

the Briefs

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

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

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President's Message

October 2012



Kristyne E. Kennedy, Esq.

My Outlook on Email...

We are always striving to better ourselves professionally and personally, right? We try to make every effort to be great at what we do – not just working to be a great lawyer, but also a great friend, loved one, leader, mentor, volunteer, and so on. We all know that these efforts usually require hard work and very often involve working on our relationships as they change and grow. Well, one relationship I have been working on is my love-hate relationship with my Outlook inbox. On the one hand, it is probably the biggest distraction and time-waster in my workday. I arrive at work, open my email, and suddenly find myself wondering what I have been doing the past two hours. It also provides an opportunity to exchange instant comments (that in some cases, had the parties taken the time to write, proof, and sign a letter, they would likely have thought better of sending.) Most importantly, email has made communications much more impersonal and, in my opinion, increasingly creates unrealistic expectations of an instant response to *every* message – resulting in negative consequences when those expectations are not met.

On the other hand, nobody can deny the incredible value and benefit that email provides in our ability to communicate today. In just an instant, we can send a message – like our OCBA e-blasts – out to thousands of people. It truly is amazing if you think about it, especially if you think of what it was like before we had this ability. Email is also incredibly useful in communicating short answers to quick questions. Email communications also can save a tremendous amount of time and money, not only in printing/copying costs but also in ever-increasing postage costs (*e.g.*, 3,500 x 45 cents for a letter or 32 cents for a postcard can really add up!). There are so many other wonderful things about being able to communicate electronically, I would never *ever* want anyone to take away my email, but... back to why I am having to work on this love-hate relationship.

It was such an exciting time back when my relationship with my Outlook inbox began, oh so many years ago... I could communicate a message

in an instant and skip all of those extra steps involved with writing a letter or making a call or multiple calls (*e.g.*, looking up a phone number, dialing the number, taking notes, sending the notes to the file, etc.). It was so efficient and gratifying! At the time, I felt it was the greatest invention ever, and it made me so happy. I never would have predicted there would be a moment one day when I would find myself staring at my computer screen feeling annoyed by yet another request that I kindly assist someone – who does not have an adequate grasp of the English language – import \$35 million illegally into the U.S., or frustrated by another unnecessary “reply to all,” or overwhelmed by dozens of emails waiting for an answer.

But we are getting better, my Outlook and me. We are working through this, finding ways to adapt to changes and improve our relationship (yes, sometimes that means taking a break from each other!). I sometimes wonder what it must have been like to practice law, serve on the OCBA board, or participate in any other organization before we had email. It is hard to imagine. At the same time, I realize this actually was not that long ago and there are probably many of our 3,500 members who recall that different time very well. And while I never want to give up my email and have no desire to “go back in time” when there was no email, I *will* say this: Lately, more and more, I am finding myself reaching over to just “pick up the phone,” and I like it.

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



Michael M. Kest, Esq.

Professionalism Lessons from the Penn State Scandal

I understand why the major participants in the Jerry Sandusky scandal at Penn State acted the way they did.

I grew up a huge sports fan and was raised to love Florida State. As a child I had an idealistic view of what college football was, especially football at FSU. I believed that Seminole players always played by the rules and would never cheat, and I believed in “Saint” Bobby Bowden and that he could do no wrong. After watching a couple of “Wide Rights” and seeing Bobby get so close for so many years, my guys finally won the 1993 NCAA Division 1-A national title. It was one of the greatest moments of my young life. I was at the national championship game with my mother and remember sitting there as the clock turned to :00 (twice actually), and then celebrating out of my mind. At that point FSU could do no wrong and no one could tell me differently. A few days later, Florida State was on the cover of *Sports Illustrated* with the caption “No. 1 At Last.”

Unfortunately, just four months later, FSU was on the cover of *SI* again. This time the caption read “Tainted Title.” When the issue first came out, I did not believe a word of it. I had elevated FSU to such an ideal that there was no way the article could be accurate. I was willing to accept any excuse out of the Florida State players or coaches because this just doesn’t happen at Florida State. Maybe at Miami or UF, but not at my beloved FSU. As a 16-year-old kid, there was little anyone could have done to convince me that anything in the *SI* story was true, regardless of the evidence.

As I said, I think I understand why the major participants in the Jerry Sandusky scandal at Penn State acted the way they did. I, too, felt that same kind of loyalty in 1993 when everything I knew about FSU was tested. It is understandable that a child believes his favorite team is infallible. However, once one becomes a leader of an institution, he or she has to be able to separate reality from fiction and move away from unbridled loyalty.

While the Jerry Sandusky case is one of the most high profile, and maybe horrendous, examples of this kind of organizational cover-up, it is certainly not the only instance. It typically happens when an organization is put on a pedestal and is seen as beyond reproach. But organizations are made of people and people are fallible. The only real way to protect an institution is to make sure that when problems are spotted, they are addressed and remedied instead of being swept under the rug.

So what does this have to do with our legal profession?

We, as attorneys and judges, are the keepers of our firms, the courts, and the legal community as a whole. Our job is to both respect the profession and, at the same time, keep watch over it. Much of the public is terrified of being in a courtroom or in any way involved in a lawsuit. When they encounter something an attorney, court staff, or judge has done that is wrong, they rarely have the will or ability to do anything about it. They just don’t know the system well enough to enact a change and don’t want to be seen as a complainer in the community.

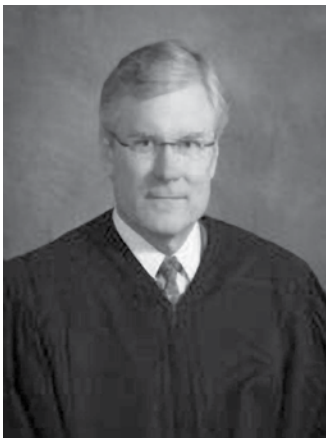
This is where our duty to the profession is at its highest. When we see something wrong with our system, it is our duty and obligation to do something about it. Regardless of what you may hear about the reputation of lawyers, your law degree gives you an enormous amount of respect in the community. You may feel like a “lowly” first- or second-year associate in a large firm who just gets lost in the fray. But to the outside world, you are seen in a totally different light. In your church and civic organizations, in social situations, and even at your child’s sports leagues, you are looked upon with an air of respect and authority. When you see unprofessional conduct within the legal community, you must strive to correct it in the same way you do when you use the system to correct an injustice to a client. The issues you will come across will rarely be as serious as the Penn State case, but they are still important. Whether it is a legal assistant using his or her contacts to take advantage of the other side in a divorce, an attorney taking advantage of an unrepresented client, or a judge using demeaning language when speaking to someone in his or her courtroom, you must act. The only way to improve the perception of attorneys and the legal system in general is to self-police our legal “team.”

Of course this does not mean reporting every problem to the bar. What it does mean is that you cannot simply ignore issues, especially significant ones, and leave them for the next person. You are the one who must take responsibility. In order to make sure the legal system has the respect it deserves, we must make sure it deserves that respect.

What would have happened if Mike McQueary had taken more significant action than he

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OCBA Luncheon Wednesday, October 24, 2012



The Hon. William A. Van Nortwick, Jr.

Florida First District Court of Appeal

The Honorable William Van Nortwick, Jr. has served on Florida's First District Court of Appeal since 1994. Previously he was in private practice in Jacksonville, Florida.

Born in Morehead City, North Carolina, Judge Van Nortwick earned his juris doctor (with honors) in 1970 at the University of Florida, where he was executive editor of the *Florida Law Review*. He received a bachelor's degree from Duke University in 1967. He served in the United States Army Reserve, from which he is now retired.

His distinguished career as a jurist and business law practitioner is marked with a lengthy list of honors and awards, including The Chief Justice's Distinguished Judicial Service Award, American Bar Association Pro Bono Publico Award, The Florida Bar Pro Bono Award, The Florida Bar President's Award of Merit (twice), and Outstanding Member of the Year Award from The Florida Bar Business Law Section.

Always active in his community, Judge Van Nortwick's professional

and civic involvement includes work with state, local, and national bar associations, as well many *pro bono* efforts, community service activities, and educational endeavors. He currently chairs the Florida Supreme Court Professionalism Commission and the District Court of Appeal Performance and Accountability Commission, and remains active in an array of other Florida Bar Association activities. He is an adjunct Professor of Law at Florida State University College of Law, where he has taught professional responsibility since 1997. A frequent CLE and CJE instructor, he is also Appellate Associate Dean for Florida College of Advanced Judicial Studies. Judge Van Nortwick has also maintained his commitment to the Florida-Georgia Blood Alliance, Inc., serving on its board of directors since 1990.

Judge Van Nortwick and his wife, Marie E. Henderson, reside in Tallahassee. Both are Foundation Fellows of The Florida Bar, and Ms. Henderson currently serves as The Florida Bar Foundation president.

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To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Thursday, October 18, 2012. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

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

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Patrick John McGinley, Esq.

How the Infield Fly Rule Influenced American Law (and How Today's Issue of The Briefs Could do the Same)

Like most of my fellow members of the Orange County Bar Association, I enjoy reading *The Briefs* for its good mix of substantive law articles and social news stories. This month's issue of *The Briefs* has a sports theme. So that probably means this particular issue will not have groundbreaking substantive articles that alter the course of American legal jurisprudence, right? Well, consider this.

The year was 1975. William S. Stevens¹ was a law student working on the *University of Pennsylvania Law Review*. Penn Law can be a serious place, and getting published in its law review is no laughing matter. Perhaps that is why William Stevens chose to remain anonymous when he published his article, *The Common Law Origins of the Infield Fly Rule*.²

You will not find an infield fly rule in an evidence code or rules of civil procedure. You must look to Major League Baseball rules 6.05e³ and 2.00.⁴ The infield fly rule prevents fielders from taking advantage of base runners by intentionally not catching a catchable fly ball.⁵ If you catch it, the batter is out, but all men on base are safe. If you let it drop, you can pick it up and throw it to second base (one man out) then to first base (another man out). So instead of one out, you get two. In such circumstances, the infield fly rule is invoked at any umpire's discretion if he concludes a fair fly ball can be caught by an infielder "with ordinary effort."⁶ The result is that the batter is out but all the men on base are safe.

What does the infield fly rule have to do with American legal jurisprudence? Some might say William Stevens' article used it as an analogy proving the need for rules of court that empower trial judges with discretion to promote fair play.⁷ Others may say Mr. Stevens meant his article as a joke. *The Common Law Origins of the Infield Fly Rule* provides plenty of support for the latter. It certainly pokes fun at baseball. But the article also parodies the style in which law review articles are generally written, including their overly formal wording and their often excessive use of footnotes.⁸ The very first word of the article, "The," is supported by a footnote citation to the *Oxford English Dictionary*.⁹ The second time the word "the" appears, another footnote appears, which merely refers back to the first footnote.¹⁰ A more complex example of parody appears when Mr. Stevens refers to a late nineteenth century baseball player who was said to have "the speed

of an ice wagon," followed by a footnote stating: "Raised by this statement is the issue of the speed of an ice wagon in both relative and absolute terms. Such inquiry is beyond the scope of this [article]."¹¹

Whether or not William Stevens intended his anonymously published article as a joke, many agree that it influenced the course of U.S. legal history. Soon after it was published, a plethora of imitators were written, including *Further Aside: A Comment on 'The Common Law Origins of the Infield Fly Rule'*,¹² *The Infield Fly Rule and the Internal Revenue Code: An Even Further Aside*,¹³ and *The Contribution of the Infield Fly Rule to Western Civilization (and Vice Versa)*.¹⁴ Within ten years of its publication, Mr. Stevens' paper was referenced in legal articles covering bankruptcy, constitutional law, and ethics.¹⁵ By 2002, *Penn Law* declared it to be its most famous student-written article.¹⁶ As of July 2012, *The Common Law Origins of the Infield Fly Rule* has been cited 81 times by American court opinions and law review articles.¹⁷

So go ahead and enjoy this month's sports-themed issue of *The Briefs*. But do not make the mistake of thinking a sports theme means frivolity. Read each sports article carefully. Commit each word to memory. Cite each article in your next motion or brief. Share them with your children and your grandchildren. Who knows? Maybe, like *The Common Law Origins of the Infield Fly Rule*, one of the sports articles here might go on to change the course of American jurisprudence. Or maybe not. Only time will tell.

Patrick John McGinley, Esq., Law Office of Patrick John McGinley, P.A., has been a member of the OCBA since 2011. He is the author of four volumes of *West's Florida Practice Series: Florida Elements of an Action, Florida Workers' Compensation, Florida Insurance Law, and Florida Municipal Law*.

¹William S. Stevens (1948–2008) was born in New Jersey and earned his bachelor's degree at Yale and his law degree from the University of Pennsylvania. He worked for a number of law firms in the Philadelphia area and then became an assistant director of the American Law Institute and of the American Bar Association's Continuing Legal Education program. See http://en.wikipedia.org/wiki/William_S._Stevens.

²William S. Stevens, *Aside, The Common Law Origins of the Infield Fly Rule*, 123 U. PA L.Rev. 1474 (June 1975).

³See Official Rules of Major League Baseball 2.00 (holding that "[a] batter is out when . . . An Infield Fly is declared. . .").

⁴See Official Rules of Major League Baseball 2.00 (stating that

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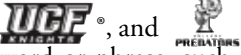


Courtney M. Dunn, Esq.

Intellectual Property: Sport's Cash Cow

As sports has become a nearly ubiquitous part of our culture, so too have the financial opportunities created by our love affair with sports. Intellectual property and the laws that protect it are fundamental to the monetizing of sports; patents, trademarks, and copyrights all play a role. While patents for inventive apparel, equipment, and novelty items do exist in the sports industry, the protections of trademarks and copyrights are far more significant.

A "trademark" is a word, phrase, and/or design used to distinguish one party's goods or services from another's and to indicate the source of the goods or services. In the sports industry, words or designs are often used to designate teams such as

ORLANDO MAGIC[®], [®], and [®]. Occasionally, a popular word or phrase, such as THREE-PEAT[™], will achieve trademark status if used correctly. Pat Riley, former coach of the Los Angeles Lakers, trademarked THREE-PEAT[™] in 1988 in anticipation of the possibility that the Lakers would win a third straight NBA title in the upcoming season. They failed, but ironically, when the Chicago Bulls did win three in a row in 1993, Riley's company collected royalties from the use of the phrase on hats and t-shirts. Currently, LINSANITY[™] and TEBOWING[™] are the subject of pending applications at the U.S. Patent and Trademark Office (USPTO), although with Jeremy Lin being traded, one wonders whether LINSANITY[™] can survive in Houston. Sports teams will often license their trademarks for use on apparel and novelty items which, depending upon the popularity of the team, can lead to a significant source of income.

In general, to be a proper trademark, the term/phrase/design cannot be generic or merely descriptive. For example, BICYCLE (for bicycles), FOOTBALL (for footballs) and ESCALATOR (for moving staircases) are considered generic and cannot be used alone or in combination with another term to make it distinctive. The phrase BEACH VOLLEYBALL would be considered merely descriptive for a magazine that features articles and advertisements regarding beach volleyball and, in general, will not receive trademark protection in that context. In fact, the more fanciful or arbitrary a mark is, the easier the mark is to protect. A "fanciful mark" is a coined term that has no other meaning (*e.g.*, EXXON[®], KODAK[®], LEGO[®], VERIZON[®], XEROX[®]) while an arbitrary mark is an existing term that has nothing to do with its use as a trademark (*e.g.*, APPLE[®],

LOTUS[®], SUN[®]). Suggestive marks – marks that cleverly hint at the products or services, but do not actually describe them (*e.g.*, MICROSOFT[®], NETSCAPE[®], FROOT LOOPS[®]) – are also generally protectable, but are not as strong. Further, to qualify as a trademark, the term, phrase, or design cannot cause a "likelihood of confusion" with existing trademarks. A likelihood of confusion exists when a proposed mark and an existing mark are similar and the goods or services represented by the marks are such that consumers would believe that they originated from the same source.

There are three levels of protection in trademark law: common law, state law, and federal law. Common law protection is acquired by a party through proper and continuous use of the word, phrase, or design on the party's goods or services in commerce. Common law protection may allow an existing user to successfully challenge a registration or application but only in the places where the trademark has actually been used in commerce.

Neither state nor federal registration is required; however, both provide distinct advantages over common law. In Florida, a company may register its trademark with the Department of State. State registration is usually rather easy to obtain because the search for similar marks is generally limited to exact and nearly exact marks. One of the main benefits of registration in Florida is that it provides for an award of attorney fees in enforcing the trademark against infringing persons. However, one of the pitfalls of such a cursory process is that such registrations are easier to invalidate in the future.

If a mark is used in interstate commerce (and sports marks often are), the owner can apply for federal registration with the USPTO. Before he played one minute of professional basketball for the New Orleans Hornets, Anthony Davis, the first pick in the 2012 NBA draft, had filed an application for registration with the USPTO for FEAR THE BROW[™] in homage to his prominent eyebrows. Once an application is filed, an examining attorney at the USPTO will review the application for threshold qualifications and perform a search of existing registered and applied-for marks to determine whether a likelihood of confusion exists. To avoid surprises, to provide a more thorough search, and to avoid the lengthy wait for the USPTO's search results (often six months to a year), we recommend that clients

seek a trademark search and opinion from an experienced trademark attorney. Such an opinion can also be used as a tool in the defense of a claim for treble damages in a trademark infringement case because it demonstrates that the owner did his or her due diligence and sought out and relied on the advice of counsel before using the subject mark in commerce. If the USPTO approves the mark and the owner has provided all required documents and fees, the mark will register and the owner can then affix the ® symbol in relation to the registered mark. This can be a smart move for athletes, maximizing the financial benefits when an opportunity, often fleeting, presents itself.

Like state registration, federal registration also provides for an award of attorney's fees. However, federal registration only provides for such fees in "exceptional cases." Federal registration also provides public notice of a party's ownership claim in a mark, creates a legal presumption of a party's ownership of, and the exclusive right to use, the mark in the U.S. on or in connection with the goods or services listed in the registration, and the ability to claim statutory damages in some cases, including treble damages, for willful infringement. Common law protection is often considered a protection of "last resort," and federal registration is highly recommended if available. Where added protection is sought or when federal protection is not available, such as in cases where the goods or services are only offered within a single state (and, therefore, are not in interstate commerce), state registration is recommended. Although the owner of a mark may file an application for trademark directly with the USPTO, owners typically retain trademark counsel. The nuances of the trademark laws can cause problems, including voiding the trademark registration, for applicants with limited experience preparing and filing trademark applications.

Copyright protects original works of authorship. Limited copyright protection automatically exists upon the creation of an original work of authorship. However, enhanced protection, increased damages, and augmented enforceability are available with federal registration. Copyrights protect original works of authorship in eight specified categories:

1. Literary works;
2. Musical works (including any accompanying words);
3. Dramatic works (including any accompanying music);
4. Pantomimes and choreographic works;

5. Pictorial, graphic, and sculptural works;
6. Motion pictures and other audio-visual works;
7. Sound recordings; and
8. Architectural works.

These categories are broadly interpreted. For instance, computer programs and compilations are often considered literary works. Copyright does not extend to ideas, procedures, methods, processes, systems, titles, names, familiar symbols or designs, and short phrases.

In the sports industry, a copyright is often used to protect artistic impressions of sporting events or athletes, such as photos of an athlete, sketches or paintings of a stadium, and event broadcasts. Those of us addicted to professional football can recite the following in our sleep: "This copyrighted broadcast is the property of the National Football League. Any rebroadcast or reproduction without the consent of the NFL is strictly prohibited." Literary works, such as books or magazine articles, are often written by sports reporters, current and former athletes, coaches, or others in the sports industry. In 2006, NFL wide receiver Terrell Owens authored a children's book entitled *Little T Learns to Share*. Fortunately for Owens, copyright protection attaches regardless of the quality of the literary work. Even the source code for a sports-related video game would likely qualify for protection as a literary work.

Copyrights, like trademarks, are also provided some protection without registration. However, unlike trademarks, which require the owner to wait until registration to use the ® symbol, copyright owners can use the © symbol to mark their work as of the time of creation. Federal copyright applications are filed with the U.S. Copyright Office. The application requires a non-returnable deposit and a copy of the work(s) to be protected. An examiner will review the content of the application to verify that copyrightable material is present, the appropriate fee has been paid, and that all necessary information has been provided.

Recently, the U.S. Copyright Office issued a *Statement of Policy* that clarifies the protection of exercise and other physical movements under copyright law. Previously, copyrights had been improperly issued on physical movements, leading to some questionable court rulings, and the statement now clarifies that a compilation of exercise poses is not protectable by copyright. Because copyright only covers compilations that fall within the eight specified

categories listed above, and exercise movements do not fall within these categories, exercise movements do not qualify for protection. Further, such movements are considered a functional system or process and thus are expressly excluded from copyright protection.

The protections afforded by intellectual property rights play an important role in all sports, especially in promoting and monetizing the teams, players, and events. Without the availability of such protections, the sports industry would lose a lucrative source of revenue, and \$500 million arenas and \$20 million salaries would be fantasy. Whether that might be a good thing is another question altogether.

H. Gregory McNeill, Esq., a partner with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been a member of the OCBA since 1985. **Courtney M. Dunn, Esq.**, an associate with Lowndes, Drosdick, Doster, Kantor & Reed, P.A., has been member of OCBA since 2012.

On the cover, judges in alphabetical order with their alma maters:

Apte, Alan S.	University of Miami
Arnold, C. Jeffery	Florida State University
Bell, Maureen	University of Florida
Blackwell, Alice L.	Furman University
Cheek, Leon B. III	University of Florida
Clark, Nancy	University of Florida
Doherty, Patricia A.	University of Florida
Egan, Robert J.	University of Florida
Higbee, Heather L.	University of Florida
Jewett, Steve	University of Florida
Jordan, John E.	University of Florida
Kest, John Marshall	Florida State University
Kest, Sally D. M.	Florida State University
Lubet, Marc L.	University of Florida
Mihok, A. Thomas	Navy
Miller, W. Michael	University of Florida
Murphy, Michael	University of Florida
Myers, Jr., Donald A.	University of Florida
Plogstedt, Antoinette	University of Florida
Polodna, Scott	University of Florida
Rodriguez, Heather Pinder	Florida State University
Shea, Tim	University of Central Florida University of Florida
Turner, Thomas W.	Ball State Univeristy
Waller, Margaret T.	University of Florida
Wallis, F. Rand	Furman University
Wooton, Wayne	Univeristy of Florida



Benjamin Haynes, Esq.

Rock and the Class v. NCAA: Does the NCAA Violate Antitrust Law by Capping Scholarships?

On July 25, 2012, former Gardner-Webb quarterback John Rock filed a class action complaint against the NCAA. The complaint alleges that the NCAA violated Section 1 of the Sherman Act, which states that “Every contract, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” Sherman Anti-Trust Act, § 1 et seq., 15 U.S.C.A. § 1 et seq. John Rock played football for Gardner-Webb University in 2008, and he claimed that he chose the school based on the pledge of the head coach that his athletic scholarship would be renewed annually so long as he did well academically and remained eligible for NCAA competition. However, in his junior season, Gardner-Webb hired a new head football coach, and the coach informed Rock that they would not be renewing his scholarship. Rock had to pay for the remainder of his college education out of his own pocket, and this lawsuit followed.

Mr. Rock alleges that the NCAA and NCAA member institutions entered into unlawful agreements and conspiracies in restraint of trade. Specifically, he alleges that the NCAA and NCAA member institutions unlawfully agreed to artificially fix or reduce the amount of athletics-based scholarships to be awarded to class members, in exchange for the student-athletes’ labor, by agreeing among themselves not to offer multi-year athletics-based scholarships and by agreeing among themselves to artificially limit the overall supply of athletics-based scholarships. If this topic seems familiar, that’s because it was raised not long ago in the *Agnew* case.

Agnew v. NCAA

On October 25, 2010, two former NCAA athletes, Joseph Agnew and Patrick Courtney, filed a class action lawsuit against the NCAA in the Northern District of California. Both athletes suffered career-ending football injuries while playing college football. The athletic scholarships for both players were good for only one year and were not renewed at the end of their seasons. The plaintiffs in that case claimed that two NCAA regulations – the cap on the number of scholarships given per team, and the prohibition of multi-year scholarships – prevented them from obtaining scholarships that covered the entire cost of their college education. Their cause of action was an alleged violation of Section 1 of the Sherman Act. In the *Agnew* case, the NCAA filed

a motion to dismiss and motion to transfer; the case was transferred from California to Indiana. The plaintiffs then filed an amended complaint alleging that the bylaws of the NCAA resulted in a horizontal agreement to fix prices and reduce output. The NCAA responded with a motion to dismiss the complaint, citing three reasons: 1) plaintiff failed to identify a relevant market, a necessity for a valid Sherman Act claim; 2) plaintiff failed to allege facts sufficient to show that the NCAA injured competition in a relevant market; and 3) the plaintiff failed to allege facts sufficient to show an injury as a result of anticompetitive acts committed by the NCAA. On September 1, 2011, the district court granted the NCAA’s motion to dismiss, the plaintiffs appealed, and the court of appeals affirmed.

Section 1 of the Sherman Act:

The purpose of the Sherman Act is to protect consumers from injury that results from diminished competition. *Banks v. NCAA*, 977 F.2d 1081, 1087 (7th Cir. 1992). Thus, the plaintiff must allege not only an injury to himself, but an injury to the market as well. *Car Carriers, Inc. v. Ford Motor Co.*, 745 F.2d 1101, 1107 (7th Cir. 1984). Specifically, Section 1 of the Sherman Act states that “[e]very contract, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal.” *Id.* This is implicated when someone, or more than one person, is restraining trade or the ability for someone to compete in a free market or to earn a certain wage. To establish a cause of action under Section 1 of the Sherman Act, all three of the following criteria must be met: 1) A contract, combination, or conspiracy 2) which results in an unreasonable restraint of trade in a relevant market, and 3) an accompanying injury. *Denny’s Marina, Inc. v. Renfro Prods., Inc.*, 8 F.3d 1217, 1220 (7th Cir. 1993).

There are two different ways violations occur under the Sherman Act: “per se,” or under the “Rule of Reason.” A per se violation requires no further inquiry onto the effects on the relevant market. When a per se rule is applied, a civil violation of the antitrust laws is found merely by proving that the conduct occurred and that it fell within a per se category. *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 104 S. Ct. 1551, 1556 (1984); *Gough v. Rossmoor Corp.*, 585 F.2d 381, 386-89 (9th Cir. 1978), cert. denied, 440 U.S. 936 (1979); *White Motor v. United States*, 372 U.S. 253, 259-

-60 (1963)(a per se rule forecloses analysis of the purpose or market effect of a restraint); *Northern Pac. Ry. v. United States*, 356 U.S. 1, 5 (1958). By comparison, the Rule of Reason requires a determination of whether the activity unreasonably restrains competition as demonstrated by actual harm in a relevant market. This will be determined by weighing pro-competitive effects of the rule against the anti-competitive effects of the rule. Courts will look at the restraint imposed and determine whether or not the restraint is justified by a legitimate purpose, which is no more restrictive than necessary. It is essential to a Sherman Act violation claim that the relevant market be stated with specificity. *Cont. T.V., Inc. v. GTE Sylvania Inc.*, 433 U.S. 36, 49 (1977).

Surviving a Motion to Dismiss for Failure to Plead Relevant Market

To survive a Rule 12(b)(6) motion to dismiss, an alleged product market must bear a "rational relation to the methodology courts prescribe to define a market for antitrust purposes-analysis of the interchangeability of use or the cross-elasticity of demand." *Gianina Enters. v. Miss World (Jersey) Ltd.*, 551 F.Supp. 1348, 1354 (S.D.N.Y. 1982). Further, because market definition is a deeply fact-intensive inquiry, courts hesitate to grant motions to dismiss for failure to plead a relevant product market. *Found. for Interior Design Educ. Research v. Savannah Coll. of Art & Design*, 244 F.3d 521, 531 (6th Cir. 2001)("Market definition is a highly fact-based analysis that generally requires discovery."); *Double D Spotting Serv., Inc. v. Supervalu, Inc.*, 136 F.3d 554, 560 (8th Cir. 1998).

Agnew v. NCAA Court Reasoning:

In *Agnew v. NCAA*, the district court granted the NCAA's motion to dismiss and held that the

plaintiffs failed to identify a cognizable market in which trade was improperly restrained, and that even if plaintiffs did adequately allege that there is a product market for bachelor's degrees or a labor market for student-athletes, as plaintiffs contended during oral argument, those markets are not cognizable in the context of the Sherman Act.

Agnew v. NCAA, 683 F.3d 328, 333 (7th Cir. 2012). The plaintiffs appealed, and the appellate court found that in order for the plaintiffs to succeed in their challenge of the district court's dismissal, they must prove: 1) that there is a cognizable market on which the NCAA's actions could have had anticompetitive effects; and 2) that plaintiffs did, in fact, identify that market in their complaint. The appellate court found that there was a market and that "a transaction clearly occurs between a student athlete and a university: the student athlete uses his athletic abilities on behalf of the university in exchange for an athletic and academic education, room, and board." *Id.* at 388. However, because the Sherman Act only applies to commercial transactions, the appellate court considered whether the Sherman Act applied to the NCAA and its member schools in relation to their interaction with student-athletes, and the court concluded that "transactions between NCAA schools and student-athletes are, to some degree, commercial in nature, and therefore take place in a relevant market with respect to the Sherman Act. *Id.* at 340.

The court also looked at the NCAA bylaws and whether they were procompetitive on their face. The court found that "these Bylaws, a one-year limit to scholarships and a limit on scholarships per team, are not inherently or obviously necessary for the preservation of amateurism, the student-athlete, or the general product of college football," but concluded that "the lack of a procompetitive presumption in favor of the two Bylaws under consideration does not equal a finding that they are anticompetitive; it simply means that they cannot be deemed procompetitive at the motion to dismiss stage." *Id.* at 344-45. Therefore, the court held that "as we have made clear, we disagree that plaintiff could not have alleged a relevant cognizable market, but we ultimately conclude that plaintiffs did not identify such a market in their complaint, and that the district court's dismissal was justified." *Id.* at 345. The biggest issue the court of appeals had with the *Agnew* complaint was that the plaintiffs did not include anything in their amended complaint even "resembling a discussion of a relevant market for student-athlete labor." *Id.* at 347. Further, the court alluded to the fact that the plaintiffs had forgone the decision to identify a specific relevant market, which is essential in bringing a Sherman Act lawsuit.

Rock Case:

Rock seems to have filled in the holes that the *Agnew* case so blatantly missed. While the appellate court in *Agnew* stated that no relevant market was pled in the complaint, *Rock* has alleged a relevant market exists. Specifically, in paragraph 21 of *Rock's* complaint, plaintiff stated:

[T]he relevant market is the nationwide market for the labor of student athletes. In this labor market, student athletes compete for sport on athletic teams of NCAA member institutions and NCAA member institutions compete for the best collegiate student athletes by paying in-kind benefits, namely, athletics-based scholarships, academic programs, access to training facilities, and instruction from premier coaches.

Therefore, *Rock* states a market with extreme particularity. Further, the *Rock* complaint referenced the *Agnew* appellate decision in several instances and discussed the fact that there is a cognizable market for student athletes under the Sherman Act.

The NCAA no longer prohibits institutions from offering one-year athletic scholarships – NCAA member institutions may now award multiyear scholarships. Undoubtedly, the *Agnew* litigation has affected the *Rock* litigation to the extent that the attorneys for John Rock have tried to plug in the pieces that were missing according to the *Agnew* appellate court ruling. If the district court finds that a relevant market has been sufficiently identified in the complaint, then an NCAA motion to dismiss may be denied based on the holding in the *Agnew* case. Will NCAA rule limiting the total number of scholarships a member institution can offer be deemed unlawful under the Sherman Act? We will find out, soon enough.

Benjamin Haynes, Esq. is a former Division 1 basketball player at Oral Roberts University and currently practices law in the state of Florida. This initial article was published on sportinlaw.com. Haynes has since expanded on this article. Posted on 1st August, in Antitrust. 1 Comment. The article is reproduced in *The Briefs* by permission of the author.

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Thoughts from the Hispanic Bar Association of Central Florida's Luncheon with the Honorable Barbara J. Pariente

What a distinct honor it was to have had Florida Supreme Court Justice Barbara J. Pariente agree to come to Orlando to speak with those of us who attended the recent Hispanic Bar Association of Central Florida (HBACF) luncheon in the confines of the old Orange County Courthouse, now converted into a museum. Justice Pariente did so at our invitation, and did so while in the midst of a merit retention political battle now brewing as we head into the November elections. It was an absolute privilege to be in Justice Pariente's presence as she recounted her career as a lawyer, as a jurist on the 4th District Court of Appeal, and as a current Justice of the Florida Supreme Court since 1997. She was overwhelmingly retained by Florida voters under merit retention in 2000 and again in 2006.

For those of you not in attendance, you missed a civics lesson and/or reminder as to why we have merit selection and retention for our appellate judges in Florida. This procedure dates back to



Hon. Barbara J. Pariente

Gov. Reuben Askew and the executive orders and legislative enactments he signed, and the constitutional amendments passed by Florida voters in 1972 and 1976, when Florida voters decided to take politics out of the selection and retention of our appellate judges. This was, as some writers of the times explained, a reaction to the question of whether a campaigning appellate jurist had the ability to be fair and impartial. It fell on the heels of major scandals in the early 1970s, leading to threatened impeachment proceedings, resignation in disgrace by some Supreme Court Justices, and a federal conviction of one justice who had been appointed over the strenuous objection of The Florida Bar.

Justice Pariente reminded us of the checks and balances our forefathers designed into our system of governance, with the judicial branch holding equal powers with the executive and legislative branches, respectively. The judicial branch was designed to be the neutral arbiter of disputes between the other two branches no matter how politically charged the issues may be, with the

independence of the judiciary being of utmost importance. Justice Pariente closed her speech by reminding all of us that it is our duty to educate and remind the public before the November elections why we have judicial nominating commissions and merit selection and retention for our appellate judges here in the great state of Florida.

What Justice Pariente did not say, but what 23 former presidents of The Florida Bar said on September 6, 2012, in a response to attempts to replace Justices Pariente, Peggy Quince, and Fred Lewis, is:

We are concerned that the public has forgotten or is unaware of how the use of judicial nominating commissions along with merit retention and selection of appellate judges and non partisan elections has helped to give Florida one of the best judicial systems in the nation.

Most importantly, we are concerned that the lack of public understanding of our judicial system and how it now serves to protect the public from the evils of judges being subjected to political influence will enable well-financed, politically motivated groups to effectively destroy our system through unwarranted attacks on Florida Supreme Court Justices who have applied the rule of law without fear or favor and have refused to yield to political pressures in their decisions.

Finally, we are concerned about the irreparable damage to our system of judicial fairness and impartiality that will occur if the well-financed and ill-conceived political campaign to remove these Florida Supreme Court Justices from office for political motives is successful. Accordingly, we hereby jointly resolve:

1. To urge the public to become well-informed about their qualifications, integrity and honesty before voting to retain or not retain any judge that appears on any ballot.
2. Based on the undersigned's knowledge of the qualifications, integrity and honesty of those Florida Supreme Court Justices whose names will appear on the ballot we urge the public to vote in favor of the retention of Justices Pariente, Quince and Lewis.
3. To do whatever we can to inform the public of the importance of maintaining judicial integrity and impartiality by supporting and retaining judges who have con-

continued page 35

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Legal Aid Society of the OCBA
The Fifth Annual Breakfast of Champions

Wednesday, November 7, 2012

Ballroom at Church Street

Registration: 7:30 a.m.

Program: 8:00 a.m. to 9:00 a.m.

We are seeking Table Captains for this annual fundraising event. As a table captain, you will be asked to invite and fill a table with ten colleagues or other professionals. Some examples of excellent professionals to invite would be your physician, dentist, accountant or insurance agent amongst others. Your guests will be asked to make a personal or business contribution (or both) to the Legal Aid Society. Corporate sponsors are needed to defray the cost of the event and provide funds for direct services to low-income citizens of Orange County.

Please consider making a donation in the following amounts:

Bronze - \$250 or *Silver* - \$500
Recognition as a Bronze or Silver Sponsor
in *The Briefs* and at the breakfast

Gold - \$1,000 or *Platinum* - \$2,500
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in *The Briefs*, at the breakfast, on our
website, and at our annual awards banquet

If you would like to serve as a Table Captain or sponsor the event, please contact Donna Haynes, Manager of Development, at dhaynes@legalaidocba.org, or call (407) 841-8310, extension 3150.

As always, thank you for your continued work on behalf of our mission to ensure that equal access to justice is a reality for all, not just for those who can afford it.

Chris Pantano and Ana Tangel-Rodriguez, Development Committee Co-Chairs

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Donna A. Haynes

Fifth Annual Breakfast of Champions

It seems like yesterday that the Legal Aid Society of the Orange County Bar was hosting its first annual **Breakfast of Champions**. The annual breakfast provides valuable funding to support our mission of providing free legal services to low income residents, the working poor, children, and other disadvantaged groups with special legal needs in Orange County. We are blessed to be approaching our *fifth* annual Breakfast of Champions.

Last year the Legal Aid staff and volunteers provided safety and stability through legal services to more than 20,000 low income clients. Together, our legal advocacy helped to protect abused and neglected children, poor senior citizens, and battered spouses from further harm. The legal representation we provided helped clients preserve their homes, removed barriers to employment, and increased both their financial resources as well as their access to health care. These are some of the important things we do to change and save lives – right here in Orange County!

Our Breakfast of Champions will take place on Wednesday, November 7, 2012, (the day after the election), at the Presidential Ballroom at Church Street Station, 225 South Garland Avenue in downtown Orlando. Our event begins with networking and registration from 7:30 a.m. to 8:00 a.m. The program will take place from 8:00 a.m. to 9:00 a.m., and Puff & Stuff Catering

will be providing us with the great breakfast and coffee. There is no charge to attend this event; we simply ask that you make a personal and/or corporate donation, keeping in mind that this is our major fundraising event for this year.

The Breakfast of Champions dollars are extremely important to our ability to continue providing our core legal services. We need your help. We are seeking an additional \$12,000 in sponsorships to help defray the cost of this event and twelve additional table captains. If you are unable to help with a sponsorship or unable to be a table captain, but you are interested in attending this year's fundraiser, contact one of the table captains listed below. Attending this fundraiser requires a reservation through a table captain as we expect more than 500 of the "movers and shakers" of the legal community to attend. Many of you have stepped up to help us with this exciting event in the past and for that, we thank you. Together, we can make a difference.

For more information on the Breakfast of Champions, contact co-chairs Chris Pantano at Chris.Pantano@SunTrust.com, or Ana Tangel-Rodriguez, Esq., at tralawfirm@aol.com.

Donna Haynes is the manager of development and has been a member of the OCBA since August, 2008. She is available at dhaynes@legalaidocba.org or at 407-515-1850.

2012 Breakfast of Champions table captains include:

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Mary Ann Etzler
Michael J. Furbush
Lydia Gardner
Michael Gibson
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Mildred Graham
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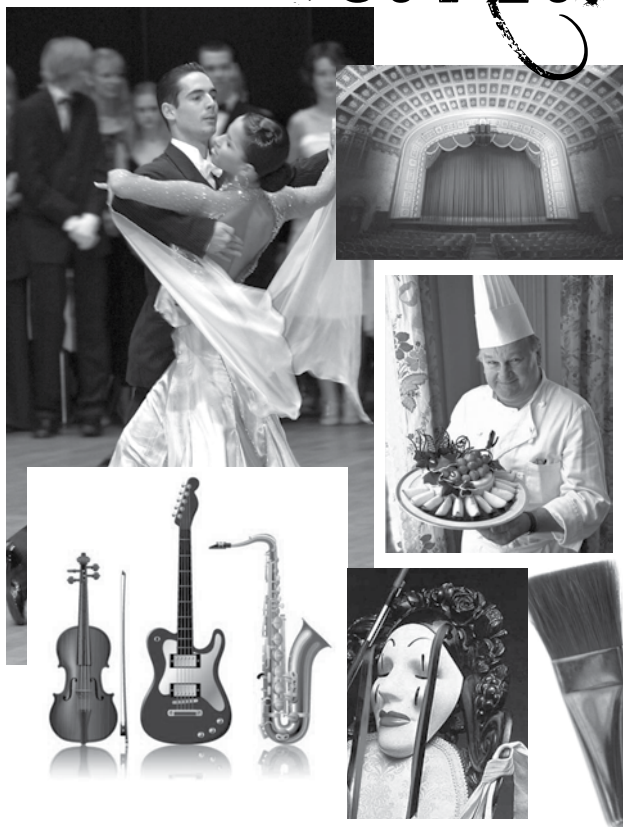
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If your heart belongs to the law, send your ideas for substantive articles that **explore the intersection of arts and the law or legal profession**.

We're looking forward to bringing you an exciting **February 2013** issue, so contact us as soon as possible – but no later than November 15 – for publication consideration.

Peggy Storch, Communications Manager
peggys@ocbanet.org

(Article submission deadline for February 2013 issue: December 15, 2012)

ANOTHER THEMED ISSUE:

April 2013 Brief's theme is environmental issues.
Submission deadline: Feb. 15



Professionalism Award Nominations Sought

Outstanding Professionalism Deserves to be Recognized

The Orange County Bar Association is one of the most active in the country, and its members are shining examples of professionalism. It is always a pleasant but difficult task to identify who is among the "best of the best" when it comes to professionalism in our legal community. Each year, the OCBA Professionalism Committee and the Orange County Bar Association recognize extraordinary professionalism demonstrated by our more experienced or senior lawyers, more recently admitted lawyers, and judges by presenting awards named to honor those great profes-

sionals who are no longer with us, yet who still guide us: William Trickle, Jr. (attorneys practicing 15 years or more); Lawrence G. Mathews, Jr. (attorneys practicing less than 15 years); and Judge James G. Glazebrook (judiciary).

The recipients of these awards are announced and honored during an OCBA luncheon. Each award winner then shares his or her remarks during a bar luncheon, annual dinner meeting, or Young Lawyers Section meeting so that our members can learn more about their views, tips, and observations on how to practice with professionalism. Additionally, each of the award winners is asked to write an article for the *The Briefs*, so that all can benefit from their collective wisdom and practical examples.

Members of the Orange County Bar Association are asked to submit nominations for these awards by using the appropriate form(s), which can be found on the OCBA's website. You may submit supplemental information if you feel that it is appropriate. Please send your completed nomination form to Executive Director Brant Bittner at the OCBA by mail, fax, or email. Nominations will be open until Friday, December 14, 2012.

For more information, please call the OCBA office at 407-422-4551.



Richard S. Dellinger, Esq.



Remembering Fifty Years of the Middle District of Florida

Until 1962, “roving” federal judges from the Northern and Southern Districts handled federal cases in Central Florida. And, until 1962, hearings and trials could not take place in the federal courts in Central Florida until the annual two- to three-month federal session began. And, until 1962, clerks and the U.S. Marshalls traveled to Central Florida from cities like Miami or Tallahassee to assist with cases. Prior to 1962, federal civil rights laws passed and were beginning to be enforced. And, prior to 1962, the Warren Court decided cases that applied more stringent constitutional limits on searches and seizures, the right to counsel, school desegregation, and voting rights.

By 1962, Central Florida’s population was exploding. Cape Canaveral was full of life as the country embarked on a race to the moon. Defense contractors were expanding their presence. Air conditioning and mosquito control made Central Florida more attractive to new residents. And, Castro’s succession to power in 1959 fueled a decade of Cuban migration.

By 1962, the time had come for the Middle District of Florida to be carved out of the Northern and Southern Districts. On July 30, 1962, the Middle District of Florida was created by statute. On October 29, 1962, three judges from the Southern District of Florida (the Honorable John Milton Bryan Simpson, the Honorable Joseph Patrick Lieb, and the Honorable William Allan McRae, Jr.) and a single judge who had shared the Northern and Southern District of Florida (the Honorable George C. Young) were permanently assigned to the Middle District. These Middle District judges then regularly held court in federal courthouses and U.S. post offices in Fernandina, Ft. Myers, Jacksonville, Live Oak, Ocala, Orlando, St. Petersburg, and Tampa.

The year 2012 marks the fiftieth anniversary of the establishment of the Middle District of Florida. To commemorate the occasion, attorneys, judges, and other members of the legal community will gather in Orlando, Florida, on October 25 - 26, 2012.

The event will be held at the Hilton Orlando and will begin with a dinner on October 25, 2012. During the dinner, guests will honor the first Middle District judges, including Judge Young, who is expected to appear in person. Attorneys Jill Schwartz and Marilyn Moran have planned a dinner that will include professional musicians

and singers, who will present musical pieces from the past fifty years.

On October 26, 2012, an academic symposium will also be at the Hilton Orlando. The symposium will begin with a general overview of the establishment of the Middle District by Professor James M. Denham, PhD, from Florida Southern College. Then, the program will turn to substantive cases with a discussion of major civil cases by the Honorable Sylvia Walbolt, Eleventh Circuit senior judge, the Honorable Susan Black, and senior Middle District judges, the Honorable William Castagna and the Honorable Harvey Schlesinger. The program will continue with a discussion of major criminal cases by Stetson Law professor Robert Batey and former Eleventh Circuit judge, the Honorable Joseph Hatchett. Senior Middle District judge, the Honorable William Terrell Hodges, will then speak about his experience with segregation and integration cases within the Middle District.

After the morning session, the program will continue with a videotaped presentation of the life of the Honorable Henry Lee Adams, Jr. The video will be introduced by Judge Adams’ former law partner, William J. Sheppard.

After lunch, students from the law reviews at the University of Florida, Florida State University, and the University of Miami will present case comments about cases decided during the Middle District’s fifty-year history. The University Florida’s *Florida Law Review* will lead with five case comments regarding cases decided from 1962 through 1978. Then, the *Florida State University Law Review* will present five case comments regarding cases decided from 1979 through 1995. And finally, the *University of Miami Law Review* will present five case comments regarding cases decided from 1996 through the present.

The event will be held in the conference facilities at the Hilton Orlando. The cost for the general public is \$60 for the Thursday dinner and \$40 for the Friday symposium. No public monies will be used for the event. For more information on the fiftieth anniversary event, please see: <http://mdfl-historicalcommittee.com/academic-symposium>.

Richard S. Dellinger, Esq., a partner with Lowndes, Drosdick, Doster, Kantor and Reed, P.A., is the Eleventh Circuit vice president and former Orlando Chapter president of the Federal Bar Association. He has been a member of the OCBA since 2000.



Jamie Billotte Moses, Esq.

You Do What? Why?

Those are the two questions I normally get asked whenever I try to explain to someone why I cannot stay out late on Friday or Saturday night or why I have been up since 5:00 a.m. Inevitably, I am training for or participating in some form of race, be it a triathlon or some type of running race. Many people simply think it is crazy that I would lose precious sleep or deprive myself of certain food or drink to subject myself to hours of physical activity (or “punishment” as some have suggested). Nevertheless, I, along with many other lawyers in the Central Florida community, have found great joy in trying to do something that seems reserved for only the fittest members of our community. For me, I had been a cheerleader all of my life and did not play sports growing up. Then, to get through a rough patch in my life, I accepted the challenge from my spin instructor when she asked, “Who would like to train for an all-women’s triathlon?”

Thanks to that fortuitous meeting eleven years ago, I have now competed in more than thirty triathlons and fifty running races of some sort. I have traveled the world for marathons or half-marathons (Greece and China, see photos). In fact, at the time of writing this I am getting ready for the Age Group Nationals at the Olympic triathlon distance in Burlington, Vermont, and then will start training for a 70.3 (half-iron distance triathlon) in Puerto Rico in March 2013. I guess for me the young athlete who did not have the opportunities my children have today is coming out. But, I am not the only one who likes to do this.

It is not uncommon for me to run into **Judge Jose Rodriquez** at a local triathlon or during a one kilometer swim at Lucky’s Lake bright and early in the morning. It also is not uncommon to run into Judge Rodriquez and his wife **Ana Tangel-Rodriguez** at the downtown YMCA. Attorney (soon-to-be-judge) **Mark Blechman** has competed in races as well and can often be found at Lucky’s Lake, too. **Wynne McFarlin** has competed in half ironman distance triathlons and is currently training for Ironman Florida in November. **Elaine Lerner** cycles almost 100 miles a weekend with her husband. **Amanda Perry** and **Melanie Griffin** are avid runners and have completed many half- or full-distance marathons. **Richard Dellinger** has completed many marathons and an Ironman and is a competitive cyclist. **Ashley Frost Bedell** is an incredible runner who often runs as part of a relay at one of the

preeminent Olympic distance triathlons in the country, and her team (when all are healthy) usually wins. Additionally, Ashley has taken to some incredible challenges, including a 24-hour military style road race. Women like **Maria Hale**, **Liz McCausland**, **Musette Stewart**, and **Ana Lopez** have done several races as well. **Judge Alan Lawson** is an incredible runner with times men half his age would be lucky to run. **Nick Shanin** started running 5ks when his little girl needed someone to take her to races – why wait at the end when you can follow her to the finish?

What is more impressive is many of these same people have done these races in conjunction with significant fundraising efforts for various charities, including The Leukemia and Lymphoma Society, The American Cancer Society, The American Diabetes Society, and The American Lung Cancer Society. One such person is **Kathleen Skambis**, a lung cancer survivor herself, who always participates in the Fight for Air Climb and has recently started running half-marathons. **Melanie Griffin** and **Barbara Leach** help organize and compete in a sprint triathlon hosted every year in Tallahassee for one of their beloved FSU professors suffering from ALS.

So why do we do this? Obviously, there are many healthy reasons to train for races. For most people, it establishes a scheduled, regular workout. The fear of not being prepared for the pending race forces us to train. For others, it’s doing something we were not able to do as a child. For some people, team sports are not an option. For women in particular, there are very few opportunities to participate in athletics. It is tough to find a 3 vs. 3 pickup basketball game at the Y for women. Yet there are many running and triathlon groups available to men and women alike. Moreover, training to run a marathon or compete in a triathlon can be done on your own schedule. For many working mothers, getting up and training before the rest of the family even wakes is one way to do it. Many people cannot make the late evening or Saturday morning games that are often scheduled in team sports as those events regularly conflict with their children’s sports schedules or other extracurricular activities. Running and triathlon training can be more flexible than other activities.

I have also found these types of activities are a great stress reliever. Nothing erases a hard day like a good workout. Lawyers have very stressful jobs and we all need to find a release. As has been seen



Jamie Billotte Moses
winning some hardware

Jamie on the Great Wall of China (May 2011)



Melanie Griffin with family after
finishing the Chicago Marathon



Melanie Griffin and Barbara
Leach getting ready to swim!

Jamie and her fiancé
after St. Anthony's
Triathlon (2011)

gravitate toward painting, sculpting, writing, acting, etc. Others, like myself, gravitate toward athletics – running, cycling, CrossFit, triathlon, martial arts (see photo of husband and wife duo **Rafael** and **Sarah Rodriguez**) – anything that takes you away from it all, if only for an hour a day, can make all the difference.

Similarly, I have found over the years that running and triathlons attract a certain type of person. Because training for these types of events usually (1) requires repetitive activity, (2) is logged, tracked, and analyzed, and (3) has a concrete objective within a specific period of time, many lawyers are attracted to these sports. Triathlon, in particular, is a very “Type A” activity. Because you are the only one competing (against others), you must be prepared. There is not another person on the team to pick up the slack if you just are not feeling it that day. That type of pressure is something Type A lawyers thrive upon. Plus, triathlons have no age limit and include age group classifications through 89! It really can be a lifelong commitment.

Finally, if we’re really being honest with ourselves, many of us always wanted to be an athlete. I know I did. Nevertheless, as a petite, bubbly gymnast, my natural progression was toward cheerleading. I spent year after year encouraging others to push themselves harder than they could imagine. Now, as a mother, I cheer my children on with vigor and fervor. The only difference now is they get to return the favor for me. Nothing brings more joy to me than hearing my kids scream “Come on Mom! You can do it!” So, when someone asks me “Why?” I reply “Because I can!”

Jamie Billotte Moses, Esq., a partner at Fisher, Rushmer, Werrenrath, Dickson, Tally & Dunlap, P.A., has been a member of the OCBA since 1989.



Thomas P. Wert, Esq.

In these unfortunate times when trust of those in the legal profession is under constant attack, I would like to share a story about adventure and trust among friends and lawyers of the OCBA. In 2006, I had the pleasure of climbing Grand Teton with past OCBA presidents, **Bill Sublette** and **Brian Wilson**. We had engaged in a number of similar undertakings over the years, biking across Montana and through Death Valley. We had climbed mountains before, but “The Grand” was different. It has been called the Matterhorn of America, shooting sharply 13,770 feet into the Wyoming sky from the Snake River below.

Trust Fall

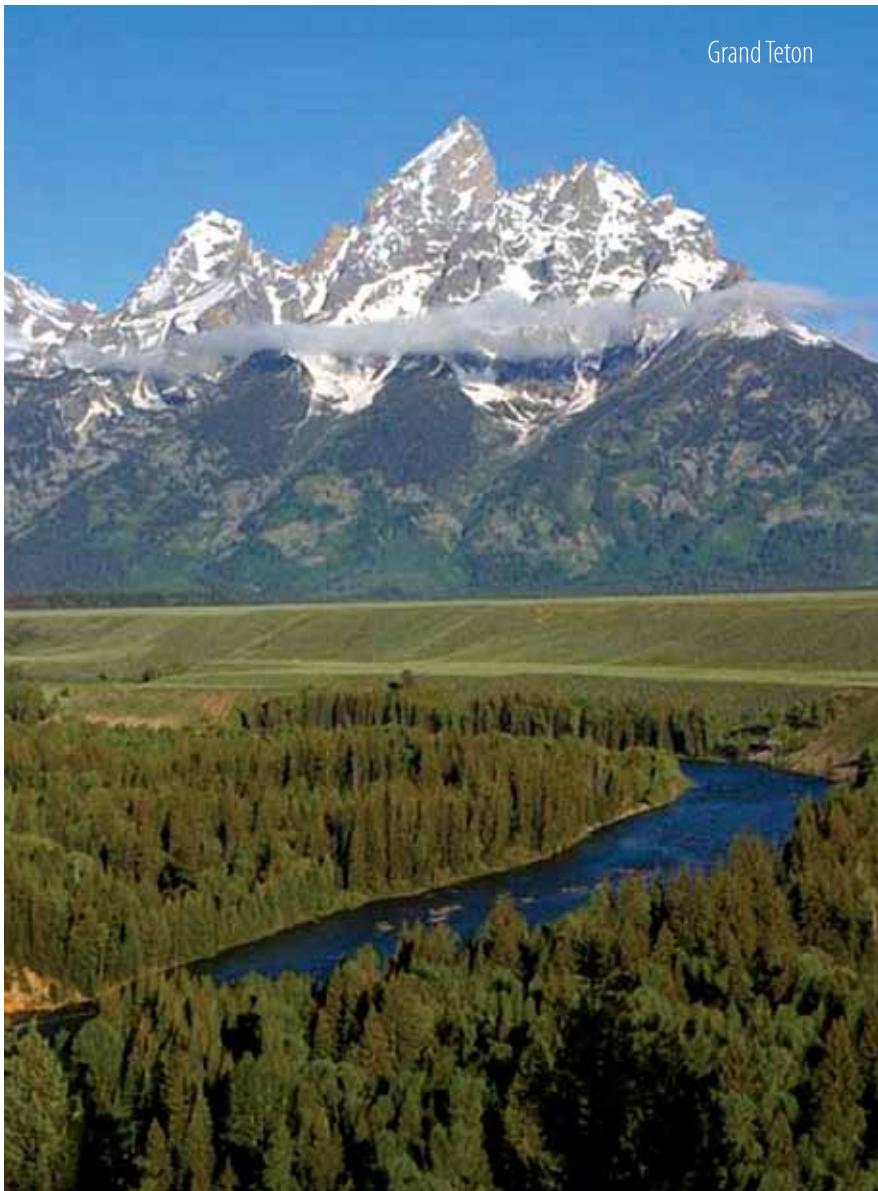
Grand Teton

To climb Grand Teton, we would traverse exposed ledges with drop offs of literally thousands of feet and spectacular views. We would need to rope up, go through two days of extensive training, and climb with an expert from Exum Mountain Guides. In our training class, we were taught how to belay, a technique where one climber exerts friction and support (with hands, arms, legs, and back) on a climbing rope so that if the climber on the other end of the rope falls, he or she won’t fall far. The website from the training class describes the curriculum as follows: “The class emphasizes participation and teamwork, an approach that guarantees an increased sense of satisfaction in climbing the Grand Teton, and a critical component when climbers are belaying one another as a single roped party.” In other words, you better trust the guy on the other end of the rope because if he lets go, you might die, and you better hold onto that rope for the guy on the other end because if you let go, he might die.

So that brings me to the end of Day 2 of the training class and the final exam. Brian, Bill, our Kansas friend, Linda, and I climbed to a high cliff near Grand Teton, where we walked along a three-foot-wide ledge until it stopped. There was a two-hundred-foot, sheer drop to rocks below. The only way to continue on was up an almost 90-degree, cragged precipice to another ledge 40-feet above. One of our guides skillfully hurried up the rock face, like a goat on a Sunday stroll, and dropped a rope down to the rest of us below. First, he belayed Brian, who began to climb up the wall of rock. For every foot Brian ascended, the guide pulled the rope tight, securing it behind his back and clasping it with both hands. With this belay technique, if Brian fell, he would not fall far because the rope was always tight. Brian inched his way up to the next ledge and Linda followed, with Brian belaying her. While she strained to find footholds and fingerholds, it started to rain. By the time she made it to the top of the pitch, the rock was wet and slick. Sublette waited pensively behind me. My turn!

Our Final Exam

Now, I’m not in bad shape but I am 200+ pounds and the guide belaying me was probably a buck fifty soaking wet, so Brian belayed me behind the guide as a backup. Not to be melodramatic but, with the potential fall, my life was literally in their hands. The first ten feet of the pitch



Grand Teton

were not difficult. I started to climb and was about 25% of the way up when the rain started coming down really hard. At that point, the route required scaling a challenging crack in the rock. I attempted to ascend the crack, but it was quickly being transformed into a temporary waterfall because of the downpour. As a result, I could not gain a foothold on



Our Final Exam

the slick rock. My foot slipped off of the rock every time I put my weight on it. Each time my foot slipped, my arms were forced to hold my body weight and they began to tire. I tried another route to my immediate left but it was just as slippery. Begrudgingly, I went back to the original course. With every second, my arm strength waned. Climbing down was not an option, so I continued to try to gain a foothold in the crack, as the rain runoff rushed down upon me. After a minute or two (which seemed like an excruciating hour), my limbs were exhausted and shaking. They had gone anaerobic and I was gasping for air. With nothing left in my arms, I fell.

Brian Wilson Belaying Tom Wert

I fell about twelve inches. The belay worked! There I was, sus-

ended from a rope over this abyss, but I was stable, catching my breath and, hey, I wasn't dead! From above came a muffled cry from Brian, "How are you doing down there?" "Not so good," I wheezed. "I can't get a foothold." The response: "Well, you better get moving because you're kind of heavy!" In my amazement at still being alive after falling, I had forgotten that Brian and the guide were now supporting my entire body weight as I hung on the mountain. I began to scramble up and with a great deal of struggle on all our parts, I inched my way up the rock wall. To be frank, Brian and the guide practically dragged me up to the ledge. When I got there, I was drained and crestfallen from the ordeal. Brian was just as fatigued as I was, after clenching the rope for ten minutes as I dangled below. He grumbled something about the need for me to go on a diet but, despite his strain, I am pretty sure he was more than relieved I had not been hurt. I thanked him and the guide for preventing my untimely demise and we prepared to belay Bill up the pitch. Brian and I belayed Bill, who made it up with relative ease and exclaimed, "piece of cake!" We are a competitive group and I am probably the most spirited of the bunch when it comes to coming in first. This would have been a wonderful opportunity for Brian and Bill to give me grief for not getting up that cliff entirely under my own power. Nevertheless, neither gave me too



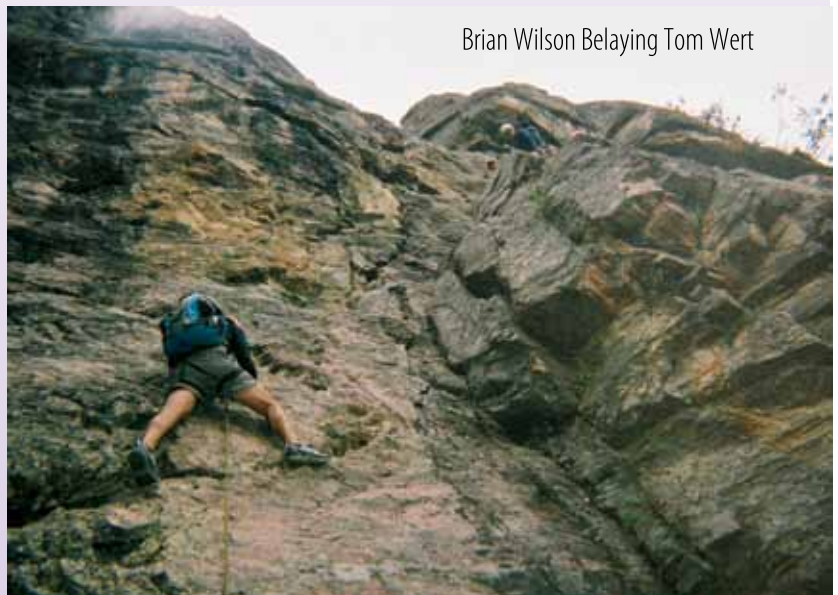
The Enclosure
Foreground:
Brian Wilson, Tom Wert
and Bill Sublette

much ribbing. They sensed my disappointment and gave me a pass.

Meanwhile, we finished our training. The next day we climbed The Grand, working together to get each other up 2-3 more pitches similar, although not as difficult, as the one that defeated me the previous day. In the end, we reached a lesser summit called The Enclosure (just below the true summit). Along the way, I learned a lot about my limitations; however, I learned a lot more about friendship, teamwork, and putting trust in others. Working together to reach a common goal, even if it is not your ultimate goal, remains very rewarding. Also, while defeat is never fun, it is much easier to confront when you are

around folks who care about you. Climbing Grand Teton was a tremendous experience. We have talked about going back and making another attempt at summiting the mountain. If we do, maybe I will spend more time in the weight room beforehand and I might even go on a diet. Regardless, I will certainly be going back with my friends, Bill Sublette and Brian Wilson.

Thomas P. Wert, Esq., past president of the OCBA and Partner-in-Charge at Roetzel & Andress, has been a member of the OCBA since 1993.



Brian Wilson Belaying Tom Wert



Dina Castillo Ward, Esq.

What Could Running Possibly Have to do with Practicing Law?

First, both require mental toughness, diligence, and zealous pursuit! You cannot sustain a running regimen without overcoming mental challenges: it's too hot, too humid, too far, and too hard. In practicing law we have to overcome mental fatigue in dealing with continual analysis of complex issues and convoluted and conflicting case law. Both endeavors require diligence in staying the course despite challenges and setbacks. Finally, just as we seek fulfillment in zealously representing our clients, we likewise should seek fulfillment in zealous pursuit of work-life balance. Balance for me comes with running.

Running is so much more than just a means of exercise and weight management. Running can be a source of stress relief, relaxation, personal enrichment, and strengthening of the mind. All of these are necessities, considering the high-stress nature of practicing law. Contributing to this inherent stress are billable hours and competing client expectations, each of which seem to necessitate a person's commitment to the job at the expense of a personal life, family, and basic down time. Having a running or training routine provides a means to carve out a little bit of time for ourselves; it's a small commitment with tremendous benefits.

Dina Castillo Ward
UCF 5-miler (2010)



One of the easiest ways to initiate the commitment is to sign up for a distance race. Any distance will do, as the date-specific timeline will help you to stay on track with training and

gives you something to work toward. You will find such resolve and confidence in committing to your training and allowing yourself the time to do something that benefits you physically, mentally, and emotionally. The experience will open up new friendships, new realizations of what you are capable of, and new-found peace with getting the hell out of the office at a reasonable hour a few times a week!

Running helps me balance the practicing law part of my life. I am currently in week twelve of approximately twenty-nine weeks of half-marathon training. This is my first race at this distance. I have been running for quite some time for the personal/health benefits but found that I needed the race commitment to keep me consistent once I graduated from law school. For the half-marathon training, I run on my own twice during the week and then meet my running group on Saturdays for the longer training runs. The running group is a great source of support and is added incentive for me to keep my training up to date throughout the week.

When you think about it, 30-60 minutes, twice a week, and one weekend morning is really not that much time to give ourselves something that benefits us in life and work. Running strengthens you on so many levels – if it didn't, no one would continue the undertaking. I know that I am a much better, stronger me – mom, wife, friend, **LAWYER** – because of my commitment to running and the balance it brings.

Dina Castillo Ward, Esq., The Unger Law Group, joined the OCBA in 2012.

Donna Gallant, Erica Marshall, Dina, Jessie Binder
The 15k Gate River Run (Jacksonville, 2011)



"This is what I do to get my mind off work – going 40 mph, barefoot!" says 52-year-old OCBA member David de Armas. Does it hurt? "Only when you fall!"



Richard Dellinger

Richard and Alisa Dellinger have been running marathons for the past 10 years and have completed eight marathons to date. "The best part... pre-run carb-loading!" says Richard.



Alisa and Richard finishing the Space Coast Marathon



Nick Dancaescu, fearless co-editor of *The Briefs*, proves he's also fierce! On April 25, 2005, at 19,341 feet, Nick grins and wishes his mom a happy birthday from the summit of Mt. Kilimanjaro.



Guess Who?

Who, among you, has achieved *any* of the following:

In football: named an All-American in college? Named SEC Offensive Player of the Year? Played in the Orange Bowl, the Sugar Bowl and/or the Hula Bowl All-Star game? Played in the NFL? Played in the former AFL? Played in the former WFL (World Football League)? Or, played in the CFL (Canadian Football League)? Played on the same team with Steve Spurrier, O.J. Simpson, or Joe Namath? Provided color analysis for college football games with a national television network?

In baseball: named an All-American in college? Drafted in the second round by the Yankees? Played professional baseball?

In ping-pong: won the student championship in college?

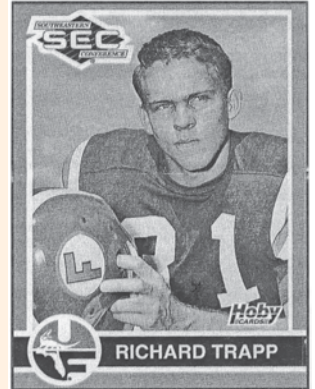
In billiards: won the student championship in college? Played an exhibition match against the most famous billiards player of all time, Willie Mosconi, in front of more than 1,000 people?

In tennis: won five national singles amateur titles? Won the national husband and wife title at Flushing Meadows in New York? Played exhibition matches against John McEnroe, Rod Laver, Gillarmo Vilas, Stan Smith, and Ken Rosewall? Represented the United States in Davis Cup-style matches around the world? Achieved the #1 rank in the state of Florida?

Orlando trial lawyer/mediator **Richard Trapp** has. In fact, he has done *all* of them! He was a

football and baseball player at the University of Florida, playing with Steve Spurrier and breaking several SEC receiving records in the process. While a student there, he also won the billiards and ping-pong championships. He was drafted in both baseball and football, choosing football. He played with the Buffalo Bills (he was the team's rookie of the year), San Diego Chargers, NY Jets, and Philadelphia Eagles. After his professional athletic career was over, he turned to tennis, where he has had great success, being considered one of the best age-group players in the world for years.

Richard E. Trapp, Esq., Trapp Law Firm, has been a member of the OCBA since 2010.



YLS 3rd Annual Dodgeball Tournament



John Brady, Rob Bamberg
ProServe USA
1st Place Team

ProServe USA

Winderweedle, Haines,
Ward & Woodman, P.A.



C. Andrew Roy
Winderweedle,
Haines, et al.
2nd Place Team



Angela Miller, Esq.
CFAWL President



Judge Faye Allen



OCBA Luncheon

August 30, 2012

The Ballroom at
Church Street

Co-hosted by the Central
Florida Association for Women
Lawyers

Gwynne Young, Esq.
President, The Florida Bar



Paul Scheck, Esq.; Angela Miller,
Esq.; Gwynne Young, Esq.;
Kristyne Kennedy, Esq., OCBA
President; Nick Shannin, Esq.



Tony Sos, Esq.
YLS President



Angela Miller, Esq.,
Gwynne Young, Esq.,
Kristyne Kennedy, Esq.



Nathan McCoy, Esq., Gary Wilson, Esq., Paul Scheck, Esq.
Wilson McCoy, P.A.



Kim Cullen, Esq., Paul Scheck, Esq.
Bob Hemphill, Esq.
Cullen & Hemphill, P.A.

Photos: Florian Boehm, Boehm & Boehm

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## OCBA SOCIAL EVENTS

### Mark Your Calendar Now!

#### Spirits & Spares Bowling

October 28, 2012 🏹 2:00 p.m.-6:00 p.m.

Location: Aloma Bowl, Winter Park



#### OCBA JOINT HAPPY HOUR

November 15, 2012 🍷 5:30 p.m.

Location: Mojo Bar & Grill, Orlando

CONTACT: Karen Persis at [kpersis@therosenthallaw.com](mailto:kpersis@therosenthallaw.com)

#### Winter Wine & Cheese Social

January 13, 2013 ★ 5:30 p.m.

Location: TBA

CONTACT: Krista Bartholomew at [Krista@kmblawfirm.com](mailto:Krista@kmblawfirm.com)

#### 9th Annual Texas Hold 'Em Charity Poker Tournament

March 14, 2013 ♠ 5:30 p.m.

Location: TBA

CONTACT: Amy Guy at [committee@floridabusinesslaw.com](mailto:committee@floridabusinesslaw.com)



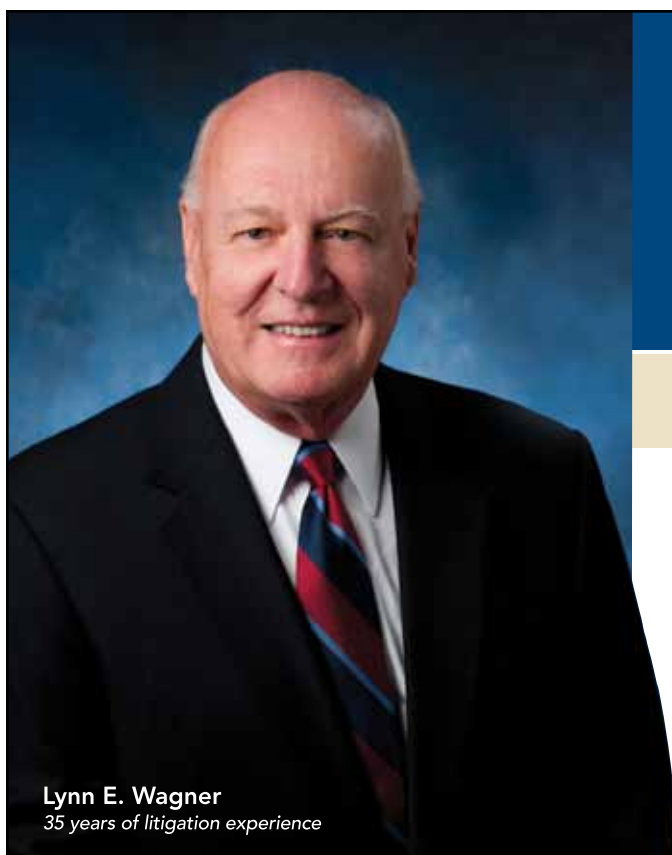
BY DAVID MAMET | PLAYING OCT. 10 - NOV. 11

# RACE

IS THE LAW  
BLACK  
AND WHITE?

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W. Robert Sherry, Esq.

## Law, Theatre, and a Red Sequined Mini-dress...

**T**he original Broadway *Playbill* from David Mamet's *RACE* featured the sleek body of an African-American woman clad in a skin-tight red sequined mini-dress. This, along with the play's title, serves as a mere *hint* of the concerns unearthed in Mamet's sly and searing new legal comic-drama, *RACE*.

Fresh from a triumphant run on Broadway, the Orlando premier of the play is at the Orlando Shakespeare Theatre (OST) from October 10 - November 11, 2012. The play's director, Thomas Ouellette, professor of theatre at Rollins College and frequent OST guest director, did me the honor of asking me to act as his assistant director for *RACE*. In that the play deals with two of my interests, namely the law and race, or more specifically the lack of communication and resentment they breed, I readily accepted the challenge (although I admit the *red-sequined dress* provided tangential interest!).

The four-member cast of *RACE* is introduced in the law offices of Jack Lawson, who is white, and his African-American partner Henry Brown. The two are deciding whether to represent Charles Strickland, a socially prominent white billionaire accused of raping an African-American woman. By the end of Act I, Lawson engages Susan, a beautiful, ivy-league educated African-American, recently-hired lawyer, in a debate about how best to present the case. "It's a complicated world, full of misunderstandings," Lawson observes. "That's why we have lawyers."

As both an employment law attorney and a professor of theatre and dance, who has an African-American partner, I fully expected to be able to hold to my perceptual beliefs as I began creative interaction on the project. Certainly, I reasoned, since I have had an enlightening collection of practical experiences that provide convictional support for my belief system, my thinking is inherently accurate.

To my surprise, as I began to question Thomas, a host of self-discoveries arose:

### Thomas, why *RACE*?

When Jim (Helsinger, artistic director at OST) contacted me about my availability for the 2012-2013 season, I jumped at the chance to direct *RACE*. It's provocative and challenging – and a big departure from my last gig with OST, *Romeo and Juliet*. Of course, *R & J* is quite complex and layered in its own way, but *RACE* feels utterly of-the-moment. In an election year, and particularly with the national press focused on the Trayvon Martin

case, working on *RACE* allows me to contribute to the discourse as Central Floridians grapple with one of the dominant issues of our time.

### How will your approach to *RACE* be different than your approach to, say, *R & J*?

Well, since I try to approach classic plays like they're new ones, I imagine my approach will be quite similar. The director's primary job is as a storyteller. Mamet's play is dark and complex. It's laced with ambiguity. My job is to tell the story clearly and dispassionately so that the audience can draw their own conclusions.

### So you'll avoid telling the audience what to think, then?

Yes, at all costs. An individual audience member's relationship with a piece of theatre is like any other non-theatrical relationship: it's as much about what he/she brings to it as it is about my providing answers or shortcuts. When a person goes to an art museum to view a particular painting, the artist is not there to tell the person what the painting means or represents. That's left up to the individual – as it should be. In fact, I'd argue that once a piece of art is out there, the individual's response to it is as valid as the artist's own take on it. Now, painting is of course a visual art, but I'd argue that it's the same with the performing arts.

Through our interactions, I have begun to see that we are all confounded by race, even when we think we are not. OST asserts that *RACE* "fearlessly challenges our perceptions of race, guilt, justice, and truth." You may be surprised by what you find.

**W. Robert Sherry, Esq.**, Jill S. Schwartz & Associates, P.A., has been a member of the OCBA since 2001.

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## ***PTSD Considered “Harm” for Modification of Time Sharing***

**F**lorida law requires that a Final Judgment of Dissolution of Marriage With Minor Children contain a parenting plan that, at a minimum, must contain the following: “...describe in adequate detail how the parents will share and be responsible for the daily tasks associated with the upbringing of the child; the time-sharing schedule arrangements that specify the time that the minor child will spend with each parent; a designation of who will be responsible for any and all forms of health care, school-related matters including the address to be used for school-boundary determination and registration, and other activities; and the methods and technologies that the parents will use to communicate with the child.” *Florida Statute Ch. 61.13(2)(b)*. After the parenting plan is ordered, if there is a **substantial, material and unanticipated change in circumstance**, a parent may seek to modify the parenting plan with a showing that said modification is in the child’s best interests. But how difficult is it to modify a parenting plan post final judgment? It actually can be pretty difficult. For example, Florida courts have found that a parent’s failure to comply with the parenting plan, by itself, is not enough to warrant a modification.

What if a child in one parent’s custody suffers some type of harm – not simply a bump or fall, but rather an emotional or mental injury? Can a child be diagnosed with Posttraumatic Stress Disorder (PTSD)? PTSD may be defined as an incapacitating anxiety disorder triggered by exposure to a severe psychological trauma. Although most people associate PTSD with combat and war veterans, a child can also have symptoms of PTSD, which include re-experiencing the event, avoidance, distress, and impairment, just as some veterans do, and be diagnosed with PTSD by a psychologist. Regardless of whether the child has been diagnosed, however, the non-offending parent may petition the court to modify the time-sharing schedule and rely exclusively on the actual emotional or mental harm. A diagnosis of PTSD would strengthen the argument that the harm is actual and not merely perceived.

### **PTSD and Children**

The National Center for PTSD defines the following risk factors that have been shown to increase the likelihood that children will develop PTSD: severity of the traumatic event, parental reaction to the traumatic event, and physical proximity to the traumatic event. Depending on the traumatic event, the child will experience a different form or level of PTSD. Children commonly display different symptoms than adults display in relation to the traumatic event.

### **Witnessing Domestic Violence**

When a child witnesses domestic violence involving a parent, there may be a number of different or varied responses. Sometimes the Department of Children and Families (DCF) gets involved and recommends a shelter hearing (a hearing designed to assist the court in determining whether the child can be made safe in the parent’s care with the use of services or other remedy). A case like this involving dependency court would fall under Florida Statute Ch. 39 to address possible abuse, neglect, and/or abandonment concerns.

What if a child in one parent’s custody suffers some type of harm – not simply a bump or fall, but rather an emotional or mental injury? Can a child be diagnosed with Posttraumatic Stress Disorder (PTSD)? PTSD may be defined as an incapacitating anxiety disorder triggered by exposure to a severe psychological trauma. Although most people associate PTSD with combat and war veterans, a child can also have symptoms of PTSD, which include re-experiencing the event, avoidance, distress, and impairment, just as some veterans do, and be diagnosed with PTSD by a psychologist. Regardless of whether the child has been diagnosed, however, the non-offending parent may petition the court to modify the time-sharing schedule and rely exclusively on the actual emotional or mental harm. A diagnosis of PTSD would strengthen the argument that the harm is actual and not merely perceived.

### **Modification of Time-Sharing Schedule**

Florida Statute Ch. 61.13(3) provides that in order for the court to modify an existing parenting plan, including a time-sharing schedule, there must be a showing of a “substantial, material, and unanticipated change in circumstances and a determination that the modification is in the best interests of the child.” In order for the court to determine what is in the best interests of the child, after finding that there has been a substantial change in circumstances, the court will evaluate the evidence using subsections to 61.13(3)(a) through (t).

### **Steps to Modify Time-Sharing Schedule**

If the non-offending parent wants to modify the time sharing schedule after the traumatic event, the parent can petition the court for a Modification of the Final Judgment. Depending on the nature of the traumatic event and the outcome of the domestic violence (and possibly criminal) process, it is possible that the Department of Children and Families will shelter the child with the non-offending parent. Unless the offending parent’s rights are terminated, when the case is closed by DCF, the

time-sharing or contact schedule will return to the most recently ordered parenting plan by the family court. The process of pursuing a Supplemental Petition to Modify Final Judgment can be a lengthy process. The non-offending parent will need to prove to the court that the child experienced harm from witnessing the domestic violence and it is in the child's best interest to modify the current time-sharing schedule because of the resulting diagnosis.

In *Wade v. Hirschman*, 903 So. 2d 928, 930 (Fla. 2005), the Florida Supreme Court held:

The substantial change test requires "the movant [seeking modification of custody] must show both that the circumstances have substantially, materially changed since the original custody determination and that the child's best interests justify changing custody. Furthermore, the substantial change must be one that was not reasonably contemplated at the time of the original judgment.

The *Wade* case involved a child witnessing domestic violence that was significant and material enough that the child was subsequently diagnosed with PTSD (which the court determined was proof that the incident(s) caused the child actual harm). Even though a parent requesting a modifica-

tion of time sharing is not required to prove detriment in order to obtain a modification, there is evidence that the child's symptoms relating to PTSD after witnessing the domestic violence could have actually caused detriment to the child's well-being.

In *Osherow v. Osherow*, 757 So. 2d 519 (Fla. 4<sup>th</sup> DCA 2000), the Fourth District Court held that:

The court does not need evidence of actual harm, past or present, in order to grant a petition to modify; rather, "proof of the likelihood of prospective harm" is sufficient to support a modification." *Commander v. Commander*, 493 So. 2d 530 (Fla. 1<sup>st</sup> DCA), *rev. den.*, 501 So. 2d 1281 (Fla. 1986); *see also Hadley v. Cox*, 470 So. 2d 735, 737 (Fla. 5<sup>th</sup> DCA 1985) (recognizing that "potential" harm, as opposed to actual harm, is sufficient to prohibit visitation); *Beaman v. Beaman*, 393 So. 2d 19, 20 (Fla. 3d DCA 1980) (holding custody and visitation rights may be changed where children are exposed to situations which are potentially damaging to them). The Court found that the "appellant's behavior may have posed a risk to the well-being of the child was sufficient to support the custody modification."

In *W.V., Father of S.D., A CHILD v. De-*

*partment of Children and Families*, 840 So. 2d 430 (Fla. 5<sup>th</sup> DCA 2003), the Fifth District Court held, "harm" includes engaging in violent behavior that demonstrates a wanton disregard for the presence of the child, *section 39.01(30)(i), Florida Statutes*, and includes domestic violence committed in the presence of the child, *see F.R. v. Department of Children and Families*, 826 So. 2d 449 (Fla. 5<sup>th</sup> DCA 2002).

The moving party will need to show that there are symptoms relating to the PTSD that occurred after the traumatic event. This may be evidenced by behavioral problems, anxiety, health related concerns (even an upset stomach), nightmares, etc.

In *K.B. and M.B v. Department of Children and Families*, 937 So. 2d 709 (Fla. 2d DCA 2006), the Second District Court held,

"There must be some evidence that the child sees or is aware of the violence occurring." And for the harm "resulting from witnessing domestic violence to constitute 'abuse,' the domestic violence witnessed by the child must result in some physical, mental, or sexual injury to the child." *Florida Statutes Chapter 39.01(2); W.T. v. Dep't of Children and Families*, 787 So. 2d 184, 185 (Fla. 5<sup>th</sup> DCA 2001).

If the child is merely in the residence or

*continued page 30*



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## Family Law Committee

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nearby, but asleep or otherwise not clearly witnessing the domestic violence, then the court will typically not find "harm." If, however, the event is so egregious that the child observes the aftermath (*i.e.*, blood or signs of the domestic violence), then the court may find that the child experienced "harm." Evidence of "harm" (whether potential or actual) has been found

to be enough to modify custody and visitation rights in that the situation of being exposed to harm is potentially damaging to the child.

### Conclusion

If the non-offending parent wants to modify time sharing in the domestic relations/family court case the parent may do so by filing a Supplemental Petition to Modify Final Judgment. If DCF becomes involved, it is likely that a shelter hearing will take place in de-

pendency court. Dependency court's primary focus is the safety of the child and protecting the child from immediate harm. If the offending party's parental rights are not terminated in dependency court because of the domestic violence incident, then the time-sharing agreement may be modified in the domestic relations court.

**Cheri L. Hobbs, Esq.**, Ayo and Iken, PLC, has been a member of the OCBA since 2009.

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# Save the Date!

**50th Anniversary  
of the Middle District of Florida**

**Anniversary Dinner - Thursday, October 25, 2012**

**Academic Symposium - Friday, October 26, 2012**

2012 marks the 50th anniversary of the Middle District of Florida! The Historical Society of the United States District Court for the Middle District of Florida and the bar are planning a dinner on October 25, followed by an academic symposium on October 26, featuring prominent Florida legal scholars who will reflect on the historic cases and issues that have impacted the Middle District of Florida over the last 50 years.

All members of the Middle District are invited to participate in this district-wide event. Please note that no public monies are being used for this event.

Additional details can be found at:  
<http://mdflhistoricalcommittee.com/academic-symposium>.



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Lance Leider has been a member of the Central Florida community for over 30 years. He is a graduate of Lake Mary High School and The University of Florida where he received bachelor's degrees in Political Science and Philosophy. Lance graduated summa cum laude from the Barry University Dwayne O. Andreas School of Law in 2011. He was the valedictorian of his class and served on the Editorial Board of the Barry Law Review as Lead Articles Editor. During law school Lance also served as a judicial intern to Judge Belvin Perry during the Casey Anthony trial. As a result of his exceptional performance on the Florida Bar Exam, Mr. Leider was invited by the Fifth District Court of Appeal to address the new inductees being sworn in on May 8, 2012 in Daytona Beach. Lance's wife Kate Leider is a registered nurse at Florida Hospital.



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Sunny Lim Hillary, Esq.

**Y**our 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!

## CFAWL

The **Central Florida Association for Women Lawyers' Fall Into Fashion** is on **October 4, 2012, 5:30 - 8:00 p.m.** at **Ember!** Local fashion leaders Cherise, Ginger, Bella, and John Craig will be contributing to the fashion show. Proceeds will be benefiting **A Place for Children**, located inside the Orange County Courthouse. Last year's event was good; this year's event will be GREAT! Enjoy cocktails, hors d'oeuvres, and networking. Tickets are \$25 and there are sponsorship opportunities. For more information, please contact **Camy B. Schwam-Wilcox** at [camy@cbsw-law.com](mailto:camy@cbsw-law.com).

To kick things off, **Bella**, one of the premiere Winter Park boutiques participating in Fall Into Fashion, hosted a private cocktail party and an exclusive fashion show at its store on September 6, 2012, for CFAWL members. Ten percent of all purchases that evening benefitted A Place for Children and the CFAWL Bar Scholarship Fund. Thank you Bella, and thank you **Gennifer Powell** for helping to organize this event.

On September 12, 2012, CFAWL held its annual **New Member Reception** at Lowndes, Drosdick, Doster, Kantor & Reed, P.A. CFAWL members, both new and returning, celebrated new members and welcomed them to CFAWL with an evening of appetizers, wine, and fellowship. Thank you to New Member Reception chair, **Keshara Davis**, for spearheading the reception.

On September 14, 2012, CFAWL held its monthly luncheon at the Citrus Club. Members celebrated the beginning of fall along with the fashion and glamour of Winter Park's top boutiques, including Bella, Cerise, Ginger, John Craig, and Peter Millar. Hair designs by iStudio were also at the luncheon.

CFAWL hosted its **Mentoring Committee Kick-Off** event on September 25, 2012, at the offices of Hylton, Adamson & Watson. Attendees were divided into tables of six or eight for small-group discussion of suggested topics of interest. Food and beverages were provided. Thank you to **Deborah Cook** for organizing this event!

## GOAABA

On September 7, 2012, **Greater Orlando Asian American Bar Association** enjoyed a **Friday Night Happy Hour** at **Howl at the Moon**. Members and guests came out and enjoyed two free drinks and a free appetizer buffet. Thank you to **William Voight** for organizing a fun night.

## HBACF

The **Hispanic Bar Association of Central Florida School Supplies Drive** was a success! Thanks to the generosity of HBACF members and fellow col-

leagues, HBACF was able to double its school supplies donations to **Carver Middle School** from last year. On August 22, 2012, at the HBACF membership luncheon, HBACF presented a check for \$1,000 to assistant principal Thaddeus Jackson. **A Gift for Children**, an Orange County Public Schools school supplies store, matched the funds raised and filled backpacks with \$2,000 worth of school supplies. **Florida Supreme Court Justice Barbara J. Pariente** was in attendance, which made the moment even more memorable. Justice Pariente has served with honor and distinction on Florida's Supreme Court since 1997. As a Supreme Court Justice, Pariente is guided by three fundamental principles: to be fair and impartial, to uphold the Florida Constitution, and to protect the rights of all Floridians. Justice Pariente, the second woman ever on Florida's Supreme Court, is a meticulous, astute, and thoughtful judge and a life-long advocate for children and families. She is a courageous survivor of breast cancer. Thank you to all of the sponsors who made the membership luncheon and delicious *arroz con pollo* possible!

In honor of **Hispanic Heritage Month** last month, HBACF held its **Annual Scholarship Night** on September 13, 2012, at the Citrus Club. HBACF, in partnership with the **Hispanic Heritage Foundation of Metro Orlando (HHSFMO)**, was proud to announce this year's \$5,000 scholarship recipient, **Diana Fis**. Diana is a distinguished third-year law school student at Florida A&M University College of Law. Congratulations to Diana! Thank you to all who attended this evening, and a special thank you to all of the sponsors who continue to support HBACF and the Hispanic/Latino community. It was the perfect opportunity to network and celebrate the educational accomplishments of Hispanic/Latino law school students here in Central Florida.

On September 19, 2012, **Dr. Al Torres, Chief, Critical Care and Transport, Nemours Children's Hospital**, was the keynote speaker at the HBACF membership luncheon. Thank you to Dr. Al Torres for taking the time to share his knowledge and experiences with HBACF.

On September 26, 2012, a special five-hour CLE class, *Spanish Language for Legal Professionals*, was presented at the Orange County Bar Association.

On September 29, 2012, HBACF held its annual **Family Day** at Moss Park. Members, guests, and families came out to enjoy the bounce house, fun games, and yummy food!

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



# YLS on the move



Sunny Lim Hillary, Esq.

The YLS and CFAWL raised approximately \$2,500 for this year's **Back Pack Project**. With YLS's \$2,000 donation, YLS and CFAWL raised approximately \$4,500 to purchase school supplies for the children at **Rock Lake Elementary School**. A HUGE congratulations and thank you to co-chairs, **Alisia Adamson** and **Keshara Davis**, and to their committee. Also, committee member **Alvin Benton** initiated a monetary/school supplies drive at Holland & Knight, which was a tremendous help. More than 85 people attended the Back Pack Project Fundraiser Happy Hour on Tuesday, July 31, 2012, at Urban Flats. Thank you to everyone for helping spread the word for this worthy cause in our community.

Also, on Friday, August 17, 2012, the newly installed Orange County Public Schools Superintendent, **Dr. Barbara Jenkins**, was the keynote speaker at our luncheon at Citrus Club. Some of the other OCPs guests included the superintendent's chief of staff and the principal of Rock Lake Elementary School. It was a great afternoon as we shared our donations and efforts towards the Backpack Project with them.

The **Brown Bag Luncheon** on Thursday, August 9, 2012, was another success. The seminar, entitled *The New Jury Instructions: Preparation of and Use*, addressed how to correctly use the new standard civil jury instructions and how to conduct a charge conference on the jury instructions. Thank you to **Judge John Marshall Kest** for sharing his valuable tips, tools, and knowledge with us. The next Brown Bag Lunch is scheduled for October 11, 2012. The title of the presentation is *Putting It All Together: Handling the Civil Case from Start to Finish*. Be sure to register with Diane Iacone at [ctjadi1@ocnjcc.org](mailto:ctjadi1@ocnjcc.org), bring your lunch, and let courthouse security know you'll be attending Judge Kest's seminar.

On Saturday, August 11, 2012, more than 30 lawyers spent the day with foster children at the annual **YLS Great Oaks Village Fun Day**. It was truly a memorable day! Everyone enjoyed playing basketball, and the shoe drive was a huge success with each child receiving a brand new pair of shoes and a package of socks. A special thank



Alisia Adamson  
Patricia Carbone



Heather Meglino  
Keshara Davis  
Alisia Adamson

you to **LaShawnda Jackson**, who organized a fundraiser at Rumberger, Kirk & Caldwell and ultimately collected roughly \$1,000 toward the shoe drive. Co-chairs **Jennifer Belbeck** and **Michael Barber**, along with their committee, did a terrific job organizing this special day for the children at Great Oaks Village.

If you missed this year's Dodgeball Tournament, you won't want to miss next year's! The YLS hosted its **3<sup>rd</sup> Annual Dodgeball Tournament** at the First Presbyterian Church Downtown Orlando on August 16, 2012. (See photos on page 24.) After the teams dipped, ducked, dove, and dodged it out, the winning team received a monumental dodgeball trophy that they will be proudly displayed in their firm lobby. Following the tournament, the teams met for happy hour to celebrate the sweat, the blood, and the glory that is dodgeball. Thank you to **Adam P. Hartley** for spearheading this event!

On Friday, August 24, 2012, young lawyers and young CPA's gathered at the annual **YLS and Young CPA's Happy Hour** at Terrace 390. Everyone enjoyed complimentary appetizers, beer, and wine. Thank you to **Brett Renton** for putting on another fantastic event.

The **Fall Oath of Admission** will be held on **October 4, 2012**, at Orlando City Hall. Come out and help us celebrate the admission of Orlando's newest attorneys to the Florida Bar! The guest speaker will be Judge Belvin Perry, Jr. Attendees are asked to arrive no later than 5:30 p.m. The swearing-in begins at 6:00 p.m., and a reception with light appetizers and drinks will immediately follow. RSVPs are not required.

Mark your calendar for the **3<sup>rd</sup> Annual YLS Lawyers for Literacy Spelling Bee** on **October 18, 2012**, beginning at 6:00 p.m. at the **Sheraton Orlando Downtown Hotel**, 400 West Livingston Street, Orlando, FL 32801. Come out and watch wordsmiths from far and wide come together to compete for a chance at the Spelling Bee Championship. While vigorously and exuberantly battling to spell words such as *zucchettos*, *xiphophyllous*, and *siphorhinal*, these fierce competitors entertain their comrades while raising money for a wonderful cause.

In 2010 the Bee raised more than \$16,000 and, because of generous contributions and the support

of the legal community, in 2011 was able to reach its goal of raising \$30,000 for the Adult Literacy League.

As this year's event is rapidly approaching we are in search of spelling teams to dazzle us with their brilliance and sponsors to help fulfill our mission of developing readers to build a strong and literate community. This event could not be a success without the support of the participants and sponsors.

For more information on how to "bee" a part of the buzz by participating with a team or sponsoring the Bee, please contact **Alana Brenner** at [alanabrenner@hotmail.com](mailto:alanabrenner@hotmail.com) or **Daryl Gottlieb** at [dgottlieb@fisherlawfirm.com](mailto:dgottlieb@fisherlawfirm.com).

Our next luncheon will be held on Friday, October 19 at the Citrus Club. Be sure to arrive no later than 11:40 a.m. to check in! If you are not receiving the email blasts and want to join the list, or if you simply want to find out more about our section and its committees and events, please email [yls.ocba@gmail.com](mailto:yls.ocba@gmail.com).

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

## Hispanic Bar Association

*continued from page 12*

sistently demonstrated their competence and integrity through their outstanding service as Justices or Judges.

4. To use our best efforts to assist and encourage the assistance of members of The Florida Bar and the public in defeating the unwarranted attacks on our judicial system.

[Signed by Marshall Criser, Burton Young, Wm. Reece Smith, Jr., L. David Shear, James C. Rinaman, Jr., Gerald F. Richman, Joseph J. Reiter, Patrick G. Emmanuel, Ray Ferrero, Jr., Stephen N. Zack, James Fox Miller, Alan T. Dimond, William F. Blews, John A. DeVault, III, Edward R. Blumberg, John W. Frost, II, Howard C. Coker, Edith G. Osman, Heman J. Russomanno, Tod Aronovitz, Kelly Overstreet Johnson, Francisco R. Angones, and Jesse H. Diner]

In conclusion, let us all be vigilant in educating the public on this most important matter, and more importantly, be intellectually honest with ourselves as we decide which legal system to preserve, as we anticipate our children, and the next generation of Floridians, to experience for decades to come.

**Tiffany M. Faddis, Esq.**, and **Eric H. Faddis, Esq.**, Faddis & Faddis, P.A., have been members of the OCBA since 2012 and 1997, respectively.



The Hispanic Bar Association of Central Florida hosts Florida Supreme Court Justice Barbara Pariente at its luncheon on August 22, 2012.

## Collegiate Moot Court Judges Needed!



The Center for Law and Policy at UCF's Legal Studies Department will host the South Atlantic Regional Moot Court Tournament October 26th and 27th. Judges are needed to assess the oral arguments made by 100 students from 13 universities. The top ranking students will leave with bids for Nationals. Due to the preparation time involved in judging, 30 hours of free CLE is available. For more information please contact OCBA member and Center Director Cindy Schmidt, at Cynthia.schmidt@ucf.edu.

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## ***Establishing a Strong Litigation Attorney-Paralegal Team***

*Teamwork is the ability to work together toward a common vision. The ability to direct individual accomplishment toward organizational objectives. It is the fuel that allows common people to attain uncommon results. -Andrew Carnegie*

**L**itigation attorneys must possess certain characteristics to effectively represent their clients. These include, but are not limited to: honesty, a strong work ethic, intelligence, persistence, professionalism, creativity, level-headedness, and communication skills.

While those characteristics are essential, they rarely suffice. Litigation attorneys must balance very large case loads that demand strict attention and substantial time allocation to hearings, depositions, written discovery, brief writing, trial, client and witness communication, and the like. An effective attorney-paralegal team is essential to meet these demands.

The first step in forming a strong team is establishing an open, two-way line of communication. An attorney is often pulled in many directions and must delegate certain critical tasks. The attorney should consider what can be appropriately delegated (scheduling, document reviews, drafting, and otherwise) and timely communicate it to the paralegal so as to allow the paralegal appropriate time for completion of those tasks.

The communication does not, however, end with giving the assignment. The attorney must have an "open door policy" and willingly answer any questions. This policy will encourage the paralegal to communicate with the attorney rather than to fear bothering the attorney.

Similarly, the paralegal must feel comfortable to freely communicate that the attorney must get certain things done. That is not always easy because employees are not often inclined to give their bosses direction. An attorney can overcome such reluctance by reminding the paralegal that it is in everyone's best interests for the paralegal to frequently remind the attorney of looming deadlines, hearings, and the like. While litigation attorneys will always be working against deadlines, frequent and timely reminders often prod an attorney to begin working on tasks earlier than he or she otherwise might.

Strong organizing skills are also a must for a paralegal. Since litigation attorneys operate from deadline to deadline, paralegals must work with the attorney to ensure that the attorney can effectively navigate the schedule. This includes regularly com-

municating with the attorney about the time allocation necessary for each item and any external activities that might affect the work schedule. It also includes the paralegal setting up his or her own system for giving regular reminders to the attorney.

Additionally, the paralegal must thoroughly organize files so that any documents can be accessed at a moment's notice. Litigation matters vary in complexity, and certain cases might yield document productions filling one or more full rooms. An attorney simply does not have time during depositions, hearings, trials, and meetings (or preparations for any of those), to root through tens or hundreds of thousands of documents to find that critical one.

To avoid such maddening exercises, the paralegal (in consultation with the attorney) must develop an effective organization system. Various electronic systems can greatly assist, but the paralegal must understand and work around any document search limitations of those systems.

A paralegal must also develop an understanding of the critical issues and documents in a case. A paralegal can more efficiently prepare an attorney for a hearing or deposition by collecting critical documents for the attorney's review without awaiting the busy attorney's direction. This exercise is greatly simplified by learning what documents matter most in a case.

As with any other good team, an excellent work ethic is pivotal to an attorney-paralegal team's success. Litigation, like the rest of the practice of law, is extremely demanding. Often, attorneys and paralegals must work unconventional and long hours. Paralegals will feel a little better and more committed about putting in those hours when they see their attorney setting an example by doing the same.

Lastly, and perhaps most importantly, the attorney-paralegal team cannot thrive without mutual respect. Litigation can be stressful for attorneys as well as paralegals. Calm, well-modulated interactions, frequent praise, and respectfully delivered criticism from the attorney can make a paralegal want to work just a little harder for the attorney and client – a result everyone wants.

Contributing authors: **Bethany D. Gibson**, a paralegal and an OCBA member since 2012; **David H. Simmons, Esq.**, an OCBA member since 1992; and **Daniel J. O'Malley, Esq.**, an OCBA member since 2006. The authors are with de Beaubien Knight Simmons Mantzaris & Neal, LLP.

**Professionalism**Committee  
*continued from page 4*

did? What if coach Paterno had made it his responsibility to understand and resolve the matter instead of relying on the administration? Paterno was coming off of a second straight losing season, and there was talk that he had lost control of the program. There is a chance that had the Sandusky information come out at that particular time in Paterno's career, Paterno would have lost his job. But he might have protected numerous young boys from Sandusky's abuse.

In the legal setting, is it difficult to be the reporting party? Of course. While it may not cost someone his or her job, it will be uncomfortable at the very least. However, if we look to Penn State as an example, the damage that would have come from Paterno, or anyone else involved in the

situation, reporting the allegations would have been minimal compared to the damage done to Sandusky's victims as well as to the school.

We must react to unprofessional conduct. Be it uncomfortable, embarrassing, or even career altering, we have a duty and an obligation to our fellow lawyers, the public, and those lawyers who will follow us in the profession. To earn and maintain our respect, we must police ourselves – for our profession's sake and the sake of all who seek the legal system's protection.

**Michael M. Kest, Esq.**, Kest Law, LLC, has been a member of the OCBA since 2012. He is co-chair of the OCBA Professionalism Committee.



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## SportsInfield Fly Rule

continued from page 6

"[a]n INFIELD FLY is a fair fly ball [not including a line drive nor an attempted bunt] which can be caught by an infielder with ordinary effort, when first and second, or first, second and third bases are occupied, before two are out. The pitcher, catcher and any outfielder who stations himself in the infield on the play shall be considered infielders for the purpose of this rule. When it seems apparent that a batted ball will be an Infield Fly, the umpire shall immediately declare 'Infield Fly' for the benefit of the runners. If the ball is near the baselines, the umpire shall declare 'Infield Fly, if Fair.' The ball is alive and runners may advance at the risk of the ball being caught, or retouch and advance after the ball is touched, the same as on any fly ball. If the hit becomes a foul ball, it is treated the same as any foul. If a declared Infield Fly is allowed to fall untouched to the ground, and bounces foul before passing first or third base, it is a foul ball. If a declared Infield Fly falls untouched to the ground outside the baseline, and bounces fair before passing first or third base, it is an Infield Fly.")

<sup>3</sup>For an ever-changing discussion of the purpose of the Infield Fly Rule, see [http://en.wikipedia.org/wiki/Infield\\_fly\\_rule](http://en.wikipedia.org/wiki/Infield_fly_rule).

<sup>6</sup>For an example of little more than "ordinary effort," see this article.

<sup>7</sup>William Grimes, "William S. Stevens, 60, Dies; Wrote Infield Fly Note", The New York Times, December 11, 2008.

<sup>8</sup>Some use footnotes as a license to plagiarize from the hard work of others. See, e.g., footnotes 11 and 15, *infra*.

<sup>9</sup>The Oxford English Dictionary humbly declares itself to be a tool to allow you to "dive straight in to the riches of the English language." See <http://www.oed.com/>. It also provides a definition for the word "the."

<sup>10</sup>*Id.*

<sup>11</sup>This author does not see the complexity in this particular parody, but defers to Wikipedia's collective wisdom on the complexity of the matter. See [http://en.wikipedia.org/wiki/William\\_S.\\_Stevens](http://en.wikipedia.org/wiki/William_S._Stevens) (from which the sentence in this text is plagiarized).

<sup>12</sup>John J. Flynn, *Further Aside: A Comment on 'The Common Law Origins of the Infield Fly Rule'*, 4 J. Contemp. L. 241 (1978).

<sup>13</sup>Mark W. Cochran, *The Infield Fly Rule and the Internal Revenue Code: An Even Further Aside*, 29 Wm. & Mary L. Rev. 567 (1988).

<sup>14</sup>Anthony D'Amato, *The Contribution of the Infield Fly*

*Rule to Western Civilization (and Vice Versa)*, 100 Nw. U. L. Rev. 189 (2006).

<sup>15</sup>See footnote 11, *supra* (revealing the undeniably reliable source from which this sentence is plagiarized).

<sup>16</sup>That is almost what Penn Law said. See Edwin Greenlee, *The University of Pennsylvania Law Review: 150 Years of History*, 150 U. Pa. L. Rev. 1875, 1877 n.15 (June 2002) ("Once every few years, the editorial board of the *University of Pennsylvania Law Review* goes on a frolic and detour. The product of such an escapade is commonly labeled an 'aside,' the most famous of which is *The Common Law Origins of the Infield Fly Rule*," 123 U. Pa. L. Rev. 1474 (1975). . .").

<sup>17</sup>I found this out by pulling up *The Common Law Origins of the Infield Fly Rule* on WestLaw and then clicking on the "KeyCite" button. Because I am on West's payroll, I feel obliged to point out that there is no better publisher on planet Earth. Please purchase things from them by visiting <http://store.westlaw.com>. Tell them I sent you.

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**James O. Cunningham, Esq.** – Civil Trial Advocacy and Civil Pretrial Practice Advocacy by the National Board of Trial Advocates (NBTA)

## Speaking Engagements

**David Henry, Esq.**, Alvarez Sambol & Winthrop, P.A., presented *Cast- ing Light on the Dark Art of Mediation: Advanced Lessons in Mediating the Commercial Case* at the Professional Mediation Institute Conference in August.

**Michelle Jernigan, Esq.**, Upchurch Watson White & Max, presented *Your Most Common Questions Answered re: the New Amendment to Rule 1.720* to Jackson Lewis in Orlando and Wilson Elser in Miami in August.

**Richard Lord, Esq.**, Upchurch Watson White & Max, presented *Effective Mediation Advocacy: A Defense Perspective* to Wicker Smith on July 30 and *What's Going on in The Other Room* to the Quintairos Law Firm in August.

**Lawrence M. Watson, Jr., Esq.**, Upchurch Watson White & Max, presented *The Practical Realities of Partnering: the Benefits of DRB; What is Early Neutral Evaluation? Mediation Complex Disputes* at the Construction Law in Florida Conference at the Palms Resort & Conference Center in Orlando in August.

## Published

**Dennis Wall, Esq.**, Winter Springs and Orlando, has recently been published in *Claims Management Magazine*. His article outlines steps in *Avoid- ing and Defending against Bad Faith*. His article, *Rulings Have Consequences: One-Year Value of Adding One Person to Medicaid = \$2,800.00, Max\*. I am worth it. Are you?*, was published in *Insurance Litigation Reporter*.

**Tom Young, Esq.**, Thomas Wade Young, P.L., presented *PPACA & SCOT- US: It's Constitutional. Now What?* to the Central Florida Compensation & Benefits Association on August 22, 2012. The presentation provided a historical overview of the Patient Protection and Affordable Care Act and the landmark decision affirming its constitutionality, *National Fed- eration of Independent Business v. Sebelius*.

## Events

**Oct. 4** – Fall Oath of Admission. 5:30 p.m. Orlando City Hall. Guest speak- er: The Hon. Belvin Perry, Jr.

**Oct. 18** – *Lawyers for Literacy Annual Spelling Bee*. 5:30 p.m. Downtown Sheraton.

**Oct. 25 & 26** – *Middle District Court 50th Anniversary Dinner and Sympo- sium*. See Middle District of Florida Historical Society website.

**Oct. 28** – *Spirits & Spares Bowling Event*. 2:00 p.m.-6:00 p.m. Aloma Bowl, 2530 Aloma Ave., Winter Park.

**Nov. 7** – *5th Annual Breakfast of Champions*. 7:30 a.m. Ballroom at Church Street

**Nov. 8** – *OCBA & Orlando Shakespeare Theater – RACE*. 6:00 p.m. recep- tion sponsored by Jill S. Schwartz & Associates, P.A.; 7:00 p.m. perfor- mance. Lowndes Shakespeare Theater.

**Nov. 15** – *OCBA Joint Happy Hour*. 5:30 p.m.-8:00 p.m. Mojo Bar & Grill.

## Seminars

**Oct. 8** – *Homestead Protection and Intestate Succession*. Estate, Guard-

ianship & Trust Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. Speaker: Tom Moss, Esq. Registration: [ajparalegal1@aol.com](mailto:ajparalegal1@aol.com).

**Oct. 9** – *Sealing and Expungement*. Legal Aid Society Lunchtime Train- ing. 12:00 p.m.-1:30 p.m. Marks Street Senior Center, 99 E. Marks St., Orlando, FL 32803. CLE: pending. Speaker: David Slaughter, Esq. Reg- istration: Marilyn Carbo at [mcarbo@legalaidocba.org](mailto:mcarbo@legalaidocba.org) or 407-841-8310 x 3121.

**Oct. 9** – *Mass Doe & Intermediary Copyright Infringement Lawsuits: Shakedown or Swift Justice?* Intellectual Property Committee Seminar. 12:00 p.m.-1:30 p.m. OCBA Center. CLE: pending. Speaker: Kevin Wim- berly, Esq. First 35 to register will get free lunch! Registration: Amber Davis at [adavis@iplawfl.com](mailto:adavis@iplawfl.com).

**Oct. 11** – *Ethical Social Media Marketing for Law Firms*. Sponsored by FindLaw. 12:00 p.m.-1:00 p.m. OCBA Center. CLE 1.0 (including .5 Eth- ics). Speaker: Joe Rodriguez. Registration: [mariew@ocbanet.org](mailto:mariew@ocbanet.org).

**Oct. 11** – *Putting it all Together - Handling the Civil Case from Start to Finish*. Brown Bag Lunch with Judge John M. Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, 23rd Floor Judicial Conference Room. CLE: 1.5. Free. Please feel free to bring your lunch, and tell security that you will be attending the Brown Bag Lunch. Registration: Diane Iacone at 407-836-0443 or [ctjadi1@ocnjcc.org](mailto:ctjadi1@ocnjcc.org).

**Oct. 16** – *Ethics and Social Media*. Solo & Small Firm Committee Semi- nar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. Speaker: Jan K. Wichrowski, Chief Branch Discipline Counsel, Orlando Branch, The Flor- ida Bar. Registration: [ocbasolos@gmail.com](mailto:ocbasolos@gmail.com).

**Oct. 19** – *The Dynamics of Domestic Violence and its Relation to Child Custody*. Family Law Committee Seminar. 12:00 p.m.-1:00 p.m. 1.0 CLE pending. Speaker: Mary Kogut Lowell, Esq. Registration: Marc Consalo at [marc@consalolaw.com](mailto:marc@consalolaw.com).

**Oct. 23** – *GAL 101*. Legal Aid Society Lunchtime Online Training. On- line training details to come. CLE: pending. Speakers: Kate York, Esq.; Bethanie Barber, Esq. Registration: Marilyn Carbo at [mcarbo@legalaid- ocba.org](mailto:mcarbo@legalaid- ocba.org) or 407-841-8310 x 3121.

**Nov. 1** – *Technology to Build Efficiency and Competitive Edge*. 12:00 p.m.-1:00 p.m., OCBA Center. Speaker: Matt St. John, Litigation Product Spe- cialist. Sponsored by Westlaw, a Thomson Reuters business. Registration: [mariew@ocbanet.org](mailto:mariew@ocbanet.org).

**Nov. 12** – *Practice Pointers for Drafting under the New Power of Attorney Statute*. Estate, Guardianship & Trust Committee Seminar. 11:45 a.m.-1:00 p.m., OCBA Center. CLE: pending. Speaker: Joseph M. Percopo, Esq. Registration: [ajparalegal1@aol.com](mailto:ajparalegal1@aol.com).

**Nov. 13** – *Tenant Law Update*. Legal Aid Society Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks Street Senior Center, 99 E. Marks St., Orlan- do, FL 32803. CLE: pending. Speaker: Michael Resnick, Esq., Registration: Marilyn Carbo at [mcarbo@legalaidocba.org](mailto:mcarbo@legalaidocba.org) or 407-841-8310 x. 3121.

**Nov. 20** – *Paperless Office and Mobile Computing*. Solo & Small Firm Committee Seminar. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. Speaker: C. Todd Smith, Esq. Registration: [ocbasolos@gmail.com](mailto:ocbasolos@gmail.com)

## Other News

**Barry Universitiy** – Three new members have joined the Board of Advi- sors for the Barry University Dwayne O. Andreas School of Law: Bryant Applegate, Esq., County Attorney for Seminole County; The Honorable Bob LeBlanc, Circuit Judge in the Ninth Judicial Circuit; and Michael Sasso, Esq., partner in Michael C. Sasso, P.A. The Board of Advisors is responsible for aiding the law school administration and faculty in the evaluation, growth and development of the school.

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King, Blackwell, Zehnder & Wermuth, P.A.  
Korshak & Associates, P.A.  
Kosto & Rotella, P.A.  
Law Offices of Thomas H. Justice III, P.A.  
Law Offices of Walter F. Benanati Credit Attorney, P.A.  
Legal Aid Society of the OCBA  
Lewis & Crichton, Attorneys at Law  
Lynn B. Aust, P.L.  
Marcus & Myers, P.A.  
Mark M. O'Mara, P.A.  
Marshall, Dennehey, Warner, Coleman & Goggin, P.A.

McClane Partners, P.A.  
McMichen, Cinami & Demps  
McMillen Law Firm, P.A.  
McShane & McShane Law Firm, P.A.  
Men's Divorce Law Firm  
Michael R. Walsh, P.A.  
Mooney Colvin, P.L.  
Morgan, White-Davis & Martinez, P.A.  
Murrah, Doyle and Wigle, P.A.  
N. Diane Holmes, P.A.  
Neduchal & MaGee, P.A.  
Nishad Khan, P.L.  
Ossinsky & Cathcart, P.A.  
Page, Eichenblatt, Bernbaum & Bennett, P.A.  
Provencher & Simmons, P.A.  
Ringer Henry Buckley & Seacord, P.A.  
Rumberger, Kirk & Caldwell, P.A.  
Sawyer & Sawyer, PA  
SeifertMiller, LLC  
Snure & Ponall, P.A.  
Southern Trial Counsel, PLC  
Stovash, Case & Tingley, P.A.  
Swann Hadley Stump Dietrich & Spears, P.A.  
Tangel-Rodriguez & Associates  
The Aikin Family Law Group  
The Brennan Law Firm  
The Carlyle Appellate Law Firm  
The Draves Law Firm, P.A.  
The Elder Law Center of Kirson & Fuller  
The Johnston Law Firm, P.A.  
The Llabona Law Group  
The Law Offices of Terry L. Bledsoe, P.A.  
The Law Offices of Trevett and Bonham, P.L.  
The Marks Law Firm, P.A.  
The McMahon Law Group, P.A.  
The Rosenthal Law Firm, P.A.  
The Skambis Law Firm  
The Smith Family Law Firm, P.A.  
Troutman, Williams, Irvin, Green, & Helms, P.A.  
Vose Law Firm, LLC  
Warner + Warner, P.L.  
West, Green & Associates, P.L.  
Wicker, Smith, O'Hara, McCoy & Ford, P.A.  
Wieland, Hilado & DeLattre, P.A.  
William G. Osborne, P.A.  
Wilson McCoy, P.A.  
Winderweedle, Haines, Ward & Woodman, P.A.  
Wolff, Hill, McFarlin & Herron, P.A.  
Wooten, Kimbrough and Normand, P.A.  
Yergey and Yergey, P.A.  
Young DeLoach, PLLC

**Is your firm part of the 100% Club?** Firms with two or more attorneys and 100% membership in the OCBA can belong! If you believe your firm is eligible, please call the Membership Department at 407-422-4551, ext. 225.

# CLUB

# CLASSIFIED ADS

To reply to BRIEFS box number, address as follows:  
Briefs Reply Box # \_\_\_\_\_  
c/o Orange County Bar Association,  
P.O. Box 530085 • Orlando, FL 32853-0085

## EMPLOYMENT

**ORLANDO FIRM SEEKS BILINGUAL ATTORNEY** with 3-5 years experience in personal injury including trial experience. Outstanding opportunity to join long established firm with excellent benefits and compensation package. Send resume in confidence to reply box 701.

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

**"AV" RATED ORLANDO LAW FIRM**, seeks attorney with seven years experience for its commercial litigation practice. Creative incentive based compensation arrangements available. Reply in confidence to reply box 701.

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

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

**AV RATED WINTER PARK** Medical Malpractice Defense Firm seeks Associate with 2-5 years' experience. Competitive salary and benefits. Send cover letter, resume and writing sample to Larry Hall, Hill, Adams, Hall & Schieffelin, P.O. Box 1090 Winter Park, FL 32790.

**ZIMMERMAN, KISER & SUTCLIFFE**, an AV- rated law firm located in Orlando, seeks an Attorney with 4 plus years experience in Employment/Labor Law

(State & Federal). This position requires strong verbal and written communication skills. Portable book of business is desired, but not required. Salary commensurate with experience; excellent benefits. Please send resumes confidentially to Personnel Director, PO Box 3000, Orlando, FL 32802 or by email to lbearden@zkslawfirm.com. Visit our website at www.zkslawfirm.com.

**SPECIALTY DEFENSE FIRM** handling first party property/liability coverage issues and complex contractual/tort litigation seeks attorneys for its Maitland office. Insurance defense experience preferred. Fax/Mail resume to: Office Manager (407) 647-9966, The Rock Law Group, P.A., 1760 Fennell St., Maitland, Florida 32751.

**THE NATION LAW FIRM** is seeking a first party litigator lawyer. Qualified applicants should have at least three years' experience handling first party claims. Please send resume to jobs@nationlaw.com.

## OFFICE SPACE SHARED

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

**REPLACING RETIRING ATTORNEY'S** Maitland general practice. Experienced sole practitioner or small group needed for transition. Share attractive, fully-equipped space at reasonable rent. Reply in confidence to reply box 702.

**SHARE OR LEASE OFFICE SPACE** at Lake Mary Pro Campus (I-4 and L. Mary Blvd). Three offices with furnished admin, conf room, break-room and bathroom with shower. \$900-\$3000/month everything included. 407-765-3893 or lorbis@earthlink.net.

## OFFICE SPACE FOR SALE/RENT/LEASE

**OFFICE SPACE AVAILABLE FOR LEASE**, midway between, easy access on/off interstate 4,

receptionist, copy machine, fax machine, and phones are available, two conference rooms with flat panel televisions, library, break-room/kitchen/storage, reception area, substantial secretarial area(s), local phone service, power, water and sewer, high speed internet, janitorial service and signage on busy road included, 3 offices with windows and 1 without available, ample free parking.

**DESIRABLE THORNTON PARK LOCATION: OFFICE FOR LEASE.** Next to Orlando's Eola Park. Attorney's office, large, lovely, windowed, adjacent assistant's work area. Charming historic two story. Call for additional info. CAROL 407-423-1066. carol@defenselaw.net. 609 E. CENTRAL BLVD. William J. Sheaffer, P.A.

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

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

**NOW AVAILABLE FOR LEASE** is a freestanding, two-story historic office building in downtown Orlando with up to 20 dedicated surface parking spaces. Located on Robinson Street between Orange Avenue and Interstate 4, one block from the Orange County Courthouse and two blocks from the main downtown SunRail Station, this highly visible, 6,850 SF office property includes a separate lobby/reception area with a grand spiral staircase, a fully furnished large conference room and an employee lounge. With several spacious private offices and ample support staff areas furnished with modular work stations, this building is perfect for a law firm. Call (407) 422-6105 for information.

**PROFESSIONAL SPACE AVAILABLE** for lease at 1604 S. Bumby Avenue, Orlando, Florida 32806. Office is 384 square ft., fully tiled and well lit. Access to adjacent conference room. Excellent location close to downtown. \$595.00/month. 407-898-8015.

**ATTORNEY OFFICE BUILDING FOR SALE.** Suitable for 4 or more attorneys and staff. Close to courthouse. 2000 + sq. ft., high traffic count, lots of parking. \$285,000.00 Call (407) 648-2000.

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

**FOR LEASE:** 3,648 SF office building. 2300 Lee Rd, Winter Park. Monument signage; great parking. Christi Davis/Morrison Commercial Real Estate 407-219-3500, ext. 230.

**SALE OR LEASE:** 17,000 SF building. North Westmonte Dr., Altamonte Springs. 5800 & 4500 SF available - owner/occupant or lease; monument signage Christi Davis, Morrison Commercial Real Estate 407-440-6644.

**FREE STANDING RENOVATED OFFICE BUILDING DOWNTOWN ORLANDO.** Three offices, plus reception, conference, lunch, & work rooms, 2 baths, ADA compliant. \$1,800 plus tax, yard maintenance included. Details & photos at www.1239MountVernonStreet.com 407-426-8000.

## OCBA

## Display & Classified Ads

## Contact:

**Sheyla A. Asencios**  
407-422-4551 ext. 244  
sheylaa@ocbanet.org

**Proven results.**

# OCBA Calendar

## OCTOBER - NOVEMBER

### OCBA Luncheon

Sponsored by Westlaw  
Co-hosted by the Legal Aid Society of the OCBA

**The Hon. William Van Nortwick, Jr.**  
Florida First District Court of Appeal

October 24, 2012 • 11:30 a.m. - 1:00 p.m.  
The Ballroom at Church Street

RSVP by October 18, 2012  
reservations@ocbanet.org

## October

**2 Social Committee**  
11:45 a.m. • The Rusty Spoon

**Professionalism Committee**  
12:00 p.m. • Bar Center

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

**4 Fall Oath of Admission**  
5:30 p.m. • Orlando City Hall

**8 Estate, Guardianship & Trust Committee**  
*Homestead Protection and Intestate Succession*  
12:00 p.m. • Bar Center

**9 Intellectual Property Committee**  
*Mass Doe & Intermediary Copyright Infringement Lawsuits: Shakedown or Swift Justice?*  
12:00 p.m. • Bar Center

**LAS Lunchtime Training**  
*Sealing and Expungement*  
12:00 p.m. • Marks Street Senior Center

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

**Executive Council Meeting**  
4:30 p.m. • Bar Center

**11 Brown Bag Lunch with Judge J. Kest**  
*Topic: Putting It All Together: Handling the Civil Case from Start to Finish*  
12:00 p.m. • Orange County Courthouse  
23rd Flr. Judicial Conference Rm.

**ADR Committee**  
12:00 p.m. • Dean, Ringers, Morgan & Lawton, P.A.

**FindLaw Seminar**  
*Ethical Social Media Marketing*  
11:30 a.m. • Bar Center

**Social Security Committee**  
12:00 p.m. • Bar Center

**16 Solo & Small Firm Committee Seminar**  
*Ethics and Social Media*  
12:00 p.m. • Bar Center

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

**Insurance Law Committee**  
12:00 p.m. • Bar Center

**18 Lawyers for Literacy Spelling Bee**  
5:30 p.m. • Downtown Sheraton

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

**Family Law Committee Seminar**  
*The Dynamics of Domestic Violence and its Relation to Child Custody*  
12:00 p.m. • Bar Center

**23 LAS Lunchtime Online Training**  
GAL 101  
12:00 p.m. • Details TBA

**24 OCBA Luncheon**  
**The Hon. William Van Nortwick, Jr.**  
Florida First District Court of Appeal  
11:30 a.m. • The Ballroom at Church Street

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

**25 Middle District Court**  
**50th Anniversary Dinner**  
*See Middle District of Florida Historical Society Website*

**26 Middle District Court**  
**50th Anniversary Academic Symposium**  
*See Middle District of Florida Historical Society Website*

**Bankruptcy Law Committee**  
12:00 p.m. • Bar Center

**28 Spirits & Spares Bowling Event**  
2:00 p.m. • Aloma Bowl

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

## November

**1 Technology to Build Efficiency and Competitive Edge Seminar**  
12:00 p.m. • Bar Center

**6 Professionalism Committee**  
12:00 p.m. • Bar Center

**7 LAS Breakfast of Champions**  
7:30 a.m. • The Ballroom at Church Street

**Business Law Committee**  
12:00 p.m. • Bar Center

**8 Social Security Committee**  
12:00 p.m. • Bar Center

**OCBA and Shakespeare Theater "RACE"**  
6:00 p.m. • Orlando Shakespeare Theater

**9 ADR Committee**  
12:00 p.m. • Bar Center

**12 Estate, Guardianship & Trust Committee Seminar**  
*Practice Pointers for Drafting under the New Power of Attorney Statute*  
11:45 a.m. • Bar Center

**13 LAS Lunchtime Training**  
*Tenant Law Update*  
12:00 p.m. • Marks Street Senior Center

**14 Elder Law Committee**  
12:00 p.m. • Bar Center

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

**Lawyers Literary Society**  
12:00 p.m. • Bar Center

**Executive Council Meeting**  
4:30 p.m. • Bar Center

**15 Technology Committee**  
12:00 p.m. • Bar Center

**OCBA Joint Happy Hour**  
5:30 p.m. • Mojo Bar & Grill

**16 YLS Luncheon**  
11:40 a.m. • Citrus Club

**Family Law Committee**  
12:00 p.m. • Bar Center

**20 Solo & Small Firm Committee Seminar**  
*Paperless Office and Mobile Computing*  
12:00 p.m. • Bar Center

**21 Insurance Law Committee**  
12:00 p.m. • Bar Center

**22 & 23 OCBA Office Closed**  
Thanksgiving Holiday

**27 Tax Law Committee**  
12:00 p.m. • Bar Center

**Appellate Practice Committee**  
12:00 p.m. • Bar Center

**29 OCBA Luncheon**  
**Dr. James A. Beckman**  
Chair, UCF Legal Studies  
11:30 a.m. • The Ballroom at Church Street

**30 Bankruptcy Law Committee**  
12:00 p.m. • Bar Center

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