

the Briefs

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OCBA President
2013-2014

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OCBA President
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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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Paul J. Scheck, Esq.

Appreciation to Members and Staff for Achieving Goals

Accomplishment will prove to be a journey, not a destination. – Dwight D. Eisenhower

It is truly hard for me to believe, but this is my final *President's Message*. To say that the past year has gone by quickly would be an understatement, though at times I thought it would never end (but that I will save for my memoirs).

As I embarked on my term last June, I proposed three goals we should strive to achieve as a bar association. These three goals were: (1) developing a long-term strategic plan for the OCBA; (2) further developing the level of professionalism and civility among our profession; and (3) continuing to make the OCBA relevant to all of you, its members, as well as to those who are not currently members. As for **strategic planning**, the bar staff and your officers have worked closely to develop plans for events and programs stretching into 2015 and 2016. We have also implemented fiscally prudent measures to ensure that our budget will be conservative, yet viable for several years to come. Though more work will need to be done, I believe we as a bar association have been successful in pursuing this first goal.

As for **professionalism and civility**, we have had another very successful year with our Professionalism Committee and its members. This past March we honored the recipients of our three major professionalism awards: Ralph Martinez, Esq., our William Trickle Award recipient; Judge Faye Allen, our James G. Glazebrook Award recipient; and LaShawnda Jackson, Esq., our Lawrence G. Mathews, Jr. Young Lawyer Award recipient. These three individuals epitomize the essence of professionalism in the practice of law. But beyond that, we have implemented professionalism components into the majority of our seminars and conferences. We continue to emphasize the importance of our members providing *pro bono* services through our award-winning Legal Aid Society. Our members continue to be an example to bar associations throughout our state and the nation in these efforts of professionalism and civility.

As for continuing to make the OCBA **relevant** to our current and potential members, we have done our best over the past 12 months to expand the services and programs offered by the OCBA. For our newer members, we instituted the "New Lawyer Training Program" in August to help educate and equip our younger lawyers for the practical aspects of the practice of law. In order to further develop the wonderful relationship we have with our local judiciary, we held our largest

and most ambitious ever Bench Bar Conference in April, allowing our members to not only obtain important and diverse CLE education, but at the same time gain invaluable and intimate exposure to our judiciary in a relaxed and informal setting. We also remained relevant by providing our members with multiple social opportunities, including our Gala at the Alford Inn, our poker and trivia tournaments, multiple happy hours, our "Cars and Coffee" event, and monthly luncheons. By combining all of these and many other events with our ever growing list of active substantive law committees, I submit that we have done our very best to provide something relevant to all of our members during the past 12 months.

I also want to take this opportunity to acknowledge the service and dedication provided by the members of the Executive Council over the past year. These individuals provided countless hours to the service of the OCBA and made sure that all of the above goals, and many more, could be achieved. It has truly been an honor to serve with them in this process. I also want to thank and recognize the finest bar staff in the United States for their dedication and commitment to making the OCBA the incredible organization that it is. Under the leadership of our executive director, Brant Bittner, these individuals provided the creativity and tireless efforts that ensured the success of the many events and benefits that we as members enjoyed throughout this past year, including many new opportunities. Though usually not receiving the praise and acknowledgment that they deserve, please join me, when possible, in thanking and congratulating each of them on their invaluable and remarkable work. They truly are terrific!

And finally on a personal note, I want to thank each of you for allowing me the privilege and honor of serving as your bar president for the past year. Though challenging and often humbling at times, this unique opportunity has provided me with experiences and new relationships that I will cherish for the rest of my life. I am hopeful that I have done honor to the men and women who have held this position before me, and I look forward to the great days ahead for the OCBA as it continues its journey toward new accomplishments.

So best wishes and God's blessings to each of you!

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



LaShawnda K. Jackson, Esq.

Remarks upon Receipt of the 2014 Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award: I'm Not the Woman I Used to Be!

Some of you might be wondering, why LaShawnda? By no means am I perfect. I am not here to tell you that I have a warm and fuzzy personality. I am not here to tell you that I always do or say the right things. I'm not here to tell you that I don't make mistakes. But what I am here to tell you can be summed up in an old gospel song that says:

*I'm not the [wo]man that I ought to be
At times I fall short of what You want of me
And I'm surely not the [wo]man I want to be
But thank God, I'm not the [wo]man I used to be!¹*

I have been very fortunate to have been trained by a great law firm and a talented group of lawyers to do my job well. But professionalism is not just being good at what you do; it has much to do with how you do it. I work hard because I know no other way. I always try to be prompt because I respect other people's time. Honesty and candor are a must because they strengthen the trust that others have in me. Those are the character traits that I brought with me to this profession. But there were many more I had to learn to be professional.

In preparing these remarks I found a dictionary entry that defined "professionalism" as the skill, good judgment, and polite behavior that is expected from a person who is trained to do a job well. I immediately recognized those traits that I have been working on for years – good judgment and trying to consistently exhibit polite behavior. I must admit that these don't always come as easily as they should. All I can say is, I am not the woman I ought to be, but thank God I'm not the woman I used to be.

As young lawyers, we do not always get the respect we deserve, or at least the respect we think we deserve. Many of you probably dreamt of being lawyers from an early age. Not me. There were no lawyers in the projects where I grew up. By the time the dream of becoming a lawyer caught up to me, I was a junior in high school with a teacher who recognized my talents (and excessive talking) and pushed me into doing mock trial competitions. Fast forward several years later and there I was in my final year of law school having a discussion with my trial teammates, talking about the type of lawyer we all wanted to be. What did LaShawnda want?

I wanted to be the lawyer that was feared and respected by all – feared because I was good, re-

spected because I demanded it. What the practice of law has taught me is that respect must be earned, not demanded, in this profession. Respect is earned through service to the community and service to the profession. Respect is earned by exhibiting consistently ethical conduct and holding high moral standards. Respect is earned by professional and courteous behavior. Although I am empowered with this knowledge, I am still not the person I ought to be.

Yet, I am standing before you today because I've come a mighty long way.

Those who know me know that I am straightforward. I don't use flowery language or sugarcoat the message. I like to be efficient and don't like to unnecessarily waste anyone's time. Unfortunately, with that approach my message was not always received as it was intended.

We often hear people talk about writing a letter or email and sticking it in the desk for 24 hours before sending it. I am not ashamed to say that I know this practice all too well. In fact, for a period of time I actually had email "re-writers." I would fire off emails that said everything I wanted to say and more. The problem was that I still wanted to send the email the next day. While I felt better getting out my frustrations, I came to realize that I was falling short of what was wanted of me. I did have the wherewithal to know that there were emails I could not send. With the help of a couple of friends, I came up with a plan. I would forward the email to my "re-writers" to do what we called "Becky-it-down" to a much softer message.² I recall getting some of those Becky-down emails back and thinking that the LaShawnda email said the same thing. But as I reflect on it now, I can see the difference. I finally graduated from the Becky-it-down plan when I responded to a LaShawnda email with a Becky reply, all on my own. It was truly a jaw dropping moment for us all.³

That is just one example of my journey towards professionalism. Throughout this journey, I have picked up a few tips I would like to share. These are tips that have gotten me here to this place, at this time, to receive this award:

5. Recognize that we are all human. We all have emotions and we all have other things going on in our lives. Consider the fact that your message could be received in someone's darkest hour.
4. Don't be an island. Use the resources

around you, including people. Use them not only for their expertise, but use them to vent. Even use them to Becky-down your message.

3. You may disagree with opposing counsel on the facts, the law, and the procedure, but hold fast to your integrity. Integrity means that you will give your best on your client's behalf and treat your colleagues with respect (sometimes even when they don't deserve it), all while maintaining the highest ethical standards.
2. Write an assessment of yourself as if you were writing about opposing counsel to a client. If you see something you don't like, you have the power to change it.
1. Strive for excellence in all you do.

I am striving for excellence in professionalism. I know I'm surely not the [wo]man I ought to be, but thank God, I'm not the [wo]man I used to be! Thank you!

LaShawnda K. Jackson, Esq., is a partner at Rumberger, Kirk & Caldwell, P.A. She has been a member of the OCBA since 2002.

¹*The Man I Used to Be* by Bill Flurry.

²Becky [Britcher] was a high school classmate who was cheerful and always had a smile on her face. I don't think she had a mean bone in her body. She was one of the most polite and thoughtful people I'll probably ever meet.

³For those who are curious, my re-writers were Terryl Blackmon Walker, Esq. and Candy Messersmith, Esq. Thanks ladies!

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It's Time to Update Your Photo for the OCBA Online Membership Directory

RCL Portrait Design will be at the OCBA on the following dates to take your free professional portrait for the OCBA Online Membership Directory:

Monday, May 5 – Thursday, May 8

Monday, May 12 – Friday, May 16

Monday, May 19 – Friday, May 23

Tuesday, May 27 – Friday, May 30 (tentative)

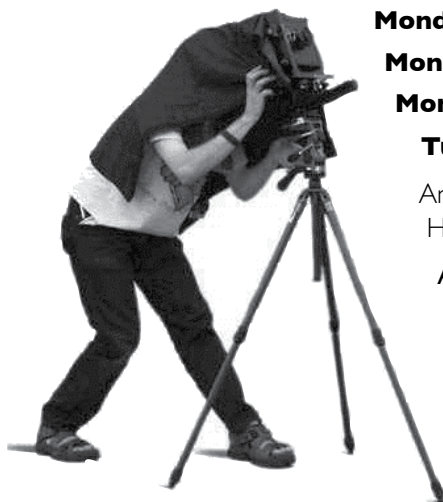
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All sittings are free of charge, and the photo you select for the Online Membership Directory will be published online at no charge. RCL will also take additional shots and provide you with an opportunity to purchase a photo package for your professional or personal use.

We are pleased to bring you this free member service. RCL has produced professional portraits for more than 21 state and local bar associations and 22 medical facilities across the nation.

We look forward to seeing you at the OCBA Center this month.

(For professional photos, appropriate dress is suggested. Ladies: a bold or bright colored long sleeved outfit. Gentlemen: a dark jacket and tie.)



Florida's Lewis and Pitts Named Recipients of Sandra Day O'Connor Award for Advancement of Civics Education

Florida Supreme Court Justice Fred Lewis, and Annette Boyd-Pitts, Executive Director of the Florida Law Related Education Association are the recipients of the National Center for State Courts' (NCSC) 2014 Sandra Day O'Connor Award for the Advancement of Civics Education. The award honors an organization, court, or individual who has promoted, inspired, improved, or led an innovation or accomplishment in the field of civics education related to the justice system.



Annette Boyd-Pitts
Justice Fred Lewis

Justice Lewis and Pitts were recognized for their joint work on Florida's Justice Teaching program and several other civics education initiatives in which they have been involved in Florida. Justice Lewis creat-

ed the Justice Teaching program and Pitts developed the teaching materials. Since the program's inception in 2006, Justice Lewis and Pitts have trained more than 4,000 lawyers and judges to teach civics in all public and private middle and high school in Florida.

"Florida has accomplished outstanding progress in civics education because of the unwavering support of the Florida Supreme Court and the collective work of Justice Lewis and Annette Boyd Pitts," NCSC president Mary McQueen said. "The dual award showcases Justice Lewis' visionary leadership and Pitts' extraordinary implementation of a successful civics education initiative. The joint award brings to light how exemplary efforts and results can be achieved through collaboration."

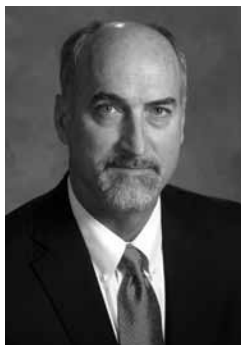
Florida Chief Justice Ricky Polston said Justice Lewis and Pitts have made outstanding progress in bringing civics education into the classroom and is proud of their accomplishments: "Justice Lewis has earned a national reputation for his extraordinary dedication to civic education. His excellent work with Justice Teaching has been tireless since he first came to the Court in the late 1990s, and Florida's third branch has been well served by this effort. He and Annette Pitts truly deserve the honor of an O'Connor Award."

Justice Teaching Initiative promotes an understanding of the justice system by helping youth to develop critical thinking activities and problem solving skills, and demonstrates the effective interaction of the courts. Justice Teaching pairs a judge, lawyer, or other law-related professional with an elementary, middle, or high school. The legal volunteers are provided structured training and materials to ensure they are fully prepared to provide a meaningful educational experience for the students. When Justice Lewis initiated the program, he assembled a statewide leadership group of judges and bar leaders that represented each of Florida's 20 circuit courts. This group recruits and coordinates volunteers, who then work with the schools. The group also works with court managers, school superintendents, teachers, and administrators. Pitts developed lesson plans and was integral in training thousands of lawyers and judges, which has paved the way for every public school in the state now participating in the program.

This is the fourth year the O'Connor Award has been presented. The award is named for retired U.S. Supreme Court Justice Sandra Day O'Connor in honor of her commitment to improving civics education. Since retiring from the bench in 2006, Justice O'Connor has become a tireless advocate of civics education, working to increase awareness and understanding of how our government works. She also established iCivics, a program that uses Web-based educational tools to teach civics education and to inspire students to be active participants in society.

The National Center for State Courts, headquartered in Williamsburg, Virginia, is a nonprofit court reform organization dedicated to improving the administration of justice by providing leadership and service to the state courts. Founded in 1971 by the Conference of Chief Justices and Chief Justice of the United States Warren E. Burger, NCSC provides education, training, technology, management, and research services to the nation's state courts.

Lorri Montgomery, Director of Communications, National Center for State Courts.



Scott R. McMillen, Esq.



Mary Ann Morgan, Esq.



Paul L. SanGiovanni, Esq.

Highlights of March 2014 Meeting

The Florida Bar Board of Governors met on March 28, 2014. The major actions of the board and reports received included:

With the 2014 legislative session nearing the half-way mark, The Florida Bar continues to advocate for court funding, including requests for staff pay and retention as well as district and trial courts' maintenance/repair and technology needs. Initial budgets released by the House and Senate are good starting points. An April 1 *Florida Bar News* article provides additional court system budget request details. Both houses have approved civil legal assistance funding – \$2 million in the Senate and \$1 million in the House – and advocates are working to educate the governor's office on the importance of the program. Bills that would exempt certain activities from criminal penalties for the unlicensed practice of law are being opposed by the bar. For weekly summaries of legislative activities related to bills being tracked by The Florida Bar, please visit www.floridabar.org/ session.

President Eugene K. Pettis, Esq., announced his appointment of a task force to bolster diversity among Florida's judges and members of Judicial Nominating Commissions (JNCs). The task force's recommendations will also assist the governor in implementing F.S. 43.291(4):

In making an appointment, the Governor shall seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution, of the population within the territorial jurisdiction of the court for which nominations will be considered. The Governor shall also consider the adequacy of representation of each county within the judicial circuit.

In May, The Florida Bar will be nominating slates of three candidates for two vacancies on each JNC and sending those slates to Gov. Rick Scott for appointments. The bar received 679 applications with approximately 45 percent falling into a category for diversity: women, Hispanics, African Americans, and Asians.

Lawyer Referral Service rules amendments were approved by the board and will now be submitted to the Florida Supreme Court. The lawyer referral service rule amendments are a multi-year effort that began with the Special Committee on

Lawyer Referral Services. Among the changes are: requiring lawyers who belong to lawyer referral services to report their participation to the bar; requiring that clients make the initial contact after being referred to a lawyer; and strictures against suggesting a referred client use other services provided by the referral service – such as medical treatment – unless the lawyer is satisfied that the referral is in the client's best interest and the client gives written confirmation that he or she has been told about the potential conflict. Proposed new amendments to trust account rules were also approved for submission to the court.

A new policy regarding advertising filing fees was approved. Any change of any kind to an advertisement renders the ad a new ad with a new filing fee of \$150 per timely filed ad and \$250 per untimely filed ad. The only exception is a revision to an existing ad that is solely to comply with a bar opinion that the ad does not comply with the lawyer advertising rules, for which no additional fee will be charged. The Board of Governors also directed staff to monitor the cost of program administration compared with fees and report back whether a reduction in filing fees is warranted. The new fees will be effective July 1. More information will be posted on the Advertising Rules webpage.

The Communications Committee of the board received approval to expand the bar's social media use to include LinkedIn, Google+, YouTube, and Pinterest. In addition to posting timely announcements and the weekly tech tips, The Florida Bar's current Facebook page – which now has almost 1,800 likes – will include a daily summary of news articles from around the state, section/division and voluntary bar information, court system, law school, and national news. All Facebook posts will be tweeted. Communications also reported that a best practices manual for effective electronic communication is being developed to address e-etiquette issues. The Standing Committee on Professionalism is being asked to review all current professionalism guidelines and to amend them as necessary to include electronic communications.

The 2014-15 budget was approved with no fee increase for the 13th year in a row. Fees for active members will remain at \$265 and for inactive members will stay at \$175. Membership fees represent approximately 65 percent of the total

continued page 16



Tara L. Tedrow, Esq.

The Central Florida Debate Initiative: Transforming Education Through Competition

When an organization like the OCBA Foundation that is committed to community education sponsors a group committed to transforming education through speech and debate competition, great things can happen. With their generous contribution of \$2,500, the OCBA Foundation sponsored the Central Florida Debate Initiative's (CFDI) Championship Competition with a donation that went far beyond hosting the event. It helped provide critical funds for the CFDI's lessons plans, trainings, and educational resources for students and teachers for the coming school year.

Why did the donation mean so much for the public high schools of Central Florida? Because the CFDI is a self-funded program that is developing competitive speech and debate programs that are available at no cost to all Central Florida high schools.

The CFDI high school speech and debate program began in the fall of 2013. Having the great opportunity to be on a competitive high school debate team beginning in ninth grade altered the course of my personal, professional, and academic careers. During the four years I debated, I won national championships that helped secure a Presidential Scholarship to continue debating in college. Because of those experiences, I wanted to ensure that all high school students in Central Florida were given the chance to earn the same opportunity. Unfortunately, school systems across the country were cutting back or eliminating programs such as speech and debate for budget reasons. Central Florida schools were no exception. So I made a presentation to create a self-funded program for Orange County Public Schools (OCPS).

My pitch was about all of the skills and benefits students gain from speech and debate: critical thinking, problem-solving, communication skills, and debate experiences that transcend what traditional classroom experiences provide. I brought in the key selling points of the peer-reviewed journal studies showing how speech and debate students are more likely to graduate, have better college and career opportunities, better meet the ACT college readiness benchmarks, and have better GPAs than many other students have. OCPS officials were receptive and said let's do it. The ball was in my court.

Using the power of persuasion learned from com-

petitive speech and debate, I got two local professionals to join in my cause – Beth Eskin, the top-ranked debate coach for Timber Creek High School, and Austin McWilliams, owner of *3P Speech*. With their help, the CFDI was created and designed to develop programs that fostered critical thinking and communication skills for the participating students of Central Florida.

Beth, Austin, and I soon learned that lofty goals take a lot of time and dedication to reach. We had to build a program that was more than just an evening fundraiser. OCPS wanted a sustainable program that it could throw its support behind.

One school signed on, and then another, and another – until today, in just the past school year, we have nearly two dozen participating programs in OCPS and throughout Central Florida. We weren't pitching pie in the sky. We were offering to build programs with provable results. It was hard for schools to turn down the CFDI's offer for free, year-round training for students and teachers, competitions monthly during the school year, and the chance to change the way we view education.

Which is where the OCBA Foundation came to our aid. The CFDI was knocking on doors to find a way to pay for its inaugural championship competition. We wanted to bring together our high school competitive speech and debate teams from different counties in Central Florida to showcase their public speaking and critical thinking skills before an elite panels of judges.

To make it all happen we needed a title sponsor. Thanks to the OCBA Foundation, the CFDI competitors had a chance before an audience to make and defend their positions – the essence of speech and debate. The reactions from the crowd and judges reinforced how this program can and does truly transform a student's future.

For the CFDI and the OCBA Foundation, it was a \$2,500 donation very well spent. Schools are already seeing an improvement in their pupils, and more schools are now signing on to be part of this ground-up effort to improve education and increase student opportunities.

Each new school program means additional costs. While parents and students are helping with bake sales and car washes, there remains a vital need for additional financial resources from supporters. Funds are needed to cover the costs of transporta-

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The Legal Aid Society of the OCBA,
The OCBA Foundation, The Young Lawyers
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Marc Anthony Consalo, Esq.

Orange County Family Law Magistrates: The Best Unused Tool of the Ninth Judicial Circuit

At the present time there are four judges assigned to the Domestic Relations Division here in Orange County.¹ Each judge is tasked with hearing cases involving divorce, paternity, child custody, and other family law matters. Each judge carries a docket of approximately 2,000 cases at any given time,² and each judge has only 35 hours a week to hear motions. While most of you reading this article did not go to law school to do math, the bottom line is that our domestic judges are inundated with cases. How this translates to the practicing attorney and why we all should care are evident for anyone who has attempted to schedule a hearing or a trial for his or her client. Yet unknown to many attorneys is the ability to refer a case and have it heard in approximately half the time by one of the sitting magistrates assigned to the Domestic Relations Division.

As of the date of the drafting of this article, the first available hearing times in the four Domestic Relations Divisions were 45 days out, 42 days out, 39 days out, and 44 days out. These were fifteen-minute hearings. Trials would not occur until approximately six months from the date of filing a notice for trial.³ While our judges often make accommodations for emergency matters, explaining to clients that they must wait more than a month before their matter can be heard is a daunting task. However, a phone call to the magistrate's office found availability to hear matters by all four magistrates within one week. The question then arises why so many attorneys refuse to utilize this resource.

One issue for many is confusion as to how to refer a case to be heard by a magistrate. Fortunately, the process is spelled out quite easily and succinctly on the Ninth Judicial Circuit's website. Under the tab for attorneys, there is a link for Court Forms. Once clicked, this takes the user to a list of topics, including a link for Family Court Forms. Once this link is selected, a user is next taken to a menu for Family Court Forms. Here the user will select the procedural icon to find forms 12.920(a), 12.920(b), and 12.920(c). After these forms are printed out, it is a simple matter of filing them with the judge assigned to your case, who will forward them to the proper magistrate (each magistrate is assigned to a specific judge's cases).

It is important to note that after a case is referred to a general magistrate, either party may object to the referral within ten days of the date that the

the referral is made; if the Order of Referral is served by mail, the parties have an additional five days to object to the referral. In Florida, "[e]very litigant is entitled to have his or her case heard by a Judge."⁴ However, before an objection to an Order of Referral to a general magistrate is filed, one should consider collateral matters such as the potential extra costs and time delays that may result from having a judge, rather than a general magistrate, hear the case.

A second issue for many is a lack of knowledge regarding the qualifications that the current magistrates assigned to domestic division possess. Many attorneys and non-lawyers believe that only a judge is qualified to hear domestic cases; however, nothing could be further from the truth.

To begin, General Magistrate Maria Hinds was appointed by Chief Judge Perry on August 1, 2004. Magistrate Hinds received her bachelor's degree in English and political science from Jacksonville State University and a master's degree in exercise physiology from the University of Central Florida. She received her law degree from the University of Florida Levin College of Law. Magistrate Hinds has substantial experience in family law and is a member of the Family Law Inn of Court. Magistrate Howard Friedman was appointed on December 21, 2004. He received his bachelor's degree from the University of Florida in 1984 and his juris doctor from Stetson University in 1987. Practicing in domestic issues prior to taking the bench, he had been a member of the Family Law Committee for the Orange County Bar Association. Magistrate Linda Skipper serves as a domestic magistrate and the mental health magistrate. She is a 1987 graduate of the University of Central Florida and earned her juris doctor in 1990 from the University of Miami. Magistrate Skipper also serves as the administrative magistrate. Finally, Magistrate Linh Ison was appointed by Chief Judge Perry on April 17, 2006. Magistrate Ison received her juris doctor from Stetson University after receiving a master of business administration from Stetson and a bachelor of science from Florida State University.

A final issue concerns what happens if the magistrate makes a mistake. This is addressed by Florida Family Law Rule of Procedure 12.490(f), which provides that a party has ten days to file "exceptions to the Magistrate's findings." If properly filed and noticed to all of the parties, then

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Ryan J. Casson, Esq.

Preservation of Error and the Doctrine of Exhaustion of Administrative Remedies in the U.S. Court of Appeals for Veterans Claims: Don't Sleep on Presentation Issues

Like most state and administrative frameworks, a final administrative decision from the Board of Veterans Appeals may be appealed for judicial review in the U.S. Court of Appeals for Veterans Claims.¹ The court and the U.S. Court of Appeals for the Circuit have clarified several instances where issue exhaustion is not discretionary and that the failure to raise before the board a particular legal theory or claim precludes raising it for the first time at the court. To preserve for appellate review an issue or a claim, these nuances must be understood.

Administrative Exhaustion Doctrines

Although the doctrine of exhaustion of administrative remedies is not per se jurisdictional, it operates as a bar against the court exercising jurisdiction over a particular request for relief or a legal issue that was never raised at the board level.² The court's exercise of the exhaustion doctrine is discretionary.³ Administrative exhaustion doctrines serve the dual purposes of protecting administrative authority or autonomy and promoting judicial efficiency.⁴ Judicial bodies recognize that several additional policy considerations support a general and enforceable exhaustion rule: agency experience and expertise; development of a complete evidentiary record; and an opportunity for the agency or parties to correct any errors or resolve the case and eliminate the need for judicial review. Avoiding premature judicial intervention in administrative processes is desirable. Where a statute imposes an express exhaustion requirement applicable to a particular case, the appropriate reviewing tribunal lacks jurisdiction to review issues not raised below.⁵ But as to the expansive administrative processes regulated through the Department of Veterans Affairs, such a specific requirement does not exist. To determine whether a contested board error must be preserved for judicial review, the practitioner must turn to the court's precedent.

Issues and Theories and Claims. Oh My!

The VA's system of claims adjudication is unique in that it is non-adversarial; in fact, it has been described by the Court of Appeals for Veterans Affairs as pro-claimant and paternalistic.⁶ Filing with the court a Notice of Appeal then transforms the process into an adversarial appellate proceeding. It is the court's function to interpret the board's duty to ensure full development of a claimant's claim. Almost all lay claimants are incompetent to self-diagnose a medical disability or discuss why a par-

ticular etiological theory establishes an in-service manifestation of a disease or injury. Time and again the court and the Circuit have held that the board has a duty to undertake a sympathetic and optimal reading of all VA filings.⁷ Unless the case involves a motion arguing that clear and unmistakable error supports revision of a final and binding board decision – in general, that the claimant failed to follow agency-level appellate timelines and lacks new and material evidence to reopen her claim – and the veteran had agency-level legal representation in filing her CUE pleadings, VA must consider all applicable laws and regulations and determine all potential claims raised through the evidence of record.⁸ In non-adversarial proceedings this practice should be expected. A self-represented layperson without either legal expertise or medical knowledge cannot be expected to narrow the universe of all theories and claims not articulated in his or her pleadings; the board must determine and construe the scope of the filed claim.⁹ The genesis of these basic principles can be traced to cases involving psychiatric health. Although a claimant is competent to report general feelings of depression and increased alertness and anxiety and files a claim for disability benefits for post-traumatic stress disorder that he believes to be related to his military service, the board must consider whether, in light of the evidence of record, the reasonable expectations of the lay claimant justify construing the filing as pertaining to a generalized anxiety disorder.

The court has acknowledged that the words *issue*, *claim*, and *theory*, are imprecise and lack consistency in VA regulations and the court's own precedent.¹⁰ But, in brief, a *claim* is a communication indicating that it is a person's intent to contend her entitlement to an identified VA benefit.¹¹ A myriad of benefits are possible: disability; pension; death; dependency and indemnity contribution; etc. And this definition is not exhaustive. An *issue* can be described as a factual or legal question that could affect the outcome of a claim. Whether the record shows a clinical diagnosis of PTSD is a question of fact for the board to determine. And whether one or more particular legal theories under different laws and regulations warrant a finding that a disability is related to military service is a legal question that guides the board in determining whether to grant the claim. But a claim based on two different legal theories – two different methods of establishing entitlement to service connection – remains just one claim.¹²

Sometimes a Claim for X is a Claim for Y

It is long established that the board's failure to provide a statement of reasons or bases to support its finding that a particular *raised* theory or regulation does not warrant a greater benefit can in the first instance be heard at the court.¹³ The board has a duty to respond to relevant arguments or benefit requests.¹⁴ In either instance – where the reasons-or-bases statement is inadequate, or where the board altogether ignores *raised* contentions – the Secretary for the Department of Veterans Affairs cannot before the court raise in his defense the exhaustion doctrine. To suggest that the court does not possess the authority to review such errors would render judicial review meaningless. Claims are distinguished based on their factual basis; although a claim for entitlement to direct or secondary service connection for a back disability remains just a single claim, separate and distinct diagnoses involve different factual bases and different claims.¹⁵ For example, limited range of motion and instability because of residuals of a meniscal tear in the left knee are distinct medical diagnoses and different claims. Although a board denial of the instability claim would be final and binding, it is nonetheless possible for a practitioner to conclude that based on her review of the record, there exists a plausible basis to believe that a reasonable and liberal interpretation of the evidence of record suggests that the board erred in not discussing a separate claim based on decreased range of motion. Remember: Our assumption has been that the lay claimant or a representative asserted before VA the claim or that a full and sympathetic reading of the pleadings raises the potential claim.

Beware of the Evolving Issue-Exhaustion Doctrine

Whether the court will exercise its discretion to impose an issue exhaustion rule is distinguishable from arguing to the court in the first instance that it has jurisdiction to find that the board erred in construing the scope of a particular claim. Although there are no bright-line rules to determine whether the court will decline to assert jurisdiction over a particular issue, several cases provide much-needed guidance.

Because a general rule requiring a claimant to raise below all issues or waive his right to raise them in the first instance to the court would be so devastating, much ambiguity remains. In brief, the law and regulations remain somewhat ambiguous as to this issue. Although the Circuit has affirmed that the court has jurisdiction to consider an issue advanced for the first time at the court level, the Circuit has held that whether the court must entertain the

new issue is an open question.¹⁶ The Circuit in fact noted that invocation of the exhaustion doctrine could frustrate Congress' intent in establishing non-adversarial VA administrative proceedings.¹⁷ By way of analogy, the Supreme Court's decision in *Sims* held that a Social Security claimant is not required to raise an issue before the highest level of the SSA.¹⁸

However, it is difficult to identify any particular trend. The Circuit has affirmed that the court does not err in finding that a veteran failed to preserve for judicial review a contended legal issue or procedure when the theory was not raised before the board.¹⁹ Evidence that remanding an issue for board consideration in the first instance would further a policy behind administrative exhaustion, or that some other benefit would flow, may persuade the court not to impose the doctrine of issue exhaustion.²⁰ Absent binding court precedent interpreting a particular VA regulation, the court has remanded for the board to consider in the first instance the issues of how to interpret the regulation and whether the claimant's facts meet the regulation's requirements.²¹ So, although the court does not always impose a preservation or exhaustion rule in cases presenting new legal or non-factual determinations regarding whether VA and the board complied with particular legal and procedural requirements, the invocation remains a very real possibility.²² It is best practice for the representative to ensure that a reasonable and sympathetic reading of the pleadings before the board raises a particular issue – to include a particular legal theory of recovery – or that the claimant or the representative in fact advances the potential theory in the first place.²³ Where the legal theory is *not* explicit in the record before the court – and it is implausible to identify a fair evidentiary basis that would allow the practitioner to argue that the theory in fact was raised below – he should expect that the secretary will contend that the theory or issue was not preserved for judicial review.²⁴ The court will almost always impose a preservation or exhaustion requirement where an argument attacking the competency of a VA medical examiner to provide an etiological opinion was not raised below.²⁵

Ryan J. Casson, Esq., Gang & Associates, LLC, focuses his practice in the U.S. Court of Appeals for Veterans Claims and the U.S. Court of Appeals for the Circuit. He is a member of the OCBA's Appellate Practice Committee and he co-chairs the Veterans Benefits Subcommittee of the Veterans Committee. He has been a member of the OCBA since 1999.

Endnotes: continued page 16



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Douglas E. Abrams, Esq.

George Orwell's Classic Essay on Writing: "The Best Style 'Handbook'" For Lawyers and Judges – Part 1

Like other Americans, lawyers and judges most remember British novelist and essayist George Orwell (1903-1950) for his two signature books, *Animal Farm* and *1984*. Somewhat less known is his abiding passion about the craft of writing. It was a lifelong passion,¹ fueled (as Christopher Hitchens recently described) by Orwell's "near visceral feeling for the English language."²

Orwell's most exhaustive commentary about writing was his 1946 essay, *Politics and the English Language*,³ which minced no words. "[T]he English language is in a bad way,"⁴ he warned. "Debased"⁵ contemporary prose was marked by "abuse,"⁶ "slovenliness,"⁷ and a "lifeless, imitative style"⁸ that was nearly devoid of "a fresh, vivid, homemade turn of speech."⁹ A "tendency... away from concreteness"¹⁰ had left writing "dreary... ugly and inaccurate."¹¹ "[V]agueness and sheer incompetence," he said, "is the most marked characteristic of modern English prose."¹²

Orwell's 12-page essay catalogued specific maladies that characterized the "decay of language" and offered six curative rules.¹³ The catalog and rules still reverberate among professional writers. Judge Richard A. Posner calls the essay "[t]he best style 'handbook'."¹⁴ Nobel Prize-winning economist Paul Krugman recently went a step further, calling the essay a resource that "anyone who cares at all about either politics or writing should know by heart."¹⁵

If I were a law partner employing young lawyers or a judge employing law clerks, I would add Orwell's essay to a list of reading recommended on the way in. If I were a young lawyer not required to read the essay, I would read it anyway. The entire essay is available for downloading at http://orwell.ru/library/essays/politics/english/e_polit.

Orwell stressed that he was dissecting, not "the literary use of language, but merely language as an instrument for expressing and not for concealing or preventing thought."¹⁶ The narrower scope does not deprive legal writers because Justice Felix Frankfurter was right that "[l]iterature is not the goal of lawyers, though they occasionally attain it."¹⁷ Orwell's essay approached language as a tool for clear communication, the goal that defines what lawyers and judges do. "The power of clear statement," said Daniel Webster, "is the great power at the bar."¹⁸

As its title intimates, the essay included criticism of political writing done by government officials and private observers. The essay's staying power,

however, transcends the political arena. By calling on writers of all persuasions to "simplify your English,"¹⁹ Orwell helped trigger the plain English movement, which still exerts influence in legislative halls, courts, administrative agencies, and law school legal writing classes.

This is a two-part article. Here I describe how judges, when they challenge colleagues or advocates in particular cases, sometimes quote from Orwell's essay as a touchstone for clear expression and careful reasoning. Part II will present Orwell's description of maladies that plagued contemporary prose. Part II will close with discussion of Orwell's six curative rules and their continuing relevance for today's lawyers and judges.

"Take the Necessary Trouble"

"[W]ritten English," said Orwell in his essay, "is full of bad habits which spread by imitation and which can be avoided if one is willing to take the necessary trouble."²⁰ In 2012, the United States Court of Appeals for the District of Columbia Circuit quoted this passage in *National Association of Regulatory Utility Commissioners v. United States Department of Energy*.²¹

The D.C. Circuit held that the challenged agency determination violated the Nuclear Waste Policy Act of 1982. Without conducting a valid cost evaluation required by the Act, the agency had refused to adjust or suspend annual fees collected from owners and operators of nuclear power plants to cover costs of the government's long term disposal of civilian nuclear waste.

The parties hotly contested the case with hefty servings of alphabet soup. On page 48 of its 58-page brief, for example, the National Association argued that, "Although DOE has not disclaimed its obligation to dispose of SNF, it is undisputed that DOE currently has no active waste disposal program... -The BRC is undertaking none of the waste disposal program activities identified in NWPA § 302(d). Its existence therefore cannot justify continued NWF fee collection."²²

On page 24 of its 60-page brief, the agency countered that "[t]he plain language of the NWPA... provides the Secretary [of Energy] with broad discretion in determining whether to recommend a change to the statutory NWF fee... In section 302(a)(2) of the NWPA, Congress set the amount of the NWF fee – which is paid only by utilities that enter into contracts with DOE for the disposal of their SNF and HLW..."²³

Writing for the unanimous panel in *National Association of Regulatory Utility Commissioners*, Judge Laurence H. Silberman quoted Orwell and admonished the parties for “abandon[ing] any attempt to write in plain English, instead abbreviating every conceivable agency and statute involved, familiar or not, and littering their briefs with” acronyms.²⁴

Other decisions have also quoted Orwell’s call to “take the necessary trouble” to achieve maximum clarity.²⁵ In *Sure Fill & Seal, Inc. v. GFF, Inc.*,²⁶ for example, the district court awarded attorneys’ fees to the defendant on its motion to enforce the parties’ settlement agreement. The court criticized both parties’ submissions. “Imprecision and lack of attention to detail,” wrote Judge Elizabeth A. Kovachevich, “severely dampen the efficacy of Plaintiff’s written submission to this Court. Equally unhelpful is Defendant’s one sentence, conclusory response that is completely devoid of any substance. Advocates, to be effective, must take the ‘necessary trouble’ to present the Court with coherent, well-reasoned and articulable points for consideration.”²⁷

“At times,” Judge Kovachevich specified, “the Court was forced to divine some meaning from the incomprehensible prose that plagued Plaintiffs’ written objections. Lest there be any confusion, the Court graciously did so even though it could have simply refused to give the faulty objections any consideration at all. The Court would have been equally obliged to treat Defendant’s failure to provide meaningful response as a concession of Plaintiffs’ objections.”²⁸

“Like Soft Snow”

George Orwell held keen interest in politics, and his 1946 essay attributed “the decadence of our language” partly to political motivation.²⁹ “[P]olitical language,” he wrote, “has to consist largely of euphemism, question-begging and sheer cloudy vagueness... [W]ords fall[] upon the facts like soft snow, blurring the outlines and covering up all the details.”³⁰

This passage appeared in *Stupak-Thrall v. United States*,³¹ an en banc decision of the U.S. Court of Appeals for the Sixth Circuit that carried no political overtones. The full court remained evenly divided on the question of whether the plaintiffs’ riparian rights may count as “valid existing rights” to which U.S. Forest Service regulations are subject under the Michigan Wilderness Act (MWA). Dissenting judge Danny J. Boggs criticized his colleagues who favored affirmance of the decision below. “The interpretation of the ‘valid existing rights’ language in Section 5 of the MWA to mean that [plaintiff] has no rights that the Forest Service is bound to respect is a good example of the distortion of language decried by” Orwell in his essay.³²

Part Two Upcoming: Orwell’s Six Rules

In the next issue, Part II will present Orwell’s catalog of the maladies that plagued contemporary prose, together with his six curative rules. To provide a flavor for what will come, here are the rules:

- “1. Never use a metaphor, simile, or other figure of speech which you are used to seeing in print.
2. Never use a long word where a short one will do.
3. If it is possible to cut a word out, always cut it out.
4. Never use the passive where you can use the active.
5. Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent.
6. Break any of these rules sooner than say anything outright barbarous.”³³

More about each of the six next time.

***Douglas E. Abrams, Esq.**, a University of Missouri law professor, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles.

¹George Orwell, *Why I Write* (1946) (“From a very early age, perhaps the age of five or six, I knew that when I grew up I should be a writer.”).

²Christopher Hitchens, *The Importance of Being Orwell*, VANITY FAIR, Aug. 2012, at 66, 66.

³George Orwell, *Politics and the English Language*, in *ESSAYS ON LANGUAGE AND USAGE* (Leonard F. Dean & Kenneth G. Wilson eds., 2d ed. 1963).

⁴*Id.* at 325.

⁵*Id.* at 333.

⁶*Id.* at 325.

⁷*Id.*

⁸*Id.* at 332.

⁹*Id.*

¹⁰*Id.* at 330.

¹¹*Id.* at 325, 334.

¹²*Id.* at 327.

¹³*Id.* at 336.

¹⁴Richard A. Posner, *Judges’ Writing Styles (and Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1423 n.8 (1995).

¹⁵Paul Krugman, *Orwell, China, and Me*, N.Y. TIMES BLOGS (July 20, 2013).

¹⁶Orwell, *supra* note 3, at 335.

¹⁷Felix Frankfurter, *When Judge Cardozo Writes*, THE NEW REPUBLIC, Apr. 8, 1931.

¹⁸Letter from Daniel Webster to R.M. Blatchford (1849), in PETER HARVEY, *REMINISCENCES AND ANECDOTES OF DANIEL WEBSTER* 118 (1877).

¹⁹Orwell, *supra* note 3, at 336.

²⁰*Id.* at 325.

²¹680 F.3d 819 (D.C. Cir. 2012); see Douglas E. Abrams, *Acronyms*, 6 PRECEDENT 44 (Fall 2012).

²²*Nat’l Ass’n of Regulatory Utility Comm’rs, Final Brief of Consolidated Petitioners* 48, 2011 WL 5479247 (2012).

²³*Nat’l Ass’n of Regulatory Utility Comm’rs, Final Brief for Respondent* 24-25, 2011 WL 5479246 (2012).

²⁴*Nat’l Ass’n*, 680 F.3d at 820 n.1.

²⁵See, e.g., *Delgadillo v. Astrue*, 601 F.Supp.2d 1241 (D. Colo. 2007) (discussing confusion caused by confusing “attorney fees” and “attorney’s fees” under the Equal Access to Justice Act); *Anthony A. Gagliano & Co. v. Openfirst, LLC*, 828 N.W. 2d 268, 271 n.2 (Wis. Ct. App. 2013) (“acronyms and initials make comprehension more, not less, difficult”).

²⁶2012 WL 5199670, No. 8:08-CV-882-T-17-TGW (M.D. Fla. Oct. 22, 2012).

²⁷*Id.* * 3.

²⁸*Id.*

²⁹Orwell, *supra* note 3, at 334.

³⁰*Id.* at 333.

³¹89 F.3d 1269 (6th Cir. 1996) (en banc).

³²*Id.* at 1292 (Boggs, J., dissenting); see also, e.g., *Grutter v. Bollinger*, 288 F.3d 732 (6th Cir. 2002) (en banc) (Boggs, J., dissenting), *aff’d*, 539 U.S. 306 (2003) (“[W]hatever else Michigan’s policy may be, it is not ‘affirmative action,’” quoting Orwell’s “soft snow” metaphor); *Palm Beach County Sheriff v. State*, 854 So.2d 278 (Fla. Dist. Ct. App. 2003) (quoting Orwell’s “soft snow” metaphor and holding that in applying sovereign immunity, there is no distinction between the “reimbursement” and “recovery” to which the plaintiff sheriff said his office was clearly entitled, and the right to “damages” which sovereign immunity precedent rejected); cf. *Quartman v. Martin*, 2001 WL 929949, No. 18702 (Ohio Ct. App. Aug 17, 2001) (in discussion of probable cause, quoting Orwell essay that “[p]olitical language . . . is designed to make lies sound truthful and murder respectable, and to give an appearance of solidity to pure wind”).

³³Orwell, *supra* note 3, at 335.

“*The Best Style ‘Handbook’ For Lawyers and Judges (Part I)*” by Douglas E. Abrams, Esq. was first published in *Precedent Fall 2013*, a publication of the Missouri Bar Association. It is reprinted here with permission of the author and the Missouri Bar. Professor Douglas E. Abrams teaches at the University of Missouri School of Law.

Board of Governors Report

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revenues and continue to increase approximately two percent per year, reflecting the increase in the number of members. Operating expenses are budgeted for approximately \$41.7 million. The regulation of the practice of law accounts for 43 percent of expenses and administrative expenses continue to be under 10 percent. The budget, which now goes to the Florida Supreme Court for approval, will be published in the April 15 issue of *The Florida Bar News*.

The board voted to oppose a petition by bar members asking the Florida Supreme Court to amend bar rules to allow for annual membership fees to be increased by up to \$100 to fund legal aid for the poor to ameliorate the current funding crisis. Instead, the board committed to finding alternative and more cost-effective ways of delivering legal services to the under-served. President Pettis said the effort will be broad-based, involving many interests, including the courts, the bar, The Florida Bar Foundation, court

clerks who work with *pro se* litigants, the business community, legislators, and others. Bar rules required that the petition be filed with the board before it is submitted to the court.

Special Appointments Schedule:

Please see the special appointments schedule on the website for more information, terms, and the application for the following appointments to be made at the May 23 meeting. The deadline is April 11 to apply for: two lawyers to the ABA House of Delegates (includes under 35 delegates), five lawyers for the Florida Legal Services, Inc.'s board, three lawyers for Florida Lawyers Assistance Inc.'s board, one lawyer to the Medical Malpractice Joint Underwriting Association, and one lawyer to the Florida Supreme Court's Judicial Ethics Advisory Committee.

Ninth Judicial Circuit Representatives: **Scott R. McMillen, Esq.**; McMillen Law Firm, P.A.; **Mary Ann Morgan, Esq.**, Billings, Morgan & Boatwright, LLC; and **Paul L. SanGiovanni, Esq.**, Morgan & Morgan.

Foundation News

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tion to and from local and out-of-town competitions, registration and entrance fees for competitions, expenses related to training, workshops, educational resources, and scholarships for qualified students.

With the continuing support of organizations like the OCBA Foundation, the Central Florida Debate Initiative is committed to its goal of not only educating our students, but becoming the epicenter for top-ranked high school speech and debate programs.

Tara L. Tedrow, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been a member of the OCBA since 2012.

Family Law Committee

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the court will entertain the concerns raised by the party filing the exceptions. The domestic trial judge will actually sit in the position of an appellate judge for this process, not re-hearing the case, but determining whether there was an abuse of discretion by the general magistrate.

With our court system flooded by litigants, the pressure to find a swift resolution to complex matters is truly a daunting task for the family law practitioner. With a streamlined approach in place, however, the Orange County Family Law magistrates embody a mechanism for ensuring

that the emotional emergencies of our clients are heard quickly and efficiently.

Marc Anthony Consalo, Esq., The Consalo Law Firm, is the OCBA Family Law vice-chair. He has been a member of the OCBA since 1999.

¹www.ninthjudicialcircuit.org

²Statement from the Honorable Tim Shea at CLE "Meet the Judicial Court Circuit Candidates," July 14, 2012.

³Statement from the Honorable Robert LeBlanc for purposes of this article.

⁴See Special Instructions to Florida Family Law Rules of Procedure 12.920(a), (b), (c).

Appellate Law Committee

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¹³8 U.S.C. §§ 7104(a), (d), 7252(a), 7266.

²*Ledford v. West*, 136 F.3d 776, 780 n.7 (Fed. Cir. 1998) (citing *Allied-General Nuclear Serv. v. United States*, 839 F.2d 1572, 1575 (Fed. Cir. 1988)).

³*Id.*; *Stuckey v. West*, 13 Vet. App. 163, 172-75 (1999).

⁴*McCarthy v. Madigan*, 503 U.S. 140, 145, (1992); *McKart v. United States*, 395 U.S. 185, 193-95, (1969).

⁵*Sims v. Apfel*, 530 U.S. 103, 107-08, (2000).

⁶*Bobbitt v. Principi*, 17 Vet. App. 547, 551-52 (2004).

⁷*Moody v. Principi*, 360 F.3d 1306, 1310 (Fed. Cir. 2004) (quoting *Roberson v. Principi*, 251 F.3d 1378, 1384 (Fed. Cir. 2001)); *Szemraj v. Principi*, 357 F.3d 1370, 1373 (Fed. Cir. 2004); *Rice v. Shinseki*, 22 Vet. App. 447, 453-54 (2009).

⁸§ 7104; 38 U.S.C. § 5109A(a); 38 C.F.R. § 3.105(a); 38 U.S.C. § 5108; 38 C.F.R. § 3.156; *Andrews v. Nicholson*, 421 F.3d 1278, 1282-83 (Fed. Cir. 2005).

⁹*Clemons v. Shinseki*, 23 Vet. App. 1, 4-5 (2009) (citing *Ingram v. Nicholson*, 21 Vet. App. 232, 256 (2007)).

¹⁰*Hillyard v. Shinseki*, 24 Vet. App. 343, 350 n.2 (2011), *aff'd* 695 F.3d 1257 (Fed. Cir. 2012).

¹¹38 C.F.R. §§ 3.155(a), 3.1(p).

¹²*Bingham v. Principi*, 18 Vet. App. 470, 474-75 (2004); *Rice*, 22 Vet. App. at 453-54.

¹³§ 7104(a), (d)(1); *Gabrielson v. Brown*, 7 Vet. App. 36, 39-40 (1994).

¹⁴*Id.*; *Peyton v. Derwinski*, 1 Vet. App. 282, 285-86 (1991).

¹⁵§ 7104(b); *Boggs v. Peake*, 520 F.3d 1330, 1335 (Fed. Cir. 2008).

¹⁶*Maggitt v. West*, 202 F.3d 1370, 1377-78 (Fed. Cir. 2000).

¹⁷*Id.*

¹⁸*Sims*, 530 U.S. at 112.

¹⁹*Bernklau v. Principi*, 291 F.3d 795, 801-02 (Fed. Cir. 2002).

²⁰*Id.*; *McCormick v. Gober*, 14 Vet. App. 39, 46-47 (2000).

²¹*Gordon v. Principi*, 15 Vet. App. 124, 127-28 (2001);

²²*Hensley v. West*, 212 F.3d 1255, 1263-64 (Fed. Cir. 2000); *Bingham*, 18 Vet. App. at 474.

²³*Schroeder v. West*, 212 F.3d 1265, 1267 (Fed. Cir. 2000); *Robinson v. Peake*, 21 Vet. App. 545, 553 (2008), *aff'd sub nom. Robinson v. Shinseki*, 557 F.3d 1355 (Fed. Cir. 2009).

²⁴*Id.*

²⁵*Rizzo v. Shinseki*, 580 F.3d 1288, 1290-91 (Fed. Cir. 2009); *Bastien v. Shinseki*, 599 F.3d 1301, 1306-07 (Fed. Cir. 2010).



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Who Gets to Claim the Dependency Exemption?

James H. Hancock, Jr., Esq., CFP

When married parents get divorced, one of the big questions is: Who gets to claim the children on their tax returns? It is clear that when parents get divorced, only one parent can claim a dependency exemption for each individual child.

Under the tax laws, the custodial parent is generally defined as the parent with whom the child lived for the greater number of nights during the year. If, somehow, the child was with each parent an equal number of nights, the custodial parent is deemed to be the one with the higher adjusted gross income (AGI). This means a parent needs to keep a log of where each child slept during the course of the year.

The Rules and Definitions are specified under Internal Revenue Code (IRC) Section 152(e), Special Rules for Divorced Parents, etc., and further clarified under subsection IRC 152(e)(2). This section states that the non-custodial parent must have a signed, written declaration from the custodial parent that releases the claim for each child. This must be attached to the tax return of the non-custodial parent each year the exemption is claimed.

The Internal Revenue Service (IRS) has identified the written declaration to be IRS Form 8332, "Release/Revocation of Release of Claim to Exemption for Child by Custodial Parent." The various U.S. tax courts have agreed with the IRS that this specific form or an alternative document, provided that it "conforms to the substance" of Form 8332¹, must be used. In IRS jargon, this means it must be an exact copy of the form, otherwise IRS will normally not allow it.

For those becoming divorced or separated for years after 2008, a signed judgment copy of a

court order cannot satisfy the requirements of the Internal Revenue Code. The actual Treasury Regulations are specific in that "A court order or decree or a separation agreement may not serve as a written declaration."² This means that for those documents that became effective after 2008 – the only document that will satisfy the IRS – is Form 8332. Otherwise, the IRS will not allow the non-custodial parent to claim the exemption.

If the divorce decree or the separation agreement went into effect after 1984 and before 2009, and if the pages from the documents are essentially the same as the Form 8332, they may be attached to the tax return. Again, in IRS jargon, this means it must be an exact copy of the form, otherwise IRS will normally not allow it.

The tax courts have agreed and concluded that tax law trumps state law on divorce matters when it comes to who gets to claim the dependency exemption.³

There are additional rules, and I encourage all who are doing this type of work or giving advice on divorces and/or separation agreements to go to www.irs.gov, under Forms and Publications, look up Form 8332 and read the instructions. Another resource at this web site is the IRS Publication 501 "Exemptions, Standard Deduction, and Filing Information."

James H. Hancock, Jr., Esq., CFP.

¹26 C.F.R. Sec. 1.152-4(e)(1)(ii), Income Tax Regulations

²26 C.F.R. Sec. 1.152-4(e)(1)(ii), Income Tax Regulations

³*Shenk*, 140 T.C. No. 10 (2013)



Jonathan R. Simon, Esq.

This Year's Firm Fest Proceeds to Benefit the Legal Aid Society of the OCBA

As a family law attorney, I am often asked why I chose to practice primarily family law. While family law can certainly be difficult because of the pain and stress most clients go through, I find it to be particularly rewarding when the case is concluded and I've been able to provide closure and the opportunity to start a new chapter in a client's life. Some of my more personal experiences have also contributed to my desire to practice family law, especially having witnessed the effects of divorce on both children and adults.

My firm feels very strongly that being successful in our field is made even more rewarding by giving back to the community and to those who are in need. We have handled several *pro bono* matters and have financially contributed to Legal Aid.

I can recall a particular case where a client came in to retain me after having been ordered to pay child support. It would have taken nearly all of his monthly income to make that payment. Obviously, something had gone wrong at the hearing and the guidelines had not been appropriately calculated. He clearly could not afford an attorney despite working 40 hours a week. I took the case *pro bono* and took the necessary steps to correct the child support calculation. When the matter was concluded, my client and his new wife tearfully hugged me and said, "Now we can finally both afford to live and meet our legal obligations." His words illustrated to me that no matter what one's net worth may be, all family law litigants want closure and the ability to move on in a peaceful manner. In addition to this particular case, my firm also handles *pro bono* Guardian ad Litem cases. Our firm's Kerstin Morgan, Esq., is active with Orange County Teen Court and the Ronald McDonald House.

We continue to support other charitable organizations outside the legal community, having donated or raised more than \$50,000 in the last three years for organizations like the Legal Aid Society of the Orange County Bar Association, Clean the World, Community Food and Outreach Center, the Orlando Magic Youth Foundation, the Glen "Big Baby" Davis Foundation, the Camaraderie Foundation, the Humane Society, and numerous others. Having been involved with all of these organizations taught me that one person's donation of time and/or money certainly helps, but a group of people with a common goal can be a total difference-maker.

The desire to raise awareness and raise funds for non-profit organizations – coupled with my love of music – gave me the idea for Firm Fest a few years ago. I wanted to create an event that people wanted to attend because it was a night of food, fun, and music with the additional benefit of serving a greater purpose. In the few years that we have put on Firm Fest, we have grown the event from around 300 attendees to aiming for 1,500 attendees this year. It is a lofty goal, but it is one that as a legal community we can achieve together.

This year, the event will be hosted by Daunte Culpepper, former UCF and NFL star. Daunte holds numerous collegiate and NFL records and has always stayed true to his roots here in Central Florida. The event will be held at the historic Firestone Live venue on the corner of Orange Avenue and Concord Street. Firestone Live has recently undergone a massive renovation and now features state-of-the-art sound and staging equipment to further enhance the night's entertainment. Food and drinks will be provided starting at 5:00 p.m. on Saturday, June 21, 2014. The headlining band, back for the third year in a row, is the Dave Matthews Tribute Band; there's usually a special guest or two that sit in for a few songs. This year we've added an opening act, Justin Michael, whose voice and piano playing talents will surely impress.

As for our beneficiary this year – the Legal Aid Society of the OCBA – an introduction is certainly unnecessary, as we are all aware of the wonderful services they provide to the community. Many of you may not know, however, that a large portion of Legal Aid's budget is provided by the interest from lawyer's trust accounts. As the economy worsened over the last few years, the interest rates began to plunge and funding was drastically reduced.

Now, more than ever, Legal Aid needs our help to continue to provide legal services for those in need. It is our ethical and moral obligation as attorneys and members of the community to support Legal Aid with both our time and our money. Imagine being in the shoes of someone who cannot afford a retainer or cannot understand a legal proceeding. Imagine the feeling of pure helplessness in dealing with a system that can be confusing to most lay people. How would you feel if those raw emotions of helplessness and financial distress were present in your life? The relief you would feel when Legal Aid was there to help you through your situation would be immense.

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Jamos Mobley, Esq.

Valor... In Many Forms

It should come as no surprise that Florida has the third largest population of veterans in the United States considering Florida's endless beaches and great weather. But, for many veterans in Florida, it is not all "sunshine and sand." According to one recent census, Orange County has more than six hundred homeless veterans on any given night! Many more are living at, or below, the poverty level. As a community, we should be deeply concerned with the fact that those who have served their country are so underserved here at home.

Our veterans are often faced with legal issues that only exacerbate their situation. Many times the legal issue starts out as a minor one. Unfortunately, in many cases the veteran cannot afford to hire an attorney or may not know who to turn to for assistance. While the problems may begin small, if left unaddressed they can become insurmountable obstacles that hinder or prevent the veteran from obtaining work or housing. Removing these obstacles is the only way to ensure that the veteran has a chance to obtain financial security, housing stability, and overall a better quality of life.

To help remove these obstacles for homeless and low-income veterans in Orange County, Holland & Knight partner Tommy Boroughs, Esq., spearheaded the effort to establish the Orange County Bar Association's Veterans Committee. Many of the members of this committee are veterans themselves, and every member has a strong desire to give back to those who gave service to their country. The Veterans Committee has a three-pronged approach to ending the cycle of hopelessness many veterans face: (1) building a successful veterans court in Orange County, (2) assisting veterans with obtaining the Veterans Affairs (VA) benefits to which they are entitled, and (3) providing low-income veterans with free civil legal assistance.

While the Orange County Veterans Court is now up and running, there is still work to be done to ensure its success. According to Tommy, the focus is now on building awareness and participation in this diversionary program. Recently he shared with me his hope that we can increase awareness among judges and defense attorneys that they have the option to refer cases to Veterans Court. He went on to say that while Veterans Court provides benefits to the veteran, it is by no means an easy way out. In fact this diversionary program provides the kind of structure and demand for ac-

countability that veterans are familiar with from their time in the service. Many veterans respond positively to this structure. Completion of the program helps remove the obstacles that stand in the way of the veteran achieving a better quality of life.

Part of achieving a better quality of life and reducing recidivism rates among veterans often depends on the veteran receiving medical and/or psychological treatment from the VA. Quite often the reason a veteran finds himself or herself in need of the Veterans Court in the first place is because of untreated issues such as post-traumatic stress disorder (PTSD). Obtaining treatment and other benefits from the VA for eligible veterans is the second area of focus for the Veterans Committee. The committee has a dedicated group of local attorneys who are well-versed in assisting veterans with their claims for VA benefits. Because many of the attorneys who assist with VA benefits claims are veterans themselves, they are better equipped to understand each veteran's specific needs and assist him or her in obtaining the treatment and benefits which improve his or her quality of life.

In order to meet the Veterans Committee's third area of focus, which is delivering free civil legal assistance, the Legal Aid Society of the OCBA, Inc. established the Veterans Advocacy, Legal Outreach and Representation (VALOR) Project of Orange County. The mission of the VALOR project is to assist as many low-income veterans and their families as possible who have civil legal needs. Legal assistance is provided primarily in the areas of family, juvenile, housing, consumer, welfare/income maintenance, disability, health, and immigration law. For non-legal issues, the VALOR project can make referrals to myriad agencies and community resources that are available to low-income veterans and their families. The VALOR project intends to hold outreach clinics in various locations throughout Orange County beginning with a once-a-month clinic at the Orlando VA Medical Center. These VALOR clinics provide veterans with the opportunity to meet one-on-one with a Legal Aid staff attorney or a volunteer attorney and discuss their individual situation and legal or non-legal needs.

As a nation we owe a debt to the men and women who valiantly served their country in the United States Armed Forces. Many of them served in and

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Caring, Individual Attention: Volunteer Advocates for Children

Heather K. Thein

When people ask what a Guardian ad Litem (GAL) does, the answer often, if not always, includes the words “*best interest*.” GALs serve the best interest of abused, abandoned, and neglected children. But what does that phrase really mean? Beyond the textbook definition, best interest truly means carefully considering each child for who he or she is as an individual. At what do they excel? With what do they struggle? With whom do they have close, healthy, and supportive relationships? What scares them, makes them happy, makes them angry, and makes them nervous? Where do they see themselves in the future? Most importantly, how, as their GAL, can you help to shape the course of their future around the answers to these questions?

As generous *pro bono* attorney volunteers, GALs can understandably struggle to balance the demands of their own schedules with the needs of their GAL cases and the children involved. Dependent children often have days packed with school, therapist sessions, family visits, and medical appointments – circumstances that can make developing a sincere, consistent connection with a child even more difficult for a GAL. Moreover, there are some children who have certain needs that require a specific expertise or experience level that may pose a challenge for some GALs: knowledge of developmental disabilities, mental health, educational obstacles, and unique medical needs, or the ability to speak a second language such as Spanish or Creole. Having an understanding of these individual differences, as well as the time to explore and address them, are essential to the development of the GAL’s recommendations to the court outlining what things should be done to ensure that the child’s needs are met. At every stage of the proceedings, the court will be looking to the GAL for these critical recommendations.

Fortunately, the Legal Aid Society’s GAL Program is committed to assisting our *pro bono* attorney GALs address these dilemmas. Whether it is through working in partnership on a case with one of our eight GAL staff attorneys and four case coordinator social workers, or working with one or more of our many lay volunteers known as VACs, the GAL program is available to help GALs navigate through these challenges in order to achieve the best possible outcomes for the children they have been appointed by the court to serve. Coordinated by Heather Thein, since 2011, volunteer advocates for children (VACs) bring a

host of talents and perspectives to their volunteer work that not only help GALs, but ultimately to benefit the children they both serve. VACs provide a wonderful support network because they come from academic, cultural, and professional backgrounds as diverse as the children we serve. The most important duty of the VAC is to assist the GAL in making the kind of constant connection essential to address a child’s individual needs. VACs accomplish this by conducting monthly visits with the child on behalf of the GAL, speaking with caregivers, teachers, mental health professionals, and others to get a thorough perspective on the child, his or her current needs, and how these needs – present and future – can be addressed. Every GAL who works with a VAC receives a monthly report after the VAC’s visit with the child/family/teacher/therapist. That report provides details about the child’s behavioral, educational, medical, and emotional status, as well as the VAC’s own personal observations. Upon receiving their VAC’s report, GALs communicate with their VAC to develop strategies that will help address any identified problems.

Helping children to find their way back to safe, loving homes – whether that means reunifying with their parents or finding an adoptive family – is the best expression of serving their best interest, and VACs can be tremendously instrumental in this.

Recently, VAC Jean Blauvelt was assigned to assist GAL Charles “Chuck” Wohlust, Esq., on a case that involved a young boy named Christopher. Christopher had a very loving, close bond with his father, but sadly, his father was unable to shake off the burden of drug addiction and maintain sobriety. Christopher had no other family members who could give him a home. Jean, a long-time educator and school administrator, went above and beyond for this boy and his foster parents, working tirelessly to get Christopher the help he needed to catch up in school. Additionally, she made herself a round-the-clock resource, connecting Christopher’s new caregivers with valuable resources and information, preparing the previously childless foster family for the care of a young, active boy. With consistent, considerate communication and mutual respect for one another’s perspectives, Jean and Chuck were able to secure a new forever family for Christopher. At the time of this writing, his adoption was scheduled for finalization in March 2014.

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Hearsay...



Christine A. Wasula, Esq.

Wow! What a winter! It was crazy, wasn't it? I think it even got into the mid 50's a few times. But the slightly lower temperatures did not slow our members down one bit, and they were just as busy as ever.

The OCBA Social Committee had a particularly busy season and hosted several successful events, including the Cars and Coffee Social, which was held at the University Club, and the 10th Annual Charity Poker Tournament, which was held at Harry Buffalo in downtown Orlando and attracted a record number of participants (well, it may have, I don't have the exact number in front of me). The winners of the tournament included:

- First Place: **Nick Primose, Esq.**
- Second Place: **Bill Umansky, Esq.**
- Third Place: **Josh Adams, Esq.**
- Top Female: **Hope Touchton, Esq.**
- Top Non-Lawyer: **David Wood**

Congratulations to all involved, especially to Social Committee chairwoman, Amy Guy Calandrino, who not only oversaw both events but also managed to plan her wedding and get married at the same time. Best wishes to Amy and Phil on many (or at least a couple) years of wedded bliss.

With respect to professional accomplishments over the past months, our very own **Jamie Billette Moses, Esq.**, shareholder at **Fisher Rushmer** and current OCBA treasurer, has been appointed by The Florida Bar Board of Governors to serve on the Florida Realtor-Attorney Joint Committee. Five lawyers (including Jamie), one from each of Florida's appellate districts, have been designated to serve a two-year term that began on January 1, 2014. The Florida Realtor-Attorney Joint Committee promotes cordial relations between realtors and attorneys and presents educational seminars throughout the year. The committee is comprised of 11 attorneys appointed by The Florida Bar and 11 realtors appointed by the Florida Association of Realtors. Congratulations to Jamie on this outstanding accomplishment!

David H. Spalter, Esq., a partner at **Jill S. Schwartz & Associates, P.A.**, has been inducted into the College of Labor and Employment Lawyers, recognizing his sustained outstanding performance in his profession, as well as his dedication and excellence in labor and employment Law.

Andrew Layden, Esq., an associate at **BakerHostetler** (just like me, from 1998 to 2000), has been elected to a three-year term as a member

of the board of directors for the Central Florida Bankruptcy Law Association (CFBLA), a non-profit organization that supports the collegial and professional practices of bankruptcy law in the Orlando Division of the Middle District of Florida. Andrew also volunteers with the Pro Se Assistance Clinic, which was created through a collaboration between the CFBLA and the OCBA Bankruptcy Committee. Through this work, Andrew offers information and guidance to individuals who choose to represent themselves in U.S. Bankruptcy Court.

In other **BakerHostetler** news, partner **Greg Lee, Esq.**, has been appointed as chair for the Central Florida Sports Commission Board of Directors. Greg, who practices in BakerHostetler's Business Group, is highly involved in the Orlando community. He is the chair of the City of Orlando Community Venues Oversight Committee, a commissioner for the Orlando Utilities Commission, former chair of the City of Orlando Municipal Planning Board, and has served two terms as president of the Board of Directors for Habitat for Humanity Orlando. Additionally, Greg is currently a part of the Board of Overseers at the Stetson University College of Law, of which he is an alumnus. The question is, how does he find time to keep up with his billable hours?

Hal K. Litchford, Esq., a shareholder at **Baker Donelson**, has been recognized in the 2014 edition of *Chambers USA* as a leading practitioner in the area of antitrust law.

Neal J. Blaher, Esq., with the **Law Office of Neal J. Blaher**, has been selected as a 2014 Legal Eagle – one of the best attorneys in franchising – by his peers, clients, and the *Franchise Times*. He has also been selected for the 2014 Super Lawyers list.

Tracy de Lemos, Esq., an associate at **Winderweede, Haines, Ward & Woodman, P.A.**, was recently appointed co-chair of two Commercial Real Estate Women (CREW) committees – Sponsorships and Future Leaders. CREW Orlando is part of a national network of independent local organizations throughout the United States and Canada, representing nearly 8,000 individual members. The association was formed to attract the most powerful and influential professionals in the commercial real estate industry. The overall purpose and goal of the chapters is to advance women in commercial real estate.

Two attorneys at **Holland & Knight** are in the news this month. **Suzanne E. Gilbert, Esq.**, a partner in the Orlando office, has been elected to the membership of the American Law Institute

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Crystal Espinosa Buit, Esq.

Interview with the Honorable Robert J. Egan

Appointed to the bench in May of 2008 by Governor Charlie Crist, the Honorable Robert J. Egan is a circuit judge for the Ninth Judicial Circuit and is currently assigned to the civil division. Judge Egan received his undergraduate degree from Mercer University and attended law school at the University of Florida.

Ms. Buit: *Where did you grow up?*

Judge Egan: I grew up in Orlando and graduated from Edgewater High School, which is just down the road from the courthouse.

Q: *What are some of the biggest changes you've seen?*

A: The size of the city, definitely. I was born here well before Disney World arrived, so the population explosion post-Disney has been the biggest change.



The Hon. Robert J. Egan

Q: *Please tell me about your early years of practice.*

A: I started out doing insurance defense and did that for eight or nine years. Then, for the last eight or nine years before becoming a judge, I was a plaintiff's personal injury lawyer at a firm called Leon and Egan, which was a small firm I formed with a friend of mine I met in law school.

Q: *What did you enjoy most about private practice?*

A: When I was practicing insurance defense, I enjoyed working at large firms. There was a lot of support there for a young lawyer, as well as mature, experienced lawyers to observe and ask questions. I very much benefitted from the training I received at a larger firm, as well as the trial experience.

I also enjoyed being in practice at my own small firm, with only one other partner, and representing individual clients. You get to know your clients more closely and share a lot of their experiences with them, good and bad. It was interesting.

Q: *Can you tell me about your transition from attorney to judge?*

A: I was appointed in May of 2008, and it was a hectic transition. You have to shut down your practice, make sure cases you're handling have substitute counsel, notify clients that you are leaving, and hopefully make sure nothing falls through the cracks during the transition.

The other transition has been how my life has changed socially. I would see a lot of civil trial

attorneys in my day-to-day life as an attorney, but after becoming a judge, for several reasons, I don't see a lot of those folks socially any more. So, I do miss the social aspect of being a trial lawyer that I had before becoming a judge. I don't get to see a lot of my old friends as often since becoming a judge.

Q: *How was the transition from the role of advocate to neutral decision-maker?*

A: That part I like. I enjoy moderating disputes, rather than being involved in them. I also had to learn new areas of law, such as juvenile delinquency and criminal law, before being assigned to circuit civil, which was a welcome challenge. Also, even though I had a background in civil law as an attorney, there were certainly areas of civil law that were new to me. There is always something new to learn, which is good.

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

A: I personally think the job of being a moderator or referee of disputes fits my personality better than being an advocate. Even though I was fortunate to have a successful practice as a civil trial attorney, I think I'm more comfortable in this role of moderating rather than advocating. One of the challenges, however, is that no matter what you do as a judge, one side is going to be disappointed. That can be difficult, but you accept it going in, knowing you cannot make everyone happy.

Q: *Well, I don't know if that leads into the next question, but what would you say is the hardest part about being a judge?*

A: I think that probably is one of the hardest things. It is impossible, as a judge, to keep everybody happy. Somebody will always be disappointed with your ruling on any significant issue.

Q: *What do you know now that you didn't before becoming a judge?*

A: I know a lot now about juvenile delinquency and criminal law. Sentencing a child to a juvenile program, which is the equivalent of jail or prison for an adult, is never fun. It is often the right thing to do, but it is not a pleasant thing to do.

Q: *Has your perspective of the judiciary changed since taking the bench?*

A: Overall, it has changed for the better. I feel we are very blessed here in Orange and Osceola counties to have judges who care deeply about their job and are also well-prepared to handle the

cases on their docket. I have worked as a civil lawyer in courtrooms all over the state, and this is one of the better places to be a lawyer because I think the quality of the judiciary is outstanding here in the Ninth Circuit.

Q: *What do you wish attorneys would do more of or better in your courtroom?*

A: Generally, I wish they would get along better with each other before coming to see me.

Q: *That brings me to my next question. What would you say is your biggest pet peeve concerning conduct you see from attorneys?*

A: My biggest pet peeve is when one attorney interrupts another during argument. It doesn't happen often but when it does, I get upset.

Q: *What advice would you give to young attorneys?*

A: Two things. First, it is possible and even preferable, in my opinion, to advocate effectively for your client and treat your opposing counsel with courtesy and respect. There is no need to get nasty with each other, but I see a lot of that. Secondly, whenever possible, observe more experienced attorneys at work, especially if you handle jury trials. Central Florida has a bounty of excellent trial attorneys and a young lawyer can learn so much from observing a good trial attorney at work in the courtroom.

LASWhat We Do...

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I challenge everybody reading this article to help in any way possible. Attend Firm Fest and see what Legal Aid has to offer. If you cannot attend, consider being a sponsor. You can go to firmfest.com to purchase tickets or become a corporate sponsor. Feel free to email me directly at jonathan@theorlandofamilyfirm.com for any information you need or questions you may have. I look forward to seeing many of you on June 21, 2014, and I hope that Firm Fest continues to grow and provide a major contribution to Legal Aid for years to come.

Johnathan R. Simon, Esq., Jonathan R. Simon, P.A.

LASGAL Tips

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In an effort to provide a VAC to every GAL, the Legal Aid Society recruits new VACs year-round. If you, or someone you know such as a paralegal, administrative assistant, or colleague is interested in joining the LAS VAC program, please contact Heather Thein at hthein@legalaidocba.org to begin the application process. Once the application is completed, aspiring volunteers will attend one VAC training session.

Q: *How do you deal with the burden of deciding cases or issues that are important to people's lives?*

A: Well, I try to put that aside, how an issue impacts somebody's life. If you dwell on that, you will probably arrive at a decision for the wrong reasons. You try to be dispassionate and neutral. It's not the easiest thing in the world to do, but I think that is the approach we as judges try to take and do our best to set personal feelings aside.

Q: *What would you say are the strengths of the legal system in America today?*

A: Thankfully, I think our system has far more strengths than weaknesses. One of its greatest strengths is that it is an adversarial system, which effectively helps us get to the truth.

Q: *Who was the biggest influence in your legal career?*

A: My first boss out of law school, Bob Hannah, Esq., was a big influence on me. In addition to being a great attorney who taught me a lot, Bob is a gentleman, a quality which seems to have more and more importance to me the older I get.

Q: *For young attorneys, do you think it is important to have such a mentor?*

A: I think it is of vital importance. If you are fortunate enough right out of law school to work at a firm where you can

have a mentor, I believe that to be very beneficial because the job of attorney is a difficult one. There are so many things to learn, and so many things to avoid. Having someone you look up to who you can observe and talk to from time to time is quite valuable.

Q: *People often talk about a "work-life balance." How important do you think that is, personally and professionally?*

A: It's important to have a personal life for your mental stability and mental health. It is difficult, though, as a lawyer to just hit an "off" switch when you go home because you deal with other people's problems and other people's lives. Consequently, their problems become very real to you, and you understandably worry about outcomes. Everybody needs some time off and when you get some, you should turn off your cell phone and computer.

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

A: I love red wine, cooking, reading, and fishing... probably in that order.

Crystal Espinosa Buit, Esq., is an attorney with the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A. She has been a member of the OCBA since 2009.

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“Rules of Interpretation

What is a moderate interpretation of the text? Halfway between what it really means and what you'd like it to mean?

– U.S. Supreme Court Justice Antonin Scalia

”



YLS on the move



Jill D. Simon, Esq.

On March 13, 2014, **Judge John Kest** presented his **Brown Bag Lunch**, “Mediations: How to More Effectively Mediate a Case.” **Dan H. Honeywell, Esq.**, Honeywell Mediations, assisted with the presentation. Brown Bag Lunches are held from noon to 1:15 p.m. in the 23rd Floor Judicial Conference Room at the Orange County Courthouse. RSVPs are not required; however, to ensure that sufficient copies of the outlines, chairs, and bottled water are provided, please contact Judge Kest’s judicial assistant, Diane Iacone, at 407-836-0443 or ctjadi1@ocnjcc.org. Feel free to bring your lunch! The next **Brown Bag Lunch** will be held on **May 8, 2014**, on the topic: “**Sanctions: Fees, Costs and other Horribles.**”

The **YLS March Luncheon** was held on March 21, 2014, and our guest speaker was former YLS board member, **Orange County Clerk of Court Eddie Fernandez, Esq.** Prior to being appointed to fill the clerk’s vacancy, Eddie practiced corporate and governmental law at Shutts & Bowen, LLP. As always, the YLS would like to thank its luncheon sponsors: **BMO Harris Bank, Cross, Fernandez & Riley LLP, Florida Lawyers Mutual Insurance, ProServe USA, Raymond James, Ricoh Legal, Smith Group Investigative Services, US Legal and Westlaw.**

The **May YLS “Pass the Gavel” Luncheon** will be held on **May 14, 2014** at the Citrus Club from

11:30 a.m.-1:00 p.m. Casual attire is perfectly appropriate. For a three-course meal, the cost is only \$10 for young lawyers and judges. Please **RSVP to yls.ocba@gmail.com no later than May 12, 2014.** When you RSVP, please provide a practice area or hobby to be included on your nametag. A late charge of \$4 will be added for all RSVPs made after the deadline. If you RSVP’d and are unable to make it, please let us know so we are not charged for your lunch!

Mark your calendar for these upcoming events, and watch for details in May’s YLS email blasts. On **May 17**, join the **YLS Relay for Life Team** “Crawl for a Cure” American Cancer Society fundraiser. The event begins at 2:00 p.m. Contact C. Andrew Roy at aroy@whww.com or Deborah Cook at deborah@dacooklaw.com for details. On **May 31**, join your YLS friends from noon to 3:00 p.m. for the annual **Great Oaks Village Fun Day.** The Great Oaks Village is a foster care facility that houses up to 100 abused and neglected children in Orange County. As part of this event, we collect donations to purchase new shoes and school supplies for the children. For information about participating or making a donation, please contact yls.ocba@gmail.com.

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

Legal Aid Society of the Orange County Bar Association, Inc.

presents free lunchtime training for pro bono attorneys

may 6

Representing Survivors of Human Trafficking

may 20

Best Interest Advocacy for Babies and Drug-Dependent Newborns: Dependency Court and Drug Court

june 10

Dissolution of Marriage Part 2

june 24

Immigration Law and Dependent Youth: Special Immigrant Juvenile Petitions

july 8

Defense to Debt Collection Cases

july 22

Securing Appropriate Psychotropic Medication and Enhanced Placement for Youth with Mental Health Needs: A Step-By-Step Guide

august 5

GAL 101: Best Interest Advocacy In and Out of Court

august 19

Paving the Road to Permanency In and Out of Dependency Court

september 9

Sealing and Expungement

september 23

Human Trafficking, Sexual Abuse and Keeping Children Safe Act Certification for GALs

october 14

Guardianship of a Person

october 28

Changes in Interstate Compact for the Placement of Children (ICPC) and Out of Town Inquires (OTT) for Placement Procedures

november 4

Immigration Relief for Victims of Domestic Violence and Other Violent Crimes

november 18

Termination of Parental Rights: Case Preparation for GALs

TUESDAYS 12:00 p.m.-1:30 p.m.

Marks Street Senior Recreation Complex

99 East Marks Street, Orlando, FL 32803

Cypress Room

december 2

Special Legal Issues Impacting Dependent Youth with Delinquency Involvement: The Crossover Effect

december 16

GAL 101: Best Interest Advocacy In and Out of Court

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@legallaidocba.org

or mcarbo@legallaidocba.org

or merasmus@legallaidocba.org.



Meredith Gibson Zornek, FRP

Tips and Procedures for the Trial Paralegal

Organization is one of the most valuable assets a paralegal can possess and is an immeasurable skill as it pertains to trial preparation. Most of a litigation paralegal's work is out of the limelight working on discovery, but an organized and prepared paralegal is invaluable in the courtroom. Paralegals wear many hats in trial preparation, including monitoring deadlines, helping prepare documents, organizing files and exhibits, preparing subpoenas, and working with members of the trial team. With so many moving parts, preparing for trial can be a challenging and stressful time for both the attorney and paralegal. As paralegals, we are charged with ensuring the attorneys we support have all the necessary tools to be successful. An organized trial is critical to that success.

Each case has its own nuances. As such, defining the exact steps for preparation is difficult. However, there are several tasks which are common in most cases. These include determining deadlines, preparing a paralegal trial notebook, creating charts and summaries, developing exhibit and witness lists, duplicating exhibits, filing subpoenas, pretrial reconnaissance, and preparing a trial box.

Early involvement is essential. Trial preparation should begin immediately upon case assignment. Once the trial date is set, it is critical to identify pretrial deadlines and calendar the dates. Although some cases may ultimately settle before trial, preparation should always commence as if the courtroom will be the final destination. Most courts issue pretrial orders which set forth the court's requirements and deadlines, such as discovery cutoff dates, deadlines to disclose experts, and deadlines to exchange exhibit and witness lists. Calendar those deadlines and tickle reminders well in advance of the deadline to ensure you have adequate time to comply.

During the initial preparation, a paralegal trial notebook is essential. It will serve as a record and a reference for the paralegal's responsibilities. At a minimum, the notebook should include the document production log, witness and exhibits lists, copies of subpoenas, important telephone numbers (e.g., vendors, court reporter, copy services, witnesses, and client), and deposition summaries. During trial, other items may be added, such as trial notes, jury lists and charts, etc. The notebook serves to keep track of all trial-related items and can be used as a quick reference when assisting others.

The trial exhibit list is a roadmap for the case. Starting with depositions and key documents is a strong beginning point. It is important to remember that this list is dynamic and will change as the case matures. There is no right or wrong way to prepare an exhibit list, but it is key that each party privy to the list can understand it. The exhibit list will serve as the in-house guide to be used by staff and attorneys to keep track of what exhibits were used by what party (plaintiff or defendant), admission of exhibits, exhibits offered into evidence, and what exhibits were used with which witnesses. It does not matter what format is used for the list as long as the exhibits used during trial are tracked in a logical and organized fashion. Also, a witness list should be drafted starting with all individuals disclosed in the parties' interrogatory answers. The same concept applies for the witness list as it is an in-house list to be used by everyone involved with the case to identify witnesses for each day of trial. Submit these drafts to the attorney as early as possible for his or her review along with the production log and deposition chart so he or she can identify any additional exhibits or witnesses for trial.

Creating and duplicating exhibits is an integral part of trial preparation. Beginning with the reviewed exhibit list, create all the identified exhibits. These may change as the case strategy evolves, but compiling exhibits early could avoid a stressful time crunch as the trial date quickly approaches. Gather the exhibits identified by the attorney and mark them with exhibit stickers. Whenever possible, pre-number exhibits before making copies by coordinating with the judge's trial clerk. The original exhibits will be provided to the court during trial. Additional copies will go to opposing counsel and other copies will be retained for the firm's files. Always ensure you have plenty of copies and never give out original exhibits to the trial team – make copies! Create exhibit folders and witness folders to ensure quick and easy access to the exhibits. Additionally, create copies of depositions, interrogatories, and admissions for potential filing with the court. Work with your attorney to determine what will be used as demonstrative and summary exhibits. These items may be a moving target as all the data may not be available at that time.

Arrange for the issuance and service of subpoenas on witnesses and make sure to follow-up with the

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Sunny Lim Hillary, Esq.

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

CFAWL

The Central Florida Association for Women Lawyers (CFAWL) will hold its **Grand Dame** event for women in the Central Florida community who have been practicing law for 20 years or more. The event will be held on **May 8, 2014, at 6:00 p.m.** at the **Winter Park Racquet Club**, 2111 Via Tuscany, Winter Park, Florida 32789. For more information and to RSVP, please contact **Jessica McGinnis, Esq.**, CFAWL's programs director, at JessicaPMCinnis@gmail.com.

GOAABA

On March 26, 2014, the Greater Orlando Asian American Bar Association (GOAABA) hosted a **Speed Networking Happy Hour** at Miller's Winter Park Ale House. Members participated in six, 10-minute sessions of networking with people from all backgrounds, ranging from a life coach to the owner of an import/export business for gun parts. Everyone enjoyed appetiz-

ers and pitchers of beer compliments of GOAABA. Thank you to past president, **Kim Nguyen, Esq.**, and social chair, **Lisa Gong, Esq.** for organizing this debut event!

On March 20, 2014, **Lemar Alejo, Esq.**, and **Robert Lee, Esq.** of GOAABA, along with **Michelle Ku, Esq.** of Student Legal Services at the University of Central Florida, spoke on a panel about "Law School to Law Practice" at Barry University School of Law. GOAABA joined forces with the Asian Pacific American Law Student Association (APALSA) at Barry to put on this informative session about transitioning from law school to the real work of practicing law.

HBACF

On April 9, 2014, Hispanic Bar Association of Central Florida (HBACF) hosted **Orlando Magic Group Night** at the Amway Arena. The night began with a happy hour at Harry Buffalo and was followed by the Orlando Magic v. Brooklyn Nets game.

Remember, SideBar is for you! If you belong to a voluntary bar in Central Florida, please send me your news and photos with IDs – we're happy to publish pre-event information and post-event news.

If your bar has an upcoming event, please send information to me at sunny@hillarylaw.com at least 10 weeks prior to the event date. I'm looking forward to hearing from you!

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



Nhan Lee, Esq. and Miguel Acosta, Esq.



Jennifer Baykal; Christine Berk, Esq.; Jile Dashtso, Esq.



Left to right:
Blaine McChesney, Esq.
Brittany Cobb
Denise Kim Beamer, Esq.
Diana Tennis, Esq.
Glenn Leong, Esq.

Hearsay

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(ALI), which is the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law. The ALI drafts, discusses, revises, and publishes *Restatements of the Law*, model statutes, and principles of law that are enormously influential in the courts and legislatures, as well as in legal scholarship and education. The ALI's elected membership of lawyers, judges, and law professors is limited to 3,000.

In addition, **Glenn Adams, Esq.**, current president of the Legal Aid Society of the OCBA, has been named as the executive partner of Holland & Knight's Orlando office. Glenn will oversee the day-to-day management of the 55-lawyer office while continuing his corporate practice. He replaces Bill Wilson, Esq., who served as executive partner in Orlando for 11 years.

James A. Edwards, Esq., a shareholder at **Zimmerman Kiser Sutcliffe**, was recently appointed as treasurer of the Central Florida Chapter of the American Board of Trial Advocates (ABOTA). ABOTA is a national association of experienced trial lawyers and judges dedicated to the preservation and promotion of the civil jury trial right provided by the Seventh Amendment to the U.S. Constitution. Jim recently brought ABOTA and the OCBA together to sponsor two presentations on professionalism to students at the Barry University School of Law. In addition, Jim and other members of ABOTA will present the seminar "Civility Matters" at meetings of the Brevard County and the Osceola County bar associations.

Andre Young, Esq., a partner with **Young DeLoach, PLLC**, has been chosen as the United Way Emerging Leader membership chairperson for 2014-2015.

William T. Dymond, Jr., Esq., president, CEO, and managing partner of **Lowndes, Drosdick, Doster, Kantor & Reed, P.A.**, has been appointed by Governor Rick Scott and confirmed by the Florida Senate to serve as the chair of Space Florida, an independent agency that focuses on the growth and development of the space industry in Florida. He has served as a statewide board member for the organization since January 2012, most recently as the interim chair of Space Florida in the wake of Lt. Gov. Jennifer Carroll's resignation.

Mel Pearlman, Esq., with the firm of **Mel Pearlman, P.A.**, has been elected vice-chair of the Osceola County West

192 Development Authority, which was created by the Osceola County Board of County Commissions to facilitate the economic development of a 15-mile corridor extending from the western boundary of Kissimmee to the Osceola County line at the Four Corners, where Osceola, Orange, Lake, and Polk counties meet. Mel, who lives and practices law in Celebration, Florida, has been a member of the OCBA for more than 40 years.

Finally (and because I feel compelled to promote my own law firm in every column, even though it's probably annoying to people), the **Law Offices of Tad Yates, P.A.**, is now a member of the 100% Club, which is based upon 100% membership in the OCBA. I take full credit for this accomplishment because a firm has to have two or more attorneys to qualify, so congratulations to me!

That's all for this month. As always, if you have any exciting news about yourself or your fellow OCBA members, please feel free to send them to our communications manager, Peggy Storch, at peggys@ocbanet.org, or to me at chris@tadyates.com. See you next month!

Christine A. Wasula, Esq., Law Offices of Tad Yates, P.A., has been a member of the OCBA since 2003.

Take a bow, **Cory L. Taylor, Esq.!** Cory, the Mock Trial Committee leader, did a fabulous job organizing the 6th Annual Bard's Board Barristers Mock Trial in February at the Orlando Shakespeare Theater. Thanks, Cory, for a job well done!

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Elliott Wilcox, Esq.

Decoder Rings and Secret Codes

A few months ago I took my wife and three-year-old son to the Animal Kingdom Lodge, staying in one of the rooms overlooking the wildlife savannah.

After catching one of the giraffes peeking inside the window as I got dressed, we decided to head out and grab some breakfast.

Arriving on the ground floor, my son suddenly yelled out, "Turtle tush!" and ran over to the window.

At first, we had no idea what he was talking about, but when we looked out the window, we saw two beautiful, radiated tortoises from Madagascar.

Well, more specifically, we saw their backsides.

They were both facing away from the window, looking off into the distance, possibly pondering the meaning of life.

They were also giving us a full view of their bottoms.

My son tugged my hand, pointed at the tortoises, then yelled, "Turtle tush!" and started laughing uncontrollably.

For the next several minutes, we stayed in front of the floor-to-ceiling windows as he went back and forth, pointing at the tortoises' keisters, laughing, and calling out "Turtle tush! Turtle tush! Turtle tush!"

Then he pointed at my backside (even though I don't really have one), and called out, "Daddy turtle!" and laughed even more, pointing and encouraging several of the other hotel guests to look at "Daddy's turtle."

I quickly realized that it might be smart for me to scoop him up and head out of there before he started telling everyone to "look at Mommy's turtle!" – so I took him by the hand and led him away to breakfast.

After breakfast we spent the day playing in the parks, and by the time we returned to the hotel 6 or 7 hours later, I thought for sure he'd pretty much gotten the "turtle" talk out of his system.

Boy, was I wrong.

As soon as we got back to the hotel he insisted on going back to see the turtles.

Being tortoises, I didn't expect them to move much, but it looked like they hadn't moved *at all*. For a moment, I thought we might be looking at animatronic tortoises (it is Disney after all), but to my disappointment, they never broke out into

a "Yo Ho! A pirate's life for me" or "Zip-a-Dee-Doo-Dah" song.

Instead, they just sat there, backsides pressed up against the window, while my son ran back and forth, pointing and laughing, "Turtle tush! Turtle tush!"

Of course, it didn't end there, either.

For the next several days, anytime he referred to someone's backside (which, unfortunately, he started to do on quite a regular basis), he called it a "turtle."

Now, months later, our entire family uses "turtle" as a generic term for *derrières*.

Anytime my wife or I say the word "turtle," or whenever we see a turtle on TV or in a photo, we look at each other and start laughing.

That's the power of insider language. With just a single word, we are instantly on the same page, plugged into the same emotions, and totally in sync.

The good news for you is that many of the groups you might want to speak to will also have this type of insider's language.

Republicans and Democrats will discuss the exact same issues using very different terminology. Disney doesn't have employees or customers, it has "cast members" and "guests." Starbucks doesn't have small, medium, or large drinks, they have "tall," "grande," and "venti" drinks.

This insider language creates a culture and a feeling of belonging. By tapping into their language code, you can maximize your persuasive presence.

That's why, if you want to persuade and influence people who are a member of any type of identifiable group, it's worth the investment to get your hands on one of the groups' secret decoder rings and tap into its language secrets. By speaking their secret language, you will immediately develop rapport with them and become a bit of an insider.

It doesn't matter if you're speaking to a large service organization like Rotary (make sure you know about the "The 4-Way Test") or one-on-one to a potential client who served in the Marine Corps during the Vietnam War (don't make the mistake of calling him a "former" Marine), if you invest the time to learn the appropriate secret words and phrases, you will instantly break down barriers to communication and maximize your chances of effective persuasion.

By contrast, it's also important to recognize the "turtles" in your speech that can make listeners feel like they're outsiders and not welcome to join your group. As lawyers, this is especially problematic, because we spent three years and \$100,000+ learning our own brand of "turtle talk" that is often indecipherable to outsiders. It's not (usually) a problem when you're speaking to other lawyers, but if you're speaking with a potential client or to a potential referral source, it can be disastrous, because people tend to stop listening if they feel excluded from the conversation. But if you will work to either eliminate those insider phrases from your presentation or define them during the conversation, listeners won't feel excluded, and they won't tune you out.

Finally, develop some family "turtle talk" of your own, so that no matter how much time and distance may come between everyone, you'll always have the power of language to instantly transport the entire family back home.

(Oh, and if you should ever find yourself being stopped by a three-year-old excitedly pointing and laughing about your "turtle," I apologize in advance!)

Elliott Wilcox, Esq., The Wicox Law Firm, PL, has been an OCBA member since 2001.

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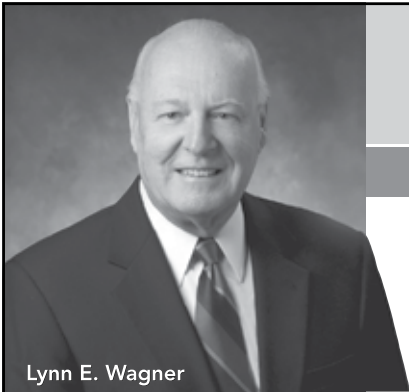


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LAS Teaching Tips *continued from page 19*

fought battles in places where angels fear to tread. Many of them now silently bear the visible and the invisible scars of combat. Overall, the OCBA's Veterans Committee is off to a great start, but we can always use your help to make it an even greater beacon of hope for our veterans and their families. Get involved with the Veterans Committee or the VALOR project and give back to those who gave so much. If you need a reason to get involved then remember this – they stood tall in hell so that we can stand at ease here at home.

For more information about the VAOLR Project and how you can help low-income veterans in Orange County, please call the Legal Aid Society of the OCBA, Inc. at 407-841-8310 and ask to speak with Jay Mobley, Esq., or Ed Dimayuga, Esq. For information on development or fundraising issues, contact Donna Haynes at 407-515-1850 or dhaynes@legalaidocba.org. To make a tax-deductible contribution to the Legal Aid Society, go to www.legalaidocba.org and click on the "donate" button.

James Mobley, Esq., Legal Aid Society, has been a member of the OCBA since 2012.

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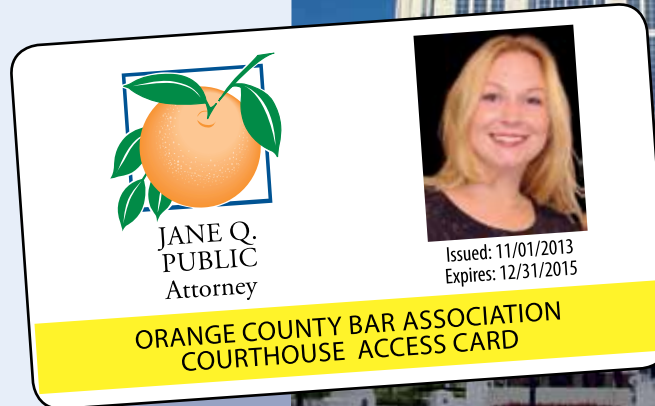
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ParalegalPost
continued from page 29

process servers until service is effectuated. Depending on the attorney's preference, you may file the returns of service with the clerk or keep them in the trial notebook to be filed in court. Always keep the witness contact list updated. This is essential should a witness need to be contacted during the proceedings.

A little bit of pretrial reconnaissance can go a long way in easing some of the stress associated with going to trial. Review the local county or district rules, paying particular attention to the rules regarding marking and exchange of exhibits to be offered at trial. If possible, visit the courtroom in advance to determine the layout of the room. Check with the court, as most times you have to reserve their audio/visual equipment in advance. Even if the court can provide the equipment, it is a better idea to bring your own. Courthouses are a busy place and scheduling issues arise. For the first day of trial, plan to arrive early to set up. You will also want to be there early to meet and greet the judge's sheriff's deputy/bailiff and clerk. These individuals can be a tremendous asset as they work day in and day out in the courtroom. Often they will know whether items can be left in the courtroom overnight.

Building a trial box is an important final step to effective preparation. The trial box will ultimately contain all the essentials that may be needed in the courtroom. Initially, it is hard to know what to keep in the box. You will find that with each trial, new items will most likely be added to your trial box. As a starter, the box should contain: extra stickers, pens, highlighters, rubber bands, binder clips, stapler, staple remover, tape, legal pads, water bottles, hard candy, band aids, etc. It is also a good idea to bring an extension cord and a power strip. The contents may be adjusted to suit your attorney's preferences.

There is a tremendous amount of planning and work involved in trial preparation. Getting to trial is the reward. All your hard work and efforts will shine. Even when things get stressful, as they usual do in trial, stay calm and professional and you will always be seen as indispensable by your attorney.

Meredith Gibson Zornek, FRP, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has recently joined the OCBA.

PhotoOp



Jennifer Finch and Patricia McLeod



From left to right: Lisa Marcum, April Orlando, Lorraine Hernandez, Misty McGlothorn, Liz Buck, Julie Barone, and Meredith Zornek.



Allison Perez and Janice Almodovar

The OCBA Paralegal Section hosted a happy hour - Come ShamRock with Us - to kick off an early St. Patrick's Day celebration. The event was held on March 13 at Frank & Steins in downtown Orlando. Proceeds from the event benefitted Truth365, an organization that supports childhood cancer research.

Rainmaking



Michael Hammond, Esq.

Effective Time Management = Effective Marketing

Unless you are so swamped with clients that you don't need to ever worry about finding more, your practice depends upon continuing to generate more business. To keep your practice vital, you need new clients coming through the door on a regular basis. Client development is a critical use of your time, yet who can spare the time? Being effective at referral-based marketing requires effective time management.

The Technician vs. The Marketer

In the early days of Atticus, our main focus was client development. But whether we were hired by established firms to help new associates, experienced attorneys opening their own firms, or partners interested in entering new markets, we were consistently met with a common refrain: "I know I should be developing new clients for the future – but with everything I have on my plate right now, I can't find the time."

Here's the problem: When it comes to your time management, the legal technician in you – the part of you that does the technical legal work that lawyers do – is in charge of your calendar. The work product you are responsible for *will* get done. It may be done at the last minute, or done by working at night, or through the weekend, but it will get done. In this deadline-driven arena, you will make sure that you rarely miss the mark. Unfortunately, marketing is not deadline-driven. Client development seems vague and unstructured; something else you'll get to later when you have more time. Marketing becomes an optional activity with few clear-cut goals and no urgent deadlines that never demands your time and attention.

Three Marketing Contacts Per Week

To add structure and some urgency to your client development efforts, we strongly recommend that you schedule and make three substantial marketing contacts a week. Three lunches are ideal and serve as the weekly goal for many attorneys. If you were to block out three lunches a week and dedicate them to marketing, this strategy will yield well over 100 marketing lunches on a yearly basis. That's the kind of time commitment that it takes to maintain rapport with existing referral sources and cultivate new ones.

To make three-lunches-a-week happen, block the time out on your calendar *ahead of time*, then stick to it – even when the technician in you wants to commandeer the time for production. Seeing the time blocked out on your calendar makes it more

difficult for you to "forget" to market yourself. Your calendar becomes a visual reminder for you to think ahead about which clients or influencers you can take out to lunch to fill those three marketing time slots you've blocked out for the week.

How To Make Marketing Work

Even those attorneys who are naturally gifted marketers or who have made a wholehearted commitment to client development often struggle with the logistics of marketing – the updating of contact information; keeping a supply of "thank you" notes on hand; or the scheduling of luncheon appointments, for example. To ensure this strategy works, delegate the scheduling to an assistant. This could be a part-time person hired to focus only on marketing, an existing legal assistant who has time and people skills, or a receptionist who has extra capacity – to work with you to keep your lunch schedule filled well in advance. Many attorneys actually bonus an assistant who keeps lunch time marketing time slots filled.

Here's how it works: You designate the days you'll be available for lunches (e.g., Tuesday, Wednesday, and Friday), supply the assistant with a list of existing referral sources whom you wish to see on an ongoing basis, and they work to fill the available time slots. Having an assistant do this for you can be a huge help, especially if you are reluctant to take the time to initiate marketing lunches and meetings – but are very effective once you show up for them. It helps to meet with your assistant once a week to oversee his or her progress in filling the lunch time slots and to provide coaching on what to say and how to say it when scheduling lunches with your referral sources. At these meetings you can also provide your assistant with information on any new contacts you meet in the community and want to add to your list of people you want to get to know. Using an assistant to help schedule these lunches minimizes the time you have to spend getting ready to market and maximizes the time you actually spend out from behind your desk marketing.

Enjoy Marketing!

An alternative to the lunch idea is to have a standing Friday or Wednesday afternoon time block that is dedicated to marketing. For many attorneys who play golf, the Friday afternoon golf game is a popular marketing strategy. It allows them to invite one to three other people to join them in golf on a weekly basis. That amounts to 50 or more golf games over the course of a year.

When multiplied by one to three people, the result is a minimum of 50 and a maximum of 150 marketing contacts annually. Given the amount of face time that occurs when playing golf, there is a significant opportunity to build rapport with important referral sources and influencers for your firm. This is a great strategy for not only expanding your network of referral sources, but concentrating all of your weekly marketing into a highly efficient and effective time frame. Who knows, it might also improve your golf game.

If you aren't a golfer and can only go out for lunch once or twice a week, you can put a once- or twice-monthly evening event on your calendar as well. These might be dinners with spouses or functions such as a community events, charity dinners, or gallery openings. You can also invite referral sources and their families to events such as an outdoor picnic or barbecue, a pool party, a boating excursion, or a sporting event. Going to a game with your son or daughter and inviting a referral source to bring his or her kids is a great way to spend more time with your family while even enjoying your marketing activities.

Marketing: A Numbers Game & A System

At its most basic level, referral-based marketing is a numbers game. Experience shows that making three marketing contacts per week – week in, week out, month after month consistently – with those referral sources most likely to send clients your way will generate business for your firm. Period. At this point, marketing itself becomes a system for the ongoing growth and health of your practice. How? It's simple – by making three marketing contacts per week consistently, the increasing number of referral sources you're getting to know better and better are themselves referring a steady flow of prospective clients to you, which in turn allows you to be more selective in the clients you add to your growing client base. And that's why effective time management = effective marketing.

Michael Hammond, Esq., is a "founding father" of Atticus and is a Certified Practice Advisor. A licensed attorney since 1983, he has spent his entire career either practicing law or supporting and promoting the practice of law. Michael has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. He is currently a featured writer for *Lawyers, USA* and a number of other publications. To learn more about the work that Atticus does with attorneys or the Atticus Rainmakers™ program, please visit www.atticusonline.com or call 352-383-0490 or 888-644-0022.

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Speaking Engagements

Claramargaret H. Groover, Esq., of counsel to Becker & Poliakoff, P.A., recently addressed the contracting requirements for public-private partnership projects under the new P3 statute. The conference took place in Miami. She had also co-chaired the ABA Forum on Construction on P3s held in Washington, D.C., late last year.

Marilyn G. Moran, Esq., of counsel with BakerHostetler, LLP, spoke at Barry University School of Law on Monday, March 10, on a panel titled, "Great Expectations for Female Lawyers: Conversations About Women in the Law." The panel facilitated an in-depth discussion about issues women lawyers face and the advantages they have as practitioners.

Randolph J. Rush, Esq., a partner with the law firm of Winderweede, Haines, Ward & Woodman, P.A., recently served as a faculty member of the University of Shopping Centers, an educational program organized by the International Council of Shopping Centers. The international conference was held at The Wharton School at the University of Pennsylvania in Philadelphia in mid-March. Rush was joined by two other real estate industry experts. Faculty presented on the topic of "Effective Lease Proposals." This is the second year Rush has been invited to serve as a faculty member.

Bradley M. Saxton, Esq., and **C. Andrew Roy, Esq.**, with the law firm of Winderweede, Haines, Ward & Woodman, P.A., recently taught a session of the Advanced Bankruptcy Course at the University of Florida Levin College of Law. The session was titled, "The Preparation of Schedules and Statement of Affairs in Bankruptcy Cases." Both Saxton and Roy are graduates of the University of Florida Levin College of Law.

Brian Wagner, Esq., a shareholder with Mateer & Harbert, P.A., participated in a mock trial presentation on February 27 in London, England, in the historic Lloyds Library in the heart of London's financial district. Wagner was one of only four lawyers from the United States invited to participate in this demonstration of how a civil trial in the U.S. is conducted.

Events

May 29 – OCBA Installation & Awards Banquet. 5:30 p.m.-8:30 p.m. Church St. Ballroom. Cost: \$10 for OCBA members; \$40 for non-members and guests. Register by Friday, May 23, 2014 at the OCBA Store.

Seminars

May 1 – Evaluating Truthfulness – Live Workshop for Attorneys and Mediators. Major Seminar. Special presentation by Susan Constantine, body language expert. 8:30 a.m.-4:30 p.m. OCBA Center. CLE and CME: 5.0. Special pricing for this event: \$189. Use coupon code "OCBAFL" when registering. Register online at <http://www.susanconstantine.com/product/florida-evaluating-truthfulness-live-cle-workshop>.

May 6 – Representing Survivors of Human Trafficking. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. Speaker: Camila Pachon Silva, Esq. CLE: pending. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org.

May 8 – Sanctions: Fees, Cost, and Other Horribles. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. CLE: 1.5. Please feel free to bring a sandwich; water will be provided. To register, contact: Diane Iacone at ctjadi1@ocnjcc.org, or 407-836-0443.

May 13 – An Overview: VA's Disability Appeals Process & U.S. Court of Appeals for Veterans' Claims. Veterans Committee **Major Seminar** and Reception. 12:45 p.m. - 6:00 p.m. OCBA Center. Speakers: Everett McKeown, Esq.; Ryan Casson, Esq.; Al Tetrault, Esq.; and Jodee Kayton, Esq. CLE: 3.0 pending. Cost: \$35 for OCBA members; \$50 for non-members. Sponsored by Veterans Legal Advocates, P.A. and Gang & Associates, LLC. **Register by May 9, 2014** at the OCBA Store.

May 16 – Pick Your Battle: A Brief Comparison Between Family and Dependency Court. Family Law Committee Seminar. 12:00 p.m. - 1:00 p.m. OCBA Center. Speakers: Hon. Alicia L. Latimore and Hon. Heather Higbee. CLE: 1.0 pending. Cost: Free, but registration is required at the OCBA Store. **Registration deadline: May 14, 2014.**

May 20 – Best Interest Advocacy for Babies and Drug-Dependent Newborns: Dependency Court and Drug Court. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. Speakers: Judge Reginald K. Whitehead, Johonna Pecolia Brown, Sally McArthur, Esq., and Kavita Sookraj, Esq. CLE: pending. RSVP to Marilyn Carbo at mcarbo@legalaiddocba.org.

May 21 – Public Benefits Applications – Do's and Don'ts. Elder Law Committee **Major Seminar.** 11:30 a.m. - 2:15 p.m. OCBA Center. Speakers: Stefanie Beach Canfield, Asst. Region Legal Counsel for DCF; Edward Dimayuga, Esq., Legal Aid Society. CLE: 2.5 pending. Cost \$45 for OCBA members; \$55 for non-members. Register by May 18, 2014 through the OCBA Store.

June 3 – Mediation 101. Paralegal Section Lunchtime Seminar. 11:45 a.m. -1:00 p.m. OCBA Center. Speaker: Rebecca Palmer, Esq. CLE: 1.0. For more information and to register, visit the OCBA web calendar.

June 10 – Dissolution of Marriage, Part 2. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. Speaker: Angel Bello-Billini, Esq. CLE: pending. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org.

June 12 – Protective Orders: When, How and Why to Use Them. Brown Bag Lunch with Judge John Kest. 12:00 p.m. - 1:15 p.m. Orange County Courthouse, 23rd Flr. Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. CLE: 1.5. To register, contact Diane Iacone at ctjadi1@ocnjcc.org, or 407-836-0443.

June 16 – 2013 Intellectual Property Law Update. IP Committee **Major Seminar.** 12:00 p.m. - 4:00 p.m. OCBA Center. Speakers: Michael Colitz, III, Esq.; Amber N. Davis, Esq.; Julee Milham, Esq.; and Cian O'Brien, Esq. CLE: 3.5 (includes 2.5 Business Litigation; IP Law 3.5 certification credits). Cost \$35 for OCBA members; \$50 for non-members. Register through the OCBA Store.

June 24 – Immigration Law and Dependent Youth: Special Immigrant Juvenile Petitions. LAS Lunchtime Training. 12:00 p.m. - 1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando FL 32803. Speakers: Bethanie Barber, Esq. and Camila Pachon Silva, Esq. CLE: pending. To register, contact Marilyn Carbo at mcarbo@legalaiddocba.org.

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OCBA Calendar

MAY - JUNE

OCBA Installation & Awards Banquet

The Ballroom at Church Street
May 29, 2014

RSVP by May 23, 2014 to
www.orangecountybar.org/store

May

- 1 Live Workshop for Attorneys and Mediators**
Evaluating Truthfulness
8:30 a.m. • OCBA Center
- 6 Paralegal Section Membership Meeting**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
Representing Survivors of Human Trafficking
12:00 p.m. • Marks St. Senior Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 7 Business Law Committee**
12:00 p.m. • OCBA Center
- 8 Brown Bag Lunch with Judge John Kest**
Sanctions: Fees, Cost and Other Horribles
12:00 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.
- Social Security Committee**
12:00 p.m. • OCBA Center
- 9 Criminal Law Committee**
12:00 p.m. • OCBA Center
- 12 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 13 ADR Committee**
7:30 a.m. • Dean, Ringers, Morgan & Lawton, P.A.
- Veterans Committee Major Seminar**
An Overview: VA's Disability Appeals Process & U.S. Court of Appeals for Veterans' Claims
12:45 p.m. • OCBA Center
- 14 YLS Luncheon**
11:40 a.m. • Citrus Club
- Lawyers' Literary Society**
12:00 p.m. • OCBA Center
- Executive Council Meeting**
4:30 p.m. • OCBA Center
- 15 Technology Committee**
12:00 p.m. • OCBA Center
- 16 Criminal Law Committee**
12:00 p.m. • OCBA Center

- Family Law Committee Seminar**
Pick Your Battle: A Brief Comparison Between Family and Dependency Court
12:00 p.m. • OCBA Center
- 20 LAS Lunchtime Training**
Best Interest Advocacy for Babies and Drug-Dependent Newborns: Dependency Court and Drug Court
12:00 p.m. • Marks St. Senior Center
- 21 Elder Law Committee Major Seminar**
Public Benefits Applications Do's and Don'ts
11:30 a.m. • OCBA Center
- 26 Memorial Day Holiday**
OCBA Office Closed
- 28 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- Judicial Relations Committee**
12:15 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.
- 29 OCBA Installation & Awards Banquet**
5:30 p.m. • The Ballroom at Church Street

June

Note: No June Luncheon – Florida Bar Annual Convention is June 25-28 at Gaylord Palms Resort and Convention Center, Kissimmee.

- 3 Paralegal Section Seminar**
Mediation 101
11:45 a.m. • OCBA Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 4 Business Law Committee**
12:00 p.m. • OCBA Center
- 5 ADR Committee**
12:00 p.m. • OCBA Center
- 9 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 10 Intellectual Property Committee**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
Dissolution of Marriage, Part 2
12:00 p.m. • Marks St. Senior Center
- 11 Lawyers' Literary Society**
12:00 p.m. • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- Executive Council Meeting**
4:30 p.m. • OCBA Center
- 12 Brown Bag Lunch with Judge John Kest**
Protective Orders: When, How, and Why to Use Them
12:00 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.
- 13 Criminal Law Committee**
12:00 p.m. • OCBA Center
- 16 Intellectual Property Committee Major Seminar**
2013 Intellectual Property Law Update
12:00 p.m. • OCBA Center
- 17 Solo & Small Firm Committee**
12:00 p.m. • OCBA Center
- 20 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee**
12:00 p.m. • OCBA Center
- 24 LAS Lunchtime Training**
Immigration Law and Dependent Youth: Special Immigrant Juvenile Petitions
12:00 p.m. • Marks St. Senior Center
- Real Property Committee**
12:00 p.m. • OCBA Center
- 25 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- 27 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center