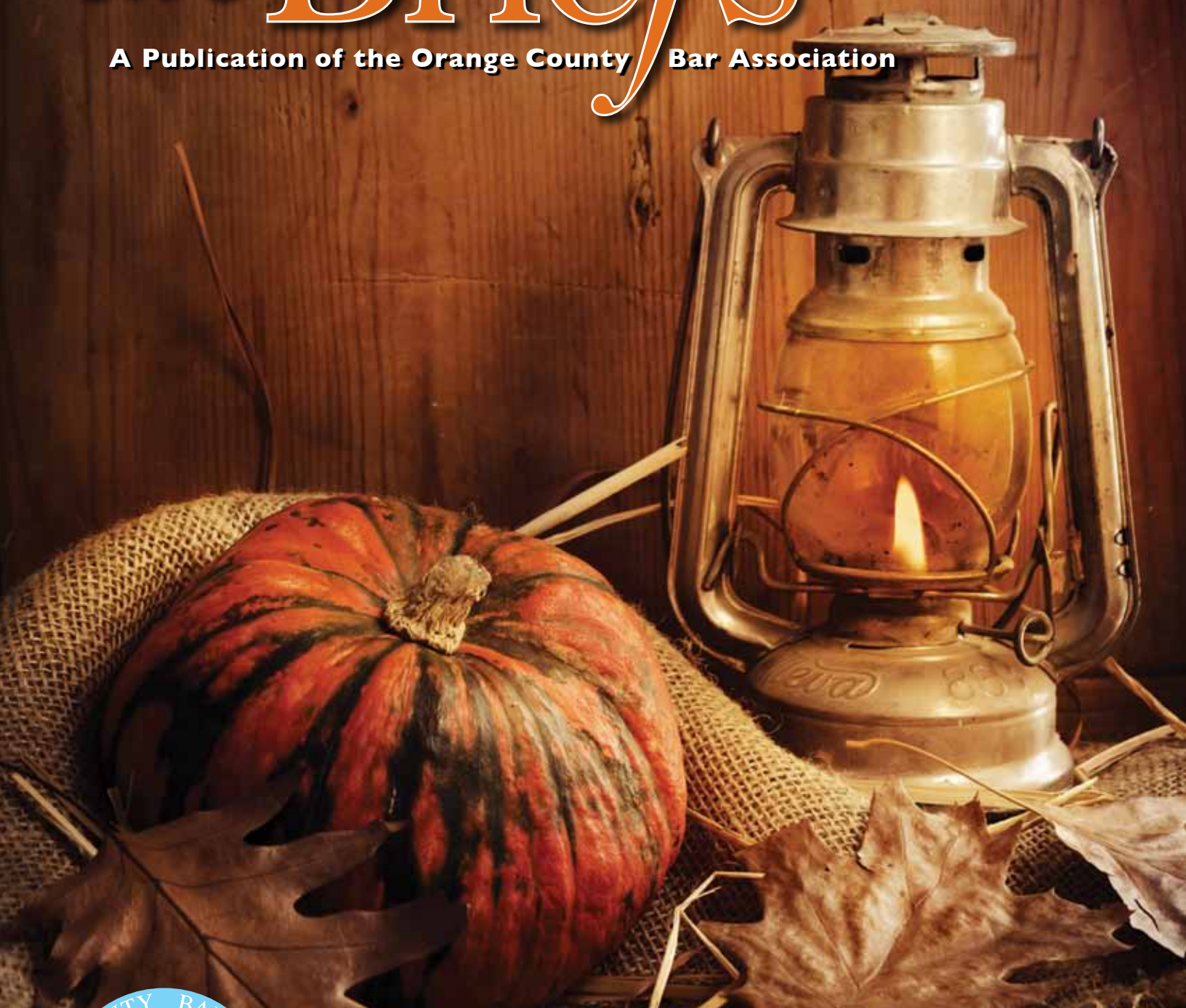


the Briefs

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DEADLINE INFORMATION

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

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

If the deadline falls on a weekend or holiday, the deadline is the next business day. Publication of advertising herein does not imply any endorsement of any product, service or opinion advertised. The opinions and conclusions, including legal opinions and conclusions contained in articles appearing in *The Briefs*, are those of the authors and do not reflect any official endorsement of these views by the Orange County Bar Association or its officers and directors, unless specifically stated as such.

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President's Message

November 2014



Nicholas A. Shannin, Esq.

Interconnectivity: Bar and Staff

NOOOOOOOOOOOOO!

That was the sound I made, heard from Ocala to Okeechobee, when our executive director since 2003 gave me the news. He loved the OCBA, and he loved serving as executive director, but he would need to take his All-American swimming medals earned as a Gator, and his National Association of Bar Executives recognitions for his leadership during his 11 years of bar service, and leave us and the whole of Florida to move to Pennsylvania.

The reason, fortunately, is all good. His wife and OCBA member, Linda Bittner, Esq., had for many years been the uber-effective manager of her law firm in Maitland. Their primary client decided her skill set was exactly what they needed at corporate and made her the proverbial offer she couldn't, or at least shouldn't, refuse. After collective contemplation, the decision had been made, and our loss is now the Keystone State's gain.

Brant took the legendary dedication he had to swimming – dedication that stands to this day as the holder of a Masters 1988 American record that has never been topped – and applied those skills to our bar. Here are four skills that he used from his role as Aquaman and applied them to be an elite bar manager:

- **Maintain clear vision.** Those goggles aren't just for show. Brant's greatest gift has always been his ability to envision long-range goals for our bar, with programs like Leadership Law, Bench Bar, New Lawyer Training Program, and the Residential Mortgage Foreclosure Program being fruits of that vision focused on the future.
- **Go the distance.** It's not a sprint, and with bar presidents changing every year, the ability to maintain progress on plans that extend over multiple years is crucial. The Florida Bar has recognized this need with its "Vision 2016" plan. Brant always worked on a long-range model, and by going the distance, we will continue on that plan for years to come.
- **Assemble a great team.** That Phelps character doesn't get his eight-medal-haul in

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Beijing without having Ryan Lochte and company ready and able to win team gold. Brant assembled a crackerjack staff that has

allowed our bar to be a leader in the state and nation for member benefits and programming.

- **Anticipate the relay.** Part of being a great team swimmer isn't just individual prowess or even selecting the right teammate; it's the ability to smoothly make the transition from one swimmer to the next that leads to victory. Our bar is very fortunate that Brant had planned the exchange all along. He not only identified our Mortgage Foreclosure Program Executive Director, Kim Homer, Esq., as someone who could succeed him, but established her two years ago as his assistant executive director. Doing so enabled her to not only continue to develop our Mortgage Foreclosure Program, but also to directly participate in the administrative process for each one of our multiple bar programs and to help those programs function at the high level expected. As a result of Brant's anticipation of the need to successfully relay this leadership post, Kim is fully prepared and has already hit the ground running as our new executive director.

So, in a year that has already seen a transition from a longtime chief judge to a worthy successor, so too do we have a changing of the guard at our bar association. Kim Homer, we welcome you to the exciting and challenging role of executive director; and to Brant Bittner, our deepest appreciation and thanks for your vision and leadership over the last 11 years. Godspeed!

Nicholas A. Shannin, Esq., Board Certified Appellate Attorney at Shannin Law Firm, P.A., practices appellate and governmental law and serves as a Certified Circuit, Appellate, and Federal Mediator. He has been a member of the OCBA since 1994.



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Kristopher J. Kest, Esq.

I Really Wish Someone Would Talk to That Guy!

I really wish someone would talk to that guy. Ugh ... I've got *her* for opposing counsel? The other attorney did *what*?!

Enter the Ninth Judicial Circuit Local Professionalism Panel. Established by Ninth Circuit Administrative Order 2014-07, the panel addresses, upon your request, instances of unprofessional behavior by and among members of the Ninth Judicial Circuit. Referrals to the panel are made by submitting the form attached to the Administrative Order, which can be found at www.ninthcircuit.org.¹ Put your local professionalism panel to work!

The panel was created at the direction of the Florida Supreme Court. On June 6, 2013, the Supreme Court directed the chief judge of each circuit to "create a Local Professionalism Panel to receive and resolve professionalism complaints informally if possible." *In re Code for Resolving Professionalism Complaints*, 116 So.3d 280, 282 (Fla. 2013). Little other guidance was provided as to the structure, make-up, or procedures to be followed by the local professionalism panels. For the Ninth Circuit, former Chief Judge Belvin Perry, Jr., created an inclusive panel, seating representatives from 10 local voluntary bar associations. New Chief Judge Frederick J. Lauten recently entered Amended Administrative Order 2014-07-A-01 and appointed two new at-large members to the panel.

But, you may be asking, what kind of issues should I refer to the panel? First, note that any person may make a referral to the panel, including attorneys, judges, members of the public, and The Florida Bar itself. If you feel that an attorney's behavior merits "a talking to" but does not rise to the level of a formal complaint to The Florida Bar, consider a referral to the panel. You might also consider a referral if it is a "close call" as to whether the behavior merits a Florida Bar complaint. The panel is empowered to make a referral to The Florida Bar if warranted.

Okay, but what standards will the panel use to measure the respondent attorney's behavior? You will be happy to know that the Florida Supreme Court recognized that there are already plenty of professionalism standards available and did not create any more. Instead, the following were identified as the "ideals and standards" to which attorneys in the Ninth Circuit will be held: the Oath of Admission to The Florida Bar; The Florida Bar Creed of Professionalism; The Florida Bar Ideals and Goals of Professionalism; the Rules Regulating The Florida Bar; the decisions and administra-

tive directives of the Florida Supreme Court; the Professionalism Standards of the Osceola County Bar Association; and the Orange County Bar Association's Standards of Professional Courtesy and Courtroom Decorum. Each of these can be found by a Google search.

When the panel receives a referral (which can be anonymous), the chairperson assigns three members from the panel to investigate and address the issue within 45 days. The three members selected will hold a meeting to which the respondent attorney will be invited. While attendance by the respondent attorney at this meeting is voluntary (as is everything associated with the process), the three-member panel may take a lack of attendance into consideration when deciding whether to refer the matter to The Florida Bar.

So – the big question: What can the panel do to the respondent attorney if it finds a deviation from the ideals and standards? The panel does not have authority to sanction or punish. Instead, it is directed to make "non-punitive, educational and constructive" recommendations. These recommendations may include an oral or written decision to the respondent attorney; referral to a mentoring program, The Florida Bar Ethics School, the Florida Lawyers Assistance Program, or The Florida Bar itself; guidelines to assist the respondent attorney in the future; or any other recommendation the three-member panel deems appropriate. Compliance with these recommendations is voluntary and all records and information received or created by the panel are confidential and are destroyed within 30 days of the conclusion of the proceedings.

There is debate within The Florida Bar as to whether these local professionalism panels will be effective. As they say, time will tell. But your local professionalism panel is off to a good start, having handled two referrals as of this writing. You are encouraged to continue making referrals as needed. The Ninth Circuit is already a great place to practice law, and use of the panel can make it even better. Questions may be directed to the author or to the chairperson, Jeffrey D. Keiner, Esq., at 407-843-8880, or Jeffrey.Keiner@gray-robinson.com.

Kristopher J. Kest, Esq., is an attorney at Lowndes, Drosdick, Doster, Kantor & Reed, P.A. Kristopher practices family law and commercial litigation. He has been a member of the OCBA since 2005.

¹Select "Research," then "Admin Orders," then in the Order Number field search for "2014-07."

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,
and 3 Executive Council Seats)

**Legal Aid Society of the
Orange County Bar Association, Inc.**
(1 Three-year-term Board of Trustees Seat)

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

Nominating petitions are available on the
OCBA website homepage.

The nomination deadline is January 30, 2015

If you have any questions, please contact Kimberly
Homer, Executive Director, at 407-422-4551 or
khomer@ocbanet.org

Important News! **Special Process Servers**

At the request of Chief Judge Lauten, an Administrative Order addressing, on a temporary basis, the issue regarding the appointment of Special Process Servers is available on the OCBA website homepage and will be sent to you via Discovery email blast.

2015 Liberty Bell Award Nominees Sought

The Orange County Bar Association invites you to submit your nomination today for a person or organization in our community but outside the traditional "legal profession" that best demonstrates a deep commitment to the rule of law and has worked to promote civic responsibility among our citizens. The honoree will be awarded the Liberty Bell award at a ceremony held during the OCBA Law Week Luncheon on April 23, 2015. As you make your nomination, please consider those whose work meets the following criteria:

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

Please submit a one- to two-page nomination letter that enumerates the ways your nominee exemplifies the qualities above. **Current submission deadline: March 1, 2015.**

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

For further information, contact Jonathan Stimler (jstimler@lseblaw.com) or Bart Vickers (bartley.Vickers@csklegal.com).

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George C. Young American Inn of Court Selects Two for Awards

In June, the George C. Young American Inn of Court honored two individuals at its year-end banquet. Judicial assistant Diane Iacone was selected as the recipient of the Arnie Wilkerson Memorial Court Service Award, and Mark L. Horwitz, Esq. was given the James G. Glazebrook Professionalism and Service Award.

Each year, the Inn solicits nominations for the two awards. The Arnie Wilkerson Award is named after Orange County Sheriff's Deputy Arnie Wilkerson, who was killed in the line of duty on January 10, 1984 while serving as a bailiff at the Orange County Courthouse. In recognition of his selfless sacrifice and his exemplary public service, the Inn created an award in his honor. The award honors individuals (excluding lawyers and judges) working in the judicial system who display the highest standards of character, integrity, and ongoing dedication to the judicial system. Past recipients have been long-term models of excellence in their work within the judicial system and have also been extremely active in some dimension of community service outside of the judicial system.

This year's winner of the Wilkerson Award was Diane Iacone, who has been Circuit Judge John Marshall Kest's judicial assistant since 2003. She has worked in the legal system her entire career. In addition to serving as Judge Kest's JA, Diane has worked as the human resources director / administrative assistant in the public defender's office, legal secretary and office manager at several private law firms, and the judicial assistant to judges Janis Mary Halker, James C. Hauser, and Ted Coleman. She also has an extensive record of community service, including volunteering at the Boone High School's law magnet program, the Russel Home for Atypical Children, and the West Orange Civitan Club.

Diane's dedication to the legal system has received widespread praise. In support of her nomination, OCBA member Kimberly Hosley, Esq., wrote: "When Ms. Iacone says that she will get right back to you or tells you that she will ask the judge right when he gets off of the bench that is indeed what she does. You can always count on her to be on top of anything she is involved with and to go above and beyond to assist you in any way that she can whether it is her job to do so or not. She is prompt, attentive, courteous, and professional. She never makes you feel that she is too busy, that your problem is too minor, or that what you need

is unimportant; quite the opposite. She is simply *always* a pleasure to interact with."

Judge J.M. Kest presented the Wilkerson Award to Diane at the banquet. Judge Kest praises Iacone for her great work: "Diane is a true public servant. She is the 'go-to' judicial assistant for assisting new judicial assistants and even judges. She is always willing to drop whatever she is doing to help a colleague. We are lucky to have her working for the court system."

The Glazebrook Award is dedicated to the memory of U.S. Magistrate Judge James G. Glazebrook, who was a longtime member of the Inn. The purpose of this award is to honor a current or former Inn member whose combination of service to the Inn and professionalism and integrity in practice display a course of excellence.

This year's winner of the Glazebrook Award was Mark Horwitz, Esq. In his 30 years of practicing law, Horwitz has worked as a federal prosecutor and a criminal defense attorney. Mark specializes in white-collar cases, and he has handled a number of high-profile matters, including the defense of the inventor of Nautilus sports equipment against criminal tax charges. Mark was one of the founding members of the Inn of Court in Orlando, and he served as its president from 2001 to 2003.

In recognition of his many years of service to the Inn and assistance in the mentoring of young attorneys, Mark was presented with the Glazebrook Award by the Inn's president, Senior U.S. District Judge John Antoon II. Judge Antoon commended Mark and his dedication to the mission of the Inn: "Mark was one of the founding members of the Inn and has served as its president and as a longstanding member of its board of directors. In his practice, Mark represents those traits which are essential to the function and survival of the American system of justice – excellence in trial practice skill, dedication to the law, civility toward his adversaries, and candor toward the court. With assiduous commitment to these qualities, Mark zealously represents the interests of his clients. We are fortunate to have him as a member."

Roger B. Handberg, Esq., is a federal prosecutor in Orlando. He handles federal criminal prosecutions of white collar, computer crime, child pornography, human trafficking, and firearms cases. He is a past chair of the OCBA's Criminal Law Committee and a member of the Board of Directors of George C. Young First American Inn of Court.



Bradford Petrino, Esq.

Constructive Criticism: District Courts Should Harmonize Decisions on Service of Process by Publication – Part 2 of 2

Last month's article presented a hypothetical scenario on service of process by publication, and then used those facts to demonstrate the inconsistent holdings reached in five appellate opinions spanning the Third, Fourth, and Fifth District Courts of Appeal.¹ As noted, the point of conflict between these courts is whether a sworn statement in support of constructive service must *state* that all of the statutory prerequisites for valid constructive service have been met (e.g., that a diligent search and inquiry was performed) or must *show* compliance with the statute.

This is critical because the validity of the sworn statement controls the question of whether a subsequent judgment rendered thereon is void or voidable.² In a civil action resulting in the judicial sale or transfer of real property, a voidable judgment allows the prevailing defendant to recover only against the plaintiff, while a void judgment returns ownership of the property to the defendant, wiping out all subsequent sales of the property regardless of whether subsequent purchasers were on notice of the defective constructive service.³

Of those cases, the two most extreme viewpoints are represented by the Fourth District's 1993 opinion in *Demars*, and the Third District's 2013 opinion in *Castro* (which was based almost entirely upon its 2008 opinion in *Redfield Investments*⁴). This author believes that to reach a logically consistent result, the courts will have to elect one of these two positions and reject all others. Selecting between these positions, however, is quite challenging because neither *Demars* nor *Redfield Investments* cited to particularly convincing authority in support of their holdings.

Accordingly, in this article we will review each case cited in *Demars* and *Redfield Investments* in an attempt to determine which opinion sets forth the more tenable application of the statute.

Demars

In 1993, the Fourth District held in *Demars v. Village of Sandalwood Lakes Homeowners Association, Inc.* that a sworn statement in support of constructive service was sufficient on its face so long as it merely alleged as a conclusion each jurisdictional fact required under the statute, most notably that a diligent search and inquiry to find the person served had been performed.⁵

To reach this conclusion, the court reviewed the history of constructive service in Florida, focusing

on the fact that the pre-1941 statutes providing the requirements for constructive service said the affidavit must "state" that a diligent search (and other requirements) had been performed, and the post-1941 statutes now say the affidavit must "show" the elements supporting constructive service have been performed.⁶ *Demars* expressly rejected that the change from "state" to "show" had any operative effect on the contents required for a facially sufficient sworn statement in support of constructive service, citing eight prior opinions as its authority.⁷

Demars began its review with the 1926 opinion of *McDaniel v. McElvy*, which was a quiet title action in which constructive service of process was authorized by the then-applicable quiet title statute.⁸ In *McDaniel*, the court distinguished the Florida statute at bar from statutes in effect in Oklahoma and South Dakota, each of which required that facts be alleged that show the due diligence performed to support constructive service.⁹ The court explained:

[the Florida statute] is unlike the statutes referred to. Its requirements are that where the names and residence of persons interested are unknown to the complainant and have not been ascertained after diligent inquiry, the bill of complaint shall so *state*; and further, that the complainant shall *allege* certain things in his bill with reference to whether certain defendants are dead or alive.¹⁰

The court also noted that a portion of the statute did require the bill of complaint to "show" certain information. However, the court concluded, based on interpretation of the overall context of the statute that "it was not intended by the Legislature ... that the complainant allege the facts tending to support that allegation as a condition precedent to the issuance of process."¹¹

Demars next discussed *Catlett v. Chestnut*, a 1933 opinion following an appeal from a divorce action, in which the bill of complaint being used as the basis for constructive service deviated from the applicable statute by alleging that the "address" of the defendant was unknown rather than the defendant's "residence."¹² *Catlett* supports the general principle of distinguishing between the total failure to allege a jurisdictional fact, which renders a judgment based thereon void, and the lesser failure of the defective allegation of a jurisdictional fact, which renders the judgment there-

on merely voidable.¹³ *Catlett* also unequivocally held that if an affidavit in support of constructive service states each required jurisdictional fact, but the service is later found defective, the judgment thereon is merely voidable, and not void.¹⁴

Next, *Demars* discussed the 1938 case, *Klinger v. Milton Holding Co.*, to explain that the determining factor for whether judgment predicated on defective constructive service was void or voidable was whether the sworn statement in support thereof was sufficient on its face.¹⁵ *Klinger* specifically held that the allegations supporting constructive service were facially sufficient because they alleged each element of the relevant statute.¹⁶ *Klinger* quoted the affidavit supporting constructive service which was at issue in the case in full, so there can be no question that the affidavit merely recited in conclusory fashion that the defendant was a non-resident, that his residence was unknown, that he was over 21, and that there was no other person upon whom service may be had in Florida.¹⁷

Upon concluding its review of *Klinger*, *Demars* discussed the constructive service statutes' legislative history, explaining that they were amended in 1941, at which time the word "state" was changed to "show."¹⁸ Moreover, the court opined that if its inquiry had been limited to the *McDaniel* opinion, it would have been forced to conclude that the word "show" controlled the content required for a facially sufficient affidavit.¹⁹ The court then proceeded to the first post-1941 case that it was relying upon.

Grammer v. Grammer was a 1955 divorce case in which the affidavit under consid-

eration merely alleged that the plaintiff made a diligent search and that the residence of the defendant was unknown, and set the defendant's address forth as particularly as was known.²⁰ *Grammer* held: "The language of the sworn statement for constructive service is a [sic] clear compliance with the statutory requirements of section 48.04, F.S.1951, F.S.A., and this fact is not questioned."²¹ The court made no reference to the 1941 amendment, and the only case cited in the entire opinion with respect to constructive service is *McDaniel*.²²

None of the next three opinions cited by *Demars* contain any discussion or opinion respecting the statutory requirement that the sworn statement "show" that the requirements have been met. In 1961, *Munro v. Bechard* upheld constructive service, stating only that the affidavit, which is not described, "was not shown to be insufficient under the established rule, as set out in *McDaniel* [and] *Grammer*..."²³ In a 1965 divorce appeal, the court in *Larsen v. Larsen* only briefly referred to the sufficiency of the allegations supporting constructive service in the context of explaining all of the analytical steps required under *McDaniel*.²⁴ Finally, the 1970 opinion in *Gmaz v. King* exclusively discusses whether the plaintiff's diligent search was sufficient and does not comment on the sufficiency of the sworn statement.²⁵

The final case cited by *Demars* is the Fourth District's opinion from the year previous, *Hobe Sound Industrial Park, Inc. v. First Union National Bank*.²⁶ In this one-page opinion, the court reviewed a sworn statement that described in detail the nature of the diligent search performed, and found it to be insufficient on its face because it did not reflect

a diligent enough search.²⁷ Note that *Demars* did not cite this case to support its conclusion, but rather as an illustration of the correctness of its holding as a public policy decision, i.e., holding out *Hobe Sound* as a result that is harmful from a public policy perspective, stating:

To require the affidavit to "show" the efforts of a diligent search leaves open the judgment to continued challenges that on the face of the affidavit that the affiant did not do enough searching... a title examiner would understandably be reluctant to insure any title in whose chain a foreclosure based on constructive service appears.²⁸

Demars concluded by certifying to the Florida Supreme Court the question of whether an affidavit must "state" or "show" that an adequate, diligent search was performed, but the question was not appealed by the non-prevailing party.²⁹

Redfield and Castro

The Third District created a direct conflict with *Demars* in 2008 in *Redfield Investments, A.V.V. v. Village of Pinecrest* when it held that

the affidavit filed by Pinecrest in this case is itself legally insufficient. Not only does section 49.051 set forth explicit requirements to effectuate proper service of process..., but the statute also requires that the sworn statement **show** that the requirements have been met. Our case law is clear that averments in conclusory terms fall short of the statutory and constitutional requirements of the statute.³⁰

In contrast with *Demars*, *Redfield Investments* undertook no review of legislative

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The Offer In Compromise and Its Less Well-Known Cousin

Jeff DeRosier, Esq.¹

Two Avenues for Reducing a Liability

Many clients and attorneys are aware, generally, that there are programs available to help taxpayers who feel they cannot repay their federal tax liabilities. Clients seem to have the general impression that reducing the liability is an exercise in horse-trading; attorneys seem to understand there is more to it than that, but do not know exactly what is entailed. This article will discuss two programs that may allow delinquent taxpayers to pay less than the entire balance owed: the Partial Pay Installment Agreement ("PPIA") and the Offer In Compromise ("OIC").

Partial Pay Installment Agreement ("PPIA")²

The PPIA was established by the American Jobs Creation Act of 2004, amending §6159(a) to include language approving full or partial collection of a given liability.³ Prior to this change, if a taxpayer could not afford to pay in full via an installment agreement, an OIC was the sole option.⁴

Assume the following:

1. Taxpayer owes \$118,000 (including all penalties and interest) as follows:

Year	Liability
2007	\$15,000
2008	\$23,000
2009	\$35,000
2010	\$45,000
Total:	\$118,000

2. Client is unmarried and is solely responsible for the liability.
3. Client has demonstrated an ability to pay of \$500 per month.⁵
4. Client has no retirement accounts, has no cash value life insurance or annuities, and rents an apartment.
5. Client has no equity in his or her automobile.
6. Client will begin making installment payments on August 15, 2014.

The Collection Statute Expiration Date (CSED) is ten years from the date the tax is assessed for any given year.⁶ Any liability, penalties, and interest still outstanding after the CSED expires become uncollectable.⁷ Generally, tax is assessed when the taxpayer submits a tax return that is accepted by the IRS.⁸ If the taxpayer never files a return and

the IRS files one on the taxpayer's behalf, the filing of that return begins the CSED for that year.⁹

Assume the following CSEDs:

Year	Liability	CSED
2007	\$15,000	4/15/2020
2008	\$23,000	4/15/2020
2009	\$35,000	4/15/2022
2010	\$45,000	4/15/2023 ¹⁰
Total:	\$118,000	

The taxpayer will make \$500 payments beginning August 15, 2014; each successive payment is due on the 15th of each successive month. Generally, the IRS will apply payments to the oldest CSED first in order to collect as much as possible of the oldest liability before the CSED expires.¹¹ All payments made subsequent to the first CSED expiration will be applied to the next oldest CSED.¹²

There are sixty-eight (68) months between the client's first payment and the CSED for 2007 and 2008.¹³ As such, the payments will be applied as follows:

Year	Liability	CSED	Amt. Paid	Amt. Expired
2007	\$15,000	4/15/2020	\$15,000 (30 pmts.)	\$0
2008	\$23,000	4/15/2020	\$19,000 (38 pmts.)	\$4,000
2009	\$35,000	4/15/2022		
2010	\$35,000	4/15/2023		
Total:	\$118,000		\$34,000	\$4,000

The sum of all the client's payments as of April 15, 2020 will be thirty-four thousand dollars. Fifteen thousand dollars will be applied to 2007, resulting in the client paying the 2007 liability in full prior to the CSED expiration.¹⁴ The balance of the client's payments (nineteen thousand dollars) will be applied to 2008, but because the CSED for 2008 expires on the same day, any unpaid amount (four thousand dollars) becomes uncollectable. As a result, the client just achieved a discount on his or her liability.

There are twenty-four months between the expiration of the 2007 and 2008 CSEDs and the 2009 CSED of April 15, 2022. As such, the client's repayment and liability summary is as follows:

Year	Liability	CSED	Amount Paid	Amount Expired
2007	\$15,000	4/15/2020	\$15,000	\$0
2008	\$23,000	4/15/2020	\$19,000 ¹⁵	\$4,000
2009	\$35,000	4/15/2022	\$12,000 (24 pmts.)	\$11,000
2010	\$35,000	4/15/2023		
Total	\$118,000		\$46,000¹⁶	\$15,000

After the expiration of the 2009 CSED, there are only another twelve months, and thus twelve payments, before the 2010 CSED expires. The sum of the client's payments that will be applied against 2010 is \$6,000. The complete picture of the client's liability and repayment amount after all CSEDs expire is as follows:

Year	Liability	CSED	Amount Paid	Amount Expired
2007	\$15,000	4/15/2020	\$15,000	\$0
2008	\$23,000	4/15/2020	\$19,000 ¹⁷	\$4,000
2009	\$35,000	4/15/2022	\$12,000	\$23,000
2010	\$35,000	4/15/2023	\$6,000 (12 pmts.)	\$29,000
Total	\$118,000		\$52,000¹⁸	\$66,000

As this hypothetical demonstrates, significant savings can occur via installment agreements. However, it would be inaccurate to describe this strategy as a lump-sum discount, even though the potential savings can be quantified in terms of a lump sum. At the outset there is a potential savings of \$66,000, but there are several risks that accompany that potential savings:

1. All PPIAs are reviewed every two years by the IRS.¹⁹ If, after any review, the client can pay more, the IRS will require that the client pay more.²⁰
2. The PPIA described above encompasses an eight-year repayment period. The taxpayer must remain compliant²¹ for the entire eight years.
3. All penalties and interest continue to accrue until the CSED date.²² If the client's ability to pay increases, the client will have to repay more penalties and interest before the client's payments are allocated to the next expiring CSED period.

As such, any description of a PPIA that characterizes the repaid amount as a lump sum is inherently inaccurate. Any discount that may occur because of the use of a PPIA is strictly conditioned on the passage of time and continuing to make payments. In other words, if the taxpayer were to call the IRS after establishing the PPIA and offer to make a lump-sum payment of \$52,000, the IRS would not accept the proposed payment, even if that is the amount ultimately repaid; all the IRS would accept is the monthly payment amount.

The Offer In Compromise ("OIC")²³

The OIC is one alternative to a PPIA. Like a PPIA, whether an OIC is accepted or rejected depends on the financial statement submitted and whether it reasonably reflects collection potential.²⁴ Unlike a PPIA, an OIC is submitted on the basis of a lump sum offer amount.²⁵ Even though the OIC is submitted on the basis of a lump sum, installment payments can still be made if accepted by the IRS.²⁶

In order to determine the offer amount, an analysis of the payment options is essential because the taxpayer may not be able to meet certain payment options, thus threatening the viability of the OIC. For example, an offer can be paid in one lump sum, in five (5) months or less,²⁷ or by payments lasting up to twenty-four

(24) months.²⁸ The following would be the payment options using the same \$500 per month payment amount:²⁹

Option	Amount Offered	Payment Amount
One-time lump sum	\$6,000	\$6,000 (one-time, submitted with the OIC).
Five months or less	\$6,000	\$1,200/month (first payment submitted with OIC, four monthly payments to follow).
More than 5 months (but not more than 24 months)	\$12,000	\$500/month, 24 months.

Some pitfalls of the OIC are evident in the table above. Most taxpayers are interested in paying as little as possible; doing so, however, may put the taxpayer in a position where the offered payment terms cannot be honored. If the taxpayer demonstrated an ability to pay \$500 per month, the taxpayer may have difficulty coming up with a \$6,000 one-time lump-sum payment.³⁰ Similarly, if the taxpayer can only pay \$500 per month, the taxpayer may default on a \$1,200 monthly payment. Thus, the taxpayer may be forced to offer the larger OIC amount simply due to the taxpayer's ability to commit to and honor the monthly payment amount.

There are other potential pitfalls to submitting an OIC:

1. Equity In Assets – All equity in assets must be offered, regardless of whether the taxpayer can actually access that equity.³¹ To illustrate, consider a variation on the assumptions that guide this discussion. Assume the taxpayer has \$6,000 in taxpayer's IRA and \$10,000 equity in his or her homestead in addition to the taxpayer's ability to pay on a monthly basis. The taxpayer must include those dollar values in his or her OIC, *whether the taxpayer can access those amounts or not*.³² Even though the taxpayer is only obligated to value his home at 80%³³ of the fair market value, if equity exists it must still be offered. The taxpayer's revised payment options are:

Option	Amount Offered	Payment Amount
One-time lump sum	\$24,000	\$24,000 (one-time, submitted with the OIC).
Five months or less	\$20,000	\$4,000/month (first payment submitted with OIC, four monthly payments to follow).
More than 5 months (but not more than 24 months)	\$28,000	\$1,666.67/month, 24 months.

The above repayment options demonstrate additional tension between the client's ability to pay and client's OIC repayment options. It is important that clients not put themselves under such financial pressure that they would be unable to perform their obligations as submitted to the Offer Unit.

2. Closely Held Business Entity – Many times, the client has tax problems because the client is self-employed via a closely held business. If such a closely held business entity exists, the client must include that business entity on the OIC financial statement, and must include a value for that business.³⁴ The IRS may request a valuation by an independent, impartial appraiser.³⁵ To illustrate, assume that the taxpayer asserts and the IRS accepts that the business is worth \$50,000 (the assumptions regarding home equity and IRA equity are disregarded here).

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Real Property Committee

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history, nor did it address any public policy concerns. *Redfield Investments* cited just three cases, including the Third District's earlier opinion in *Robinson v. Cornelius*. In *Robinson*, the court briefly mentioned that the "record [did] not disclose any meaningful search or inquiry as to the whereabouts of appellant," but the court did not specifically state whether it was referring to the facial sufficiency of the affidavit or the sufficiency of the search, nor did it articulate what standard it used to review the sworn statement.³¹

Redfield Investments also cited to *Coin Copies, Inc. v. Financial Federal Savings & Loan Association of Dade County*, which held that an affidavit containing a conclusory statement that a diligent search was performed, along with additional evidence that the sheriff made seven attempts at personal service during a one month period, was insufficient for constructive service on a business entity.³² Citing only to *Robinson*, *Coin Copies* also did not describe the standard it was applying or whether it was addressing to the sufficiency of the affidavit or the search.³³

Redfield Investments' third citation was to *Perpro Systems International, Inc. v. Rickbeil*, a 1996 Fourth District case.³⁴ In *Perpro*, however, the affidavit (which is quoted in the opinion) stated that the plaintiff made a diligent search to find the registered agent of the defendant, but failed to allege any diligent search to locate other corporate officers.³⁵ Although the affidavit did recite all of the statutory elements, *Perpro* held that the affidavit should have alleged that a diligent search was performed for all of the corporate officers, not merely that a diligent search was performed to locate all persons upon whom service of process would bind the defendant corporation.³⁶ Nevertheless, there is no holding in *Perpro* that the affidavit should have shown that a diligent search was performed.³⁷

Redfield Investments has been followed recently by *Castro v. The Charter Club, Inc.*, which directly contradicts *Demars*. *Castro* held that Chapter 49, Florida Statutes, requires that a sworn statement in support of constructive service must specify, with particularity, what efforts and steps were taken to conduct a diligent search, and failure to do so renders such an affidavit defective on its face and the final judgment thereon void.³⁸

Conclusion

The foregoing has revealed that there is truly no easy reconciliation of appellate

case law concerning constructive service requirements. A careful review of both *Demars* and *Redfield Investments* reveals significant gaps in both these courts' analyses, particularly where they rely upon numerous authorities that do not support the proposition for which they are cited. Accordingly, this author urges the district courts to critically review the extant body of case law and clarify this important due process issue.

Bradford Petrino, Esq., is an associate attorney at Korshak & Associates, P.A., where his practice focuses on business and real property litigation throughout Central Florida. He is an executive committee member of the OCBA's Real Property Committee and an at-large member of The Florida Bar Real Property, Probate, and Trust Law Section's Executive Council. He has been a member of the OCBA since 2008.

³¹Those five cases were: *Castro v. The Charter Club, Inc.*, 114 So. 3d 1055 (Fla. 3d DCA 2013); *Godsell v. United Guar. Residential Ins.*, 923 So. 2d 1209 (Fla. 5th DCA 2006); *Shepherd v. Deutsche Bank Trust Co. Ams.*, 922 So. 2d 340 (Fla. 5th DCA 2006); *Demars v. Vill. of Sandalwood Lakes Homeowners Ass'n, Inc.*, 625 So. 2d 1219 (Fla. 4th DCA 1993); *Gans v. Heathgate-Sunflower Homeowners Ass'n, Inc.*, 593 So. 2d 549 (Fla. 4th DCA 1992).

³²*Klinger v. Milton Holding Co.*, 186 So. 526, 532-33 (Fla. 1939).

³³E.g., *Lewis v. Fifth Third Mortgage Co.*, 38 So. 3d 157, 160 (Fla. 3d DCA 2010) ("If the trial judge were to find the affidavit to be defective on its face, service would be void as to the bona fide purchaser. If the trial judge finds the affidavit sufficient on its face, but were to determine that a diligent search was not performed, the foreclosure would be voidable, not void, as to the bona fide purchaser.")

³⁴*Castro*, 114 So. 3d at 1059-60 (citing *Redfield Invs., A.V.V. v. Vill. of Pinecrest*, 990 So. 2d 1135, (Fla. 3d DCA 2008)).

³⁵*Demars*, 625 So. 2d at 1223 (Fla. 4th DCA 1993).

³⁶*Id.* at 1222.

³⁷*Id.* at 1223.

³⁸*Id.* at 1221-22 (citing *McDaniel v. McElhy*, 108 So. 820 (Fla. 1926)).

⁹*McDaniel*, 108 So. at 831-32.

¹⁰*Id.* at 832.

¹¹*Id.*

¹²*Demars*, 625 So. 2d at 1222 (citing *Catlett v. Chestnut*, 146 So. 241 (Fla. 1926)). 146 So. 241 (Fla. 1926)).

¹³*Catlett*, 146 So. at 244.

¹⁴*Id.*

¹⁵*Demars*, 625 So. 2d at 1222 (citing *Klinger*, 186 So. at 532-33).

¹⁶*Klinger*, 186 So. at 532-33.

¹⁷*Id.* at 532.

¹⁸*Demars*, 625 So. 2d at 1222.

¹⁹*Id.*

²⁰*Grammer v. Grammer*, 80 So. 2d 457, 458 (Fla. 1955).

²¹*Id.* at 459, quoted in *Demars*, 625 So. 2d at 1222.

²²*Id.* at 460.

²³*Munro v. Bechard*, 132 So. 2d 429, 430 (Fla. 3d DCA 1961) (other citations omitted).

²⁴*Larsen v. Larsen*, 180 So. 2d 393, 393-95 (Fla. 1st DCA 1965).

²⁵*Gmaz v. King*, 238 So. 2d 511, 512-13 (Fla. 2d DCA 1970).

²⁶*Demars*, 625 So. 2d at 1223 (citing *Hobe Sound Indus. Park, Inc. v. First Union Nat'l Bank*, 594 So. 2d 334 (Fla. 4th DCA 1992)).

²⁷*Hobe Sound Indus. Park, Inc.*, 594 So. 2d at 335.

²⁸*Demars*, 625 So. 2d at 1223.

²⁹*See id.* at 1224.

³⁰*Redfield Invs., A.V.V.*, 990 So. 2d at 1139 (citations omitted).

³¹*Robinson v. Cornelius*, 377 So. 2d 776, 778 (Fla. 4th DCA 1979).

³²*Coin Copies, Inc. v. Fin. Fed. Sav. & Loan Ass'n of Dade County*, 439 So. 2d 338 (Fla. 3d DCA 1983) (citing *Robinson*, 377 So. 2d 776).

³³*See id.*

³⁴*Perpro Sys. Int'l, Inc. v. Rickbeil*, 668 So. 2d 319, 320 (Fla. 4th DCA 1996) (citing *Coin Copies, Inc.*, 377 So. 2d 338).

³⁵*Id.* at 319.

³⁶*Id.* at 319-20.

³⁷*Id.*

³⁸*Castro v. The Charter Club, Inc.*, 114 So. 3d 1055, 1060-61 (Fla. 3d DCA 2013) (citing *Redfield Invs., A.V.V.*, 990 So. 2d at 1140). Notably, *Castro* also cited to *Gans*, 593 So. 2d at 552, decided by the Fourth District the year before *Demars*, but *Castro* makes no reference to *Demars* itself. *Castro*, 114 So. 2d at 1060.



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Catherine A. Tucker, Esq.

Choose Your Pro Bono Work for 2015 by Email

2015 is a year filled with *pro bono* opportunities for OCBA members. The Legal Aid Society will offer many areas for casework and 12 projects. When you receive your 2015 preference form in late November, please make your selections. If you need information, you may contact me or any of the attorneys coordinating one of the activities in which you are interested.

This year we will be using email to send out our preference forms. The email will contain a link to a fillable form on which you will make your selections. We hope this new process will make it quicker and easier for attorneys to submit their preference.

Casework

We refer cases in family law, consumer law, housing law, immigration, and public benefits.

Clients have inspired the attorneys who represented them.

A volunteer attorney who concluded her dissolution of marriage case notes:

I spent over 42 hours on this case, and I will continue to help this client and attend all hearings on her behalf. She has no one for support in the state of Florida and I have become that stable support in her life. As a survivor of domestic abuse myself, I am blessed to have helped this client and her children escape the abuse. I want to thank the Legal Aid Society for helping this family.

An attorney who represented a tenant remarks:

We advanced costs of \$295, but the landlord reimbursed me for the costs as part of the settlement. I was not paid any attorney's fee by the landlord; rather, we waived the fee claim as part of the settlement so the client could get the matter settled swiftly and get the money she needed to move.

Guardian Ad Litem Program

Many children need the help of attorneys, including single child placements, sibling groups, infants, and teenagers. These children have been abandoned, neglected, or abused and are in need of a guardian ad litem to help them through the juvenile court process. Besides dependency, there are transitions cases for teens and young adults ages 16 through 21, delinquency issues for a dependent child, and appointments in criminal

cases for a child victim/witness. The program staff can provide support for the case.

The GAL program offers support teams for volunteer attorneys. For Division 7, program support is provided by GAL courtroom attorney Kavita Sookrajh, Esq. (ksookrajh@legalaidocba.org), GAL case coordinator Doris Mackey (demackey@legalaidocba.org), GAL case coordinator and volunteer advocate coordinator Heather Thein (hthein@legalaidocba.org), GAL case coordinator Clarissa Maldonado (cmaldonado@legalaidocba.org), and legal assistant to GAL assistant program director Michelle Erazmus (merazmus@legalaidocba.org). For Division 3, program support is provided by GAL courtroom staff attorney Catherine York, Esq. (kyork@legalaidocba.org), GAL case coordinator and volunteer advocate coordinator Heather Thein (hthein@legalaidocba.org), GAL case coordinator Clarissa Maldonado (cmaldonado@legalaidocba.org), and legal assistant to the GAL assistant program director Michelle Erazmus (merazmus@legalaidocba.org). The team will walk with the volunteer until he or she is comfortable to handle the case solo. The team assists with visitations, reports, and hearing coverage, making the case seamless. In addition, volunteer advocate coordinators are available to work with the GAL to assist with investigation and monitoring.

Family Law

In family law, Legal Aid refers dissolution of marriage cases with minor children and a current domestic violence order. We also receive many requests for guardianships. We only accept guardianships of the person – not property – and they are most often for now-adult children with capacity issues, spouse or parent, and for the Public Guardian, Seniors First. We also refer cases for a family member seeking custody of a minor child. The Chapter 751 cases are the third area of family law cases in which we receive many requests. There were more than 120 referrals in 2014.

Consumer Law

Chapter 7 bankruptcies are the single largest referral. We had a few Chapter 13 cases. We also have collection, garnishments, and student loans cases. Legal Aid does not offer training for the bankruptcy cases but relies on *pro bono* attorneys with experience in this area for referrals. We offer training in consumer debt issues. We are also seeing ID theft issues, collection/garnishment, and

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Susan Khoury, Esq.

Expanding Accomplishments Through Collaboration

For more than ten years, the Florida Statewide Guardian ad Litem Program has contracted with the Legal Aid Society of the Orange County Bar Association to operate the Guardian ad Litem Program in Orange County. Throughout those years, the statewide GAL office has completely supported Legal Aid's attorney-based model of representation. Current executive director Alan Abramowitz, Esq., was familiar with our GAL program from his years of service in Orange County as chief legal counsel for the Department of Children and Families. During his tenure in Orlando, Alan had the opportunity to work with many of Legal Aid's *pro bono* attorney GALs and, through those experiences, came to respect and admire the priority Orange County Bar members place on ensuring abused, abandoned, and neglected child victims have a voice in dependency court proceedings.

During the past three years, Alan has familiarized himself with the operational aspects of the Orange County model. He sought out and accepted the referral of a case from Legal Aid and served as the GAL for an older Orange County youth aging out of the foster care system. Through his interactions with our GAL program, he became more familiar with the breadth of knowledge among Legal Aid's Guardian ad Litem Program attorney staff and how staff uses that knowledge to support the work of *pro bono* attorney GALs.

Legal Aid currently has nine staff attorneys. They each possess a wide range of experience in general dependency litigation but also have specific legal knowledge and experience working with older youth aging out of foster care, dependent children who have developmental disabilities, those with health, mental health, and educational needs, as well as those with immigration and delinquency issues. Alan and his colleagues in the statewide GAL office have called upon Legal Aid's attorney staff to provide assistance with training in many of these areas. Starting in 2012 and through 2014, Legal Aid offered trainings to GAL program attorneys as well as community stakeholders across the state on permanency, developmental disabilities, education, independent living, and immigration issues.

Through a nomination submitted by the statewide GAL office, the Legal Aid Society of the

Orange County Bar Association was awarded a Davis Productivity Award both in 2012 and 2013 for maximizing volunteer resources. This award is presented to an organization for innovation, dedication, and commitment to excellence through work that enhances productivity within state government and the lives of Florida's citizens. Approximately 350 Orange County lawyers currently serve as GALs for more than 1,300 children, and in 2013, they donated 12,000 *pro bono* hours to the representation of child victims. A conservative estimate of the dollar value of that representation would likely exceed a \$2.5 million dollar donation of time and talent. During his tenure as executive director, Alan has successfully increased funding for the Statewide GAL Program, which has led to increased funding for our Orange County GAL Program. This increase has allowed Legal Aid to maintain a stable staff of experienced GAL program staff attorneys, case coordinators, and support staff who are available to *pro bono* attorney GALs to help with litigation and case management activities.

We are deeply grateful for the many opportunities that have grown out of our partnership with the statewide GAL office and particularly with executive director, Alan Abramowitz, Esq.; director of operations, Charles Nelson; administrative services director, Debra Ervin; general counsel, Dennis Moore, Esq.; director of legal services, Kelly Swartz, Esq.; director of budget and finance, David Windle; and special projects manager, Kelly Razzano. We look forward to the continued growth and development of our relationship for many years to come.

For more information on the Guardian ad Litem program, please contact director Susan Khoury, Esq., at skhoury@legalaidocba.org. For more information on development, contact development manager, Donna Haynes at dhaynes@legalaidocba.org.

Susan Khoury, Esq., is the Guardian ad Litem Program Coordinator at the Legal Aid Society of the OCBA, Inc. She has been a member of the OCBA since 1985.



Angel M. Bello-Billini, Esq.

Family Law Cases – Support for Pro Bono Attorneys

As an attorney working mostly in family law for the last couple of decades, and as one of The Florida Bar's Family Law Section members who has been closely familiar with the development of many of today's family law provisions, I am one of the attorneys at the Legal Aid Society who has been tasked with answering questions and requests for information posed by *pro bono* attorneys who represent indigent spouses with their family law needs. The client is almost always the caretaker of the children and someone with a history as a victim of domestic violence who needs a dissolution of marriage.

The substantial support mechanism designed to assist *pro bono* attorneys is geared toward attorneys who are not very familiar with family law. The need for such support became necessary early in the development of the *pro bono* program because most of the volunteer attorneys did not have extensive experience in matrimonial law but were generously answering our calls for help. This has not changed over the years, except for the fact that we now need more attorneys than ever to answer the call.

In addition to the sheer increase in the demand for service, the practice of family law has become considerably more complex than say, 25 years ago. *Pro bono* attorneys two generations ago did not have to deal with parenting plans tied to a more helpful but elaborate parenting statute, time sharing-based child support, relocation, or an ever-changing alimony statute. Add newer and upgraded local practice rules and procedures in our courts, including the creation of the previously non-existent domestic violence division. The current picture of family law practice would make our non-family attorney of 1990 freeze in disbelief.

Absent a complete agreement, long gone are the days when one could file and obtain a dissolution of marriage with relevant orders in a fairly short time with a minimum of complications, save, of course, for the occasional custody dispute. But the advent of the many changes affecting the family practice has made it increasingly difficult to attempt to handle such a matter, even a simple one, without some sort of training and subsequent backup.

Questions related to parental responsibility and time sharing, child support, relocation, and general family law procedure can be daunting for the uninitiated. This is why there are at least two dedicated attorneys at the Legal Aid Society familiar with the dissolution process ready to assist *pro bono* attorneys with these issues.

Support for these attorneys begins with a two-part basic dissolution of marriage training for *pro bono* attorneys, aimed at those volunteers who have agreed to take at least one case but who have little or no experience in the area. Volunteers are provided with all the materials that would give them a good orientation to the law and procedures – and the forms – necessary to successfully prosecute these cases, as well as malpractice insurance for any *pro bono* dissolution case taken. In addition, our office will answer any questions that come up during the representation. If our staff attorneys do not have an immediate answer, they will either research the issue or will put the *pro bono* attorney in contact with an experienced practitioner who will have the answer and will help walk him or her through the problem.

It is important to point out that this help is not just limited to family law issues; indigent clients frequently have a variety of problems affecting their lives. Thus, the family may be having problems getting the governmental relief they may be entitled to, in which case our public benefits attorney can provide information, and in suitable cases, representation to solve the problem. The same applies to other areas of the law, such as immigration, housing and foreclosure, wage garnishments, etc. Even if we are not able to represent the individual, we always strive to provide as much information as possible to assist in resolving the problem and, where available, making referrals to resources that might assist the client.

Angel M. Bello-Billini, Esq., is the Director of Litigation at the Legal Aid Society of the OCBA. He has been an OCBA member since 1986.

The taxpayer's OIC options are as follows:

Option	Amount Offered	Payment Amount
One-time lump sum	\$56,000	\$56,000 (one-time, submitted with the OIC).
Five months or less	\$56,000	\$11,200/month (first payment submitted with OIC, four monthly payments to follow).
More than 5 months (but not more than 24 months)	\$62,000	\$2,583.33/month, 24 months.

This can be an especially difficult outcome to accept for a taxpayer who cannot sell the business for the estimated value.

The Equity Problem – PPIA v. OIC

How would such equity in assets be handled if present when considering a PPIA? To properly assess whether the taxpayer can access the equity, the IRS may require that the taxpayer attempt to borrow money using real property as collateral (whether the real property is homestead or not), or to take a loan against a retirement account or life insurance policy.³⁶ If the taxpayer cannot access the equity, the IRS may disregard it for purposes of calculating the taxpayer's ability to pay.

Conclusion

Although most taxpayers are convinced that an OIC is the result that would be of the greatest benefit to them, that is often not the case. Sometimes, the lump sum payment or increased installment payments make the OIC a bad option (in spite of the promise of more quickly resolving the liability). For those taxpayer's a PPIA, although not without drawbacks, may provide a viable resolution option.

¹Jeff DeRosier has been a member in good standing of the Florida Bar since 2006. He earned his Juris Doctor degree from Barry University School of Law, *cum laude*, in 2006. He earned his LL.M. in taxation from the University of Florida in 2007. He now works in private practice with the firm of Riemenschneider & Wattwood, P.A., with offices in Melbourne and Winter Park, Florida.

²Internal Revenue Manual § 5.14.2.1. While the Internal Revenue Code (hereinafter "I.R.C.") authorizes the Partial Pay Installment Agreement, the Internal Revenue Manual (hereinafter "I.R.M.") is the primary source of guidance for implementation of any PPIA.

³I.R.C. §6159(a).

⁴<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Legislation-Allows-Partial-Payment-Option>

⁵See I.R.M. § 5.14.2.1.1 for PPIA requirements. The taxpayer seeking a PPIA must submit a financial statement, form 433A; the taxpayer must submit form 433B (business financial statement) for each closely held business entity the taxpayer owns.

⁶I.R.C. § 6502(a)(1). Note that there are several events which toll the statute of limitations and extend the collection period: requesting an installment agreement which causes the IRS to review a financial statement; I.R.C. §6331(k)(2); filing of a bankruptcy petition; I.R.C. § 6503(h); and submission of an offer in compromise; I.R.C. §§ 6331(i)(5), 6331(k)(1);

⁷I.R.M. § 5.1.19.1(2).

⁸I.R.C. § 6203.

⁹I.R.M. § 25.6.1.9.4.5(1).

¹⁰CSEDs, in fact, can be any date whatsoever; there is no requirement that a CSED coincide with April 15, even though that is the date returns are due each year.

¹¹See form 433D terms and conditions,

¹²§ *Id.*

¹³Although it may seem odd that consecutive years have the same CSED, this often occurs because the IRS filed two (2) returns on the taxpayer's behalf (SFR Returns) on the same date. As such, identical CSED dates are not uncommon.

¹⁴This assumes all penalties and interest are included in the \$15,000 figure. However, all penalties and interest continue to accrue as long as the liability is outstanding, so actual figures may vary. For example, if principal, penalties, and interest are assessed as of August 15, 2014, but interest and penalties continue to accrue so that the total balance as of April 15, 2020 is \$17,500, then \$17,500 worth of the payments will be applied to 2007, with the smaller balance amount then being applied to 2008. Either way, because the taxpayer demonstrated an ability to pay \$500 per month *only*, the taxpayer will only be forced to pay that and any excess liability, interest, or penalty will expire.

¹⁵\$500 x 68 payments = \$34,000.

¹⁶The total amount owed for 2007, 2008, and 2009 was \$73,000.

¹⁷\$500 x 68 payments = \$34,000.

¹⁸The total amount owed for 2007, 2008, and 2009 was \$73,000.

¹⁹I.R.M. §§ 5.4.11.8, and 5.14.2.1.4(7).

²⁰See form 433D Terms of Agreement.

²¹I.R.M. §§ 5.14.1.2(8)(f) and 5.14.2.4.2. All returns must be filed on time, all liabilities as reported must be paid on time (the new balances cannot be added to the liabilities that are part of the PPIA); payroll taxes, withholding, filing, or estimated tax deposits must be timely for the duration of the PPIA.

²²See <http://www.irs.gov/Individuals/Payment-Plans-Installment-Agreements>, last paragraph.

²³Authorized by I.R.C. § 7122.

²⁴I.R.M. § 57.10.10.1(1).

²⁵See form 433-A (OIC), p. 7. The OIC form is number 656; submitted along with form 656 is form 433-A, which is the same form as 433-A used to validate the PPIA. The 433-A submitted with the OIC, however, is specially designated "433-A (OIC)" and contains the calculation page to determine the amount of the offer. The standard 433-A does not contain that calculation page.

²⁶*Id.* and form 656, p. 3. Many taxpayers seem to think that an OIC *must* be paid on a one-time lump-sum basis, and are therefore discouraged from even submitting an OIC. This is incorrect, even though the payment amount may differ from the PPIA, installment payments are still a viable method of paying an accepted OIC.

²⁷I.R.M. § 5.8.5.28(2). The payment period may be shorter if the CSED expires within the repayment period.

²⁸See form 433-A (OIC) p. 5.

²⁹*Id.*

³⁰Note that if the taxpayer has \$6,000 in a bank account, that \$6,000 must be offered *in addition* to the ability to pay on a monthly basis, thus resulting in an offer amount of \$12,000, further escalating the payment. See form 433-A (OIC), p. 2.

³¹I.R.M. § 5.8.5.4(4).

³²*Id.*

³³See form 433-A (OIC), p. 3. The allowance of only 80% of the fair market value is an acknowledgement that if the taxpayer were forced to sell their home to pay their tax liability, the taxpayer may be forced to accept a "fire-sale" price. I.R.M. § 5.8.5.4.1(2).

³⁴See form 433-A (OIC) p. 4.

³⁵I.R.M. § 5.8.5.8(4). Even the IRS recognizes that an appraisal is should only be requested when the cost of the appraisal is justified by the complexity of the business entity. Still, even if no appraisal is required and the IRS accepts the taxpayer's approval or a "rule of thumb" value, the value must be offered.

³⁶I.R.M. § 5.14.2.1.2(1)-(6); I.R.M. § 5.14.2.1.1(3), (5)(D).



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January 27	Landlord Tenant Issues Mike Resnick and Larri Thatcher
February 10	GAL: GAL 101 Stephanie Stewart and Tanika Patrick
February 24	GAL: Mental vs Behavior Health Treatment for Dependent Children Coravious Cowart
March 10	Medicaid Advocacy: Welcome to Managed Care Ed Dimayuga
March 24	GAL: Effective Advocacy for LGBTQ Youth in Dependency Sally McArthur
April 7	Chapter 751, Temporary Custody William A Davis and Cathy Tucker
April 21	GAL: Crossover Kids: The GAL's Role in Advocating for Children with Delinquency and Dependency Involvement Kate York
May 5	DOM for Pro Bono Attorneys, Part 1 Angel Bello Billini
May 19	GAL: Interviewing Children with Developmental Disabilities Ericka Garcia and Abby Adkins
June 9	GAL: The ICPC Process: How to Navigate the Complex World of the Interstate Compact on the Placement of Children Kate York
June 23	GAL: Keeping Children Safe Act Certification for GALs Stephanie Stewart and Tanika Patrick
July 7	Defense to Debt Collection Mike Resnick and Jay Mobley
July 21	DOM for Pro Bono Attorneys Part 2 Angel Bello Billini
August 11	GAL: Effective Home Visits and Advocacy in Domestic Violence Dependency Cases Clarissa Maldonado and Hannah Farber
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"Bridging The Gap"

Judge Belvin Perry, Jr. Retirement Celebration

August 22, 2014

Jones High School

On Friday, August 22, 2014, at 4:00 p.m., a retirement celebration was held for former Ninth Circuit Chief Judge Belvin Perry, Jr., at his alma mater, Jones High School. More than 100 judges from across the state as well as four justices of the Florida Supreme Court were in attendance. The ceremony began with a seven-minute tribute video highlighting the life and accomplishments of Judge Perry, followed by a judicial processional, and then remarks from a host of speakers, including Chief Justice Jorge Labarga. A packed auditorium of friends, family, and colleagues were in attendance to bid farewell to Judge Perry, who will be best remembered for his sharp legal intellect and extensive contributions to the legal profession. The ceremony was presided over by newly-elected Ninth Circuit Chief Judge Frederick J. Lauten. Following the ceremony, the Orange County Bar Association hosted a reception for Judge Perry at the DoubleTree Hotel in downtown Orlando.

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Ninth Judicial Circuit Court and District Court Judges



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September 19, 2014



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OCBA September Luncheon

September 18, 2014

The Ballroom at Church Street

Co-hosted by the Hispanic Bar Association of Central Florida

Nick Shannin, Esq., President, OCBA; The Hon. Frederick Lauten, Chief Judge, Ninth Judicial Circuit; Tiffany Faddis, Esq., President, Hispanic Bar Association of Central Florida



The Hon. Frederick Lauten



Tiffany Faddis, Esq.



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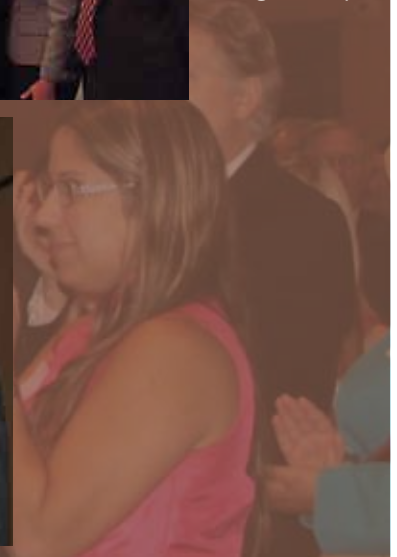
Nick Shannin, Esq., Eddie Fernandez, Esq., Tiffany Faddis, Esq., Chief Judge Frederick Lauten, Jamie Billotte Moses, Esq., Woody Rodriguez, Esq.



Chief Judge Fredrick Lauten, Amir Ladan, Esq., Eddie Fernandez, Esq., Clerk of Courts



Eddie Fernandez, Esq.



Joint Voluntary Bar Associations Happy Hour

Wednesday, November 19, 2014
5:30 to 8:30 p.m.

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Chanel A. Mosley, Esq.

YLS on the move

During the month of November, many of us will reflect back on the previous year and give thanks for our family, friends, and all of the blessings in our lives. As the holidays draw near, we should pause to remember how fortunate we are to belong to a legal community with so many talented, generous, and dedicated members who volunteer countless hours each year for the greater good of the Central Florida region. The YLS has had a wonderful year thanks to the overwhelming compassion and selflessness of so many of its members, and we have enjoyed the camaraderie and a lot of fun along the way! Here are some of the things we've been up to this fall:

The **YLS held a joint happy hour with the Young CPAs** on September 3, 2014 at Ember. This is a great networking event that provides an opportunity for young lawyers to get connected with other young professionals in the Central Florida area. The happy hour was a huge success, with roughly 40 lawyers in attendance and just as many CPAs. Congratulations to committee chair, **Adam Hartley, Esq.**, and vice chair, **Miguel Acosta, Esq.**, who coordinated yet another great event.

On September 13, 2014, the YLS headed to Gainesville for the annual **Gator Football Bus Trip**. Forty-two YLS members and guests hopped aboard the bus for the Florida v. Kentucky game. Attendees enjoyed a spirited tailgate party complete with BBQ provided by Adam's Rib Co., a local Gainesville favorite. After three overtimes, the Gators were able to snag a win against Kentucky for the 28th straight time, making this the longest winning streak against a single opponent in SEC history! Committee chair, **Joey Chindamo, Esq.**, did an excellent job with the trip and a great time was had by all (unless you were a Kentucky fan...) A special thank you to the trip sponsors – **Dellecker, Wilson, King, McKenna, Ruffier & Sos, LLP, The 850-Call Joe Law Firm, P.A.**, and **Sean Gerlin, Prudential Financial Planning Services**.

On September 17, 2014, the **YLS High School Speech and Debate Competition** was held at Edgewater High School. Twenty YLS members volunteered to judge the debate competition, which was held in connection with the Central Florida Debate Initiative. More than 100 high school students participated and did an excellent job. Thank you to all of those who volunteered to judge this competition, and congratulations to committee chair, **Tara Tedrow, Esq.**, for coordinating such a successful event. (See photo on page 27.)

On September 19, 2014, the **YLS held its monthly luncheon** at the Citrus Club. Former **Chief Judge Belvin Perry** opened up the floor for a very enlightening and entertaining Q&A session about his service as chief judge and what is next in his career. Judge Perry reminded us how fortunate we are to serve as young lawyers in Orlando and offered many words of wisdom for achieving success and balance in the legal profession. The luncheon was well attended and we are grateful to Judge Perry for sharing his time with us! Thank you to our wonderful sponsors who made this luncheon available to our members at such a reduced rate: **Florida Lawyers Mutual Insurance Company, Digital Legal, and LexisNexis**.

Also be sure to join us for these exciting upcoming events:

The **November YLS Luncheon** will take place on **November 14, 2014** at the **Citrus Club** beginning at 12:00 p.m. and ending at 1:00 p.m. Casual attire, including jeans, is acceptable and jackets are not required. For a wonderful three-course meal, the cost is only \$10. Lunch is offered at a reduced price, thanks to the wonderful help of our sponsors. **Please be sure to RSVP through the OCBA Store (www.orange-countybar.org/ylsproducts) no later than November 11, 2014.** A late charge of \$5 will be added for all RSVPs received after the deadline. Please note that the YLS is charged for all RSVPs, so please ensure that you notify us if you have made an RSVP but are unable to make it. We hope to see you at the luncheon!

The **annual YLS holiday party** will be held on **December 5, 2014** at **Ceviche** on Church Street in downtown Orlando. The party is open to YLS members and their guests and includes an open bar and heavy hors d'oeuvres. We will be conducting a toy drive in conjunction with the holiday party, so please bring an unwrapped toy with you to get in the door. Be on the lookout for additional information, including how to RSVP, in our weekly e-blast emails. If you are not receiving our weekly emails and would like to be added to the list, please contact **Amy Rigdon, Esq.**, at Amy.Rigdon@hklaw.com.

Stay connected with the YLS on social media! You can "Like" us on Facebook at <https://www.facebook.com/OCBAYoungLawyersSection> and follow us on Instagram at **@OCBAYLS** to stay in the loop with all of the upcoming YLS events.

Chanel A. Mosley, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., has been a member of the OCBA since 2010.



Sunny Lim Hillary, Esq.

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

GOAABA

On June 18, 2014, Greater Orlando Asian American Bar Association held its **annual membership meeting** at Mi Tomatina in Winter Park. This event was open to all, so members and non-members enjoyed complimentary Spanish tapas and drink specials, including \$13 all-you-can-drink beer and sangria! Thank you to **Lisa Gong Guerrero, Esq.**, for organizing this event.

On July 16, 2014, GOAABA welcomed the new **2014-2015 board of directors: Wanda Reas, Esq.** (president); **Lisa Gong Guerrero, Esq.** (president-elect); **Lemar Alejo, Esq.** (treasurer); **Teris Deitsch, Esq.** (secretary); **Lalitha Alladi, Esq.**, **Christine Berk, Esq.**, **Jile Dashtso, Esq.**, **Denise Kim, Esq.**, and **Anna Meddin, Esq.** (at-large board members); and **Sunny Hillary, Esq.** (immediate past president).

An installation happy hour was held at Kasa Restaurant & Bar, where **Magistrate Linh Ison** performed the swearing in ceremony. Thank you to **Kim Nguyen, Esq.**, and **Lisa Gong Guerrero, Esq.**, for organizing this event!

The board held its **annual retreat** on September 20, 2014, and discussed ways for GOAABA to continue to grow and make a difference in the Greater Orlando area.

For more information about GOAABA, or to join, please contact Wanda at WReas@znoskoreas.com, or check out www.goaaba.org.

CFTLA

The Central Florida Trial Lawyers Association held its ninth annual **"Raising the Bar" seminar** on August 22, 2014. The venue was the Historic Dubs-dread Ballroom and Conference Center in Orlando. More than 80 members, sponsors, and presenters attended. The CFTLA board designated this event in support of the Cystic Fibrosis Foundation-Central Florida, which is a local chapter dedicated to the fundraising efforts of six counties across Central Florida. The Cystic Fibrosis Foundation is the world's leader in the search for a cure for cystic fibrosis. The CFF is a nonprofit, donor-supported organization dedicated to attacking cystic fibrosis on all fronts.

HBACF

On September 13, 2014, the Hispanic Bar Association of Central Florida held its **Family Day** at Disney's Fort Wilderness Resort and Campground. Thank you to all who came out!

If you'd like more information about the HBACF, please visit the website at <http://hbacf.com>.

Remember, SideBar is for you! Please send me announcements about upcoming or past events, seminars, awards, or other news of interest at sunny@hillarylaw.com. We welcome photos, too! Be sure to ID photos with the name of the event and people in the pic!

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

HBACF



Family Day at Disney

GOAABA's Annual Membership Meeting on June 16, 2014



Sunny Hillary, Esq., Judge Margaret Schreiber, Felipe Guerrero, Esq., Kim Nguyen, Esq.



Frank George, Esq., Jennifer Hinton Knutton, Esq., John Knutton, Esq.



Donna Hung, Esq., Teris Deitsch, Esq.



Wanda Reas, Esq., Kim Nguyen, Esq.



CFTLA

Roy Smith, IV, Esq., CFTLA Board; Lisa Murphy, Executive Director, Cystic Fibrosis Foundation; Michael Woods, Esq., Cystic Fibrosis Foundation Representative; Fermin Lopez, Esq., CFTLA 2014 President



Ronald Mejia, Esq., Lalitha Alladi, Esq., Nikhil Patel, Esq.



Lisa Gong Guerrero, Esq., Sunny Hillary, Esq., Wanda Reas, Esq.



YLS Sponsored Central Florida Debate Initiative Speech and Debate Competition

More than 100 students, two dozen lawyers, and a group of volunteers got together on September 17 to sponsor the YLS's Central Florida Debate Initiative hosted at Edgewater High School. Chair Tara Tedrow, Esq., of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., and co-chair, Marc Sugerman, Esq., of Allen, Norton & Blue, P.A., organized the competition. First-timers' competition nerves weren't settled when the students realized that YLS had recruited attorneys to judge every debate round. However, the excited chatter following the debates reaffirmed the incredible impact the students felt from having practicing attorneys provide constructive feedback about the quality of their arguments and presentations. Because of the YLS's generous sponsorship, all participating Orange County high schools will receive free memberships to the National Speech and Debate Association, along with free educational resources for the entire school year. For those who are interested in getting involved and helping to transform education for local students, more information can be found at www.cfdebate.com.

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Save the Dates!

**OCBA Social Committee Events
2014-2015**

Nov. 14, 2014 – OCBA's Night with the Magic, Amway Center

Nov. 19, 2014 – Joint Voluntary Bar Associations Happy Hour, Ember

Jan. 28, 2015 – Winter Wine & Cheese Social, Winter Park Farmer's Market

Feb. 7, 2015 – Cars & Coffee Event, University Club

Mar. 2015 – Texas Hold 'em Charity Poker Tournament & Happy Hour

May 2, 2015 – Law Week Inaugural 5k Run, Lake Baldwin Park

All proceeds benefit the OCBA Foundation, Inc.

See the OCBA website and *The Briefs* for updates!

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Legal Aid Society What We Do...

continued from page 13

student loan cases. We have a staff attorney who provides clinic services in consumer debt issues. We had almost 100 referrals in 2014.

Housing Law

Landlord/tenant issues make up the bulk of our referrals, which include eviction defense, substandard conditions, and security deposit cases. In 2014, there were almost 70 referrals.

Immigration

Legal Aid has a staff attorney active in immigration matters and refers cases in this area, including VAWA, U and T visas, asy-

lum, SIJS, and DACA. We also have an annual Citizenship Day event that uses a variety of experienced attorneys and other volunteers.

Public Benefits

We have an active staff attorney who refers food stamps, Medicaid, SSI/SSDI overpayment, and cessation cases. These include both the administrative hearing and appeals for final agency action, and an occasional appeal to the state or federal court.

Miscellaneous

Legal Aid has appeals for other than GAL cases, including advance directives and wills for special community events, and sealing/expungement matters.

Projects

We offer 12 projects for *pro bono* attorneys to choose among. In creating the projects, Legal Aid looks for ways to meet the needs of the client community and use the services of attorney volunteers. Not all attorneys can accept individual cases for representation, so many have a limited commitment of intake or advice. Many of the projects are offered in the evening or on Saturdays. All of the projects are covered by LAS malpractice insurance. Most offer training.

For attorneys making a selection, many of the projects require an early decision to commit to the project. Slots for Teen Court, run by Orange County, and Citizen Dispute Settlement / Family Law Mediation, run by the OCBA, fill quickly – often by December. Interested attorneys should email or fax their response when they receive the preference form. Earned Income Tax Clinic, AIDS Special Will Project, Bankruptcy Pro Se Clinic, Homeless Advocacy Project, VALOR Project of Orange County, and Saturday Telephone Screening Project all try to set their schedules at the beginning of the year and have early closing dates for participation so that services can begin in January.

Several projects have varied start dates and have a more flexible sign up: Teen Parent Education Project, Non-Profit Incorporation, Community Education Project, and Attorneys Fighting for Seriously Ill Children.

If you need information about one of the projects, you may contact the staff coordinator. For the Homeless Advocacy Project or VALOR Project, contact Ed Dimayuga, Esq., at ed@legalaidocba.org. For Community Education and Telephone Screening Project, contact Larri Thatcher, Esq., at lthatcher@legalaidocba.org. For the Teen Parent Project, contact Stephanie Stewart, Esq., at ssewart@legalaidocba.org, or Ericka Garcia, Esq., at egarcia@legalaidocba.org. For the Tax Clinic, contact Cathy Tucker, Esq., at ctucker@legalaidocba.org, or Marilyn Carbo at mcarbo@legalaidocba.org. For the remaining projects, please contact Cathy Tucker, Esq., at ctucker@legalaidocba.org, or Milly Gonzalez, mgonzalez@legalaidocba.org.

Catherine A. Tucker, Esq., is the Pro Bono Coordinator at the Legal Aid Society of the OCBA, Inc. She has been a member of the OCBA since 1986.

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Paralegal Fundraiser

The OCBA Paralegal Section held a fundraiser in honor of National Cancer Awareness Month in September, with a happy hour on September 25 at Shine on Wall Street.

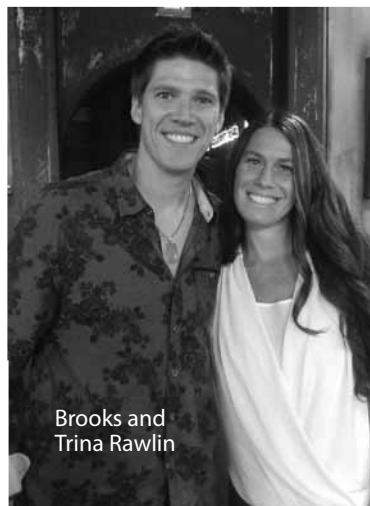
Attendees enjoyed raffles, drinks, and appetizers as they raised money for Emmy, a five-year-old from Lake Mary. Emmy was diagnosed in March with a rare, inoperable brain tumor. She is undergoing treatment at St. Jude's Hospital in Memphis, Tennessee. The happy hour was sponsored by D4.



Michelle Gerena, Carianne Reggio



Lorraine Hernández, Keisha Clay



Brooks and Trina Rawlin



WHWW Raises Funds for HKPS

Lance Ragland, Esq., of Winderweede, Haines, Ward and Woodman, P.A., announces that the Winter Park YMCA is a HelpKidsPlaySports.org (HKPS) funding recipient. Pictured are Kevin Masih, President and Founder of HKPS, William "Bud" Oliver, Winter Park YMCA Executive Director, and Lance Ragland, Vice President and Co-founder of HKPS.



Alyson M. Innes, Esq.

Three Things for a Successful Legal Practice

The reality is that there are many facets to having a successful law practice, and there is no single secret formula. Still, when asked to break it down to the top three things, these came to mind first: Focus on relationships, dress for success, and maintain your mental health. Obligatory lawyer disclaimer: These are in no particular order and do not guarantee success, just a better chance at it.

Focus on Relationships

You may not realize it, but you have a relationship with everyone with whom you come in contact. The scope and nature of that relationship depends on your interaction – it can be brief, lengthy, positive, or negative. You always have the opportunity to define and nurture your relationships, and it is up to you to seize that opportunity.

As a paralegal, some of the key relationships that you should strive to cultivate include those with your attorney, other staff members, firm partners, associates, witnesses, opposing counsel and their staff, judicial assistants, judges, and everyday people you interact with. At the most basic level, you never know when you may need to ask a favor, like an extension for a discovery deadline, a last-minute hearing time, or to reset a previously coordinated event (like a deposition or hearing).

Still, it goes much further than that. These relationships, over time, may develop into future business endeavors, employment opportunities, or friendships with individuals who can talk through difficult situations or questions with you. As a paralegal, how you treat others not only reflects on you, but also your attorney, your firm, and your client. Just because you are nice once or twice, however, does not mean you will always get what you want or need. There must be a genuine reciprocity – a give-and-take in each relationship – as well as just being genuine. Maintaining a professional, yet friendly approach, will make a day in the legal practice that much smoother.

Overall, the most important relationship to develop is the one with your attorney. Open, effective communication with your teammate is imperative. You should treat that relationship similar to a spouse or partner – you need to say what you want or need and express any questions that you may have. Neither of you is psychic nor can you guess what the other is thinking, feeling, or expecting. Instead of guessing (likely incorrectly), ask the question or express your concern in a

straightforward manner. Both you and the attorney will benefit from the open communication.

Dress for Success

When a client hires an attorney and her team, the client expects a certain level of professionalism. Both you and your attorney are a product – a professional hired to effectively represent the clients' legal needs. Although we would like to think that we are not being judged by our appearances, it couldn't be further from the truth. Clients (as well as bosses) have certain expectations of legal professionals. If we look like we do not care about our appearance, it can convey the message that we do not care about their case or our work.

So, save the sandals, flip-flops, and skin-exposing clothes for the beach. Moreover, as much as I love to wear jeans, there is a time and a place. Even when it is a casual day at work, I make sure that I do not have any hearings, attorney meetings, or client meetings that day and that I keep a suit in my office for the unexpected.

Maintain Your Mental Health

Law is a field where others are paid to be adversarial to you on a daily basis. The sooner you understand and appreciate that, the easier it will be to adopt the appropriate perspective. It is not an easy field to work in; it is one that takes patience, perseverance, and sometimes a quiet place to scream at the end of the day.

The question becomes: How do you avoid the emotional drain or early burnout? To do this, you must find a way to maintain your mental health. Law is a practice that can be difficult to "turn off" when you are outside of the office. The deadlines, upcoming trials and hearings, and sometimes antagonistic interactions are constantly playing and replaying in your head. The key is to find a way to shut it all down – at least for a few minutes every day (if not an hour or more).

Maintenance of mental health is a practice all unto itself. The legal practice is known to have high levels of substance abuse and mental health-related problems. The way to combat that is to figure out what calms you and centers you. Is it deep breathing? Yoga? Running or exercising? Reading? Cooking? Chatting with a counselor who cannot share your thoughts with anyone? Writing? Meditation? Figure out what helps balance you and then routinely implement it. It can be any combination of these things like 30 min-

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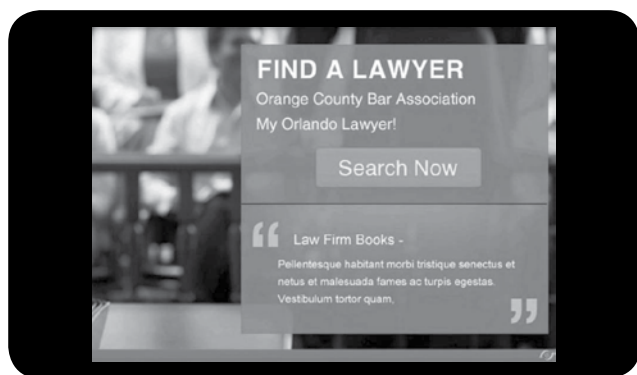
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ParalegalPost continued from page 31

utes of workout/walking/yoga and 5-10 minutes of deep breathing and meditation. If you are like me, finding that time can seem like a daunting task, but don't let it be. Take five minutes when you are stuck in traffic or at your desk to sit quietly and count measured breaths or make a mental list of everything for which you are thankful, particularly after a stressful encounter or frustrating situation.

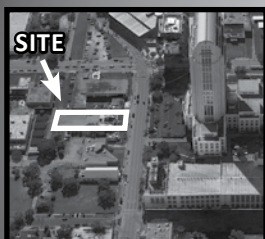
Also, make sure you get the proper amount of sleep and nutrition. Your body and your mental health will thank you for it. In a field where your mind is your tool, you need to keep it sharp in order to function at its highest level. Working in the legal practice can be a daily challenge. Similar to running a marathon, you need to train your body and your mind to overcome the challenge. The main difference, however, is that this career is not a one-time event; instead, it continues for as long as you remain in the profession and can seem like a never-ending cycle. Some legs of the race may seem easier, while others will feel like an uphill battle. The key is to remind yourself that the landscape often changes and to willfully try to maintain your own mental health on a daily basis.

Though these appear to be common sense, you may find that you will need to remind yourself of these three steps quite often – particularly on a stressful day. These three steps – focusing on building relationships, dressing for your profession, and maintaining your mental health – are a good foundation for a successful legal practice.

Alyson M. Innes, Esq., an attorney with Morgan & Morgan, P.A., focuses on commercial litigation, property disputes, and alternative dispute resolution. She has practiced law in the Central Florida/Orlando area since 2003. She graduated with honors with her bachelor's degree from Nova Southeastern University, Fort Lauderdale, and she received her Juris Doctor, *cum laude*, from the University of Miami. She has been a member of the OCBA since 2014.



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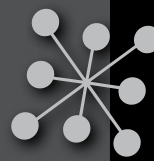
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How Do You Eat an Elephant? Part 1

Lately it's been common to hear lawyers say, "What's the point of doing a marketing plan? Why bother trying to forecast business results when you're riding the rollercoaster of an uncertain economy?" Well, the short answer is that the need to plan is even greater during a prolonged period of economic uncertainty. While planning for the future does not guarantee the result, it will get you much closer to achieving your goals than if you continue to allow your firm to drift along with no particular destination in mind. Even if you don't accomplish all of your objectives, the mental exercise of planning provides focus, clarity, and renewed commitment to your marketing efforts. As Winston Churchill once said during a time of far greater uncertainty: "Let our advance worrying become advance thinking and planning instead."

Do you have an elephant (and can you find it)?

So, let's say you subscribe to the view that planning for future growth is more likely to be effective than worrying and just allowing your firm to drift along. And let's say you've even taken the next step of having a marketing retreat that produced a written marketing plan with some significant client development goals. Just how do you eat the elephant of a big, audacious marketing plan with big, ambitious annual goals?

For many firms that get this far into the marketing planning process, the retreat itself is checked-off the list of things to do to keep up with the marketing Joneses; the enthusiasm for marketing quickly wears off as the day-to-day grind reasserts itself; and the work product of the retreat – the annual marketing plan – goes on some partner's shelf to collect dust. Thus begins the self-fulfilling prophecy: "Marketing doesn't work; we tried it once and nothing happened." The elephant is a lot harder to eat when nobody can find it. So, what went wrong?

Law firms and rainmakers succeed at marketing because they have a plan, along with a system of support and a structure of accountability that ensures that their plan is executed. You may develop a brilliant, strategic marketing plan, but unless you stay in action – achieving short-term intermediate goals – your "big picture" plan will never be implemented. The additional focus, clarity, and urgency created by the more frequent deadlines to achieve shorter-term goals will keep you on track to make the incremental progress necessary to achieve your longer-term goals.

Also, since neither the business climate nor your marketplace remain static, this shorter-term orientation gives you the opportunity to make any small course corrections along the way that may be necessary to reach your ultimate destination. So how does this system of support and accountability work in ensuring the successful implementation of your marketing plan? How do you eat the elephant?

Just how big is your elephant?

Let's say that your marketing plan has an annual goal of increasing the number of referrals your firm receives. Let's also say that you have developed a list of your current top twenty referral sources – and another list of referral source prospects with great potential. These two lists together are the referral sources you want to cultivate to achieve your annual goal. In order to ensure that you cover as many of the names on both lists as possible, you will need to allocate your client development time on a rotating basis between the old, proven referral sources and the new, potential referral sources.

How much of the elephant can you eat in a month?

Now, make a list for each month with twelve referral source names to be contacted. Next to each name, identify the objective of the contact with this referral source. Since you will have a different level of relationship with the individuals on the two lists, your intended objectives will differ widely, but, in general, they will all be focused on improving your relationship. When you are merely an acquaintance of the person you will be contacting, your goal may be to simply get to know him or her better. When it's a referral source you've known for a while, but who hasn't sent you any business lately, your objective might be to interview him or her or to ask for a referral.

Next to the objective, list the follow-up action to be taken after the contact has been made – "send hand-written thank you note," or "send game tickets I promised," or "calendar lunch for next month." Following up with these referral sources is critical to demonstrating that you are reliable, trustworthy, and are serious about cultivating the relationship.

We'll continue our discussion of "How Do You Eat an Elephant" next month in Part 2 of this article.

Michael Hammond, Esq., is a "founding father" of Atticus and is a Certified Practice Advisor. He has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. For details, go to Atticus online at www.atticusonline.com, or call 888-644-0022.

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Speaking Engagements

William J. Denius, Esq., shareholder at Killgore, Pearlman, Stamp, Ornstein & Squires, P.A. spoke on “The TCPA: What Is It, Does It Prohibit and Staying in Compliance” at the National Automotive Finance Association’s 18th Annual Non-Prime Auto Financing Conference; he also spoke on “Why Dealers Get Sued And How To Avoid It” at the AutoStar Industry Conference.

Events

Nov. 6 – 7th Annual Breakfast of Champions. Legal Aid Society Fundraiser. 7:30 a.m.-9:00 p.m. Church Street Ballroom, 225 S. Garland Ave., Orlando, FL 32801. Contact Donna Haynes, dhaynes@legalaiddocba.org.

Nov. 14 – OCBA Night with the Magic. Social Committee. Families welcome. Orlando Magic v. Milwaukee Bucks. Reception at 5:30 p.m. Tip-off at 7:00 p.m. Amway Center, 400 W. Church St., Orlando, FL 32801. Terrace IV tickets: \$85; Terrace VII tickets: \$40. For more information and to purchase ticket, visit the OCBA Store.

Nov. 19 – Joint Voluntary Bar Associations Happy Hour. Social Committee. 5:30 p.m.-8:30 p.m. Ember, 42 W. Central Blvd., Orlando, FL 32801. Fee: Prior to Nov. 17 – \$15 for members of all voluntary bar associations; \$20 for non-members. After Nov. 17 and at the door: \$20. Proceeds benefit Second Harvest Food Bank. Sponsored by Nater Law and US Legal Support. Register at the OCBA Store.

Jan. 28 – Winter Wine & Cheese Social. Social Committee. 5:30 p.m.-8:30 p.m. Winter Park Farmer’s Market. 200 W. New England Ave., Winter Park, FL 32789. Details to come. Save the date!

Jan. 31 – Third Annual Central Florida Mentoring Picnic. FAMU Law School, 201 Beggs Ave., Orlando 32801. 11:00 a.m.-4:00 p.m. Free admission. Contact Susan W. Fox, Esq., susanfox@flappeal.com or Jennifer Ngoie, Esq., jngoie4@gmail.com. Save the date!

Seminars

Nov. 4 – Immigration Relief for Victims of Domestic Violence and other Violent Crimes. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. Speaker: Camila Pachon, Esq. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

Nov. 7 – Technology-Assisted Review. Business Law Committee Seminar. 12:00 p.m.-1:30 p.m. Citrus Club, 255 S. Orange

Ave., Orlando, FL 32801. CLE: 1.0. Free. Contact: diana@roman-vhammes.com.

Nov. 17 – How to Be a More Effective Attorney at Mediation and Trial. Workers’ Compensation Committee **Major Seminar.** 11:15 a.m.-1:30 p.m. OCBA Center. CLE: pending. Cost: \$35 for OCBA members; \$50 for non-members. Register at the OCBA Store.

Nov. 18 – Get to Know the Newly Elected Judges. Solo & Small Firm Committee. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: 1.0 pending. See the OCBA website calendar for details.

Nov. 18 – Termination of Parental Rights Case Preparation for GALs. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. Speaker: Clarissa Diaz, Esq. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

Nov. 19 – Social Media Investigation Evidence Collection & Preservation. Technology Committee **Major Seminar.** 12:00 p.m.-3:30 p.m. OCBA Center. CLE: 3.5. Speakers: Greig Gilbert, Senior Intelligence Analyst, Intelligence for Navy SEAL teams and Coalition Forces; David Driggars, Former Intelligence Analyst for the NSA/CSS Texas Cryptologic Center; Karhrman Ziegenbein, Expert in Data Mining, Machine Learning, and Analytics. Fee: \$45 for OCBA regular and affiliate members; \$60 for non-members; \$25 for OCBA government attorneys, law students, and paralegal students. Registration through the OCBA Store will be available soon.

Nov. 24 – Topic: TBA. Labor & Employment Law Committee Seminar. Details to come.

Dec. 2 – Special Legal Issues Impacting Dependent Youth with Delinquency Involvement: The Crossover Effect. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

Dec. 16 – Best Interest Advocacy In and Out of Court. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

Dec. 17 – Working with PDFs in the Law Office. Technology Committee Webinar. 12:00 p.m.-1:00 p.m. Presented by Adriana Linares, LawTech Partners. CLE: 1.0. Fee: \$25 for OCBA members; \$35 for non-members. Purchase at the OCBA Store and receive webinar registration link.

Jan. 8 – Tentative date. Topic: TBA. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Flr. Judicial Conf. Room. CLE: 1.5. Please feel free to bring your lunch; water will be provided. Contact: Diane Iacone at ctjadi1@ocnjcc.org or 407-836-0443.

Jan. 13 – GAL: A Whole New Dependency World. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

Jan. 27 – Landlord Tenant Issues. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Contact: Marilyn Carbo at mcarbo@legalaiddocba.org.

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Congratulations to Members of the OCBA's 100% Club

Congratulations to the Stuart-based law firm **Goldstein, Schmitt & Cambron PL**, which recently won a \$15.2 million jury award, before deduction for attorneys' fees and expenses, on behalf of the widow and son of a 29-year-old Navy veteran killed in a June 2011 crash with a semi-trailer truck in Orlando.

The award was the second-largest ever in Florida in a motorcycle case.

An Orlando jury held for the plaintiff, finding that the truck driver was 93 percent liable for the accident and that the trucker's employer, Jacksonville-based Landstar Ranger Trucking, was negligent in failing to adequately supervise the driver.

Lead counsel Thomas P. Schmitt, a partner in Goldstein, Schmitt & Cambron, said the key to the case was proving the driver had been on the road in excess of the Federal Motor Carrier Safety Administration hours of driving limits.

Attorney Lauri J. Goldstein, the law firm's founding partner, said evidence showed how Landstar Ranger failed to maintain adequate recordkeeping by utilizing paper logs, known in the industry as "comic books," instead of electronic logs that most other large trucking companies used.

For more information on the case or about Goldstein, Schmitt & Cambron PL, go to www.femaleinjurylawyer.com/ or call (772) 222-2222.

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OCBA Calendar

NOVEMBER – DECEMBER & JANUARY 2015

OCBA Luncheons
 There is no monthly luncheon in
 November or December.
 The next luncheon is scheduled for
 January 22, 2015.

November

- 4 LAS Lunchtime Training**
 Immigration Relief for Victims of Domestic
 Violence and Other Violent Crimes
 12:00 p.m. • Marks St. Senior Center
- Professionalism Committee**
 12:00 p.m. • OCBA Center
- 6 7th Annual Breakfast of Champions**
 7:30 a.m. • Church Street Ballroom
- ADR Committee**
 12:00 p.m. • OCBA Center
- The Red Mass**
 12:10 p.m. • St. James Cathedral
- 7 Law Week Committee**
 12:00 p.m. • OCBA Center
- Business Law Committee Seminar**
Technology-Assisted Review
 12:00 p.m. • Citrus Club
- 10 Estate, Guardianship & Trust Committee**
 12:00 p.m. • OCBA Center
- 12 Social Committee**
 11:45 a.m. • Contact Chair
- Lawyers Literary Society**
 12:00 p.m. • OCBA Center
- Veterans Committee**
 12:00 p.m. • OCBA Center
- Executive Council Meeting**
 4:30 p.m. • OCBA Center
- 13 Social Security Committee**
 12:00 p.m. • OCBA Center
- 14 YLS Monthly Luncheon**
 11:45 a.m. • Citrus Club
- Criminal Law Committee**
 12:00 p.m. • OCBA Center
- OCBA Night with Orlando Magic**
 5:30 p.m. • Amway Center
- 17 Workers' Compensation Committee**
Major Seminar
*How to Be a More Effective Attorney at
 Mediation and Trial*
 11:15 a.m. • OCBA Center
- 18 LAS Lunchtime Training**
*Termination of Parental Rights: Case Preparation
 of GALs*
 12:00 p.m. • Marks St. Senior Center
- Solo & Small Firm Committee Seminar**
Get to Know the Newly Elected Judges
 12:00 p.m. • OCBA Center
- 19 Appellate Practice Committee**
 12:00 p.m. • Wicker Smith
- Judicial Relations Committee**
 12:00 p.m. • Orange County Courthouse,
 23rd Flr. Judicial Conf. Rm.
- Elder Law Committee**
 12:00 p.m. • OCBA Center
- Technology Committee Major Seminar**
*Social Media Investigation, Evidence Collection &
 Preservation*
 12:00 p.m. • OCBA Center

Joint Voluntary Bar Associations Happy Hour
 5:30 p.m. • Ember

- 21 Family Law Committee Event**
 12:00 p.m. • Citrus Club
- 24 Labor & Employment Law Committee**
Topic TBA
 12:00 p.m. • OCBA Center
- 27 & 28**
Thanksgiving Holiday
 OCBA Office Closed

December

- 2 Law Week Committee**
 12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
*Special Legal Issues Impacting Dependent Youth
 with Delinquency Involvement Crossover Effect*
 12:00 p.m. • Marks St. Senior Center
- Professionalism Committee**
 12:00 p.m. • OCBA Center
- 3 Business Law Committee**
 12:00 p.m. • OCBA Center
- 4 ADR Committee**
 12:00 p.m. • OCBA Center
- 8 Estate, Guardianship & Trust Committee**
 12:00 p.m. • OCBA Center
- 9 Intellectual Property Committee**
 12:00 p.m. • OCBA Center
- 10 Social Committee**
 11:45 a.m. • Contact Chair
- 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
- 11 Social Security Committee**
 12:00 p.m. • OCBA Center
- Workers' Compensation Committee**
 12:00 p.m. • OCBA Center
- 12 Criminal Law Committee**
 12:00 p.m. • OCBA Center
- 16 Real Property Committee**
 12:00 p.m. • OCBA Center
- 17 Elder Law Committee**
 12:00 p.m. • OCBA Center
- Technology Committee Webinar**
Working with PDFs in the Law Office
 12:00 p.m. • Online
- 19 Family Law Committee**
 12:00 p.m. • OCBA Center
- 22-26**
Winter Holidays
 OCBA Office Closed

January

- 1 New Year's Day**
 OCBA Office Closed

- 6 Law Week Committee**
 12:00 p.m. • OCBA Center
- Professionalism Committee**
 12:00 p.m. • OCBA Center
- 7 Business Law Committee**
 12:00 p.m. • OCBA Center
- 8 Social Security Committee**
 12:00 p.m. • OCBA Center
- Brown Bag Lunch with Judge John Kest**
Topic: TBA
 12:00 p.m. • Orange County Courthouse,
 23rd Flr. Judicial Conf. Rm.
- 9 Criminal Law Committee**
 12:00 p.m. • OCBA Center
- 12 Estate, Guardianship & Trust Committee**
 12:00 p.m. • OCBA Center
- 13 Intellectual Property Committee**
 12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
*GAL: A Whole New Dependence World: DCF
 Safety Methodology Changes*
 12:00 p.m. • Marks St. Senior Center
- 14 Lawyers Literary Society**
 12:00 p.m. • OCBA Center
- Veterans Committee**
 12:00 p.m. • OCBA Center
- Executive Council Meeting**
 4:30 p.m. • OCBA Center
- 15 Real Property Committee**
 12:00 p.m. • OCBA Center
- 16 YLS Monthly Luncheon**
 11:45 a.m. • Citrus Club
- Family Law Committee**
 12:00 p.m. • OCBA Center
- 21 Technology Committee**
 12:00 p.m. • OCBA Center
- Elder Law Committee**
 12:00 p.m. • OCBA Center
- 22 OCBA Monthly Luncheon**
 11:30 a.m. • Church Street Ballroom
- Solo & Small Firm Committee**
 12:00 p.m. • OCBA Center
- 27 LAS Lunchtime Training**
Landlord Tenant Issues
 12:00 p.m. • Marks St. Senior Center
- 28 Appellate Practice Committee**
 12:00 p.m. • OCBA Center
- Judicial Relations Committee**
 12:30 p.m. • Orange County Courthouse,
 23rd Flr. Judicial Conf. Rm.
- Winter Wine & Cheese Social**
 5:30 p.m. • Winter Park Farmer's Market
- 30 Bankruptcy Law Committee**
 12:00 p.m. • OCBA Center
- 31 Third Annual Central Florida
 Mentoring Picnic**
 11:00 a.m. • FAMU Law School