

the Briefs

A Publication of the Orange County Bar Association



Richard S. Dellinger, Esq.



The Honorable John Antoon, II



James A. Edwards, Esq.



March 2013
Vol. 81 No. 3

Inside this Issue:

President's Message

Realizing the Dream: Equality for All
Kristyne E. Kennedy, Esq.

Professionalism Committee

2013 Professionalism Award Winners
James A. Edwards, Esq.
Richard S. Dellinger, Esq.
The Honorable John Antoon, II

Elder Law Committee

The Affordable Care Act Impacts the Special Needs Planning Practice Area
Vanessa J. Skinner, Esq.

Criminal Law Committee

The Romeo and Juliet Statute: Would a Sex Offender by Any Other Name Smell as Bad?
Marc Anthony Consalo, Esq.

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For additional information about Gala sponsorship opportunities, please contact Kimberly Webb at 407-647-8911 or kwebb@schwarzlawfirm.net.
Individual tickets are \$125. To purchase tickets, please go online to: <http://ocbagala.brownpapertickets.com>.



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Contents

3

President's Message

Realizing the Dream: Equality for All

Kristyne E. Kennedy, Esq.

4

The Florida Bar News

Florida's E-Filing Portal is Up and Running

5

March Luncheon

James A. Edwards, Esq.

2013 William Trickett, Jr. Professionalism Award Recipient

6

Professionalism Committee

2013 Professionalism Award Winners

James A. Edwards, Esq.

Richard S. Dellinger, Esq.

The Honorable John Antoon, II

8

Judicial Relations Committee

Interview with the Honorable

Vincent G. Torpy, Jr.

Justin R. Infurna, Esq., LL.M.

10

Elder Law Committee

The Affordable Care Act Impacts the Special Needs Planning Practice Area

Vanessa J. Skinner, Esq.

12

Judicial Relations Committee

Interview with the Honorable

Janet C. Thorpe

Ted McCaskill, Esq.

14

Criminal Law Committee

The Romeo and Juliet Statute: Would a Sex Offender by Any Other Name Smell as Bad?

Marc Anthony Consalo, Esq.

16

Appellate Practice Committee

What Do You Mean I Can't Say That?

Avoiding Improper Opening Statements and Closing Arguments – Part 1

The Hon. Thomas W. Sculco

David C. Knapp, Esq.

18

Legal Aid Society News

Haven't Done Your Taxes? Tax Preparation in Full Season at Legal Aid Vita Site

Catherine A. Tucker, Esq.

19

Clerk's Corner

Orange County Clerk of Courts Lydia Gardner Sworn Into Fourth Term

22

Winter Wine & Cheese Social

23

OCBA Luncheon January 2013

29

SideBar

Sunny Lim Hillary, Esq.

31

YLS on the Move

Sunny Lim Hillary, Esq.

32

Brown v. Nagelhout Nixes the "Joint Residency Rule" for Venue

Joe L. Fore, Jr., Esq.

36

Paralegal Post

Fight or Flee? Under the Microscope: Stand Your Ground Gun Law – A Panel Discussion

Paul Smith

Risa E. Harrell

38

Rainmaking

Back to the Basics of Word of Mouth Marketing

Michael Hammond, Esq.

40

New Members

41

Announcements

43

Classifieds

44

Calendar

the Briefs

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

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

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Cover photo: Mark LeGrand, Creative Director and Lisa LeGrand, Pro One Video; Derek Smith, Photographer, Sunshine Photographics, Inc.

President's Message

March 2013



Kristyne E. Kennedy, Esq.

Realizing the Dream: Equality for All

This year we will celebrate Law Week throughout March and April. If you have been looking for an opportunity to get more involved in OCBA activities, here is your chance!

In 1961, Congress issued a joint resolution declaring May 1st as Law Day – a day to recognize and celebrate our justice system and the rule of law. This year marks the 150th anniversary of the issuance of the Emancipation Proclamation. In 1963, during the Proclamation's centennial, Rev. Dr. Martin Luther King, Jr. stood in front of the Lincoln Memorial and called upon the nation to live up to the great promise, enshrined in its founding documents, of equality for all. Five decades later, the inspirational words of Dr. King's "I Have a Dream" speech continue to resonate and challenge us to live up to our national ideal of equality under the law. The legacy in the Civil Rights Movement can be seen in the strides that have been made against discrimination based on race, gender, ethnicity, national origin, religion, age, disability, and sexual orientation.

In recognition of this milestone, the Law Day theme for 2013 is "***Realizing the Dream: Equality for All.***" This will provide an opportunity to explore America's ongoing movement for civil and human rights and the impact it has had in promoting the ideal of equality under the law. It also provides a forum for reflecting on the work that remains to be done toward eliminating injustice and all forms of discrimination, and to put an end to other violations of basic human rights. As Dr. King pointed out in his "Letter from a Birmingham Jail," "Injustice anywhere is a threat to justice everywhere."

Law Week 201 once again promises to bring many great activities in celebration of this important event! Among the activities the OCBA's Law Week Committee is planning this year are:

Poster and Speech Contest: In honor of Dr. King, one of the greatest orators of our time, this year the essay contest has been replaced with an all new speech contest! All Orange County schools will be invited to submit posters (from the younger students) and their best orators on this year's theme. The posters and speeches will be judged by attorneys, paralegals, and judges.

Pathways in Law Program: Members of the judiciary have developed this program, specifically targeted at crime prevention. The program

fosters youth at the Orange County Courthouse through a mock trial and discussion of careers in the legal field.

Liberty Bell Award: The Liberty Bell Award is presented annually to recognize community service that has strengthened the American system of freedom under law. This honor is bestowed upon a non-lawyer or organization that has performed outstanding service to the community.

Goldilocks Mock Trial: OCBA members will conduct the ever-popular mock trial of *Wolf v. Pig*, performing the civil mock trial (which – yes, you guessed it – follows the story line of *The Three Little Pigs*) for elementary school students.

DUI Mock Trial Program: Members of the judiciary, attorneys, and law enforcement will conduct a special DUI mock trial for high school students, to be held at the Orange County Courthouse.

A Day in the Life of a Judge: Judges from the Ninth Judicial Circuit will host students for a special job shadowing program.

Law Week Luncheon: We will celebrate Law Day/Law Week this year at our monthly OCBA luncheon on **April 25, 2013**. This is one of my favorite luncheons, when we are joined each year by impressive students accepting their awards as well as educators from our community who deserve so much recognition.

I am particularly excited about this year's Law Week – not only because of the inspiring theme and the new speech contest, but also because we truly have a *dream team* chairing our Law Week Committee this year: **John Robinson III**, **Bill Davis** (a.k.a. "Super-chair!"), and fellow bar geek **Elizabeth Collins Plummer** (past-president of the Eighth Judicial Circuit Bar Association, now a proud OCBA member!). If you are interested in participating on the committee or in any law week activities, please contact any of the chairs at john.e.robinsoniii@gmail.com, william.davis@csklegal.com, or elizabeth.plummer@csklegal.com. We look forward to seeing everyone at our Law Week events!

Kristyne E. Kennedy, Esq., Cole, Scott & Kissane, P.A., has been a member of the OCBA since 2001.



Florida's E-Filing Portal is Up and Running

By April 1 all attorneys and all clerks will be required to use Florida's e-filing portal for the filing of civil trial cases.

Currently, there are more than 20,100 registered users and an average of almost 43,000 documents per month being filed electronically in the trial courts. April 1 should bring about a spike in both those numbers as attorneys adapt to the electronic world and clerks begin to process electronic filings as quickly as possible. April 1 will be upon us before we know it. To prepare for the deadline, there have been a number of questions already asked that may be helpful as attorneys gear up.

Q: *What type of computer should I use?*

A: If you are able to send and receive email with attached documents, and use a fairly new computer — the portal supports Internet Explorer 8 or higher — you probably already know how to navigate your computer to attach a text or PDF document as you file on the Florida Courts E-Filing Portal. Use a PC when filing, as the portal does not currently accept documents sent from an iPad or an Android device.

Q: *How do I obtain a user name and password for using the Florida Courts E-Filing Portal?*

A: Navigate the Internet to www.myflcourtagency.com. Click on the underlined words, "Register Now," and follow the prompts. You will receive an email confirming that you have registered, followed by another email with a link that you must click on. This link will take you to a site where you can activate your account. You must use the same name as you use with The Florida Bar — the portal validates your registration name with your Florida Bar information.

Q: *I already registered and am getting ready to e-file, but I see a message that says my account is inactive and I should contact "support." What should I do?*

A: It may have been a while since you registered. Passwords expire every 90 days and will need to be changed. You will be unable to use the same or previous passwords. Contact support@myflcourtagency.com or call 850-577-4609 to reset your account.

Q: *How do I send a document through the portal?*

A: Create case documents on your computer as you normally would. The Florida Courts E-Filing Portal will accept filings in Microsoft Word or PDF formats. Then login to www.myflcourtagency.com.

Complete the required information and follow the steps to attach your document(s) (it's like attaching a document to an email), then pay, if required, and submit the filing.

Q: *I'm having issues filing a large document. Why won't my document transmit properly?*

A: Documents are limited to 25 megabytes in size per submission.

Q: *What should my scanner settings be for my documents?*

A: Black and White 600x800 DPI-Flat image.

Q: *Why doesn't the document type I need appear in the drop-down menu?*

A: If you do not see the proper document type in the drop-down list provided, contact the clerk's office in the county where you wish to file and ask their advice. You may also want to ask that the document code be added to the drop-down list.

Q: *How do I know my document was received?*

A: You will receive an automated filing confirmation from the clerk's office and acceptance from the clerk. Watch for information on the "My Filings" site on the portal when you log on. Once the filing is accepted into the local clerk's system, this becomes the official court record just like the current paper process. The portal provides access to your filings via the "My Filings" page. As a precaution, double check that you have sent the filing to the correct county to make sure your filing is timely filed.

Q: *How do I find out more about how to file a document through the portal?*

A: There is an e-filer manual found in the "Filer Documentation" link on the portal. Once logged in, scroll to the bottom of the screen. More information can also be found in Supreme Court orders on e-filing and the portal on the Supreme Court's website, www.flcourts.org/gen_public/technology/e-filinginfostatus.shtml. The most recent copy of SC 11-399, amended October 18, 2012, is found linked there.

Q: *What if my questions are not answered in the manual?*

A: Attorneys and legal assistants can send an email to support@myflcourtagency.com or call (850) 577-4609.

Q: *I have a law office in which many attorneys will be filing documents. Is there a better way to manage that work?*

continued page 7

OCBA Luncheon Thursday, March 21, 2013



James A. Edwards, Esq.

James A. Edwards, Esq.

2013 William Trickel, Jr. Professionalism Award Recipient Shareholder, Zimmerman Kiser Sutcliffe, P.A.

James A. Edwards, a Board Certified Civil Trial Lawyer and Certified Mediator, is a native of Orlando. Jim has represented clients in state and federal courts throughout Florida and the Caribbean. During his 30 years of practice, he has litigated cases ranging from straight-forward automobile accidents to complex commercial matters to highly technical products liability claims. Mr. Edwards has litigated cases involving banking, bonds, civil rights claims, corporate and partnership disputes, employment matters, false arrest and imprisonment, food poisoning claims, franchise claims, and personal injury or wrongful death cases resulting from product liability claims and from automobile, forklift, railroad and trucking accidents. Jim has handled product liability and warranty cases involving pharmaceutical and household products, automobiles, trucks, forklifts, manufacturing equipment, chemical sensitivity, toxic torts, construction equipment, sporting goods, and garden equipment. Many of his product liability clients are multi-national or foreign corporations, giving Jim a great deal of experience contesting jurisdictional matters.

Jim represents clients in state and federal appeals involving cases that have been tried by

his or other firms. Maintaining a client's win from a hard-fought trial or reversing an injustice through appellate review has always been an important part of Jim's practice. Mediation is an integral part of modern complex litigation. Jim is a certified circuit court and appellate mediator and is authorized to handle federal court mediations in Florida. As a neutral mediator, he helps individuals and businesses resolve a wide variety of disputes. For the firm's clients, Jim is involved in evaluating and developing strategies to obtain desirable results during settlement negotiations and mediations.

Orlando Magazine recognized Jim as a "Best Lawyer" in the field of products liability, and he was recently included in *The Best Lawyers in America 2012* by *Florida's Best Lawyers* and the *Best Lawyers of America*. Jim remains very active in the Orange County Bar Association and recently received the honor of being recognized as the "Outstanding Committee Chair - Professionalism Committee."

The Ballroom at Church Street

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

225 S. Garland Avenue • Orlando, FL 32801

Co-hosted by the OCBA Professionalism Committee

Please RSVP by Friday, March 15, 2013
to reservations@ocbanet.org

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, March 15, 2013. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

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

Sponsored by Orlando Magic



James A. Edwards, Esq.



Richard S. Dellinger, Esq.

2013 OCBA Professionalism Award Winners

The OCBA and Ninth Circuit Professionalism Committee is always looking for ways to increase the civility and professionalism of the local bar. We do it through seminars, articles in *The Briefs*, reaching out to local law schools, and other events. However, the most effective tool we have for showing that civility and professionalism work is our recognition each year of the professionalism award winners. They are the living embodiment of what we strive to be as a bar. There is no question that this year's award winners continue that tradition.

William Trickel, Jr. 2013 OCBA Professionalism Award James A. Edwards, Esq.

Introduction by Dennis J. Wall, Esq.

I may or may not have met lawyers equally as skilled as Jim Edwards, but I do not recall meeting a lawyer more skilled than Jim. I certainly have not met a lawyer who conducts himself more professionally.

This year's recipient of the OCBA's Trickel Award for Professionalism is James A. Edwards. He is the son of the late, well-respected Circuit Judge Claude Edwards. He is also a life-long Orlando resident, husband of Marcia, and father of sons Scott, also a lawyer, who currently practices in South Florida and with whom Jim had the privilege of practicing law in Orlando, and Steve, who is in the accounting department of Jim's law firm, Zimmerman Kiser Sutcliffe.

The OCBA website describes recipients of the Trickel Award for Professionalism as persons "who are nominated by their peers, [and] are attorneys whose conduct and career stands as a model of success built on unquestioned professionalism."

Jim Edwards embodies "unquestioned professionalism." In all of his areas of the practice of law over the past 30 years, he has conducted himself professionally and with integrity. I have had the high privilege of being his partner and practicing law with him at a firm here in Orlando. Jim has practiced law in large and small law firms, and as a sole practitioner.

The diversity of his professional experience also shows in the diversity of the kinds of cases he handles. He is a litigator who tries cases. He is a Board Certified Civil Trial Lawyer and a mediator certified by the Florida Supreme Court. He has tried cases as different in kind and complexity as intersectional collisions and commercial

matters, presenting issues never before litigated. Opposing counsel do not merely get along with Jim, they invariably praise him for his candor and demeanor.

That is almost certainly why Jim Edwards has received professional recognition as one of *Orlando Magazine's* "Best Lawyers," and why he has been listed as one of the Best Lawyers of America. It is unquestionably why he is this year's recipient of the Trickel Award.

Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award Richard S. Dellinger, Esq.

Introduction by Thomas A. Zehnder, Esq.

Richard Dellinger, a partner with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., is an AV rated litigation attorney practicing in the areas of complex commercial and business litigation, federal criminal litigation, and as co-chair of the firm's Intellectual Property practice group, trademark, and patent infringement litigation.

Richard is also a dedicated *pro bono* attorney, serving as a Guardian Ad Litem for abused and neglected children, volunteering as a teen court judge, and providing free legal services for victims of domestic violence. He currently serves as member of the Board of Trustees of the OCBA's Legal Aid Society, and chairs its Legislative Affairs Committee.

In addition to his outstanding commitment to our community, Richard also serves our legal profession through his extraordinary bar work. He is the past president of the Orlando Chapter of the Federal Bar Association, current 11th Circuit vice president for the Federal Bar Association, board member of the Middle District of Florida's Historical Society, and a member of the Middle District's Bench Bar and Judicial Relations Committees. Richard also serves as president of the OCBA's Foundation, and through his outstanding leadership, Richard has elevated the Foundation to new heights by promoting and advocating its mission of improving civics education in our schools.

Finally, and perhaps most important, Richard has become a model for young lawyers on practicing with professionalism, always striving to balance his obligation to represent his clients zealously with his commitment to treat his opponents with courtesy, respect, and civility.

**James G. Glazebrook Memorial Bar Service Award
Judge John Antoon, II**

Introduction by Judge John Marshall Kest



Hon. John Antoon, II

Service to the legal community, support of the legal profession, and encouraging all involved to act more professionally and competently are phrases that define Federal District Judge John Antoon. To all who appear before him in court and to those who work with him in bar activities, Judge Antoon personifies professionalism and civility. Through the example he sets, and has set, as a state circuit judge, a district court of appeals judge, and more recently as a federal district judge, John Antoon exhibits, teaches, and encourages civility and integrity in the practice of law and respect for the American legal system.

Born in 1946 in California, Judge Antoon received his undergraduate degree from Florida Southern College, his law degree from the Florida State University College of Law, and a masters degree from Florida Institute of Technology as well as a LL.M. from the University of Virginia. He has worked in the private sector with several law firms. In the public sector he has served as both a city prosecutor and an assistant public defender. Judge Antoon started his judicial career in 1985 when he was appointed to the position of Cir-

cuit Judge for the Eighteenth Judicial Circuit. Ten years later he was elevated to the Fifth District Court of Appeal. Judge Antoon was commissioned as a Federal District Judge on May 31, 2000, after being nominated by President Bill Clinton and confirmed by the United States Senate.

John Antoon is president-elect of the George C. Young First Central Florida American Inn of Court. His involvement in the Inn exemplifies his interest in professionalism and civility in the legal profession. Judge Antoon was one of the organizers of the Inn's mentoring program and has, each year, taken young lawyers under his wing to mentor and help them develop into productive and competent practitioners. As one attorney succinctly put it, he is "scholarly, serious, and fair (and) truly strives to do justice. He is always professional, courteous to the litigants, lawyers and his staff; he is kind and considerate." Judge John Antoon truly embodies the standards of the James G. Glazebrook Memorial Bar Service Award.

Dennis J. Wall, Esq., of Orlando and Winter Springs, has been a member of the OCBA since 1978. **Thomas A. Zehnder, Esq.**, King, Blackwell, Zehnder & Wermuth, P.A., has been a member of the OCBA since 1975. **The Hon. John Marshall Kest**, Ninth Judicial Circuit, has been a member of the OCBA since 1979.

The Florida BarNews
continued from page 4

A: There is a "Law Firm Administrator" function that can be set up for law offices. Contact support@myflcourtagency.com or call 850-577-4609 for assistance.

Q: *How do I pay for filing a document?*

A: You will only be charged when submitting documents that initiate a case. Note, there is a charge when using a credit/debit card and a flat \$3 charge for using an ACH transfer. The portal accepts MasterCard, Discover, and American Express.

Q: *What is the difference between e-filing and e-service, to the extent that even though you e-file, in most counties, you also then have to e-serve opposing counsel?*

A: Currently, the Florida Courts E-Filing Portal does not perform e-service, but it is expected to do so later this year. Thus, an attorney must adhere to the rules to effect service. The Florida Bar website has a page devoted to what lawyers need to know about e-filing and e-service. It can be found by mousing over the "Member Services" link on the Bar's homepage (www.floridabar.org) and then clicking on "LO-MAS." Scroll down to: "HOT NEWS!! What Florida Lawyers need to know about

e-filing and e-service." Major updates to portal functionality will be noticed on the Myflcourtagency.com website.

Q: *I cannot figure out how to use the portal. Can I just send my document to the clerk by email?*

A: After April 1, 2013, all civil court documents must be e-filed through the Florida Courts E-Filing Portal. The clerk is not authorized to accept court documents by email. Sending a document by email to support@myflcourtagency.com does not get it filed or edited. Many clerks have a standard response directing attorneys on how to best file their pleading in that county. Even the statewide help desk supporting portal users is getting emailed documents accompanied by a note, such as, "Please file my document," or, better yet, several attorneys have emailed documents with the directive: "Please correct the filing I just sent by replacing it with this document." The portal help desk personnel cannot file for an attorney, much less alter a document meant for the court. If you need assistance, contact the clerk in the county where you wish to file, or contact portal assistance at support@myflcourtagency.com or (850) 577-4609.

This article addresses just the tip of the ice-

berg when it comes to questions that attorneys are bound to have. Volume through the portal will not be an issue; it is a pass-through site for the most part. As with any new way of doing business, it will take time and patience for practitioners to learn and get used to the new way of filing case documents.

Court procedural rules affected by e-filing, e-service, and related functions were discussed in two Florida Supreme Court opinions issued on October 18, 2012, in case no. SC11-399 and case no. SC10-2101. The latter deals with Rule of Judicial Administration 2.516 on electronic service and its related rules, and the former deals with Rule of Judicial Administration 2.525 on e-filing and its related rules.

(This report was compiled by the Florida Court Clerks & Comptrollers and edited by the Bar News.)

Judicial Relations Committee



Justin R. Infurna, Esq., LL.M.

Interview with the Honorable Vincent G. Torpy, Jr.

Vincent G. Torpy, Jr. is a judge on the Fifth District Court of Appeal who was appointed by Governor Jeb Bush in 2003. Judge Torpy graduated from Brevard Community College in 1980 and from the University of Central Florida the following year. Before Judge Torpy went to law school, he served as a police officer in Indialantic, Florida. After serving on the force for six years, he went on to receive his law degree from Florida State University in 1983. After law school, Judge Torpy was a civil and business trial lawyer. He became an associate attorney for the law firm Peirson, Borroughs, Grimm, Bennett & Griffin, P.A. In 1986, he became a partner in the firm Frese, Nash & Torpy, P.A. He became a Circuit Judge of the Eighteenth Judicial Circuit in December of 1999. He held this position until his appointment to the District Court of Appeal in 2003.

Q: Where are you from?

A: I lived in Carmel, New York, until I graduated from high school. I moved to Brevard County and still reside there.

Q: What undergrad and law school did you go to?



The Hon. Vincent G. Torpy, Jr.

A: Brevard Community College and University of Central Florida.

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

A: Motorcycle riding, SCUBA diving, home projects.

Q: What is your favorite vacation destination?

A: Western Carolina.

Q: What is your favorite type of music/movie/book?

A: 60s rock music, movies with happy endings, and books – murder mysteries.

Q: What is your favorite sports team?

A: FSU.

Q: Who would you like to go to lunch with, living or deceased?

A: Chief Justice John Roberts.

Q: Who is your favorite fictional lawyer?

A: Judge Chamberlain Haller from *My Cousin Vinny*.

Q: If you could have any superpower, what would it be?

A: Mindreading.

Q: What are the strengths and weaknesses of the legal system in America today?

A: Our legal system remains strong, particularly when compared to other nations. Technology has improved our efficiency and accuracy, but there is always room for improvement. The most significant weakness in our system is its political vulnerability. Judges play the unique role of vindicating the rights of individuals who are unpopular or who express unpopular ideas. Because of that, judges are politically vulnerable.

Q: What do you know now that you wish you'd known before you entered your role as judge?

A: That the compensation and benefits would not keep pace with increased costs of living.

Q: In what ways has technology changed how you perform the duties of a judge, and what changes do you anticipate in the future?

A: I am much more efficient than my predecessors.

Q: What is a memorable moment in your life – a time you will never forget?

A: Birth of my first child.

Q: Who was the biggest influence on your career?

A: The police chief for whom I worked from age 20-25. He motivated me to pursue a higher education.

Q: What advice would you give to a new lawyer entering the practice of law?

A: Honesty is critical. Your word should be your bond, period. Focus on a specialty and immerse yourself in it.

Q: What is the longest case you had before you?

A: I have cases that take me 5 minutes to resolve and some that take me hundreds of hours.

Q: What is the hardest thing about being a judge?

A: For me, resisting the temptation to lawyer the case myself, especially when the lawyers are not very good.

Q: What is your biggest pet peeve in the courtroom?

A: Not answering the judge's question directly.

continued page 27

“Our Neutrals Are Privileged To Serve At The Level Our Clients Demand”



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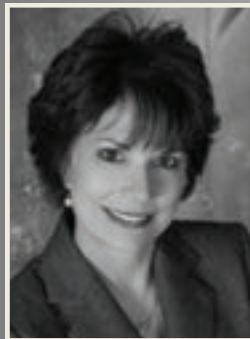
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Vanessa J. Skinner, Esq.

The Affordable Care Act Impacts the Special Needs Planning Practice Area

The Affordable Care Act (ACA) has proven to be one of the most controversial pieces of legislation in the history of the United States, and its effects have also shown to be far reaching. Special needs planning attorneys, and in part, personal injury lawyers, are discovering that several key provisions of the ACA may impact their practice areas in ways they never imagined.

In an effort to provide all Americans with health insurance, the ACA eliminates lifetime and annual limits, expands universal coverage for young adults, and prevents denials of coverage based on pre-existing conditions. Prior to the ACA, many health insurance plans set an annual dollar limit for covered benefits for an individual. Similarly, it was also common for plans to establish a lifetime dollar limit, restricting what they would spend for covered benefits during the entire time the patient is enrolled in that plan. If a patient's medical expenses exceeded these limits, they were required to pay the excess amounts. The ACA prohibits all health plans from putting a lifetime dollar limit on most covered benefits. Similarly, over the next year, it restricts and phases out annual dollar limits a health plan can place on most benefits. Effective January 1, 2014, these annual limits are eliminated in their entirety.

Further, under the ACA, children can now receive coverage under their parents' health insurance policy until they reach the age of 26. Prior to the ACA, the insurance companies could remove enrolled children usually at age 19, sometimes older for full-time students. Children could be dropped from their parents' plan if they married or became eligible for their own insurance. With the ACA, children can join or remain on their parents' plan despite their marital status, their residence (they need not live in the same household as their parents), their educational status, their financial independence, or eligibility under their own employer's plan. If they are under 26 and their parents receive coverage under a health insurance policy that covers children, their parents can add or keep them on such plan.

The ACA also prohibits coverage exclusions based on pre-existing conditions. Until the ACA, health insurance plans could refuse anyone because of a pre-existing condition or, alternatively, limit benefits coverage for such condition. As a result of the ACA, since September 23, 2010, health plans can no longer limit or deny coverage for a child younger than 19 years of age solely because the child suffers from a pre-existing condition that

developed before applying to join the plan. This includes developmental and other disabilities.

Similarly, effective January 1, 2014, these protections will be extended to Americans of all ages. Until such time, the ACA provides the Preexisting Condition Insurance Plan (PCIP). PCIP, which is based on the same health insurance provided to members of Congress, covers most Americans who suffer from a pre-existing condition and have been without any health insurance coverage for a period of at least six months or more.

As a result of the ACA, for the first time in U.S. history, disabled individuals may purchase private health insurance which has no lifetime or annual limits, guaranteed renewability, guaranteed accessibility, and rates, terms and conditions exactly equal to persons of the same age who have perfect health. Due to the expanded coverage afforded to disabled individuals under the ACA, attorneys who practice in the areas of elder law and special needs planning are re-evaluating the planning strategies they employ for their clients.

Prior to the ACA, special needs trusts were planning tools of choice because the private health insurance market was effectively closed to disabled individuals, thus making it critical to protect their access to publicly funded medical care. Thanks to an exception carved out for special needs trusts under federal law, assets held in these trusts are not considered when determining the disabled beneficiary's financial eligibility for means-tested government benefits such as Supplemental Security Income and Medicaid.¹ The overall goal in special needs trust planning is to maximize and supplement, but not supplant, the goods and services government resources provide to the disabled individual with special needs. With a few types of special needs trusts, Medicaid must be paid back upon the death of the disabled beneficiary for medical services rendered to the beneficiary during the course of his or her lifetime.²

If, through the ACA, disabled individuals can obtain affordable private health insurance, which provides better coverage than Medicaid, many will no longer need to apply for government benefits, and in turn, the need for special needs trusts will be dramatically diminished. According to David Lillesand, a Clearwater attorney who has been representing individuals with SSI disability claims since 1974, "The numbers of persons absolutely needing special needs trusts will drop by approximately 84 percent compared to those

persons with disabilities in 2012.” He explains, “While it gets easier for the clients, it gets that much harder for the Elder and Disability Law attorney to determine which clients still need a trust, and to calculate and factor in things like the possibility of completely avoiding Medicaid payback, and the cost of trustee fees versus the cost of maintaining SSI disability checks.”

Lillesand also points to another provision of the ACA that will significantly reduce the circumstances in which a special needs trust is an appropriate planning tool. The ACA expands Medicaid to include individuals ages 19-64 with income up to 133 percent of the federal poverty limit (approximately \$15,000 for a single individual and \$25,000 for a family of three). This provision was included in the ACA so that people who cannot afford private health insurance, even at the reduced rates, and who are also not eligible for Medicare, can get Medicaid. It appears likely that Florida will opt in to this Medicaid expansion, which notably allows individuals to have unlimited assets and still be eligible. In fact, the ACA expressly prohibits states from imposing an asset or resources test, with eligibility for the new “Adult Medicaid” determined solely by modified adjusted gross income. Therefore, “persons with disabilities can secure Medicaid and retain complete access to and control of their formerly disqualifying inheritance or personal injury award,” says Lillesand.

While the ACA has generated some discussion about the reduction of personal injury awards due to the availability of insurance options that did not exist before, personal injury lawyers believe the ACA will have little to no effect on settlement amounts. Rather, they see the ACA as a positive development. “One of the challenges we face is clients who have no health insurance and no other ability to pay for healthcare,” states Brian Wilson, a Florida Bar Board Certified Civil Trial Lawyer in Orlando who has practiced in the area of personal injury more than 25 years. “Greater access to medical coverage allows the client to obtain the care he or she needs while waiting for the personal injury case to resolve.”

Wilson further explains the fact that future medical expenses are covered by health insurance does not decrease the amount claimed under Florida law; the person that caused the injury is obligated to cover those expenses rather than having it billed to the health insurance paid for by the injured party. “Under Florida

law, the plaintiff is entitled to recover future medical expenses which he or she is reasonably certain to incur in the future. I am not aware of anything within the ACA which would preempt Florida tort law and mandate recovery of future medical expenses based on insurance reimbursement rates as opposed to private pay rates,” says Wilson. He adds, “As a practical matter, proving future medical expenses is hard enough. I cannot imagine how hard it would be to prove future reimbursement rates as well.” Similarly, Wilson does not believe that personal injury settlements will be reduced because of the annuitized payment of more quantifiable insurance premiums. “Florida law does not permit a wrongdoer to limit his or her liability for future care based on what insurance will cost,” states Wilson. “I frankly do not see how you could predict the future cost of health insurance with sufficient accuracy to ensure that the injured party could afford to maintain the coverage.”

Neither the Medicaid expansion nor the ACA as a whole affects Medicaid programs that provide nursing home long-term care coverage or home and community based long-term care waiver programs, despite the efforts of Senator Edward Kennedy who long championed for the inclusion of a long-term care component to the ACA. Out of more than 313 million Americans, only about 8 million have any long-term care insurance and few have the ability to cover the costs from savings alone.³ Therefore, for many needing long-term care, needs-based government benefits remain the only option, which, in turn, necessitates the use of special needs trusts.

“For those suffering from a debilitating disability who are medically eligible for Medicaid waiver programs, a special needs trust remains a viable option,” states Stephen Taylor, a Florida Bar board certified Elder Law attorney in Miami who chairs the Special Needs Trust committee for the

Elder Law Section of the Florida Bar and also chairs the sub-committee addressing the impact of the ACA on special needs trusts.

Taylor says it’s important for special needs planning attorneys to know all the different Medicaid programs that are available to their disabled clients. Taylor further states, “the availability of private health insurance aside, for many disabled individuals, a pooled trust may still be recommended because of the money management advantages a special needs trust can provide, preserving assets over an extended period of time for the benefit of the disabled beneficiary who for example suffers cognitive issues.”

Taylor concludes it’s still too early to determine the full impact of the ACA on special needs trusts. “Special needs planning attorneys must remember that the special needs trust is a tool in the special needs planning arsenal, not the only solution.”

Vanessa J. Skinner, Esq., Winderweedle, Haines, et al., has been a member of the Orange County Bar Association since 2003.

¹Medicare and Social Security Disability Insurance (SSDI) are not considered means-tested government benefits. In Florida, if a disabled individual receives even \$1.00 of SSI, they are automatically entitled to receive Medicaid benefits.

²Federal law requires that first party special needs trusts and pooled trusts include a mandatory Medicaid payback provision since these trusts are funded with the assets of the disabled individual, rather than the assets of the disabled individual’s family members.

³American Association for Long-Term Care Insurance (May 2012).



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Ted McCaskill, Esq.

Interview with the Honorable Janet C. Thorpe

The Honorable Janet C. Thorpe is a graduate of Emory Law School and member of both the Georgia and Florida Bar Associations. Before becoming a member of Central Florida's judiciary, Judge Thorpe served as general counsel for SunTrust Bank until 2000, when she was appointed Circuit Judge for Orange County's Juvenile Dependency Division. Since then, Judge Thorpe has enjoyed a successful career working in Orange County's Civil and Domestic Divisions and currently serves as both Administrative Appellate Judge and Circuit Judge for Orange County's Criminal Division.

Judge Thorpe grew up predominantly in Pittsburgh, Pennsylvania. She began her undergraduate career at Boston University and finished at Union College.

Q: *Where is Union College?*

A: Schenectady, New York. It's the oldest college campus in America. I'm sure you didn't, but if you ever saw Robert Redford and Barbara Streisand in *The Way We Were*, that was filmed at Union College the summer before I went. And then I started at Western New England School of Law. My husband-to-be was still at Boston University, so I was at Western New England in Springfield, Massachusetts, and that summer my father said, "You'll transfer to Emory or you'll pay for your own law school education," and gave me about 10 seconds to decide. So that didn't take long to figure out that I'm going to Emory (laughter).

Shortly after leaving Emory, Judge Thorpe worked as in-house counsel for the Trust Company of Georgia, which later merged with Sun Bank in 1985 to become SunTrust Bank. The bank merger brought her to Central Florida, where she began her career as a member of our judiciary.

Q: *Why did you want to become a judge?*

A: At that point it was one of the few career alternatives that I thought were available. Even in my role as general counsel, I was a problem-solver. I had become a mediator as well in the late 1980s. It was the idea of hopefully being able to work through different things and issues – which of course the first place I got put had absolutely nothing to do with my background. I went down to Dependency for three years with Judge Roche, and we were very successful in trimming the size of Orange County's foster care population. And we reached the point of saying that if good work got you into heaven, then that was our period.

Judge Thorpe explained to me that her success in the Juvenile Dependency Division came shortly after the Kayla McKean tragedy, a 1998 incident in which 6-year-old Kayla was found beaten to death by her father after child-welfare workers failed to remove her from the home despite signs of abuse – a situation Thorpe said that resulted in the DCF "swooping in and grabbing kids left and right." Judge Thorpe continued:

By the time Judge Roche and I left, I think we



The Hon. Janet C. Thorpe

were down to maybe 350 cases each, which was a far cry from the over 1,300 dependent children we started with. And we got kids adopted too! That was our other big thing... That's also the good part about Domestic Relations, is the adoptions. I'm still looking for the upside in criminal (laughing), except everybody acts

very nice. As they say: "DR is good people acting poorly, and criminal is bad people acting on their best behavior."

Q: *What other differences are there between criminal and civil court?*

A: In civil, there were lots of nights where I would go home with stacks of reading and then I come in the next day and the attorneys tell me, "We've resolved it, Judge." You may have downtime in criminal, but you had a reverse piece of it going on in civil. There was one year where we had so many injured vertebrae cases, I think all of us thought we could have done the surgery. Time is so limited, and at least at the time back in civil, we were juggling 1,700 cases and trying to get them to move along and stay on pace. I guess a lot of people don't understand that we're held to standards as well. And that gets reported back in Tallahassee. Concerning criminal, civil, DR – you name it – the loads go up.

Q: *What do you think are the weaknesses of the legal system in America today?*

A: Volume vs. resources that are thrown to support it. In the criminal arena, I would bet that 80% of our cases in one way or another are drug related, and we don't seem to be doing a good job

of finding a better path out. We also seem, with the fees and costs, to be running the whole system on the backs of those who can least afford it.

Q: *What are the strengths of America's legal system?*

A: The checks and balances that are built into it... in theory. But it doesn't always work. One of the things that doesn't work well is dependency and family court. Yeah, that's really one where procedure and methodology can absolutely tank outcomes, unfortunately. But that's the way it is. My own theory is I'm reaching the point of wondering why we even have the State involved in marriage and divorce. You should have an interest in the children, but my own views have reached a point where marriage is a religious sacrament, and if you want to get married, it ought to be over in the church. We used to have trials in divorces... years ago. Obviously we went to bench, but... there should be a way to streamline that for the expense of the State, in sorting out people's personal lives. It doesn't make sense.

Q: *To what extent did you really understand the role of the judiciary before taking the bench?*

A: I think I had a pretty good understanding of what it was, but I didn't realize how difficult it is in Florida as it is rarely perceived as the proper third branch of government. It's not treated like that in this state. It's almost treated as an agency based on funding and kind of a lack of understanding by the folks in Tallahassee of what our role is. There are times that I may not agree with precedent, but I'm bound by it.

Q: *What is your favorite vacation destination?*

A: I happen to love the city of Venice, Italy. We'll end up back there in June. When my kids graduate high school, I let them choose somewhere in the world where they want to go, so this way I get to go on a trip, too. They're usually teenagers at that point, and unless you're holding out to them something good like that, they wouldn't have anything to do with you. It's really the last time you're going to spend time with them. And it puts a passport in their hand and lets them know there's a whole... wide... world out there.

Q: *What do you do in your spare time?*

A: Well, I still have one child left at home, so a lot of it is child focused. I have four daughters and three grandsons, six and



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under. What time I have normally (pausing) – kids are always kids. They always take your time.

Q: *Finally, what advice would you give today's young lawyers?*

A: It probably would be to find an area of law that interests you, then drill down, become the specialist that you need or the niche. Personally, I think the growing area is going to be social security as the baby boomers age out. And knowing all the nuances that go in through that – and they're going to play with it again – so who knows?

Ted H. McCaskill, Esq., has been a member of the Orange County Bar Association since 2011.



Editors' Note

July's *Briefs* will be devoted to **technology and the law**.

Technology is trending! Please contact Peggy Storch at peggys@ocbanet.org if you have questions or suggestions. **The deadline for submission of articles is May 15, 2013.**

The Briefs Editors



Marc Anthony Consalo, Esq.

The Romeo and Juliet Statute: Would a Sex Offender by Any Other Name Smell as Bad?

For years, a debate has been stirring in the State of Florida regarding drawing a difference between child molesters and consensual sex between children. More specifically, many have asked whether a legal distinction should be created between teenagers having consensual sex and an individual forcibly raping a child. For most the answer would seem to be a resounding yes. However, until recently, both individuals in these scenarios would be designated as sex offenders. Fortunately, the legislature attempted to tackle this issue in 2007. Yet as one delves further into the law, the Courts have interpreted the statute in such a fashion to undermine its true intent.

In 2007 the legislature created Florida's "Romeo and Juliet" law to address the growing number of complaints the public was fielding regarding high-school-aged boys having consensual sex with their high-school-aged girlfriends.¹ Prior to the enactment of the statute, offenders faced the lifelong stigma of being labeled a sex offender or sex predator even if they committed no forcible act against someone their own age or in some case older. In these situations, boys would have the designation follow them and affect their ability to seek higher education, employment, or even a residence.

Therefore, before the passage of 943.04354, F.S., if a 15-year-old and an 18-year-old had a consensual sexual relationship, the 18-year-old would be required to register as a sexual offender. He could petition the court for removal of this requirement but only after 20 years from the completion of his sentence if convicted, or 10 years after being released from all sanctions if adjudication was withheld.²

Before the passage of Section 943.04354, Florida Statutes, if a process was created to petition the trial court for removal of the designation requirement as well as removal from infamous internet offender registry maintained by the Florida Department of Law Enforcement. The statute reads in relevant part:

(If a defendant) is not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation.... the person may move the court that will sentence or dispose of this violation to remove the requirement that the person register as a sexual offender

or sexual predator. The person must allege in the motion that he or she meets the criteria in subsection (1) and that removal of the registration requirement will not conflict with federal law. The state attorney must be given notice of the motion at least 21 days before the date of sentencing or disposition of this violation and may present evidence in opposition to the requested relief or may otherwise demonstrate why the motion should be denied. At sentencing or disposition of this violation, the court shall rule on this motion and, if the court determines the person meets the criteria in subsection (1) and the removal of the registration requirement will not conflict with federal law, it may grant the motion and order the removal of the registration requirement. If the court denies the motion, the person is not authorized under this section to petition for removal of the registration requirement.³

It is clear from the statute that offenders must meet very specific criteria in order to qualify under the law. More specifically, there is a three-prong test that must be met to petition under the statute. First and foremost, the victim must be at least 14 years old. Second, the offender can be no more than 4 years older than the victim at the time of the offense. Finally, the sexual encounter must be consensual. However, if the criteria are met, then a defendant charged with any of the following crimes can ask for removal under the law: sexual battery, lewd or lascivious offenses, and sexual performance by a child.

It is important to note that Florida's Romeo and Juliet law does not legitimize a sexual relationship between an 18-year-old and a 15-year-old. These offenses are still crimes. It does not matter that the victim is 15 years of age or younger, or whether both of the participants are minors. It does not even matter whether the act was consensual. Furthermore, the fact that an offender may not have known the age of the victim or that the victim portrayed himself or herself to be older, cannot be used as a defense to prosecution.⁴ But it is important to understand that the defense is able to present this at sentencing as mitigation for the court's consideration.⁵

As of July 2011, the Florida Department of Law Enforcement reported 241 petitions under the Romeo and Juliet law had been granted. The most common underlying offense was some form of lewd and lascivious behavior (93%). The

highest percentage of petitions granted was in the Sixth Judicial Circuit, which makes up Pasco and Pinellas counties. The Ninth Judicial Circuit had granted 11 requests. Ninety-eight percent of petitioners were male and their average age was eighteen.⁶

Initial litigation over the statute was limited. However, most appellate decisions have now focused on defining what is meant by the term "not more than 4 years older than the victim of this violation who was 14 years of age or older but not more than 17 years of age at the time the person committed this violation." Like all issues in the law, the clear meaning of the statute was called into question.

Scenario 1: Jack and Jill are boyfriend and girlfriend. They have consensual sex on December 18, 1995. Jack was born on April 4, 1977, which makes him 18 at the time of the offense. Jill is born on July 23, 1981, which makes her 14 at the time of the offense. Jack is convicted of sex battery and labeled a sex offender. He petitions the court for removal from the registry. The court grants the petition.

Scenario 2: Jack and Jill are boyfriend and girlfriend. They have consensual sex on March 18, 1996. Jack was born on April 4, 1977, which makes him 18 at the time of the offense. Jill is born on July 23, 1981, which makes her 14 at the time of the offense. Jack is convicted of sex battery and labeled a sex offender. He petitions the court for removal from the registry. The court denies the petition.

What makes these two scenarios different? It all lies in how the court defines the term "4 years older." In *State v. Marcel*, 67 So.2d 1223 (Fla 3rd DCA 2011), a trial court had granted a petition under the Romeo and Juliet law to a defendant. The Third DCA reversed. In reaching their decision the court found that at the time of the offense there was a difference of four years and five months between the defendant's and the victim's birthdates. In applying the "birthday rule," the court stated: "If a person is one day past the four-year eligibility limit prescribed by 943.4354 of the Florida Statutes, he is ineligible."⁷

On December 30, 2011 the Fifth DCA issued an opinion ratifying *Marcel*. In *State v. Samuels*, 76 So.3d 1109 (Fla. 5th DCA 2011), the appellate court found again that a trial court had erred in granting a Romeo and Juliet petition. While the defendant was eighteen and the victim fourteen at the time of the offense, based on the birthday rule, the defendant was four years, 51 days older than his victim.⁸

In our scenarios above, application of the birthday rule finds that Jack is four years and 110 days older than Jill under scenario 2. As such, he would not qualify under the statute.

Of course, this begs the question. Would a sex offender by any other name smell as bad? Or in less Shakespearian terms, is Jack in scenario 2 any more deserving than Jack in scenario 1 of being designated as a sex offender? It is here where the courts have undermined the legislature's intent.

Both consensual sex acts occur exactly in the same manner. Both Jacks are 18 at the time of the event. Both Jills are 14 at the time of the event. The only difference is that the date of the sex act changes. Three months separates the two. If the purpose of the Romeo and Juliet Statute is to protect teenage boys who have consensual sex with their teenage girlfriends from being branded sexual deviants, how is justice served by drawing such a distinction between these two individuals? Does the Florida Legislature truly believe that 110 days magically makes one individual more mature than the other?

In our ever-evolving world, where whether we like it or not, sexual relations occur routinely between teenagers, a draconian approach to designating children sex offenders is as outdated as going to the apothecary to drink a sleeping potion. It is necessary for the legislature to give trial judges the flexibility to make individual decisions regarding each defendant who appears before them on a case-by-case basis. The other option is for the appellate courts to honor the intent of the legislature in passing such laws. Until either event occurs, the State of Florida will continue to have a generation of men penalized for having consensual sex with their high school girlfriends.

Marc Anthony Consalo, Esq., Consalo Law Firm, is chairman of the Criminal Law Committee and has been a member of the OCBA since 1999.

¹The Florida Senate Issue Brief September 2011.

²Fla. Stat. § 943.0435 (as amended in 2007).

³Fla. Stat. § 943.04354 (2007).

⁴Fla. Stat. § 800.04 (2012).

⁵Fla. Stat. § 921.0026 (2012).

⁶Florida Department of Law Enforcement website.

⁷*State v. Marcel* 67 So.2d 1223 (Fla. 3rd DCA 2011).

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What Do You Mean I Can't Say That? Avoiding Improper Opening Statements and Closing Arguments – Part 1

Part I. – Opening Statements

Two of the most important parts of any trial are the opening statement and closing argument. The opening statement is an attorney's first opportunity to set the stage, to lay out what facts he expects will be introduced during the trial, and to explain where he expects the facts to lead. Closing argument, on the other hand, is an attorney's last opportunity to sway the jury to his client's point of view by emphasizing certain aspects of the evidence and explaining why they support his client's theory of the case. Since opening statement and closing argument are so important, it is easy to understand how an attorney can become so focused on being persuasive that his comments over-step the bounds of what is proper and ethical. However, this can lead to mistrials, or even worse, result in a favorable judgment being reversed and remanded on appeal. Therefore, it is vitally important to be able to recognize what type of comments are improper – not only so you can avoid making them, but also so you can recognize when they are being made by the other side. This article is not intended to be an exhaustive list of every type of improper comment an attorney may make. Rather, it discusses some of the most common errors and provides examples of how those comments might actually sound in a case. This is a two-part article that will be presented in two issues of *The Briefs*. Part I of the article will address improper comments made during opening statements, while Part II will discuss improper closing arguments as well as the need to object. If nothing else, hopefully this article will prevent you from having to turn one day to your client, partner, opposing counsel, or even the judge and say, "What do you mean I can't say that?"

OPENING STATEMENT

Trial attorneys often contend that opening statement is the most underrated and overlooked part of a case. It has been claimed that as many as 80 to 90 percent of all jurors reach their verdict during or immediately after opening statements, and that everything in the trial that follows is selectively perceived to reinforce decisions that have already been made.¹ Because of its importance, attorneys can be tempted to "push the envelope" as to what is permissible during opening statement. Unfortunately, this can put their case at risk of a mistrial or reversal on appeal, and can put their reputation and bar license at risk for

possible ethics violations. To help attorneys avoid these undesirable results, outlined below are some of the common errors made by counsel in their opening statements.

1. Improper Argument

While a basic principle of opening statement is that "argument" is prohibited, attorneys often find it tempting to include improper argument in their openings.² Counsel should not argue about how to resolve conflicts in the evidence, discuss how to apply the law to the facts, or attempt to arouse the emotions of the jurors.³

Sometimes, it is difficult to distinguish between statements of fact and improper argument. In making this determination, there are two rules of thumb: (1) If you make a statement that is not susceptible of proof, it is argument;⁴ and (2) whenever you make a statement, if the rules of evidence would prevent a witness from taking the stand and making the same statement, or if no such witness exists, the remarks are argumentative.⁵

If there is a question about whether an issue should be referenced in opening statement, the parties should bring the matter to the attention of the trial court by way of a motion in limine, and obtain a ruling on its propriety before the commencement of opening statements. Counsel should not allude to any evidence unless there is a good faith and reasonable basis for believing that such evidence will be offered and admitted at trial.⁶

2. Reference to Exhibits

The use of trial exhibits during the presentation of opening statements is generally considered improper unless an agreement was reached beforehand about their admissibility. Counsel should obtain consent from opposing counsel to use the exhibit during opening, or seek a favorable ruling from the court regarding its use. If a witness will not be available to authenticate evidence at trial, the court will generally not allow it to be used during opening.⁷ If the court prohibits the use of a trial exhibit during opening, the attorney may not use it, but he may refer to it. This is because exhibits must generally be identified and offered into evidence before they are shown to the jury.⁸

3. Discussion of Facts

In discussing the facts during opening statement, you should not: (a) misstate or exaggerate the evi-

dence; (b) refer to inadmissible evidence; or (c) discuss evidence expected to be introduced by opposing counsel that will not be part of your own case. Below are some examples of these issues that can arise during counsel's discussion of the facts in opening statement:

A. Exaggerating, Misstating, or Overstating Evidence

A common problem for attorneys is the temptation to overstate the evidence. For example, where the evidence showed that the plaintiff's right testicle was injured, but not removed, and his sperm production was normal, it was improper to argue that: "The dramatics of this, folks, to try to think about and embrace – and this is going to be hard for you in this case – the evidence will be that [Plaintiff] is going to live for over 50 years with half his manhood missing and with pain from that."⁹

In the case of a significant factual dispute, when the evidence introduced does not deliver what was promised in opening statement, an attorney may move for a mistrial at the conclusion of the case.¹⁰ Evidence that would be inadmissible at trial cannot be referred to in opening statement. If counsel makes reference to inadmissible evidence, and it is damaging enough, it may constitute grounds for a mistrial.

B. "Opening the Door"

The attorney should be careful not to introduce irrelevant matters into the trial during opening statement. Doing so will subject the offering party to the potential claim that the "door has been opened" for opposing counsel to introduce various matters that could have been excluded.¹¹

C. Reference to Absence of Evidence

It has been held to be fundamental error to accuse defense counsel of perpetuating fraud upon the court by hiding evidence.¹² In contrast, where counsel stated in opening that: "We asked for maintenance records; they couldn't produce any,"¹³ the appellate court did not find error where the comment was true at the time it was made and the attorney did not imply that the appellees had intentionally concealed evidence.¹⁴ Rather, the court found that the statement was made to point out that a trucking firm did not have any maintenance records because it had not conducted any proper preventative maintenance. The court held that "[t]here was no error in the appellants'

attorney's statement, and even if there was, defense counsel did not request a curative instruction which could have removed any improper inferences regarding the statement."¹⁵

D. Commentary Regarding Lack of Sanctions by Authorities

An attorney's comment in opening statement that a police officer who arrived on the scene had issued no citations supported the grant of a new trial.¹⁶ The trial court stated that the plaintiff was prejudiced both as to liability and damages because of the citation statement, and the court noted that its own attempted curative instruction was inadequate to remove the prejudice. The appellate court upheld the decision, stating that a police officer's decision whether to charge one or another driver with a traffic violation "is very material to, if not wholly dispositive of" a juror's determination of who is at fault in the case.¹⁷

E. Discussion of Irrelevant Matters

Relevant evidence is defined as "evidence tending to prove or disprove a material fact."¹⁸ Matters referenced in the opening statement must be relevant and directed to an issue that is material to the case.

For example, it is improper to refer to an issue that had been settled before the trial and was not included in the pleadings.¹⁹ The court stated that the matter was not only irrelevant, but "could be construed as an attempt to inject extraneous prejudicial matters into the proceeding."²⁰ The trial court gave a curative instruction, which was upheld by the appellate court. The Second District Court of Appeal noted that "[e]xcess zeal or the personal intensity of an attorney does not justify going beyond the limited purpose of opening statement - to set out the relevant, and only the relevant, facts of the case."²¹

F. Injection of Lawyer's Personal Opinion

The Rules Regulating The Florida Bar states that the lawyer may not, "in trial, state a personal opinion about the credibility of a witness unless the statement is authorized by current rule or case law . . . or state a personal opinion as to the justness of a cause, the culpability of a civil litigant, or the guilt or innocence of an accused."²² As noted by the Fifth District Court of Appeal: "[t]he underpinnings of this ethical rule are well-founded; it

not only prevents lawyers from placing their own credibility at issue in a case, it also limits the possibility that the jury may decide a case based on non-record evidence."²³

G. Comments Regarding Motive for Claim or Defense

Comments or suggestions in opening about the motives behind a party's filing of a lawsuit may be grounds for reversal. The Third District Court of Appeal has held that it is improper for an attorney to disparage opposing party's defense or to suggest that the party should be punished for contesting a claim by stating: "They won't accept responsibility. They won't accept the harm that they have caused him. They are fighting on both. It's time to hold them responsible."²⁴

4. Reference to "Empty Chair" or Silence of the Accused

Another category of improper comment during opening statement is a reference to the absence of a party in the case or to the silence of a criminal defendant.

A. "Empty Chair" References

In 2002, the Florida Supreme Court held that the trial judge acted within his discretion in concluding that the "empty chair" reference in the defendant's opening statement warranted a new trial in a medical malpractice case.²⁵ Defense counsel had stated:

It will not be something that you need to consider as to why they aren't in the courtroom, although you might want to ask yourself that question. I assure you, though, that Miss Ricks and her attorney aren't going to tell you why they aren't here.²⁶

The Supreme Court stated that the jurors could have interpreted these statements to imply that settlement had been reached with others involved in the case, despite the fact that the word "settlement" was not actually used. Moreover, such a statement imposes an improper burden on the plaintiff to explain why others are not parties to the lawsuit.²⁷

B. Comments on the Silence of the Accused

In a criminal case, Florida courts have held that the silence of the accused cannot be commented on in opening statement.²⁸ "The particular characteristics of these comments – that they relate to a defendant's "impending failure to take the stand" rather than

continued page 28



Catherine A. Tucker, Esq.

Haven't Done Your Taxes? Tax Preparation in Full Season at Legal Aid Vita Site

Every Tuesday and Thursday evening through the first week in April, taxpayers can get their taxes prepared for free at the Legal Aid downtown office located at 100 East Robinson Street, Orlando, Florida. *Pro bono* attorneys certified as Volunteer Income Tax Assistance (VITA) preparers are waiting to help working class families with their taxes. Last year for the 2011 Tax Year, which was held in early 2012, Legal Aid volunteers helped more than 200 families with information, forms, e-filing, and obtaining refunds totaling more than \$250,000.



Results Over First Year NUMBER OF EITC CLAIMS

	Tax Year 2003	Tax Year 2011	Increase	
Orange	104,113	149,082	\$44,969	43.19%
Osceola	22,994	40,963	\$17,969	78.15%
Seminole	23,984	33,324	\$9,340	38.94%
Total	151,091	223,369	\$72,278	47.84%
REFUND TOTALS				
	Tax Year 2003	Tax Year 2011	Increase	
Orange	\$199,068,844	\$369,225,708	\$170,156,864	85.48%
Osceola	\$45,035,613	\$108,936,335	\$63,900,722	141.89%
Seminole	\$41,845,352	\$73,819,279	\$31,973,927	76.41%
Total	\$285,949,809	\$551,981,322	\$266,031,513	93.03%

Currently, Legal Aid is preparing taxes on Tuesday and Thursday evenings from 5:00 p.m. until 7:00 p.m. at its downtown office. There are no appointments; it is first come, first served. It will continue until April 4. Legal Aid volunteers are also providing services at Goodwill on East Colonial Drive on Fridays, from 11:30 a.m. to 1:30 p.m. until April 5. For more information contact Cathy Tucker at ctucker@legalaidocba.org or Marilyn Carbo at mcabo@legalaidocba.org. Dates with VITA at Legal Aid are also listed on the calendar on our website, www.legalaid-ocba.org.

Free services through VITA and AARP are available throughout Orange, Osceola, and Seminole counties. If you call 211, you can find the nearest location. The free services through the VITA/TCE programs are available for taxpayers who make less than \$50,000 and who have simple returns. The focus for VITA has been to work with families who are eligible for the Earned Income Tax Credit and other family credits. AARP/TCE serves people of all ages who have income under \$57,000. For information about filing your

own taxes for free, go to www.MyFreeTaxes.com/HeartofFloridaUnitedWay.

For the past 15 years, Legal Aid's *pro bono* attorneys have participated in VITA/TCE in providing free tax preparation services to the local community. The focus was on working families eligible for the Earned Income Tax Credit and other family credits that were paying significant fees to private providers. The effort was intensified in 2003 with an effort to better coordinate the services provided in the tri-county area of Orange, Seminole, and Osceola counties. Now called Florida Prosperity Council, the community group of local agencies shared information so that local taxpayers could find the tax preparation sites and use the free services rather than pay the fees of private providers. The results for the tri-county area are provided in the accompanying chart.

Each year, 12-18 *pro bono* attorneys participate. Unless you are certified with the IRS as a tax agent, a volunteer must take and pass the relevant tests. Since taking tests is something most attorneys have sworn off since the bar exam, this has become the greatest challenge. The sites are open during tax season, from the end of January until April.

E-filing has been available at the Legal Aid site for several years. Since the web-based software was introduced, it has been a much easier way to prepare taxes at outreach sites. The Goodwill site on East Colonial will be open through April 5. For more information on *pro bono* or taxes contact ctucker@legalaidocba.org or mcabo@legalaid-ocba.org.

Catherine A. Tucker, Esq., is the Pro Bono Coordinator/Deputy Director at the Legal Aid Society of the OCBA. She has been a member of the OCBA since 1998.

Orange County Clerk of Courts Lydia Gardner Sworn Into Fourth Term

ORLANDO, FL — Orange County Clerk of Courts Lydia Gardner took the Oath of Office for the fourth time on January 8, 2013 in the rotunda of the Orange County Courthouse. Florida Sen. Andy Gardiner, R-District 13, administered the oath.

Since becoming Clerk in 2001, Gardner has been a dedicated public servant and made customer service her No. 1 priority. She has accomplished that through stakeholder involvement at every level, cutting-edge technology and continuous process improvements. Her fiscally conservative approach to running the organization has served the office well in tough economic times. In 2008, her office was awarded the Florida Governor's Sterling Award for performance excellence.

Gardner was a pioneer in providing Electronic Case Filing in Florida. Nearly 10,000 attorneys and *pro se* litigants have filed more than 40,000 cases and 1.6 million documents on the Orange County Clerk of Courts e-filing system. At www.myorangeclerk.com, customers can look up court case information, pay a traffic ticket, or download forms. Gardner also showed innovation through technology when she moved foreclosure sales online and witnessed the number of registered users increase more than 210 percent in the first year as people around the globe signed onto the service. In the courthouse, wait times for customers continue to decrease as efficiency is continuously improved.

"We live by our Strategic Plan, which is based on advocating for our customers and partners, instilling confidence and trust in those we serve, delivering quality in all that we do, and managing our resources efficiently," Gardner said. "I look forward to continuing to serve our citizens for another four years. Our work is important and I am proud of the deputy clerks who work tirelessly to make our office so successful."



Sen. Andy Gardiner delivered the oath of office, and the Honorable Gardner's husband, John Terwilliger, is holding the Bible, surrounded by her family.

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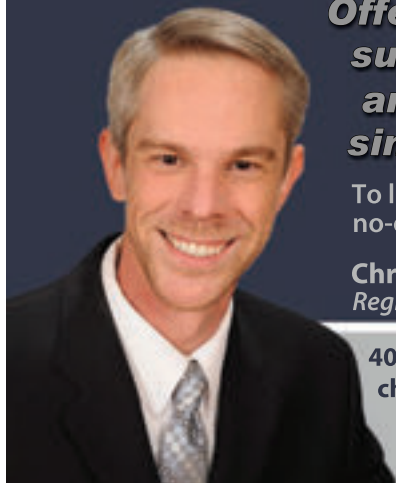
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Q: *Why did you want to be a judge?*
A: The most rewarding achievement is to right a wrong. Judges have the opportunity to do that many times each day.

Q: *To what extent did you really understand the role of the judiciary before taking the bench? Has your perspective changed?*
A: I had been in courtrooms my whole life. At age 16, I worked as a janitor in the local courthouse. I watched judges. As a police officer, I testified in many trials. Finally, as a trial lawyer, I practiced in all levels of the court system. I was fully aware of the role of the judiciary. My perspective has not changed.

Q: *Provide your perspective of funding of the court system and, generally, the role of the judiciary in being more vocal in the legislative funding process.*
A: The funding of the court system should be the highest priority for all judges and lawyers. Judges should tell everyone who will listen.

Q: *Provide some examples of pinnacles of professionalism you have witnessed since taking the bench.*
A: I greatly admire lawyers and judges who display courage.

Justin R. Infurna, Esq., LL.M. in Taxation, The Infurna Law Firm, P.A., has been a member of the OCBA since 2011.

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his “completed election not to become a witness” – do not matter, and a comment on that which may happen is equally as reprehensible as a comment upon that which has happened.²⁹ Additionally, a prosecutor may not refer to a defendant’s silence at the time of his arrest after he has been advised of his rights.³⁰

5. Injecting Race or Prejudice

Appealing to racial prejudice is erroneous for two reasons. First, it is improper in and of itself; and second, it does not address the purpose of opening statement.³¹ For example, it is improper for plaintiff’s counsel to suggest that the defendants “study races” and “divide the American consumer up into groups” including “white” and “black.”³² It is also improper for plaintiff’s counsel to compare the defendant’s position to positions taken by defenders of slavery and the Holocaust.³³ Similarly, it is improper to urge the jury to reach “a verdict that simply reflects the truth.”³⁴ This is because it may result in a conviction just because the jury believed that the defendant committed the crime, even if all of the elements were not properly proven.

6. Reference to Insurance or Party’s Ability to Pay

In opening statement, counsel should not mention whether a defendant is insured or not, and it is improper to repeatedly reference the insurance policy limits.³⁵ It is also improper and prejudicial for plaintiff’s counsel to state that one of the defendants had approximately 90 stores doing over a billion dollars in sales.³⁶

CONCLUSION

Avoiding improper statements during opening statements, like those above, can help protect counsel from losing a favor-

able verdict due to a mistrial or being reversed on appeal. Alternatively, it can help you spot an error made by an opponent, and potentially get an unfavorable verdict overturned. However, recognizing an improper opening statement is only a beginning. Part II of this article, which will be presented in next month’s issue of *The Briefs*, will discuss the need to object in order to preserve improper comments for appeal and provide a similar list of improper comments that counsel should avoid and be able to recognize during closing argument.

The Honorable Thomas W. Sculco is a Judge of Compensation Claims in Orlando, and is board-certified in both appellate practice and workers’ compensation law. **David C. Knapp, Esq.**, is a partner and appellate attorney with McDonald, Toole, Wiggins, P.A. in Orlando. Both are charter members of the Orange County Bar Association Appellate Practice Committee.

¹Donald Vinson, *The Psychology of Winning Strategy* 171 (1986).

²*Testa v. Village of Mundelein, Illinois*, 89 F.3d 443, 446 (7th Cir. 1996).

³J. Alexander Tanford, *The Trial Process: Law, Tactics and Ethics*, 3d Ed. (2002), p.153.

⁴Decof, *Art of Advocacy: Opening Statement* § 1.06[1] (Bender 1982, 2011 Supp.).

⁵*See* Jeans, *Trial Advocacy* pgs. 316-317 (West Pub. Co. 2d ed. 1993).

⁶Presentation of Evidence, *Standard 4-7.5*, ABA Standards for Criminal Justice: Prosecution and Defense Function, (3d ed., 1993 American Bar Association).

⁷*See Gencorp, Inc. v. Wolfe*, 481 So.2d 109 (Fla. 1st DCA 1983).

⁸*Opening Statements - Plaintiff’s View*, 5 Am.Jur. Trials §285.

⁹*Chun v. Caiaffa*, 42 So. 3d 300 (Fla. 3d DCA 2010).

¹⁰*See White v. Consolidated Freightways Corp. of Delaware*, 766 So.2d 1228 (Fla. 1st DCA 2000).

¹¹*See, e.g., Horizon/CMS Healthcare Corp. v. Auld*, 985 S.W.2d 216 (Tex. App. 1999), *aff’d in part, rev’d in part* 34 S.W.3d 887 (trial counsel’s reference in opening statement regarding good quality of care given to nursing home residents opened door for opponent to admit into evidence state inspection reports as impeachment material); *Mutual Savings Life Insurance Co. v. Smith*, 765 So.2d 652 (Ala. Civ.App. 1999) (trial

counsel’s reference to life insurance company as small, employee-owned business opened door for opponent to admit evidence of wealth and proof that company made \$3 million in previous year). *See also State v. Eugenio*, 565 N.W.2d 798 (Wis. Ct. App. 1997) (discussing defendant’s character in opening statement opened door to otherwise inadmissible character evidence). But *see Bynum v. Commonwealth*, 506 S.E.2d 30 (Va. Ct.App. 1998) (statements made in opening do not open door to evidence during trial).

¹²*SDG Dadeland Associates, Inc. v. Anthony*, 979 So. 2d 997, 1003 (Fla. 3d DCA 2008).

¹³*Goutis v. Express Transport, Inc., Division of F.V. Miranda, Inc.*, 699 So.2d 757 (Fla. 4th DCA 1997), *disapproved on other grounds*.

¹⁴This was the case in *Emerson Electric Co. v. Garcia*, 623 So.2d 523 (Fla. 3d DCA 1993), and in *George v. Mann*, 622 So.2d 151 (Fla. 3d DCA 1993).

¹⁵*Goutis*, 699 So.2d at 762.

¹⁶*Lindos Rent A Car v. Standley*, 590 So.2d 1114 (Fla. 4th DCA 1991).

¹⁷*Id.* at 1116.

¹⁸Florida Statute §90.401.

¹⁹*Music v. Hebb*, 744 So.2d 1169 (Fla. 2d DCA 1999).

²⁰*Id.* at 1172.

²¹*Id.*

²²Rule 4-3.4(e).

²³*City of Orlando v. Pineiro*, 66 So.3d 1064, 1069 (Fla. 5th DCA 2011), and cases cited therein.

²⁴*Carnival Corp. v. Pajares*, 972 So. 2d 973 (Fla. 3d DCA 2007); *see also Fasani v. Kowalski*, 43 So. 3d 805 (Fla. 3d DCA 2010).

²⁵*Ricks v. Loyola*, 822 So.2d 502 (Fla. 2002).

²⁶*Id.* at 504.

²⁷*See also* F.S. 768.041; *Morgan v. Decker*, 23 So.3d 201 (Fla. 1st DCA 2009).

²⁸*Roberts v. State*, 443 So. 2d 192 (Fla. 3d DCA 1983).

²⁹*Id.*

³⁰*Barnes v. State*, 375 So. 2d 40 (Fla. 3d DCA 1979).

³¹*Terrazas v. State*, 696 So. 2d 762 (Fla. 2d DCA 1997).

³²*Liggett Group, Inc. v. Engle*, 853 So.2d 434 (Fla. 3d DCA 2003) (noting four of the six jurors were African-American).

³³*Id.*

³⁴*Northard v. State*, 675 So. 2d 652 (Fla. 4th DCA 1996).

³⁵*See, e.g., Auto-Owners Insurance Co. v. Dewberry*, 383 So.2d 1109 (Fla. 1st DCA 1980).

³⁶*Werneck v. Worrall*, 918 So.2d 383 (Fla. 5th DCA 2006).



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GOAABA

On January 13, 2013, the Greater Orlando Asian American Bar Association (GOAABA) showed off their cooking skills as part of the **Ronald McDonald House "Share-a-Meal" Program**. GOAABA prepared a magnificent brunch buffet, including pancakes, bacon, sausage, eggs, parfaits with yogurt, granola, and berries, a fruit and cheese platter, toast, bagels, muffins, cinnamon rolls, orange juice, milk, chocolate milk, coffee, and tea. The Ronald McDonald House is a "home-away-from-home" for families with seriously ill children who receive treatment at local hospitals. It was a wonderful day spent giving back to the community. Thank you to **Denise Kim** for spearheading this event!



GOAABA's volunteer day at the Ronald McDonald House. L to R: Felipe Guerrero, Lisa Gong, William Voight, Amy Mai, Kim Nguyen, Denise Kim, Wanda Reas, John Beamer, Joe Panyanouvong

On February 10, 2013, GOAABA participated in the **Dragon Parade Lunar New Year Festival 2013!** The parade began at Hillcrest/Hampton and ended at Hillcrest/Mills in the Mills 50 District of Orlando. GOAABA and members of the community celebrated the Year of the Snake with Dragon and Lion dances, martial arts, Japanese Taiko, acrobatic performances, arts and crafts, exotic food, and kids' activities.

On February 22, 2013, GOAABA attended the **Investiture Ceremony** at Jones High School and joined the legal community in welcoming new circuit judges, **Mark S. Blechman**, **Keith A. Carsten**, and **Leticia J. Marques**, and new county judges, **Andrew L. Cameron** and **Adam McGinnis**.

On March 14, 2013, GOAABA will be hosting a **Membership Drive/Networking Happy Hour Event!** For details, please contact **Donna Hung** at donna@donnahunglaw.com.

Keep your eyes and ears open for more exciting events put on by GOAABA, including a **CLE**

Lunch Seminar in April and a **Speed Networking Event** in May. For more information about the CLE Lunch Seminar, please contact **Lemar Alejo** at lemar@alejolaw.com. For more information about the Speed Networking Event and other social events, please contact **Donna Hung** at donna@donnahunglaw.com.

HBACF

On January 24, 2013, the Hispanic Bar Association of Central Florida (HBACF) co-hosted the **Fourth Annual "Holidays in January" Wine Down** with OCBA YLS, and CFAWL. The event took place at Urban Flats. UNLIMITED wine, beer, and flatbreads were served and raffle prizes were handed out. All proceeds benefited the children of the Arnold Palmer Pediatric Oncology Wing, United Cerebral Palsy, and The Boys and Girls Club. Thank you to all who joined us in supporting a very worthy cause, and special thanks to **Jessica Gonzalez-Monge** for helping to organize this event.

The HBACF thanks all those who attended the **2013 Installation Dinner** held on January 26, 2013, at **Disney's Contemporary Resort!** Members and guests enjoyed a delicious dinner while listening to the memorable speech of **Judge Josefina Tamayo**. Judge Tamayo recently served as the first Latina appointed to a circuit court in North Florida and has more than 20 years of experience as general counsel to numerous state agencies, including being the first Hispanic appointed as general counsel for the Department of Children and Families. She was a fantastic speaker, describing her life's journey as a Hispanic woman to the incredible heights achieved in her career. Members and guests also enjoyed the live music of **Latin Wave**. While some do have what it takes to perform in "So You Think You Can Dance," others should stick to just thinking that they can dance! All joined in sending off the 2012 executive board and its terrific leader, **Felipe Guerrero**, and welcoming the new 2013 executive board and the HBACF's new leader, **Kimberly A. Lopez**. Please visit our facebook page as we will continue to post pictures of this event.

Register to join the Hispanic National Bar Association! You can complete your membership application online in a matter of minutes at <http://www.hnba.com>. Please contact **Luis Gonzalez** at luis.gonzalez@hklaw.com for questions.

A **General Membership Meeting** took place on February 20, 2013, at the **Orange County Regional History Center**. The guest speaker was **Ian Garlic**, a nationally known internet marketing consultant who works closely with lawyers to develop authentic web marketing and who provides coaching and consulting services. Thank you to the law firm of **Colling, Gilbert, Wright, & Carter** for sponsoring lunch!

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



Rumberger Staff Shares Holiday Spirit with Military Personnel

Over the holidays, Rumberger, Kirk & Caldwell continued its tradition of sending special boxes of goodies to military personnel deployed to Iraq, Afghanistan, and other postings. "Rumberger folks really got into the holiday spirit this year as we decorated and



stuffed stockings for our holiday troop shipment. We shipped 82 boxes to nine units representing all branches of the service," said Lisa Griffin, legal assistant at Rumberger. Lisa has coordinated the quarterly shipments from the Orlando office since the firm's first shipment in 2009.

"While some of the troops have Internet access, many don't, so magazines, books, and games are always a big hit. We always include the staples our troops look forward to receiving, such as socks, shave gear, personal hygiene items, coffee, and snacks, but we wanted to make this shipment extra special. It's tough being away from home during the holidays. Each box has a very personal touch. Along with the stockings, we included Santa hats, candy canes, and cards made by children as well as cards from our staff."

Frank Sheppard, Managing Partner of Rumberger, shared his pride, not only in the firm's staff, but also the men and women who serve to keep America safe. "The world continues to become more dangerous and more complex. We rely on the men and women in the military to keep our families safe and, at the same time, we recognize the great risks they face. The many notes of thanks that we receive are great and we're glad that we've found a way to do something meaningful that our troops appreciate."

Thanks so much for all the boxes. We were surprised when we got five in one day, and even more surprised when we got more a couple days later. We managed to distribute three of the boxes to our fabulous Marines, one to the guys who help keep the office clean, and the others we added to our snack stash. We truly appreciate the thoughtfulness, and the efforts you all make to help us feel more at home.

James F. Walsh, Jr.
Supervisory Special Agent
FBI/ALAT/Baghdad

I would like to thank you all for your lovely care boxes. When my shop saw that I was carrying six boxes, they were very excited and curious on who sent them, needless to say they were very jealous, but thankful when I shared with them. Thank you for the lovely cards; it gave us a smile. Again thank you for your support during these trouble times when we are not with our loved ones during the holidays.

SSgt Yusko, Parker USAF

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



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YLS *on the move*



Sunny Lim Hillary, Esq.

The 4th annual **Holidays in January Wine Down** event was held on January 24, 2013, at **Urban Flats** in downtown Orlando. This year's fundraiser was a hit! Live music was provided courtesy of **Phil Bonanno** – an incredible local musician. Attendees enjoyed UNLIMITED wine and appetizers. All event proceeds benefited the Arnold Palmer Pediatric Oncology Wing, United Cerebral Palsy of Central Florida, and The Boys and Girls Club.

On February 8, 2013, the YLS welcomed **Federal Judge Roy B. "Skip" Dalton** as its special speaker at its monthly luncheon. YLS luncheons are held the third Friday of every month from 11:30 a.m. to 1:00 p.m. at the Citrus Club, with the next YLS luncheon being March 15, 2013. YLS luncheons are a great opportunity to meet and network with YLS members and local judges. Casual attire is perfectly appropriate. For a three-course meal, the cost is ONLY \$10 thanks to our amazing sponsors. Please RSVP to yls.ocba@gmail.com no later than the Tuesday immediately preceding the YLS luncheon, otherwise a \$4 late charge will be added. We look forward to seeing you at our luncheons!

Judge John Marshall Kest presented "**Motions to Compel, Sanctions, and Contempt**" at the monthly **Brown Bag Lunch** on February 14, 2013. Brown Bag Luncheons are held from 12:00 p.m. to 1:15 p.m. at the Orange County Courthouse, 23rd Floor. You will receive 1.5 hours of CLE for attending. While not required, an RSVP to Judge Kest's Judicial Assistant, Diane Iacone, (407-836-0443 or ctjadi1@ocnjcc.org) helps ensure sufficient copies of outlines, chairs, and bottled are water available. Please feel free to bring a sandwich and eat while you learn. The next

Brown Bag Lunch will be held on March 14, and the topic will be "**Planning Your Discovery.**"

On February 15, 2013, the YLS co-hosted a **Joint Happy Hour** with the OCBA at **The Woods**, one of Orlando's newest bars located just above The Lodge on Orange Avenue, between Washington and Wall Street. The Woods creates fine libations and craftsman style drinks using fresh ingredients and mixers. Thank you to **Northwestern Mutual** for sponsoring the event in conjunction with the YLS and for providing a selection from three signature drinks, beer, and wine until the tab ran out! Also, thank you to social chair, **Brett Renton**, for organizing the event.

On February 21, 2013, members of the YLS attended **Attorney Appreciation Night** with the **Orlando Solar Bears** at The Amway Center! The evening included VIP early entrance, a private pre-game meet and greet with select players and the mascot, club level seating, and more.

Elections! Just a reminder – election ballots have been mailed. There are five seats available on the YLS board, and each elected board member will serve a two-year term, from June 1, 2013, through May 31, 2015. Candidates' bios will be sent via the YLS's regular email blasts and are available on the OCBA website. The ballot will also include candidates for OCBA officers, members of the Executive Council, and members of the Board of Trustees of the Legal Aid Society. Be sure to let your voice be heard!

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



Philip Mooring
Wilbert Vancol
Jennifer Randall



Holidays in January Wine Down

Tony Sos with long time United Cerebral Palsy board member, Maureen Brockman, and her husband Chris Brockman, Holland & Knight.



Joe L. Fore, Jr., Esq.

Brown v. Nagelhout Nixes the “Joint Residency Rule” for Venue

Determining the proper venue for an action involving both corporate and individual defendants requires an examination of three different sections of Chapter 47, Florida Statutes. Section 47.011 provides, in relevant part, that “[a]ctions shall be brought only in the county where the defendant resides, where the cause of action accrued, or where the property in litigation is located.” Section 47.051, in turn, establishes that, for venue purposes, a Florida corporation resides “in the county where such corporation has, or usually keeps, an office for transaction of customary business,” while a foreign corporation resides in any county “where such corporation has an agent or other representative.” When an action involves multiple defendants residing in different counties, Section 47.021 provides that such an action may be brought “in any county in which any defendant resides.” An easy example quickly demonstrates the effect of these statutes. A plaintiff sues two defendants: 1) a corporation, with offices for transaction of ordinary business in Orange and Osceola counties, and 2) an individual, who resides in Orange County. A plain reading of the above-cited statutes would suggest that the plaintiff has her choice: she can sue in “*any* county in which *any* defendant resides” – in this case, either Orange or Osceola County.¹

However, in the 1957 case of *Enfinger v. Baxley*, 96 So. 2d 538 (Fla. 1957), the Florida Supreme Court created an exception to these statutes and limited the options available to plaintiffs in selecting a venue. In *Enfinger*, the plaintiff filed suit against two defendants: an individual, who was a resident of Polk County, and a corporation, which was a resident of both Polk and Duval counties. Relying on the relevant venue statutes – then codified in Chapter 46 of the Florida Statutes – the plaintiff brought his action in Duval County. Looking to the statutes, the Supreme Court held that because the individual defendant and the corporate defendant shared a common county of residence, Polk County, they did not “reside ‘in different counties’” within the meaning of Section 47.021.²

In reaching its decision, the Supreme Court looked to the effect on the individual defendant, noting that if sued alone, he would not have been subjected to suit in Duval County.³ The Supreme Court reasoned that where an individual defendant and a corporate defendant shared a joint county of residence, the individual defendant’s privilege to be sued in his only county of residence

trumped the right of the plaintiff to bring suit in *any* county in which *any* defendant resides.⁴ Consequently, the Court held that where a corporate defendant and an individual defendant shared a common county of residence, venue was appropriate *only* in that county, even if the corporate defendant also resided in another county.⁵

This rule – which eventually came to be known as the “joint residency rule” or the “joint-corporate-defendant rule” – became a well-established part of Florida venue jurisprudence over the next six decades and was cited numerous times by different appellate courts.⁶

In 2012, however, the Florida Supreme Court decided *Brown v. Nagelhout*, 84 So. 3d 304 (Fla. 2012), abrogating *Enfinger* and eliminating the judicially-crafted joint residency rule. The Supreme Court found that *Enfinger* was “predicated on a serious misinterpretation” of Florida’s venue statutes and drew improper distinctions between individual and corporate defendants:

[T]he joint residency rule of *Enfinger* is based on a serious interpretative error, which resulted in imposing a meaning on the statute that is “unsound in principle.” There is no basis in the statutory provisions for treating the venue rights of an individual defendant as superior to the plaintiff’s statutory right to select venue. To the contrary, section 47.021 – which permits a plaintiff to bring an action “in *any* county in which *any* defendant resides,” § 47.021, Fla. Stat. (2011) (emphasis added) – does not distinguish between corporate and individual defendants or place any other limitation on the plaintiff’s choice of venue based on residency. Under the reasoning of *Enfinger*, for purposes of section 47.021 a corporate defendant may be deemed to reside in only one county, although under the unequivocal terms of section 47.051 the same corporate defendant may have more than one county of residence. *Enfinger* thus relies on an unwarranted and impractical legal fiction.⁷

The *Naghelout* Court went on to note that *Enfinger*’s joint residency rule had created “uncertainty and inconsistency,” for example, in situations where “some – but not all – of the defendants to an action share a county of residence.”⁸ Receding from *Enfinger*, the Supreme Court concluded, would “promote stability in the law.”⁹ Ultimately,

continued page 35

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2013 schedule

march 12

Community Based Care of Central Florida:
Collaborations To Improve Dependency
Outcomes
Doris Mackey, GAL Case Coordinator
CLE applied for

march 26

Crossover Youth: Implications For Youth With
Both Dependency and Delinquency Involvement
Kate York, Attorney at Law
CLE applied for

april 9

Dependent Youth and Immigration Law
Bethanie Barber, Attorney at Law
Camila Pachon Silva, Attorney at Law
CLE applied for

april 23

Independent Living Issues for Transitioning
Youth and Young Adults
Bethanie Barber, Attorney at Law
CLE applied for

may 7

GAL's Role in Termination of Parental
Rights Cases in Juvenile Court
Kate York, Attorney at Law
Clarissa Maldonado, GAL Case
Coordinator
CLE applied for

may 21

Dependent Youth with Developmental
Disabilities: Impact on the Family
Ericka Garcia, Attorney at Law
CLE applied for

june 11

Finding Forever Families for Developmentally
Disabled Dependent Youth
Stephanie Stewart, Attorney at Law
CLE applied for

june 25

GAL Representation of Youth who are Sexual
Abuse Victims or Victims of Human Trafficking:
Discussion of the Keeping Children Safe Act
and the Safe Harbor Act
Kavita Sookrajh, Attorney at Law
Tanika Patrick, GAL Case Coordinator
Tomas Lares, Co-Founder and Chair of the
Rescue and Restore Coalition of Orlando
CLE applied for

july 9

Administrative Hearings for Public Benefits
Edward Dimayuga, Attorney at Law
CLE applied for

july 23

Topic 1: How to Conduct Effective Home Visits;
Topic 2: Dependency Staffings 101
Doris Mackey, GAL Case Coordinator
Heather Brangwin, VAC Coordinator
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august 13

Defenses to Garnishments & Debt Collection
Michael Resnick, Attorney at Law
Larri Thatcher, Attorney at Law
CLE applied for

august 27

General and Special Education: Improving
Outcomes for Dependent Youth
Tenesia C. Hall, Attorney at Law
CLE applied for

september 10

Immigration Relief for Youth: Special Immigrant
Juvenile Status and Deferred Action for
Childhood Arrivals
Camila Pachon Silva, Attorney at Law
CLE applied for

september 24

GAL 101: Understanding the GAL's Role At
Each Stage Of A Juvenile Dependency Case.
Beginner level.
Ericka Garcia, Attorney at Law
Sally McArthur, Attorney at Law
CLE applied for

october 8

Achieving Permanency For Dependent Youth:
Essential Advocacy Strategies for GALs
Kavita Sookrajh, Attorney at Law
CLE applied for

october 22

Basic Dissolution of Marriage Part I
Angel Bello-Billini, Attorney at Law
CLE applied for

november 12

Landlord Tenant Update
Michael Resnick, Attorney at Law
Larri Thatcher Attorney at Law
CLE applied for

november 19

Mental Health: Evaluations, Diagnoses,
Treatment, and Medications
Coravious Cowart, Attorney at Law
CLE applied for

december 10

Basic Dissolution of Marriage Part II
Angel Bello-Billini, Attorney at Law
CLE applied for

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Medicaid Basics
Edward Dimayuga, Attorney at Law
CLE applied for

For OCBA members, the training is free. For non-OCBA members participating in the LAS *pro bono* program, the training is free. Pre-registration is required for the free lunch and requested for training (or subject to space availability if not pre-registered). For more information, please email:

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See e.g. *Corona v. State*, 64 So.3d 1232 (Fla. 2011); *Rameses v. Orange County*,
481 F.Supp.2d 1305 (MD Fla. 2007); *Sanders v. Thomas*, 821 So.2d 1214 (Fla.
1st DCA 2002); *AG v. Bradenton Group*, 26 So.3d 636 (Fla. 5th DCA 2010);
DVD v. New Albany, 581 F.3d 556 (7th Cir. 2009).

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Brown v. Nagelhout

continued from page 32

the Supreme Court held that a determination of venue should be governed by the plain language of the relevant provisions of Chapter 47:

When reviewing a plaintiff's venue selection, the Florida courts should apply the plain language of sections 47.011, 47.021, and 47.051, Florida Statutes. *Where there are multiple defendants to an action, a plaintiff may choose as venue any county in which any defendant, without consideration of his or her codefendants, may be considered a resident.*¹⁰

It is important that practitioners be mindful of *Naghout* when researching venue case law, as many of the authorities on which *Enfinger* relied are still shown as being valid in research services. Indeed, a Westlaw search for cases citing *Enfinger*

turns up more than three dozen cases, only two of which are "red-flagged" as no longer being good law. Moreover, not all cases referencing the joint residency rule cite *Enfinger* directly; rather, some cases cite only other appellate decisions that, in turn, relied on *Enfinger*.¹¹ The existence of this twice-removed case law could make it difficult to discover that the joint residency rule is no longer valid.

Additionally, some treatise materials have continued to reference the joint residency rule without fully appreciating the impact of *Enfinger's* holding. For example, the Florida Jurisprudence series still has a section discussing the joint corporate defendant rule; the reference to *Naghout* appears only in the cumulative case law supplement portion of the entry.¹² Similarly, the 2012-2013 edition of Westlaw's Construction Law Manual—updated in November 2012—refers to the joint residency rule and even cites the decision

from the Fourth District Court of Appeal in *Naghout*, which was, subsequently, overruled by the Supreme Court.¹³ Fortunately, attorneys should be served well simply by adhering to the plain text of the relevant venue statutes and avoid getting distracted by the outdated joint residency rule embraced by *Enfinger* and its progeny.

Joe L. Fore, Jr., Esq., Baker & Hostetler LLP, has been a member of the Orange County Bar Association since 2011.

¹A very brief discussion of the interrelation of these statutes in the corporate context is found in *Aladdin Ins. Agency, Inc. v. Jones*, 687 So. 2d 937, 939 (Fla. 3d DCA 1997).

²*Id.* at 540. At the time of the *Enfinger* decision, the relevant statutory provision was codified at Section 46.02.

³*Id.*

⁴*Id.*

⁵*Id.* at 540-41.

⁶See, e.g., *Pill v. Merco Group of Palm Beaches, Inc.*, 56 So. 3d 890 (Fla. 4th DCA 2011); *A-Ryan Staffing Solutions Inc. v. Ace Staffing Management Unlimited, Inc.*, 917 So. 2d 1000 (Fla. 5th DCA 2005); *Carbone v. Value Added Vacations, Inc.*, 791 So. 2d 1217 (Fla. 5th DCA 2001); *Lifemark Hospitals of Florida, Inc. v. Roque*, 727 So. 2d 1077 (Fla. 4th DCA 1999); *Levy County School Bd. v. Bowdoin*, 607 So. 2d 479 (Fla. 1st DCA 1992) (calling *Enfinger's* holding the "joint-corporate-defendant rule"); *Inter-Medic Health Centers, Inc. v. Murphy*, 400 So. 2d 206 (Fla. 1st DCA 1981); *Commercial Carrier Corp. v. Mercer*, 226 So. 2d 270 (Fla. 2d DCA 1969).

⁷84 So. 3d at 310 (internal citations and quotation marks omitted) (emphasis in original).

⁸*Id.* at 310-11.

⁹*Id.*

¹⁰*Id.* at 311 (Emphasis added).

¹¹See, e.g., *Walden Leasing, Inc. v. Modicamore*, 559 So. 2d 656 (Fla. 4th DCA 1990) (applying the joint residency rule and citing *Inter-Medic*, 400 So. 2d at 206).

¹²See 56 Fla. Jur. 2d Venue § 30 (Supp. Nov. 2012).

¹³See Larry R. Leiby, Construction Law Manual § 7.28 (2012-2013 ed.).

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Paul Smith



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Fight or Flee? Under the Microscope: Stand Your Ground Gun Law – A Panel Discussion

Once again Central Florida finds itself in the middle of yet another heated and high-profile criminal trial. However this time the case concerns the shooting death of a teenager and the accused shooter claiming self-defense. This case quickly brought Florida's "Stand Your Ground" law front and center. On August 29th the OCBA Paralegal Section launched its *Under the Microscope* series to examine the Stand Your Ground law in a panel discussion moderated by Paul Owens, *Orlando Sentinel* senior editor. Guest panelists were Senator David Simmons, the main author and co-sponsor of the bill, noted criminal defense attorney and former prosecutor, Zahra Umansky, and the Honorable Robert LeBlanc of the Ninth Circuit Court – Criminal Division.

So What Did We Learn?

Senator David Simmons opened the discussion by describing the legal landscape that existed before the law was enacted. The idea of the right to self-defense dates back to the days of English common law with the general consensus that if someone attacked you, then you had the right to defend yourself.

One controversial question that arises regarding a person's right to self-defense is: As the encounter escalates, does the victim, prior to the use of self-defense, have the requirement to flee? English common law viewed that in a "civil society" the victim, prior to using deadly force must, in fact, flee if they had the ability. Senator Simmons posed the question: "Do they have that duty if they are standing against a wall?" In the late 1800s and early 1900s, many states rejected the notion that the person who is the victim could or should be second-guessed by a prosecutor, or anyone else, as to whether it was "reasonable" or not to try to defend one's self rather than fleeing. Simmons also shared his opinion that this old notion was a "very anti-woman law." He rejected the concept that "a woman, who is confronted with a potential rapist in a place where she has the right to be (like a mall parking lot) prior to defending herself, would have to try to flee."

In the process of drafting the proposed bill, Simmons and his committee examined the laws in other states. Unlike pre-2005 Florida, the majority of states rejected the idea that you must attempt to flee before defending yourself. In Simmons' view, Florida's pre-2005 duty-to-flee law improperly held the criminal's life as being more valuable than the innocent victim's life. By passing the Stand Your Ground law, he felt Florida

law removed this injustice against innocent victims.

In *Brown v. United States*, the court rejected the idea that the victim confronted with deadly force must flee prior to using deadly force themselves. Justice Holmes' concluded that a person confronted with an "uplifted knife to the face" should never be second-guessed on whether they should meet force with force or flee. The choice of whether or not to use force should rest with the victims.

As Simmons continued to hone the proposed language, he somewhat revised the "Castle Doctrine," which in essence states that if you are confronted in your home, you do not have the duty to flee. For his use, he substituted the phrase "in your own home" with "where you have the right to be" taken from the Florida Standard Jury Instructions dealing with the Castle Doctrine. To ensure that this law would not encourage lawless behavior, Simmons' committee inserted the qualifier that you cannot be engaged in "unlawful activity," and the doctrine cannot be used by the person that provoked the use of force. Finally, the force used by the victim must be reasonable. Simmons' opinion is that this was a "reasonable piece of legislation, made a lot of sense, and was thoroughly analyzed," and "works pretty well."

Moderator Paul Owens continued the discussion by posing the question to Attorney Umansky, "... To its supporters, the Stand Your Ground law is all about the right to self-defense – to its critics it's a license to kill – which side do you think is closer to the truth?"

Umansky responded, "I believe in the Stand Your Ground law. I think any law can be used by bad people to do bad things... but if it is used the way it is intended to be, it is a useful law." She reminded us that the law is a creature of statutes – it doesn't apply retroactively. Attorney Umansky emphasized that the Stand your Ground law is NOT an affirmative defense but rather an immunity and can be brought forward through a motion to dismiss, pre-trial. In this situation, the judge would hold an evidentiary hearing and it is the defendant's burden to "prove beyond a preponderance of evidence" that he or she is entitled to immunity. "Whoever tips the scales has proven beyond a preponderance of evidence," she said. Then the judge would decide whether the defendant had met the burden and, if so the case would "not proceed to trial."

Attorney Umansky pointed out to the audience that if a defendant is not successful in arguing his rights under this law, the defense can argue self-defense and the prosecutor must prove, beyond a reasonable doubt, that it is not self-defense.

For a judicial perspective, Mr. Owens turned the discussion to Judge LeBlanc to share with the audience complications that could arise from a hypothetical case based on this law. Judge LeBlanc relayed a conversation with a friend in which the friend asked him if he was "for or against" this law. His reply, was "neither for nor against it" – after all it is his role to be impartial. The judge went on to explain that he is charged with applying the statute as it is given to him and that there is very little case law on this law. He emphasized that each case is unique and all the facts

must be considered. He echoed Umansky's point that the Stand Your Ground law is not a defense but pre-trial immunity, both criminally as well as civilly. "It is a defense to the charge. It is immunity from being prosecuted."

Judge LeBlanc suggested that prosecutors may have an issue with the statute because "they feel that juries should make those decisions, not judges." "Some of the difficulties are the unknowns," he said, for example whether an affidavit could be used in lieu of live testimony. Other unsettled questions were: Can a convicted felon on probation who cannot legally possess a firearm avail himself of this immunity? What standards does a judge use in weighing the credibility of the witness in an immunity hearing? Are they the same standards applied in a criminal trial? What happens

when the judge denies immunity – is there going to be someone who tells that witness that what he testifies to in the hearing can be introduced in trial? And who is supposed to?

Moderator Owens concluded the discussion and opened the floor to a lively round of questions from the audience. Time ran out before the curiosity did.

What to know more? The DVD of the presentation is available for purchase from the OCBA Paralegal Section.

Paul Smith is a paralegal and has been a member of the Orange County Bar Association since 2012. **Risa E. Harrell** is a paralegal with Marlowe & Weatherford, P.A. and has been an OCBA member since 2005.

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Michael Hammond, Esq.

Back to the Basics of Word of Mouth Marketing

You wouldn't be reading this article if you didn't think marketing was important to your practice. Without retaining good clients or originating new clients, you won't have a practice. This is why the rainmakers in law firms hold most, if not all, of the proverbial cards. Becoming selective about the clients you accept may seem counterintuitive, but it can have a crucial impact on your profitability, your cash flow, the level of your stress, and the quality of your life.

Positioning yourself to be selective is the first goal. Without prospective clients knocking on your door in great enough numbers, it's hard to be selective. But taking whatever walks in the door perpetuates the vicious cycle: your working harder and longer for too few clients who don't appreciate – and sometimes won't pay for – your services. Targeting and choosing your clients effectively will lead to greater success, profit, and satisfaction with your career.

A New Start for a New Year

For this New Year, we'll be providing a series of articles on the hows and whys of word-of-mouth or relationship marketing. These techniques are practical and time tested by lawyers who are successfully growing their practices. When you see a tip that you like, try it out – learning becomes more valuable when it's applied effectively. If you do the recommended exercises, implement the suggestions made in the upcoming articles, and work at applying them throughout the series, you will see real benefits and experience true growth in your practice. Most of the suggested exercises are brief, straightforward, and to the point – this is not rocket science.

Relationship marketing is the traditional way that many lawyers over many years have marketed their practices, and it is still the most accessible, least expensive, and most ethical and effective way to gain new clients. When referred clients come to you because someone they know and trust said that you were good at what you do, studies show that they are more motivated, more likely to pay your fees, and will be more loyal in the long run.

Who To Talk To

If you review the key elements involved in word-of-mouth marketing, it will come as no surprise that most of the elements involve communication and building relationships. And quite honestly, these are areas where most lawyers excel. "Word-of-mouth marketing" means just that – get the word out about you and your practice to others.

Successful marketing often comes down to knowing *Who To Talk To*, *What to Say*, and *How and When to Say It*. Many lawyers fail to market themselves effectively because they miss one or more of these simple steps.

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

It all begins with a profile of your clients. Until you truly know the clientele you serve – especially the clientele you prefer to serve – you won't know who influences them to do business with you. If, for example, you are an estate-planning lawyer, you may prefer to work with high net worth individuals who own their own businesses. These individuals typically have a strong relationship with their CPA, their financial advisor, and their investment broker. If you happen to have a good relationship with one of these professionals, they would be in a position to recommend your services. They would be a referral source, or an influencer, because of their ability to influence clients to use your services.

Who is Your Ideal Client?

If you understand the profile, or the demographics, of your ideal client, you can work backward, as just demonstrated, to determine who influences them. It is important to note that you will have a different ideal client or "target market" for each of your practice areas. In the case of an institutional or commercial primary client construct one list of attributes – using the chart provided—for the institution itself; then create another list of the attributes typical of the decision-maker within those types of organizations. It is important that you develop a profile for each. Knowing the profile of the institution will help you cultivate new institutional clients. Knowing the profile of the decision-maker within the institution will help you identify who to talk to and how to deal with them.

To work your way through this process, look for commonalities among your existing group of clients. Many of the answers will be known to you from your everyday experience and contact with them. For characteristics that are eluding you, go back through your files to see whether you can

find the information. If that doesn't give you a precise answer, then make an intelligent guess or use a low-high range (i.e., between the ages of 50 – 65). To get started analyzing the characteristics of your clients for each of your practice areas, use the chart provided below:

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

In doing this exercise, many lawyers are surprised to discover that most of the information about their client demographics is easily retrieved from their memory. But, if you want to establish a more comprehensive and current baseline, go through your files and retrieve the information you have collected on your clients through the last quarter of 2012, for example.

Now, let's take this one step further: Don't you have both good clients – even ideal ones -- and "problem clients"? This occurs in all practice areas and the inability to distinguish between the two carries with it a high, hidden cost. As an important part of your personal word-of-mouth marketing program, you must sharpen your ability to identify the "good" clients. The next article will focus on this longstanding maxim: The quality of your practice is determined largely by the quality of your clients.

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.



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Published

George F. Indest III, Esq., president and managing partner of The Health Law Firm, was published in the December 2012 issue of *Medical Economics*. Mr. Indest's article, *19 Tips to Prepare You for a Medicare Audit and Site Visit*, is a list of ways a health provider can be prepared for his or her audit.

Events

Mar. 14 – 9th Annual Texas Hold 'em Poker Tournament. Social Committee. 5:30 p.m.-9:00 p.m. One-Eyed Jack's, Wall Street Plaza, 15 N. Orange Ave., Orlando, FL 32801. All proceeds benefit the OCBA Foundation. Register with credit card payment at: <http://ocbapoker.brownpapertickets.com>.

Apr. 20 – OCBA Annual Gala. Cornell Museum of Fine Arts, Rollins College, Winter Park. 7:00 p.m. All proceeds to benefit the Legal Aid Society and the OCBA Foundation. Individual tickets: \$125. Go to <http://ocbagala.brownpapertickets.com>. For sponsorship information, contact Kim Webb at 407-647-8911 or kwebb@schwartzlaw-firm.net.

Seminars

Mar. 5 – Inside the Courts, Ninth Judicial Circuit. 6:30 p.m.-8:30 p.m. Orange County Courthouse, Jury Assembly Room. For legal professionals and the public. Call: 407-836-0517 or register online at www.ninthcircuit.org.

Mar. 12 – Community Based Care of Central Florida: Collaborations to Improve Dependency Outcomes. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks Street Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Speaker: Doris Mackey, GAL

Case Coordinator. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

Mar. 12 – Recent Developments: Copyright Preemption and Contract Claims. Intellectual Property Committee. 12:00 p.m.-1:00 p.m. OCBA Center. Speaker: Greg Herbert, Esq. CLE: pending. RSVP to Amber Davis at adavis@iplawfl.com.

Mar. 14 – Appeals and Postconviction Relief for Trial and Appellate Practitioners. Appellate Practice Committee. 11:45 a.m.-5:00 p.m. OCBA Center. CLE: 5.0 pending. \$40 for OCBA members in advance (\$50 at the door); \$60 for non-members (\$70 at the door). To register, contact: Marie West at mariew@ocbanet.org.

Mar. 14 – Planning Your Discovery: Use of Rogs, Depos, R/P, Records P/U and R/A. Brown Bag Lunch with Judge J. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. CLE: 1.5. Please feel free to bring your lunch, and tell security you will be attending the Brown Bag Lunch. To register, contact: Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Mar. 15 – Getting to Know Judge Marc Luby. Family Law Committee. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. To register, contact: Camy Schwam-Wilcox at camy@cbslaw.com.

Mar. 19 – Complex Trust Planning. Solo & Small Firm Committee. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. To RSVP, contact: ocbasolos@gmail.com.

Mar. 26 – Crossover Youth: Implications for Youth with Both Dependency and Delinquency Involvement. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks Street Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Speaker: Kate York, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

Apr. 9 – Dependent Youth and Immigration Law. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Speaker: Bethanie Barber, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

Apr. 11 – Objections: In Discovery and at Trial. Brown Bag Lunch with Judge J. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. CLE: 1.5. Please feel free to bring your lunch, and tell security you will be attending the Brown Bag Lunch. To register, contact: Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.

Apr. 16 – Bluebook Citation Changes. Appellate Law Committee and Solo & Small Firm Committee Joint Seminar. 12:00 p.m.-1:00 p.m. Speaker: Susan W. Fox, Esq. CLE: pending. RSVP to ocbasolos@gmail.com.

Apr. 18 – Attorneys' Fees Seminar. 1:30 p.m.-5:00 p.m. OCBA Center. Details TBA.

Apr. 23 – Independent Living Issues for Transitioning Youth and Young Adults. LAS Lunchtime Training. 12:00 p.m.-1:00 p.m. Speaker: Bethanie Barber, Esq. CLE: pending. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. To register, contact: Marilyn Carbo at mcarbo@legalaidocba.org or 407-841-8310, ext. 3121.

Apr. 24 – Labor and Employment Seminar. Details TBA.

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6 Business Law Committee
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8 Criminal Law Committee
12:00 p.m. • OCBA Center

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

12 Intellectual Property Committee Seminar
Recent Developments: Copyright Preemption and Contract Claims
12:00 p.m. • OCBA Center

LAS Lunchtime Training

Community Based Care of Central Florida: Collaborations to Improve Dependency Outcomes
12:00 p.m. • Marks Street Recreation Complex

13 Judicial Relations Committee
12:00 p.m. • Orange County Courthouse, 21st Flr. Conf. Rm.

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

14 Appellate Practice Committee Seminar
Appeals and Postconviction Relief for Trial and Appellate Practitioners
11:45 a.m. • OCBA Center

Brown Bag Lunch with Judge J. Kest

Planning your Discovery: Use of Rags, Depos, R/P, records P/U and R/A
12:00 p.m. • Orange County Courthouse, 23rd Flr.

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

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

Texas Hold 'em Poker Tournament
5:30 p.m. • One-Eyed Jack's

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

Family Law Committee Seminar
Getting to Know Judge Marc Lubet
12:00 p.m. • OCBA Center

19 Solo & Small Firm Committee Seminar
Complex Trust Planning
12:00 p.m. • OCBA Center

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

Veterans Committee

New Committee Kick-off Meeting
12:00 p.m. • OCBA Center

21 OCBA Luncheon
James A. Edwards, Esq.
William Trickel, Jr. Professionalism Award Recipient
11:30 a.m. • Ballroom at Church Street

26 Tax Law Committee
12:00 p.m. • OCBA Center

LAS Lunchtime Training

Crossover Youth: Implications for Youth with Both Dependency and Delinquency Involvement
12:00 p.m. • Marks Street Senior Recreation Complex

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

Judicial Relations Committee

12:15 p.m. • Orange County Courthouse
23rd Flr. Conference Rm.

28 Technology Committee
12:00 p.m. • OCBA Center

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

April

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

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

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

9 LAS Lunchtime Training
Dependent Youth and Immigration Law
12:00 p.m. • Marks Street Senior Center

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

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

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

Brown Bag Lunch with Judge J. Kest

Objections: In Discovery and at Trial
12:00 p.m. • Orange County Courthouse, 23rd Flr.

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

16 Appellate Law Committee and Solo & Small Firm Committee Joint Seminar
Bluebook Citation Changes
12:00 p.m. • OCBA Center

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

Veterans' Committee

12:00 p.m. • OCBA Center

18 Attorneys' Fees Seminar
1:30 p.m. • OCBA Center

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

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

20 Annual Gala
7:00 p.m. • Cornell Museum of Fine Arts, Rollins College

23 LAS Lunchtime Training
Independent Living Issues for Transitioning Youth and Young Adults
12:00 p.m. • Marks Street Senior Center

24 Labor & Employment Seminar
Details TBA

25 OCBA Luncheon
Law Week
11:30 a.m. • Ballroom at Church Street

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

30 Tax Law Committee
12:00 p.m. • OCBA Center

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