

the Briefs

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DEADLINE INFORMATION

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

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

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

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President's Message

October 2013



Paul J. Scheck, Esq.

Called to Share Our Best with Others

This past July I had the pleasure of attending the Florida Bar's Voluntary Bar Leaders Conference in Clearwater Beach. This conference was an opportunity to interact with leaders from the state's numerous other voluntary bar associations, ranging from Pensacola to Key West. I was greatly encouraged by the passion and creativity expressed by these other leaders, and as always, I was proud of our own OCBA members and staff as they were some of the most sought-after presenters during the weekend.

A personal highlight for me was getting to know our new Florida Bar president, Eugene Pettis, Esq. There has been much written about president Pettis, including the historic nature of his election as the first African-American president of The Florida Bar. It is also extremely impressive to learn of Eugene's personal determination that led him from simple beginnings to attending the finest educational institution in the Southeast (the University of Florida), and then to the highest position of leadership within The Florida Bar. More than this, however, I was greatly challenged by Eugene's comments to us throughout the weekend, and I wanted to share a few of them with you in the hope that they will resonate as much with you as they did with me.

Eugene stated that two of his primary goals for the upcoming bar year are to "share our best with others" and to "lift people higher to the table of opportunity." These concepts are not necessarily new to any of us, but they are worthy of reflection as they challenge us to be something more than just practitioners. As lawyers, we have been called to serve as ardent advocates on behalf of our clients, while adhering to the highest standards of civility and professionalism that epitomize and define our profession. To truly "share our best" with others, however, involves more than simply winning cases on behalf of our clients, regardless of the costs. It requires a constant effort to seek resolutions that are in the best interests of our clients, which may or may not always be classified as a "win" for us as lawyers. It also involves us acting outside of our comfort zones on behalf of clients of a different social status than our regular clients, and thereby lifting these less fortunate individuals to the "table of opportunity."

These opportunities to raise the standards of professionalism, advocacy, and service within our profession are placed in our path every day, and

hopefully Eugene's words will inspire each of us to keep our eyes open for new ways to use our unique talents for the benefit of others.

An additional challenge that Eugene issued is the following quote: "Footprints are not made by standing still. Footprints are made by moving forward." I have written in previous messages that we owe a great debt of gratitude to our predecessors for establishing our bar association and our legal community as one of the finest in the nation. As the current leaders of the Orange County legal community, however, we are called not simply to look back, but rather to blaze new paths and make our own footprints for the benefit of our members and fellow citizens. One way we can do this is through president Pettis' "ROPES" initiative. As Eugene elegantly described, just as a rope has different threads that come together for its greater strength, so too the bar, both locally and on a state-wide basis, is strongest when it is united around a common core or mission.

The "ROPES" initiative is a program designed to educate the general public throughout Florida regarding the virtues of a fair, impartial, and independent judiciary and the importance of the rule of law in our democracy. It focuses on creating an informed public by engaging them in activities about judicial review, our Constitution, and the operations of our federal and state government and courts. The Florida Bar staff has designed a comprehensive training course that is already being used by lawyers in community groups throughout Florida, including supporting materials such as PowerPoint presentations and handouts. If you are interested in being a part of this important program and making a lasting footprint on behalf of the legal profession in Orange County, please contact the bar office and we will help you become a part of this new initiative.

So as October is upon us, my hope is that all of you will have a safe and happy Halloween, whether that consists of trick or treating with your children or putting on your favorite costume and attending a Halloween party. October also brings the hope that a taste of fall will arrive soon, allowing us to open the windows and enjoy some cooler temperatures. So blessings to everyone for a safe and prosperous October!

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



Judge James F. Holderman

Q & A: Chief Judge James F. Holderman on Dealing with Difficult Judges – Part 1

Q: Judge Holderman, you practiced law for 14 years before you were appointed to the U.S. District Court. Did you encounter any “difficult” judges during your practice?

A: Fortunately, not too often, but – yes, I did. Judges are people and subject to the same prejudices, pressures, human problems, flaws, and frailties, which we all have. I took my lumps as a trial lawyer enough to develop some suggestions for lawyers, especially young lawyers, on how to deal with judges who may be “difficult.”

Q: How so?

A: Judges become difficult for several reasons. They become frustrated when lawyers are unprepared, do not know their cases, do not follow the procedures in the Federal Rules of Procedure, or are not familiar with the court’s local rules or practices. So, the number one tip for any lawyer is to be prepared, know the law and facts, and follow the rules governing your case, as well as your particular judge’s practices.

Q: Being prepared, knowing your case, and following the Federal Rules of Procedure can be accomplished by being diligent, but how do lawyers learn the unique practices of the judge if the lawyer is from out-of-town, appearing before that judge for the first time, and does not know any lawyers in that judge’s community?

A: Before joining the bench, I appeared all over the country. Many times I appeared before a judge I did not know, in cities where I knew no, or very few, lawyers. When doing so I would simply contact the judge’s court reporter or courtroom clerk and say, “I am attorney Jim Holderman from Chicago. I will be appearing before the judge next week and I wanted to know if there are any particular courtroom procedures the judge wants lawyers to follow?” I would also ask, “Are there any things the judge hates?” A judge’s court reporter or courtroom clerk, especially in federal court, know the judge inside out and are great sources of information. I encourage my own court reporter and clerk to tell lawyers all about me and my procedures, so things run smoother for everyone.

Q: Can you share some examples with us of difficult judges you encountered in practice?

A: Most of the difficulties I encountered were with trial judges. Appellate judges are not immune from being difficult, but most trial judges preside alone. There are no other judges to ameliorate any difficulty those judges may have. In

fact, regarding trial judges, I developed a specific list of difficulties, and I have some tips for lawyers in dealing with each of them.

Q: Before we get to your list of how to deal with specific difficulties in trial judges, do you have any general advice for lawyers confronted with a difficult judge?

A: Yes. Always maintain a professional and civil demeanor. Sometimes that is difficult, but you owe it to your client, yourself, our profession, and our system of justice. It is not easy when the judge with the power becomes difficult, but you as a lawyer should not succumb to the moment and become difficult too. You need to protect your record and protect your client, but do not become a part of the problem.

Q: Good advice. What specific trial judge difficulties did you encounter in your practice, and what tips do you have for lawyers in dealing with them?

A: Briefly, I have encountered six types of difficult judges. I have given each a name:

1. “The Snap-Judgment Judge”
2. “The Stalled Judge”
3. “The Intrusive Judge”
4. “The Angry Judge”
5. “The Impaired Judge”
6. “The Biased Judge”

Q: What can you tell us about the first one, “The Snap-Judgment Judge?”

A: This is a difficulty some judges have because they want to move their trials along quickly. Consequently, they rule on objections without hearing opposing counsel’s position. This, of course, is appropriate if the basis for the objection is obvious to all counsel, and the judge’s ruling is clear. It becomes difficult if the quick rulings do not allow counsel to make an adequate record. I had this happen with more than one judge when I was a trial lawyer.

The simple solution is for counsel to ask the judge at an appropriate time, “Your Honor, may I be heard on that objection outside the jury’s presence?” If the judge does not allow you to be heard, then you have made your record for appeal. If the judge allows you to be heard, you could ask for reconsideration of the judge’s earlier ruling. If you are right, next time the judge may hear from you before making a ruling. If not, then you should

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OCBA Luncheon Thursday, October 24, 2013



Miguel Alexander Pozo, Esq.

Miguel Alexander Pozo, Esq. President Hispanic National Bar Association

Miguel Alexander Pozo, Esq., is the newly installed president of the Hispanic National Bar Association (HNBA), a national membership organization that represents the interests of more than 100,000 Hispanic attorneys, judges, law professors, legal assistants, and law students in the United States and its territories.

Miguel is brand lawyer and litigation partner at Lowenstein Sandler LLP, a nationally recognized AmLaw 200 law firm. During his fifteen years at Lowenstein, Miguel has represented Fortune 500 corporations, businesses, and non-profit organizations in a broad range of federal and state court matters. He has especially deep experience representing luxury goods manufacturers, representing some of the most recognizable names in the fashion industry, including LVMH Moët Hennessey Louis Vuitton, Inc., TAG Heuer, Christian Dior, Hublot, and Thomas Pink. He has also represented the Juilliard School and the New Jersey Performing Arts Center.

Miguel has been repeatedly recognized by his peers and others for his expertise, professionalism, and community service. In 2011, he received the “Professional

Lawyer of the Year” award from the New Jersey Commission on Professionalism in the Law. For the last four years (2010-2013), he has been named a “Super Lawyer” by *Super Lawyers* magazine for his experience in business litigation. He served as the 30th president of the Hispanic Bar Association of New Jersey and has twice been recognized as one of New Jersey’s top “40 Under 40” lawyers by the *New Jersey Law Journal* and *NJBiz* magazines. In 2008, he was featured in *Essence Magazine* for his work as a board member for the Boys & Girls Club in Newark, New Jersey and other charities. He was the only attorney on *Essence Magazine’s* list of “40 Men from Across the Country.” In 2005 he was included as one of the “50 Leading Women and Minority Attorneys” in the State of New Jersey and also labeled as a “Rising Star” for his outstanding achievements.

A graduate of Hofstra University where he was president of the Alpha Phi Alpha Fraternity, Inc., he received his J.D. from Rutgers University School of Law, serving as the managing editor of the *Rutgers Race & the Law Review*.

The Ballroom at Church Street

Co-hosted by:

The Hispanic Bar Association of Central Florida

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

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Please RSVP by Friday, October 18, 2013

**RSVP through the OCBA Store
at www.orangecountybar.org/store**

Main Entrance: Garland Avenue between
Church Street and South Street

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, October 18, 2013. The OCBA is happy to provide 10 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ins cannot be guaranteed a seat.

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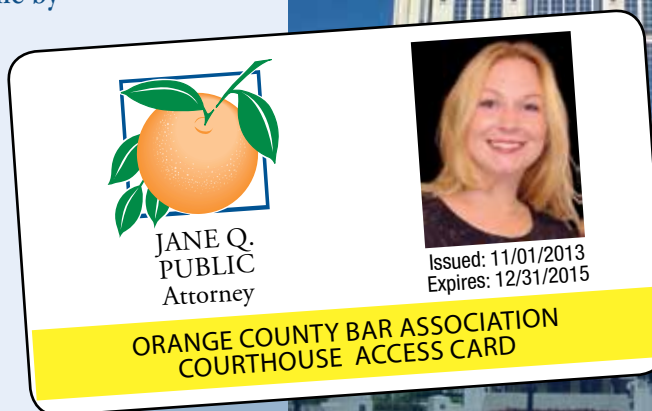
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Terrace I
Terrace II
Terrace III
Terrace IV
Terrace V
Terrace VI
Chase Club I
Chase Club II
Promenade I
Promenade II
Promenade III
Promenade IV



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

To reserve your seats or for questions, contact Krista M. Bartholomew at krista@kmblawfirm.com

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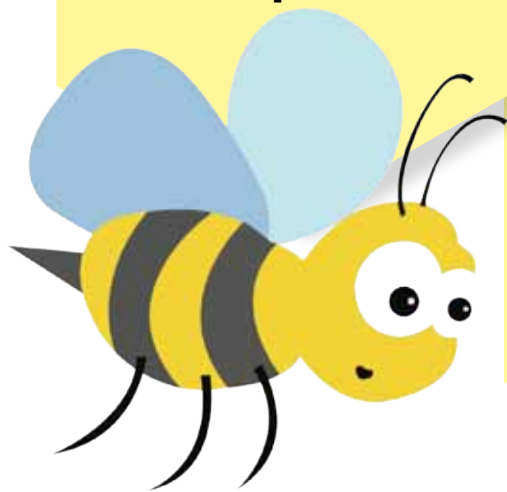
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5:30 p.m.**



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4th ANNUAL *Lawyers for Literacy Spelling Bee*

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For details, see the OCBA website calendar

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See OCBA website for details.

Conference information: Karen Fast at karenf@ocbanet.org

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Matthew G. Brenner, Esq.

The Florida Bar Foundation Provides Leadership and Funding for Justice

As lawyers we share a commitment to justice. The Florida Bar Foundation, a 501(c)(3) public charity, turns that commitment into action through its funding of programs that provide access to justice for Floridians living in poverty. Through our support of The Florida Bar Foundation, we can demonstrate our belief that the justice system works best when it works for everyone – regardless of his or her economic status.

Locally, The Florida Bar Foundation is a vital funding source for the Legal Aid Society of the Orange County Bar Association, Inc., as well as Community Legal Services of Mid-Florida, whose service area includes Orange County. Additionally, through its Administration of Justice Grant Program, the Foundation helps fund special projects and initiatives across the state such as the Innocence Project of Florida – which, since 2003, has succeeded in exonerating thirteen wrongfully imprisoned Floridians by using DNA evidence – and the Florida Law Related Education Association, which teaches Florida students about democracy and the American legal system.

If you visit the Foundation's website at www.floridabarfoundation.org, you will be impressed with the number and diversity of the grantees assisted by the Foundation.

Since 1981, the primary source of funding for The Florida Bar Foundation has been Florida's Interest on Trust Accounts (IOTA) program, which has enabled the Foundation to provide about a third of the total funding for civil legal aid organizations in Florida. Over the past 32 years, Florida's IOTA program has distributed more than \$425 million to help hundreds of thousands of poor people throughout Florida receive critically needed free civil legal assistance.

The Foundation also funds initiatives such as salary supplementation and loan repayment programs that help attract and retain legal aid attorneys. The salary supplementation grant for the Legal Aid Society of the OCBA, Inc., was \$165,000 in 2012-13.

In recent years, because of the impact of extremely low interest rates on IOTA revenue, the Foundation has had to drastically reduce its funding to legal aid agencies. Whereas in 2010, our Legal Aid Society received a Foundation general support grant of \$763,294 to provide legal services, as well as a \$138,020 Foundation grant specifically for Children's Legal Services, in 2013 those grant amounts were \$347,299 and \$60,264, respectively. Overall, Foundation funding is now about a quarter of overall legal aid funding statewide.

Please take a few minutes to learn more about The Florida Bar Foundation, an organization in which all of us, as Florida attorneys, can take tremendous pride, and one that brings critical resources back to our community. If you have questions about the Foundation, feel free to ask me or one of my fellow Florida Bar Foundation board members from Orange County: Tad Yates, Esq., the Honorable Reginald Whitehead, and the Honorable Emerson Thompson.

Matthew G. Brenner, Esq., Lowndes, Drosdick, Doster, Kantor & Reed, P.A., is a Florida Bar Foundation board member. He has been a member of the OCBA since 1986.



David P. Hathaway, Esq.

15 Tips for a Successful Mediation – Part 2

The following is a continuation of the article, *15 Tips for Successful Mediation*, which appeared in last month's issue of *The Briefs*.

Tip #6: Draft a Good Mediation Summary.

Lawyers should be sure their written mediation statement is neutral, has the right information, and is not overly long or technical. For example, you probably do not have to attach every will and trust that a decedent ever executed. However, if there is one paragraph of a contract whose interpretation is central to the case, you should attach the actual page from the contract and not try to paraphrase. It can be comical for a mediator to read, "The contract is clear and unambiguous" followed by three paragraphs of detailed interpretation. The mediator is going to read both summaries for probably an hour or two the night before mediation, so use your space wisely. The mediation statement should include the key facts, claims and defenses, and the status of discovery. It should comment on expert witnesses, dispositive motions, related litigation, prior litigation between the parties, prior negotiations (i.e., anchors), offers of judgment or proposals for settlement, fee shifting issues, and who is coming to mediation.

Fee shifting changes a perspective of the risk. A mediation statement generally would not be confidential, particularly if it attaches filed pleadings, so you may want to ask the mediator to keep it confidential. See Fla. Stat. § 44.405 regarding confidentiality. In fact, some attorneys prepare a second summary containing only the confidential information. If you need the mediator to know that he or she will have to calm someone down from the start, feel free to call the mediator the night before. Also, prior to mediation, consider whether you have any ethical issues in dealing with multiple individuals. For example, if you represent three sisters against their brother, they may disagree on how to judicially reform a will or trust. The same goes for individual shareholders in closely held corporations, or where a corporation is paying to defend an employee as in a non-compete case. Get waivers under Rule 4.1-7 of the Rules of Professional Conduct, or have the clients agree in advance as to precise percentages or formulas for sharing a recovery before the money becomes available. You might even have to consider whether the lawyer could be a witness under Rule 4-3.7, such as where the lawyer has performed the pre-suit investigation, or drafted a challenged will or trust. You need to flesh out these issues before you get to mediation, include them in the media-

tion summary, and perhaps even call The Florida Bar ethics hotline (800-235-8619) with any questions before you attend.

Tip #7: Set Bargaining Points.

The day before mediation, lawyers should make a chart with a starting point, target point, and reserve point. Make sure you know what your fees and costs are to date. In the illustration above where the case was valued at \$175,000, your starting point could be \$1M, your target might be \$300,000, and your reserve may be \$175,000. A central goal at mediation will be to make the other side think your target point is actually your reserve point. A positive bargaining zone is where the plaintiff's reserve overlaps with the defendant's reserve (for example, the least the plaintiff would take is \$175,000 and the most the defendant would pay is \$250,000). Unfortunately, this does not happen often. Usually there is a negative bargaining zone, and if it is large, the case probably will not settle. If the bargaining zone deficit is small, the parties will have to decide whether a small movement from the reserve is better than continuing with litigation.

When you get to mediation, you might question whether you have really pulled the other side down to its reserve, but only the mediator knows. If you believe the other side can do better, your pre-mediation bargaining points should be your cue to walk away. In simplest terms, the question of when to walk away is whether the outcome of mediation would be worse than continuing to litigate. On the television show *Pawn Stars*, the employees at a high-end pawn shop in Las Vegas are experienced negotiators who stick to their final number, leaving plenty of room for profit, even when the customers ask for more. Although more than half of the deals fall through, the owners have a successful operation because they stick to their bargaining points. In fact, the employees keep track of their profit percentages and rank themselves from top to bottom as negotiators at the store. Likewise at mediation, it is wise to set your bargaining points the day before and be willing to walk away if the other side expects you to go beyond your reserve.

Tip #8: Make a Good Opening Statement.

At the start of mediation, your opening statement should be persuasive but should not cross the line to offensive. If the delivery is so caustic that even the mediator is uncomfortable, the lawyer needs to tone it down. Lawyers should stick to the facts of the case and not speak to the relative experience

or abilities of counsel. If an expert witness is going to offer remarks in the opening statement, he or she should present like a college professor, not an adversarial blowhard. Lawyers sometimes miss the mark when it comes to good communication at the opening of mediation. Often plaintiffs' counsel, after giving their opening statement, spend the rest of the time in the joint conference before caucus thinking about a possible rebuttal, when they should be listening closely to the other side. The expression, "We are here in good faith," has become such a cliché that it now means very little.

The mediator will probably be looking at how the opposing parties react when a lawyer makes his or her statement. Normally a lawyer's client will love it, but the mediator may look to see whether the other party is fidgeting or passing notes. The audience for your opening statement is the decision maker on the other side, not the mediator. The best statements are informal and are directed to the opposing decision maker, as "the one chance I have to speak to you informally." It is acceptable to involve your clients to say something if they wish, as long as you believe it will be productive. There is no need to repeat the same legal arguments that the other side has heard ten times before. The best statements include a new "thunderbolt" and use it as the opening act of the negotiation. Pictures can be effective. Be sure never to threaten an adverse party of criminal penalties, as that probably would be a second degree felony under Fla. Stat. § 836.05. A defense lawyer needs to respond to the plaintiff's statement with more than just a brief, "We disagree," because otherwise it creates an imbalance. The opening statement should be longer if the mediation is early in the case, and shorter if the mediation is later

in the case. Even though the opening statement may be long forgotten at the end of the day, it is very important to setting the negotiations on the right track.

Tip #9: Start the Negotiation Properly.

People who ask for more generally get more, but you should also heed the expression, "pigs get fat; hogs get slaughtered" (i.e., asking for a big number can be rewarding, but demanding an outrageous sum can kill the negotiations before they start). At some point in the case the plaintiff has probably already demanded all amounts potentially recoverable. At mediation, it does not help to ask for more than your best case at trial, but it may be wise to start with your best case. You should then move slowly off that number, adapting to new information and making the smallest concessions possible while still keeping the other side in the game. If they shut down, you failed. It may be helpful to give a rationale for the starting number, and possibly for the number after that, but over time, it often becomes unproductive to give a rationale. Just submit a number and don't explain it, because truly it reflects nothing more than a negotiated compromise. Take your time and use strategies to make the opposing side think you are nearing your bottom-line reserve when actually you are nearing your target. The lawyer who "gets it" is the one who asks the mediator how many times the offers will go back and forth, because you need to save room to make final concessions at the end.

A lawyer should keep a chart of the plaintiff's demands, the defendant's offers, and the midpoint, and watch that midpoint to be sure it is going in the right direction. If you start slowing down (say, from \$100,000 to \$90,000 to \$85,000 to

\$82,500) you are reinforcing a message and signaling where you will end. Signal early that you cannot move much, but break the bad news slowly because that way it is easier to digest. A quick illustration of breaking bad news slowly: If you house-sit for your neighbor and the cat dies, your first sentence when they return home should not be that the cat died. You might explain that the cat was missing, you saw him on the roof, you took him down safely, he was acting strangely, you took him to the vet, the vet prescribed medicine, the next day he was barely moving, you took him back to the vet, they ran some tests, and later the cat had to be put down. Remember that some negotiations at mediation are between the lawyer and his own client, and these principles also apply in that regard. Never move backward from a prior offer because it is extremely damaging to the process (unless of course you find a "smoking gun" e-mail in the file during mediation or learn that the court entered summary judgment that day).

If the other party claims to be broke from the outset of the negotiations, the best you can do is settle for what he can pay based on his representations, and if they turn out to be false, the agreement would be void and immediate judgment entered for the full amount. There is no sense in continuing to litigate if what he says is true, as it would be against your client's best interest. Rarely will one succeed in getting guarantees from the wife or liens on the house or car. Never take a promissory note from someone who already defaulted on a payment obligation because you have just let the guy escape the lawsuit and return to square one with a new payment obligation that will require enforcement. Mediation is like a game, and the mediator is going

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Professionalism Award Nominations Sought

2014 Awards

The OCBA Professionalism Committee is now accepting nominations for the

William Trickel, Jr. Professionalism Award
(attorney practicing 15 years or more)

Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award
(attorney practicing less than 15 years)

James G. Glazebrook Memorial Bar Service Award
(state or federal jurist)

These awards are the most prestigious awards presented by the OCBA each year. Recipients must be individuals whose conduct and career stands as a model of success built on unquestioned professionalism, service, civility, integrity, and respect for the legal system.

Please consider nominating candidates who are worthy of the honor. Nominating petitions are available on the OCBA website homepage and at the OCBA office.

Nominating petitions are due in the OCBA office by 5:00 p.m., Thursday, October 31, 2013.

If you have any questions, please contact Brant Bittner, OCBA Executive Director, at 407-422-4551.



Melanie Griffin, Esq.

Melanie Griffin Becomes President of The Florida Bar Young Lawyers Division

On June 28, 2013, at The Florida Bar Annual Convention, Melanie Griffin, Esq., was sworn in as president of The Florida Bar Young Lawyers Division (YLD). Melanie is an associate in Dean Mead's litigation department and is active in numerous professional and service organizations in the greater Orlando area. Her newest position is a reflection of her leadership abilities and the professional and personal relationships she has forged over the years.

The Florida Bar YLD represents approximately one quarter of the bar's more than 90,000 members. Serving as a member of the YLD board of

governors since 2009, Melanie's presidency is a continuation of her dedication to the community. She says, "Being a good leader requires effective communication skills, the ability to motivate and empower others, a willingness to delegate important tasks to others and trust that they will perform the work successfully, and

the diligence to hold others accountable."

Melanie's goals for the YLD this year include:

- Expanding mentorship of law school students and young lawyers;

- Promoting professionalism;

- Increasing communication through electronic and social media outlets;

- Increasing coordination with the Senior Board of Governors regarding legislative issues;

- Serving as a better resource for local affiliates;

- Maximizing workplace diversity; and

- Presenting continuing legal education on how to compete and practice in a marketplace when there are fewer jobs for more attorneys.

Melanie explained how the needs of members of the YLD are different from those of the gen-

eral membership of The Florida Bar: "Due to the economy and the number of young lawyers hanging out their own shingles immediately after law school with little to no experience, it is increasingly important that the YLD provide young lawyers with mentorship and continuing education to help them transition from law school to successfully serving clients."

Melanie has already facilitated several major initiatives aimed at helping the YLD achieve its 2013-2014 goals, including:

- Establishing a monthly lunchtime webinar series focused on incorporating today's ever-changing technology into the legal practice;

- Implementing a social media campaign through which \$1 was donated to The Florida Bar Foundation for each of the new 2,000 new followers to register on Facebook and Twitter;

- Coordinating with The Florida Bar's Center for Professionalism on work-life balance panels to be presented at each of Florida's twelve law schools;

- Creating a Young Lawyers Division representative position on the Standing Committee on Professionalism;

- Creating the Professionalism Roundtable Grant;

- Expanding the YLD's communication efforts; and

- Expanding the Mentoring with the Masters Program that features Mentoring with the Masters videos.

Melanie has been actively engaged in a variety of leadership roles, especially the Central Florida Association for Women Lawyers (CFAWL), having served as its president from 2011 to 2012. Under her tenure, CFAWL received the state chapter award for doubling membership, improving programming and attendance, and raising more than \$30,000 for charitable causes. In part because to her efforts, CFAWL and the OCBA Young Lawyers Section were awarded not only a county Partner in Education Award in May 2013, but a Commissioner's Business Recognition Award from the Florida Department of Education in June 2013.

Melanie strongly believes in creating a vital impact in other people's lives. Raised by a single mother, she quickly realized the significance of community service. "She is, by far, one of the most talented,

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Melanie with Michael Fox Orr, Esq., YLD president-elect, being sworn in to office.



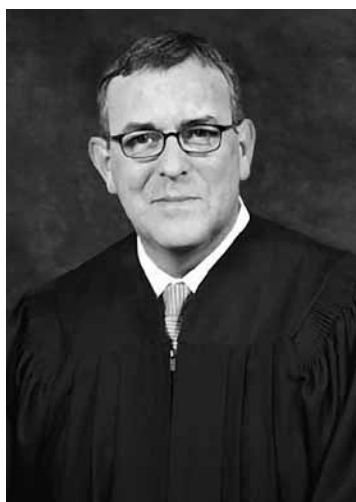
Members of the Dean Mead team at The Florida Bar General Assembly: David Hathaway, Esq.; Felipe Guerrero, Esq.; Melanie Griffin, Esq.; Marc Chapman, Esq.; Nicky Mooney, Esq.; Marisa Godek.

Judges Earn Prestigious Awards



Hon. Jose Rodriguez

Two Circuit Judges of the Ninth Circuit Court received distinguished awards in June, 2013. Honorable Jose Rodriguez received the St. Thomas More Award, which is presented to members of the legal profession who promote the general welfare of the community through sacrificial and devoted service. Judge Rodriguez was born in Cienfuegos, Cuba, and came to the United States at the age of 9. He is a graduate of the University of Central Florida and has been a judge in the Ninth Circuit since 1987. Judge Rodriguez is widely known for his professionalism and dedication to the legal profession. His outreach efforts include speaking to youngsters about the perils of juvenile substance abuse and serving on various community boards and committees.



Hon. Bob LeBlanc

Also in June, the Honorable Bob LeBlanc was presented with The Florida Bar's Young Lawyers Division Outstanding Jurist Award. The award is given to well-respected judges who actively assist young lawyers. Judge LeBlanc was born in Quebec, Canada. After graduating from the University of Miami, he worked as a criminal defense lawyer for 17 years. He was then elected to the circuit bench in 2006. Judge LeBlanc has reached out to many upcoming lawyers and has hosted law students from various universities as law clerks or interns. He also has an open-door policy where he invites lawyers to his chambers to give them insights on trial strategies and arguments.

Submitted by **Julio Semino**, Ninth Judicial Circuit Court. For additional information, please contact ctadjs1@ocnjcc.org or 407-836-0403.

OCBA Members Appointed as General Magistrates

On July 10, 2013, Chief Judge Belvin Perry, Jr., appointed eight Orange County attorneys as General Magistrates of the Ninth Judicial Circuit Court. As General Magistrates, they will hear matters referred to them pertaining to residential mortgage foreclosure actions and other related matters that a General Magistrate is authorized to hear. Among the eight are two long-time OCBA members, Lawrence H. Kolin, Esq., and James W. Sears, Esq.



Lawrence H. Kolin, Esq.



James W. Sears, Esq.



Caroline Johnson Levine, Esq.

An Offer of Judgment in “Damages” Litigation Must Address Attorney’s Fees

Civil litigation costs can be incredibly expensive. Accordingly, attorneys routinely file motions for costs and attorney’s fees in order to recover litigation expenses from the opposing party. However, particular factors must be established by the moving party in order to successfully obtain a court order that would require the non-moving party to pay attorney’s fees.

The Florida Supreme Court recently determined in *Diamond Aircraft Industries, Inc. v. Horowitch*, 107 So. 3d 362 (Fla. 2013) that in order to recover attorney’s fees after successful litigation, an offer of judgment must be for a suit seeking *only* monetary damages and the offer must specifically address attorney’s fees.

Horowitch had contracted with Diamond Aircraft Industries, Inc. to buy an \$850,000 airplane. Subsequently, Diamond Aircraft refused to deliver the aircraft to Horowitch unless Horowitch agreed to a new purchase price of \$1,380,000. Horowitch sued Diamond Aircraft for “(1) specific performance of the contract; and, in the alternative, (2) breach of contract; (3) breach of the covenants of good faith and fair dealing; and (4) deceptive trade practices under the Florida Deceptive and Unfair Trade Practices Act (FDUTPA).”¹ As the litigation progressed, Diamond Aircraft served Horowitch with a \$40,000 offer of judgment. Horowitch refused this offer of judgment and subsequently his specific performance, breach of contract, and breach of implied covenants of good faith and fair dealings claims were defeated on summary judgment. Additionally, after “a nonjury trial, the district court entered judgment in favor of Diamond Aircraft and against Horowitch on the deceptive trade practices claim.”²

Diamond Aircraft made a motion to recover its attorney’s fees based upon its offer of judgment. The Supreme Court was presented with important issues relating to Florida’s offer of judgment statute, specifically “(1) whether section 768.79 is inapplicable because Horowitch’s action concerned both monetary (damages) and nonmonetary (equitable) relief, and (2) whether section 768.79 applies when the offer of judgment Diamond Aircraft served on Horowitch did not satisfy the specific requirements of Florida Rule of Civil Procedure 1.442(c)(2).”³

The Supreme Court concluded that Florida Statute § 768.79 did not apply to suits demanding equitable relief and monetary damages, even when an equitable relief claim “lacks serious merit.”⁴

Horowitch had requested specific performance of the contract by demanding delivery of the airplane or in the alternative monetary damages related to Diamond Aircraft’s breach of contract.

The Supreme Court recognized that Florida Statute § 768.79 was enacted to motivate recipients of reasonable settlement offers to accept the offer and terminate the litigation or face a sanction of attorney’s fees and costs. Section 768.79(1) provides that in “any civil action for *damages* filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney’s fees.”⁵ Accordingly, the Supreme Court found that any demand for equitable relief removes an action from section 768.79 attorney’s fees provisions.⁶

More importantly, the Supreme Court found that even if this action solely involved monetary damages, Diamond Aircraft would not be entitled to recover attorney’s fees because its offer of judgment failed to strictly comply with Florida Rule of Civil Procedure 1.442(c)(2). Specifically, Diamond Aircraft’s offer of judgment did not address attorney’s fees as a portion of the action. Rule 1.442 specifically requires that a proposal for settlement *shall* “state whether the proposal includes attorney fees and whether attorney fees are part of the legal claim.”⁷ Therefore, in this case, the “offer of settlement here failed to include such a statement, and the offer would be invalid and unenforceable even if section 768.79 applied.”⁸ Additionally, the Supreme Court required that an offer of judgment must “be in writing and include a citation to the applicable section of the Florida Statutes (section 768.79).”⁹

In *Diamond Aircraft*, the Florida Supreme Court determined that attorney’s fees are only recoverable in monetary damages actions *and* a written offer of judgment must strictly comply with Florida Statute, section 768.79 and Rule 1.442 of the Florida Rules of Civil Procedure. Therefore, a party considering service of an offer of judgment, with the ultimate goal of recovering attorney’s fees, should consider the requirements delineated by the Supreme Court.

Caroline Johnson Levine, Esq., was previously employed as a criminal prosecutor for ten years and currently practices civil litigation defense. She is a member of The Florida Bar’s Standing Committee on Professionalism and has recently joined the OCBA.

Endnotes: continued page 31

Interview with The Honorable Deborah B. Ansbro

Emily Hansen-Brown, Esq.

The Honorable Deborah B. Ansbro received her bachelor's degree from the University of Central Florida in 1984 and her juris doctor from the University of Florida in 1987. She served as a county judge in the criminal division from 2006-2010. She currently sits in the criminal division.

Q: *Where are you from?*

A: I am from Memphis, Tennessee, originally.

Q: *Tell us a bit about your career before becoming a judge.*

A: Well, I started as a real estate paralegal and I really wanted to go into real estate law. Baker Hostetler had a rotation program for young attorneys so, as a lawyer, I started in the litigation department. I learned to draft good contracts by litigating bad ones. I had a wonderful experience there; we learned so much from each other and had great mentors.

Q: *Tell us about one of your proudest professional moments.*

A: I handled a matter for a woman through the Legal Aid program. She owned a daycare center and was served with a foreclosure notice, but the bank would not tell her how much she owed. We prevailed and were awarded attorney's fees.

Q: *Who is the biggest influence on your professional career?*

A: There were three or four senior attorneys at Baker Hostetler who served as great mentors to me.

Q: *Why did you become a judge?*

A: I felt it was my contribution to my community and my profession, and we needed experienced people on the bench.

Q: *What would you tell your younger self about being a judge?*

A: I was able to accomplish a lot of things as a practitioner, so I would ask myself whether becoming a judge was the best way to make that contribution to community and profession.

Q: *What is the hardest thing about being a judge?*

A: You will never please everyone.

Q: *What is your biggest pet peeve in the courtroom?*

A: A lack of professionalism and preparedness.

Q: *What helps attorneys the most in your courtroom?*

A: Resolving motions without the court. For example, motions to compel and motions for extension of time. Also, knowing we can believe what you tell us, gaining the trust and respect of the court.

Q: *Give us some examples of the best and worst behavior you've seen in the courtroom.*

A: The best is when attorneys are prepared and professional; the worst is when attorneys roll their eyes or huff and puff about what the other side or the court says.

Q: *What are the strengths and weaknesses of America's legal system today?*

A: The strength of the legal system is that if people follow the rules, things will go well. The weakness is the fact that the general public does not know how to find competent legal counsel. So many people are unrepresented or don't have competent legal counsel.

Q: *How has the funding crisis affected your courtroom?*

A: In County Civil, we did not have enough deputies for each judge, so we must leave the doors to the hearing rooms open for security. People's personal affairs are therefore heard by everyone in the waiting room. We also no longer have law clerks. When I was on the criminal bench, trials could not continue after 5:00 p.m. because we couldn't afford the overtime for staff. This imposes on the jurors because they would have to return another day to finish up the trials.

Q: *What are some ways technology has improved your job?*

A: Being able to view the court file on the computer in the hearing room is a great thing.

Q: *What are your hobbies?*

A: Reading, shopping, traveling, and anything to do with my granddaughters.

Q: *Who is your favorite fictional lawyer?*

A: Atticus Finch. What would the practice of law be like if every person conducted himself or herself with that kind of dignity and professionalism?

Q: *What are your favorite movies or books?*

A: I love chick flicks; anything that involves laughing and happy endings, like *Sleepless in Seattle* or *Notting Hill*. I love to read history and biographies.



Hon. Deborah B. Ansbro

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Filing Criminal, Traffic, and Juvenile Subsequent Pleadings Through the Florida Courts' E-Filing Portal Begins October 1, 2013

Attorneys must begin filing subsequent pleadings in Criminal, Traffic, and Juvenile cases through the Florida Courts E-Filing Portal on Oct. 1, 2013. The state Supreme Court mandate also requires that Juvenile Dependency cases be initiated through the portal on the same timetable.

Attorneys have been filing Civil, Family, Probate, and Mental Health cases, as well as their subsequent pleadings, through the portal since April, per the mandate.

The portal allows attorneys to benefit from the ability to file and access their cases 24/7, 365 days a year.

Please take the time to register on the Florida Courts E-Filing Portal and to access useful training resources.

The Orange County Clerk's Office has been working closely with the Orange County Bar Association, as well as the Judiciary, State Attorney's Office, Public Defender, and others on testing the portal and to assist with questions. We will continue to add updates in the coming months.

Following are some frequently asked questions regarding use of the E-Filing Portal.

Q: *What is the Florida Courts E-Filing Portal?*

A: It is a statewide portal for the transmission of electronically filed cases and documents. The portal provides attorneys with a common entry point for filing and viewing documents.

Pro se litigants (self-represented parties) and non-Florida attorneys, except those appearing *pro hac vice*, will not be able to use the portal because it requires a Florida bar number to submit a filing.

Q: *How do I register for an account?*

A: Through the portal at <http://www.myflcourtaccess.com>. Be sure that the primary email address you enter matches the email address you have on record with The Florida Bar.

Q: *How do I file electronically?*

A: Through the portal at <http://www.myflcourtaccess.com>

Q: *Where can I find information on how to file?*

A: Go to <http://www.myflcourtaccess.com> and click on the "Help" menu's "FAQs," "Training Videos," and "Training Manuals." These links are also available at www.myorangeclerk.com.

Q: *How do I know that my filing has been accepted?*

A: The filer will be notified via email. The status

of each filing can also be found by clicking on "My Filings" from the portal home page.

Q: *Is there a charge for filing via the portal?*

A: The usual filing fees apply, per Florida statute. In addition, a fee has been established by the state to offset the cost of electronic fund transfers. When using MasterCard, Discover, and American Express cards, there will be a 3 percent service charge. For a check transaction there is a \$3 flat fee.

Q: *Does the portal accept Visa?*

A: No. It only accepts MasterCard, Discover, and American Express.

Q: *How long will it take the clerk's office to approve my filings?*

A: Up to 3 business days. We will notify you via email when approved.

Q: *After they're approved, when can I view them electronically?*

A: Between 24- and 48-hours after you receive confirmation that your filing has been approved, you can view the filing on your account page under "My Trial Court Filings." Access to existing documents will be granted instantly.

Q: *How can I notify the clerk when filing a document that has a hearing scheduled within 48-hours?*

A: Click the "Emergency Filing" box at the bottom of the first screen.

Q: *Who can file through the portal?*

A: Only Florida bar attorneys and attorneys appearing *pro hac vice* can file through the portal because a Florida bar number is required to register. *Pro se* litigants (self-represented parties) and non-Florida bar attorneys, except those appearing *pro hac vice*, will not be able to use the portal. *Pro hac vice* attorneys should contact support@myflcourtaccess.com for assistance.

Q: *How do I have a document such as a writ or summons issued through the clerk's office?*

A: The documents must be submitted through the portal. The clerk will issue it and return it to you via email for service.

Q: *How do I have a certificate of mailing issued?*

A: Once you receive your summons or notice of action, print the document and forward it with the required paperwork, appropriate envelopes with postage, and the certificate of mailing to the clerk's office to complete.

Q: *When should I mark a filing as an "Emergency Filing?"*

A: The emergency filing should only be used in these scenarios:

Juvenile Delinquency

No Petition Notices
Direct Files & Transfer Order
Demand for Speedy Trial
Petitions in cases that go for hearing within 72-hours
Petitions when child detained
Notice of Appeal & Supplemental Appeal
Notice of Appearance
Violation of Probation, if child is detained

Juvenile Dependency

Shelter pleadings
Judicial waivers
Notice of Appearance in cases that go for hearing within 72-hours or if unknown
Notice of Appeal & Supplemental Appeal
Emergency medical

Criminal/Traffic

When filing a document or Notice of Appearance on a case which has a hearing scheduled within 48-hours

Notice of Expiration of Speedy Trial

Motion for Speedy Trial

Q: *Will I be able to file to a case using the Uniform Traffic Citation number (UTC)?*

A: No, the portal can only find existing cases using the Clerk's case number. If you only have the UTC number, please look it up at the "Look Up Cases" link at www.myorangeclerk.com.

Q: *If I represent a client with multiple cases or citations, will one document file to all cases?*

A: No, the portal does not have a feature to submit one document to multiple cases. You must submit the document to each case as appropriate. In addition, the clerk will no longer be able to search for related or companion cases. Therefore, a Notice of Appearance must be submitted in each case.

Q: *Why is there no standardization from county to county, especially in the document-selection descriptions? Sometimes no selection matches my filing need.*

A: The Florida Court Clerks and Comp-trollers (FCCC) convened a best-practices

committee, which has recommended document categories and document types that all counties should use. Orange County Clerk of Courts has adopted those standards. The filer should select a category from the drop-down menu that fits best.

Q: *What would cause the server to be unresponsive when uploading a document? Why does the portal sometimes show 5 documents, for instance, submitted but give an error message that only 4 have been uploaded?*

A: This most commonly happens when uploading large documents. When uploading large documents – 10MB is the maximum size – you should pause before moving on to the next document. Depending on your connection speed to the portal, it may take 30 to 45 seconds for the document to upload. One way to make sure your document has fully uploaded is to click "View" on the "Document" page and verify that the entire document is visible.

Q: *Why is it sometimes difficult to access an e-filed document?*

A: There could be a number of reasons. In Orange County, the documents are retrieved from the Comprehensive Case Information System (CCIS), and we dis-

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Angel M. Bello-Billini, Esq.

Handling Parenting Disputes: Tips for Attorneys Unfamiliar with Family Law

We are frequently contacted by *pro bono* attorneys who find handling family cases involving custody disputes a challenge. It is true that family dynamics and disputes are more complex than uncontested, no-children scenarios. Understanding the basic controlling principles and key working tools of the parenting statute hopefully will simplify the task.

The following may be of help:

- 1) Strictly adhere to the statutory requirement that the ultimate goal is to find a solution that best promotes the best interests of the child, not the parents;
- 2) Carefully gather the family's normal child care and responsibility history;
- 3) Review the statutory factors that are used to determine best interest, Fla. Stat. § 61.13(3) (a)-(t), compare these to the family history, and make a careful assessment of the needs of the child given the child's history;
- 4) Reduce the assessment to writing by completing the appropriate, statutory parenting plan – there are different Supreme Court-approved forms, some of which are suited to special family situations, such as domestic violence.

Each family is different, and one size fits all approaches would not be acceptable. *See* Fla. Stat. § 61.13(3). Many parents offer parenting plans that have only a vague resemblance to the family history and are closer to fantasy than workable reality. Careful notice should be taken of the statutory phrase, “a demonstrated capacity to,” contained in many of the factors. If a parent has shown only a casual interest in the child, it might not be in the child's best interest for this parent to suddenly be given substantially increased time and responsibility, unless this is tied to a “work for benefits” plan (i.e., an incremental plan where this parent is rewarded with more time only in proportion to increased, successful participation). In most cases, creating plans that ignore the family history are very ill advised, may dangerously increase family friction, and are a recipe for future litigation.

This history is key to making an accurate parenting assessment and in creating a suitable parenting plan. Gathering these facts should not be left to untrained support staff. If you use “homework” forms given to the client, you must follow

this with a thorough client interview, which is the equivalent of a thorough deposition of your client. Fact gathering that is not done in person or via Skype should not be used, unless totally unavoidable, because you are also measuring your client as a witness. Viewing the client through the eyes of the opponent will also help you make a more objective assessment. Obtaining additional, hopefully unbiased witnesses to provide you with relevant information is also key, because generally parents' descriptions tend to be self-serving.

Gather your information, apply the factors, and do a quick draft of the statutory parenting plan. Keep it to yourself and give the client a blank copy as homework. Compare both completed drafts and prepare yourself for a possible shock. You will now need to guide your client through to a final draft to get a plan that complies with the law. Balancing your client's expectation with the requirements of the law will require a final assessment of the family history and applicable factors. This will require gentle, but sometimes firm guidance, depending on resistance levels. Unreasonable expectations and obstructive, recalcitrant behavior should be met head-on from the outset, and if efforts to obtain a greater understanding and acceptance of the law prove unsuccessful, you must seriously consider withdrawing your appearance.

This may seem to require a lot of work, but good lawyers succeed through knowledge of the facts and advance preparation, and getting this done up front will save you time and agony later. In difficult situations, if a golden “jeannie” is available, the assistance of an experienced mental health professional in gathering information and preparing a parenting plan is crucial.

Following these suggestions should help place you in a position, barring high degrees of dysfunction at the parental or attorney level, to reach a reasonable agreement, or to help you prepare a thorough, coherent, and realistic case before the court, should the need arise.

Angel M. Bello-Billini, Esq., Legal Aid Society of the Orange County Bar Association, Inc., has been a member of the OCBA since 1995.



Tenesia C. Hall, Esq.

It Takes a Village

Foster children are 2.5 to 3.5 times more likely to need special education services than their non-foster youth counterparts. They have a higher rate of grade retention resulting in a higher drop-out rate. Only 34% of foster children graduate from high school; 3% obtain a college degree.

Appointment of a surrogate parent can improve educational outcomes for foster children. Surrogate parents are assigned in all matters relating to the identification, evaluation, and educational placement of a child who has/is suspected of having a disability as defined in the Individuals with Disabilities in Education Act and Fla. Stat. §1003.01(3). The appointment is for educational purposes only. School employees, DCF case workers, and group home staff are barred from acting as surrogate parents. Before evaluating, re-evaluating, or providing special education services to students, schools must identify and obtain *parental consent*. For educational purposes, “parent” is defined as: the natural, adoptive, and foster parents; guardians; an individual acting in place of natural/adoptive parents; or, *an individual assigned to be a surrogate parent*.

GALs receive priority when assigning surrogate parents. Educational expertise is not required, as training is provided. Marc Consalo, Esq., is the GAL for three children who were physically abused by their mother. Cindy Egeli, one of Legal Aid’s GAL lay volunteer advocates, has worked with Marc on the case over the past two years. One of the children, “Anna,” failed the FCAT by four points and was set to be retained in the third grade. Cindy obtained summer tutoring and numerous study materials to get Anna on track. Two weeks before school started, Anna retook the portion of the test that she failed and is now a fourth grader!

Kara Wick, Esq., serves as GAL for two children who were not enrolled in school for an entire year and struggled to keep up with their school work. Although both children are very bright, neither of them was provided with the tutoring and speech therapy necessary to get them on track. As a for-

mer public school teacher, Kara understands that having an educational advocate sometimes means the difference between academic success and failure. Kara worked closely with the boys’ teachers, caseworker, and caregivers to provide them with the tools they needed to succeed. As a result of these collaborative efforts, both boys have shown amazing progress.

Volunteer GAL Abigail M. Johnson, Esq., has served as a surrogate parent, as well. “The most significant thing I can offer to a child as both their GAL and educational surrogate is consistency – I have cases where I’ve been involved for more than a decade and am the only one who remembers each school, each placement, and each milestone. By providing the history and stability of my professional involvement, I can ensure that the child’s needs are better met and less is lost in the many transitions each child endures.”

These great volunteers have helped change their GAL children’s lives and you can too. For more information about becoming a surrogate parent for your GAL child, please contact Tenesia C. Hall, Esq., at tchall@legalaidocba.org, or 407-841-8310 ext. 3136.

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

Tenesia C. Hall, Esq., a staff attorney with the Legal Aid Society Guardian ad Litem Program, has been a member of the OCBA since 2001.



Donna A. Haynes

Coming Full Circle

Neal Blaher, Esq., began practicing law in Philadelphia, Pennsylvania, in 1986 and has been a member of The Florida Bar since 1987 and the Orange County Bar Association since 1988. His *pro bono* work began in 1988. In 2010, Neal was awarded the Judge J.C. “Jake” Stone Distinguished Service Award and has closed more than 91 cases, providing more than 1,250 hours of *pro bono* legal services. Today, Neal is the Guardian ad Litem to 10 children.

After graduating from law school, Neal returned to Central Florida, his childhood home, and took a job with a small firm, then known as Duckworth, Allen, Dyer & Doppelt (now Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A.). Unbeknownst to Neal, the firm’s partners had varying, meaningful connections with the Legal Aid Society’s *pro bono* program. Neal reports that Bob Duckworth was among those attorneys (including former Orlando mayor Bill Frederick) who

helped launch our nonprofit charity in the 1960s. Herb Allen was a committed volunteer for the GAL program and took it upon himself to spread the message to the new, young attorney, Neal.

Neal recounts that, initially, he avoided GAL work as it was such a “foreign concept” to him. He reports that he knew what to expect with a divorce case but could not figure out, at the time, how to represent a child in that context. Although Legal Aid’s resources were much more limited back then, and the extent of staff involvement and assistance only a fraction of what is available to attorneys today, the fact

is that they were there to help and to answer any questions he had. Neal even availed himself of a volunteer assistant.

Neal states that

[w]ithin the last several years, I found my place – handling the GAL cases with younger children caught between layers of family members whose placement needed some real sorting out. For me, this has been rewarding and has made me feel like I am actually changing lives.

I am a sole practitioner. I therefore have not had the opportunity of imparting on a young lawyer the kind of influence that I had the

good fortune of receiving from Herb Allen some 25 years ago. But, I do what I can. I help annually with the Breakfast of Champions and impart my view that helping those most vulnerable is a wonderful, fulfilling, and crucial aspect of being a lawyer.

As a young lawyer here in the 1980s, I was told how the Orange County Bar’s Legal Aid Society was the oldest program of its kind. In fact, it traced its roots back to the 1960s, and it was the model cited by the American Bar Association as the example for other bar associations nationwide.

When I go out and perform my duties as a Guardian ad Litem, I am constantly reminded of this lesson. Most of these children are where they are today through no fault of their own. They are our responsibility. We all owe a duty to help those less fortunate than ourselves and what better place to start than with these children, so many of whom get lost in the system, when they – for whatever reason – get separated from family.

We hear so much today about how much is wrong with the world. Maybe, we should follow the advice my father used to tell me and my brother: You have to start with the basics before you can go further and accomplish anything. So perhaps, we can start making the world look a little better if we do just that – start with the basics. Reach out to help someone who has been less fortunate.

I hope you become motivated to subscribe to the principle that the few – just one, in fact – can effect positive change in the world. And, if there were ever a time it was needed, this is the time.

Neal Blaher is hosting a table at our annual fundraiser, the Breakfast of Champions, which will be held on Thursday, November 7, 2013, at the Ballroom at Church Street Station. This fundraising event will begin at 7:30 a.m. and end at 9:00 am (sharp). Neal seeks to fill that table with young lawyers and share his experiences of volunteering with the Legal Aid Society of the Orange County Bar Association, Inc. There is no charge to attend the Breakfast of Champions. We simply ask you to remember that this is our only annual fundraiser, and you will be asked to make a personal and/or corporate donation. If you would care to join Neal at the Breakfast of Champions please

continued page 31

Neal Blaher, Esq.



2013 Breakfast of Champions

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Attention: Donna Haynes, Manager of Development
100 East Robinson Street, Orlando, Florida 32801
(407) 515-1850 – dhaynes@legalaidocba.org



We are also seeking individuals to serve as Table Captains.

Please contact Donna Haynes at dhaynes@legalaidocba.org or (407) 515-1850



Thank you for your continued support.

Sincerely,

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

Ana Tangel-Rodriguez, Breakfast of Champions Co-chair
Legal Aid Society of the Orange County Bar Association, Inc.

Joe Amos, Development Committee Co-chair
Legal Aid Society of the Orange County Bar Association, Inc.

Chris Pantano, Breakfast of Champions Co-chair
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cover topics in contract negotiation, protection of intellectual property, employment and bankruptcy law, and alternative dispute resolution.

Special "behind the scenes" tours of the Orange County Courthouse, the federal courthouse, the juvenile justice center, and – by invitation only – the Medical Examiner's office, are all part of the varied schedule.

Mary Ann Etzler, Esq., Miller Etzler, P.L., the program's developer and facilitator, says that "Leadership Law provides information our participants just can't get anywhere else."

Recommend Leadership Law to community leaders, colleagues, and friends!

Classes are held from 8:00 a.m. to 5:30 p.m. once a month beginning in January at the OCBA Center in downtown Orlando. Round-trip transportation is provided to all off-site locations.



"Our local justice system will touch you in some way, at some time during your career." – Tiffany Altizer, CPA
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Continental breakfasts, lunches, and social networking receptions are provided, and a graduation ceremony will be held in May. Chief Judge Belvin Perry, Jr., will be on hand to present certificates.

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*Class meetings:

January 24, 2014

Civic & Judicial Politics: How They Impact Business

February 28, 2014

Juvenile Justice Center & Delinquency Court

March 21, 2014

Criminal Matters & Body Language Workshop

April 4, 2014

Hot Issues: Federal Employment & Bankruptcy Laws

May 9, 2014

The Judicial System: Jury Selection, Small Claims & Traffic Court & Tour of the Orange County Corrections Facility

A sixth meeting date may be scheduled. Topics: *City & County Government.*

*Schedule subject to change.

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Justice Ricky Polston, Bruce B. Blackwell, Esq.



Judge Belvin Perry, Jr., Justice Ricky Polston, Erik J. Arroyo,
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Thinking beyond the numbers.



Sunny Lim Hillary, Esq.

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

CFAWL

On August 21, 2013, the **Central Florida Association for Women Lawyers (CFAWL)** participated in Feeding Children Everywhere. Members joined a team in College Park in hand-packaging 20,000 healthy meals that were distributed to Orange County school children and their families through the Love Pantry Project. There was great music and great fun in making a tangible difference in the life of a hungry child.

On September 6, 2013, CFAWL held its membership luncheon at the Citrus Club. The keynote speaker was former Florida Supreme Court Justice, **Charles Wells**, who offered insight on his experience as the Chief Justice of the Florida Supreme Court during the *Bush v. Gore* 2000 election controversy.

CFAWL got chic on September 11, 2013, when CFAWL honored its cherished members at the annual membership celebration. CFAWL members gathered at the law firm of Lowndes, Drosdick, Doster, Kantor & Reed, P.A., for an evening of fun, delicious food, and wine. Thank you to event chair, **Tara Tedrow, Esq.**, for organizing this event.

GOAABA

On August 2, 2013, the Greater Orlando Asian American Bar Association (GOAABA) participated in OCBA's first annual New Lawyer Training Program reception at OCBA headquarters. **Kim Nguyen, Esq., Sunny Hillary, Esq., and Christine Berk, Esq.**, welcomed new lawyers to Orlando with sweet Vietnamese pastries from Saigon Market located in the

Mills-50 district. Membership to GOAABA is open to all lawyers. If you would like to join GOAABA, please contact membership chair, **Christine Berk, Esq.**, at Christine@emerituslaw.com.



Sunny Hillary, Esq.
Kim Nguyen, Esq.

On August 8, 2013, GOAABA held its annual Installation Ceremony and Happy Hour. This year, the event took place at Paxia Alta Cocina Mexicana and Tequila Lounge in College Park. Members and new members enjoyed delicious dishes such as ancho chicken skewers, empanadas, chilaquiles, blue corn calamari, open-face quesadillas, and delicious margaritas. Past president, **Glenn Leong, Esq.**, administered the oath of office. Congratulations to the 2013-2014 Board of Officers and Directors: **Sunny Hillary, Esq.** (president); **Wanda Reas, Esq.** (president-elect); **Donna Hung, Esq.** (treasurer); **Teris Deitsch, Esq.** (secretary); and board members **Lisa Gong, Esq.; Denise Kim, Esq.; Lemar Alejo, Esq.; Christine Berk, Esq.; and Anna Meddin, Esq.**

On September 17, 2013, GOAABA partook in Barry Law School's first annual Voluntary Bar Association Fair at the Dwayne O. Andreas Law Center. Barry law students were able to learn about GOAABA and their opportunities for involvement. Barry Law School put on the fair with the belief that law students benefit from voluntary bar associations by gaining new knowledge, experiences, and contacts, and in turn, voluntary bar associations benefit from vibrant student membership. Thank you to **Kelli Murray, Esq.**, associate director of career services, at Barry Law for putting on a successful debut event.

Keep your eyes and ears open for upcoming happy hours, CLE's, and community outreach projects. To join our e-mail list, or see how you can get involved with GOAABA, please contact **Sunny Hillary, Esq.**, at sunny@hillarylaw.com.

HBACF

On June 21, 2013, the **Hispanic Bar Association of Central Florida (HBACF)** hosted its Annual Summer Fiesta and Domino Tournament at the Citrus Club in downtown Orlando. Guests enjoyed Latin cuisine, desserts, and unlimited mojitos while bidding on silent auction items. Prizes for the tournament were awarded to the 1st place winners. Special thanks to **Fermin Lopez, Esq.**, and his committee for putting on another successful event, and thanks to all who attended. All proceeds went to the HBACF Education Fund.

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

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

Hearsay...



Christine A. Wasula, Esq.

October vies with May for my favorite month, with the temperatures cooling down and the fall colors starting to appear (and, of course, my favorite holiday – Halloween). Fall is a great time to step back and to take stock of what you’ve accomplished so far during the year. Many of our OCBA members, I think, will find that they have exceeded their goals for the year. In fact, the past few months have been so busy it’s downright spooky!

Going back to the summer for a minute, this year’s Trivia Tournament was a huge success, and the prize for “Most Improved Law Firm” goes to **Cole, Scott & Kissane, P.A.**, which not only participated in the tournament for the first time but also sponsored three teams and managed to win the tournament in the process! Special congratulation to managing partner **Robert Swift, Esq.**, who led the winning team – “Who Cares, We’re Going to Win” – to a resounding victory. Congratulations also to the second and third place teams, whose names I don’t know, and to **Tiffany Wax, Esq.**, and **Hope Touchton, Esq.**, who did a fantastic job of organizing the event.

For my shameless plug of the month, I would like to recognize **Tad A. Yates, Esq.**, with the **Law Offices of Tad A. Yates, P.A.**, who has received a presidential appointment to the Board of Directors for the UF Alumni Association. Tad will serve a one-year term beginning in July 2013 and ending in June 2014. Anyone who knows Tad knows that he is a huge Gator fan (Classes of ’91 and ’94), so this is an exciting accomplishment for him. Congratulations, Tad, and, by the way, where are those season tickets you promised me?

Next up is **Robert L. Dietz, Esq.**, a shareholder with **Zimmerman Kiser Sutcliffe, P.A.**, who received one of only two International Honor Key awards, which were presented at the 93rd Civitan International Convention in Denver. Civitan is an international community service organization that helps the less fortunate in their communities, with a special emphasis on developmental disabilities and diseases of the brain. The award was presented for “exemplary service as speaker, instructor, and officer at the club, district, and international levels, and on several international committees, for building three Civitan clubs and four Junior Civitan clubs, and for invaluable service in providing legal counsel, conflict resolution, and parliamentary expertise to Civitan leaders.” Robert has been a member of Civitan since 1984 and is currently serving as treasurer of Civitan Lake Eola and area director of the Florida district.

And that’s only the beginning. There were numerous other OCBA members who were recognized for their outstanding accomplishments in both the legal field and the community at large.

Archie O. Lowry Jr., Esq., of counsel with **Potter Clement Bergholtz Alexander** in Mt. Dora, was recognized as Volunteer of the Year for 2012 by the Salvation Army for Lake and Sumter counties, and as Lake County Pro Bono Attorney of the Year for 2013 by the Community Legal Services of Mid-Florida. He’s a double threat!

Richard E. “Rick” Mitchell, Esq., a shareholder with **GrayRobinson**, has been appointed by Governor Rick Scott to serve on the Fifth District Court of Appeal Judicial Nominating Commission. He will serve a three-year term beginning on July 31, 2013, and ending on July 1, 2016.

Timothy Dunbrack, Esq., managing partner in the Orlando office of **Kelley, Kronenberg, Gilmartin, Fichtel, Wander, Bamdas, Eskalyo & Dunbrack, P.A.**, has been appointed to the Executive Council of the Workers’ Compensation Section of The Florida Bar.

The law firm of **Baker Donelson, et al., P.A.** has been ranked among the Top 10 law firms in the country in the 2014 edition of Vault, Inc.’s “Best Law Firms to Work For.” The ranking was based on feedback from law firm associates across the country who were asked to rate their law firms on a number of quality-of-life categories. In its fourth year to participate in the annual survey, Baker Donelson achieved a ranking of tenth in the overall Best Law Firms to Work For list. The Firm also achieved a first place ranking in the category of Transparency, and achieved rankings among the top five law firms nationally in the categories of Formal Training (third place) and Informal Training and Mentoring (fifth place). Sounds like a great place to work – I wonder whether they’re hiring?

Joseph (Rusty) P. Carolan III, Esq., and **J. Jeffrey Deery, Esq.**, shareholders at **Wind-erweedle, Haines, Ward and Woodman, P.A.**, were selected as Top Rated Lawyers in Banking & Finance by American Lawyer Media and the Martindale-Hubbell Law Directory. Because of their AV Preeminent Rating with Martindale-Hubbell, both attorneys were featured in special sections of the September 2013 issues of *The American Lawyer*, *The National Law Journal*, and *Corporate Counsel*.

John V. Colvin, Esq., a partner at **Mooney Colvin, P.L.**, is now a member of The National Trial Lawyers: Top 100 Trial Lawyers. Membership is by invitation only and extends to individuals who exemplify superior qualifications, trial results, and leadership in their respective state or major geographical area. John’s invitation was based on his exceptional performance in the practice area of civil plaintiff law.

Gregory Herbert, Esq., a shareholder at **Greenberg Traurig P.A.**, was named as Intellectual Property Litigation "Lawyer of the Year" in The Best Lawyers in America 2014 list. I don't know about you, but "Lawyer of the Year" sounds like a big deal to me. So if anyone tries to reprint this column without my permission, I know who I'm calling first.

Andrew M. Gluck, Esq., an attorney at **Lowndes, Drosdick, Doster, Kantor & Reed P.A.**, was elected as chairman of the Orange County Board of Directors of the Boys and Girls Clubs of Central Florida. Andrew has served on the board for more than five years and most recently served as vice-chairman.

And last but not least, **Steven M. Seibert, Esq.**, a founding partner at **triSect, LLC**, has been selected by the Environ-

mental and Land Use Law Section of The Florida Bar as the 2013 recipient of the Bill Sadowski Memorial Public Service Award, which honors him for his "outstanding record of public service in environmental and land use law."

For those of you who have not yet been mentioned in a *Hearsay* column this year, your time is running out, so hurry up and get appointed to a board!

And when you do, please send the announcement, along with any other newsworthy items, to our communications manager, Peggy Storch, at peggys@ocbanet.org, or to myself at chris@tadyates.com. Have a great Halloween, and see you next month!

Christine A. Wasula, Esq., currently of counsel at the Law Office of Tad Yates, P.A., has been an OCBA member since 2003.

Judicial Relations Committee

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Q: What would you have done if you were not a lawyer?

A: If I had been better at math, I would have gone to medical school.

Q: What advice would you give today's young lawyers?

A: Learn the rules, whether civil, criminal, domestic, or federal. Read, understand, and follow them.

Emily Hansen-Brown, Esq., practices with The Stewart Law Group, P.L. She has been a member of the OCBA since 2010.



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EDUCATION / QUALIFICATIONS:

- B.A. Economics, University of Florida
- J.D., University of Florida College of Law
- Advanced Negotiation Program, Harvard University Law School
- Florida Supreme Court Certified Circuit Civil Mediator
- Certified U.S. District Court Mediator, Middle District of Florida
- Florida Supreme Court Certified Appellate Mediator

MEMBERSHIPS:

- Fellow, American College of Civil Trial Mediators (ACCTM)
- National Academy of Distinguished Neutrals
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covered that the screen was timing out in 30 seconds, which was not enough time to accommodate the transfer. FCCC has increased the period before the screen times out from 30 to 60 seconds.

Q: Sometimes, the portal doesn't allow us to file or even to log on. At times it has taken a couple of days to gain access.

A: That should not happen. Only once has the entire portal system gone down for several hours. That was because the Internet provider was down across the Southeast. Redundancy has since been provided through a back-up Internet provider. Without more specifics, it is difficult to answer this question. If you're unable to access the portal, check your browser. The portal is compatible with the latest versions of Internet Explorer, Chrome, Firefox, and Safari.

Q: Sometimes the portal will not upload more than one document at a time.

A: There is a 10MB size per document and a 25MB limit per submission (total of all documents). If the submission exceeds the size limit, the filer will need to break them up into more than one submission.

Q: There have been a few times when only the attorney of record is receiving the clerk's notices of filings, not the paralegal, even though both email addresses are in the system.

A: Check your email "Trash" folder for the notices. If the notice of filings are there, add the domain name "myflcourtcass.com" to your list of permitted email addresses.

Q: What is the process for filing proposed orders or correspondence for counties that don't have a document type for these items?

A: In Orange County, proposed orders are not filed through the portal. Proposed orders are to be sent directly to the judge with a copy of the corresponding motion. For other counties, check their web site or look in the "News and Information" section in the county's portal page.

Q: Is it possible to review documents filed by others on the portal?

A: You will have access to the electronic record, including the docket sheet and documents filed, in cases where you are the counsel of record and have filed electronically to the case. The link to the electronic record appears on your "My Trial Court Filings" page.

Q: Shouldn't the portal be able to accept both the notice-of-appeal fee and the appellate court fee? That's not true with many counties.

A: This is functionality that will be available in the near future. When the District Courts of Appeal go live on the portal, you will be able to pay both fees there. In Orange County, the notice-of-appeal fee is paid through the portal. The appellate court fee is paid with a check made out to the 5th DCA and mailed to the Orange County Clerk's Office. We forward the check.

Q: In Orange County, there is a Uniform Order Setting Trial that requires parties to file a joint pretrial statement. The order requires witness and exhibit lists to be attached. That would seem to mean filing one document. When I did that, however, I received a

message from the portal to resubmit as separate documents. Why order the filer to do one thing and then reject it?

A: In Orange County, we have recently instructed our staff to approve these as submitted, whether as one or two documents.

Q: It would be helpful if the case name appeared in the filing notifications and other emails from the portal.

A: That will indeed be rectified in the next system upgrade, which is scheduled for later this year.

Q: When having issues with the portal, filers often get ping-ponged back and forth between the FCCC help desk and the clerk's office. Is that being resolved? Also it can take a long time to get a response to complaints sent via email to the FCCC help desk.

A: To address this concern, in late June the Orange County Clerk of Court established a dedicated phone line (407-836-2322) for electronic filers to reach a knowledgeable deputy clerk. Even when the problem is at the ePortal and not specific to Orange County, we can get a message to the ePortal staff to alert them to the issue.

For questions about clerk's offices outside of Orange County, we suggest checking their web sites or looking in the "News and Information" section on that county's portal page.

Submitted by **Leesa Bainbridge**, Clerk of Courts office.



JEFFREY M. FLEMING, MEDIATOR

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ProfessionalismCommittee
continued from page 4

civilly and respectfully make a record and move on with your case.

Q: You next mentioned "The Stalled Judge," what is that difficulty?

A: That difficulty usually arises when the judge has motions under advisement, but months or years go by without a ruling. The judge is stalled, the litigation is stalled, and justice is stalled.

Q: What should lawyers do when this happens?

A: Lawyers are understandably hesitant to inquire when to expect a ruling because they do not want to offend the judge. Their clients, however, want and deserve a prompt ruling. The tip I have for counsel is to inquire not of the judge or even the judge's staff, but of the clerk of court's office, and preferably, jointly with all the lawyers in the case. Inquiry with all counsel at least takes a little of the concern out of making the inquiry.

In my court, we have codified procedures in Local Rule 78.5, allowing a party to make a request to the clerk in writing for a report on the status of a motion pending before a judge seven months or more, or fully briefed for 60 days or more without a ruling. Thereafter,

[t]he clerk will thereupon notify the judge before whom the motion is pending that a request has been received for a status report on the motion. The clerk will not disclose the name of the requesting party to the judge. If the judge provides information on the status of the motion, the clerk will notify all parties. If the judge does not provide any information within 10 days of the clerk's notice to the judge, the clerk will notify all parties that the motion is pending and that it has been called to the judge's attention.

Lawyers facing this difficulty should see if the court has a similar local rule. If not, lawyers should address the problem by following the same procedure and informing the clerk that other courts have such a procedure.

Q: What is the difficulty with "The Intrusive Judge?"

A: This difficulty occurs when the judge, who in federal court has the authority to

ask witnesses questions and comment on the evidence, does so in a way that is prejudicial to one side or the other.

The tip to counsel comes from my law school evidence professor, a former trial lawyer who became a mentor of mine. He later became a federal district judge, Judge Prentice H. Marshall, and preceded me on my court in Chicago. The advice was, "If the trial judge becomes your opponent, you have to treat the judge as you would an opponent, and even object to the judge's questions if necessary. You owe it to your client to do so."

I tried several cases before Judge Marshall, and on one occasion he questioned one of my witnesses too far. I objected and asked for a sidebar. I said to him at the sidebar, "Your Honor, I once had an evidence professor who told me, 'If the trial judge becomes your opponent, you have to treat the judge as you would an opponent.'" Judge Marshall responded, "I think I know that professor," sustained my objection to his own question, and after the trial was over he told me he was proud of me.

Your experience, if you have to object to "The Intrusive Judge," may not end as pleasantly as mine, but you have to do it. As Judge Marshall told me, "You owe it to your client."

From *The Briefs* editors: Part 2 of the interview with Judge James F. Holderman will appear in the November 2013 issue of *The Briefs*.

Judge James F. Holderman is an active district judge of the U.S. District Court for the Northern District of Illinois who served as the chief judge of that court from July 1, 2006 to July 1, 2013. He served as president of the Richard Linn American Inn of Court from July 1, 2012 to July 1, 2013, and has been a member of the Chicago American Inn of Court since its founding in 1988.

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to do what you say, whether it is wise or unwise. The goal is never to convince the other side you are right about the case, as opposing counsel literally are paid not to agree. The goal from the start is to convince the other side that your target is really your bottom line and to get the other side to reach or exceed its reserve.

Tip #10: Balance Puffing with Credibility.

The law allows puffing about possibilities of settlement or as to what a party might be willing to accept. Rule 4-4.1 of the Rules of Professional Conduct is titled "Truthfulness in statements to others." The comment following the rule states that a lawyer is required to be truthful as to statements of fact, but that "[u]nder generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact." It specifies that "[e]stimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category." The rule basically carves out an exception to the rule against making untruthful statements. Thus, you are ethically allowed to say, "This is a final offer" even if you know

it is not, although query whether that is advisable for your client.

Some lawyers expect opposing counsel to be puffing at mediation and expect their adversary to call them out on it. However, do not lose credibility. If you say "final offer" and continue to negotiate, you have cried wolf. Another way to lose credibility is to make an outrageous opening demand and then huge concessions. In one case, a plaintiff's attorney made an opening demand of \$15M and a follow-up demand of \$5M. At the end of the day he took only \$85,000. As he was walking out of the building, he asked the mediator whether he could have done better, and the mediator said, "Yes."

Sometimes a lawyer will insist that one point is non-negotiable and then offer it away later, which hurts credibility. Remember that whether the other side settles depends, at least in part, on whether the other lawyer believes you have moved as far as you will go, and therefore credibility matters.

One way to establish credibility is to respond to an unacceptable offer by simply saying "no." It is amazing how difficult it is for some lawyers to just say "no." Some law schools videotape their students saying "no" just to help them study all the non-

verbal signals and hesitations that might indicate serious consideration of the offer. If you say you are "about at the end of your rope," "the train is leaving the station," or the like, all you are really saying is "there is more money left."

Any phrase or expression that is not a "yes," is just a "no" with several qualifiers that might give away your mental impressions. Even with the mediator you do not have to be totally frank, such as blurting out your bottom number from the start, but the mediator eventually will need to know how much money there really is left to spend, because an apparent impasse might be avoided. Often if the mediator really needs to know the truth about where things are headed, it will be in a hallway chat. Of course, a lawyer must be careful not to give away client confidences when talking to the mediator in the hallway. See Fla. Stat. § 44.405 regarding the lack of confidentiality for mediation communications offered to prove malpractice (e.g., breach of attorney-client privilege). The bottom line is to observe the principles of puffing while at the same time maintaining credibility during mediation.

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

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Special

Mellanie Griffin, Esq.

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caring, and hard-working young lawyers I know," says Renee E. Thompson, Esq., past president of The Florida Bar Young Lawyers Division.

In an effort to pay it forward, Melanie serves on the Seminole Torchbearers board of directors for Florida State University, is a member of Women in Leadership and Philanthropy at the University of South Florida, and has served on the Board of Visitors at the FAMU College of Law. Melanie, who received a Martindale-Hubble AV rating in just her fourth year of practice, has received numerous awards over the years.

Good friend Barbara Leach, Esq., says: "Melanie is an inspiration to everyone she meets. She motivates people to be more – more professional, more philanthropic, and more gracious. She brings out the best in people. I am constantly learning from her." Darryl Bloodworth, Esq., a Dean Mead founder and shareholder comments: "She is a great leader as has been recognized by her contemporaries on the Young Lawyers board. She is, without doubt, the most outstanding young lawyer I have had the pleasure of knowing or working with."

Congratulations, Melanie!

Jennifer Rhoads, Dean Mead marketing department.



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email him at njblaher@blaherlaw.com, with a copy to Donna Haynes at dhaynes@legalaiddocba.org.

For more information about *pro bono* legal services contact Cathy Tucker at ctucker@legalaiddocba.org, or Susan Khoury at skhoury@legalaiddocba.org. For information regarding the Breakfast of Champions, contact Donna Haynes at 407-515-1850 or dhaynes@legalaiddocba.org.

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

Special Feature: Damages

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¹*Diamond Aircraft Industries, Inc. v. Horowitz*, 107 So. 3d 362, 365 (Fla. 2013).

²*Id.* at 366.

³*Id.* at 371.

⁴*Id.* at 372; see also *Winter Park Imports, Inc. v. JM Family Enters.*, 66 So. 3d 336, 340 (Fla. 5th DCA 2011); see also *Palm Beach Polo Holdings, Inc. v. Equestrian Club Estates Prop. Owners Ass'n, Inc.*, 22 So. 3d 140, 143–44 (Fla. 4th DCA 2009).

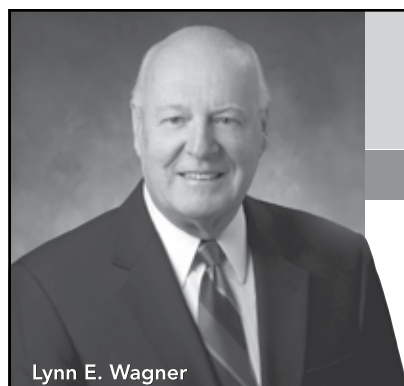
⁵See *Diamond Aircraft*, 107 So. 3d at 372.

⁶See, e.g., *Nat'l Idem. Co. v. Consol. Ins. Servs.*, 778 So. 2d 404, 408 (Fla. 4th DCA 2001); see also *Dipompeo Constr. Corp. v. Kimmel & Assocs., Inc.*, 916 So. 2d 17 (Fla. 4th DCA 2005).

⁷See *Diamond Aircraft*, 107 So. 3d at 376.

⁸*Id.* at 378.

⁹*Id.* at 376.



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What You Don't Know About Your Court Reporter May Hurt Your Case

Price is what you pay. Value is what you get.
—Warren Buffett

As more court reporting vendors enter the market place, attorneys and paralegals have their pick of who can provide a verbatim record of their court proceedings and depositions. Central Florida alone has well over 300 court reporting agencies, varying from large national companies to small “mom and pop” reporters who simply freelance with a few firms. The qualifications a reporter must have by which he or she can provide an official record vary state by state and can greatly impact the level of service a client receives from his or her reporter.

Unlike many states, the state of Florida does not have a mandatory certification program or exam requirement for stenographers and digital court reporters. To date, any type of certification including the Registered Professional Reporter (RPR) designation, is only voluntary.

Your Record is only as Good as Your Court Reporter

In a 2010 survey of litigation costs, Fortune 200 companies reported spending nearly \$115 million for outside counsel representation, an increase of 73% since 2000. Nearly 60% of the \$4.1 billion in aggregated spending among the companies surveyed was for external costs associated with litigation support and administration, such as court reporting and e-discovery services.¹ The number one consideration successful corporations look for in a law firm for hire is qualifications of the attorneys and paralegals working for them. Shouldn't you consider the same when hiring a court reporter?

Complex matters require skilled stenographers who have demonstrated an advanced level of accuracy perfecting the science and art of shorthand, verbatim reporting. At a minimum, a Registered Professional Reporter (RPR) must pass a rigorous examination that includes both speed and accuracy skills as well as a written knowledge test. Certified Realtime Reporters (CRR) pass a three-step examination process, including writing realtime for five minutes at a 96% accuracy rate from recorded two-voice Q & A material at 200 words per minute. By hiring a certified RPR, or realtime reporter, you are guaranteed the record upon which you complete your discovery is accurate and is one the reporter can testify to if necessary.

Standard Operations Versus Best Practices

In an industry where rates are based upon insur-

ance contracts and preferred pricing for contingency cases, court reporting companies are always looking for ways to maintain profits and reduce costs. Some court reporting businesses are operating under the assumption that “what customers don't know won't hurt them.”

Because certifications and high-level qualifications of reporters are strictly voluntary in Florida, more firms are being introduced to a form of reporting whereby a non-stenographic reporter, who is simply a notary public, appears at the deposition or court proceeding with a laptop and a tape recorder. The audio is recorded and later, when the official record is ordered, it is produced by a typist. Often, the attorney and paralegal do not realize the record is not being transcribed during the event.

This type of digital recording brings the record's value and integrity into question since inaudible sounds are common when several participants are speaking at the same time. The cost to the court reporting company to produce the transcript in this manner is far less than by hiring a stenographer or RPR. However, typically the per page rate remains the same to the client regardless of whether a stenographer is present at the event or not. Clients report this type of recording most often occurring during examination under oath (EUO), or charge not applicable (CNA) situations when a transcript is usually not ordered. Cutting corners on quality to reach higher profits can have consequences that may affect the overall success of the case.

Questions to Consider When Hiring a Court Reporter

What training and education has your court reporter completed?

Who will be completing the transcript if ordered?

Is the transcription being outsourced to another country for any reason?

Are there HIPAA issues associated with your case?

How will exhibits and the reporter's notes be electronically stored and for how long?

How will exhibits and transcripts be sent securely to you?

When audio/video files are provided to participants at the proceeding, what precautions are taken to ensure that "off-the-record comments" are really off the record?

April Orlando, U.S. Legal Support, has recently joined the OCBA.

"Litigation Cost Survey of Major Companies," presented at the 2010 Conference on Civil Litigation at Duke Law School; presented by Lawyers of Civil Justice, Civil Justice Reform Group, U.S. Chamber Institute of Legal Reform.



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Michael Hammond, Esq.

The Low Hanging Fruit

In our first series of articles we concentrated on “Who to Talk To” in your word-of-mouth marketing campaign. In the next series we focused on “What to Say.” In this article we will combine the “who” and the “what” to discuss several ways to market your services to *existing clients*. This is called “cross-selling” and is one of the least expensive marketing options available to you. Why? Because you’ve already spent the time, money, and effort to get the client in the door – there are minimal additional marketing costs associated with continuing to serve that client and as a result additional business with them is much more profitable.

Cross-Selling Your Client Base

How profitable is cross-selling? Research studies consistently demonstrate that it costs an average of *five times* more in both time and money to get new clients than it does to get more business from existing clients. It just makes good economic sense to leverage existing business relationships.

Cross-selling is selling additional services to an individual or organization that is already a client. In cross-selling you educate your clientele about your full range of services, with the goal of selling them more of what you have to offer. This includes clients who might need advanced services in the same practice area (more commonly referred to as “up-selling” or “upgrading”) and clients who could be served by another practice area altogether.

Complementary Practice Areas

Once you’ve started seeing clients from the more strategic perspective of a long-term business relationship, your next step is to rate your existing client base and identify strategies for upgrading or cross-selling to them. There is a great deal of potential business and hidden revenue to discover through this process. Ask yourself which clients are viable candidates for additional, further services. Most law firms have complementary practice areas; more than likely yours does as well.

For example, we know a family law attorney who does an outstanding job representing her divorce clients. She maintains close communication with them and they develop a high level of trust in her. In addition to family law, she also does estate planning. At the end of each divorce case, she presents the client with a certificate for a free estate planning consultation. Similarly, many real estate attorneys also practice in the complementary area of estate planning. Post-closing, these real estate attorneys send their clients all of their documents, plus a “thank you” letter which congratulates them on their recent home purchase, reminds them that

acquiring new or additional real property may frequently impact their estate plan and change insurance requirements, and offers the firm’s help with any of the client’s needs in this area.

What Are Your Criteria?

Identify past clients who may be cross-selling candidates by analyzing your client lists. Establish criteria for the services or products you wish to promote to them, and develop a list of attributes that are indicators of these clients’ needs. If your client information is in a database that allows you to sort by given parameters or fields, it will be easy to generate reports or lists of those who meet specific selected criteria. If you are not automated or that well organized, delegate a staff member to hand sort your files using your selected criteria.

For example, an estate planning attorney could search for past clients who might need advanced estate planning services by using sorting criteria like age, asset level, past service provided by the law firm, and business ownership. So, for example, the specific criteria for higher-end estate planning services could be: income above \$3,000,000, 50+ years of age, and an equity position in a family-owned business. Develop similar lists of attributes that are reliable indicators of your clients’ needs and then generate lists of candidates for selected additional services.

The Next Steps

Next, strategize on your own or with other attorneys in your firm about cross-selling or upgrading these groups. To do this, create an offer or opportunity that will interest your clients. For example:

Call clients and schedule a brief, complimentary appointment to update their files and discuss a particular legal concern of theirs.

Either by personal letter or phone call, invite a small, select group of clients to attend a complimentary informational session at your office on a specific legal issue – perhaps a significant recent development in the law of a particular practice area. Open the session with an initial presentation, followed by a question-and-answer period. Inform the clients that you will be meeting with them individually after the session.

Develop a survey or needs analysis that can be mailed or given to clients in person. Design this survey as a legal evaluation checklist that will allow clients to discover where they currently stand on select legal issues. Offer them a complimentary session with you or another attorney to discuss the results.

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Rainmaking

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Send a cross-selling letter to clients informing them of further services provided by the firm. For example, let them know that in addition to employment law, your firm has expertise in a wide variety of other practice areas, including family law, estate planning, and general corporate matters. Offer your clients complimentary consultations in these areas.

Think Like Your Client, Know Your Client

We have all been the target of cross-selling efforts and it's important that we remember what that experience was like and why it did or didn't work for us. For example, has your bank ever approached you about adding a credit card, a retirement account, or meeting with one of their financial advisors? Odds are that if you said "yes" to any of those offers, you did so because you saw a direct and immediate personal benefit. In order to maximize your cross-selling success, it is crucial that you understand the situation from your client's perspective. You will be far more successful with cross-selling if you view it as a way of providing even more help to your clients based upon a more complete understanding of their needs.

Lawyers will come to know the best opportunities to help their clients if they've invested the time to more thoroughly know and un-

derstand their clients' needs. Jim Hassett, president of LegalBizDev and author of *Legal Business Development: A Step by Step Guide*, offered this advice in a recent blog posting: "Start by listening and by asking about the problems and opportunities that face the client, and then considering how the firm might help. When lawyers ask the right questions – and then actively listen to the answers – they often uncover legal needs that the client is not even aware of." It's far better for you to know enough about your client that you can almost anticipate his or her needs, instead of just hoping that you guessed right or that you were lucky enough to ask him or her at the right time. The real key to successful cross-selling – and to maintaining growing, long-term client relationships – is to do whatever you can, whenever you can, to learn as much as you can about your client.

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

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- More than 30 years of legal experience
- LL.M. from George Washington University
- Admitted in Florida, Louisiana and D.C.



**Michael L. Smith,
R.R.T., J.D.**

- Board Certified by The Florida Bar in Health Law
- B.S. Nova Southeast University
- J.D., Stetson University College of Law
- Registered Respiratory Therapist
- Licensed in Florida

- | | | | |
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Associate

Cory B. Suter, Esq. - *Stovash, Case & Tingley, P.A.*

Timothy W. Sobczak, Esq. - *Dean, Mead, Egerton, Bloodworth, Capouano & Bozarth, P.A.*

Speaking Engagements

Catherine T. Hollis, Esq., The Health Law Firm, delivered a lecture to Florida Hospital's family medicine residents and medical students on August 7, 2013. The topic focused on contracting for physicians and health professionals, primarily by discussing employment agreements. Other members of the firm co-presented.

Events

Oct. 6 – *Susan G. Komen Race for the Cure*. Paralegal Section. 8:00 a.m. UCF Bright House Networks Stadium. See OCBA website for details.

Oct. 24 – *Lawyers for Literacy Spelling Bee*, hosted by YLS. 5:30 p.m. DoubleTree, 60 S. Ivanhoe Blvd., Orlando, FL 32804. For details, see the OCBA website calendar.

Oct. 29 – *YLS Halloween Party and Mock Trial for Children at the Women's Residential Counseling and Treatment Center*. 5:30 p.m. For details, see the OCBA website calendar.

Nov. 7 – *6th Annual Breakfast of Champions* to benefit the Legal Aid Society of the Orange County Bar Association, Inc. 7:30 a.m. - 9:00 a.m. Church St. Ballroom, 225 S. Garland Ave., Orlando, FL 32801. For details, see the ad in this issue of *The Briefs*.

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

Nov. 20 – *Joint Happy Hour*, hosted by the OCBA and other Voluntary Bars. 5:30 p.m. - 8:00 p.m. Don Jefe's, 41 W. Church St., Orlando, FL 32801. Details to come.

Seminars

Oct. 8 – *eRecording Seminar* sponsored by Corporation Service Company®. Learn about eRecording during one of three one-hour sessions being held at 8:00 a.m., 10:00 a.m., and 1:00 p.m. To register, contact: Marie West at mariew@ocbanet.org, indicating which session you will attend.

Oct. 8 – *Achieving Permanency for Dependent Youth: Essential Advocacy Strategies for GALs*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: Kavita Sokrajh, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Oct. 10 – *Real Life Professionalism and Ethics in the Trial Practice*. Brown Bag Lunch with Judge J. Kest. 12:00 p.m.-1:15 p.m. CLE: 1.5. Orange County Courthouse, 23rd Fl., Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. Please feel free to bring a sandwich; water will be provided. To register, contact: Diane Iacone at ctjadi1@ocnjcc.org or 407-836-0443.

Oct. 12 – *Get Plugged In: Mastering the Use of Technology in the Legal Field*. Major Seminar. Paralegal Section Fall Seminar. 7:30 a.m.-5:00 p.m. DoubleTree Hotel, 6. S. Ivanhoe Blvd., Orlando, FL 32804. For details, see the OCBA website calendar.

Oct. 15 – *Appeal This; Preserve That*. Solo & Small Firm Committee Seminar. 11:45 a.m.-1:00 p.m. OCBA Center. CLE: 1.0 general; 0.5 Certification in Appellate Practice. Speaker Nicholas Shannin, Esq. Free for OCBA members; \$20 for non-members. To register, go to the OCBA Store.

Oct. 16 – *Labor & Employment Law Committee Seminar*. 12:00 p.m.-1:00 p.m. OCBA Center. CLE: pending. Details TBA. Free for OCBA members; \$20 for non-members. To register, go to the OCBA Store.

Oct. 22 – *Basic Dissolution of Marriage Part I*. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Center. CLE: pending. Speaker: Angel Bello-Billini, Esq. To register, contact: Marilyn Carbo at mcarbo@legalaiddocba.org or 407-841-8410, ext. 3121.

Oct. 25 – *Focus on Foreclosures*. Brown Bag Lunch with 9th Judicial Circuit Magistrates. A discussion with emphasis on Rule 1.490 of the Florida Rules of Civil Procedure, as amended, to allow magistrates to handle foreclosure actions. 12:00 p.m. Orange County Courthouse, 23rd Fl. Conf. Rm. Contact: Lawrence Kolin at ctgmlk1@ocnjcc.org.

Nov. 7 – *Civility Matters*. Professionalism Committee and the Central Florida Chapter of ABOTA. Pizza and Professionalism Series. 12:30 p.m. (4:45 p.m. for attorneys). Barry University School of Law, 6441 E. Colonial Dr., Orlando, FL 32807. For more information, contact Jim Edwards at jimedwards@zkslawfirm.com.

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

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

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

Other News

The University of Central Florida Department of Legal Studies will be hosting the South Atlantic Regional Moot Court Tournament on November 15 and 16, 2013, on UCF's main campus. More than 100 students will be participating. UCF has relied upon and appreciated the support of OCBA members who have served as judges in the past and is asking for the bar's support again this year. **Ninety lawyers are needed to serve as judges!** If you would like to volunteer your time and talent for this exceptional program, please contact Cindy Schmidt, UCF Center for Law and Policy Director, Legal Studies, at cynthia.schmidt@ucf.edu or 407-823-1670. **Sign-up deadline: November 1, 2013.**

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THE UMANSKY LAW FIRM, a AV rated Orlando boutique firm seeks a criminal defense attorney with 2-5 years of prosecution and/or public defender experience. Candidate must be extremely hardworking and outgoing with a desire to both resolve and try criminal cases. Must have good sense of humor and a zest for living life. Send resume and salary requirements to ltorres@thelawman.net.

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.

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IN THE ORPHANS' COURT DIVISION OF THE COURT OF COMMON PLEAS OF

WESTMORELAND COUNTY, PENNSYLVANIA

IN RE :

ADOPTION OF :

: No: 27 OF 2013

Tiara Tatyana Pickett-Long :

(Adoptee's name as on birth certificate) : ATTORNEY: MaryAnn Grec

NOTICE

(Involuntary Termination)

TO: Joshua James Long, birth father of Tiara Tatyana Pickett-Long

A petition has been filed asking the court to put an end to all rights you have to your child Tiara Tatyanna Pickett-Long. The court has set a hearing to consider ending your rights to your child. That hearing will be held before the Honorable Judge Feliciani in Courtroom # 10, Westmoreland County Courthouse, 2 North Main St., Greensburg, Pennsylvania 15601, on the 9th day of December, 2013 at 9:00 A.M. You are warned that even if you fail to appear at the scheduled hearing, the hearing will go on without you and your rights to your child may be ended by the court without your being present.

You are notified of Act 101 of 2010 which allows for an enforceable voluntary agreement for continuing contact of communication following an adoption between and adoptive parent, a child, a birth parent and/or birth relative of the child, if all parties agree and the written voluntary agreement is approved by the court.

YOU HAVE A RIGHT TO BE REPRESENTED AT THE

HEARING BY A LAWYER. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP. THIS OFFICE CAN PROVIDE YOU WITH INFORMATION ABOUT HIRING A LAWYER.

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OCBA Calendar

OCTOBER - NOVEMBER

October

- 1 Professionalism Committee**
12:00 p.m. • OCBA Center
- 2 Business Law Committee**
12:00 pm. • OCBA Center
- 6 Paralegal Section**
Susan G. Komen Race for the Cure
8:00 a.m. • UCF Bright House Networks Stadium
- 7 Estate, Guardianship & Trust Law Committee**
12:00 p.m. • OCBA Center
- 8 CSC eRecording Seminar**
8:00 a.m.; repeated at 10:00 a.m. and 1:00 p.m.
OCBA Center
- LAS Lunchtime Training**
*Achieving Permanency for Dependent Youth:
Essential Advocacy Strategies for GALs*
12:00 p.m. • Mark St. Senior Center
- 9 Lawyers Literary Society**
12:00 • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- 10 Brown Bag Lunch with Judge J. Kest**
*Real Life Professionalism and Ethics in the
Trial Practice*
12:00 p.m. • Orange County Courthouse
23rd Fl., Judicial Conf. Rm.
- Social Security Committee**
12:00 p.m. • OCBA Center
- 11 Family Law Committee**
*Judicial Assistants/Magistrates Assistants
Luncheon*
11:45 a.m. • Citrus Club
- 12 Paralegal Section Fall Seminar**
*Get Plugged In: Mastering the Use of
Technology in the Legal Field*
7:30 a.m. • DoubleTree Hotel
- 14 Estate, Guardianship & Trust Law
Committee**
12:00 p.m. • OCBA Center
- 15 ADR Committee**
7:30 a.m. • Dean, Ringers, Morgan &
Lawton, P.A.
- Solo & Small Firm Committee Seminar**
Appeal This: Preserve That
11:45 a.m. • OCBA Center
- Social Committee Meeting**
11:45 a.m. • Location Varies
- 16 Elder Law Committee**
12:00 p.m. • OCBA Center

**Labor & Employment Law Committee
Seminar**
12:00 p.m. • OCBA Center

- 17 Technology Committee Meeting**
12:00 p.m. • OCBA Center
- 18 Family Law Committee**
12:00 p.m. • OCBA Center
- 22 LAS Lunchtime Training**
Basic Dissolution of Marriage Part I
12:00 p.m. • Marks St. Senior Center
- 23 Appellate Practice Committee**
12:00 p.m. • OCBA Center
- 24 OCBA Luncheon**
Miguel Alexander Pozo, Esq.
**President of the Hispanic National
Bar Association**
11:30 a.m. • Church Street Ballroom
Sponsored by BMO Harris Bank
- 4th Annual
Lawyers for Literacy Spelling Bee**
5:30 p.m. • DoubleTree Hotel
- 25 Bankruptcy Law Committee**
11:30 a.m. • OCBA Center
- 29 YLS Halloween Party
& Mock Trial for Children**
5:30 p.m. • Women's Residential and
Counseling Center

November

- 4 Paralegal Section Meeting**
12:00 p.m. • OCBA Center
- 5 Estate, Guardianship & Trust Committee**
(Note date change)
12:00 p.m. • OCBA Center
- Professionalism Committee**
12:00 p.m. • OCBA Center
- 6 Business Law Committee**
12:00 p.m. • OCBA Center
- 7 6th Annual Breakfast of Champions**
7:30 a.m. • Church Street Ballroom
- Professionalism Committee &
ABOTA Professionalism Series**
Civility Matters
12:30 p.m. & 4:45 p.m. • Barry University
School of Law
- 12 LAS Lunchtime Training**
Temporary Custody: Chapter 751
12:00 p.m. • Marks St. Senior Center

OCBA October Luncheon

October 24, 2013
Miguel Alexander Pozo, Esq.
President, Hispanic National
Bar Association
RSVP by October 18 to
www.orangecountybar.org/store
Co-hosted by the Hispanic Bar Association
of Central Florida

Sponsored by BMO Harris Bank

Intellectual Property Committee
12:00 p.m. • OCBA Center

13 Veterans Committee
12:00 p.m. • OCBA Center

Lawyers Literary Society
12:00 p.m. • OCBA Center

14 Technology Committee
12:00 p.m. • OCBA Center

Social Security Committee
12:00 p.m. • OCBA Center

15 Family Law Committee Seminar
How Immigration Affects Family Law Cases
12:00 p.m. • OCBA Center

19 ADR Committee
7:30 a.m. • GrayRobinson

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

20 Elder Law Committee
12:00 p.m. • OCBA Center

Joint Happy Hour
OCBA and Voluntary Bars
5:30 p.m. • Don Jefe's, 41 W. Church St.

21 OCBA Luncheon
Lt. General Thomas L. Baptiste
National Center for Simulation
11:30 a.m. • Church Street Ballroom
Sponsored by: LexisNexis

27 Appellate Practice Committee
12:00 p.m. • OCBA Center

Judicial Relations Committee
12:00 p.m. • 23rd Fl., Conf. Room, Orange
County Courthouse

28 & 29
Thanksgiving Holiday
OCBA Office Closed

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