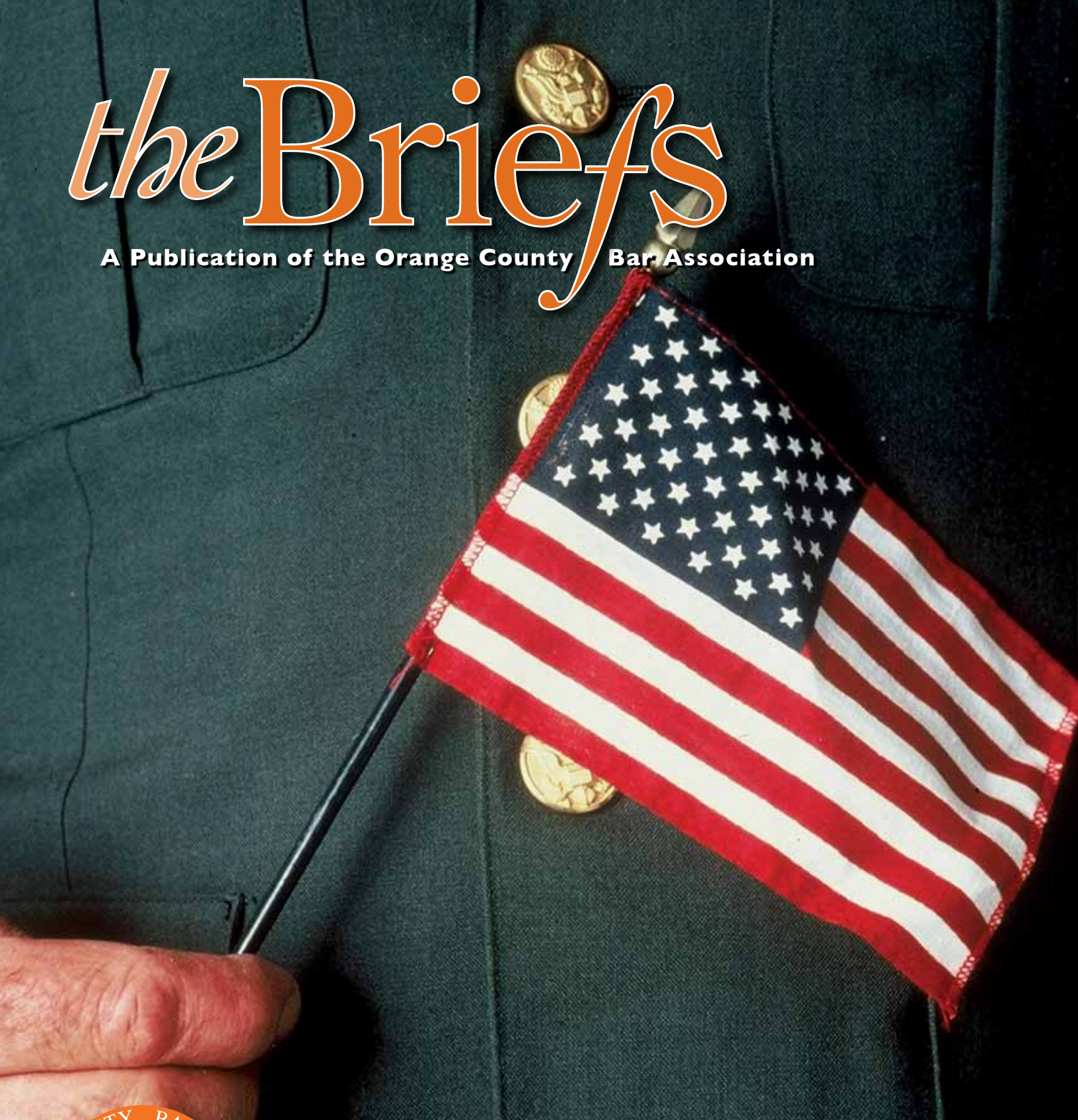


the Briefs

A Publication of the Orange County Bar Association



November 2013
Vol. 81 No. 11

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Ms. Schriefer is a registered nurse (R.N.) in the state of Colorado and is licensed to practice law in Colorado and Florida. She earned her Juris Doctor (J.D.) from the University of Kentucky College of Law. She received her Bachelor of Science in Nursing (B.S.N.) from Old Dominion University in Norfolk, Virginia.

Ms. Schriefer served as an officer in the Navy Judge Advocate General's (JAG) Corps. As a Navy JAG, she worked as a defense counsel with the Command Judge and then transferred to a position as Advocate for the Commander, Naval Medical Command, Mid-Atlantic Region.

Ms. Schriefer worked as a medical malpractice litigation attorney for a prestigious District of Columbia law firm where she tried cases in the District of Columbia Superior Court and the U.S. District Court of the District of Columbia. Ms. Schriefer also litigates products liability cases and is currently involved in litigating artificial hip implant cases with several manufacturers.



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theBriefs November 2013 Vol. 81 No. 11

President's Message

November 2013



Paul J. Scheck, Esq.

Called to Serve

We remember those who were called upon to give all a person can give, and we remember those who were prepared to make that sacrifice if it were demanded of them in the line of duty, though it never was. Most of all, we remember the devotion and gallantry with which all of them ennobled their nation as they became champions of a noble cause.

— Remarks of President Ronald Reagan at the Veterans Day Ceremony, November 1988

On the 11th hour of the 11th day of the 11th month of 1918, an armistice, or temporary cessation of hostilities, was declared between the Allied nations and Germany in the First World War, then known as “the Great War.” In November 1919, President Woodrow Wilson proclaimed November 11th as the first commemoration of “Armistice Day,” a day primarily set aside to honor veterans of World War I. By 1954, however, World War II had required the greatest mobilization of soldiers, sailors, Marines, and airmen in the nation’s history, followed by the deployment of American forces to Korea. As a result, in 1954 Congress amended the previous law by striking out the word “Armistice” and inserting in its place the word “Veterans,” establishing November 11th as a day to honor American veterans of all wars.

Veterans Day continues to be a celebration honoring America’s veterans for their patriotism, love of country, and willingness to serve and sacrifice for the common good. Veterans Day pays tribute to all American veterans – living or dead – but especially gives thanks to living veterans who served their country honorably during war or peacetime. This Veterans Day we remember and reflect upon the enormous sacrifices that have been made by our veterans and their families – past, present, and future. As a nation, we have prospered because we have always had citizens willing to rise to answer the call to serve in hours of need. The millions who have worn the military uniform have expressed the finest attributes of our national heritage, and this month we honor them for their unyielding sacrifice and dedication to our great nation. To all of our veterans and their families – whether members of the OCBA or members of our greater Orange County community – we extend a heartfelt **THANK YOU!**

In return for their many sacrifices, these brave individuals ask very little. And thus, it falls to an indebted nation to meet their selflessness with thankfulness. Saying “thank you” is important, but there’s always more that we as citizens can do for those whose sacrifices preserved our heritage of freedom. We can pray for those currently serving in our armed forces, that they return home

safely to be honored on this day, with a story or two of their own to tell. We at the OCBA have also begun the process of doing more through the efforts of our Veterans Committee in creating a Veterans’ Court here in Orange County.

The Veterans’ Court began serving veterans in our community last month. This new court is a result of the collaborative efforts of many participants, including Chief Judge Perry and Judge Brewer, State Attorney Jeff Ashton and his office, Public Defender Robert Wesley and his office, the Department of Veterans Affairs, the Clerk of Courts, and the OCBA’s Veterans Committee, chaired by Tommy Burroughs. This court is modeled on our local drug court, and offenders must voluntarily agree to participate. The offenders who are selected must be eligible for veterans’ benefits and must be eligible under the State Attorneys’ current pre-trial diversion criteria. All offenders work closely with the Veterans Health Administration to obtain mental health assessments, evaluations, counseling, and treatment plans and are paired with community resources through a Veterans Health Administration coordinator, who is working hand in hand with the program. One of the ultimate goals of this new program is to stop the revolving door for some veterans, including those suffering from post-traumatic stress disorder and those having trouble reintegrating into society. We at the OCBA are proud of this new court and the men and women who we hope to serve.

On this Veterans Day, there is much to commemorate and much to be thankful for. It is true – America remains strong and free. But, we must remember that freedom is not free. So let us never forget our veterans and their families and the high price they have paid protecting our liberties and our country. This month we have the privilege of honoring this very special group of Americans, whose service spans every decade of our country’s existence; we owe them a debt of gratitude. So **thank you, veterans** – and God Bless America!

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



Judge James F. Holderman

Q & A: Chief Judge James F. Holderman on Dealing with Difficult Judges – Part 2

(Continuation of interview with Chief Judge James F. Holderman, district judge of the U.S. District Court for the Northern District of Illinois, which appeared in the October 2013 issue of The Briefs.)

Q: What about “The Angry Judge?”

A: Any trial lawyer has confronted a judge who becomes angry or hostile. It is unfortunate. The source of the judge’s irritation may have nothing to do with the lawyers, the case, or even judicial business. It may be a personal problem the judge has allowed to affect the courtroom.

Often this situation can be cured with a time-out. The tip to counsel is to ask for a recess. With luck, during the recess the judge will cool-down. During that recess, trial counsel should make a self-assessment regarding the possible cause of the judge’s attitude to make sure it is not something counsel has done. If appropriate, change your conduct.

If the judge persists and the judge’s apparent anger or hostility becomes prejudicial to your client’s case, it may be necessary to make a record (of course, always outside the presence of the jury if you are in a jury trial). The tip is to do so as respectfully as possible. While maintaining an appropriate courtroom demeanor, seek the judge’s input by saying something like, “Your Honor, you appear to be angry. Is there anything I should be doing differently?” Some judges may not even realize their apparent anger until it is called to their attention. It is always difficult, but your client has no one to turn to but you in dealing with this type of difficult judge.

Q: What should a lawyer do about “The Impaired Judge?”

A: This happens very infrequently, but when it does, it is a very serious problem not only for the lawyers appearing before the judge, but for the whole judicial system. Justice suffers if a judge’s impairment affects that judge’s ability to properly address cases.

In Illinois, we have the Lawyers’ Assistance Program, which addresses impairment issues for judges as well as lawyers. Other states have similar programs. Referrals are anonymous if requested.

On the federal side, 28 U.S.C. § 351 addresses both judicial misconduct and disability. The chief judge of each regional circuit court of appeals oversees the administration of judicial misconduct or disability inquiries. My court’s website, www.ilnd.uscourts.gov, provides a link to assist

anyone who desires to lodge a complaint against a judge or initiate an inquiry based on a judge’s misconduct or disability.

The first step to assisting a disabled or impaired judge is typically an intervention by a team of trained individuals and friends of the judge. Lawyers who are before such a judge should bring it to the attention of the appropriate authorities so their clients are not adversely affected. Hopefully the judge can obtain the necessary assistance to overcome the impairment.

Q: What does a lawyer do when confronted with “The Biased Judge?”

A: When I was in private practice, I appeared before a federal judge in a southern state who insisted on calling me a “Yankee Lawyer” with disdain in his voice. After I respectfully asked the judge in open court to refrain from that label, and the judge declined, and even though my client desired my continued representation, I was confronted with the dilemma of filing a motion for recusal or withdrawing from the case. I withdrew.

The tip is that if a lawyer is the cause of the judge being difficult, as I was because the judge and case were in the south, and I was from Chicago, the client’s interests are and must be paramount. As professionals, it is our job to ensure to every extent ethically possible that our client’s interests are cared for and their rights, not ours, are upheld.

Q: Good advice. Turning now to your 28 years of experience on the federal district bench, do informal processes exist that enable the bar to bring conduct-related concerns to a judge’s attention? Are these standard procedures or are they a reflection of local practice and tradition?

A: The answer to both questions is “Yes.” Relatively often, in my capacity as chief judge of my district court, individuals send me letters or leave voicemail messages about the conduct of a judge on my court. Concerns stem mostly from individuals who do not properly understand court processes or are disgruntled with the outcome of a case in which the he or she was involved. I try to respond to the extent I can and give guidance regarding their options as to further action. These procedures are standard and reflect our local practice to assist everyone we can in better understanding proper judicial processes, including the filing of judicial misconduct complaints.

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OCBA Luncheon Thursday, November 21, 2013



Lt. Gen. (Ret.) Thomas L. Baptiste

Thomas L. Baptiste, Lieutenant General United States Air Force (Ret.) President/Executive Director National Center for Simulation Partnership III

Lt. Gen. (Ret.) Thomas L. Baptiste completed his 34-year military career as the Deputy Chairman, North Atlantic Treaty Organization (NATO) Military Committee, Brussels, Belgium. The NATO Military Committee is the highest military authority in NATO and provides direction and advice on military policy and strategy to the North Atlantic Council, guidance to the NATO strategic commanders, and support to the development of strategic concepts for the Alliance. In this role, Lt. Gen. (Ret.) Baptiste also served as the second most senior military advisor to the NATO Secretary General.

Lt. Gen. (Ret.) Baptiste graduated from California State University, Chico, California, in June 1973, and earned a graduate degree from Golden Gate University, San Francisco, California, in 1986. Following commissioning from the Officer Training School (OTS), he was initially trained as a navigator/weapons systems officer and assigned to the F-4 in 1974. After one overseas operational tour, he was competitively selected for Undergraduate Pilot Training (UPT) and returned to the F-4 as a pilot in 1978. In 1981, Lt. Gen. (Ret.) Baptiste was handpicked to become part of the initial cadre of instructor pilots to stand-up the F-16 training wing at MacDill AFB, Tampa, Florida. Several other F-16 assignments followed, including Commander, 72nd Fighter Training Squadron and Commander, 52nd Operations Group.

During two staff assignments in Washington, D.C., he served as the Director of Operations, Defense Nuclear Agency, and as the Assistant Deputy Director, International Negotiations, Directorate of Plans and Policy (J-5), the Joint Staff in the Pentagon. As a general officer, he served in a number of joint and combined assignments, including: the Deputy Commander, Canadian NORAD Region, Winnipeg, Manitoba; the Commander, Cheyenne Mountain Operations Center, Colorado Springs, Colorado; and the Director of Plans (J-5), HQ NORAD, Peterson AFB, Colorado. Additionally, during his final seven years on active duty, he served at three different levels within the NATO Alliance: first as the Assistant Chief of Staff for Operations, HQ AIRSOUTH, Naples, Italy; next as the Assistant Chief of Staff for Operations, Supreme Allied Powers Europe (SHAPE), Mons, Belgium; and finally as the Deputy Chairman, NATO Military Committee, HQ NATO, Brussels, Belgium.

A command pilot, Lt. Gen. (Ret.) Baptiste accumulated nearly 3,000 flight hours in a variety of fighter and trainer aircraft. He retired from active duty on June 1, 2007 and has been the president/executive director of the National Center for Simulation since January 18, 2010.

The Ballroom at Church Street

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

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Please RSVP by Friday, November 15, 2013

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

Q: *If a judge gains a reputation of being “difficult,” are there circumstances in which it would be appropriate for the judge’s peers to intervene either formally or informally?*

A: Yes. I have found informal interventions by a judge’s friend or friends who are judges to be effective when the judge himself or herself is not fully aware of how the judge’s conduct is being perceived, or if the judge is suffering from an impairment such as the abuse of alcohol that the judge has difficulty admitting or accepting as a problem. As I mentioned, a Lawyers’ Assistance Program provides informal and highly professional interventions, as well, if impairment is a concern.

Formal procedures dealing primarily with misconduct by a federal judge are statutory and found at 28 U.S.C. § 351, et seq.

Q: *How much of your time as chief judge is spent on matters related to judicial conduct issues and how are they brought to your attention?*

A: Fortunately, not much, I estimate less than 5%, of my administrative work as chief district judge is spent on judicial conduct. The time that I do spend is primarily when I am asked by my court’s judges on how best to address a situation they are confronting. I also vote as a member of the Seventh Circuit Judicial Council on appeals from decisions by the chief circuit judge on judicial misconduct complaints. Concerns about judicial conduct from members of the public are typically brought to my attention as a result of a letter or a phone message. What is usually sought by the public is guidance on how to proceed with a judicial complaint. My staff provides that guidance.

Q: *At what point do judicial conduct issues become matters requiring formal action? How are formal complaints initiated and how are they considered?*

A: In the federal judicial system, the judicial conduct of every circuit judge, district judge, bankruptcy judge, or magistrate judge is formally addressed by statutory procedure set out in 28 U.S.C. § 351, et seq. Under § 351(b), the chief circuit judge can himself or herself “identify a complaint,” which means initiate a complaint about a judge’s conduct based solely on information he or she learns informally, without a formal complaint being filed. Our current chief circuit judge has enlisted the members of the bar to assist him with identifying judicial misconduct. Formal complaints are initiated pursuant to 28 U.S.C. §351(a) by a written filing “with

the Clerk of the Court of Appeals for the Circuit.”

Q: *What is your impression of the general level of civility on the federal trial bench? Are there differences with regard to relationships with the practicing bar and relations with fellow judges?*

A: I believe the judges on my court maintain a high level of civility. I also feel I would be aware if any of my court’s judges fell below the expected level of civility, because I have many, many lawyers as friends who I believe would tell me.

Of course, I do not discuss internal court matters or pending cases with anyone outside my court. I realize, as do my fellow judges, that we each must keep a professional distance regarding court matters from our friends who are lawyers. This professional distance is what allows us judges to maintain our friendships and our ethical responsibilities as we do.

From *The Briefs* editors: Part 3 of the interview with Judge James F. Holderman will appear in the January 2014 issue of *The Briefs*.

Judge James F. Holderman is an active district judge of the U.S. District Court for the Northern District of Illinois who served as the chief judge of that court from July 1, 2006 to July 1, 2013. He served as president of the Richard Linn American Inn of Court from July 1, 2012 to July 1, 2013,

and has been a member of the Chicago American Inn of Court since its founding in 1988.

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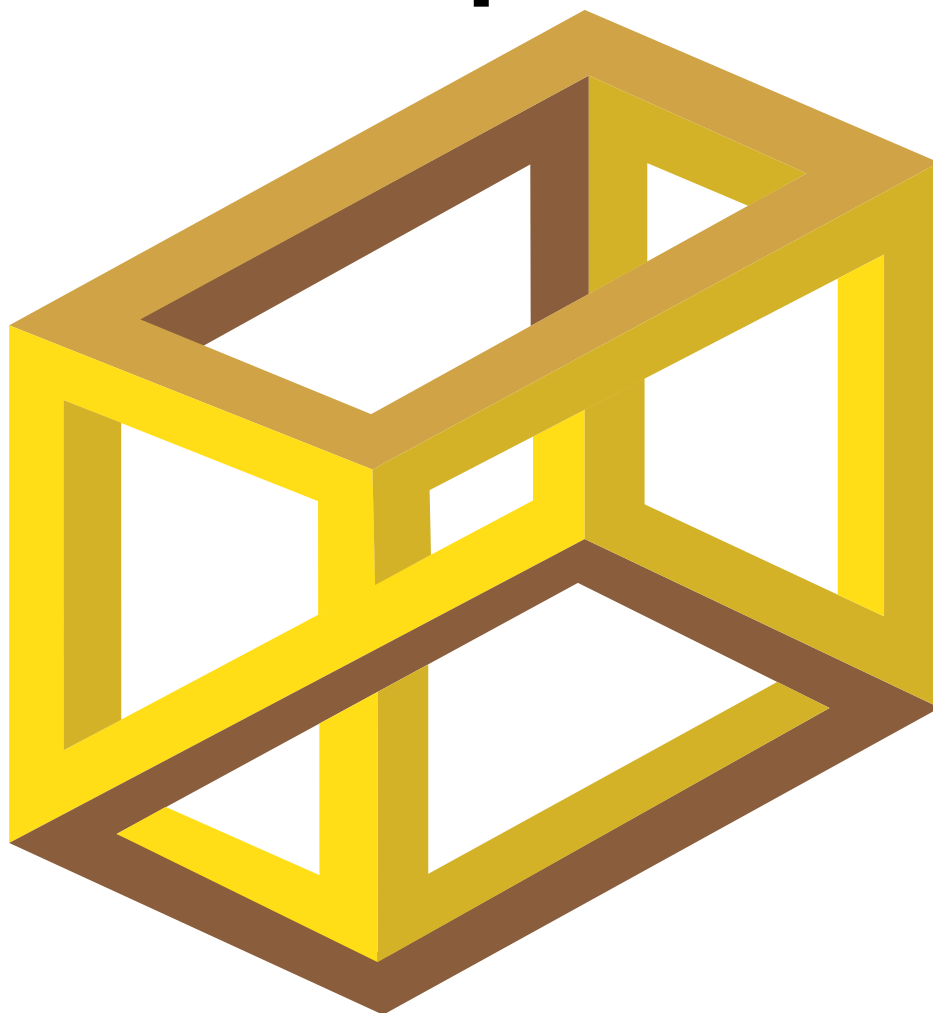


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Orlando Magic v. Boston Celtics Friday, November 8, 2013

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Terrace III
Terrace IV
Terrace V
Terrace VI
Chase Club I
Chase Club II
Promenade I
Promenade II
Promenade III
Promenade IV



We have seats in Terrace II (Section 116) for \$75/person and Terrace V (Section 102) for \$30/person.
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Thinking beyond the numbers.

The Ninth Judicial Circuit Establishes a Veterans' Court

The Ninth Judicial Circuit has recently established a Veterans' Court to address the special needs present in cases where the defendants are veterans. The first scheduled date for Veterans' Court was October 30, 2013. Subsequently, court will be held every three weeks or as needed on Wednesdays at 1:30 p.m. in Courtroom 4B. The Honorable Jerry L. Brewer, who is a veteran, has been assigned to oversee these cases.

Veterans returning from combat often suffer from post-traumatic stress disorder and may have difficulty reintegrating into society. Because of alienation and lack of support, many veterans fall into drug and alcohol abuse or develop mental health issues. Veterans' courts are designed to address these factors.

Veterans must be eligible for acceptance into the program, and the victim and State Attorney must consent to their participation. Upon qualifying, veterans are placed in a diversion program and are assigned a mentor who supervises the veteran while he or she completes the program. Upon successful completion of the program, which may take up to 18 months, the charges are *nolle prossed*.

Veterans' courts have been successful in curbing the recidivism rates of its participants through

the proper diagnosis and treatment of mental health issues and because of the supportive roles the mentors play in the process. Besides reducing recidivism rates, veterans' courts also provide economic benefits. Veterans can receive VA services to diagnose and treat drug abuse problems or mental health issues. Veterans' courts also divert many cases from the legal system, thus alleviating the burden created by large docket sizes. With smaller dockets, the courts can then allocate their resources more efficiently and focus their time on other cases, thereby saving valuable tax dollars. Additionally, successful completion of the program reduces costs associated with unnecessary incarceration.

The Ninth Judicial Circuit's Veterans' Court definitely promises to benefit all those involved in the process.

For questions on how to refer cases to Veterans' Court, please contact Becky Richard, Judge Brewer's legal assistant, at 407-254-7667. For other information, please contact Julio Semino, Court Support Manager, at ctadjs1@ocnjcc.org, or call 407-836-0403.

Editors' Note

The Briefs editors are soliciting articles on technology and the law for the March 2014 issue. Topics for consideration include, but are not limited to: policy; ethics; professionalism; regulation; impact of technology and globalization on the legal profession; digitally stored information; data protection; privacy; internet security; client communication; obligations related to metadata (information that is embedded in electronic documents); online marketing; outsourcing; use of social media related to investigative and background research; blogging and its risks; data breaches, including cloud security, computer security, and network security; use of open-source file storage (i.e., Dropbox); identity breaches; court technology; electronic discovery; and accessibility of documents.

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

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

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

Sincerely,

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Lieutenant Colonel Kevin Malchow Deployed Twice in the Florida National Guard

Why does a lawyer decide to add to the significant amount of time it takes to build a successful practice in a sizable Central Florida law firm by also serving as a military Judge Advocate General (JAG) officer? *Serving* is the key word.

"From an early age, it was clear to me that I wanted to serve my country. With time, I found that I really enjoyed teaching and leading other soldiers," said Kevin Malchow, Esq., a shareholder with Zimmerman, Kiser & Sutcliffe, P.A.

One of 17 Army National Guard JAGs in the state of Florida, Kevin made the decision to join the military while attending The Ohio State

University, where he joined the Army ROTC program while earning his bachelor of arts degree. After graduating from college, he took a year off to attend Basic Officer Leaders Course (BOLC) after being commissioned and before going on to earn his juris doctor at the Florida State University College of Law. The action hasn't stopped since.

In 2003, Kevin temporarily paused from his successful workers' compensation defense law practice to serve his country with the 32nd Army Air and Missile Defense Command for six months while deployed during the opening stages of Operation Iraqi Freedom in the Middle East. Kevin again deployed to the Middle East in 2010 and served for a year with the 53rd Infantry Brigade Combat Team in support of the final phase of Operation Iraqi Freedom and the beginning of Operation New Dawn.

"It was interesting to be there in the beginning and at the end of Operation Iraqi Freedom," Kevin said. During the invasion, he explained, things were more dangerous and unpredictable. Although, he added, that bringing operations in Iraq to an end also posed unique challenges.

"Practicing law in a combat zone is far different and more challenging than in other circumstances. One really serves as a general practitioner, gaining experience in a multitude of areas. I worked as the commander's primary legal advisor on issues of military justice, administrative and

contract law, international and operational law, and counseled on the rules for the use of force, among many other areas," he commented.

Working at both the trial and appellate levels on all aspects of Florida workers' compensation law throughout the state, Kevin's experiences as a judge advocate have definitely enhanced his abilities as a litigator and trial attorney. The responsibilities and exposure of a JAG officer are significant from the beginning. The duty, Kevin explained, is a true advantage because of the vast experience gained, while the challenge is in finding time to fit it all in, with both a busy professional and family life.

"The Army has the biggest law firm in the country, but I am also fortunate to work in a strong civilian law firm. While I was deployed, my partners at ZKS and my clients were so supportive. I was lucky to be able to spread my files among several of the firm's attorneys to allow for superior client service both times."

Prior to his first deployment, Kevin served in the United States Army Reserve from 1988-1989 and has been in the Florida Army National Guard since 1989, with a deployment to Germany during Operation Desert Storm. He completed the process of becoming a United States Army Judge Advocate General Officer in 2000.

Kevin was recently selected for promotion to full colonel and will be promoted when a slot opens. He currently serves as a lieutenant colonel as-

continued page 13





Karlyn R. Hylton, Esq.

Sophie's Choice: Career v. Family – A Military Spouse's Dilemma

Military families are proud of their service to our country, yet non-military attorney spouses have a difficult and unbearable task of having to choose between family and career. Military families are characterized by geographic insecurity. These families typically move every two to three years, including tours overseas. These moves are based on the needs of the U.S. government and are mandatory for the service member. Spouses of military personnel who are engaged in licensed, legal professions are often left without job opportunities because of frequent relocation. Although the spouse and children are not required to move with the service member and can decline to relocate, this may cause significant hardships on families already often separated by deployments, including maintaining dual households and absentee parenting issues.

In addition to the normal difficulty that comes with frequent relocation, relocation can be especially costly and frustrating for professional military spouses because they lack the stability necessary for job growth. The problem is further magnified for military spouses who are practicing attorneys, since under the current licensing schemes, attorneys are required to be licensed in each state in which they practice, except in the limited cases where reciprocity may apply. It can take up to a year or more to go through the various steps of licensure, including the application, character and fitness review, bar examination, and processing of the application. In addition to time, licensing can ultimately cost an average of \$4,000 to \$5,000 each time for application fees, preparation materials, and administrative fees. For the military spouse who is plagued by frequent relocation, gaps in employment – which must be justified on bar applications – may raise red flags and cause delays in admission. In many cases, service members would have completed their assignment and would be scheduled for another relocation by the time a spouse is accepted to a state bar. As a result of the significant cost, lengthy processing times, and emotional strain, a vast majority of military spouses forego pursuit of their legal careers to accommodate the needs of their families.

In addition, these individuals also lose the network and foundation necessary for building a successful legal career because moves are relatively immediate and locations are often unknown until the move is imminent. Often, military spouses

must decide to take hefty reductions in salary to accompany their service member spouses as they fulfill their military commitment. Even more poignant is the fact that the legal profession's inability to properly address this issue nationwide has resulted in the absence of some of the best legal talent from our ranks.

The problem is multiplied ten-fold and creates not only a moral dilemma but a financial quandary for those attorneys who borrowed tens of thousands of dollars in student loans to pay for their legal education with the anticipation of illustrious legal careers. These attorneys are faced with the proverbial Sophie's Choice: *Do I keep my family together and give up my career or do I pursue my career, pay off my loans, and sacrifice the unity of my family?* Military legal spouses should not have to face such an unbearable decision. Likewise, the service member should not be forced to choose between remaining in the military and moving, or retiring from the military to save his or her spouse's career.

Military legal spouses are working hard to raise awareness of this growing issue. The Military Spouse JD Network (MSJDN) was created with the mission of providing education about the challenges facing military families, encouraging the hiring of military spouses, and providing a support network in various geographical areas among the JD community. Fewer than one-third of MSJDN members have full-time legal employment. Half of MSJDN members are unemployed and actively looking for work, underemployed in non-attorney positions as paralegals or secretaries, or can only find part-time work.

The MSJDN is made up of spouses and future spouses from all branches of the United States military and is open to spouses of active duty, retired, and reserve service members. The MSJDN includes other attorneys and community members who support its mission of promoting the practice of law as a viable choice for military spouses and eliminating those barriers which make that difficult.

MSJDN provides a model rule for bar licensing authorities interested in supporting military families through admission without examination of military spouse attorneys. MSJDN supports such a rule change in each jurisdiction. There are currently four states that have passed these rule ac-

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David P. Hathaway, Esq.

15 Tips for a Successful Mediation – Part 3

The following is a continuation of the article, *15 Tips for a Successful Mediation – Part 2*, which appeared in the October 2013 issue of *The Briefs*.

Tip #11: Beware the Annoying Negotiator.

Some lawyers employ tactics that make mediation maddening. There are a number of examples: the good cop/bad cop (one lawyer walks out in a huff, the other lawyer stays and “reveals” what the client needs, which is actually the target rather than the reserve); the costume jewelry salesman (always adding things of zero value to get you to trade something better); the poor soul (can’t afford anything); the auctioneer (he can get it cheaper elsewhere, or he has a buyer who will pay more); the pseudo-cooperator (explaining how it’s a win-win and getting more info from you); the higher authority (I have to check with my wife, and then “she” reduces the offer); the nibbler (sells you the eyeglass frame, plus the prescription, plus the left lens, plus the right lens, plus the case, etc.); the *fait accompli* (this is our standard deal for every case and there is nothing we can do to change it); the guy with funny money (you can make this tax deductible, or pay in the next budget year, or allocate money toward payroll, or split it five ways, etc.); the red herring dragger (always focuses on a bogus argument); the relationship hostage-taker (“If you valued our friendship you would do this for me and in return I will help you earn business.”); the tough guy (“I’ve never lost a case like this in 30 years.”); the snail (tries to make the mediation go past midnight); the blowhard (just tells irrelevant stories to distract you all day); the time-bomb (suddenly gets irate at the negotiation process and begins to walk out); the critic (nothing is a good idea and no compromise will ever work); the poor host (turns off the air conditioning and won’t order lunch); the know-it-all (he has a perfect spreadsheet and there is no way to refute his numbers); the one-track mind (refuses to consider other issues until the parties will agree to one thing, like nailing down the date of an employee’s termination).

So, how do you deal with these people? Just like with bullying in school, people only mess with you if it works. Ignore them. If that does not work, get away from negotiating, and talk directly about their behavior and how the process needs to change. Always have a suggestion about how to proceed in a more constructive way. If they still don’t change, you may have to confront them and

retaliate (i.e., “If you continue to do this, then we will make our next offer good for only 10 minutes.”). But remember, your definition of difficult behavior may say more about you than it does about them. Try not to wish the other person was different. Instead, just do your job and stay the course.

Tip #12: Making Progress at the End of the Day.

There are a few tricks to reaching a settlement at the end of the day. One is to dump “the rest of the money” and impart a sense of urgency. It is a tactic geared to convincing the other side it is the best you can do. Another option is to “split the baby” and meet in the middle, which might work if you are very close, but never do it too early, because as soon as you make the suggestion, you just told the other side you would go as far as that middle number.

The same is true for a “would ya, could ya,” meaning if you go to this number, I will go to that number. These are sometimes called “brackets.” Similarly, if you offer a lump sum initial payment at any time, there is no way to pull it back. For settlements involving a number of payments, always negotiate the lump sum first and then get to the monthly installments. If the other side stops, do not “bid against yourself” by moving twice without any movement by the other side. However, simply opening the negotiations with a number is almost never “bidding against yourself” because chances are it will not be even in the ballpark of what the other side would accept.

Plaintiffs usually should expect to go first with an opening demand. If the other side plays hard-ball and makes minuscule concessions, you should punish bad behavior by doing whatever it does, and relaying a specific message through the mediator that “our last move is a response to what came from you.” Likewise, you should reward good behavior.

Don’t get into percentages, because they mean nothing. You could come down 5% (\$100,000 to \$95,000) and they could go up 100% (\$5,000 to \$10,000) and both sides only moved \$5,000. You should have an end game plan, meaning a way to give the other side a small victory to entice them to close the deal. It is very important psychologically. For example, you might offer to pay the entire mediator’s fee.

Typically it is not a good idea to have the par-

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VeteransMalchow

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signed as the Command Judge Advocate (CJA) for the Florida National Guard's Camp Blanding Joint Training Center.



According to Kevin, "Working as a JAG allows you to practice a more pure form of law, like what most of us aspired to in law school. It also gives you a front row seat to history and some interesting travel opportunities." But Kevin said the opportunity to serve his country is the true reason behind his plan to maintain the balance among the family life so important to him, his law practice, and his service to the nation until a projected 2018 retirement from the military.

Submitted by Zimmerman, Kiser & Sutcliffe, P.A.

VeteransSophie's Choice

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commodations: Arizona, Idaho, North Carolina, and Texas. The goal is to have all 50 states enact these new procedures. This mission is currently supported by the ABA, Conference of Chief Justices, U.S. Chamber of Commerce, the National Military Family Association, and many other nonprofits and associations that support military families.

In February 2012, with the support of the ABA Commission on Women in the

Profession, the ABA House of Delegates adopted a resolution supporting changes in state licensing rules for military spouses with law degrees. In July 2012, the Conference of Chief Justices voted to support a resolution for admission of military spouse attorneys without examination. For those who are concerned that these rule changes will make it easier for any attorney to practice in a different state, it is important to note that most, if not all rule changes, support these accommodations for spouses who

are in a location because of a service member's military orders. Those written orders can be provided and verified prior to the accommodations being made.

If you are interested in becoming an advocate for this cause, encourage your local and state bar associations to support the movement and encourage

leaders to adopt rule changes or accommodations. You can find more information at www.militaryspousejdnetwork.org

Karlyn R. Hylton, Esq., a partner at Hylton Adamson Watson Attorneys at Law, is a military spouse to be. She may be reached at khylton@hawmlaw.com, or 407-802-3223.

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Orange County Bar Association Election Notice

Nominations are now being accepted for officer and/or board positions for the

Orange County Bar Association
(President-Elect, Treasurer, Secretary, 3 Executive Council Seats)

**Legal Aid Society of the
Orange County Bar Association, Inc.**
(2 Board of Trustee Seats)

**Young Lawyers Section of the
Orange County Bar Association**
(5 At-Large Board Seats)

Nominating petitions will be available on the OCBA website homepage.

The nomination deadline is January 31, 2014.

Additional details will be published shortly.

If you have any questions, please contact Brant Bittner, Executive Director, at 407-422-4551 or branth@ocbanet.org.

Lost and Destroyed Wills

Erika Kane, Esq.

Florida Statutes §733.207 sets forth a legal presumption that when an original will is known to have existed, but the will cannot be located and its loss cannot be explained, it is assumed that the testator destroyed the will with the intent to revoke it.¹ This presumption applies to codicils as well. The presumption only arises where the will has been in the possession and under the control of the decedent.² It does not apply if the will was kept by the testator's attorney, and the attorney cannot locate the document.³

Presumption of Revocation

The presumption of revocation is rebuttable, but it is more than a "mere permissible inference of revocation."⁴ Rather, the presumption is a finding that the missing will, has been revoked unless the proponent of the lost will offers enough evidence showing otherwise.⁵ There must be other evidence, besides the fact that the will is lost, sufficient to overcome the presumption.⁶ The presumption of revocation remains "in the absence of other evidence."⁷

Burden of Production

The presumption that the decedent revoked the will puts the burden of production or persuasion on the proponent of the lost will who then must attempt to overcome the presumption by introducing "competent, substantial evidence" to justify a finding that the will had not been revoked.⁸ This cannot be done by stipulation during an *ex parte* hearing.

Competent, Substantial Evidence

The term "competent, substantial evidence" refers to the admissibility of the evidence introduced and the existence of a quantity of evidence that proves each essential element of the offense charged.⁹ The term does not involve "the quality, character, convincing power, probative value or weight of the evidence."¹⁰ The evidence must be "real, material, pertinent, and relevant."¹¹ The evidence can be circumstantial.¹² Direct evidence is not required. Furthermore, the evidence does not need to be "overwhelming," only competent and substantial.¹³ However, the proponents of the will must present more "than the fabled twins of speculation and conjecture."¹⁴

Florida courts typically find competent, substantial evidence where there is a showing of one of the following: 1.) evidence that a person with an adverse interest, and the opportunity, may have destroyed the will;¹⁵ 2.) evidence that the will was accidentally destroyed;¹⁶ 3.) evidence that the

original will had been seen among the decedent's papers after her death;¹⁷ and 4.) evidence that the decedent was insane during the period in which he or she might have revoked the will and, therefore, did not have testamentary capacity to effectively revoke the will.^{18 19}

Access and Opportunity

The case *Loneragan v. Estate of Budahazi* demonstrates that evidence of access, opportunity, and pecuniary interest is considered to be competent and substantial. *Loneragan* involves a dispute between the decedent's daughter and husband. After the decedent's death, her husband petitioned for intestate administration of estate. In response, the decedent's daughter filed a counter-petition requesting that a copy of the decedent's last will, which named the daughter as sole beneficiary, be admitted to probate.²⁰ The will proposed by the daughter was signed during a period of marital discord. Subsequent to the execution of the will, the decedent reunited with her husband. Her attorney later mailed the will to their marital home, and the executed will was never seen again.²¹

The *Loneragan* court found that there was competent, sufficient evidence to overcome the presumption of revocation because the husband had access to the marital residence during his wife's illness and opportunity to destroy the will. In addition, the husband had a pecuniary interest in seeing the will destroyed. The extreme marital discord, coupled with the fact that the wife never returned funds to their jointly held bank account after they reconciled, supported the court's holding that the daughter overcame the presumption that the decedent deliberately destroyed her will before her death.²²

Pierre v. Estate of Pierre is another case in which the court relied on access to the will, an opportunity to destroy it, and a pecuniary interest in doing so.²³ The *Pierre* court relied on evidence that the respondent went to the decedent's house after her death and removed two folders from the closet where the decedent kept all her papers, only one of which was returned.²⁴ Also, the decedent's attorney testified that when the decedent sought to revoke an earlier will she brought the original to the attorney's office to be destroyed.²⁵ Furthermore, the personal representative of the estate testified that the decedent sent him a copy of the will, but never sent him anything indicating that she intended to revoke it.²⁶ The court found this evidence to be sufficient to revoke the presumption of revocation.

It is important to note that “mere opportunity to destroy the will is insufficient to rebut the presumption of revocation; it is only one factor to be considered.”²⁷ In *Daul v. Goff*, the court held that it is not enough to presume revocation where the daughter of the decedent, who was not included in the will, had been alone in the decedent’s home; there should be evidence of “suspect behavior.”²⁸ Although the daughter helped the decedent inventory items in the safe deposit box, there was no evidence that the daughter had access when the decedent was not present.²⁹ The court did not consider this evidence to competent and substantial.

Balboni v. LaRocque further addresses the subject of access and opportunity. The *Balboni* court held that it is not material that people with no interest in the will had access to the will and the opportunity to destroy it, especially when there is no other evidence proving this occurred.³⁰ Prior to the decedent’s death in *Balboni*, the amount of traffic in his home increased substantially as did the amount of paperwork because of his wife’s illness. There were many third parties entering the decedent’s home, such as nurses and visitors, who had no interest in the will. The court rejected the petitioners’ argument that third parties accidentally lost or discarded the will, stating that there was “no evidence whatever that they did.”³¹ The mere presence of nurses and visitors in the decedent’s home is insufficient to overcome the presumption that the decedent revoked the will.

Decedent’s Statements and Sentiments

One factor that has no influence in the court’s determination of whether competent, substantial evidence exists is the decedent’s statements and sentiments about people involved in the will contest – whether they be beneficiaries or people specifically excluded from the will. This is demonstrated in *In re Baird’s Estate* where the court held that it was not pertinent that the decedent “expressed continued affec-

tion” for the beneficiary of the missing will.³² Evidence of a “decedent’s fondness of someone or... lack thereof,” is not a factor to rely on when considering the question of revocation.³³ Besides the fact that the decedent’s will was missing – the only other evidence being the decedent’s statements about the beneficiary of the missing will – the court ruled that this was not enough evidence to overcome the presumption of revocation of the will.³⁴

Conclusion

As one can deduce, introducing a lost or destroyed will into a probate court is not an easy process. The proponent of the will has a significant burden to surmount as it is a necessity to introduce competent, substantial evidence to overcome the rebuttable presumption that the decedent revoked his or her will. This evidence must prove more than a person’s access and opportunity to the suspected location where the will was under the decedent’s control.

When the presumption of revocation is overcome, the proponent of the will has even more burdens to surmount. The next step to admitting a lost or destroyed will into the probate court is to establish the contents of the original will. This can only be completed by providing testimony of two disinterested witnesses or, if a correct copy is provided, the content must be proved by one disinterested witness.

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

¹ *In re Estate of Parker*, 382 So. 2d 652 (Fla. 1980).

² *Schultz v. Estate of Roach*, 549 So. 2d 1156 (Fla. 3d DCA 1989).

³ *In re Yost’s Estate*, 117 So. 2d 753 (Fla. 3d DCA 1960).

⁴ *Balboni v. LaRocque*, 991 So. 2d 993, 995 (Fla. 4th DCA 2008).

⁵ *Id.*

⁶ *In re Estate of Washington*, 56 So. 2d 545, 547 (Fla. 1952).

⁷ *Id.*

⁸ *Loneragan v. Estate of Budahazi*, 669 So. 2d 1062, 1064 (Fla. 5th DCA 1996).

⁹ *Id.* See also *Dunn v. State*, 454 So. 2d 641 (Fla. 5th DCA 1984).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Balboni*, 991 So. 2d at 996.

¹⁵ See *In re Estate of Washington*, 56 So. 2d at 547; *Loneragan*, 669 So. 2d 1062; *Upson v. Estate of Carville*, 369 So. 2d 113 (Fla. 1st DCA 1979).

¹⁶ See *In re Estate of Carlton*, 276 So. 2d 832, 833 (Fla. 1973). The presumption was rebutted where decedent repeatedly spoke of his will and his intention to leave his estate to the petitioner, although the decedent’s safe was found waterlogged and the papers inside turned to “mush.”

¹⁷ See *Silvers v. Estate of Silvers*, 274 So. 2d 20 (Fla. 3d DCA 1973).

¹⁸ See *In re Estate of Niernsee*, 2 So. 2d 737 (1941).

¹⁹ *Balboni*, 991 So. 2d at 995.

²⁰ *Loneragan*, 669 So. 2d at 1063.

²¹ *Id.*

²² *Id.* at 1064.

²³ *Pierre v. Estate of Pierre*, 928 So. 2d 1252 (Fla. 3d DCA 2006).

²⁴ *Id.* at 1253.

²⁵ *Id.* at 1254.

²⁶ *Id.*

²⁷ *Daul v. Goff*, 754 So. 2d 847, 848 (Fla. 2d DCA 2000).

²⁸ *Id.* at 849.

²⁹ *Id.*

³⁰ *Balboni*, 991 So. 2d at 996.

³¹ *Id.*

³² *In re Baird’s Estate*, 343 So. 2d 41, 43 (Fla. 4th DCA 1977).

³³ *Balboni*, 991 So. 2d at 996.

³⁴ *In re Baird’s Estate*, 343 So. 2d at 43-44.

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The Federal Bar Association Orlando Chapter



Melody B. Lynch, Esq.

2013 State of the District Luncheon

The 2013 State of the District Luncheon was held on October 4, 2013, in the atrium of the George C. Young United States Courthouse and Federal Building. This event featured keynote speakers, the Honorable Charles R. Wilson, of the 11th Circuit Court of Appeals and the Honorable Chief Judge Anne C. Conway, of the Middle District of Florida. Judge Wilson eloquently described the challenges of operating a 12-member Court of Appeals with only nine active judges. He explained that unfilled judicial vacancies and the effects of sequestration present serious challenges to the administration of justice. Despite these budgetary challenges, the 11th Circuit remains one of the most efficient circuits in the country. The 11th Circuit ranks third in average time from the time of filing the Notice of Appeal to resolution (average 7.7 months). Judge Wilson thanked the Federal Bar Association

(FBA) for its service to the court and the legal community.

Chief Judge Conway painted a grim picture of the state of the Middle District because of an extremely busy court, two judicial vacancies, and severe budget cuts. Each active judge in the Middle District has an average of 676 cases on his or her docket – 129 cases higher than the national average. She explained that the lack of funding for the federal judiciary is creating a crisis in the federal court system which impacts the district courts most severely. One potential consequence

of these budget cuts could be the suspension of civil jury trials to ensure that all criminal trials receive the constitutional priority required under the Speedy Trial Act. While the federal judiciary is the third branch of the government, it receives less than two-tenths of 1% of the federal budget. Chief Judge Conway urged a call to action. She suggested that all attorneys contact their U.S. Senators and congressional representatives to emphasize the concern regarding the lack of funding for the federal judiciary and its impact on the administration of justice.

Immediate past president of the FBA, Jim Skuthan, Esq., was honored for his years of service to the Orlando Chapter. Outgoing FBA president Mike Vitale, Esq., provided a 2013 FBA Orlando retrospective, highlighting the recent recognition of the Orlando Chapter as experiencing more than 10% growth in the past year and being one of only 15 FBA chapters nationwide to receive the FBA's Presidential Achievement Award. President-elect Fritz Wermuth, Esq., introduced and empaneled the 2014 FBA officers.

The Orlando Chapter of the FBA is a voluntary bar association developed to provide a forum for federal practitioners, the federal judiciary, and the public they serve. Membership in the Orlando Chapter provides unparalleled access to programs, speakers, and events geared toward criminal and civil practitioners who practice in federal court, as well as a wealth of opportunities to interact with members of the federal judiciary and network with colleagues in the federal bar.

If you are interested in joining the Orlando Chapter of the FBA or learning more about its upcoming events, please contact Kelly Garcia, Esq., at kelly.garcia@akerman.com.

Melody B. Lynch, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been a member of the OCBA since 2007.



Hon. Anne C. Conway



Frederick S. Wermuth, Esq.

Michael S. Vitale, Esq.



Hon. Charles R. Wilson

Special Feature: Mediation – Part 3 *continued from page 12*

ties get together to talk “person to person” to close a deal, because the weaker one may cave in without his lawyer present, or their tempers could destroy all the progress of the mediation thus far. If the other side offers non-monetary terms, do not try to negotiate the monetary amount at the same time, because it is the non-monetary terms that will help you value the money component, and some of them can be quite valuable if you fully understand what is being offered.

Be careful of clients who try to negotiate your fees just to make the settlement work, or clients who ask your opinion about whether to accept a final offer and then accuse you of a bias, particularly in a contingency fee case. If it looks like the parties are just too far apart, rather than declaring an impasse, the parties might agree to settle part of the case. In any event, you should have a game plan so that you can make progress at the end of the day.

In the January 2014 issue of *The Briefs* we will publish the conclusion: *15 Tips for a Successful Mediation – Part 4.*

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

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Camila A. Pachon Silva, Esq.

Representing Special Immigrant Juveniles

The Legal Aid Society relies on *pro bono* attorneys to represent immigrant children in petitioning the United States Citizenship and Immigration Services (USCIS) for Special Immigrant Juvenile Status (SIJS). Congress created SIJS to enable undocumented children who have been abused, neglected, or abandoned to obtain legal, permanent residence in the United States.¹ Representing children usually raises practical and ethical considerations that do not exist in the legal representation of an adult. The legal representation of a Special Immigrant Juvenile (SIJ) has extra layers of complexity because of the trauma these children have experienced. In addition to abuse, neglect, or abandonment and cultural, language, and developmental barriers, some SIJs endure the hardships of dire poverty and/or fleeing their home country to escape civil war. As a result, representing a SIJ may be one of the most challenging but rewarding experiences you may have as a *pro bono* attorney.

One of the primary considerations in successfully representing a SIJ is understanding your role as his or her attorney. As the attorney for the child, you owe the same duties of loyalty, confidentiality, and zealous representation as you would to any adult client. Maintaining confidentiality may be particularly challenging in SIJS matters because of the number of individuals involved in these proceedings. In the course of representation, you may have regular contact with myriad players, including case managers from the Department of Children and Families, guardians ad litem, attorneys ad litem, attorneys for the parents, foster parents, attorneys for the Department of Homeland Security, immigration judges, and USCIS officers, in addition to the child's relatives. It is crucial to always keep in mind that your relationship to the child is that of lawyer-client with privileged communications.

A clear understanding of your role will make it easier to explain that role to the child. Before you begin the legal representation, the child has already been in contact with many, if not all, of the players mentioned above. This process may be extremely confusing and stressful to the child. For instance, the child may not be able to distinguish between you, his attorney, and the immigration officers. This will result in natural distrust towards you. Therefore, it will be essential for you to develop trust and rapport with the child. It may take time and patience for the child to understand that you are on his side and will be representing his interests. Besides explaining the different roles, you

also have an obligation to clearly explain, in terms the child can understand, the SIJS process. Most likely the child has heard the term before, but it will be your responsibility to explain the benefits – as well as the risks – of applying for SIJS in a manner the child can understand.

Cultural competency may assist you in establishing rapport with the child. It is important that you do not make any assumptions about the child's background and instead ask plenty of questions. Getting to know the child's background, religion, family structure, and likes and dislikes will strengthen the relationship with the child and help you put together a compelling case. Researching the child's country of origin may also help you become more culturally competent.² However, in getting to know the child better, it is also important that you avoid re-traumatization. Discussion of past trauma, although necessary, should be kept to a minimum. Moreover, if an interview is held by USCIS, the officers should not question the child about the details of the abuse or neglect as these issues were already dealt with by the juvenile court.³

Your successful representation of a special immigrant juvenile will make a real difference in the child's life. Because of your service as a *pro bono* attorney, the child may be able to attend college, obtain a driver's license, and eventually work legally and support himself. Above all, your service will assure that this child will be able to remain safely in the United States and have a better future.

For more information, please contact immigration attorney Camila Pachon Silva, Esq., at cpachon@legalaidocba.org.

Camila A. Pachon Silva, Esq., Legal Aid Society of the Orange County Bar Association, Inc., has been a member of the OCBA since 2010.

¹INA §101(a)(27)(J)

²*The Country Reports on Human Rights Practices* prepared by the U.S. Department of State and available at <http://www.state.gov/j/drl/rls/hrrpt/> includes specific information on discrimination, societal abuses, and trafficking of children for each country and constitutes a great starting point.

³USCIS Memorandum, Donald Neufeld and Pearl Chang, "Trafficking Victims Protection Reauthorization Act of 2008: Special Immigrant Juvenile Status Provisions" HQQPS 70, 8.5, p. 4 (March 24, 2009).



Bethanie A. Barber, Esq.



Donna A. Haynes



Taj Banks

Foster Care Redesign Brings Opportunities for Success

Most of us have fond memories of our 18th birthday. The day was likely filled with well-wishes from loving friends and family, as well as tokens of affection. Unfortunately, 18th birthdays take on a distinctly somber tone for Florida's youth in foster care. Under current law, most youth living in licensed care on their 18th birthday are forced to move out of their foster home or group home and immediately pay for their own housing. Many have no credit and no work history. Like their non-foster youth counterparts, the majority of foster youth have not graduated from high school by their 18th birthday. If a teen moves to a new residence in a different school zone, he or she must change schools, leave classmates, and begin anew... all on his or her birthday. This rapid change and uncertainty has not served most former foster youth well.

In response, the Florida Legislature passed the Nancy C. Detert Common Sense and Compassion Independent Living Act. This law, which goes into effect January 1, 2014, was created in large part to improve educational and professional outcomes for current and former foster youth. The law provides youth living in licensed foster care on their 18th birthday the option of remaining in foster care until age 21, so long as they are attending school on a full-time basis, working, or engaging in career preparation. Youth who meet medical "disability" criteria may remain in care until age 22, and are not required to meet full-time educational or career preparation requirements.

Although youth may elect to leave foster care upon turning 18, those who choose to remain in care will have the benefit of twice-yearly court hearings, monthly contact with case managers, and familiar living surroundings. One crucial component of the legislation that former foster youth have celebrated is the ability to communicate with their guardians ad litem (GAL) beyond age 18. When asked about the significance of this additional access, former foster youth Taj Banks responded, "It means everything. It means I'm not alone."

In addition to the foster care age extension, the new law also increases the role of foster parents, giving them the responsibility of providing inde-

pendent living life-skills training to youth in their care. The vast majority of foster parents welcome such a change since, overwhelmingly, they are the individuals who spend more time with foster youth than any other adult.

Locally, few individuals are impacted by the new independent living legislation more than GAL, Kim Hosley, Esq. Kim, a GAL since 2007, not only gave her time to serve as GAL for a sibling group of four, but she also opened her home to two teen sisters in the sibling group. Kim is in the process of adopting one of the sisters while also obtaining her foster parent license to care for the other.

When asked what the imminent legislation means to her, Kim responded,

I applaud the move to find another way to ensure that these older children are taught the life skills they need by placing that responsibility with the caregiver of the child as opposed to a case manager or independent living specialist. Personally, I have had "Sheila" take part in almost everything I do to run a household and live independently – from simple things like making a grocery list, to going to the bank with me to learn how to endorse a check and use an ATM, to doing a job search with her and teaching her skills to be successful at the part-time job we found for her, as well as teaching her how to manage the money that she earns from that job.

Although Kim is hopeful that the new legislation will promote additional opportunities for foster youth to engage in practical, experiential learning activities, she is anxious about its application. "While we have so many amazing foster caregivers, there are still some who will not be able or willing to take on the responsibility of teaching a young adult independent living skills," Kim commented. With this new opportunity for foster youth growth comes a new challenge for GALs: making the law meaningful for each child. GALs can ensure appropriate compliance with the new independent living laws by maintaining regular contact with each youth, inquiring into the youth's daily activities, and informing the court of their findings.

Thankfully, as evidenced by Kim's commitment and that of countless other Orange County

continued page 30



Stephanie K. Stewart, Esq.

Reflections on a Life in Foster Care

I started as the GAL Program's Permanency Attorney in 2007 and focused on advocacy strategies that could help guardians ad litem achieve permanency for dependent children quickly and safely. In the past six years, one particularly important accomplishment occurred through a grant from the Dr. P. Phillips Foundation.

In cases when an adoptive family was identified prior to termination of the parents' rights, it was discovered that it was taking up to nine months from the termination of parental rights to finalize an adoption. By identifying the factors that were causing the delay and working to ameliorate their effect on the forward progress of the case, we were able to reduce that gap from nine months to four months. I currently serve as the courtroom attorney in the Magistrate's hearing room, but when I'm not assisting GALs in the courtroom, I serve as the GAL for thirteen children. I've been fortunate to represent one youth, Destiny, since 2008. Destiny and her brothers entered the child welfare system in 2005 when their mother was charged with attempted manslaughter. Destiny's mother was sentenced to serve a term in prison, and Destiny and her brothers have been in foster care since that time.

Destiny recently turned 18 and "aged-out" of foster care. After graduating from high school in May 2013, she enrolled at a local community college and is now studying graphic arts. I asked Destiny whether she would share her thoughts about her experience in foster care.

Q: *What was it like growing up in foster care?*

A: It was very different from what I expected. Like most people, I had no idea about foster care. I only knew what I saw on television. Obviously, I didn't know it would happen to me.

This isn't the typical childhood like others have experienced. It was awkward at school, especially when I started to get to know people. I won't say that I lost friends, but people would think I was different or weird. They didn't even know what foster care was. They would think that I just didn't have my parents because this isn't a traditional thing. In high school, they started to understand more and it was perfectly fine. There were times when people would find out I was in foster care and question if I was an orphan, so I had to explain the situation. It was hard and different, but I've learned from it.

Q: *Obviously, the situation of being in foster care was*

not your fault. Have you come to terms with your unusual childhood?

A: I feel that I am a better person. I feel that if I wasn't in foster care, my life would not have gone in the same direction, and I would not have had as many opportunities as I do now. I'm pretty sure I would not have gone to college.

Q: *What have you learned through this experience?*

A: I've learned to appreciate people who work with foster children as well as foster children themselves. I appreciate the fact that people working with foster children have a different perspective on things. They know what a foster kid is going through and understand all the different factors that make up this kid.

I appreciate what a foster child is going through, having been one. No one else understands that feeling like another foster child. I feel that if I had not been in foster care I would think the same thing that everyone else is thinking and react the same way.

I have learned that I can't control everything. I have had to adapt to this life that is sometimes out of my control. I wasn't very good at that when I was moving around a lot with my mom, but now I've had to learn how to adapt because I was in foster care. It has taught me that everything happens for a reason. You can either go the wrong way, or you can adapt and figure out something good.

Q: *How has having a GAL impacted your experience?*

A: Having a GAL has given me a reason to keep going. My GAL has helped me through a lot and has agreed with me on a lot of things; she didn't agree when I wanted to do illogical things. My GAL stands for what I stand for. She takes part in what my life is and what I want it to be. She has helped me through hardships and helped me figure out what I'm going to do with my life.

Q: *What are your goals as you turn 18?*

A: I'm going to college. I'm living a whole new life. I'm going to be successful and stay true to myself.

Q: *Without a GAL, do you think your outcome would have been different?*

A: Most definitely. I would not have had the same amount of say in how my future was developed. Things may have been worse because there wouldn't constantly be someone there to stand up for what I believe in, especially in court. Case workers are cool, but it's not the same.

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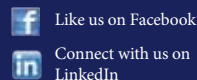
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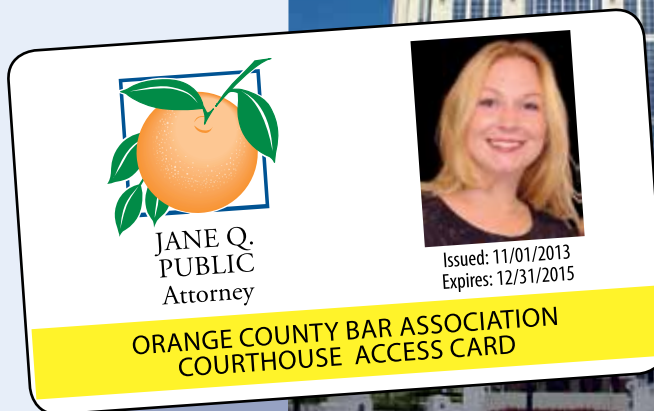
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OCBA Luncheon

September 24, 2013

The Ballroom at Church Street
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Photos: Flo Boehm



GOAABA's booth at the Barry Law School Voluntary Bar Association Fair held at Barry Law School on September 17, 2013: Denise Kim, Esq., Sunny Hillary, Esq., and Lemar Alejo, Esq.



Kim Nguyen, Esq., Lyndon Carter, Esq., and Natalia Gove, Esq.

Central Florida Diversity Mentoring Picnic FAMU Law School



Kim Nguyen, Esq.
Christine Berk, Esq.

GOAABA's Board Retreat, Dave & Buster's, September 15, 2013



Sunny Hillary, Esq.
Lemar Alejo, Esq.



Teris Deitsch, Esq.
Donna Hung, Esq.



Anna Meddin, Esq.



Teris Deitsch, Esq., Donna Hung, Esq.,
Lemar Alejo, Esq., Christine Berk, Esq.



Denise Kim, Esq.



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Anna Meddin, Esq.
Teris Deitsch, Esq.
Kim Nguyen, Esq.
Donna Hung, Esq.
Denise Kim, Esq.
Lisa Gong Guerrero, Esq.

GOAABA's Networking Happy Hour, Ember, September 25, 2013



Tiffany Chang, Esq., Kim Nguyen, Esq., and Magistrate Linh Ison with Barry Law Students



Lisa Gong Guerrero, Esq.
Denise Kim, Esq.
Sunny Hillary, Esq.



Felipe Guerrero, Esq.
Lisa Gong Guerrero, Esq.
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Lemar Alejo, Esq., Joe Panyanouvong, Esq.,
Tony Casserta, Joey Guccione



Sunny Lim Hillary, Esq.

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

Congratulations to **CFAWL, CFGLLA, GOAABA, HBACF, Paul C. Perkins Bar Association, OCBA Diversity Committee, OCBA Young Lawyers Section, Barry University School of Law, and Florida A&M University College of Law** for organizing the 2nd Annual Central Florida Diversity Mentoring Picnic. The informal picnic, which was held on September 21, 2013, at FAMU College of Law, offered law students the opportunity to socialize with attorneys and judges from Central Florida in a relaxed setting. The picnic also allowed law students and young lawyers the chance to learn about our area's legal community, establish relationships with practicing attorneys, and meet and exchange contact information with mentorships partners. Thank you to all of the organizations and their committee members for planning and hosting the event and to each of the event sponsors who helped to make it happen!

Mark your calendar for the **OCBA's Joint Bar Association Happy Hour, "Tequila and Turkey Legs,"** sponsored by **BKHM CPAs and Professional Litigation Support, LLC.** The joint happy hour will be held on **Wednesday, November 20, 2013**, from 5:30 p.m. to 8:00 p.m. at **Don Jefe's Tequila Parlour**, 41 West Church Street in downtown Orlando. Everyone's invited! This year, the OCBA has added a fun, new twist to help raise money for the Second Harvest Food Bank. Each voluntary bar association will compete in the great "Turkey Legs" competition by selecting one member and decorating the member's legs in creative turkey leg garb. Those attending will then have the chance to vote on the best-dressed turkey leg by dropping money into the Turkey Leg Bank Bucket of their favorite of leg. The association whose turkey leg walks away with the largest bank will have its winnings donated to a charity of its choice. The money collected in the other bank buckets will be donated directly to the Second Harvest Food Bank. The event fee is \$5 for members of a voluntary bar or legal association, and \$10 for all others. Be sure to bring extra cash to "vote" for the best leg! To RSVP for the Joint Bar Association Happy Hour, go to the OCBA Store at www.orangecountybar.org/store. For more info, contact **Nikki Rodeman, RFP**, at 407-206-6746, or Nikki@floridabusinesslaw.com. Don't miss the chance have some fun, to vote for the best leg, enjoy refreshments, and win door prizes all for a good cause!

GOAABA

On September 15, 2013, the **Greater Orlando Asian American Bar Association's (GOAABA)** 2013-2014 board of directors got to know each other a little better by participating in the Ultimate Quest at Dave & Buster's located on International Drive. It was a race against the clock during an intensely competitive scavenger hunt, which took place

inside the restaurant and entertainment complex, as teams searched for items and played games to find the answers. Congratulations to Team A, consisting of **Teris Deitsch, Esq., Donna Hung, Esq., Denise Kim, Esq., and Anna Meddin, Esq.,** for winning the Ultimate Quest!

On September 17, 2013, GOAABA participated in Barry School of Law's first Voluntary Bar Association Fair at the Dwayne O. Andreas Law Center. Students were able to learn about opportunities for involvement with GOAABA. Barry hosted the fair with the belief that law students benefit by meeting members of voluntary bar associations and gaining new knowledge, experiences, and contacts; in turn, voluntary bars benefit by interacting with potential new members! Thank you to **Kelli Murray, Esq.,** Associate Director of Career Services at Barry University School of Law, for putting on a successful, debut event.

On September 24, 2013, GOAABA hosted a networking happy hour at Ember. There was a strong turnout of attorneys and law students from Barry and FAMU. Attorneys were able to make new contacts for future referrals and law students were able to ask attorneys questions about preparing for the workplace and the "real" practice of law. Everyone enjoyed appetizers, compliments of GOAABA, and Ember's drink specials. Thanks go to social chair, **Lisa Gong Guerrero, Esq.,** and past president, **Kim Nguyen, Esq.**

GOAABA will be hosting a happy hour in November as well as a holiday lunch in December. For more information, please email goaaba@gmail.com.

To join the GOAABA email list, or to find out how to become involved, please email goaaba@gmail.com.

HBACF

The **Hispanic Bar Association of Central Florida (HBACF)** is proud to announce the recipient of its 2013 Scholarship Award, **Lizete Dominguez.** Each year, the HBACF works hard to ensure recognition of a local law school student of Hispanic heritage who exemplifies positive contributions to the legal community. This year, the HBACF faced a tough choice from a number of stellar candidates. Ms. Dominguez stood out with her impressive accomplishments. For the first time, the HBACF also awarded two \$500 Book Awards to students from Barry University School of Law and Florida A&M University College of Law. Congratulations to Ms. Dominguez.

The 2013 Scholarship Night was a tremendous success as judges, attorneys, and many other professionals met to celebrate scholarship recipients. The event was covered by the Spanish media, including Telemundo. The HBACF thanks all the 2013-2014 sponsors and supporters that made Scholarship Night possible.

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

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



Matthew Ryan Williams, Esq.

Sanctioning Mutiny: *Polite v. State*

Our American system of justice cannot stand if a witness's oath to tell the truth is meaningless. This system relies on witnesses to testify as to what they saw or heard, and it relies on juries to determine who is telling the truth and who is not.¹ The rules of evidence should therefore encourage witnesses to take "swearing" seriously and provide juries with the tools necessary to know when witnesses are speaking truth and when they are not. Given the vital role oaths and credibility play in this system of justice, it is concerning when a court refers to the testimony of witnesses as a "serial mutiny,"² and then reaches a conclusion that allows supposed logic to overwhelm the practical realities of our world. The Florida Supreme Court's recent opinion in *Polite v. State*³ provides an example of the injustice that can result when the law is ignorant of facts.

The *Polite* Court addressed the Florida rule of evidence commonly known as "past recollection recorded."⁴ Specifically, the Court addressed a conflict between the district courts regarding whether the hearsay exception codified in Section 90.803(5), Florida Statutes, requires a witness to "vouch for the accuracy of the record or memorandum" at issue as a requirement for admissibility.⁵ The Fifth District Court of Appeal's decision in *Polite v. State*⁶ held that a witness's prior recorded statement was admissible and could be read into the record even if the witness could not – or refused to – acknowledge or confirm the accuracy of the statement in the witness's testimony at trial.⁷ Conversely, the Second and Fourth District Courts of Appeal had concluded that a previously recorded statement was not admissible absent the witness expressly testifying at trial that the past statement was true when written, or would not have been written if not true.⁸ A brief review of these opinions, both their respective rationales and more importantly their facts, demonstrates how a focus fixed squarely on logical interpretation leads appellate courts to miss the forest for the trees.

In *Polite*, the Fifth District Court of Appeal affirmed the trial court's admission of portions of a previously written, previously sworn-to statement by victim Falisa Levine.⁹ Ms. Levine was the alleged victim of an armed, home-invasion robbery who, on the night of the robbery, provided a detailed, written statement containing her observations of the attack and her assailants.¹⁰ This statement included identifying appellant Polite by

name as one of the men involved because she knew Polite by his first name from the neighborhood.¹¹ Prior to her testimony, the prosecutor informed the Court that "Ms. Levine would not stop crying because she was afraid something would happen to her or her children if she testified."¹² Ms. Levine took the stand but proceeded to claim she lacked any memory of the attack.¹³ When shown her written statement, Ms. Levine identified it as the statement she wrote an hour after the attack, but never testified it was "true and correct" when she wrote it.¹⁴ Ms. Levine went on to state, both during direct and cross examination, that law enforcement and others were "pressuring her" when she wrote the statement.¹⁵ Following this testimony, the trial court permitted the prosecutor to read Ms. Levine's written statement into evidence as past recollection recorded pursuant to Section 90.803(5).¹⁶

The Fifth District held the statement was properly admitted since the "plain language" of the statute does not require the necessary showing that the statement correctly reflects the witness's knowledge at the time.¹⁷ Rather, the Court held that a "plain reading of the statute would allow admission of the statement so long as the State presented evidence (from any source) sufficient to support a finding that the statement was made when the matter was fresh in the witness's mind, and that it was accurate."¹⁸ The Court concluded that the "totality of the circumstances" – the memorable nature of the event, the fact that Ms. Levine swore to the accuracy of the statement when it was made, and that "other evidence corroborated her statement" – warranted admission of the statement even though Ms. Levine never verified its accuracy at trial.¹⁹ The Florida Supreme Court reversed appellant Polite's convictions, following the logic of the decisions in the Fourth and Second District Courts of Appeal.²⁰

In essence, the Florida Supreme Court cast aside or ignored the evidence corroborating Ms. Levine's recorded statement. This "paper" approach to law ignored the very real fear that a victim like Falisa Levine possessed that she or her children would be harmed in retaliation for cooperating with law enforcement. Criminal practitioners operating at the trial level – whether they be prosecutors, assistant public defenders, private defense counsel, or even circuit or county court judges – are all too familiar with the reality that many criminal cases never reach a jury because witnesses fear retaliation.

tion or will face other hardships as a result of testifying. The truth of this statement is evident with only a brief glance at the facts underlying the opinions from the Second and Fourth District Courts of Appeal regarding past recollection recorded.

The Fourth District Court of Appeal addressed the requirements of Section 90.803(5) in *Montano v. State*.²¹ Montano was charged with possession of a firearm by a convicted felon, and the State's key witness was his live-in girlfriend, Lourdes Cabrera.²² At the time of the crime, Ms. Cabrera had already mothered one of the appellant's children and was eight months pregnant with a second.²³ When law enforcement arrived, two young girls ran to deputies exclaiming, "he's got a gun, he's going to kill her."²⁴ Ms. Cabrera provided an audio-recorded statement to law enforcement less than an hour after their arrival on scene.²⁵ In her statement, Ms. Cabrera detailed a lengthy argument with Montano regarding dinner plans that included several references to Montano possessing a firearm and the ammunition that went with it both inside their apartment and inside his vehicle.²⁶ At trial, Ms. Cabrera testified she had no recollection of the firearm from the night of the incident, and she gave an entirely different version of the night's events from those written within an hour of the event occurring.²⁷ Despite never testifying to the accuracy of her previously recorded statement, the trial court admitted it under Section 90.803(5), concluding that the statement was consistent with other evidence in the case and that there was testimony that Ms. Cabrera was of sound mind when she swore to and provided the statement.²⁸ The Fourth District Court of Appeal reversed, holding that Ms. Cabrera's statement was not admissible as past recollection recorded since she did not testify the prior statement was an accurate reflection of her knowledge at the time of the incident or that she was truthful when she made it.²⁹ The court concluded that the theory behind the admissibility of prior recorded statements was that they were "incorporated" into the witnesses' testimony, and that therefore the "reliability of the recorded recollection depends on the credibility of its maker."³⁰ In essence, the Fourth District Court of Appeal concluded that the recorded statement was not reliable because the witness refused to say that it was. This conclusion therefore ignores the evidence from other sources – witnesses on scene providing testimony consistent with the statement, the timing of the statement, and most significantly the common sense conclusion that the mother

of the accused's children would not wish to have the father of those children incarcerated – because the witness did not say, "I was telling the truth back then."³¹

Similar facts are found underlying the Fourth District Court of Appeal's decision in *Hernandez v. State*,³² and the Second District Court of Appeal's decision in *Smith v. State*.³³ In *Hernandez*, the recorded recollection at issue came from the appellant's wife, Sherill Hernandez, who in a recorded phone call told a child victim that the appellant admitted to her that he committed the sexual abuse alleged.³⁴ Despite acknowledging her voice on the call and the prosecution providing her with a transcript of it, Ms. Hernandez refused to testify that the conversation was accurate at the time it was made.³⁵ Following its ruling and logic in *Montano*, the Court concluded this barred the admission of the statement and reversed the appellant's convictions for lewd molestation and exhibition.³⁶ In *Smith*, the State sought admission of the prior, recorded statements of three witnesses who either saw the appellant shoot the victim or witnessed him with a firearm in close proximity to the shooting itself.³⁷ In addition, the court noted that "[a]ll three of the recanting witnesses said they heard Smith say that he shot someone."³⁸ The Second District Court of Appeals characterized the situation in *Smith* in the opening paragraph of its opinion as one where "the State experienced the serial mutiny of its three primary witnesses."³⁹ The Court went on to note that the witnesses were "completely uncooperative," and that this occurred to "the apparent surprise and consternation of the prosecutors."⁴⁰ The Court even included a quote from one of the recanting witnesses who responded to the prosecutors' attempts to refresh his recollection with the witness's previously recorded statement by saying, "[m]an, forget the *sworn* statement."⁴¹ Despite these facts and a clear picture that witnesses were turning their backs on statements with strong indicia of reliability, the Second District Court of Appeal reversed appellant Smith's conviction due to the inadmissibility of their prior, recorded statements under the rationale of *Hernandez*, *Montano*, and eventually the Supreme Court's decision in *Polite*.⁴²

The United States is a nation of laws because its citizens accept the fact that adherence to the law – even when that acceptance carries negative consequences – is necessary to the effective functioning of a free-yet-orderly society. Americans recognize that evidence and statements are lost if the police violate rights, and that this must occur

to encourage the respect of those rights. The problem with the conclusion and law of *Polite* is that its outcome was reached for logic's sake. No precedent or legislative intent forced the Court's hand, allowing the Court to consider all of the circumstances and law available to it when reaching its conclusion.⁴³ It is difficult to read the all-too-common facts found in *Montano*, *Hernandez*, *Smith*, and *Polite* – the victim of domestic violence who has forgiven, the loving wife who cannot believe he did it, the "I'm no snitch" crowd, and the terrified neighbor in the rough part of town – and conclude that the Court deeply considered the impact of its ruling when it decided to sanction mutiny from the witness stand.

Matthew Ryan Williams, Esq., State Attorney's Office, has been a member of the OCBA since 2011.

¹Fla. Std. Jury Instr. (Crim.) 3.9 ("It is up to you to decide what evidence is reliable. You should use your common sense in deciding which is the best evidence, and which evidence should not be relied upon in considering your verdict. You may find some of the evidence not reliable, or less reliable than other evidence.").

²*Smith v. State*, 880 So. 2d 730, 732 (Fla. 2d DCA 2004).

³116 So. 3d 270 (Fla. 2013).

⁴Fla. Stat. § 90.803(5)(2008).

⁵*Polite*, 116 So. 3d at 271 ("Darius Polite petitions this Court... regarding the requirements for the admission of a record or memorandum of past recollection recorded under section 90.803(5), Florida Statutes (2008)").

⁶41 So. 3d 935 (Fla. 5th DCA 2010).

⁷*Id.* at 941.

⁸The Fourth District Court of Appeal reached this conclusion in its decisions in *Hernandez v. State*, 31 So. 3d 873 (Fla. 4th DCA 2010) and *Montano v. State*, 846 So. 2d 677 (Fla. 4th DCA 2003). The Second District Court of Appeal reached this conclusion in *Smith v. State*, 880 So. 2d 730 (Fla. 2d DCA 2004).

⁹*Polite*, 41 So. 3d at 941. It is important to note that "admission" under Section 90.803(5) refers to allowing the party offering the statement to read it into the record. The written or recorded statement is not permitted to go back to the jury. § 90.803(5) ("A party may read into evidence a memorandum or record when it is admitted, but no such memorandum or record is admissible as an exhibit unless offered by an adverse party.").

¹⁰*Id.* at 938.

¹¹*Id.* Ms. Levine's statement is lengthy and reproduced in both the *Polite* opinions by the Fifth District Court of Appeal and the Florida Supreme Court. Its detail is worth reading in the context of the Fifth District's conclusion that the statement was admissible due to its accuracy at the time it was made.

¹²*Id.* at 937.

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.* at 938.

¹⁶*Id.*

¹⁷*Id.*



Caroline Johnson Levine, Esq.

Ex Parte Interviews May Violate Patient Confidentiality

When a medical patient suffers an injury due to the malpractice of a doctor, the patient may pursue further medical treatment from additional doctors to cure the pain and suffering caused by the initial injurious treatment. Therefore, each subsequent doctor may become a witness in a medical malpractice lawsuit against the original doctor. Interestingly, due to the nature of the insurance industry, the original doctor's insurance company may also represent the doctors who provided subsequent treatment to the plaintiff. When this occurs, an insurance company may run the risk of violating the statutory requirement to maintain patient-physician confidentiality. The Florida Supreme Court recently addressed this issue in *Ramsey Hasan v. Lanny Gavar, D.M.D.*, 108 So. 3d 570 (Fla. 2012).

Ramsey Hasan filed a lawsuit against Dr. Lanny Gavar for medical malpractice. Hasan alleged that Dr. Gavar failed to properly diagnose and treat Hasan's dental problems, which resulted in a bone infection and permanent physical and emotional suffering. Subsequently, Hasan sought restorative dental treatment from Dr. Jennifer Schaumberg. Both Dr. Gavar and Dr. Schaumberg were insured by OMS National Insurance Company (OMS-NIC).¹

OMSNIC retained an attorney to defend Dr. Gavar against Hasan's lawsuit. As part of its investigation, OMSNIC's attorney scheduled an ex parte private deposition conference with Dr. Schaumberg. Hasan filed a motion for a protective order to prevent the ex parte conference, citing the patient confidentiality provisions of section 456.057, Florida Statutes (2009). However, Dr. Gavar argued that preventing an ex parte meeting between Dr. Schaumberg and Dr. Gavar's defense attorney "would violate the physician's common law right to counsel and First Amendment right to freedom of speech."²

Section 456.057 (8) provides that unless a health care provider reasonably expects to become a defendant in a medical negligence action, any "information disclosed to a health care practitioner by a patient in the course of the care and treatment of such patient is *confidential and may be disclosed only* to other health care practitioners or providers involved in the care or treatment of the patient" or if authorized by the patient or subpoenaed for the purposes of litigation.³ Importantly, the Florida Supreme Court has historically "interpreted the statute at issue in light of its purpose

to provide broad patient protection."⁴ Therefore, because Dr. Schaumberg was not a defendant in Hasan's medical malpractice action against Dr. Gavar, any health care information developed from Dr. Schaumberg's subsequent treatment of Hasan would remain confidential.

The Florida Supreme Court held in *Hasan* that section 456.057 "prohibits ex parte meetings between a patient's nonparty treating physician and counsel provided by the defendant's insurance company."⁵ This prohibition prevents any ex parte meeting of the type described herein "irrespective of whether the attorney and physician claim they will discuss only non-privileged matters."⁶ The court noted that if such an ex parte meeting were permitted, "then insurance companies could simply hire counsel to circumvent the statutory protection."⁷

Importantly, the court held "that section 456.057(8) creates a broad and expansive physician-patient privilege of confidentiality for the patient's personal information with only limited, defined exceptions."⁸ Therefore, "measures to absolutely protect the patient and the privilege" are required by any party attempting to interview a potential witness in a medical malpractice lawsuit.⁹

Patently, the purpose of the statute is to preserve a patient's right to confidentiality with respect to information disclosed to a health care provider in the course of the care and treatment of a patient and to limit the conditions under which such information may be disclosed to others.¹⁰

It is significant to note that Chief Justice Polston dissented and Justice Canady concurred in the dissent of this decision. Chief Justice Polston felt that this decision was overbroad in that the "majority wrongfully prohibits a physician from consulting with her own lawyer, paid for by her insurance, by assuming that ethical violations will occur."¹¹ Further, the dissent argued that this decision "is so breathtakingly broad that it even forbids the nonparty physician from consulting a lawyer that she may choose to hire independently. . . [and] I am unaware of any other circumstance where this Court has prohibited someone from consulting a lawyer for legal advice."¹² Most importantly, the dissent asserted that "the Court's prohibition of such legal counsel violates the First Amendment protection of commercial speech between the nonparty physician and her lawyer."¹³

continued page 30



YLS on the move



Jill D. Simon, Esq.

On **September 11, 2013**, the YLS held a happy hour at The Fifth, located in downtown Orlando. YLS president **Lauren McCorvie, Esq.**, and social committee chairs **Brett Renton, Esq.**, and **Adam Hartley, Esq.**, participated as guest bartenders. A special thanks to the sponsors, **ProServe USA** and **The Fifth** for their generosity. A great time was had by all.

On **September 12, 2013**, Judge **John Marshall Kest** presented his monthly **Brown Bag Luncheon**. The September topic was "Exhibits and Demonstrative Aids: Proper Use and Suggestions." Brown Bag Luncheons are held monthly in the Judicial Conference Room on the 23rd Floor of the Orange County Courthouse from 12:00 to 1:15 p.m. For more information, please contact Judge John Marshall Kest's judicial assistant, Diane Iacone, at 407-836-0443 or ctjadi1@ocnjcc.org.

On **September 18, 2013**, YLS and Ricoh USA presented a free luncheon CLE event: "Social Media Challenges in Discovery." The CLE covered the social media arena in relation to litigation, as well as the challenges encountered when social media must be preserved and produced during the discovery process. The CLE was presented by **David Greetham**, National Director of Forensic Services for Ricoh Legal, who is one of the premier experts in his field. The YLS thanks Ricoh USA for its participation in the luncheon and CLE.

The **YLS September Luncheon** was held on **September 20, 2013**, with speaker **Brad Rex**, who is currently the chief executive officer of Foundation Partners Group. Mr. Rex is a former nuclear submarine engineering officer in the U.S. Navy and a former vice president of Epcot. Mr. Rex spoke about the Cs of Top 1% Leaders – competence, commitment, character, and compassion. At the luncheon, the YLS awarded its annual scholarship to **Jeanette Ann Figueroa**. Jeanette will attend Valencia College for two years and then attend a four-year university in Florida. Congratulations, Jeanette! 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; U.S. Legal; and Westlaw.**

On **September 21, 2013**, the YLS participated as a platinum sponsor in the **Central Florida Diversity Mentoring Picnic** at FAMU College of Law. Local bar associations and sponsoring law firms welcomed students from Florida's eleven law schools to the Central Florida legal community. Thank you to YLS member **Alvin**

Benton, Esq., for coordinating YLS' participation in the picnic!

The **22nd Annual YLS Charity Golf Tournament** was held on **September 27, 2013**, at the Ritz Carlton Golf Club. The tournament was a huge success, and the YLS raised a net of over \$20,000 to fund charitable endeavors. The YLS thanks and congratulates the Golf Tournament committee chair, **Jerry Hanbery, Esq.**, for his amazing work on this event.

On Thursday, **November 14, 2013**, the YLS will hold its **Fourth Annual Dodgeball Tournament**. The tournament will begin at 6:00 pm at the First Presbyterian Church, 106 East Church Street, Orlando, Florida 32801. If you are interested in playing, sponsoring, or volunteering for this event, please contact: **Amanda Sampaio, Esq.**, at amanda@fighterlaw.com, or **Heather Kozlowski, Esq.**, at heather.kozlowski@csklegal.com.

The **YLS November Luncheon** will take place on **November 15, 2013**, at the Citrus Club from 11:30 a.m. to 1:00 p.m. Casual attire is perfectly appropriate. For a three-course meal, the cost is only \$10 for all young lawyers and for judges. Please RSVP to yls.ocba@gmail.com **no later than November 13, 2013**. When you RSVP, please provide a practice area or hobby to be included on your name tag. A late charge of \$4 will be added for all RSVPs made after the deadline. YLS is charged for anyone who RSVPs, so show up if you RSVP, or let us know if you cannot make it. We look forward to seeing you at the luncheon!

The YLS is starting a new volunteer initiative called **YLS-250**, whereby we hope to pledge two hours of support for each of the 250 workdays in the year (after accounting for holidays). We will be partnering with a different Central Florida non-profit organization each quarter in order to give young lawyers a glimpse into the great work that is being done in our community, and present different ways in which they can get involved. This initiative will kick-start in the 2014 calendar year, and there is much work to do in preparing for the rollout. If you are interested in joining the YLS-250 Committee, or for additional information, please contact **Jill Simon, Esq.**, at jill.simon@lowndes-law.com.

If you're not receiving YLS email blasts and would like to be added to the list and find out more about our section and its committees and events, please email yls.ocba@gmail.com.

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

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LAS What We Do... *continued from page 19*

GALs, our foster children will reap the full benefits of each new independent living law.

For more information on changes to foster care legislation and independent living laws, please contact Bethanie Barber at bbarber@legalaidocba.org. To make a donation to the LAS, please contact Donna Haynes at dhaynes@legalaidocba.org.

Bethanie A. Barber, Esq., is the GAL program attorney and GAL program litigation director with the Legal Aid Society of the Orange County Bar Association, Inc. She has been a member of the OCBA since 2008.

Donna A. Haynes, Legal Aid Society manager of development, has been a member of the OCBA since 2008.

LAS Gal Teaching Tips *continued from page 20*

Q: *As a foster youth, why is it important to have a GAL?*

A: A GAL is someone who listens to you, talks with you, and is there to help you with things. It's mostly important because you're going to need someone to help you and remind people that you have a say in your life.

Q: *When asked by others, how do you describe a GAL?*

A: I tell them that a GAL is someone who is awesome and you need to get to know them because they are *you* in court.

Q: *What would you say to someone interested in becoming a GAL?*

A: I would encourage them to do it. People need to realize that helping themselves isn't the only thing in this life. Helping someone else is important. Helping others makes the world a better place. Helping someone who needs another person to stick up for them is especially important. If you want to help someone, be a GAL. It's not only beneficial for the individual, but for the child because this grown-up is someone the child can trust and confide in.

If you would like to volunteer and serve as a GAL for an abused, abandoned, or neglected child, please contact Susan Khoury at the Legal Aid Society at skhoury@legalaidocba.org.

If you are interested in donating time and/or money to the Legal Aid Society, please contact Donna Haynes at 100 E. Robinson Street, Orlando, Florida 32801, 407-515-1580, or dhaynes@legalaidocba.org. As always, thank you for your continued support of the Legal Aid Society. You are truly appreciated!

Stephanie K. Stewart, Esq., is a staff attorney with the Legal Aid Society Guardian ad Litem Program. She has been a member of the OCBA since 2007.

Special Ex Parte Interviews *continued from page 28*

It is clear that the majority of the Florida Supreme Court believes that a health care patient should be able to seek high quality medical treatment without having to fear that the subsequent filing of a medical malpractice lawsuit will necessarily result in the dissemination of his private health care information.

Caroline Johnson Levine, Esq., was a criminal prosecutor for ten years and now practices civil litigation defense. Additionally, she is an appointed member of The Florida Bar's Standing Committee on Professionalism. She has been a member of the OCBA since 2013.

¹*Ramsey Hasan v. Lanny Gavar, D.M.D.*, 108 So. 3d 570, 571 (Fla. 2012).

²*Id.* at 572.

³*Id.* at 572 (emphasis supplied).

⁴*Id.* at 573; see also *Acosta v. Richter*, 671 So. 2d 149, 156 (Fla. 1996).

⁵*Id.* at 577.

⁶*Id.* at 572.

⁷*Id.* at 577.

⁸*Id.* at 578.

⁹*Id.*

¹⁰See *Lemieux v. Tandem Health Care of Florida, Inc.*, 863 So. 2d 745, 750 (Fla. 2d DCA 2003); see also *Kirkland v. Middleton*, 639 So. 2d 1002, 1003 (Fla.

5th DCA 1994) ("Were unsupervised ex parte interviews allowed, medical malpractice plaintiffs could not object and act to protect against inadvertent disclosure of privileged information, nor could they effectively prove that improper disclosure took place.").

¹¹See *Hasan* at 579.

¹²*Id.* at 580.

¹³*Id.*



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Happy Thanksgiving!

from the OCBA staff, *Briefs* editors and executive council



Lissa C. Bealke-Moore, FRP

Karen R. George, FRP

Future Endeavors for FRPs

On November 15, 2007, the Florida Supreme Court issued an opinion establishing the Florida Registered Paralegal Program – Rule 20 of the Rules Regulating the Florida Bar. Rule 20 establishes a voluntary registration program for Florida paralegals, which became effective on March 1, 2008.

A Florida Registered Paralegal (FRP) is an individual who has attained a standard of education, work experience, or national certification and performs specifically delegated substantive legal work under the direct supervision of a Florida Bar member. A FRP must fulfill 30 hours of continuing education every three years, abide by The Florida Bar Code of Ethics and Responsibility, and is subject to disciplinary measures.

Rule 20 is the culmination of years of hard work for many attorneys and paralegals throughout the State of Florida and confirms that the courts, attorneys, and The Florida Bar recognize paralegals as serious professionals. Paralegals have to meet standards of experience and education in order to obtain this title. Rule 20 has helped to differentiate between the terms “legal assistant” and “paralegal” in Florida.

Because of Rule 20, The Florida Bar was directed to create a department/area within its organization to start voluntarily registering Florida paralegals. Rule 20 set forth the criteria for those who could qualify to call themselves a FRP.

Carin M. Gordon, chair of the FRP Committee, wrote in *The Florida Bar Journal*, June 2013, that “the purpose of the FRP Committee is to assist in the implementation of Rule 20... relating to registering for and maintaining FRP status.” The committee also advises on eligibility as well as rule changes as needed.

Today, five years later, there are 5,409 paralegals currently registered with The Florida Bar, and that number continues to grow each day. As of December 31, 2012, the FRP Committee brought in \$844,500 in membership revenue for The Florida Bar!

With this kind of revenue and tremendous membership growth, FRPs have already proven that they are very serious about their profession and are ready to take the next step. Professional development, advancement, and recognition of the profession are just some of the many reasons why more paralegals are moving in this direction.

The Orange County Bar Association was the first voluntary bar association in the State of Florida to create a Paralegal Committee. Through the work and dedication of some local paralegals the OCBA later created the first Paralegal Section. Quickly thereafter, paralegals throughout the State approached their bar associations seeking and obtaining the same status. Paralegals in other states have taken notice and are taking like action.

What now? Once a paralegal obtains a certified status, what happens next? One concern that many FRPs have is that they are not members of The Florida Bar despite having to pay the same yearly dues and having to fulfill the same CLE requirements as Florida Bar members. However, The Florida Bar currently does not have a Paralegal Section. The Florida Bar does have a Council of Sections Delegates, consisting of officers holding the title of: chair, chair-elect, secretary/treasurer, board liaison, and immediate past president. According to the section handbook, sections have a chair and chair-elect (chair-in-training) and can put on their own CLEs and have their own budget. Sections also host their own parties at the annual convention. Being a section means having more autonomy within The Florida Bar guidelines. Conversely, some of the most controversial and sensitive subjects surrounding the paralegal profession are licensure and regulation. There is much debate about these issues, and creation of a Florida Bar Paralegal Section is yet another future (but attainable) goal until these issues are hammered out.

For now, the paralegal profession can unite and move forward with progressive and determined steps. For starters, let's put the substantial membership revenue generated by the FRP Section to some good use! Wouldn't it be great to see The Florida Bar's 2014 Annual Convention announce that the FRP Section will have its own list of seminars, conferences, and parties for FRP members to attend and meet one another? This venue would be a great launching point for paralegals to share their thoughts and ideas in recognition of their FRP status. Hope to see you there!

Lissa C. Bealke-Moore, FRP, a paralegal with Gray-Robinson, P.A., has been an OCBA member since 2000. **Karen R. George, FRP**, is a paralegal with Cole, Scott & Kissane, P.A., Miami.

PhotoOps



Paul Smith and Phil Gordin

Paralegal Section Appreciation Happy Hour August 29, 2013

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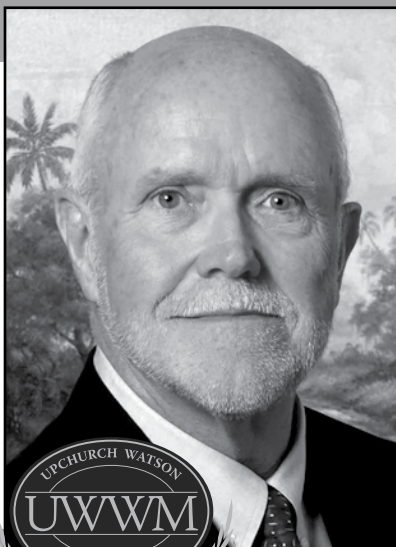


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Rainmaking



Michael Hammond, Esq.

'Tis the Season

In our last article we combined what we've learned about "Who to Talk To" and "What to Say" by focusing on the art of cross-selling. In this article we will review our lessons about the "who" and the "what" so during the upcoming holidays you can apply everything you've learned about word-of-mouth marketing.

Even if you haven't been faithfully sending out thank you notes or acknowledging your referral sources throughout the year, all is likely to be forgiven in the spirit of thankfulness and goodwill that begins with Thanksgiving and ends sometime after New Year's Day.

Be Thoughtful

When a client wanted to make sure his efforts to acknowledge and thank his referral sources would be memorable, he had his secretary inquire discreetly about where they all liked to celebrate special occasions. Then gift certificates were purchased and given to the referrers and their families to dine in their favorite spots. This highly personalized approach won this attorney a great deal of goodwill – and he didn't even have to show up. For him, a few hundred dollars spent on gift certificates was more than a worthwhile investment compared to the high-value cases these referral sources send him every year.

Make a List, Check it Twice

Which referral sources should *you* invest in during the holidays? Here's how you find out: Make a list of the referral sources who've sent the most business in the last year. Add to this those referrers who have sent some business, but who you know are well-positioned to send more. Then add to the list clients who refer significant business or have a great deal of recurring work. Focus your efforts on the individuals on this list.

To get started, examine your list to see whom you'd like to get to know better. While giving gifts is a great form of acknowledgement for some referrers, there is no substitute for time spent face-to-face to build rapport and trust. We encourage you to invite these referral sources out to lunch or dinner and express your appreciation for the business they send.

Acknowledge and Thank

When you're face-to-face with referrers, your acknowledgement can be brief and simple. You can say something like, "I've been reviewing my referrals for the last year and want to let you know how much I appreciate all the business you send."

Or, "I really appreciate your continued faith and confidence in me. You've sent a lot of business this year and I appreciate it. I will always take good care of the clients you send to me." These simple acknowledgements can be used in almost any setting. The best referral sources are the ones you get to know better over time and with whom you might eventually become friends. An expression of gratitude paired with good food in a nice atmosphere will help cultivate a growing business relationship. You can even use this holiday lunch with a good referral source to set up your next lunch with him or her in the new year at which you'd employ the interview technique to advance the business relationship even further.

Food for Thought

For those clients on the list whom you'd like to acknowledge with a gift, the possibilities are endless. Several attorneys have thick Omaha steaks or large stuffed turkeys delivered to their best referral sources – who eagerly await these special holiday treats every year. One creative soul with a flair for the dramatic even dresses up like Santa and hand-delivers his wife's homemade cookies.

While gifts of food are very much appreciated, some attorneys take another approach and give sports-oriented gifts. A gift certificate for a few rounds on a favorite golf course is a generous gesture. Asking a client to play a round of golf and have lunch as your guest is even better. Treat a referral source to a series of lessons with a golf pro, or buy season football tickets and generously share them with referral sources who you know are fans of the sport.

Get Personal

The holidays are the perfect time to put to good use all of the information you've gleaned from getting to know someone better by asking questions about his or her family, background, and interests. In fact, gifts related to any of your referrals sources' hobbies or passions are a great way to say "thanks" in a much more thoughtful way. A book on photography given to an amateur photographer, a bottle of single-malt given to a lover of fine scotch, a subscription to a top-notch wine-of-the-month club for a wine enthusiast – all are highly personalized ways to say thank you that demonstrate how much you value the relationship.

If you decide to bring your gift to a holiday func-

continued page 36

Rainmaking

continued from page 35

tion, call the host's assistant in advance to find out his or her preferences. It reflects better on you if the gift you bring is something that you know the person will enjoy. With gifts like a bottle of wine, candy or liquor, include a card stating that it is for the host's enjoyment after the event; that way the host will not feel obliged to serve it at the party.

Get Out and About

Just by mixing and mingling at holiday events, you will raise "Top-of-Mind Awareness" about yourself and your practice. But make sure you do more than just mingle at holiday parties. These events can be powerful opportunities to polish your word-of-mouth marketing skills and enjoy yourself while you're at it. Practice introducing yourself with style and purpose. Try out your well-rehearsed "Laser Talk." Refine your storytelling technique with stories about your practice, who you help, and why. Well-delivered stories, which can be anything from long, involved tales, to short analogies and anecdotes, can be an extremely effective means of communicating with a prospective client or referral source. A story told well can communicate

compelling information in a brief amount of time and in an entertaining manner.

Be Different

The holidays are occasions to invoke beloved and time-honored traditions. It's an enjoyable but very busy time of year during which we tend to fall into comfortable habits and familiar patterns.

But this is precisely why it's the perfect opportunity to practice the first rule of marketing: Differentiate yourself. In spite of – even because of – the pressure to do too much in too little time, take a little time *now* to think about and plan for the upcoming holidays.

Think now about how you can personalize a gift for your best client instead of going with the obligatory fruit basket at the last minute. Know who you want to meet at that annual holiday event everyone goes to and find out ahead of time who can make an introduction. Start scheduling lunches now to acknowledge and say "thank you" to all your referral sources, instead of figuring out in December that you'll have to wait until next year because everyone's too busy.

Be intentional and creative in finding ways to differentiate yourself and stand

out from the holiday herd. Think about it – aren't the holidays the very best time to be thoughtful, generous, memorable, and even exceptional?

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

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Conference information: Karen Fast at karenf@ocbanet.org

Sponsorship/scholarship information: Chelsie Sloan at chelsies@ocbanet.org



Annual Winter Wine & Cheese Social



January 30, 2014

5:30 p.m. registration

6:00 p.m. - 8:00 p.m.

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The business listed herein (the "Vendors") are not affiliated with the Orange County Bar Association (OCBA) and shall not under any circumstances be deemed to have any authority to act on behalf of the OCBA. The OCBA does not make, and expressly disclaims, any warranty, representation, responsibility, or guarantee as to (a) the quality or suitability of the Vendors, their products, or services, and (b) the duration or validity of any discount or other promotion offered by any of the Vendors.



FAMILY LAW SEMINAR



The OCBA Family Law Committee held a major seminar, "Family Law in the Current Economy," to a full house in September at the bar center. Speakers and panelists were Samuel J. Weiss, Esq.; John W. Foster, Esq.; Susan Savard, Esq.; Hon. Sally D.M. Kest; Hon. Heather Higbee; and Magistrate Howard Friedman. The seminar was sponsored by BMO Harris Bank and Central Florida Investigative Services.

Law Week Volunteers Needed

The 2014 Law Week theme is "American Democracy and the Rule of Law: Why Every Vote Matters," which calls on every American to reflect on the importance of a citizen's right to vote. With 2014 marking the 50th anniversary of the Civil Rights Act of 1964 and 2015 marking the 50th anniversary of the Voting Rights Act of 1965, this is a great chance to take a leadership role in helping commemorate those landmark legislations.

All community residents, school administrators, teachers and students, business and civic leaders, legal professionals, and law students are encouraged to support this national day by participating in Law Day activities. Our upcoming activities and co-chairpersons are:

A Day in the Life of a Judge: Tara Tedrow at Tara.Tedrow@lowndes-law.com

Goldilocks Mock Trial and DUI Mock Trial Programs: Patti Savitz at psavitz@flabar.org and Keshara Davis at kdavis@flabar.org

Liberty Bell Award: Bart Vickers at bart@mandell-law.org and Jonathan Stimler at jstimler@lseblaw.com

Naturalization Ceremony: Teresa Finer at teresa.finer@lowndes-law.com and Natalie Gove at Natalia.Gove@lowndes-law.com

Pathways in Law Program: John Starks, Jr. at John.Starks@disney.com

Poster and Speech Contest: Peonca S. Grier, at peonca@drml-law.com and Carmen L. Guerrero at carmen@drml-law.com

Law Day Luncheon: Jamie Moses at jmoses@fisherlawfirm.com and Brant Bittner at brantb@ocbanet.org

For more information on participating or helping sponsor OCBA's various Law Week activities for 2014, please email Law Week co-chairs, Tony Sos, Esq. at asos@dwklaw.com and Nikki Rodeman, FRP at Nikki@FloridaBusinessLaw.com. We would love to have you join us!

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Criminal Law Committee continued from page 27

¹⁸*Id.*

¹⁹*Id.* at 941.

²⁰*Polite*, 116 So. 2d at 279. Significantly, even the Supreme Court's opinion mentioned the other evidence of appellant Polite's guilt in reversing the Fifth District Court of Appeal, noting that there was evidence the door had been kicked in, that phone lines to the home were cut, and that appellant Polite's GPS monitor at the time of the crime placed him at the scene at the time the crime was committed and directly contradicted the appellant's alibi.

²¹846 So. 2d 677 (Fla. 4th DCA 2003).

²²*Id.* at 679.

²³*Id.*

²⁴*Id.*

²⁵*Id.* (noting that law enforcement arrived just after midnight and that Cabrera's statement was taken at 12:48 a.m.). Other law enforcement officers on scene reported finding a magazine and individual cartridges for the firearm in Montano's hand upon arrival, and that the magazine found on Montano's person fit the firearm eventually located in Montano's vehicle. *Id.*

²⁶*Id.*

²⁷*Id.* Specifically, Ms. Cabrera testified that the argument arose when Montano was at her home with another woman while she was at the hospital with a sick child, and that this made her angry. She went on to state that she "just wanted to see [appellant] die that day. *Id.*

²⁸*Id.*

²⁹*Id.* at 682.

³⁰*Id.* at 681.

³¹This is an interesting conclusion for the Court to reach given that the "Weighing the Evidence" instruction provided to jurors—the instruction designed to help jurors weigh the credibility of evidence—lists ten (10) potential things jurors should look for, not just what the witness stated. Fla. Std. Jury Instr. (Crim.) 3.9.

³²31 So. 3d 873 (Fla. 4th DCA 2010).

³³880 So. 2d 730 (Fla. 2d DCA 2004).

³⁴*Hernandez*, 31 So. 3d at 876.

³⁵*Id.* at 878.

³⁶*Id.* at 881.

³⁷*Smith*, 880 So. 2d at 735.

³⁸*Id.*

³⁹*Id.* at 732.

⁴⁰*Id.* at 734.

⁴¹*Id.* (emphasis added).

⁴²*Id.* at 741–42.

⁴³This statement is one based upon fact. The Supreme Court's opinion goes into detail regarding the legislative intent and precedent on this issue that is beyond the scope of this article. However, the most telling evidence of intent, a note to the federal rule's comments when there is no such comment or note in the Florida rule, states that "no attempt is made in the exception to spell out the method of establishing the initial knowledge or the contemporaneity and accuracy of the record, leaving them to be dealt with as the circumstances of the particular case might indicate." *Polite*, 116 So. 3d at 274–75 (citing Fed. R. Evid. 803, 28 U.S.C.A. (West 2001) (Advisory Committee Notes, 1972 Proposed Rules, Note to Paragraph (5))).

PhotoOp



During its "Lucky 13" annual summer fundraiser, Lowndes, Drosdick, Doster, Kantor & Reed, P.A., raised \$9,100 for the Leukemia and Lymphoma Society. Firm employees participated in various activities, such as purchasing raffle tickets, carnations, cookies, ice cream, casual day passes, and more. "Every year, employees look forward to this event and even plan their dunking strategies in advance," said Meredith Level, Esq., a long-time partner at the firm and the head of the firm's charitable contribution committee. "While we have a lot of fun, it is important to also remember the reason we participate – to help fight and find a cure for these types of blood cancers." The firm has been hosting the summer fundraiser for 13 years and has raised a grand total of \$139,392.44.

Partner

Christopher R. D'Amico, Esq. – *Roetzel & Andress, LP*

Speaking Engagements

Christopher E. Brown, Esq., and **Lance O. Leider, Esq.,** The Health Law Firm, delivered a lecture to members of the Medical Office Resources of Florida and attending health care providers on September 26, 2013. The topic focused on Medicare and Medicaid audits.

Jules S. Cohen, Esq., a shareholder in Akerman Senterfitt, was a panelist at the American Bankruptcy Institute Southeastern Bankruptcy Workshop in Amelia Island, FL, on the topic, "Scary Stories for Secured Creditors."

Craig A. Minegar, Esq., a shareholder with the law firm of Winderweede, Haines, Ward & Woodman, P.A., recently spoke at the monthly breakfast meeting of the Central Florida Brazilian American Chamber of Commerce. Minegar spoke on the topic of commercial real estate as it relates to buying, selling, leasing, and developing real property.

Thomas Wade (Tom) Young, Esq., Orlando, presented "Free Labor Ain't Cheap: The High Cost of Volunteers and Interns" to the Central Florida Compensation and Benefits Association on August 21, 2013.

Published

Dennis Wall, Esq. of Winter Springs was recently published in *Insurance Litigation Reporter*. His articles are entitled: "Force-placed, Lender-placed Insurance Class Actions: Is the Lender Placement of Insurance Authorized by Law, Or Simply Beyond the Reach of the Courts?" and "Interpleading Policy Limits to Multiple Claimants: Objectively Verifiable Good Faith Claims Handling?"

Events

Nov. 7 – *Breakfast of Champions* to benefit the Legal Aid Society of the OCBA. 7:30 a.m.-9:00 a.m. Church Street Ballroom, 255 S. Garland Ave., Orlando, FL 32801.

Nov. 8 – *OCBA Night with the Magic*. 7:00 p.m.-10:30 p.m. Amway Center. Orlando Magic v. Boston Celtics. Special seating and ticket prices for OCBA members and guests. Deadline: Nov. 4, 2013. For details, see the OCBA website, or contact Krista M. Bartholomew at krista@kmblawfirm.com.

Nov. 14 – *YLS 4th Annual Dodgeball Tournament*. 6:00 p.m. First Presbyterian Church, 106 E. Church St., Orlando, FL 32801. For details, see the OCBA website.

Nov. 20 – *OCBA Joint Voluntary Bar Associations Happy Hour* to benefit Second Harvest Food Bank. 5:30 p.m.-8:00 p.m. Don Jefe's Tequila Parlour, 41 W. Church St., Orlando, FL 32801. For details, see the OCBA website. Register through OCBA Store.

Jan. 30 – *Winter Wine & Cheese Social*. 5:30 p.m. Winter Park Farmers' Market, 200 W. New England Ave., Winter Park, FL 32789. Register the through OCBA Store.

Seminars

Nov. 4 – *You've Been Served! But was it Proper?* Paralegal Section Seminar. 11:30 a.m.-1:30 p.m. OCBA Center. CLE: 1.0. Speaker: Danna L. Bishop, Acer Legal Services. See OCBA web calendar for registration details.

Nov. 7 – *Civility Matters*. Professionalism Committee and the Central Florida Chapter of ABOTA. Pizza and Professionalism Series. 4:45 p.m. Barry University School of Law, 6441 E. Colonial Dr., Orlando, FL 32807. CLE: pending. Free. RSVPs required. Contact lawscs@barry.edu. Please include "ABOTA Professionalism Program" in the subject line of your email. For details, see OCBA website.

Nov. 8 – *How Well Do You Know Your Malpractice Insurance? Your Ethical Obligations to Clients*. Elder Law and Solo & Small Firm Committees

Major Seminar. 11:15 a.m.-4:00 p.m. OCBA Center. CLE: 3.0 pending (including Ethics.) Speaker: Sharon Ecker, Marsh U.S. Consumer, a service of Seabury & Smith. Fee: \$35 (OCBA members); \$50 (non-members). Lunch sponsored by Marsh, U.S. Consumer. **Registration deadline: Nov. 6.** To register, go to the OCBA Store.

Nov. 12 – *Temporary Custody: Chapter 751*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: William A. Davis, Jr., Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Nov. 12 – *Prior Art Masterpiece: Key Prior in Computer Science*. Intellectual Property Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speaker: Christian Hicks, Elysium Digital. Fee: Free (OCBA members); \$20 (non-members). Lunch sponsored by Elysium Digital. To register, go to the OCBA Store.

Nov. 14 – *Social Media & Electronic Evidence*. Technology Committee Seminar. 11:30 a.m.-1:30 p.m. OCBA Center. CLE: pending. Speakers: Keith Kanouse, Esq.; Daniel Whitehouse, Esq.; Donna Chesteen, Esq.; Christopher Newton, Elijah, LTD. Fee: Free (OCBA members); \$20 (non-members). Luncheon sponsored by Elijah, LTD. **Registration deadline: Nov. 7.** To register, go to the OCBA Store.

Nov. 15 – *How Immigration Affects Family Law Cases*. Family Law Committee Seminar. 12:00 p.m.-1:00 p.m., OCBA Center. CLE: 1.0 pending. Speakers: Lisa Krueger Khan, Esq.; Walter G. Santos, Esq.; Frances A. Lopez, Esq. Fee: Free (OCBA members); \$20 (non-members). To register, go to the OCBA Store.

Nov. 19 – *Mental Health: Evaluations, Diagnoses, Treatment, and Medications*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: Coravious Cowart, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Dec. 2 – *Legislative Update: The Florida Revised LLC Act of 2013 and Other Topics*. Estate, Guardianship & Trust Committee Major Seminar. 11:30 a.m.-2:30 p.m. OCBA Center. CLE: 3.0 pending. Speakers: Matthew Armstrong, Esq., and Jordan DeLoach, Esq. Fee: \$45 (OCBA members); \$70 (non-members). **Registration deadline: Nov. 26.** To register, go to the OCBA Store.

Dec. 10 – *We Can Help: Wage & Hour Division Mission*. Labor & Employment Law Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speaker: William Richardson, U.S. Dept. of Labor. Fee: Free (OCBA members); \$20 (non-members). Lunch sponsored by Acer Legal Resources, Inc. To register, go to the OCBA Store.

Dec. 10 – *Basic Dissolution of Marriage, Part II*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: Angel Bello-Billini, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Dec. 12 – *Advanced Deposition Practices and Procedures*. Paralegal Section Seminar. 11:30 a.m.-1:00 p.m. OCBA Center. CLE: pending. Speaker: April Orlando, Director of Business Development, U.S. Legal Support, Inc. See OCBA website calendar for registration information.

Dec. 17 – *Medicaid Basics*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: Edward Dimayuga, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Jan. 15 – *Labor and Employment Committee Seminar*. Details to come.

Jan. 17 – *Family Law Committee Seminar*. Details to come.

Jan. 21 – *Mastering Mediation Negotiation*. Solo & Small Firm and ADR Committees Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. Speaker: Dan H. Honeywell, Esq. Fee: Free (OCBA members); \$20 (non-members.) Lunch sponsored by Honeywell Mediation, Inc. **Registration deadline: Jan. 20.** To register, go to the OCBA Store.

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BOGIN, MUNNS & MUNNS SEEKS ATTORNEY with 3 plus years experience for its commercial litigation practice. Some portable business preferred but not required. Creative incentive based compensation arrangements available. Excellent opportunity to join growing, dynamic firm. Reply in confidence to denise@boginmunns.com or fax to 407-578-2128.

BOGIN, MUNNS & MUNNS SEEKS ATTORNEY with

three plus years experience in real estate, estate and probate, for our Village's office. Outstanding opportunity for attorney willing to work hard and grow our practice. Send reply in confidence to reply box 704.

MISCELLANEOUS

FOR SALE: HP LASERJET PRO m1212MPF and HP LaserJet p1102w. Like new. Best offer. 407-426-7707

WITH OUR STATEWIDE VOTER DATABASE, law firms and process servers can determine an individual's permanent residence by last name or street name. Our state-of-the-art database query engine running on SSD or SATA hardware allows for unparalleled access times whose results can be viewed then downloaded immediately without any intermittent emails or non-interactive wait times. During this grand promotion, Orange County Bar Association members may access the database free of charge with the username="flabar" and password="flabarFall2013". Thank you, www.Florida-Voters.org!!!

OFFICE SPACE FOR SALE / RENT / LEASE

ORLANDO DOWNTOWN OFFICE BUILDING FOR SALE. 203 E. Livingston St., Orlando, FL 32801. Ideal location for law practice. Walking distance to Orange County Court House. Five parking spaces. Fully furnished professional office. Price: \$569,000. Contact 407-923-2049 (Joseph Caruso) for further information and property tour.

DELAND OFFICE SPACE FOR RENT Located two blocks from the County Courthouse, 1,200 sq. ft. with ample onsite parking and attic storage. \$1,800 per month includes water, sewer and exterior maintenance. See complete listing at

<http://www.loopnet.com/lid/18328132>. For more information, please call Astrid de Parry at 386-736-1223 or email: email@delandattorney.com.

LAW OFFICE SPACE AVAILABLE. DOWNTOWN ORLANDO. Located off of North Orange Avenue. Easy accessibility to 408 and I-4. Walking Distance from the courthouse. Two-story building with two attorneys looking to fill third office with an attorney. Available space for secretary. Set up for office use (internet, telephone, copier, fax). Conference room. Possible referrals. Please call 407-244-5522 if interested.

ORLANDO - LEE ROAD AND I-4 580 SF to 13,968 SF (5405 Diplomat Circle). Beautiful building. Class "A" lobby. Numerous amenities. Highly visible signage visible facing I-4. Great lease rate. Christi Davis/Morrison Commercial Real Estate 407-440-6644.

AVAILABLE SHARED PROFESSIONAL OFFICE SPACE FOR BILINGUAL ATTORNEY(S) in Kissimmee area - physical address: 12934 Deertrace Ave., Orlando, FL 32837. Looking to refer family law, bankruptcy and worker's compensation cases. Furnished or unfurnished offices with secretarial area(s). Use of shared conference, break and copy rooms. Free parking on site. Will need to provide own telephones and Internet (date and phone lines in place). Please call (401) 367-0221.

OFFICE SPACE AVAILABLE; this is an incredible Downtown Location in a serene historical setting. Easily accessible for your clients, easy in and out, close to the Court House. Historical Office Buildings ranging from 800 sq. ft. to 2300 sq. ft... Great value in Downtown Orlando. Free Parking; Please

call Tim Leffler at (407) 947-6485.

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DOWNTOWN KISSIMMEE OFFICE - Use of Conference Room, Reception and Break Area included. Most Utilities Included. Referrals Possible \$500 Monthly 407-518-7160

OFFICE SPACE AVAILABLE FOR RENT. Close to Downtown Orlando. Easily accessible with free parking. Conference and kitchen facilities. Copier/fax available. Reception area. Please call John Pierce at (407) 898-4848.

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

DOWNTOWN ORLANDO LAW OFFICE. Secured building w/elevator & parking. Furnished/unfurnished office available, perfect for attorney, sole practitioner or professional. Rent includes utilities, copy machine, phone line and WIFI, with conference room & kitchen privileges. \$500.00 per month. Please email ljparente@skturnerlaw.com, or call Lori at 407-849-4114.

PROFESSIONAL SERVICES

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OCBA Calendar

NOVEMBER - DECEMBER - JANUARY 2014

OCBA November Luncheon

November 21, 2013

Lt. General (Ret.) Thomas L. Baptiste

National Center for Simulation

RSVP by November 15, 2013 to

<http://orangecountybar.org/store>

November

- 4 Paralegal Section Seminar**
You've Been Served! But was it Proper?
11:30 a.m. • OCBA Center
- 5 Estate, Guardianship & Trust Committee**
(Note date change)
12:00 p.m. • OCBA Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 6 Business Law Committee**
12:00 p.m. • OCBA Center
- 7 6th Annual Breakfast of Champions**
7:30 a.m. • Church Street Ballroom
- Professionalism Committee & ABOTA**
Professionalism & Pizza
Civility Matters
4:45 p.m. • Barry University School of Law
- 8 Elder Law and Solo & Small Firm**
Committees Major Seminar
How Well Do You Know Your Malpractice Insurance? Your Ethical Obligations to Clients
11:15 a.m. • OCBA Center
- OCBA Night with the Magic**
Orlando Magic v. Boston Celtics
7:00 p.m. • Amway Center
- 12 LAS Lunchtime Training**
Temporary Custody: Chapter 751
12:00 p.m. • Marks St. Senior Center
- Intellectual Property Committee Seminar**
Prior Art Masterpiece: Key Prior in Computer Science
12:00 p.m. • OCBA Center
- 13 Veterans Committee**
12:00 p.m. • OCBA Center
- Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Executive Council Meeting**
4:30 p.m. • OCBA Center
- 14 Technology Committee Seminar**
Social Media & Electronic Evidence
11:30 a.m. • OCBA Center
- Social Security Committee**
12:00 p.m. • OCBA Center
- 15 YLS Luncheon**
11:30 a.m. • Citrus Club
- Family Law Committee Seminar**
How Immigration Affects Family Law Cases
12:00 p.m. • OCBA Center
- 19 ADR Committee**
7:30 a.m. • GrayRobinson

LAS Lunchtime Training
Mental Health: Evaluations, Diagnoses, Treatment, and Medications
12:00 p.m. • Marks St. Senior Center

- 20 Elder Law Committee**
12:00 p.m. • OCBA Center
- Judicial Relations Committee**
12:00 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.
- OCBA & Voluntary Bars Joint Happy Hour**
5:30 p.m. • Don Jefe's Tequila Parlour
- 21 OCBA Luncheon**
Lt. General (Ret.) Thomas L. Baptiste
11:30 a.m. • Church Street Ballroom
- 27 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- 28 & 29 Thanksgiving Holiday**
OCBA Office Closed

December

- 2 Estate, Guardianship & Trust Committee Major Seminar**
Legislative Update: The Florida Revised LLC Act of 2013 & Other Topics
11:30 a.m. • OCBA Center
- 3 Professionalism Committee**
12:00 p.m. • OCBA Center
- 4 Business Law Committee**
12:00 p.m. • OCBA Center
- 9 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 10 LAS Lunchtime Training**
Basic Dissolution of Marriage, Part II
12:00 p.m. • Marks St. Senior Center
- Employment Law Committee Seminar**
We Can Help: Wage & Hour Division Mission
12:00 p.m. • OCBA Center
- 11 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- 12 Paralegal Section Seminar**
Advanced Deposition Practices and Procedures
11:30 a.m. • OCBA Center
- Social Security Committee**
12:00 p.m. • OCBA Center
- 13 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center

- 17 LAS Lunchtime Training**
Medicaid Basics
12:00 p.m. • Marks St. Senior Center
- 18 Elder Law Committee**
12:00 p.m. • OCBA Center
- 19 Technology Committee**
12:00 p.m. • OCBA Center
- 22-25**
OCBA Office Closed for the Holidays

January 2014

- 8 Lawyers Literary Society**
12:00 p.m. • OCBA Center
- Executive Council Meeting**
4:30 p.m. • OCBA Center
- 13 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 15 Labor & Employment Committee Seminar**
Details TBA
- 17 YLS Luncheon**
11:30 a.m. • Citrus Club
- Family Law Committee**
12:00 p.m. • OCBA Center
- 21 OCBA Solo & Small Firm and ADR Committees Seminar**
Mastering Mediation Negotiation
12:00 p.m. • OCBA Center
- 22 Technology Committee**
12:00 p.m. • OCBA Center
- Judicial Relations Committee**
12:00 p.m. • Orange County Courthouse
23rd Flr. Judicial Conf. Rm.
- 23 OCBA Luncheon**
Jeffrey S. Bromme, Esq.
Adventist Health System
11:30 a.m. • Church Street Ballroom
- 30 Winter Wine & Cheese Social**
5:30 p.m. • Winter Park Farmers' Market

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