florida Political Leadership Institute is a groundbreaking event – only a limited number of emerging leaders from the Central Florida business community are invited to participate.

Robert H. Dellecker, Esq., managing partner of **Dellecker, Wilson, King, McKenna, Ruffier & Sos, LLP**, was recognized as a "Legal Elite Hall of Fame" attorney in the 2013 edition of *Florida Trend's* Florida Legal Elite. Robert is one of 28 attorneys from the state who had the distinction of being chosen as Legal Elite every year for the past 10 years.

J. Jeffrey Deery, Esq., a shareholder with the law firm of **Winderweede, Haines, Ward & Woodman, P.A.**, is being recognized here as a double-threat. On the professional side, Jeffrey was honored with the distinction of Best Lawyers' 2014 Orlando Litigation – Banking and Finance "Lawyer of the Year." On the community side, he was elected as secretary of the Lake Highland Preparatory School (LHPS) Board of Trustees. Jeffrey, an alumni of LHPS and a parent with two children currently enrolled, is also chair of the development committee and co-chair of a capital campaign committee, raising funds to improve the gymnasium.

Joanne M. Prescott, Esq., a shareholder with the law firm of **Zimmerman, Kiser & Sutcliffe, P.A.**, received an "AV" rating from Martindale-Hubbell, which is the highest rating available. Joanne is a Florida Board Certified Workers' Compensation attorney who serves as secretary of the Executive Council of the Workers' Compensation Section of The Florida Bar.

The following local attorneys were included in The Best Lawyers in America 2014 Listing:

From **Baker Donelson**: **Suzan A. Abramson, Esq.**, in Corporate Law; **Zachary J. Bancroft, Esq.**, in Mortgage Banking Foreclosure Law; and **Hal K. Litchford, Esq.**, in Too Many Categories to Mention.

From **Mooney Colvin, P.L.:** **John V. Colvin, Esq.**, in Product Liability Litigation – Plaintiffs.

From **Zimmerman, Kiser & Sutcliffe, P.A.:** **Robert L. Dietz, Esq.**, in Workers' Compensation Law; **James A. Edwards, Esq.**, in Personal

Injury Litigation – Defendants; and **J. Timothy Schulte, Esq.**, in Commercial Litigation.

From **Winderweede, Haines, Ward and Woodman, P.A.:** **J. Jeffrey Deery, Esq.**, in Banking and Finance Law; **Joseph P. “Rusty” Carolan II, Esq.**, in Banking and Finance Law, Business Organizations and Corporate Law; **Robert P. Major, Esq.**, in Commercial Litigation; **Bradley M. Saxton, Esq.**, in Bankruptcy and Creditor Debtor Rights/Insolvency and Reorganization Law, Commercial Litigation and Litigation - Bankruptcy; **Gregory L. Holzhauer, Esq.**, in Real Estate Law; **Randolph J. Rush, Esq.**, in Real Estate Law, **Harold A. Ward III, Esq.**, in Trusts and Estates; and **Victor E. Woodman, Esq.**, in Real Estate Law.

Finally, several local law firms were included in the Best Law Firms List for 2013-2014, published by *U.S. News & World Report* in conjunction with Best Lawyers, including **Roetzel & Andress LPA, Fisher Rushmer, Werrenrath, Dickson, Talley & Dunlap, P.A.**, and **Baker Donelson**. (Please note, there are other lawyers and law firms in Orlando who were included on the “Best Lawyers” lists but they are not mentioned here because they did not send me an email!)

My primary New Year’s resolution is to submit my *Hearsay* column on time so that you are not hearing about October accomplishments in January. I would also like to drink more and smoke more, and to spend less time with my family.

If you have any resolutions or accomplishments you’d like to share with the rest of the OCBA, please send them along to our communications manager, Peggy Storch, at peggys@ocbanet.org, or to myself at chris@tadyates.com. See you next month!

Christine A. Wasula, Esq., Law Offices of Tad Yates, P.A., has been a member of the OCBA since 2002.

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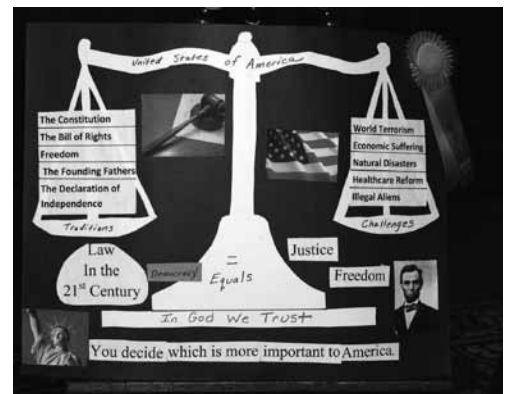
Law Day Poster & Speech Contest: Get Involved!

The Orange County Bar Association is proud to announce its annual Poster & Speech Contest as it celebrates Law Day 2014. The Poster Contest is open to all Orange County students in grades 3-9, and the Speech Contest is open to students in grades 9-12. This year’s theme is “American Democracy and the Rule of Law: Every Vote Matters.” The deadline to submit entries for each contest is Friday, January 31, 2014, at 4:00 p.m. Please have your students’ posters and/or speeches delivered to the Orange County Bar Association, which is located at 880 North Orange Avenue, Orlando, Florida 32801.

Get involved! For information about how to contact your child’s school or teacher and encourage your school’s participation, please contact Carmen Guerrero at 407-422-4310 x192 or Peonca Grier at 407-422-4310 or via email at Peonca@drml-law.com or Carmen@drml-law.com.

Ribbons will be awarded to first, second, and third place winners in each category. Each first place

winner will also receive a \$200 cash prize, second place winners receive a \$100 cash prize, and third place receives a \$75 cash prize. All winners and their parents or school official will be invited to the Orange County Bar Association’s annual Law Day luncheon at the Church Street Station Ballroom at 11:30 a.m. on Thursday, April 24, 2014. The winning entries will be exhibited at this special luncheon. In addition, the OCBA Paralegal Section will select one special winning entry as “Best in Show” and provide the winner with a \$250 cash prize and the teacher of that student will receive a check in the amount of \$150.





Sunny Lim Hillary, Esq.

Your local voluntary bar associations have been doing great things! Read on to find out what's happened and what's happening, and get involved!

CFAWL

The **Central Florida Association for Women Lawyers** (CFAWL) got CHIC on September 11, 2013, when CFAWL honored its cherished members at its annual membership celebration. All new and current CFAWL members were invited to the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. for an evening of fun. More than 160 members and guests attended this event for CFAWL's largest **New Member Reception** to date.

CFAWL's 3rd annual **Fall Festival** on October 16, 2013 was a smashing success! Over 150 members



Heather Page, Esq.
Chrissie Scelsi, Esq.
Kristen Johnson, Esq.

along with their families and guests gathered at Palmer's Nursery to enjoy 4Rivers BBQ and other fall treats. **Jessica McGinnis, Esq.**, and **Kayla Mudge, Esq.**, hosted and organized this wonderful event, while **Megan Malec, Esq.**, and **Amanda Perry, Esq.**, served as Head Pump-

kin Honcho committee members. Megan and Amanda were in charge of the kids' center with pumpkin decorating, fun fall games, and more glow-in-the-dark fun. **Louiza Tarassova, Esq.**, and **Courtney Elam, Esq.**, displayed their artistic magic with creative and beautiful face painting creations. Children and adults of all ages enjoyed the opportunity to meet with other CFAWL members and officially welcome the fall season. The Fall Festival is a wonderful tradition for CFAWL members, families, and friends!

GOAABA

On October 9, 2013, members of the **Greater Orlando Asian American Bar Association** (GOAABA) met for a networking lunch at Pho Vinh Restaurant. It was a good opportunity for everyone to take a break from the work day, enjoy delicious Vietnamese food, and network in a casual setting.

On November 13, 2013, GOAABA and the Paul C. Perkins Bar Association co-hosted a **Joint Happy Hour** at Carmel Café & Wine Bar in Winter Park. There was a great buzz as people met new friends and referral sources while enjoying free appetizers and great drink specials! A special thank you to our terrific sponsor, Professional Retirement Services, Inc.!

On November 20, 2013, GOAABA participated in the **OCBA's Joint Bar Association Happy Hour** "Tequila and Turkey Legs" at Don Jefe's Tequila Parlour! Each voluntary bar association had the opportunity to compete in the First Annual Great Turkey Legs competition, where the legs of a member of the voluntary bar association were put on display at the happy hour with their own Turkey Leg "Bank" Bucket. The turkey leg that had the most bank in its bucket had its winnings donated directly to the voluntary bar association's designated charity. GOAABA chose Typhoon Haiyan's Children's Relief Fund with Save the Children as its charity. The rest of the money raised by the other turkey leg contestants was donated directly to the Second Harvest Food Bank. Thank you to all who came out and voted for GOAABA's Turkey Leg!

Mark your calendar for upcoming GOAABA events: January 2014, **Holidays All Year Long** joint charity event with YLS, HBACF, and CFAWL; Saturday, February 8, 2014: **Karaoke** networking evening; Wednesday, March 26, 2014: speed networking evening; April 2014: **Ronald McDonald House** community service event; Wednesday, May 21, 2014: annual membership meeting (members only); Wednesday, July 16, 2014: installation of 2014-2015 board members and networking event.

Other events in the planning stage include: "Representing an Immigrant Client" conference with HBACF; discussion panel: "Law School to Law Practice" at FAMU College of Law; discussion panel: "Law School to Law Practice" at Barry Law School. Dates and complete event details will be posted/emailed as they become available.

We are always welcoming new members and sponsors! To join our e-mail list, or see how you can get involved with GOAABA, please email goaaba@gmail.com.

HBACF

The **Hispanic Bar Association of Central Florida** (HBACF) congratulates its new 2014 board of directors: president – Tiffany Faddis, Esq.; president-elect – Luis Gonzalez, Esq.; ex-officio – Kimberly Lopez, Esq.; by-laws committee chair – Diego Puig, Esq.; treasurer – Sylvia Ibanez, Esq.; secretary – Irene Pons, Esq.; membership chair – Vanessa Cotto, Esq.; community relations chair – Henry Lim, Esq.; public relations chair – Gisela Laurent, Esq.; judicial relations chair – Fermin Lopez, Esq.; fundraising chair – Mitzi Carr, Esq.; young lawyers chair – Jessica Gonzalez-Monge, Esq.

Thank you to all who ran for an HBACF board position and thank you to all who placed a vote. It was a close call for the contested races and your vote mattered.

On November 7, 2013, HBACF and Hispanic Health Initiatives, Inc. co-presented "OBAM-



The Hon. Margaret Schreiber
Louiza Tarassova, Esq.
Jessica Lowe, Esq.

ACARE: Understanding and Utilizing the New Healthcare Law.” This community education project, presented in English and Spanish, was held at Barry Law School. Thank you to **Ana Lopez, Esq.**, and her committee for helping to make this important event a success.

The Hispanic National Bar Association’s leadership has selected the HBACF to co-host the 2014 Corporate Counsel Conference. The conference will take place March 19-21, 2014, at the Orlando Marriott World Center. Early bird registration is now open at <http://www.hnba.com/2014-corporate-counsel-conference-moot-court-competition/>. The HBACF will be asked to fulfill many tasks in preparing for the conference and is seeking volunteers who would be interested in creating a task force. Task force members will be asked to assist with one-off tasks, such as a follow-up telephone call, email communications, compiling lists of local attractions, etc. If interested, please contact **Kimberly Lopez, Esq.**, at Kimberly@hbacf.com.

SideBar is for you! If you have information about upcoming events, past activities, or photos, please be sure to send them to me at sunny@hillarylawn.com.

Sunny Lim Hillary, Esq., Hillary, P.A., has been a member of the OCBA since 2005.



CFAWL CHIC

September 11, 2013

Lowndes, Drosdick, Doster, Kantor & Reed, P.A.



Joint GOAABA and Paul C. Perkins Bar Association Happy Hour

November 13, 2013

Carmel Café & Wine Bar



GOAABA Networking Lunch

October 9, 2013

Pho Vinh Restaurant





Misty M. McGlothlen, FRP

Practical Tips for the Billing Paralegal

Most paralegals have experienced those overwhelmingly hectic days when they suddenly realize it is nearing five o'clock. They stop to review their time entries for the day and, low and behold, only a fraction of their time has been billed. The reality is, sometimes there isn't even time for a restroom break in the midst of such frantic days. It is easy to understand why one could fall short of entering all of his or her time in a single day. Timekeeping, however, is one of the most important aspects of a paralegal's job. Accurate timekeeping is just as important for the paralegal as it is for attorneys and the law firm. Billing is essential to the success of the firm as a whole. Our positions as paralegals are absolutely contingent upon the success of the firm for which we work.

In this economy, clients are spending more time reviewing their invoices and raising questions about the tasks being billed to them. Below are a few reminders to help all paralegals, whether they are entry-level or experienced, maintain an accurate, thorough record of their time.

- 1. Be Detailed.** We must be as detailed as possible when documenting our time. Make sure the task is something that can be read easily and understood by the lay person who may not be familiar with regularly used legal jargon. Detailed time entries result in client comprehension. When billing for a telephone conference with opposing counsel, for example, always include what the call was in reference to. Otherwise, a client could receive an invoice with multiple entries such as "Telephone conference with opposing counsel." Those types of entries can be perceived as duplicates. Descriptions explaining each task will help differentiate the time entries and provide a better understanding to the client of the work being performed on his or her behalf.
- 2. Do Not Abbreviate.** Abbreviations should always be avoided. We cannot expect clients to decipher abbreviations such as "NOH," "RTP," or "PTC." It may take a little extra time to type "Interrogatories," but it will inevitably save you the time it would take if you had to explain "Roggs" or "Interrogs" to your clients when they call later requesting an explanation.
- 3. Avoid Block Billing.** Billing multiple tasks in a single time entry is not an effective timekeeping measure. An example of block billing is "Draft Complaint, Summons, Cover Sheet, and Notice of Appearance; phone conference with opposing counsel." You should itemize tasks separately, noting the time spent on each individual task, rather than record a block of time spent on multiple tasks.
- 4. Delegate.** It is always important to consider whether or not the task being performed is appropriate for the individual performing the task. Many paralegals perform tasks such as photocopying, sending facsimiles, processing mail, and other clerical tasks. When legal assistants are available they should be used to perform clerical functions as often as possible. Clients will benefit financially from clerical tasks being delegated to legal assistants and billed at a reduced rate. Paralegals will also benefit by having their workload reduced, essentially freeing them to focus their time on more pressing tasks.
- 5. Keep It Professional.** Always remember that the billing statements and your time entries could be provided to the court as evidence. Your time entries are a direct reflection of your work product, the attorney, and the law firm you work for. The time expended on a case could be subject to scrutiny by opposing counsel and judge at a hearing or trial. Make sure you review your entries for any spelling errors or other mistakes. Take pride in your work and always strive to be the best at what you do.
- 6. Record Time Promptly.** Enter your time as soon as you have completed a task. Waiting until the end of the day, week, or even the end of the month only increases the likelihood that you will be unable to accurately account for all of your billable time. If you are doing the work, do not lose the opportunity to receive credit because you have not recorded your time and work product in a timely fashion. We cannot always enter our time immediately after performing a task, but we can make sure we have a system in place to ensure our time is eventually entered accurately.

Consider writing down your time on a notepad throughout the day, crossing off any entries you have billed, and inputting your remaining time before you leave for the day.

7. **Administrative and Unbillable Time.** Paralegals generally work an eight-hour day, but our entire day is not always billable. We are faced with numerous interruptions that cannot fall under billable hours to a client. Most often, such interruptions can be tracked as "administrative." Some examples of administrative time include interoffice conferences such as meetings with tech support and human resources, performance evaluations, educational training and seminars, organizing and prioritizing tasks, and reviewing and replying to interoffice emails. All of these examples can be quite time consuming. Even when they may take only a minute or two of your time, they serve as a distraction, and it may

take you a few moments to refocus your attention on the task you were performing or the next task you will be handling when you were interrupted. It is important to track your administrative time as diligently as your billable time. Strive to ensure that at the end of every day you have accounted for all eight hours you worked. After all, we as paralegals know how busy our days are, but if we are not accurately recording our time, including administrative tasks, our supervisors will not know the eight hours we are paid for each day are worth their payroll.

Our time records are a reflection of our competency and efficiency. When it comes time for your review, accurate time records will be beneficial and will provide documented proof of your hard work and how essential you are to your firm.

Misty M. McGlothorn, FRP, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has recently joined the OCBA.

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I have no way of knowing how people really feel, but the vast majority of those I meet couldn't be nicer. Every once in a while someone barks at me. My New Year's resolution is not to bark back.

– Tucker Carlson

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The More Things Change... How Social Media is Like a Cocktail Party

Want to party 24/7? Marketing experts Tim Tobin and Lisa Braziel suggest that the activity generated by social media sites is analogous to a giant, ongoing, internet-based, 24/7 cocktail party. Their book, published a few years ago and titled *Social Media Marketing Is A Cocktail Party: Why You Already Know the Rules of Social Media Marketing*, uses cocktail party analogies to outline the rules for social media marketing. Social media perplexes many lawyers and law firms. They know they need to move in that direction, but the “how” escapes them. By embracing the theme of this book, you can make social media more accessible by thinking of it like a cocktail party.

Imagine a large room filled with interesting people. There are many conversations going on at once. People are talking about themselves, asking questions about one another, and discovering common ground. The conversation gets livelier and a connection is made. Yet, when some businesses foray into social media, they operate under the old rules of broadcast media – I talk about me (selling me) and what matters most to me (selling me to you) – and pretty soon you’re tuning out and looking for the exit.

That approach will not work at a cocktail party and it won’t work on Twitter, Facebook, or even on your own blog. Whether you’re at a cocktail party or on social media, you behave the same: you mix and mingle; you share your interests, expertise, connections, *and* your attention. Then, when it’s your turn to talk, they’ll be ready to listen. The way to be successful with social media is to embrace the simple but effective rules of relationship-based, word-of-mouth marketing that we’ve been talking about in all of these articles – just imagine you’re at a cocktail party.

Cocktail Party Rules

This past summer in a guest post on the Infusionsoft.BigIdeasBlog, Anne McAuley outlined her cocktail party rules for social media:

1. **Survey the Space** – You wouldn’t rush into a cocktail party blathering on to just anyone who would listen and it’s no different for social media. Survey the space first and learn about the different social media platforms, because some may work better for you than others. Facebook is used primarily to engage target clients; LinkedIn is used for B2B marketing and professional networking.

Twitter is commonly used for sharing links to relevant information. Google+ is also used to share information and helps drive traffic to websites. Once you understand which platforms are best for your firm, you can move on to the next rule of the social media cocktail party.

2. **Work the Room** – When you walk into a cocktail party you find the people you want to meet, and then you work the room to get to know them – it’s no different on social media. Get to know who is in your space, whether on Facebook, LinkedIn, Twitter, or some other social media platform. Identify and connect with the experts and others in your area of interest. Listen to what others are saying, comment, and create a following. Just like at the cocktail party, it takes time to work the room, but it’s well worth the effort.
3. **Listen More, Talk Less** – An effective networker at a cocktail party is a good listener and intent on learning more about – and from – other people. Social media allows you to listen on a big scale to your clients, referral sources, prospects, and even to your competitors. So listen carefully before you join the conversation. Lawyers, for example, can use Twitter’s search function and search “need a lawyer” and literally listen to the people who are asking for their help. Start thinking of social media as a huge, 24/7, 365-day long focus group that you can tap into whenever you want.
4. **Tell Don’t Sell** – In a previous article I talked about how storytelling can be a powerful marketing tool for you and your firm. In a recent article he posted on Inc.com, Dave Kerpen, CEO of Likeable Local, points out that with social media you can now tell your stories on a big scale, along with a picture, a 30-second video shot with an iPhone, or a tweet. If your story doesn’t resonate, then tell another one the next hour or tomorrow. Traditional media storytelling requires an expensive PR agency or a big advertising budget, but with social media there is no barrier to entry and little or no penalty for telling a story that doesn’t quite resonate with your audiences.

5. Be Authentic and Transparent

– Dave Kerpen stated the following in his recent article on social media posted on Inc.com: “This is the hardest rule for older generations to appreciate, but the reality is that in the social media age there are few if any secrets anymore. The more open you are, the more people will trust you. And the more people trust you, the more they’ll want to do business with you.” This is especially true of lawyers, whose entire relationship with their client is built on a foundation of trust.

6. Be Courteous – Whether it’s an in-person or a social media contact, don’t forget to say “please,” “thank you,” and “I’m sorry” when you should – make your grandmother proud of how you behave at the social media cocktail party. Just be polite, attentive, and responsive. Like, retweet, or comment when followers engage with you or your brand. Dave Kerpen gives this advice: “Be prepared if and when someone complains about you on social media. Embrace it... and fix the problem. When you do that, you not only solve one customer’s problem, you tell the whole world that’s watching that you’re the kind of organization that cares about its customers.”

7. Be Valuable – People aren’t interested in your law firm; they’re interested in getting help solving their own problems. So think about how you can provide value to your audience. Are you educating them? How can they benefit from your expertise? Can they gain insight from your experience? Establish yourself and

others in your firm as thought leaders in your practice areas by providing useful information and practical guidance. When people have a need for your services, you’ll be top-of-mind and they’ll come to you.

Three Important Points

In a recent blog post, Patrick McFadden, a marketing advisor and creator of the Indispensable Marketing Blog, said: “Now social media is word-of-mouth marketing on steroids and one-to-one marketing to infinity.” While this is no doubt true, to be successful with social media you still need to embrace the practical, “cocktail party” rules of these two tried and true approaches to marketing. Three important points to remember: Know who your clients and referral sources are, know which social media platforms they use, and most importantly, create a compelling marketing message that demonstrates how your services solve their problems.

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. The Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

*One resolution I have made, and try
always to keep, is this:*

To rise above the little things.

– John Burroughs

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2014 Liberty Bell Award Nominees Sought

The Orange County Bar Association invites you to submit your nomination today for a person or organization in our community but outside the traditional "legal profession" that best demonstrates a deep commitment to the rule of law and has worked to promote civic responsibility among our citizens. The honoree will be awarded the Liberty Bell award at a ceremony held during the OCBA Law Week Luncheon on April 24, 2014. As you make your nomination, please consider those whose work meets the following criteria:

- ★ Promoted a better understanding of the rule of law;
- ★ Encouraged a greater respect for law and the courts;
- ★ Stimulated a sense of civic responsibility; and
- ★ Contributed to good government within the community.

Please submit a one- to two-page nomination letter that enumerates the ways your nominee exemplifies the qualities above. **Current submission deadline: March 1, 2014.**

Please mail or e-mail your nomination to Brant Bittner, Executive Director, Orange County Bar Association, 880 North Orange Avenue, Orlando, FL 32801, or brantb@ocbanet.org.

For further information, contact Jonathan Stimler (jstimler@lseblaw.com) or Bart Vickers (bart@mandell-law.org).

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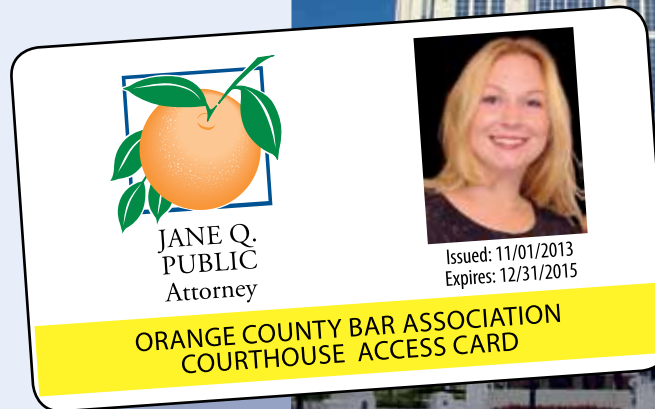
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The Central Florida Trial Lawyers Association (CFTLA) held its Eighth Annual Raising the Bar seminar this past fall at the Historic Dubsread Ballroom in Orlando. The CFTLA board designated the event in support of the Great Oaks Village, which is a residential foster group home for children ages 6 to 18 who have been removed from their homes because of abuse, neglect, or abandonment. More than 90 members and 20 sponsors attended the event and generously donated a carload of necessities from the Great Oaks Village supply list.

Pictured are CFTLA officers Fermin Lopez, Esq., President Elect and Tiffany Faddis, Esq., Secretary, with Myra Richardson, Program Manager and Dennis Richardson of Great Oaks Village.



On November 14, 2103, the Central Florida Chapter of the American Board of Trial Advocates (ABOTA) honored Roger D. Helms, Esq., of Troutman, Williams, Irvin, Green & Helms, P.A., with its 2013 Jurist of the Year Award.

Roger was born and raised in Orlando and is a graduate of the University of Central Florida and the University of Florida College of Law. Mr. Helms has proven himself in cases from minor accident injuries to complex medical litigation, and is a Florida Bar Certified Trial Lawyer. He has lectured in continuing legal education courses and has remained involved with the teaching of trial technique as a guest lecturer since joining the firm in 1983.

Pictured is John Alpizar, Esq., Vice President of the Central Florida Chapter of ABOTA, presenting the award to Mr. Helms.

See related story on page 9.



Referee Apte

YLS 4th Annual Dodgeball Tournament

Ten teams dodged, dipped, and ducked in the YLS 4th Annual Dodgeball Tournament, held on November 14, 2013, at the First Presbyterian Church in Orlando. Judge Alan Apte and Judge Adam McGinnis were this year's guest referees. The competition was tough! Here are the results:

First Place – The Maher Law Firm "Juris Dodgers"

Runner Up – Shutts & Bowen "Dodge & Balls"

Most Spirited – Cole, Scott, & Kissane P.A. "Aresenio Balls" (with CFAWL "Bop-its" as a very close second)

Kudos to co-chairs Amanda Sampaio, Esq., and Heather Kozlowski, Esq., and a huge thanks to our sponsors:

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Team "Aresenio Balls"



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Speaking Engagements

Central Florida ABOTA and the OCBA Professionalism Committee jointly presented two "Civility Matters" seminars at Barry Law School on November 7, 2013. The panelists included **Judge John Kest**, **Judge Patricia Doherty**, and attorneys **Dennis O'Conner, Esq.**, **Marybeth McDonald, Esq.**, **Scott Kirk, Esq.**, **John Dill, Esq.**, **Jim Edwards, Esq.**, and **John Alpizar, Esq.**, all of whom are ABOTA members. This was part of the OCBA's Pizza and Professionalism series of seminars presented at our Orlando law schools.

Ryan E. Davis, Esq., a shareholder with Winderweede, Haines, Ward & Woodman, P.A., recently presented "Impact and Consequences of Bankruptcy from the Landlord's Perspective" at the 13th Annual Landlord and Tenant Law Seminar by Sterling Education Services. Attorneys, law students, property managers, landlords, tenants, and other real estate professionals attended.

Thomas Wade (Tom) Young, Esq., Orlando, presented "Florida's Economic Loss Rule Then and Now" at the Second Annual Construction Law in Florida seminar in Miami on October 17, 2013.

Events

Jan. 30 – *Annual Winter Wine & Cheese Social*. 5:30 p.m. Winter Park Farmers' Market. Sponsored by Westlaw. Benefitting OCBA Foundation.

Feb. 15 – *2nd Annual Cars & Coffee Social*, 9:00 a.m. University Club. Sponsored by Rumberger Kirk & Caldwell. Benefitting OCBA Foundation.

Seminars

Jan. 7 – *e-Discovery. Paralegal Section Seminar*. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 (pending.) Speaker: Bob Currie, Managing Partner, e-Discovery Institute. Go to the OCBA website calendar for registration link.

Jan. 9 – *Bench Trials – How to Keep the Judge's Attention*. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. Conf. Rm. CLE: 1.5. Please feel free to bring your lunch, and tell security you will be attending the Brown Bag Lunch. To register, contact: Diana Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Jan. 10 – *Daubert: Changes in Expert Testimony in Criminal Cases*. Criminal Law Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. Speakers: Thomas Sadaka, Esq. and Jeffrey Ashton, Esq., State Attorney. Cost: Free for OCBA members; \$20 for non-members. To register, go to the OCBA Store.

Jan. 17 – *Serious Issues Facing Children*. Family Law Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speaker: Jeff Griesemer, President of Child Rescue Network, Inc. Cost: Free for OCBA members; \$10 for non-members. To register, go to the OCBA Store.

Jan. 21 – *Mastering Mediation Negotiation*. Solo & Small Firm Committee and ADR Committee Joint Seminar. CLE: 1.0 pending. Speaker: Dan. H. Honeywell, Esq., Honeywell Mediation. Sponsored by Honeywell Mediation, Inc. Cost: Free for OCBA members; \$20 for non-members. **Registration deadline: Jan. 20.** To register, go to the OCBA Store.

Jan. 22 – *Admissibility of Social Network and Internet Based Evidence*. Technology Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speakers: James Edwards, Esq. and Amy Jellicorse, Esq. of Zimmerman, Kiser & Sutcliffe, P.A. Cost: free for OCBA members; \$20 for non-members. **Registration deadline: January 21.** To register: go to the OCBA Store.

Feb. 13 – *Pre-Trials and Case Management: Uses, Expectations and Requirements*. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m., Orange County Courthouse, 23rd Flr. Conf. Rm. CLE: 1.5. Please feel free to bring your lunch, and tell security you will be attending the Brown Bag Lunch. To register, contact: Diana Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Feb. 14 – Criminal Law Committee Seminar. Topic TBA. 12:00 p.m.-1:00 p.m. OCBA Center. Details to come. Save the date.

Feb. 18 – Solo & Small Firm Committee Seminar. Topic TBA. 12:00 p.m.-1:00 p.m. OCBA Center. Details to come. Save the date.

Feb. 21 – Family Law Committee Seminar. Topic TBA. 12:00 p.m.-1:00 p.m. OCBA Center. Details to come. Save the date.

LAS Lunchtime Training dates: Jan. 14; Jan. 28; Feb. 4; Feb. 18. See ad in this issue of *The Briefs*.

E-Portal Refresher Training dates: Jan. 13 and Jan. 22 (12:00 p.m.-2:00 p.m.); Jan. 18 (10:00 a.m.-12:00 p.m.). OCBA Center. CLE: 2.0. \$10. See OCBA website calendar for details.

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PUBLIC NOTICE

IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY, PENNSYLVANIA

IN RE:

ADOPTION OF

No: 27 OF 2013

Tiara Tatyana Pickett-Long (Adoptee's name as on birth certificate)

ATTORNEY: MaryAnn Grec NOTICE

(Involuntary Termination)

TO: Joshua James Long, birth father of Tiara Tatyana Pickett-Long

A petition has been filed asking the court to put an end to all rights you have to your child Tiara Tatyanna Pickett-Long. The court has set a hearing to consider ending your rights to your child. That hearing will be held before the Honorable Judge Feliciani in Courtroom # 10, Westmoreland County Courthouse, 2 North Main St., Greensburg, Pennsylvania 15601, on the 6th day of March, 2014 at 9:00 A.M. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present.

You are notified of Act 101 of 2010 which allows for an enforceable voluntary agreement for continuing contact of communication following an adoption between and adoptive par-

ent, a child, a birth parent and/or birth relative of the child, if all parties agree and the written voluntary agreement is approved by the court.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

IF YOU CANNOT AFFORD TO HIRE A LAWYER, THIS OFFICE MAY BE ABLE TO PROVIDE YOU WITH INFORMATION ABOUT AGENCIES THAT MAY OFFER LEGAL SERVICES TO ELIGIBLE PERSONS AT A REDUCED FEE OR NO FEE.

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OCBA Calendar

JANUARY - FEBRUARY 2014

January 2014

- 1 OCBA Office Closed**
New Year's Day
- 7 Paralegal Section Seminar**
e-Discovery
11:30 a.m. • OCBA Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 8 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- 9 Brown Bag Lunch with Judge John Kest**
Bench Trials – How to Keep the Judge's Attention
12:00 p.m. • Orange County Courthouse
23rd Fl., Judicial Conf. Rm.
- Social Security Committee**
12:00 p.m. • OCBA Center
- 10 Criminal Law Committee Seminar**
Daubert: Changes in Expert Testimony in Criminal Cases
12:00 p.m. • OCBA Center
- 13 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 14 Intellectual Property Committee**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
Essential Legal Advocacy for Youth with Autism: Beyond Dependency Court
12:00 p.m. • Marks St. Senior Center
- 15 Elder Law Committee**
12:00 p.m. • OCBA Center
- Labor & Employee Law Committee**
12:00 p.m. • OCBA Center
- 17 Family Law Committee Seminar**
Serious Issues Facing Children
12:00 p.m. • OCBA Center
- YLS Luncheon**
11:40 a.m. • Citrus Club
- 21 ADR Committee**
7:30 a.m. • Dean, Ringers, Morton & Lawton, P.A.

- Solo & Small Firm and ADR Committees Joint Seminar**
Mastering Mediation Negotiation
12:00 p.m. • OCBA Center
- 22 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- Judicial Relations Committee**
12:00 p.m. • Orange County Courthouse
23rd Fl., Judicial Conf. Rm.
- Technology Committee Seminar**
Admissibility of Social Network and Internet Based Evidence
12:00 p.m. • OCBA Center
- 23 OCBA Luncheon**
Jeffrey S. Bromme, Esq.
Adventist Health System
11:30 a.m. • Church St. Ballroom
- 28 LAS Lunchtime Training**
Landlord Tenant Update
12:00 p.m. • Marks St. Senior Center
- 30 Winter Wine & Cheese Social**
5:30 p.m. • Winter Park Farmers' Market
- 31 Bankruptcy Law Committee**
11:30 a.m. • OCBA Center

February

- 4 LAS Lunchtime Training**
Recent Changes to Medicaid and Health Insurance
12:00 p.m. • Marks St. Senior Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 5 Business Law Committee**
12:00 p.m. • OCBA Center
- 10 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 11 Intellectual Property Committee**
12:00 p.m. • OCBA Center
- Social Committee**
11:45 a.m. • Contact Chair
- 12 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- 13 Brown Bag Lunch with Judge John Kest**
Pre-Trials and Case Management: Uses, Expectations and Requirements
12:00 p.m. • Orange County Courthouse
23rd Fl., Judicial Conf. Rm.
- Social Security Committee**
12:00 p.m. • OCBA Center
- 14 Criminal Law Committee Seminar**
Topic: TBA
12:00 p.m. • OCBA Center
- 15 Cars & Coffee Social Event**
9:00 a.m. • University Club
- 17 Paralegal Section Membership Meeting**
12:00 p.m. • OCBA Center
- 18 ADR Committee**
7:30 a.m. • GrayRobinson
- LAS Lunchtime Training**
2014 Extension of Foster Care: A Legislative Review
12:00 p.m. • Marks St. Senior Center
- Solo & Small Firm Committee Seminar**
Topic: TBA
12:00 p.m. • OCBA Center
- 19 Elder Law Committee**
12:00 p.m. • OCBA Center
- 21 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee Seminar**
Topic: TBA
12:00 p.m. • OCBA Center
- 26 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- 27 OCBA Luncheon**
Eugene K. Pettis, Esq.
President, The Florida Bar
11:30 a.m. • Church St. Ballroom

OCBA January Luncheon

January 23, 2014

Co-hosted by the Legal Aid Society of the OCBA, Inc.

Jeffrey S. Bromme, Esq.

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