

the Briefs

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2012-2013

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2011-2012



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may 22

Permanency 101 – Adoption? Reunification? Guardianship?
Beginner's Guide to Permanency Options for Dependent Children
Stephanie Stewart, Esq.
CLE applied for

june 12

Basic Dissolution of Marriage for Pro Bono Attorneys: (Part 1)
Angel Bello-Billini, Esq.
CLE applied for

june 26

Crossover Youth Advocacy: Serving Dependent Youth with
DJJ Cases
Kate York, Esq.
Sally McArthur, Esq.
CLE applied for

july 10

Basic Dissolution of Marriage for Pro Bono Attorneys: (Part 2)
Angel Bello-Billini, Esq.
CLE applied for

july 24

Developmental Disabilities and Specialized Treatment Options in
Dependency Cases
Ericka Garcia, Esq.
CLE applied for

august 14

Garnishments/Debtor Defenses
Michael Resnick, Esq.
CLE applied for

august 21

Guardianship of a Person
David Yerger, Esq.
Catherine A. Tucker, Esq.
CLE applied for

august 28

Termination of Parental Rights Cases: Litigation Skills
Kirsten Teany, Esq.
Judge Donald E. Grincewicz
Kavita Sookrajh, Esq.
CLE applied for

september 11

Crafting a Parenting Plan When There's Domestic Violence
Tenesia Hall, Esq.
CLE applied for

september 25

Dependency Adoptions
Stephanie Stewart, Esq.
CLE applied for

october 9

Sealing and Expungement
David B. Slaughter, Esq.
CLE applied for

october 23

GAL 101
Kate York, Esq., Attorney at Law
Bethanie Barber, Esq.
CLE applied for

november 13

Landlord - Tenant Law Update
Michael Resnick, Esq.
CLE applied for

december 4

Immigration Topic - TBA

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: ctucker@legalaidocba.org or mcarbo@legalaidocba.org or merazmus@legalaidocba.org.

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DEADLINE INFORMATION

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

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

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Thomas A. Zehnder, Esq.

Reflections on a Year that Went by Way Too Fast

It's hard to believe it has been a year since I was sworn in as OCBA president. This is a bitter-sweet moment for me. On the one hand I am very much looking forward to passing the torch to **Kristyne Kennedy**, our incoming OCBA president, and to assuming what is, of course, the greatest of all leadership positions – immediate past president! But, on the other, I know that as I step back I will miss working so closely with our OCBA leadership and staff. We are very fortunate to have such great people who give of their time and talents every day to make this the best voluntary bar association in the state, if not the nation.

A year ago, as incoming president, I spoke at our installation and awards banquet about all that the OCBA has to offer. I remarked how the OCBA provides a forum for all things that are great about being a lawyer – guidance and mentoring, education and enlightenment, and camaraderie and collegiality. As I look back on a few highlights from the year, I'm proud to say that we remained true to these values.

Guidance and Mentoring

A few months ago I wrote about the ever-increasing need for mentoring in our profession. The OCBA's dynamic Young Lawyers Section has certainly answered the call through its Law School Mentoring Program. I congratulate YLS president **LaShawnda Jackson** and the entire YLS for this great program and on another outstanding year.

But mentoring and guidance are not reserved solely for the young. We older lawyers still have much to learn as well. (*After all, it's not called "practicing" law for nothing, right?*) During the past year, our substantive law committees consistently challenged us with dozens of seminars, offering us new opportunities to grow as practitioners. Last summer, under the great leadership of its chair, **Jim Edwards**, the OCBA's Professionalism Committee teamed up with the OCBA's Business Law Committee (chaired by **Phil Calandrino**) and Appellate Practice Committee (chaired by **John Hamilton**) to present their *War and Peace* seminar, one of our most successful events of the year. The OCBA office was teeming with people, including federal and state judges, and lawyers from a wide range of practice areas. I was fortunate to participate in *War and Peace* as a moderator of one of the panel discussions. I was heartened by our members' dedication to professionalism and willingness to share and exchange ideas about how we can all strive not only

to meet, but exceed, the high standards our noble profession requires.

We also had the amazing opportunity to hear from the prosecution and defense teams of the Casey Anthony trial, from local OCBA lawyers who served as national commentators on the case and from the distinguished ethics and professional responsibility educator, Professor Amy Mashburn. *Lessons in Ethics and Professionalism from the Casey Anthony Trial* allowed us to learn directly from the lawyers who tried one of the most widely-covered and controversial cases in recent history. What a privilege it was to hear from them about the struggles they faced and overcame. I want to thank my good friend and OCBA past president **Tad Yates** for recognizing the potential teaching moment a seminar like this could be and for his work in turning that potential into a reality.

Education and Enlightenment

Throughout its nearly 80-year history, the OCBA has remained committed to educating the public about the legal profession. I'm particularly proud of our newest program on that front – Leadership Law. Through the Leadership Law program, the OCBA provides a forum for business and community leaders to learn more about our legal system. Our inaugural class comprised an impressive list of individuals from diverse industries such as finance and accounting, health care, education, public service and even the religious community. I want to thank OCBA executive council member **Mary Ann Etzler** for her unfailing commitment to ensuring the success of this great program.

Another of our goals this year was to increase the profile and participation of the OCBA Foundation in our community. Last May, I asked OCBA member **Richard Dellinger** to serve as Foundation president and, fortunately for all of us, he accepted. Under Richard's leadership, I'm proud to say the Foundation has become more active than at any time in its history. Out of a brainstorming session we had at our OCBA retreat last June, the Foundation has emerged as a leader in civics education in our schools. Richard, his board members, and many members of our federal and state judiciary, including **Judge John Antoon, II**, **Judge Gregory Presnell**, **Judge Gregory Kelly**, **Judge Karen Jennemann**, **Judge Fred Lauten**, **Judge Antoinette Plogstedt**, **Judge Faye Allen**, **Judge Julie O'Kane**, **Judge Bob LeBlanc** and

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Ryan E. Davis, Esq.

Professionalism: To the Obscene – Remarks by Ryan E. Davis Upon Receiving the 2012 Lawrence G. Mathews, Jr. Young Lawyers Professionalism Award

When I received the call from Tom Zehnder that I was this year's recipient of the Lawrence G. Mathews, Jr. Professionalism Award, I was honored and humbled. Knowing and very much respecting all of the past recipients, I felt privileged to be considered among their ranks. Naturally, I shared the good news with the first person that walked into my office, my assistant. Clearly impressed, her immediate response was, "Huh, you're still a young lawyer?" Thanks, Toni!

Tackling a topic such as professionalism is a daunting task. How does one define it, or even describe it? Is the concept limited to the workplace, or does it, or should it, extend into life outside of the office as well? (It does.)

For assistance, I turned to the trusty *Merriam-Webster* online dictionary, which defines professionalism as follows:

The conduct, aims, or qualities that characterize or mark a profession or a professional person.

Although quite accurate, the definition was not of much help. After all, what are those aims, qualities and types of conduct? I then realized that the Supreme Court of the United States had already articulated the best description of professionalism in a 1964 opinion, *Jacobellis v. Ohio*, 378 U.S. 184 (1964). In that case, the Supreme Court also struggled with a definition.

Ultimately, Justice Stewart wrote:

I shall not today attempt further to define the kinds of material I understand to be embraced within that shorthand description and perhaps I could never succeed in intelligently doing so. But I know it when I see it.

Ironically, as we all know, Justice Stewart was describing obscenity when he penned those words. But the same words apply to the concept of professionalism. It is difficult to define, but we all know it when we see it. Professionalism can definitely be seen in new attorneys, like members of our YLS, who are beacons of professionalism – dedicated, enthusiastic, deferential and idealistic. While our "big bar" has no shortage of attorneys who exude the attributes of professionalism, it can be a challenge to maintain that commitment to professionalism in the wake of escalating pressures.

Indeed, increasing workloads, combative opposing attorneys and mounting financial demands

can chip away at even the most professional among us. I can't offer any solutions, but I can offer a story my high school English teacher, Dr. Walton, shared with our class my senior year, before we departed for college. She had a somewhat sheltered, wholesome upbringing and barely knew, much less uttered, any four-letter words. Then, she went off to college. She was away from her family and childhood friends for the first time. That Christmas she returned a different person.

Her vocabulary had expanded and her language had become, well, much more colorful. The change was gradual and completely unbeknownst to her – until she returned home and her friends and family informed her how shocked they were with what she had "learned" in college.

I mention this story because professionalism, and in turn one's most valuable asset – his or her reputation – can erode, much like my high school teacher's once pristine language, unless professionalism is made a priority – unless it is an objective in and of itself. Without a commitment to professionalism, the number of hours billed can become more important than the quality of those hours. Email discussions can more frequently descend into email wars, and having the last word can become more important than maintaining one's reputation. While achieving a zen-like state of pure professionalism, where emotion never overtakes the moment, may not be possible (well, at least not in litigation), every encounter with opposing counsel, your clients, your colleagues or the court is a new opportunity to build your reputation and to allow others to see glimpses of professionalism in you.

One practical and fulfilling way to maintain a commitment to professionalism is through mentorship. Having a mentor, and then later becoming one, can help instill, maintain and bolster professionalism. The YLS, through the leadership of Kristopher Kest, now boasts one of the few attorney-law school mentoring programs in the country. This program has proven to be as rewarding for the YLS mentors as it is for the law student mentees.

I never knew the man for whom the young lawyer's professionalism award was named, but I have every reason to believe that he was an incredible mentor. I've had the good fortune of being partners with one of Mr. Mathews' former partners,

continued page 8

The Orange County Bar Association,
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The OCBA Foundation, The Young Lawyers
Section of the OCBA, and The OCBA
Paralegal Section



Invite you...

to the Fifth Annual Officer Installation and Awards Banquet,
featuring the installation of the 2012-2013 officers of the OCBA,
the Legal Aid Society of the OCBA, the OCBA Foundation and
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Join the Legal Aid Society of the OCBA in presenting its 2011-2012
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With remarks by keynote speaker The Honorable Belvin Perry, Jr.,
Chief Judge of the Ninth Judicial Circuit and recipient of the 2012
Judge James G. Glazebrook Memorial Bar Service Award.

Thursday
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Please RSVP by May 17, 2012
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Cocktails served from 5:30 p.m. until 6:30 p.m. (cash bar)
Dinner and Program commencing at 6:30 p.m.

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Thomas P. Wert, Esq.

OCBA Foundation's Program on the Importance of Fair and Impartial Courts

The OCBA Foundation recently pulled off another successful event aimed at educating the youth of our community about American legal institutions and civil rights/responsibilities. On March 6, 2012, the OCBA Foundation conducted a program called "The Importance of Fair and Impartial Courts," which was attended by approximately forty middle school and high school civics teachers from the Orange, Seminole and Volusia County public school systems. The program was held in the Jury Assembly Room at the Orange County Courthouse.

During the three-hour program, teachers were treated to a multi-media review about the need to protect our system of justice from the oftentimes unfair influence of political opinion. The program was led by past OCBA president Tom Wert and focused on the courts' protection of our "unalienable rights," first widely proclaimed in America by the Declaration of Independence and later codified by our federal and state constitutions. Without fair and impartial courts made up of individuals with integrity, fairness and impartiality, any constitution is just a piece of paper – worthless without a branch of government committed to protecting it. The framers of the Constitution were afraid human nature might lead our executive and legislative branches to make decisions that encroached upon the people's rights, so a third branch of government – the judicial branch – was created to put a check on this danger.



Judge Bob LeBlanc (second from left), Tom Wert (far right)

Judges take on and make hard decisions based upon the law, regardless of public or political opinion. The judiciary is not a group of independently acting individuals; judges have to follow the law and the Constitution. Indeed, judges take an oath to uphold the law and Constitution when they take office. Rather, when a case

comes to court, judges must decide the case based upon governing legal precedent without resorting to their own personal notions of right or wrong. As a result, the judiciary is the champion of the people's fundamental and inalienable rights.

After the presentation, the teachers engaged in a real-life case study discussion about the possible lack of impartiality of a Texas court. The discussion was led by Orange County Judge Antoinette Plogstedt. The case involved the murder trial and conviction of Charles D. Hood. Though Hood maintained his innocence, his bloody fingerprints were found at the scene and he was arrested the next day in Indiana driving the murdered man's car. After trial, Hood was sentenced to death. For years, it had been rumored that the judge who oversaw Hood's trial and sentenced him was having a romantic relationship with the prosecutor. The rumors were confirmed in 2008 when Hood's lawyers compelled the judge and the prosecutor to give depositions (both officials had since retired). As a result, the district court recommended that Hood be granted a new trial; but in a 6-3 decision, the Court of Criminal Appeals reversed on procedural grounds. Hood appealed to the United States Supreme Court. In February 2010, twenty-one former judges, government officials and prosecutors filed an amicus brief in support of Hood's petition to the Supreme Court, asking the Court to hear the case based on an apparently clear due process violation. The brief stated in part:

The conduct of the trial judge and prosecutor in a proceeding that resulted in imposition of the death penalty, combined with the short shrift given to petitioner's claim by the Court of Criminal Appeals, cast grave doubt on the impartiality and fairness of the trial in this case and tarnish significantly the reputation of the judiciary as a whole. This Court likely is the last court with an opportunity to prevent the infliction of this serious harm – both to petitioner and to the judiciary.

In April 2010, the U.S. Supreme Court rejected Hood's appeal, without comment.

The Foundation program's group discussion was followed by a panel discussion with Orange County Judges Faye Allen, Jenifer Davis, Antoinette Plogstedt, Frederick Lauten, Bob LeBlanc and Wilfredo Martinez. The judges discussed why courts are important to our freedom. Participants

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Professionalism Committee

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Frank Bedell. In talking with Frank, I've learned that Mr. Mathews believed that no case or client was more important than your reputation and that the practice of law is a privilege, not a right. Words to live by.

I have been fortunate to have had some great mentors at Winderwee-dle, Haines, Ward & Woodman, P.A., including Brad Saxton and Jeff Deery, among others. In fact, I consider this award as much a tribute to them as it is to me.

Brad has always encouraged me to pick up the phone or, better yet, meet in person rather than rely upon email, especially in important or delicate situations. That advice has proved invaluable. A simple phone call, rather than an email in which the tone or intent can be misconstrued, can often smooth over a situation that would otherwise be fraught with angst.

I recall a fairly recent situation where I had asked opposing counsel for an extension to answer or otherwise respond to a complaint. The opposing counsel consented to an extension to answer but not otherwise respond. It was a complex matter and I had just been retained a day or two prior to the response date, so I, rightfully or wrongfully, was a little frustrated. Rather than responding by email and raising an issue about it, I decided to pick up the phone. As it turns out, we simply had a misunderstanding, and the opposing

counsel was not in any way attempting to limit my response. He interpreted "otherwise respond" to mean an informal response, which was not my intent, rather than a pleading or motion to be filed with the court. By making the phone call, I was able to resolve the issue quickly and maintain a good working relationship with opposing counsel.

Professionalism is no longer just an ideal, but is actually required of new attorneys – and should be required, or at least expected, of all attorneys. In September of last year the Supreme Court revised the Oath of Admissions by adding the following:

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications.

The oath now mandates civility, or a certain level of decency when attorneys interact with opposing counsel. Civility is not inconsistent with zealous advocacy; it just keeps the advocacy from becoming personal.

Although professionalism can be hard to define or to describe succinctly, by committing to it and making it a priority in your practice, others will certainly know and understand professionalism when they see you.

Ryan E. Davis, Esq., is a shareholder in the Orlando office of Winderwee-dle, Haines, Ward & Woodman, P.A. Ryan has been an OCBA member since 1999.

Foundation News

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examined the roles of lawyers and judges in the justice system and experiences from the bench exemplifying the need for fair and impartial courts. Citizen involvement through participation on juries, voting and speaking out when the courts are criticized for doing what they were created to do were talked about as well.

Feedback from the program was phenomenal. One teacher wrote:

Thank you for an excellent American government presentation last night. It was extremely informative, useful and beneficial to an Orange County educator of social studies. The

presenter was excellent. The lawyers were very helpful and the judges were very informative, insightful and fascinating. I could have listened to them all evening long. I would be honored to be on their jury.

Many thanks go out to Judges Allen, Davis, Plogstedt, Lauten, LeBlanc and Martinez for their invaluable participation, as well as OCBA board members Jessica Hew and Meena Hirani for their assistance with the group discussion.

Thomas P. Wert, Esq., Roetzel & Andress, LPA, is a past president of the OCBA. He has been a member of the OCBA since 1974.

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President's Message

continued from page 3

Judge Wilfredo Martinez, have visited with both educators and students throughout the year, teaching them about our Constitution, our legal system and the rule of law. What a wonderful way for the OCBA, through its Foundation, to give back to our community. Thank you, Richard, the Foundation board and our participating judiciary, for your continued commitment to civics education.

Camaraderie and Collegiality

One of the best things about being active in the OCBA is the lasting friendships you develop with your colleagues. Success in the practice of law, as with many professions, has a lot to do with relationships. This year we've worked hard to provide opportunities to foster those relationships. We revamped our luncheons by returning to a buffet, not only to improve the food, but also to encourage more mingling and interaction among our members. I thought this year's Professionalism Luncheon was particularly special, when we came together to recognize **Chief Judge Belvin Perry, Jr., Matt Brenner** and **Ryan Davis** for their wonderful leadership by example. And when we all stood and took the new Oath of Admission together, we publicly rededicated ourselves

to practicing law with integrity and with civility. What a great moment.

We also endeavored to provide distinct social functions so that everyone could find an event they'd want to attend. From the Trivia Contest, to the Joint Happy Hour, to the Winter Wine and Cheese Social and to the Poker Tournament, **Shayne Thomas** and executive council member **Bill Umansky** were wonderful Social Committee co-chairs again this year, and I am grateful to both of them for their hard work.

And I must say, our annual Gala was a real highlight. Located in the North Club Bar on the Club Level of the magnificent Amway Center, the Gala was a great success this year. To be sure, there were well-founded concerns about having our Gala at the Amway Center, in large part because we couldn't secure a date until very late in the process. (*You see, Lady Gaga easily could have picked us off at any moment!*) But fortunately we were able to navigate that issue, and special thanks go to **Mayanne Downs** for her help in securing the venue. I also want to thank executive council member **Nicky Mooney** and OCBA Foundation board member **Gavin Mackinnon**, this year's Gala co-chairs, for their tireless work in planning all that goes into the Gala.

Serving as OCBA president has been a great experience. I've learned a lot, both personally and professionally. I'd like to thank my partners, **David King, Bruce Blackwell** and **Fritz Wermuth**, for allowing me to invest the time required of the position. I'm very pleased (*and quite relieved!*) that there have been some successes this year, and that when faced with difficult challenges we tackled them together and improved our organization in the process. I'm honored to have served with my fellow officers – **Kristyne Kennedy, Paul Scheck, Nick Shannin** and **Frank Bedell** – and with all of the executive council members. The OCBA is in great hands, and I thank these leaders for graciously volunteering their valuable time to our organization. I am also very grateful to our executive director, **Brant Bittner**, and for our wonderful OCBA staff, who no doubt worked hard this year to keep me out of trouble!

The future of the OCBA has never been brighter, my friends. We can all look forward to bigger and better things next year, and in the many years to come. Thank you for allowing me the great privilege to serve.

Thomas A. Zehnder, Esq., is a partner with King, Blackwell, Zehnder & Wermuth, P.A. He has been a member of the OCBA since 1995.

The Florida Bar Foundation

would like to recognize and thank the following Orange County contributors to its NOW Campaign in support of legal aid. The campaign is seeking to help fill a critical funding gap over the next few years until IOTA revenue returns to pre-recession levels.

Matthew J. Ahearn
Bruce B. Blackwell
Darryl M. Bloodworth
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Harvey Cohen
James C. Dauksch, Jr.
Mary Anne DePetrillo
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Michael D. Minton
Lawrence J. Phalin
Lou Ann Powell
Kimberly B. Rezanka
Catherine Tucker
Jennifer D. Wimberly
Steven Zucker
Joel C. Zwemer

Special thanks to the law firm of Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A. for encouraging its attorneys to contribute to the NOW Campaign through a payroll deduction that was created specifically to support The Florida Bar Foundation's Legal Assistance for the Poor Grant Program. The names of individual Dean Mead attorneys who are donors to the NOW Campaign appear on the list above.

This list reflects donors as of April 9, 2012.

For more information about the NOW Campaign, or to give online, go to:

www.floridabarfoundation.org





The Honorable
Antoinette D. Plogstedt

High School Mock Trial Teams Receive Foundation Support

Orange County Bar Foundation members Cindy Schmidt and Judges Antoinette Plogstedt, Faye Allen and Wilfredo Martinez assisted with the Florida High School Mock Trial Competition hosted by the Florida Law Related Education Association, Inc. (FLREA). Initial competitions were held at the circuit court level.

This year's mock trial case involved the criminal investigation of Jesse Woodson, who was accused of aggravated battery and cyberbullying. Angel Sterling, the victim, used Buddy-Link, an instant messenger service and FacePlace, a popular social networking site. Angel suffered a brick to the back of the head and threats on FacePlace. Jesse Woodson was arrested.

Judge Plogstedt, together with several local attorneys, judged the Ninth Circuit level competition held at Barry University School of Law on February 13, 2012. Judge Plogstedt presided over the proceedings just as she would hold court in the Orange County Courthouse. Other attorneys officiated during proceedings and scored the teams while paralegals volunteered as timekeepers.

Mock trial teams from several local high schools competed. Boone High School, assisted by Foundation member Cindy Schmidt, prevailed as the winner and proceeded to the state competition. The students were enthused. One student wrote, "This team is what I look forward to in school day in and day out." The Foundation donated funds to support Boone High School in its preparation for state competition.



Judges Allen and Martinez assisted students on Boone High School's mock trial team to prepare for the state competition. Judge Martinez hosted students at the Orange County Courthouse and Judge Allen worked with the team at their school. Cindy Schmidt, a Boone Law Magnet faculty member, worked closely with the team as well.

Judges Plogstedt and Allen judged the state competition held at the Orange County Courthouse, May 8-10, 2012. Students from throughout the state participated. Judges presided over the mock trials, while visiting attorneys scored the students. Awards were given for the best attorney and best witness. Tate High School in Escambia County prevailed as the winning team.

Foundation members enjoyed supporting this annual event and are looking forward to next year's competition.

The **Honorable Antoinette D. Plogstedt** serves in the Ninth Judicial Circuit and has been a member of the OCBA since 1994.



Florida High School Mock Trial
Competitions

Cindy Schmidt (center), OCBA
Foundation and Boone High
School Law Magnet faculty
member



Bradley M. Saxton, Esq.



C. Andrew Roy, Esq.

Stern v. Marshall:¹ A Quagmire for the Future of Bankruptcy Jurisdiction or Just a Bad Joke? Part II

Part I, published in the December/January 2012 issue of The Briefs (pgs. 12-13), introduced the unusual facts of Stern v. Marshall, which involved a dispute over inheritance between Anna Nicole Smith and her stepson, Pierce Marshall. Chief Justice Roberts, author of the opinion, even likened the story behind the case to that of Charles Dickens' Bleak House. More importantly, the Court's conclusion in Stern v. Marshall raises serious questions about bankruptcy court jurisdiction – including questions about the constitutionality of the bankruptcy system as a whole. But bankruptcy and district courts alike, including the Middle District of Florida with its new standing order of reference, have responded to reduce the detrimental impact of Stern that was once predicted. Part II continues the story of Stern v. Marshall and what happens when Anna Nicole Smith, the bankruptcy code, and the Supreme Court walk into a bar . . .

The Pause: Do You Get It? (continued)

Scholarly Predictions

As expected, the joke is not entirely lost on those academics actively participating in bankruptcy scholarship. In the months since *Stern*, members of the bankruptcy community have been trying to predict the impact the decision will have on bankruptcy courts and their jurisdiction. Some analyses have predicted *Stern* will be applied to its maximum possible extent despite the Court's apparent downplay. Bankruptcy Judge Laurel Isicoff recently noted that "a maelstrom of opinions and articles have been written about the scope of *Stern*, ranging from 'much ado about nothing' to 'the end of the bankruptcy world as we know it.'"² Professor Kenneth Klee³ and Henry Sommer, Esq.⁴ joined in a podcast hosted by LexisNexis on July 25, 2011, to discuss their predictions about the practical impact of *Stern*.⁵ Klee and Sommer discussed primarily (1) the survival of consent jurisdiction in bankruptcy,⁶ (2) how bankruptcy courts may be reluctant to apply *Stern* and rule away their jurisdiction, and even (3) the possibility of solving the *Stern* issue by establishing bankruptcy judgeship under Article III.⁷ Klee and Sommer proposed other temporary solutions to any problems that may arise from the *Stern* decision in the meantime. Among those recommendations were emergency rules adopted nationwide or local rules amending standing orders of reference so as to avoid the "ping-pong" effect that worried Justice Breyer. In essence, these rules would ensure that actions like

Vickie's counterclaim would find their rightful home first in the district court. Ultimately, Klee and Sommer expressed some concerns over the impact of *Stern*, but conclude the issues *Stern* created were not so fundamentally problematic that courts will not fashion a solution.

The Courts Weigh In

The bankruptcy courts, district courts and even some circuit courts⁸ have begun elucidating the meaning of *Stern*. As of February 17, 2012, nearly three hundred cases had cited *Stern*.⁹ Of those cases, thirteen opinions were rendered by courts in the Eleventh Circuit. Just as Professor Klee predicted, the bankruptcy courts have emphasized the narrowness of *Stern*.¹⁰ *In re Safety Harbor Resort and Spa*¹¹ and *In re Peacock*,¹² both cases from the Bankruptcy Court for the Middle District, Tampa Division, mention and rely at least in part on the narrowness of the *Stern* decision. Similarly, the courts in both *Safety Harbor* and *Peacock* found that the party challenging the court's jurisdiction had in fact consented to jurisdiction.¹³ *Peacock* involved a claim by a Chapter 7 trustee against a creditor of the estate to recover damages for violations of the Florida Consumer Collections Practices Act. The *Peacock* court held that *Stern* was not only a narrow holding, but also that it only applies to counterclaims unnecessary to the court's ruling on a creditor's claim. Thus the court had jurisdiction over the trustee's state law claim.¹⁴

In *in re Safety Harbor*, a thorough analysis by Judge Michael G. Williamson, which we referred to as the "CliffsNotes" on *Stern* in Part I of this article, involved a debtor's objection to the court issuing "lock-up" restrictions as part of confirmation of the debtor's proposed Chapter 11 plan.¹⁵ The debtor, citing *Stern*, argued the court had no authority to issue such restrictions. The *Safety Harbor* court undertook a thorough, yet clear, concise and well-written analysis of *Stern* that mirrors the *Stern* opinion outline.¹⁶ Following its analysis, including mention of the narrowness of *Stern*, the court concluded that the lock-up order falls within the core proceeding "confirmation of plans" as listed in 28 U.S.C. § 157(b)(2)(L), which was otherwise untouched by *Stern*.¹⁷ Thus the court had jurisdiction.

Compare *Safety Harbor* and *Peacock* with *In re Colony Beach*,¹⁸ which was a decision rendered by the District Court for the Middle District of Florida in its bankruptcy appellate capacity in

the same locale. *Colony Beach* involved state law claims for damages against a condo association that filed bankruptcy.¹⁹ The party seeking damages filed its state law claims with the bankruptcy court and accompanied the filing with a request for remand to the district court. The bankruptcy court denied the request, finding that it had jurisdiction over the state law claims. On appeal, the district determined that a thoughtful analysis of *Stern* revealed that the state law claims were constitutionally non-core claims and thus the bankruptcy court lacked jurisdiction.²⁰

These three cases illustrate the array of possible consequences resulting from *Stern*: short, to the point decisions that are almost dismissive of *Stern*; long, thorough analyses that perhaps tee up the case for withstanding appeal; and decisions that go beyond the facts of *Stern* and apply the framework laid out by the Supreme Court.

In addition to substantively addressing *Stern*, courts have also fashioned rules and procedures to deal with *Stern* issues just as Klee and Sommer predicted. For instance, some bankruptcy courts have incorporated language into orders setting pre-trial conferences for adversary proceedings that in essence requires the parties to raise any *Stern* issue within a certain period of time or the argument will be deemed waived and the parties will have consented to the entry of final judgments by the bankruptcy court.²¹ The most recent and most impactful procedural change, however, has been to standing orders of reference. On January 31, 2012, the Southern District of New York issued an amendment to its standing order of reference that attempts to eliminate the ping-pong effect by permitting the bankruptcy courts to hear proceedings and submit proposed findings to the district court even if the bankruptcy court would lack constitutional authority to otherwise enter a final order or judgment in the proceeding.²² On February 22, 2012, our very own Middle District of Florida followed suit and became the second court in the United States to enter a new standing order of reference that procedurally addresses *Stern*.²³

The language in the Middle District's new standing order of reference strikes a balance between the practicalities of keeping proceedings in bankruptcy courts and the constitutional concerns created by *Stern*. It is clear that the new standing order of reference is intended to prevent the gamesmanship that is enabled by *Stern* and its ping-pong effect, while allowing legitimate constitutional concerns to be addressed. Practically, the new order of reference will keep the bulk of any civil proceeding in front of the bankruptcy court, but will still leave the district court in a position not only to choose whether to adopt or reject the bankruptcy court's findings, but also to determine whether *Stern* would prohibit entry of a final judgment by the bankruptcy court. So, while the initial legwork in the case rests with the bankruptcy court, the district court controls the destiny of any adversary proceeding, with the adversary proceeding staying in the bankruptcy court by default. Furthermore, the effect of the new standing order of reference is enhanced because the bankruptcy court entered the type of pre-trial order previously discussed, putting the burden on the litigants to immediately raise the *Stern* argument or forever waive it. So it goes without saying that lawyers engaged in adversary proceedings or contested matters should pay careful attention to the new standing order of reference and any pre-trial scheduling order that establishes a deadline to raise jurisdictional concerns. Ultimately, the practical procedural problems of ping-ponging may be effectively addressed by the new standing order of reference.

Even with the procedural impact of *Stern* diminished however, what is certain is that there is still more to learn about the future

effects of the *Stern* decision. Maybe it will become the evil twin of *Marbury v. Madison*²⁴ for bankruptcy. Or maybe it will just be one piece in a line of cases that slowly chips away at bankruptcy court jurisdiction. For the future, one thing is clear: legitimate *Stern* issues could detrimentally impact bankruptcy court jurisdiction. This is especially true since the Court left open the possibility that the entire scheme that grants bankruptcy courts the power to restructure the debtor-creditor relationship may be unconstitutional.²⁵

– The Punchline –

Do You Get It Now?

So this is the punch line. This is where you are supposed to laugh. The Supreme Court has to be kidding, right? The entire bankruptcy system is unconstitutional? Of course, this is only in dicta and the dicta itself clarifies that it does not mean to suggest constitutionality one way or the other. But the thought of essentially eliminating the current bankruptcy system seems almost comedic, especially in light of the overwhelming number of bankruptcies filed. Regardless of this potentially earth-shattering suggestion, lawyers appearing in bankruptcy court in the meantime should be aware of the reach and the limitations of this decision. They should be prepared to respond if the court asks, "Does *Stern v. Marshall* impact this case?" Lawyers should be especially prepared to answer this question at the beginning of an adversary proceeding or forever hold their peace, as we will likely see more and more bankruptcy courts adopt pre-trial orders setting a deadline to raise the *Stern* argument.

If parties can agree to litigate in the bankruptcy court, the *Stern* opinion will have little practical effect. On the other hand, if one party insists on being in the district court, lawyers should realize that the new standing order of reference will effectively keep cases out of the district court until the bankruptcy court has finished its fact finding and legal determinations; *Stern* gamesmanship simply will not work. In the end, only legitimate *Stern* issues will make it to the district court, and those issues will get there not through a complete withdrawal of the reference, but through appeal or a *de novo* review of the bankruptcy court's findings.

Therefore, unless you want to be the butt of a bad joke, make sure to know when legitimate jurisdictional issues may arise from *Stern* and its progeny. Understand that the bankruptcy court will be the likely venue for litigation, and rather than wasting time brushing up on your ping-pong skills, you should instead study up on your Shakespeare because proactive courts, like those in the Middle District, are rendering *Stern* to be truly much ado about nothing.

Bradley M. Saxton, Esq., is a shareholder with Winderweede, Haines, Ward and Woodman, P.A. He has been a member of the OCBA since 1990, is a past president of the Central Florida Bankruptcy Law Association, and is a past chair of The Florida Bar's Business Law Section Bankruptcy/UC Committee.

C. Andrew Roy, Esq., is an attorney with Winderweede, Haines, Ward & Woodman, P.A. He has been a member of the OCBA since 2011.

¹131 S. Ct. 2594 (June 23, 2011).

²*BankUnited Fin. Corp. v. Fed. Dep. Ins. Corp. (In re BankUnited Fin. Corp.)*, Adv. No. 10-02872-BKC-LMI, 2011 Bankr LEXIS 4531, *13-14 (Bankr. S.D. Fla. Nov. 22, 2011).

³Professor at UCLA School of Law.

⁴Co-editor-in-chief of *Collier on Bankruptcy* and the LexisNexis Matthew Bender Collier line of bankruptcy publications.

⁵<http://www.lexisnexis.com/community/bankruptcylaw> (follow "Podcasts" link; then follow "Professor Kenneth Klee and Henry Sommer Discuss *Stern v. Marshall*" link).



Donna A. Haynes

Weathering the Storm

Poverty results in people being unable to obtain food, shelter, money, clothing, education and other essentials for their well-being. Among the many people suffering from poverty in Orange County, some could be members of your family, or your friends or neighbors.

Legal Aid advocates find more and more families whose socioeconomic status has fallen from middle class to working poor, and from working poor into poverty. Often, we hear people express that they never thought their economic situation would change so dramatically. Many find themselves living in motel rooms, squeezing their entire family into one bedroom of a relative's or friend's home, or living in their vehicle. They must use food pantries to feed their families and seek assistance from outreach agencies to help pay for monthly housing, utility or other necessary services. Many working parents are struggling to make ends meet as they work hard to pay their bills and take care of their children. Divorced individuals often are among the working poor; some are forced to remain in abusive domestic situations, living in the same household and devising ways to avoid the abusive partner. Although working at their full capacity to take care of their children, these people struggle to meet their families' basic needs.

We have talked about the importance of Legal Aid's work and how it saves and changes lives. We have provided facts, figures and stories about the effects the continued decline in funding from The Florida Bar Foundation's IOTA fund will have on Legal Aid and the services it provides our community. We have sought monetary donations at our annual *Breakfast of Champions*, and you have been generous. However, we must come to you for more. Legal aid agencies throughout the state are reducing or eliminating staff and services. Travel, training and expense budgets are being cut. The

Legal Aid Society of the OCBA is no different. Although our executive director and board of trustees have been proactive and extremely careful stewards of our funding, we continue to see more clients and have fewer financial resources and less staff with which to serve them.

Funding problems will not magically disappear even as the economy slowly, almost imperceptibly, begins to improve. We must continue to work smart and hard for our clients. We will continue to look for other avenues of funding, and we ask that as you move through your work week, month and year, you keep us in mind. If you come across a business partner who you believe might be able to make an in-kind donation, volunteer time or make a financial contribution, please ask him or her to contact Legal Aid. If you are a board member of a foundation, ask that the organization consider making a donation to our non-profit charity. If you represent a celebrity – a sports star or other celebrity – consider asking for his or her support for one of our fundraising events. If you are able to direct *cy pres* funds to a non-profit, ask that our agency be the recipient. And last, but not least, if you are an elected official, consider donating your campaign residual funds to us. These are ways that together we can weather the storm.

For more information about the Legal Aid Society of the Orange County Bar Association, Inc., visit www.legalaidocba.org. To find out how you can help support Legal Aid, contact development manager Donna Haynes at dhaynes@legalaidocba.org or 407-841-8310 x 3150.

Donna A. Haynes is the Director of Development at the Legal Aid Society. She has been a member of the OCBA since 2008.

Board of Governors Report



Scott R. McMillen, Esq.



Mary Ann Morgan, Esq.



Paul SanGiovanni, Esq.

The Florida Bar Board of Governors met on March 23, 2012. Major actions of the board and reports received include:

The 2012 Legislative Session concluded with a \$446 million budget for the state court systems, representing no reduction from the current year's funding. Further, to avoid a repeat of the cash flow problems caused by insufficient filing fee revenue, the Legislature is funding the courts principally with general revenue. Funds have also been allocated to address the foreclosure backlog and for technology enhancements. President Scott Hawkins, in his March video message to the membership, thanked House Speaker Dean Cannon and senators Ellyn Bogdanoff and David Simmons for their help with court funding and for increasing funds for civil legal assistance. For a summary of outcomes of other 2012 legislation monitored by The Florida Bar, visit www.floridabar.org/2012legislativesession.

The Florida Bar will lead a statewide voter education program on merit retention in advance of the November 2012 election when three Supreme Court justices and fifteen District Court of Appeal judges will be on the ballot. Themed *The Vote's in YOUR COURT. Judicial merit retention. Know the facts.*, the program will provide voters with information on the merit system and encourage their participation in the election. Research conducted for the program revealed that 90 percent of respondents did not know what the term "merit retention" meant. The bar will employ multiple strategies to achieve the program objectives, including: printed materials and a dedicated webpage with public information and links to additional resources; distribution of a voters' guide with frequently asked questions; reporter briefings and editorial board meetings; presentations to civic and community groups and developing partnerships with other grassroots and advocacy groups. The program kick-off will be held during Law Week, beginning May 1. Additional information on the program will be in upcoming issues of *The Florida Bar News*.

Amendments to Rule 5-1.2 (b) and (c) on trust accounting records and procedures were approved. The proposed changes require law firms with two or more members to have a written trust account plan identifying which of a firm's lawyers can sign trust account checks and reconcile trust

accounts. The proposed amendments also mandate that only a Florida Bar member can sign a trust account check and that bar members may not sign blank trust account checks and will provide sample trust accounting forms and plans. The amendments will go to the Florida Supreme Court this fall with the bar's annual rules filing.

After considerable study of the issue, the Program Evaluation Committee concluded that adding a seat on the board for a nonvoting representative of government lawyers could best be addressed under existing Standing Board Policy, which encourages "participation at board meetings by representatives of state or local bar associations or groups." The bar president is empowered to carry out the intent of that policy, including the appointment of a nonvoting member to the board. Representatives of the Cuban American Bar Association, Florida Association for Women Lawyers and the Virgil Hawkins Chapter of the National Bar Association currently participate at all meetings of the Board of Governors.

Recommendations were approved to improve communications between procedural rules committees and bar sections. A tracking process for rule amendments will be available to sections and to educate section leaders about how section members can apply to serve on court rules committees.

For More Information:

Video messages to the membership from Bar President Scott Hawkins are sent by email and are posted in several formats and with the text on the President's Page on the website.

You can access Board of Governors member and committee lists, minutes, agendas and the special appointments calendar on the website: www.floridabar.org.

Scott R. McMillen, Esq., McMillen Law Firm, P.A.; **Mary Ann Morgan, Esq.**, Billings, Morgan & Boatwright, LLC; and **Paul SanGiovanni, Esq.**, Morgan and Morgan, represent the Ninth Judicial Circuit as members of The Florida Bar Board of Governors. Each is a past president of the OCBA.



Richard S. Dellinger, Esq.



The Honorable
Leon B. Cheek, III

Litigating With Professionalism

Continuing its yearlong emphasis on the Rules of Professional Conduct in the litigation context, the February 21, 2012, meeting of the George C. Young First Central Florida American Inn of Court was devoted entirely to Rule 4-3.1 (Meritorious Claims and Contentions); Rule 4-3.2 (Expediting Litigation) and Rule 4-3.8 (Special Responsibilities of a Prosecutor).

Judges Thomas W. Turner, John Jordan and Julie O'Kane organized the presentation, which involved lectures, videotaped skits and live discussion.

The first session was presented by Barrister Level Inn member Richard S. Dellinger, who introduced the requirements of Rule 4-3.1, which provides as follows:

A lawyer shall not bring or defend a proceeding, or assert, or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require every element of the case be established.

Dellinger presented a videotaped skit that highlighted ethical issues which may arise in a typical civil case. Inn members were shown fact patterns



Inn of Court
dinner meeting
presentation
February 21, 2012

involving excessive discovery, unreasonable settlement demands and arguments unsupported by facts. Inn members discussed the implications of Rule 4-3.1 on the given scenario.



Cassandra Snapp and the Honorable Faye Allen

The second skit was introduced by Barrister Level member John Oden and presented Rule 4-3.2, which provides:

A lawyer shall make reasonable efforts to expedite litigation consistent with the interest of the client.

The skit showed a client – about to be served with process in a foreclosure case – on the phone with his lawyer, requesting advice as to whether to answer the door. The lawyer, knowing the statute of limitation on the foreclosure action is about to expire, counsels him not to. Later, a lawyer was shown frustrating the reasonable efforts of the opposing lawyer to schedule a hearing. Inn members discussed the ethics of the scenarios. Recognizing that dilatory practices bring the administration of justice into disrepute, the skit elicited a lively discussion.

Barrister Level member Lawrence Collins introduced Rule 4-3.8, addressing the special responsibilities of a prosecutor. It states:

The prosecutor in a criminal case shall:

- (a) Refrain from prosecuting a charge that the prosecution knows is not supported by probable cause.
- (b) Not seek to obtain from an unrepresented accused a waiver of important pre-trial rights such as the right to a preliminary hearing. Make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the

defense and to the tribunal all unprivileged, mitigating information known to the prosecutor, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal.

The third skit highlighted the special duties of a prosecutor under Rule 4-3.8. In the skit, an unscrupulous investigator committed numerous ethical breaches, including pressuring an unrepresented defendant into a plea agreement. Later the same investigator was involved in a relationship with another witness that was not timely disclosed to the prosecutor.

The discussion that followed emphasized that the role of the prosecutor is more than simply that of an advocate in the administration of justice.

The program reinforced that each lawyer present, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.

Richard S. Dellinger, Esq., a shareholder with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., serves as president of the OCBA Foundation. He has been a member of the OCBA since 1999. The **Honorable Leon B. Cheek, III** serves in the Ninth Judicial Circuit and has been a member of the OCBA since 1987.



Inn of Court dinner meeting presentation

Legal Aid SocietyNews

Edmund T. Baxa, Jr., Receives the 2012 Florida Bar President's Pro Bono Service Award

The Florida Bar recognized twenty-one lawyers for their work on behalf of poor and indigent clients at a January 26, 2012, ceremony at the Supreme Court of Florida.



Edmund T. Baxa, Jr., Esq.

In 2010-11, Florida lawyers provided 1.6 million hours of *pro bono* services to those in need and \$4.8 million to legal aid organizations.

The Florida Bar President's Pro Bono Service Award was established in 1981. The award recognizes lawyers who have made public service commitments by volunteering free legal services to the poor. In addition to encouraging *pro bono* service, the award raises public awareness of the substantial *pro bono* work donated by Florida lawyers. Florida Bar President Scott G. Hawkins of West Palm Beach presented the 2012 awards.

Edmund T. Baxa, Jr., a partner at Foley & Lardner, LLP in Orlando, received The Florida Bar President's Pro Bono Service Award for the Ninth Judicial Circuit. Ed's principal areas of practice are construction law, commercial litigation, government enforcement, compliance and white collar defense. As chair of Foley & Lardner's National Pro Bono Committee, he has worked to develop and encourage a *pro bono* culture within his firm.

As an active *pro bono* attorney, Ed often accepted cases with sibling groups, requiring additional commitment because the children's placement was in different homes and counties. He has averaged four cases per year for 25 years. Ed is a voice for children in Orange County who have been victims of abuse or neglect, serving as a guardian ad litem for more than 100 children. He currently has eight active cases and has contributed almost 1,000 hours on closed cases.

Submitted by Dorohn A. Frazier, The Florida Bar.



Karla E. Valladares, Esq.

Lost in Translation: Foreclosure Scams Target Speakers of Other Languages

Although it has been more than four years since the housing market imploded, the foreclosure crisis continues. The filing of new foreclosure actions slowed down significantly in 2010 when the U.S. Department of Housing and Urban Development (HUD) launched its investigation into some of the largest lenders for improper banking practices such as “robo-signing” financial affidavits filed in pending foreclosure actions across the country. As a result, banks announced they would take a hiatus in filing new foreclosure actions until HUD’s investigation was concluded and the banks had rectified their practices. Earlier this year, HUD entered into a twenty-five billion dollar settlement agreement with the mortgage industry. This means banks will commence bringing foreclosure actions again. As a result, Orange County will see a significant increase in foreclosure filings in the upcoming year. Many of the residential foreclosure actions filed in Orange County are the result of the ballooning and subsequent implosion of the real estate market values in Central Florida. Today, Central Florida continues to rank in the top five areas hardest hit by the housing crisis.

Successfully navigating through a residential foreclosure action today is challenging for any seasoned real estate litigator. For a non-attorney defendant who does not know the workings of the mortgage industry or the real estate market, it is a very daunting task. Add to that a language barrier and it becomes almost insurmountable. Language-challenged homeowners become prime prey to a vast array of fraudulent “save your home” scams. Unfortunately, the scammer is often someone who was able to take advantage simply because he or she spoke the homeowner’s native language.

Along with being a real estate practitioner, I am also the immediate past president of the Hispanic Bar Association of Central Florida (HBACF). The HBACF’s mission is “to serve as the local voice for the concerns and opinions of Hispanics in the community.” In my practice and through my service on the HBACF board, I have learned that Hispanics in Orange County are being targeted by unscrupulous fraudsters who use their ability to speak Spanish as a gateway to commit fraud. This is an age-old problem for Hispanics who do not speak English as their primary language and one that certainly preceded the recent collapse of the real estate market. Generally, the victims simply put too much trust in someone just because he or she speaks Spanish. After the debacle of the

real estate market, fraud has become rampant across the board for all races, cultures and creeds. The language barrier certainly makes it more pervasive in the Hispanic community.

Foreclosure scams are on the rise as the U.S. economy continues to flail and people find themselves in desperate circumstances. Desperation is experienced not only by the homeowners, but also by the many individuals who relied on the real estate market for their livelihoods.

I have witnessed real estate agents brazen enough to attend foreclosure hearings and attempt to advocate on behalf of their seller (the homeowner/defendant). They do not alert the judge that they are not attorneys, and even go as far as telling the judge that they “represent” the defendant homeowner. Not only is this a blatant, unauthorized practice of law (UPL) violation, the “advice” these real estate agents give their sellers is often not based on the best interest of the homeowner, but rather on earning a real estate commission. It is a huge disservice to the homeowners, as the “counsel” they may receive from a real estate agent is not founded on good legal principles. In fact, it can be disastrous to the homeowner.

One example is erroneously telling the homeowner that the deficiency in a short sale need not be entirely released as part and parcel of the short sale negotiations because “the bank will probably not pursue it.” Orange County Circuit Court judges assigned foreclosure actions are on high alert for these corrupt individuals. If the judge does not know you personally, he or she will quickly ask whether you are, in fact, an attorney. Real estate agents aren’t the only ones who have been caught crossing the line of providing legal advice: Many mortgage brokers, credit counselors, title agents and notaries have been caught committing the unauthorized practice of law. Since the judiciary is well aware of the UPL issues in foreclosures, the fraudsters have found a new way to get inside the courtroom to speak to the judges on behalf of their Hispanic “client” – they pretend to be the homeowner/defendant’s translator.

Very recently I overheard an exchange outside chambers between a woman and two homeowner/defendants. They were speaking Spanish and it quickly became evident to me that the woman was not an attorney, but had every intention of “representing” the homeowners inside the courtroom. I approached the plaintiff’s counsel and asked whether the woman was an attorney. The

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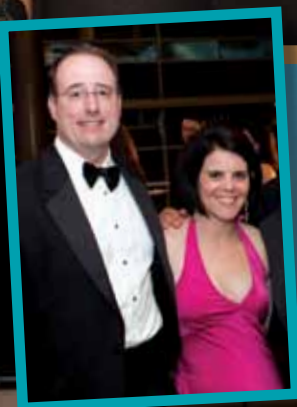
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continued from page 18

bank's attorney responded that the woman had introduced herself as the homeowner/defendants' translator. I immediately became suspicious that the woman was not there solely for the purpose of translating.

After concluding my own hearing, I alerted the presiding judge to my suspicion and offered to sit through that hearing to translate if necessary. The judge asked and the woman confirmed she was not a court-appointed translator. Several minutes into the hearing it became clear that the "translator" was not accurately translating what the homeowner/defendant said. Instead she was telling the judge the vari-

ous reasons why the homeowner/defendants should not have a judgment entered against them. The judge did not let her continue to translate for the defendants and asked me to step in. I got involved because I am passionate about protecting fellow Hispanics from these predators, yet I know this same scenario plays out unnoticed hundreds of times throughout the year in Florida courts.

Compounding the problem is the fact that many Hispanics move to Orange County as adults and expect that our legal system is similar to the ones in their native country. For example, they will seek legal advice from a notary (*notario*) because they believe Florida notaries have similar powers to the no-

taries in their home countries, who are also attorneys.

Many of these homeowners have owned their residences for a substantial number of years and have depleted every financial resource available to them in an attempt to keep their homes. A foreclosure is a very emotional proceeding for homeowner/defendants, making them a prime target for scammers. We, as practitioners,

need to be cognizant of these scams and be aware of the sectors of our community that are being targeted.

Karla E. Valladares, Esq., Valladares Law Firm, is the immediate past president of the Hispanic Bar Association of Central Florida. She has been a member of the OCBA since 2010.



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2012 Leadership Law Update

Leadership Law, the OCBA's new community education program, has received overwhelmingly positive comments from the forty-six business men and women who have attended monthly class meetings since January. In February, participants were immersed in the finer points of business operations, arbitration, mediation, patents, trademarks and copyrights in morning sessions, and visited the Juvenile Justice Center during afternoon sessions to learn about diversion programs for youth. The Orange County Courthouse was the site of March's morning sessions, where participants witnessed closing arguments in a real trial, heard from the public defender and state attorney's offices, and got tips on reading body language from a nationally recognized expert. The afternoon field trip to the ME's office, complete with a presentation by Dr. G and a tour of the complex, rounded out what one participant called an "amazing" day. April and May meetings include sessions in federal and bankruptcy court, a visit to the Orange County Jail, a mock trial and jury selection, and more. Leadership Law wraps up in May with a graduation ceremony and remarks by Judge Belvin Perry, Jr.



Judge Frederick Lauten



Dr. G at autopsy table



Mary Ann Etzler



Eileen Forrester
Chief Assistant Public
Defender



Judge Bob LeBlanc



The Hon. Lawson Lamar
State Attorney



Judge Jose Rodriguez



Judge Faye Allen



Presenter
Brian Steinberger



End-of-the-day reception and
gift drawing

Attentive attendees





Sunny Lim Hillary

Your local voluntary bar associations have already filled the 2012 calendar with activities! Read on to find out what's happened and what's happening and get involved!

CFAWL

On March 9, 2012, the **Central Florida Association for Women Lawyers** celebrated **Women's History Month**, in part by celebrating the strong women in our local community at its monthly luncheon. At the luncheon, CFAWL members learned about CFAWL's **Runway for Justice** event and how members are making a difference in the lives of children throughout Central Florida. CFAWL was addressed by one of Orlando's leading women, **Jan C. Garavaglia, M.D.** (a.k.a. "Dr. G"), the chief medical examiner for the District Nine Medical Examiner's Office covering Orange and Osceola counties. Dr.



Melanie Griffin, CFAWL president; Judge Antoinette Plogstedt, Ninth Circuit Judicial Liaison; Jan C. Garavaglia, M.D., Chief Medical Examiner, District Nine

G spoke to luncheon attendees about the current office, prior cases, her experiences as a forensic pathologist over the past twenty-three years and her popular reality television show, *Dr. G: Medical Examiner*, shown on the Discovery Fit & Health channel. Dr. G was extremely entertaining. Members enjoyed chatting with her after the luncheon, snapping photos and receiving autographs.

On March 15, 2012, CFAWL hosted its annual **Judicial Reception** at the Courtyard at Lake Lucerne. This year's event was Mardi Gras-themed, complete with New Orleans cuisine, a Zydeco band, beads, masks and caricature artists. The event was a blast, with well over 200 attendees, including approximately 40 members of the Central Florida judiciary. CFAWL is especially thankful to the generous sponsors who made the event possible, all of the judges who attended the judicial reception and chairs **Suzanne Meehle** and **Laura Weis**, who spent countless hours planning such a fabulous event.

At its March 7, 2012, board of directors meeting, CFAWL selected two very worthy recipients to each receive a \$1,000 scholarship from CFAWL's inaugural scholarship fund. The scholarship was estab-

lished to promote CFAWL's mission while helping the recipients during their study for the July 2012 Florida Bar Exam. The awards were presented at CFAWL's monthly luncheon in April. CFAWL thanks scholarship chairs **Sarah AuMiller** and **Jane Goddard** for all of their hard work establishing the scholarship and selecting this year's winners.

On Friday, June 15, 2012, CFAWL will host its annual **Past Presidents Luncheon** and **Swearing-In** of its **2012-2013 Board of Directors**. CFAWL hopes that several past presidents, CFAWL members and members of the Orlando legal community will join us for this special occasion. For more details about the event, please email: rsvp@cfawl.org.

GOAABA

On March 23, 2012, members of the **Greater Orlando Asian American Bar Association** mixed and mingled with local law students from FAMU College of Law and National Asian Pacific American Bar Association Law Student Affiliates from UF Levin College of Law, Barry University School of Law and Florida Coastal School of Law, to discuss the Alien Land Law project. The mixer was held at Ember. Special thanks to community service chair, **Don Nguyen**, for organizing the event.

On April 24, 2012, members of GOAABA and local Asian CPA's enjoyed Asian street fare at Hawkers, located in the Mills 50 district. Special thanks to **Donna Hung** for organizing the event.

Through a joint effort of the **Florida Bar Equal Opportunity in Law Section**, a committee of the Orlando minority bar associations and the Orange County Bar Association (Diversity Committee and YLS), a **Joint Diversity Picnic** will be held in Orlando on **September 8, 2012**. If you are interested in helping with this inaugural event, please contact lead committee member of the Joint Diversity Picnic committee, **Kim Nguyen**, at Kim.Nguyen@lowndes-law.com.

The **Alien Land Law Committee** is moving toward the organization of a ballot initiative! Significantly, **Senator Oscar Braynon, II** has sponsored JSR 1102, which is an amendment to Section 2 of Article I of the State Constitution. To rally national support for GOAABA's efforts to eliminate the constitutional prohibition against aliens owning real property, GOAABA president **Jessica Hew** made a presentation to the board of directors of the National Asian Pacific America Bar Association. Thank you to **Greg Maaswinkel** for placing Alien Land Law brochures in his firm's swag bags at the 1st Annual Dragon Boat Parade. For more information about the Alien Land Law or to become more involved with this community service project, please contact lead committee member of the Alien Land Law Committee, **Christine Ho**, at cho@bakerdonelson.com.



CFAWL's annual Judicial Reception at the Courtyard at Lake Lucerne

We are scheduling an **Attorney Panel** for the students of **FAMU College of Law** to discuss important topics relating to the transition from law school to the law office. Keep an eye out for more details. Please contact community service chair, **Don Nguyen**, at Don@emerituslaw.com, for more information.

We are also scheduling a **Karaoke Night!** Please contact social chair, **Donna Hung**, at donna@donnahunglaw.com, with any questions.



HBACF

The **Hispanic Bar Association of Central Florida** held its **Installation Dinner** at Disney's Contemporary Resort on January 21, 2012. The event was a great success. Thanks to all those in attendance, including the keynote speaker, the Honorable Jimmie V. Reyna of the U.S. Court of Appeals for the Federal Circuit. Judge Reyna delivered an inspiring speech about his journey through the legal profession *con ganas* (with enthusiasm). We want to thank all of our sponsors, especially Walt

Disney World for hosting the HBACF.

Congratulations to the new HBACF board for 2012-13:

Felipe Guerrero, President

Kimberly A. Lopez, President-elect

Karla Valladares, Ex-officio

Patricia Angulo Markuck, Secretary

Nicolas A. Apfelbaum, Treasurer

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Marcio Valladares, Judicial Relations

Frank Symphorien Saavedra, Bylaws

Tiffany M. Faddis, OCBA Liaison

Jessica Gonzalez-Monge, Young Lawyers Section

Olga Garcia, Fundraising

Ana M. Lopez, Public Relations

On February 22, 2012, the HBACF and the OCBA held a joint luncheon at the Ballroom on Church Street. The guest speaker was **Jaime Piñero**, chair of the Hispanic Heritage Scholarship Fund of Metro Orlando (HHSFMO). Mr. Piñero's speech focused on the obstacles he had to overcome in life that motivated him to help thousands of students achieve their own potential, resulting in scholarships awarded through the HHSFMO.

We'd love to hear from other local voluntary bars! Please send your news to me at any time! You can reach me at sunny@hillarylawn.com or 407-237-0911.

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



Linda McGrath-Cruz, ACP, FRP

The ABC's of Paralegal Designations

When hiring paralegals for your practice, you need the right mix of education, experience, professionalism and personality. In Florida, no mandatory registration or certification program for paralegals exists, but paralegals can take a wide variety of voluntary measures to improve their professional standing. So, how do you know whether the paralegal you are interviewing is certified, certificated, registered or none of the above?

Certified Legal Assistant (CLA) and Certified Paralegal (CP)

The National Association of Legal Assistants/Paralegals (NALA) provides one of the most recognized certifications a paralegal can obtain. The CLA/CP program was established in 1976 to offer a nationwide designation for all paralegals. Paralegals who successfully complete the NALA CP exam may choose either the CLA or CP title.

The exam has been described as grueling by many, and it is common for an examinee to need to re-take a section. The exam consists of five sections: communications (objective and essay); judgment and legal analysis (essay required); ethics; legal research and substantive law. The substantive law section includes one section on the American legal system and four sections in practice areas selected from a list by examinees.

To sit for the CP exam, a paralegal must meet a specific combination of education and/or work experience requirements. The CLA/CP designation is awarded for a period of five years. To maintain CP status, a paralegal must complete 50 hours of CLE.

Advanced Certified Paralegal (ACP)

Once a paralegal has achieved the CLA/CP designation, he or she has the option to continue certification through NALA by obtaining an advanced certification.

The ACP courses focus on education and learning specific subject matter as opposed to testing. Each course is about 20 hours in length and actual completion time will be based on the paralegal's understanding of the material. Currently, a dozen different subjects are available, including discovery, trial practice, ADR, social security disability, trademarks and more.

Upon completion, the paralegal may use the ACP designation and is also awarded CLE credits.

Florida Certified Paralegal (FCP)

A paralegal who has achieved the CLA/CP designation can also obtain the Florida Certified Paralegal designation. The FCP was established in

1980 by the Paralegal Association of Florida, Inc., to complement NALA's CLA/CP program.

The FCP exam is a three-hour, in-depth exam that covers Florida law. The test has two sections. The first covers ethics, civil procedure and Florida general law that includes Florida's court system in addition to basic criminal law, property law, estate/probate law, family law and business law. The second covers thorough testing in your choice of real estate, probate law, business law, family law or criminal law.

The FCP designation is awarded for a period of five years. To maintain FCP status, a paralegal must complete 30 hours of CLE.

Registered Paralegal (RP)

In 1996, the National Federation of Paralegal Associations, Inc. (NFPA) began offering the RP designation upon successful completion of the Paralegal Advanced Competency Exam (PACE). PACE consists of 200 multiple choice questions covering tasks paralegals may frequently perform. It is not restricted to a particular practice area or geographic location. The topics covered are: administration of client legal matters, development of client legal matters, factual and legal research, factual and legal writing, and office administration.

To sit for PACE, a paralegal must meet a combination of education and work experience requirements. The RP designation is awarded for a period of two years. To maintain RP status, a paralegal must complete 12 hours of CLE.

Core Registered Paralegal (CRP)

In 2011, NFPA launched the Paralegal CORE Competency (PCC) Exam designed to test the core competencies of early-career and entry-level paralegals.

There are numerous options for eligibility to sit for the PCC exam as it is designed for individuals who may not have the education or work experience necessary to sit for other certification exams. The exam consists of 125 multiple choice questions, and examinees are given two-and-a-half hours to complete it. Upon successful completion, the Core Registered Paralegal (CRP) designation is awarded. The CRP designation is awarded for a period of two years. To maintain CRP status, a paralegal must complete 8 hours of CLE.

Florida Registered Paralegal (FRP)

In March 2008, the Florida Bar began accepting paralegal registrations. The Florida Registered Paralegal (FRP) program is not a certifying program; it is a voluntary registration program.

When it first began, paralegals could qualify to become an FRP by work experience alone under a grandfather provision. That provision expired in March 2011 and is no longer an option. Paralegals must now possess either a CP or RP designation, or a combination of education and work experience.

Like attorneys, registered paralegals must renew their membership on a yearly basis and complete 30 hours of CLE every reporting cycle.

Professional Paralegal (PP)

In 2004, the National Association of Legal Secretaries (NALS) created the Professional Paralegal designation. The PP designation is awarded upon completion of a one-day, four-part examination that covers written communications, legal knowledge and skills, ethics and judgment skills, and substantive law.

The PP designation is awarded for a period of five years. To maintain PP status, a paralegal must complete 75 hours of CLE.

Graduates of Paralegal Education Programs

Paralegals have a variety of educational options: there are traditional associate degrees, bachelor degrees and even graduate-level programs in paralegal studies. Paralegals who are looking for a faster option might choose a paralegal certificate program. Some paralegals mistakenly refer to themselves as a "Certified Paralegal" when in fact their paralegal certificate is simply proof of the completion of a paralegal training course. Also, fast-track certificate programs do not qualify under the educational requirements of The Florida Bar for registration as an FRP and may not meet the qualifications of other certifying groups.

Memberships

It is also important to keep in mind that individuals can be members of all of the organizations listed above – with the exception of The Florida Bar – without taking the certification/registration exam.

The Bottom Line

As an attorney, you are ultimately responsible for your work product; however, you delegate many of your tasks to paralegals. You are constantly confronted with the challenges of providing quality legal services to your clients, and you need to be assured that the paralegals you hire are educated and qualified to assist you. Paralegals who have taken the steps to demonstrate their commitment to the paralegal profession and have met the high professional standards of groups such as The Florida Bar and NALA have significant value. They establish that they have met the standards of paralegal competency and

know and understand their ethical duties and limitations under the unauthorized practice of law statutes.

Although registration and certification are voluntary, knowledge of attainable paralegal professional skill sets can provide you with a benchmark for hiring practices. I hope this article will give you a better understanding

of the options available when adding new paralegals to your staff and that you will consider supporting existing staff in gaining certification or registration to further enhance your firm's professional profile.

Linda McGrath-Cruz, ACP, FRP, is a litigation paralegal with the Miami office of Arnstein & Lehr LLP. Linda can be reached at 305-753-2443 or lmc@miamifrp.com.

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On March 29, 2012, OCBA Foundation president and OCBA Legal Aid Society trustee Richard Dellinger awarded Justice Clarence Thomas an honorary Federal Bar Foundation Fellowship at a ceremony at the US Supreme Court in Washington, DC. Mr. Dellinger is vice president for the Eleventh Circuit, Federal Bar Association.



The YLS-Law School Mentoring Program held its end-of-year social on March 30, 2012, at Terrace 390. Pictured left to right are: Kristopher Kest, senior associate at Lowndes, Drosdick, Doster, Kantor & Reed, P.A. and chair of the mentoring program; Chanel Mosley, associate with Marshall, Dennehey, Warner, Coleman & Goggin, and mentoring program committee member; and Skinner Louis, founder and managing partner, The Louis Law Firm, and vice chair of the mentoring program.

The Central Florida Trial Lawyers Association held its spring social on March 20, 2012, at Cocina214 in Winter Park. More than 75 members and sponsors were in attendance. The CFTLA board designated this event in support of the Second Harvest Food Bank of Central Florida. Members generously donated three large containers of necessities from the needs supply list. Pictured is CFTLA board member, Mitzi Carr, Carr Law Firm, P.A., who organized the charity drive.



Stern v. Marshall

continued from page 13

⁹Indeed the Court stated that "Pierce did not truly consent to resolution of Vickie's claim in the bankruptcy court proceedings [because] [h]e had nowhere else to go if he wished to recover from Vickie's estate." Therefore, "the notion of 'consent' does not apply in bankruptcy proceedings as it might in other contexts." 131 S. Ct. at 2614-15, n.8.

⁷Apparently Professor Klee was a proponent of this idea while he assisted Congress in drafting the code, but he suggested that political pressures, including pressure from existing Article III judges, stymied the idea. Sommer and Klee speculate that with the "ping-pong" effect caused by *Stern*, existing Article III judges will start to warm up to the idea, especially with the potential increased case load. There still are, however, a host of hurdles and political realities to overcome before that would result.

⁸As of February 17, 2012, the only Circuit Courts of Appeals to address *Stern* were: the First Circuit, *DiVittorio v. HSBC Bank USA, NA*, 2012 U.S. App. LEXIS 248, *18 n. 4 (1st Cir. Jan. 6, 2012) (declining, in a footnote, to apply *Stern* to the debtor's loan rescission

claim against bank requesting relief from stay); the Second Circuit, *Ace Am. Ins. Co. v. DPH Holdings Corp.*, 2011 U.S. App. LEXIS 23749, *1-7 (2d Cir. Nov. 29, 2011) (declining to apply *Stern* to breach of contract claims); and the Seventh Circuit, *Ortiz v. Aurora Health Care, Inc.*, 2011 U.S. App. LEXIS 26009, (7th Cir. Dec. 30, 2011) (determining, *sua sponte*, that appellate jurisdiction did not exist because the bankruptcy court's judgment on state law claims was not constitutionally final under *Stern*).

⁹To give an idea of the breadth of the response to *Stern*, and how the response has recently exploded, a Shepard's report on September 15, 2011, when this article was originally authored, reported only about 70 citing decisions, and as of December 1, 2011, there were 184 cases citing to *Stern*.

¹⁰See also *Monetter v. United States (In re Custom Controls LLC)*, 2011 Bankr. LEXIS 5203, *17-18 (Bankr. M.D. Fla. Dec. 5, 2011) (Glenn, J.) (declining to extend *Stern* to a fraudulent transfer action).

¹¹*Safety Harbor*, 2011 Bankr. LEXIS 3238 (Bankr. M.D. Fla. Aug. 30, 2011).

¹²*Peacock*, 2011 Bankr. LEXIS 3271 (Bankr. M.D. Fla. Sept. 2, 2011).

¹³*Safety Harbor* at 38-40; *Peacock* at 5-6.

¹⁴*Peacock* at 3-4.

¹⁵*Safety Harbor* at 1-2.

¹⁶*Id.* at 9-28.

¹⁷*Id.* at 41.

¹⁸*Colony Beach*, 2011 U.S. Dist. LEXIS 82225 (M.D. Fla. July 27, 2011) (Merryday, J.)

¹⁹*Id.* at 4-5.

²⁰*Id.* at 6-12.

²¹See, e.g., *Levine & Assoc., P.A. v. Tobin (In re Tobin)*, Adv. P. No. 8:12-ap-00028-MGW, Doc. No. 3 (Bankr. M.D. Fla. Jan. 20, 2012).

²²See Amended Standing Order of Reference (In the Matter of: Standing Order of Reference Re: Title 11), 12-MISC-00032 (S.D.N.Y. January 31, 2012).

²³See Order (In re Standing Order of Reference, Cases arising Under Title 11, United States Code), 6:12-MC-26-ORL-22 (M.D. Fla. Feb. 22, 2012).

²⁴5 U.S. (1 Cranch) 137 (1803).

²⁵131 S. Ct. at 2614, n. 7.



Mark Powers



Shawn McNalis

Can Tracking Your Marketing Efforts Make You More Money? Part II

In last month's column, we discussed the fact that if you can't measure your marketing activities, you can't manage them. It's a cliché, we know, but it's one that's worth repeating in this case. We offered the following form as a spreadsheet you could use to measure your level of marketing activity and your marketing success (we define success as gaining new, qualified clients). Below the form, we explain what all of the key indicators mean. We've narrowed it down to the eight most important ones for marketing purposes. To improve your marketing, take a look at the form below and then read through the following explanations.

Sample Tracking Form

Month: _____		Total # of Inquiry Calls this month: _____			
Total # of Marketing Activities: _____		Total # of New Clients this month: _____			
Date	Potential Client Name	Source of Referral and Name of Referral Source	Qualified Client?	Consultation Meeting Set?	Convert To Client?
		☐ YP ☐ AD ☐ RS ☐ CL ☐ Internet Name: _____			☐ Yes ☐ No
		☐ YP ☐ AD ☐ RS ☐ CL ☐ Internet Name: _____			☐ Yes ☐ No
		☐ YP ☐ AD ☐ RS ☐ CL ☐ Internet Name: _____			☐ Yes ☐ No

1. The total number of marketing activities occurring on a monthly basis:

The math here is very simple. Generally the more marketing contacts you make, the more referrals you'll get. We stand on our recommendation of three marketing contacts a week, which will amount to well over a hundred marketing contacts a year. When this number goes up, expect to see an increase in the number of new clients down the line. Unfortunately, the reverse is true when you slow down your marketing efforts. There is usually a lag time between the marketing event and the referrals that will come from it.

2. What percentage of your new clients is referred by past and present clients?

This is a statistic that shows how closely related customer service is to marketing. In fact, we believe delivering a high level of customer service *is* marketing. If you want to know how your clients feel about the service they receive from your office, look at the spreadsheet to determine the number of referrals they send. To figure your percentage, compare this number with the overall

number of referrals sent. With a few exceptions, for most practice areas, having past and present clients refer new business means one thing: they were more than satisfied with the level of care they were given. They show their approval by telling others.

If you want to fine-tune your marketing without ever leaving the office, focusing on great client service is a great place to start.

3. What percentage of your clients comes from the Yellow Pages? And how many are price-shopping?

Probably your largest client development expense is any phone book advertising you do. Wouldn't it be nice to know whether it was paying off? Here's how you can tell: track the number of clients who call from the Yellow Pages (this works to track clients who come from any referral source) by saying, "Whom may we thank for sending you to our office?" or "May I ask how you heard about us?" and then marking down the source on the spreadsheet. If the caller is overly intent on finding out the price of your firm's services before going any further, and appears uninterested in

an appointment without hearing the fees or *upon* hearing the fees, note that the caller is probably unqualified or a price-shopper.

Phone book ads are notorious for bringing in a great many price-shoppers, but once in a while, they deliver a substantial client. To figure out whether or not your phone book ad is worth what you spend, look at how much your phone-book-originated clients bring in compared to what you spend on the phone book ads. You will want to do this calculation once every six months and then once a year in order to have enough data to make an effective comparison. If you find the fees from phone book clients are less than what you spend on your ads, you are spending way too much. Your fees should exceed your expenses by ten to twenty-five percent, at a minimum, in order for the ad to be considered profitable.

4. What percentage of the potential clients who call your office inquiring about your services are qualified or desirable clients?

They are qualified if they appear to be able and willing to pay and meet all of the rest of your client-selection criteria.

5. What percentage of your inquiries and clients come from referrals in general?

Out of everyone who dials your office to inquire about your services, how many come from a live person as opposed to an advertisement of some kind? It is generally accepted that clients who are referred by people who know you and heartily recommend your services are easier to work with, more loyal and less price-sensitive. To find out what percentage of your clients come from referral sources, subtract the number who come from ads of some kind from the total number of clients who hired you. The number that remains is your answer. If you were hired by one hundred clients last year and twenty-five came from advertisements, seventy-five percent of your clients come from referral sources. Typically, the higher this number, the less stressed and more profitable you are. As mentioned before, referred clients are generally more desirable. If this number is low for you, ramp up your marketing efforts and focus on face time with referral sources.

6. What percentage of the qualified clients who call actually make an appointment to talk to a lawyer?

If eight out of the ten *qualified* potential clients who called this month to set an appointment don't end up booking one, something is wrong with your inquiry call script. Whether you are handling the conversation, or someone else in your firm is, you could be turning off potential clients by saying the wrong thing. Problems

in this area happen more often than you'd imagine. If you are going to spend the time, money and effort to get clients to call in the first place, don't allow the system to break down at this point. Refine your scripts. There is a delicate art to converting an inquirer into a client, and any breakdowns here are worth investigating.

7. What percentage of those who schedule a consultation actually become paying clients?

This is the final step in the journey that a potential client takes in the course of becoming a client. If you aren't converting at least seventy-five percent of the *qualified* clients who come in for an initial consultation, something is off. If you don't know what you are doing wrong, have someone sit in on a consultation and evaluate your performance. Sometimes the problem lies with the way in which the attorney explains how he or she can help the client. Sometimes the attorney doesn't spend enough time listening to the client's story and the person feels unheard. Sometimes the attorney lacks the ability or doesn't devote enough time to building a sense of rapport with the client. Many elements go into a successful consultation and any number of them could be off. If this statistic is low for you, or someone in your firm, get someone to mentor you on this.

8. What is your average fee per file?

Why is this statistic important? To ensure, from a business standpoint, that you are always working with A- and B-level clients, doing high-quality work and being paid for that work. If you start working with a great many C- and D-level clients, this number will drop. If you have collections issues, this number will drop. Over time we would prefer to grow the business by increasing the average dollars per case as opposed to just increasing the volume of cases.

You won't gather this information off of the spreadsheet we have given you – you'll

have to pull this figure off of your quarterly or annual financial reports. To calculate this, take the number of new cases you opened during the period, and divide them by the total fees generated. For the most accurate reading, do this for each type of case you handle. This one statistic is a great way to tell the overall health of your practice, and you should set goals to raise it on a regular basis.

Keeping track of these eight key indicators will allow you to make intelligent, informed marketing decisions. When a negative trend begins and you see, for example, client referrals falling off, or your total number of client inquiries decline, you should be poised to take remedial action. Keeping track of your numbers will show these trends early so you aren't caught short. Keeping track of these indicators will also, after a year, give you a record of last year's numbers, enabling you to compare your current numbers. This can be invaluable in mapping out and counterbalancing your business cycles. We believe that keeping your eye on these numbers will help you maximize your marketing efforts and grow your firm intelligently. We'll say it again: you really can't manage what you don't measure.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis** co-authored *How Good Attorneys Become Great Rainmakers* and *Time Management for Attorneys*, and are featured marketing writers for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus (www.atticusonline.com) does with attorneys or the Atticus Rainmakers™ (www.atticusrainmakers.com) program, please visit or call 352-383-0490 or 888-644-0022.

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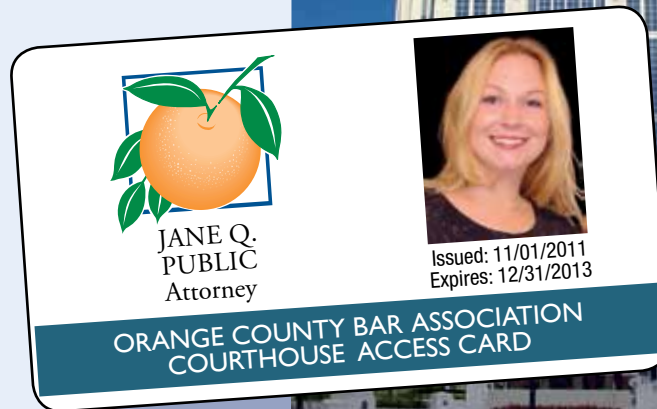
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Speaking Engagements

Elizabeth A. Green, partner with Baker Hostetler's Orlando office, was a panelist at the Tampa Bay Bankruptcy Bar Association's recent program: *Chapter 11s and the Absolute Priority Rule*. Other panelists included The Hon. Michael G. Williamson, Hon. K. Rodney May, attorney David Jennis, Esq. and Larry Foil, Esq.

Louise B. Zeuli, Esq., of Louise B. Zeuli, P.A., and Facilitative Arbitration & Dispute Resolution, Inc. (FADR), presented a seminar titled *Conducting a Florida Bar Arbitration* at The Florida Bar's mid-year meeting in Orlando. She also co-presented a seminar called *40 Lines Mediators Can Hang Clothes On: No Really!* at the American Arbitration Association/International Center for Dispute Resolution Neutrals Conference: Maximize Efficiency in Dispute Resolution, held in Scottsdale, AZ.

Peggy Smith Bush, Esq., partner, Southern Trial Counsel, PLC, presented as a panelist at Barry Law School on April 11, 2012 on the topic, *Small & Solo Life: Here's the Real Deal*.

Events

May 10 – OCBA 8th Annual Texas Hold 'Em Charity Poker Tournament & Happy Hour, Ember

May 24 – OCBA Installation of Officers Banquet, Ballroom at Church Street

Seminars

May 1 – *Arbitration and Related ADR*. ADR Committee Seminar. 8:30 a.m.-11:30 a.m. GrayRobinson, 301 E. Pine St., Ste. 1400, Orlando 32801. CLE: 3.0. Presented in conjunction with AAA. Contact: orlandorsvp@gray-robinson.com.

May 10 – *Closing Arguments*. Brown Bag Lunch with Judge John M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Floor Judicial Conference Room. CLE: 1.5. Free. Please feel free to bring your lunch, and tell security that you will be attending the Brown Bag Lunch. Contact: DianeIacone@ocnjcc.org at 407-836-0443 or ctjadi1@ocnjcc.org.

May 11 – *Negotiation for Litigators: Theory and Practice*, Major Seminar. 9:00 a.m.-4:30 p.m. (Registration: 8:30 a.m.) OCBA Center. CLE: 6.0, including 1.0 Ethics. Speaker: Jay M. Cohen, Esq., mediator. Cost: \$295. Contact: mariew@ocbanet.org.

May 22 – *Permanency 101 – Adoption? Reunification? Guardianship? Beginner's Guide to Permanency Options for Dependent Children*. Legal Aid Society Lunchtime Training 12:00 p.m.-1:30 p.m., Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE: pending. Speaker: Stephanie Stewart, Esq. Contact: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

May 15 – Solo & Small Firm Committee. 12:00 p.m.-1:00 p.m. OCBA Center. Speaker: The Hon. Lydia Gardner, Clerk of Courts. Contact: mariew@ocbanet.org.

June 12 – *Basic Dissolution of Marriage for Pro Bono Attorneys: (Part 1)*. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speaker: Angel Bello-Billini, Esq. Contact: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

June 14 – *Cross Examination – The Fundamentals*. Brown Bag Lunch with Judge John M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Floor Judicial Conference Room. CLE: 1.5. Free. Please feel free to bring your lunch, and tell security that you will be attending the Brown Bag Lunch. Contact Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org

June 26 – *Crossover Youth Advocacy: Serving Dependent Youth with DJJ Cases*. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Comerica Bank, 111 N. Magnolia Ave., Ste. 1000, Orlando, FL 32801. CLE pending. Speakers: Kate York, Esq. and Sally McArthur, Esq. Contact: ctucker@legalaidocba.org or mcarbo@legalaidocba.org.

July 13 – *Jury Challenges – Cause and Peremptory*. Brown Bag Lunch with Judge John M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Floor Judicial Conference Room. CLE: 1.5. Free. Please feel free to bring your lunch, and tell security that you will be attending the Brown Bag Lunch. Contact Diane Iacone at 407-836-0443 or ctjadi1@ocnjcc.org.



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"AV" RATED CIVIL LITIGATION FIRM is seeking an experienced litigation attorney. Minimum 5 years litigation experience. Strong advocacy skills required. We offer competitive salary and comprehensive benefits package. Send resume to: O'Connor & O'Connor, LLC, 840 S. Denning Drive, Suite 200, Winter Park, FL 32789, Attn: Patricia Schnepf.

ESTABLISHED, DOWNTOWN ORLANDO LAW FIRM seeking Experienced Appellate Attorney (3+ years) to handle appellate work and other litigation services. Candidate must be an excellent writer. Insurance Defense (PIP, BI, Med Mal) a plus. Great work environment, plus Competitive Salary and Benefits Package. Non-Smoker. Email resume and writing sample to insureddefensefirm@yahoo.com.

NEWSOME LAW FIRM, an AV rated law firm with a national practice, specializing in products liability and mass torts, seeks an attorney with 0 to 3 years experience for its Orlando office. Research and writing experience is preferred. Must be willing to travel. Creative compensation arrangements with benefits available, with great opportunity for growth and advancement. Send resume by secure fax to 407-648-5282 or email to casalino@newsomelaw.com.

SMALL AV RATED CORPORATE, REAL ESTATE FIRM seeks experienced attorney as a firm member capable of handling sophisticated work to add to your existing practice. Send resume in confidence to jerry@johnpierce.com.

BOGIN, MUNNS & MUNNS, an AV rated law firm, with ten offices in Orlando and Central Florida, seeks experienced real estate attorney for real estate practice, including residential closings. Creative compensation arrangements available with great opportunity for growth and advancement. Send resume in confidence by fax to 407-578-2128 or e-mail to bmm@boginmunns.com.

SPECIALTY DEFENSE FIRM handling first party property/liability coverage issues and complex contractual/tort litigation seeks attorneys for its Maitland office. Insurance defense experience preferred. Fax/Mail resume to: Of-

fice Manager (407) 647-9966, The Rock Law Group, P.A., 1760 Fennell St., Maitland, Florida 32751.

BOGIN, MUNNS & MUNNS seeks of counsel attorneys: keep your own practice; we provide office, equipment, furniture, and receptionist; some referral work available for healthcare, international, securities, elder, social security, disability and veterans law, and other practice areas, with fee sharing arrangement. Send reply in confidence to bmm@boginmunns.com.

AV RATED ORLANDO LAW FIRM seeks attorneys in all practice areas with 200K book of business. Great opportunity to join growing, existing law firm. Send reply in confidence to reply box 701.

OFFICE SPACE SHARED

TURN KEY OFFICE SHARING, 1 to 4 offices, + receptionist + conference room. No Lease required. Winter Park, Fairbanks and I-4. Brett Bressler (407) 599-2002.

WINTER PARK OFFICE SPACE TO SHARE - Near I-4. Furnished or unfurnished office with secretarial area(s). Share 2 conference rooms, reception area, full kitchen, phone, internet, large on-site parking area, and utilities included. Monthly rent negotiable. For info call Marc at 321-397-2966.

SHARE NEWLY RENOVATED OFFICE DOWNTOWN Class A Bldg. - Covered Parking - Conference Room - All Facilities Included. Please contact Eddie Reiss at 407-447-5884 or emrholdings@aol.com.

DOWNTOWN OFFICE SPACE: Luxury office space for space sharing across from courthouse for one attorney and separate, adjoining space for one staff. Garage parking, shared reception area, receptionist, conference room, library, kitchen, copier, fax, Internet. Contact Cheney Mason or Don Lykkebak, 407-843-5785.

OFFICE SPACE FOR SALE/RENT/LEASE DOWNTOWN ORLANDO OFFICE SPACE AVAILABLE for one attorney only one block from the Orange County Courthouse. Space includes furnished window office, professional reception area and garage parking with

access to conference room, meeting room, internet, copier, fax, small library and kitchen. \$800 per month. Optional amenities are available for additional costs for access to one assistant's separate work station adjacent to the attorney's office, parking for one assistant and for the attorney's privately maintained phone line to be answered by a receptionist. Because of potential conflicts with existing law practice, criminal defense practitioners cannot be considered. (407) 425-4251.

I-4 AND FAIRBANKS. Second floor available, 4,154 SF, Class A, nine offices + break room, excellent conference room, lobby, excellent parking, covered spaces. I-4 signage available. Heidi Zervitz, Kelly Price & Company (407)929-5797.

COLONIALTOWN OFFICE: 1,438 Sq.Ft., Former law office includes 3 offices plus secretarial areas; large reception area with hardwood floors, wall to wall built in bookcase, sky lights, and foyer; full kitchen. Backyard includes private courtyard, pool and elaborate landscaping. Minutes from courthouse. Call Ed Gay at 407-578-1334, ext. 292.

PROFESSIONAL SPACE AVAILABLE FOR LEASE at 1604 S. Bumby Avenue, Orlando, Florida 32806. Office is 384 square ft., fully tiled and well lit. Access to adjacent conference room. Excellent location close to downtown. \$695.00/month, 407-898-8015.

AVAILABLE JUNE 1, 1,000-plus Sq. Ft. office suite in carriage house, Downtown Orlando, convenient to I-4 and 408, quiet setting with private entrance on grounds of established law firm. Ideal for small law practice or business. Call John Parrell 407-386-1900.

OFFICE SPACE AVAILABLE FOR RENT. Approximately 1,537 sq ft., with furniture, phone system, receptionist area and 4 window offices, 2 large enough for attorneys and 2 for paralegals. Attorneys preferred. Please contact Denise Singler at 407-578-1334 or e-mail denise@boginmunns.com.

DOWNTOWN OFFICE SPACE FOR LEASE: 1-2 offices, 1 secretary built in work area, conference room, reception area, kitchen area, ample parking. Call 407-849-7072.

OFFICE BUILDING FOR SALE/FOR LEASE

Near Robinson St. and Mills Ave. in Thornton Park. 2 story block bldg., 2600 Sq. Ft., with parking. Flexible terms with many options. Contact: pat.phillips@patphillipslaw.com; 407-425-7676 office; 407-325-9557 cell; Pat Phillips is an OCBA member.

LOCAL OPHTHALMOLOGIST LOOKING TO LEASE

fully furnished, move-in ready, luxury downtown condo. 2 bedroom, 2 bath, with parking space. Perfect for new law associate. Available August 1, 2011. \$2400 monthly, 7 month minimum. This condo is directly lakefront with floor to ceiling windows and amazing panoramic views from your 14th floor balcony of Lake Eola, Thornton Park, and Disney. The building features 24 hour security, concierge, with pool and spa, 2 fitness centers, conference rooms, and cyber café. Walk to restaurants, grocery, shopping and more. Great downtown location convenient to everything. Contact Anne, 407-595-5716.

FERNCREEK PROFESSIONAL CENTER - FIRST MONTH FREE upon signing one year lease. Office space available just minutes away from downtown Orlando. Free parking and signage on busy road. Receptionist, conference rooms, phone system, fax machine, copier, high speed DSL, scanner, and other services provided. Call (407) 898-4848.

MISCELLANEOUS

ALL MUST GO! Desks (lawyer and secretarial), lateral files, bookcases, cabinets, long and round conference tables, chairs, credenza's, Southern Reporters (1st and 2nd), Florida Jurisprudence 2nd, Florida Statutes Annotated - MUST SELL. Make an offer! Call Sheryl at 407-925-6030.

MOVING. Must sell law library. Office furniture, equipment, Xerox copiers, desks. No reasonable offers refused. Call Brian @ 407-316-9988.

PROFESSIONAL SERVICES

RETIRED CIVIL TRIAL ATTORNEY seeks part time work on hourly basis. AV-Rated 407-862-6674.

OCBA Calendar

MAY - JUNE

OCBA Annual Officer Installation and Awards Banquet

May 24, 2012

5:30 p.m. – 9:30 p.m.

The Ballroom at Church Street

RSVP by Thursday, May 17, 2012

reservations@ocbanet.org

May

- 1** *ADR Committee Seminar*
Arbitration and Related ADR
8:30 a.m. • GrayRobinson
- 2** *Business Law Committee*
12:00 p.m. • Bar Center
- 9** *Judicial Relations Committee*
12:15 p.m. • Courthouse
21st Floor Conference Rm.
- Lawyers Literary Society*
12:00 p.m. • Bar Center
- Executive Council*
TBD • Bar Center
- 10** *OCBA 8th Annual Texas Hold 'Em Charity
Poker Tournament & Happy Hour*
5:30 p.m. • Ember
- Social Security Committee*
12:00 p.m. • Bar Center
- Brown Bag Lunch with Judge J. Kest*
Closing Arguments
12:00 p.m. • Courthouse
23rd Flr. Judicial Conference Rm.
- 11** *Negotiation for Litigators: Theory and
Practice Major Seminar*
8:30 a.m. • Bar Center
- 14** *Estate, Guardianship & Trust Committee*
12:00 p.m. • Bar Center
- 15** *Solo & Small Firm Committee*
12:00 p.m. • Bar Center
- Professionalism Committee*
12:00 p.m. • Bar Center
- 16** *Insurance Law Committee*
12:00 p.m. • Bar Center
- Elder Law Committee*
12:00 p.m. • Bar Center
- 17** *Technology Committee*
12:00 p.m. • Bar Center
- 18** *Leadership Law*
8:30 a.m. • Bar Center
- Family Law Committee*
12:00 p.m. • Bar Center
- 22** *LAS Lunchtime Learning*
Permanency 101 – Adoption? Reunification?
Guardianship? Beginner's Guide to Permanency
Options for Dependent Children
12:00 p.m. • Comerica Bank
- 23** *YLS Luncheon*
11:45 a.m. • University Club
- 24** *OCBA Officer Installation and
Awards Banquet*
5:30 p.m. - 9:30 p.m.
Ballroom at Church Street
- 25** *Criminal Law Committee*
12:00 p.m. • Bar Center
- Bankruptcy Law Committee*
12:00 p.m. • Bar Center
- 28** *Memorial Day*
Bar Center Closed
- 29** *Tax Law Committee*
12:00 p.m. • Bar Center
- 30** *Labor & Employment Committee*
11:30 a.m. • Bar Center
- 14** *Brown Bag Lunch with Judge J. Kest*
Cross Examination – The Fundamentals
12:00 p.m. • Courthouse
23rd Flr. Judicial Conference Rm.
- 15** *Family Law Committee*
12:00 p.m. • Bar Center
- 19** *Professionalism Committee*
12:00 p.m. • Bar Center
- Solo & Small Firm Committee*
12:00 p.m. • Bar Center
- 22** *Criminal Law Committee*
12:00 p.m. • Bar Center
- 26** *LAS Lunchtime Training*
*Crossover Youth Advocacy: Serving Dependent
Youth with DJJ Cases*
12:00 p.m. • Comerica Bank
- Tax Law Committee*
12:00 p.m. • Bar Center
- 27** *YLS Luncheon*
11:45 a.m. • University Club
- 28** *Monthly Bar Luncheon*
11:30 a.m. • Ballroom at Church Street
- 29** *Bankruptcy Law Committee*
12:00 p.m. • Bar Center

June

- 8** *Workers Compensation Committee*
11:45 a.m. • Smokey Bones
- 11** *Estate, Guardianship & Trust Committee*
12:00 p.m. • Bar Center
- 12** *LAS Lunchtime Training*
Dissolution of Marriage for Pro Bono Attorneys:
(Part 1)
12:00 p.m. • Comerica Bank
- 13** *Lawyers Literary Committee*
12:00 p.m. • Bar Center
- Executive Council*
4:30 p.m. • Bar Center

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