

the Briefs

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Inside this Issue:

Recognition Luncheon

The Hon. Patricia C. Fawcett

The Hon. Charles T. Wells

The Hon. Robert J. Pleus, Jr.

Celebrating 75 Years of Excellence

The History of the OCBA in the 1990s

Judith Anne Garabo Hayes

Professionalism Committee

Awards and Standards – Standards and Rewards

Magistrate Howard D. Friedman

Labor and Employment Committee

President Signs Law Expanding Disability

Rights in Employment

John S. Lord, Jr.

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Table of Contents:

President's Message	3
<i>Florida Registered Paralegal Program</i> Tad A. Yates	
Editor's Note	4
Thomas A. Zehnder	
Recognition Luncheon	6
The Hon. Patricia C. Fawcett The Hon. Charles T. Wells The Hon. Robert J. Pleus, Jr.	
Professionalism Committee	9
<i>Awards and Standards – Standards and Rewards</i> Magistrate Howard D. Friedman	
75 Years of Excellence	10
<i>The History of the OCBA in the 1990s</i> Judith Anne Garabo Hayes	
Labor and Employment Committee	12
<i>President Signs Law Expanding Disability Rights in Employment</i> John S. Lord, Jr.	
Legal Aid Society News	13
<i>Personal Comments on Pro Bono Service</i> William A. Davis, Jr.	
What We Do . . . Change the World	14
Donna Graf	
Solo & Small Firm Committee	16
<i>The Biggest Leap of Faith You'll Ever Take</i> Shane E. Fischer	
Judicial News	19
The Hon. Alice Blackwell The Hon. Gregory J. Kelly The Hon. Robert J. Egan	
Law Firm Spotlight	20
<i>Foley & Lardner Embraces Pro Bono with a Passion</i> John R. Hamilton	
Hearsay	22-23
Nicholas A. Shannin	
YLS on the Move	24
<i>Fall Fun</i> Bridget Heffernan Labutta	
Entertainment Law Committee	26
<i>A Muggle Perspective for Fan Fiction: Potential Implications of Warner Bros. Entertainment Inc. v. RDR Books</i> Jonathan L. Innes	
Side Bar	28
Jessica K. Hew	
Presentation Skills for Lawyers	29
<i>Trust Me, I'm a Lawyer!</i> Elliott Wilcox	
Rainmaking	30
<i>Can Tracking Your Marketing Efforts Make You More Money? Part I</i> Mark Powers and Shawn McNalis	
New Members	32
Announcements	34
Classifieds	39
OCBA Calendar	44

the Briefs

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Did you realize that on March 1, 2008, the Florida Registered Paralegal Program began in our state? It was news to me until OCBA Affiliate Members **Lissa Bealke** and **Lori Spangler**¹ came to me with the request that the OCBA consider creating an OCBA Paralegal Section to give more recognition to the professionals in our legal community who meet the high standards required



Tad A. Yates

for designation as a Florida Registered Paralegal by The Florida Bar. Florida is one of a number of states which has now created a separate division of its bar association for paralegals. Texas was the first in 1981. Likewise, there are now a number of states which offer paralegal certification through their bar associations.

To give you some additional information on Florida's program, portions of a press release issued last year by The Florida Bar follow:

The Florida Supreme Court unanimously approved creation of the Florida Registered Paralegal Program, which provides for voluntary registration of paralegals who meet minimum educational, certification, or work experience criteria, and who agree to abide by an established code of ethics. The goal is to better serve the public by establishing high professional standards for a profession that has been largely self-regulated.

The program, which begins on March 1, 2008, sets up a two-tier system for registering paralegals and also creates a disciplinary system and a Code of Ethics and Responsibility. Registration applications will be available at a future date.²

The first tier encompasses paralegals as currently defined by a Bar rule (10-2.1). This rule describes a paralegal as someone qualified with education, training or work experience and who, under the supervision of a lawyer, performs delegated, substantive work for which the lawyer is responsible. Tier two paralegals would have to meet experience, education and continuing education criteria to become registered and then could hold themselves out as "Florida Registered Paralegals."

¹ Since 2003, Lissa and Lori have served as Co-Chairs of the Law Week Committee for the OCBA. They have worked tirelessly for our organization. The Executive Council of the OCBA thanks Lissa, Lori and the rest of the OCBA Paralegal Committee for the great contributions they have made to the OCBA!

² The applications are now available at www.flabar.org.

The new plan also has a grandfathering provision allowing paralegals who can show substantial experience, but who don't meet the education or certification requirements, to become registered paralegals. That provision is limited to the first three years of the program.

The new rules do not establish "regulation" of paralegals. Primary responsibility for monitoring paralegals -- whether they are Florida Registered Paralegals or not -- still rests with lawyers who employ them and direct their substantive legal work. "This responsibility cannot be delegated, and this voluntary registration program does not relieve the lawyer of that critical responsibility," the court said.

The Florida Bar special committee that proposed the program began meeting in 2005 after bills were introduced in the Legislature that proposed a regulatory system for paralegals. Those bills, backed by paralegal organizations, would have had regulation overseen by the Department of Business and Professional Regulation.

Florida Alliance of Paralegal Associations Inc. President Tana J. Stringfellow said her organization has diligently pursued meaningful regulation for paralegals for many years. "It is through the efforts of many dedicated paralegals that this program has become a reality," she said.

First Circuit Judge Ross Goodman chaired the special committee, which also included paralegal professionals and public members. He said he is pleased with the Nov. 15 Florida Supreme Court ruling and credited paralegal organizations that have been working for so long to get a paralegal regulatory plan in place.

"This was an honest effort brought about by people who did not all agree on everything, but they agreed to try to work around their disagreements," said Goodman. "I think what we came up with was a really good start." He also noted that while the plan is not mandatory now, it may be some day, depending on how the state's paralegals embrace it.

Now you know a bit more about The Florida Bar's Program, which as of September 1, 2008, had 2,111 registered paralegals. Lissa and Lori have suggested the creation of the OCBA Paralegal Section, membership in which would require Registered Paralegal designation by The Florida Bar. Although their proposal does not include a request for voting rights within the OCBA, they do hope that the OCBA will give this group section status for purposes of electing

continued page 4

President's Message

continued from page 3

its own officers in the same manner as the YLS does.

The OCBA has the opportunity to be the first local bar association in the State to undertake the creation of such a section for those affiliate members who receive Florida Registered Paralegal (FRP) designation. I think this is a great opportunity to recognize

Editor's Note: In September's issue of *The Briefs*, we ran an article in our *Rainmaking* series entitled "A Simple Way to Increase Referrals – Learn to Say Thank You." In the article, the authors suggested one way to bolster referral relationships was to send thank you gifts to your referrals sources such as a basket of cookies, a bottle of wine, a favorite cigar or a restaurant gift certificate. While everyone agrees cultivating referral relationships is vital to a successful practice, we all must be mindful of Rule 4-7.2(c)(14) of the Rules of Professional Conduct, which prohibits a lawyer from giving anything "of value" to a person for recommending the lawyer's services, with certain exceptions. According to The Florida Bar, while there is no bright line test for determining what is a gift "of value," the better practice is to thank your referral sources with a personal thank you note, card or letter, thereby avoiding the possibility of the rule's application. We encourage all OCBA members to contact The Florida Bar with any questions or concerns about the application of Rule 4-7.2(c)(14). Special thanks to OCBA member **Louise B. Zeuli** for bringing this important issue to our attention.



Thomas A. Zehnder, Co-editor of *The Briefs*, is a partner with King, Blackwell, Downs & Zehnder, P.A. He has been a member of the OCBA since 1996.

the importance of these professionals to the legal community in general and, specifically, to the OCBA. With designation as a Registered Paralegal comes a requirement of continuing legal education. CLE requirements offer the OCBA an opportunity to serve FRPs, their law firms and their clients through the offering of quality seminars.

As I understand it, many law firms in our community are encouraging support staff to seek out designation as an FRP. **Byrd F. "Biff" Marshall, Jr.** of GrayRobinson says,

Paralegals invest money in education and spend countless hours fine-tuning the knowledge and skills that help bring success to our law firms and the clients we serve. Their commitment to the legal profession should be rewarded. The Florida Registered Paralegal program recognizes the knowledge and professionalism of these gifted individuals. Realizing the benefit of FRP designation, GrayRobinson has paid for all of its qualified

paralegal team members to become registered. In addition, the firm has established a budget so that each GrayRobinson paralegal may pursue opportunities for continuing legal education and may obtain or maintain membership within a professional association, such as the one the OCBA is considering creating.

In August, the Executive Council of the OCBA voted to proceed with drafting bylaw changes for the creation of this proposed Paralegal Section. OCBA President-Elect **Woody Rodriguez** now chairs the committee charged with drafting these proposed bylaw changes. If you have thoughts about the idea of the creation of this new section of the OCBA, please share them with Woody, me or any other member of the Executive Council. Thanks, as always, for your membership in and commitment to the OCBA!

Tad A. Yates is a partner with Kirkconnell, Lindsey, Snure and Yates, P.A. He has been a member of the OCBA since 1994.



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Judge Patricia C. Fawsett earned her B.A., MAT and J.D. degrees from the University of Florida. While in law school she served as the Editor of the Law Review and was awarded the Order of the Coif membership, an honor society for high-achievers in the legal field. Judge Fawsett also attended the University of Vienna through the Institute of European Studies.

Judge Fawsett's legal career began in Orlando's private sector where she practiced from 1973 to 1986. She was a partner in a law firm that specialized in civil litigation. It did not take long for people outside of her firm to notice her or her accomplishments. In 1981, the Downtown Orlando Business District honored her with the Business Woman of the Year award. In 1986 President Ronald Reagan nominated her to the United States District Court, Middle District of Florida (Middle District Court) and she was confirmed by the U.S. Senate that same year. Judge Fawsett served as Chief Judge of the Middle District Court from 2003 to 2008 and currently serves as a Senior Judge.

Throughout her career Judge Fawsett has been involved in several legal and civic organizations. She served as President of the Orange County Bar Association (1981-82) and the Florida Council of Bar Association Presidents (1982-83). Her many contributions to our community included positions such as Director of the Orlando Area Chamber of Commerce (1983-85) and as Commissioner of both the Greater Orlando Crime Prevention Association (1982-85) and the Orlando Housing Authority (1976-81). Judge Fawsett has also served as Trustee for several organizations, including the Orange County Legal Aid Society (1977-81), Loch Haven Art Center, Inc. (1980-1984), the Levin College of Law, University of Florida (2002-05), Negro Spiritual Scholarship Foundation (1999-present) and the Historic Bok Tower Sanctuary (2004-present). Judge Fawsett has traveled to more than 30 countries.



Justice Charles T. Wells assumed his duties as Justice of the Florida Supreme Court on June 16, 1994, after being appointed by Governor Lawton Chiles. He served the Court as Chief Justice from 2000 to 2002.

Justice Wells is a native Floridian. He was born in Orlando on March 4, 1939, and graduated from William R. Boone High School in 1957. He received his bachelor's degree ('61) and his juris doctor degree ('64) from the University of Florida where he is a member of Phi Beta Kappa, Florida Blue Key and the University of Florida Hall of Fame. In 2001 he was recognized as a Distinguished Alumnus of the University of Florida.

After law school, Justice Wells entered private practice in Orlando with the law firm of Maguire, Voorhis, and Wells, P.A. In 1969, he left for one year to work as a trial attorney with the United States Department of Justice in Washington, D.C., returning to remain with the firm until 1976. He then formed the firm of Wells, Gattis, Hallows and Carpenter, P.A., in Orlando, where he practiced law until his appointment to the Florida Supreme Court.

During his twenty-eight years in private practice, Justice Wells was a certified mediator of the Florida Circuit Court and United States District Court, and was admitted to practice law by all Florida courts as well as many federal district and appellate courts, including the Supreme Court of the United States.

He actively participated in the Orange County Bar Association, serving as President from 1989 to 1990. Justice Wells was also actively involved in the Orange County Legal Aid Society from 1968 until 1994, and sat on the Board of Trustees from 1988 through 1989. From 1985 through 1994, he participated in the Guardian Ad Litem Program, and in 1989 he received LAS's

Award of Excellence in recognition of his outstanding *pro bono* service. He also served on the Board of Governors of The Florida Bar.

Justice Wells became Chief Justice of the Florida Supreme Court in July 2000 and presided over the 2000 presidential election cases. He served on the Board of Directors of the Conference of Chief Justices and as a member of several of the Conference's committees. From 2000 to 2006 Justice Wells was a member of the Federal Judicial Conference Standing Committee on Rules of Practice and Procedure.

Justice Wells and his wife, Linda Fischer Wells, have three children: Charles Talley Wells, Jr., Shelley Wells Collins and Ashley Wells Greene. The Wells also have four grandsons and two granddaughters.



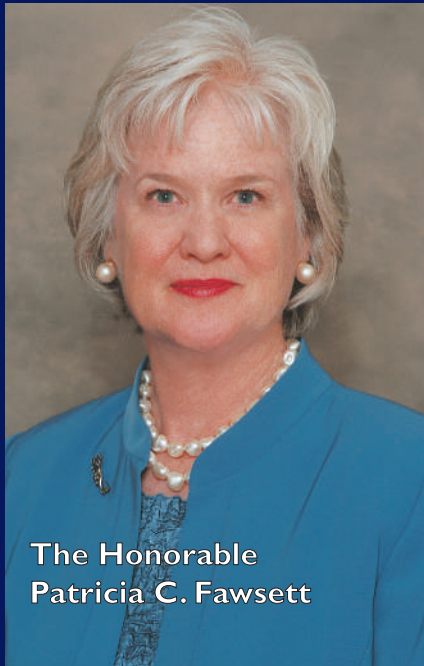
Judge Robert J. Pleus, Jr. was admitted to the Florida Bar in 1962. Judge Pleus was appointed to the Fifth District Court of Appeal by Governor Jeb Bush in March 2000, and served as its Chief Judge from 2005 to 2007.

Judge Pleus received a bachelor of arts degree cum laude from the University of Notre Dame, a master's degree in Pastoral Ministry from Loyola University of New Orleans and his J.D. from the University of Florida.

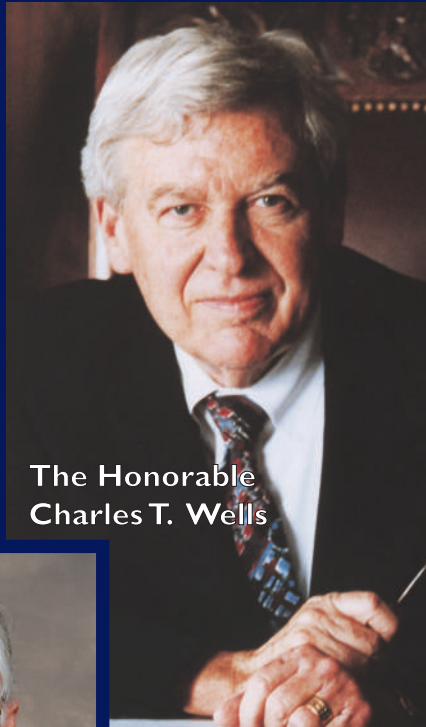
Over the course of his forty-seven year legal career, Judge Pleus worked for several firms, including Rush Reed and Marshall; Smathers, Tepper and Pleus (partner); Carlton Fields (shareholder); Pleus, Adams & Spears f/k/a Pleus, Adams, Fassett & Divine (partner); and Akerman Senterfitt (of counsel). He served on the Executive Council of the Real Property Probate and Trust Law Section of The Florida Bar and was elected to membership in the American College of Real Estate Lawyers. Judge Pleus was Board Certified in Real Estate and was a certified mediator.

continued page 17

Please join us for this very special luncheon as we honor the careers of the Honorable Patricia C. Fawsett, the Honorable Charles T. Wells and the Honorable Robert J. Pleus, Jr. We are pleased to recognize these jurists, each of whom is a past-President of the OCBA.



The Honorable
Patricia C. Fawsett



The Honorable
Charles T. Wells

The Honorable Patricia C. Fawsett
Former Chief Judge of the United States
District Court, Middle District of Florida
OCBA President 1981-1982

The Honorable Charles T. Wells
Chief Judge, Florida Supreme Court
OCBA President 1989-1990

The Honorable Robert J. Pleus, Jr.
Chief Judge of the Fifth District
Court of Appeal
OCBA President 1976-1977



The Honorable
Robert J. Pleus, Jr.

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Professionalism ● Awards and Standards - Committee ● Standards and Rewards

I want to thank all those who submitted comments and others who assisted with the proposed OCBA *Standards of Professionalism, Professional Courtesy and Courtroom Decorum*. The goal of these proposed standards is to define and declare what is expected of attorneys practicing in our legal community.

These standards will be used in the context of an informal peer review system to help measure whether attorneys are practicing in a professional manner consistent with our desired community standards. We must do this to avoid a largely randomized, downward drifting level of professionalism, making our lives more stressful and less productive. The OCBA, in establishing an informal peer review system, will better serve our members by helping to improve the environment in which we practice.

As a rather stingy miser of adjectives in my legal writing, I would like to deliver a stream of descriptors. The goal of the OCBA *Standards* is to discourage (in the disjunctive) nasty, mean-spirited, obnoxious, reprehensible, outrageous, vindictive, manipulative or deceitful conduct. The goal is to encourage principled conduct, a level of collegiality and a sense of moral responsibility for our conduct. How we behave affects not only other lawyers in our community but also “civilian” perception of our profession as well. We are mindful that in application of these standards, we deal with differing skill and experience levels, differing “nature of practice” issues and concerns that complaints regarding violations of professionalism standards may be misused in an effort to further one’s own agenda.

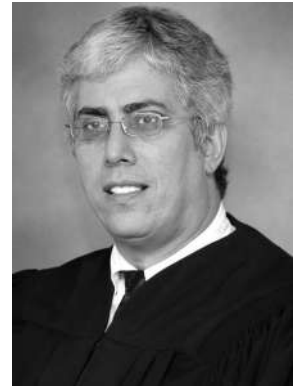
As Chair of our local bar’s Professionalism Committee, I have become one of the cognoscenti on statewide and local ethics and professionalism issues. A statewide proposal for a professionalism standards system with sanctions for non-compliance died in committee about two years ago. However, what we propose for our local bar is nothing new. Some eminent, long-standing OCBA members have described to me that in the past they have participated in loosely structured informal peer counseling. I am also informed that our local Inns of Court from time to time has provided informal peer counseling. In fact, the type of local informal peer review we propose is already in effect in Palm Beach County.

The Florida Bar grievance process will continue to address issues relating to compliance with the minimum ethical standards required by the Florida Rules of Professional Conduct. By establishing an informal peer review in Orange County, we will attempt to address those with the box checked, “does not get along with others.”

Moving from the normative to the aspirational . . .

Professionalism Awards Nominations Are Now Being Accepted!

Please submit your nominations for the OCBA William Trickel, Jr. Professionalism Award (15 years or more in practice), the Lawrence G. Mathews, Jr. Young Lawyer Professionalism Award (less than 15 years in practice) and the James G. Glazebrook Memorial Bar Service Award (jurist). Please help us honor our worthy jurists, friends and peers by making your nominations. The deadline for nominations is December 1, 2008.



General Magistrate
Howard D. Friedman

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However, if you submit your nomination early, prior to the December 1st deadline, the onerous paper size, ink and font requirements shall be deemed waived.

Hopefully that last section caused a few second looks. Now seriously, please submit your nomination(s) for these awards in conventional format by filling out an application form (available on the OCBA website) or by submitting an e-mail or letter. Clearly identify your nominee, indicate for which award you are making the nomination and explain why your nominee embodies the qualities worthy of receiving the award. Ensure that you provide your contact information so that we may contact you if we have questions. Also, let us know if you desire to have the committee consider a previously submitted application. Forward your nomination(s) or any question(s) regarding the awards to either:

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General Magistrate Howard D. Friedman, Chair of the OCBA Professionalism Committee, has been a member of the OCBA since 2005.



Celebrating 75 Years of Excellence The History of the OCBA in the 1990s

Judith Anne Garabo Hayes

As we take our yearlong trip down memory lane, let's revisit the OCBA in the 1990s. Past Bar Presidents from that decade include such notable names as then-future Florida Supreme Court Justice **Charles T. Wells** (1989-1990), future Orange County Circuit Judges **John M. Kest** (1991-1992) and **Maura T. Smith** (1995-1996), and other staples of the local bar like **Michael P. McMahon** (1990-1991), **Phillip "Hugh" Trees** (1992-1993), **R. Lee Bennett** (1993-1994), **Russell W. Devine** (1994-1995), **Warren W. Lindsey** (1996-1997), **Mayanne Downs** (1997-1998), **Daniel DeCubellis** (1998-1999), and **Scott R. McMillen** (1999-2000). It was a decade that saw a new courthouse replace the existing structures, designed both to improve the public face of the bar and bench and to relieve major overcrowding and space concerns with new and improved functionality. Socially, the Bar Gala made a reappearance and that has carried through to this day, with increasing attendance and a higher profile as each year passes.

Judge John Marshall Kest, who sat as President of the Orange County Bar from July 1991 through June of 1992 and subsequently as President of the Legal Aid Society from 1992 to 1993 and then the Ninth Circuit's representative to The Florida Bar Board of Governors from 1997 through 2002, identifies the following critical issues that were either on or rising to the forefront of the OCBA's collective consciousness during the '90s: the ongoing concerns with the public's perception of the bar, member benefits including group and life insurance, child care issues, a bar photo directory, member discounts, bar luncheon and speaker selection, and increased *pro bono* involvement by the membership at large. However, the building of the new Orange County Courthouse, gender bias concerns in the law practice, merit selection and retention of the judiciary, and the relationship between and among lawyers and doctors as it relates to litigation seemed to rise as more immediate issues of concern.

The new Orange County Courthouse that commandeers the corner of Livingston and Orange was completed and opened for business in 1997. Its design and construction were of academic, aesthetic, and practical interest to the Orange County Bar. The old courthouses were no longer appropriate or functional. Anyone who crammed into the elevators of the old Angebilt building en route to a hearing can attest to that fact. Orlando and Orange County in the 1990s were growing so fast that the

number of cases, and with it the number of lawyers and law firms, were outpacing what the existing facilities could handle. Security was also becoming a significant issue. The bar as a whole was excited about the new courthouse, but unfortunately afforded only a minimal amount of input into the design, structure, and functionality of the building. The law library had been moved out of the old courthouse and heroic efforts were made to place a workable law library in the new courthouse; unfortunately, those efforts were not ultimately successful. Parking was, and to this day still remains, a big issue. Access to judges and attorneys' movement between courtrooms and hearing rooms, partly because of elevator problems and lack of stairway access, were problems that were discussed and still exist today due to the sheer volume of cases handled in the "new" courthouse.

Gender bias became a topic of significant discussion and concern during the 1990s as well. National and statewide issues had arisen, but on a local level, the OCBA was attempting to address issues within the bar and the judiciary. As noted in Judge Kest's President's Message in November 1991, "With a membership of two thousand lawyers, it is not necessary for Orange County Lawyers to wait on The Florida Bar or the Supreme Court to act." A local committee was appointed, comprised of members of the judiciary and the local bar. Committee members were **Michael Jones, Pamela Smith, Roger Weeden, Nancy Jacobson, Sherri DeWitt, Melanie Ruta, Penny Jacobs, Carols Diez-Arguelles** and **Jane Carey**, joined by Circuit Judge **Alice Blackwell** and then County Judge **Jose Rodriguez**. The "assignment" was to assume that gender bias exists, as set forth in prior studies, and "...to develop and recommend specific remedial plans to deal with those issues." In conjunction with the gender bias



The Angebilt Hotel (1962), former home of the Orange County Courthouse *Photo courtesy of the Orange County Regional History Center*

issues, and jointly with CFAWL, the Orange County Bar CFAWL, the Orange County Bar Association invited future First Lady Hillary Rodham Clinton as the guest speaker at the February 26, 1992 bar luncheon.

Another topic of concern during the 1990s was merit selection and retention of judicial officers. The Florida Bar had taken a position in support of merit selection and retention, but the Orange County Bar was divided. The advantages and disadvantages of merit selection/retention versus election of members of the judiciary remains a debate today.

The two great professions – law and



The Orange County Courthouse, with its art deco design, dominates the Orlando skyline. *Photo courtesy of Jennifer McCully*

medicine – had been in confrontation to different degrees for decades. In the early '90s, an attempt to resolve, or at least ease, the tension was undertaken by creation of a Code of Mutual Cooperation between the Orange County Medical Society and the Orange County Bar Association. Medical/legal committees of each organization worked together to design or re-design both a code of cooperation and to institute a “fast track” dispute resolution program. Scott McMillen and Ralph Martinez worked with their counterparts in the medical community to finalize this

document. Each association eventually adopted the Code in its entirety.

On another front, the OCBA itself saw some administrative changes during the 1990s. Funding for and planning for major renovations of the new Bar Center was a major project, as was the retirement of longtime Bar Director **Eloise Fox**. The search for her replacement was extensive. Eloise had been a major force behind the success of the OCBA for many years. She was also the historian and a great asset and friend to the executive council and officers. Hers were big shoes to fill, metaphorically speaking.

The long-dormant OCBA Gala was revived the same year that the new courthouse opened. Scott McMillen was the Gala committee chair that first year back, and the Gala itself was held in the brand new courthouse, a feat replicated this past year in the new Federal Courthouse. In years since, Gala planning has largely built upon past years' successes, but orchestrating the revived Gala in 1997 required a lot of ingenuity. Scott received an award as outstanding committee chair for his hard work and dedication and, according to him, it was the committee that deserved the award.

Yet another of the OCBA's ongoing projects during the 1990s was the continuing growth of the specialty bars, such as the Hispanic and Paul Perkins Bar Associations, CFAWL, and others. The OCBA's effort to embrace all the other bars and get them involved for the mutual benefit of everyone was a paramount concern. The specialty bars continue to grow and make important contributions to the OCBA's membership.



The Orange County Courthouse under construction. *Photos courtesy of Gil Ihrig*



The 1990s were a time of unprecedented growth of the OCBA and its membership, and the move to a new courthouse was symbolic of the our transition into the next century.

Judith Anne Garabo Hayes is Of Counsel with McClane Tessitore. She has been a member of the OCBA since 1999.



Photo: Jennifer McCully

Labor and Employment Committee

● President Signs Law Expanding ● Disability Rights in Employment

On September 25, President Bush signed into law the ADA Amendments Act of 2008. The law was passed by Congress with the specific intention of overturning a series of Supreme Court cases that narrowed the definition of



John S. Lord, Jr.

who is entitled to protection under the Americans with Disabilities Act (ADA). A review of the history of the ADA will help with an understanding of the impact of these changes.

In 1990, with broad bipartisan support, President George H.W. Bush signed the original ADA into law. The ADA provided a rather complex definition of who was a disabled individual and therefore entitled to protection.

In September 1999 and again in 2002, the U.S. Supreme Court decided a series of cases which narrowed the application of the definition of “disabled.” For example, the Court held that a nearsighted person was not disabled if her vision was corrected with contacts or glasses; that a person with high blood pressure controlled by medication was not disabled; and that a factory worker who was told by her physician she should not perform any of the manual tasks associated with her job was not substantially limited in her major life activities.

In passing these recent amendments – which become effective on January 1, 2009 – Congress specifically expressed its displeasure with the

Supreme Court’s restrictions and stated its intention to overrule the strict and demanding standards. Some of the changes made by the amendments include the following:

- The determination of whether an impairment “substantially limits a major life activity” is to be made without reference to the effects of mitigating measures or assistive devices. This means that if a diabetic or someone with epilepsy can control the condition with medication, he still may be “disabled” under the Act.
- A prohibition on the use of qualification standards, employment tests or other selection criteria based on an individual’s uncorrected vision unless the standard, test or other selection criteria is shown to be related to the position and is consistent with business necessity.
- A new definition of “substantially limits” to redefine the term “disability,” to make it easier for an employee to meet the definition of being disabled.
- An impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active. This means that someone who has cancer, even if it is in remission, may now be disabled under the law.
- Directing federal agencies to issue regulations consistent with the congressional mandate of “clear, strong, consis-

tent, enforceable standards addressing discrimination by reinstating a broad scope of protection to be available under the ADA.”

The changes in these definitions ensure that more people will now qualify as a “disabled individual” under the ADA – and, perhaps, under Florida law. It can be expected that more employees will file disability discrimination actions with the EEOC and the courts in light of the new definitions. The OCBA Labor and Employment Law Committee will be exploring these changes, as well as other potential changes on the labor and employment law horizon, at our upcoming committee meetings. Stay tuned.

John S. Lord, Jr. is a partner at Foley & Lardner LLP. He has been a member of the OCBA since 1995.



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William A. Davis, Jr.

For the past five years, I have handled *pro bono* lawsuits for the Legal Aid Society of the Orange County Bar Association (Legal Aid)

involving Chapter 751 Temporary Custody Cases. Chapter 751 allows close relatives of minors to obtain temporary custody of the minor. My clients, the petitioners, usually are interested in obtaining the legal right to make medical and educational decisions, securing public assistance for the children, keeping children and families together and/or avoiding the foster care system. When granted, the order is usually ongoing until the children reach 18 or until a parent petitions the court for modification.

Once I receive a case from Legal Aid, I meet with the petitioner and the children involved. After investigating to determine whether the case is meritorious I proceed with obtaining signed consents from the parents. Parents typically either consent to the custody or are unavailable for some reason (death, disappearance, prison, missing or unknown fathers). If I can-

not obtain a consent, I proceed with obtaining service of process. With consents or defaults, I can proceed to a final hearing and obtain a temporary custody order. If a parent objects to an order, the petitioner's chances of success are slim.

Chapter 751 cases are both rewarding and heartbreaking. In every case, something has occurred that separates the children from their parents. On the other hand, in every case my client is stepping forward to help the children involved.

My most tragic and rewarding case involved a baby girl who was born to a teenage mother of three. All three children had different fathers. The teenage mother's first two children were being raised by their paternal grandmothers. The father of the baby girl who was the subject of my action physically abused the mother both before and after the birth. When the police tried to find him, he fled to parts unknown. The mother hated the child because she reminded her of the abusive father and thus named the child "Enemy." Within days of the birth, the mother contacted the police and told them to take the child or she would abandon her. The police contacted the mother's mother to see whether she would come for the child. The reply was "let the child die." The

police then contacted the mother's elderly grandmother who immediately came to the rescue of the child. While the elderly client was concerned that she would not live to see the baby graduate from high school, she loved the child and wanted to do what she could to help the child. She thus called Legal Aid and they sent her case to me.

Once we received the temporary custody order, we also wanted to have the child's name changed. The mother didn't want anything to do with the child but wanted her to carry the name "Enemy" as a statement to the world. After lengthy discussions, we convinced the mother to consent to the name change. Now, the child and her great-grandmother are doing well.

In 2007 and 2008, **Cathy Tucker**, the Legal Aid *Pro Bono* Coordinator, and I taught free lunchtime seminars on Chapter 751 for *pro bono* attorneys. Cathy coordinated the seminars and spoke about *pro bono* work in general and Chapter 751 in particular. We created materials for the attorneys and I provided a practical discussion on how to handle these cases. I encourage anyone that is interested in this area to attend our 2009 seminar.

In sum, I find Chapter 751 cases rewarding because I believe that I am accomplishing a useful, tangible result that has an important impact on the lives of children in need in our community. In addition to handling *pro bono* Chapter 751 cases, I have also participated in the Saturday morning telephone screening project for Legal Aid. For the past several years, I have spent six Saturday mornings each year answering phone calls from members



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continued page 14

of our community in need of legal assistance and screening them for appointments. **Larri Thatcher** and other Legal Aid staff have always been very helpful during these mornings and it is a delight to work with them.

The most common calls involve evictions, foreclosures, divorces, child custody and immigration. Some calls are memorable because they pose unusual issues or because they are funny. For example, one young father wanted to know whether he had a legal right to force his wife to permit him to be present at the birth of his child. Another caller told me that he won the lottery and received six-figure annual payments. He had already spent the current year's payment so he felt that he could not afford a lawyer. Of course, he did not qualify for Legal Aid. Some callers simply want to talk out of loneliness and have no legal problems at all.

I would strongly recommend that you volunteer with Legal Aid by handling *pro bono* cases and/or participating in their projects. My most important advice regarding the handling of *pro bono* cases is to treat *pro bono* clients the same as you do paying clients.

William "Bill" A. Davis, Jr. is a managing attorney at The Law Office of Patricia Gargozlo. He has been a member of the OCBA since 1997.

Legal Aid Society News

● *What We Do...*

● *Change the World!* Donna Graf

Have you changed a life today? **Joseph L. Amos, Jr.** (Joe) of Fisher, Rushmer, Werrenrath, Dickson, Talley & Dunlap P.A. has! Actually, a team surrounding "Susie" (pseudonym) shows what a collaborative effort can do for a dependent child, including helping our community remain strong, keeping a child on the path to being a contributing member of the community and affecting lives.

Susie entered the Juvenile Dependency Division of the Circuit Court after her mother died and there were problems with Susie's family placement. Like other children who are the subject of dependency cases, she needed a Guardian ad Litem (GAL) to represent her best interests in court proceedings. Joe Amos, appointed as her GAL, accepted this case and has gone above and beyond in representing her.

Against her best interest, Susie was removed from the high school she had been attending for the past three years and transferred to an unfamiliar school. Two days after the change of placement, GAL Joe Amos arrived at Susie's school for a meeting and was informed of the change. Charging into action, Joe reached out to the Legal Aid Society staff to assist him in finding a way to bring Susie back to her academic home. Knowing that there must be something in the education laws that he could use to remedy this situation, he met with **Sarah Wallerstein Koren**, an education attorney with the GAL Program, to discuss what options he had to rectify this situation. Armed with the research and case law Sarah provided, including a provision in Chapter 39 of the Florida Statutes which recognizes that continued enrollment in the same school for a foster youth is preferred, Joe secured Susie's return to her academic home, ensured the provision of her transportation to and from school, and arranged for her to make up missed class work and semester exams. This changed Susie's life in a monumental way. She resumed enrollment in all of her prior classes, many of which had not been offered at her interim school. Enabling Susie to return to her home school renewed Susie's faith in her ability to reach her goal of attending college – a hope that began slipping away while she was enrolled at her interim school. Although her position of class treasurer had been filled by another student and she missed her chance to try out for the basketball team, Susie resumed her membership in the Professional Business Association and reconnected with the guidance counselors and friends who provided her constant support during the previous three years. In returning to her academic home, Susie's trust in her Guardian ad Litem grew, and she truly learned that he would

be there to fight the good fight for her best interest. The team of professionals helping Susie, including teachers, guidance counselors, school social workers, a foster care parent and a case worker, coupled with the legal advocacy of her attorneys, enabled Susie to remain on track for success. And succeed she has.

Interviewed at The Legal Aid Society of the OCBA, Susie spoke with a determination that shines in her eyes and a knowledge not possessed by many

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17 year olds. The special events for high school seniors are what she looks forward to as she talks about prom, basketball, grad night and graduation. Deliberately thoughtful, she listens carefully and focuses on the things that she sees as important to meeting her goals. Susie wonders about health and dental insurance and aging out of the foster care system. She worries about preparing for the SATs because

her goals. With stoic pride and determination, she speaks about the many hurdles she must overcome. Susie states with deliberate stubbornness that she is “just doing what I’ve got to do.” There is no doubt that without the representation of attorney Amos, Susie would have remained in an unfamiliar high school and, like others in the “system,” may have simply fallen through the cracks. Susie is one of our success stories.



Education attorney Sarah Wallerstein Koren, M.Ed. and *pro bono* attorney Joe Amos with the Guardian Ad Litem program

she “wants to get good grades to get a business degree, Ph.D., doctorate and maybe go back to law school . . .” Susie is looking at colleges and universities that will accept her tuition exemption from the State of Florida and offer the most education for the monies allotted to her. When asked about her career path, Susie responds that “one day I want to work with foster kids, but not now. First I need to work on myself, and one day, after I have an MBA, Ph.D., or law degree, I will help other kids to make a real difference just as Joe and Sarah did.”

Susie recently started a part-time job and talks about ride sharing, an inconvenient bus schedule for late night employees, opening a savings account and figuring out how much money she will need for a car and living expenses. In a system where many youths struggle to succeed, Susie is independent, self-assured and confident that she will reach

Each month the lives of approximately sixty-two Orange County children are affected by the nearly 50 GAL cases Legal Aid handles. Could you help to enlarge the world of these children and volunteer? To change a life, please email **Susan Khoury**, Program Director, at skhoury@legalaidocba.org, write to Susan Khoury, Attorney at Law, Guardian Ad Litem Program Coordinator, 100 East Robinson, Orlando, Florida 32801, or call 407-841-8310. Will you help change a life today? Volunteer by contacting the Legal Aid Society of the OCBA.

Donna Graff is the Director of Development for the Legal Aid Society of the OCBA. She has recently joined the LAS staff and the OCBA.

A Private Practice Announcement

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Solo and Small Firm Committee

● *The Biggest Leap of Faith* ● *You'll Ever Take*

Since opening my law firm more than a year ago, attorneys frequently ask me how I like running my own show. I wrote this for anyone who has considered opening his or her own firm but is unsure of what to expect.

If you've ever thought: "I'm tired of making someone else rich," "I've always wanted to have my own business," or "I don't want



Shane E. Fischer

to bounce around from firm to firm the rest of my career," then opening your own practice might be for you.

In addition to unlimited income potential, you have complete freedom to decide everything from working hours to dress code to case selection. Whether it's family law, estate planning, or corporate transactions, you're in charge of shaping the direction and growth of your firm. It's exciting to watch your practice grow, especially when you love your work. The most rewarding aspect, though, is the professional satisfaction that comes from knowing you've built your business around referrals from satisfied clients. There is no greater feeling than knowing that former clients think so highly of you they recommend you to someone else.

While the benefits are great, there are serious risks and lifestyle changes you need to consider. First, you must have a burning desire to own a business, because it will consume you! When you're not working, you're thinking about work, networking, reading about recent legal trends, or making sure your cell phone is always fully charged, even at 2:00 a.m. just in case someone calls!

Second, you'll want to consider the emotional stress of opening your own firm. Today the phone is ringing, money is pouring in, and you're contemplating early retirement. Tomorrow, a client's check bounces, your printer breaks, and you notice your business card in the trash after a local networking event, filling you

with self-doubt. This emotional roller coaster is more than some people can handle.

And third, you should ask yourself whether you and your family are willing to give up a guaranteed paycheck, health insurance, and vacation time. Trust me, you'll miss that guaranteed paycheck no matter how underpaid you might feel!

If you've read this far and are still thinking about opening your own firm, I recommend planning a year ahead of time. Save a year's salary for bills, start-up costs, and personal expenses while establishing your practice. Even if you can't save an entire year's salary, save something, because credit card balances add up fast and the rates are high! Also, look to close friends or family for start-up capital. Banks will compete for your business, so shop around. They all want to be seen as friendly to small businesses, so don't be afraid to negotiate for what you want. Just consider that the Bar does not allow a trust account to be held at a credit union. Don't ask me why.

Next, gather forms, pleadings, letters, and attend lots of seminars. This keeps you informed of recent legal trends and presents great networking opportunities. Consider treating a solo practitioner to lunch and ask for information about cheap office space, a good banker, a trustworthy accountant, a knowledgeable insurance agent, the best phone service plans, and reliable office equipment. Your fellow solo practitioner or any of the other professional contacts may even give or sell you their old stuff.

Six months to three months before you open, take advantage of your firm's group health insurance. Whether it's a new pair of eyeglasses or dental work you've been postponing, get your medical house in order before leaving your job because you won't find any individual coverage that provides the benefits available with your group coverage.

Ninety days to one month before opening your firm, set up your company (corporation v. LLC, etc.), get your business

licenses, and obtain your tax ID number from the IRS (it can be done online in a matter of minutes). Useful tip: since you may not yet have office space I recommend renting a UPS-type mail center mailbox as your "principal place of business." This is advantageous because the Department of State won't accept a P.O. Box as a principal place of business and because you don't want advertisers overwhelming your house with unsolicited offers for everything from credit card processing machines to postage meters.

One month before you open your firm, make final decisions regarding office space, phone service, bank accounts, and business cards. I reviewed several business card layouts and can now confidently say that all you really need is a plain card with your contact information. The design, color, and feel of your card are minor considerations.

I do not recommend a virtual office where you work from home and rent conference room space for client meetings. You'll go crazy sitting at home all day, your house has too many distractions, and your clients won't have much confidence in your ability to handle their case if they know you have a virtual office. Clients want to see your name on the diplomas that cover your office walls.

Ideally, your office should include a receptionist, access to a fax machine, and use of a conference room. It's worth the money to pay for these features, as they will simplify your life!

Purchase used furniture. You can get great deals from other solos, friends, or websites like craigslist or eBay. It's amazing the stuff people are willing to give away. Your current firm might even give you things. Alternately, your landlord may let you use the furniture already on site. I'm using my landlord's desk, credenza, and fax machine.

Buy a new computer. Technology changes rapidly and you don't want to be stuck with old, obsolete hardware or software. I recommend a laptop because of its portability. With a laptop, you can work while drinking coffee at Starbucks

or relaxing by Lake Eola and enjoying the weather. After all, it's your firm. Nobody is forcing you to work in a stuffy, cramped office with a bad view!

There is no ideal time of the year to open your own firm, but if your dates are flexible I recommend opening in late summer. Summer is traditionally a slow time for attorneys, so the downtime will allow you to set up your office before everyone returns from summer vacation. Plus, since your bar fees (Florida Bar, OCBA, etc.) are due in summer, your current firm might pay them before they realize you are leaving, saving you hundreds of dollars. Last, don't worry about finding potential advertisers. They will find you. Guaranteed.

Congratulations! You are now open for business. What's next?

Your first year will be spent practicing "threshold law." In other words, if it crosses the threshold with money, you take the case. Don't turn away cases that are outside of your comfort zone because you don't know the answer. Have faith in yourself. Go and find the answer. There's nothing you can't figure out. You'll boost your confidence by learning a new area of law and by getting a favorable result for your client (who, hopefully, will refer you to your next client!).

Since legal research databases are pricey, familiarize yourself with FAMU's law library. It's free and has resources for



looking up every possible legal issue. I also highly recommend The Florida Bar's SCOPE (Seek Counsel of Professional Experience) program. Ex-

perienced attorneys volunteer their time to briefly consult with other attorneys unfamiliar with a particular area of law or procedure. I've consulted with SCOPE attorneys on everything from debt collection law to employment discrimination.

You will quickly find that there are some things you can (and should) do yourself, while it's worth time and money to pay someone else for other tasks. Draft your own pleadings, schedule your own hearings, and mail your own letters. Computer technology has evolved dramatically, allowing document mergers and record keeping with incredible speed and efficiency. You can also take out your own trash, clean your own bathroom, and do your own filing. It will give you a greater appreciation for your hard work, not to mention keep you humble, to realize that other individuals clean toilets and take out trash for a living.

While you can do your own filing and cleaning, I highly recommend that you outsource payroll, even if you're the only employee. Payroll issues are very complicated and come with stiff penalties for minor errors. Unfortunately, I learned this lesson the hard way: I was late mail-

ing a form to the Department of Revenue and wound up having to pay a \$200 penalty for unpaid taxes I didn't even owe! That experience convinced me to spend \$60 per month for a payroll service because it handles all tax filing and other paperwork, saving me time to build my business.

Most importantly, believe in yourself, even if nobody else does. Nobody is born knowing how to run a law firm or start a business, so don't beat yourself up too much when you make mistakes. Even if you eventually decide you don't like running your own business, the experience and perspective you will gain as a business owner will make you a very attractive hiring prospect.

Finally, joining the OCBA Solo and Small Firm Committee is a great way to network with other solo practitioners and listen to exciting speakers while earning CLE credit. We meet four times a year, with our next meeting set for January 27, 2009 at 11:30 a.m. at the Bar Center. I look forward to seeing you there!

If you have any other questions about life as a solo practitioner, call me at (407) 650-5509 or email me at shane@fischer-law.com. I look forward to hearing from you.

Shane E. Fischer of Shane E. Fischer, P.A. has been a member of the OCBA since 2001.

Recognition Luncheon

continued from page 6

Some of his many activities include service as an Interim Municipal Judge for the City of Orlando and a member of the Aviation Zoning Board for the City of Orlando. Judge Pleus is a past-President of the Orange County Bar Association. He also served as President of many other organizations, including the Young Lawyers Division of the Florida Bar, Windermere Rotary Club, the Orange County Historical Society, Tiger Bay Club of Orlando, Tri-County League of Cities and the Grand Knight of Council 5150

Knights of Columbus. He served as a member of the Board of Governors of the Florida Bar for eight years. Judge Pleus was Mayor of Windermere from 1988 to 1994. In 1994, he was recognized by the Legal Aid Society with an Award of Excellence.

Judge Pleus is an Ordained Permanent Deacon in the Catholic Church. He has been married to Terry Pleus for 46 years. They have six children and six grandchildren.

To ensure a proper luncheon count, RSVPs and CANCELLATIONS are requested no later than Friday, November 7, 2008. The OCBA is happy to provide

11 luncheons as part of your member benefits, but no-shows incur additional charges for the Bar and walk-ups cannot be guaranteed a seat. Please keep us up-to-date on your reservation status.



Thomas v. Fusilier,

966 So. 2d 1001 (Fla. 5th DCA 2007)
Reversed forfeiture of \$250,000
payment required by marital
settlement agreement.

***Marriott International, Inc.
v. Perez-Melendez,***

855 So. 2d 624 (Fla. 5th DCA 2003)
Affirmed million dollar personal injury
verdict based on the "two issue rule".

Savoie v. Southeast Bank, N.A.

529 So. 2d 1275 (Fla. 5th DCA 1988)
Reversed and remanded mortgage
foreclosure for exercise of option
to purchase.

Petry v. Petry,

768 So. 2d 8 (Fla. 5th DCA 2000)
Reversed conversion of rehabilitative
alimony to permanent alimony.

***Mitchell v. Metropolitan at
Lake Eola LLC,***

947 So. 2d 1263 (Fla. 5th DCA 2007)
Reduced lis pendens bond from
\$600,000 to \$20,000.

Wenzel v. Boyles Galvanizing Co.,

920 F. 2d 779 (11th Cir. 1991)
Affirmed a 2.75 million dollar
personal injury award.

Winn v. Winn,

669 So. 2d 1155 (Fla. 5th DCA 1996)
Reversed "woefully inadequate"
permanent alimony.

McGhee v. Volusia County,

679 So. 2d 729 (Fla. 1996)
Clarified sovereign immunity/scope
of employment rules for deputy
sheriffs.

Rykiel v. Rykiel,

795 So. 2d 90 (Fla. 5th DCA 2000)
Reversed dissolution judgment due to
excessive awards against husband.

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The Honorable Alice Blackwell

Judicial News ● Circuit Judge Blackwell Takes Lead as Chair of Statewide Conference

Circuit Judge Alice L. Blackwell was sworn in as Chair of the Florida Conference of Circuit Court Judges during the Conference's annual business meeting earlier this month.

The Conference of Circuit Court Judges was established by Florida Statute and consists of active and retired circuit judges statewide. The Conference is charged with the task of recommending improvements to rules and methods of procedure for the betterment of Florida's Judicial System. The organization also serves as a forum for continued judicial education.

The Chair is elected by Conference members and serves a one-year term. It is the duty of the Chair to report to the President of the Senate and the Speaker of the House the

recommendations of the Conference concerning defects in the laws of the state and such amendments or additional legislation as the conference may deem necessary. The Chair also calls meetings and appoints committees to effectuate the purposes of the Conference.

"It is a true honor to serve this Conference and the people of Florida," said Judge Blackwell regarding her new position. "Never, has the business of our state courts been more important to the people than in these times of reduced budgets and high foreclosures rates," she said. "I will work tirelessly to see that our laws are improved, that our judges receive the best educational training possible, and that our courts receive the funding and resources necessary to meet the demands of a fair and equal system of justice, for all."

Submitted by the Ninth Judicial Circuit Court Communications Office.

Judicial Investitures

The Honorable **Gregory J. Kelly** was invested as a United States Magistrate Judge for the Middle District of Florida on July 11, 2008, in an enrobement ceremony presided over by then Chief Judge of the United States District Court Middle District of Florida, **The Honorable Patricia C. Fawsett. The Honorable Gregory A. Presnell**, United States District Court, administered the oath of office, and Judge Fawsett and **Thomas Cardwell** of Akerman Senterfitt gave remarks. Presentations were made



The Honorable Gregory J. Kelly

by **Jill Schwartz**, President of the Federal Bar Association, Orlando Chapter, and **Woody Rodriguez**, President-elect of the Orange County Bar Association. The ceremony was held at the United States Courthouse. Judge Kelly was enrobed by members of his family: **Trish Kelly, Laura Kelly**, and **Allison Kelly**.

The Honorable **Robert J. Egan** was invested as Judge of the Ninth Judicial Circuit Court on August 15, 2008, in an enrobement ceremony held in the Roger A. Barker Courtroom of the Orange County Courthouse. **The Honorable Belvin Perry, Jr.**, Chief Judge of the Ninth Judicial Circuit Court, presided over the ceremony and gave the opening remarks. **The Honorable Mike Murphy** of the Ninth Judicial Circuit Court administered the oath of office. The introduction was given by **William E. Sublette**, and presentations were made by **The Honorable Frederick J. Lauten**, Conference of Circuit Court Judges, **The Honorable**



The Honorable Robert J. Egan

Lydia Gardner, Clerk of the Circuit and County Courts for Orange County, and **Tad A. Yates**, President of the Orange County Bar Association. Judge Egan was enrobed by members of his family: **Justin Egan, Amanda Egan**, and **Sissy Egan**.

*Cynthia Hawkins, P.A.
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has opened her own law firm after
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Law Firm Spotlight ● *Foley & Lardner Embraces Pro Bono with a Passion*

Two years ago Foley & Lardner LLP embarked on an initiative to reinvigorate its *pro bono* program. To help jump-start the effort, Foley CEO Ralf Böer appointed **Ed Baxa**, a management committee member and former managing partner of the Orlando office, to chair the National *Pro Bono* Committee.

For Baxa, accepting a new position was a no-brainer. “With the intellectual, administrative and financial resources available to us, I knew we could make a significant impact in our community and in achieving the goal of equal justice under the law. It was just a matter of creating opportunities for our lawyers to match their expertise with critical, but un-served needs.”

The firm’s primary goal is to elevate the quality and quantity of its *pro bono* service to a level commensurate with its commercial practice. An early step in the process was to “make it safe to talk about *pro bono*” at Foley & Lardner. The firm’s *pro bono* initiative is an agenda topic at all firm meetings, and is a central part of the orientation programs for both summer and new associates. The firm created an internal news letter, *Pro Bono Matters*, to recognize exceptional accomplishments by the firm’s attorneys in their *pro bono* practice. The newsletter and a dedicated *pro bono* website also alert attorneys to *pro bono* opportunities. Finally, a tangible goal for *pro bono* service – achieving top 50 status in the American Lawyer *Pro Bono* rankings – was set to ensure that the *pro bono* program was about performance, not platitudes.

Foley & Lardner accepted the *Pro Bono* Institute challenge of performing *pro bono* service equal to 3% of the firm’s billable hour total. To emphasize the institutional support of this commitment, the firm provides attorneys with “billable credit” for the first 100 hours of *pro bono* work (with additional billable credit available where *pro bono* projects require an extended commitment of time). Senior management in the firm is leading the effort by example, as both Ralf Böer, the CEO, and Stan Jaspan, the Managing Partner, have accepted *pro bono* assignments.

The results of the initiative have been dramatic. The percentage of the firm’s lawyers participating in *pro bono* projects has increased from approximately 41% to 70%. Ninety-four percent of the firm’s summer associates performed *pro bono* service in 2008. The firm’s average *pro bono* hours per attorney is projected to exceed 40 in 2008, up from 23 in 2006. As a result of these improvements, Foley & Lardner moved up 32 places in the most recent American Lawyer *Pro Bono* Ratings, one of the largest advances among the top 200 firms in the country.

However, *pro bono* is about far more than numbers. It is about providing service to the disenfranchised, the underserved, the most powerless in our society and in the world community.

The individual stories are compelling. As a result of *pro bono* legal services, Central Florida children have been removed from homes where physical and sexual abuse was perpetrated by and/or permitted by their parents. Foley lawyers have secured political asylum for a Rwandan woman who testified at an international tribunal prosecuting war crimes, and for an Iraqi interpreter who assisted U.S. troops during the height of the war. In both instances, asylum was necessary to protect our clients against violent reprisals.

The firm’s *pro bono* work includes traditional legal aid support service, including serving as guardians ad litem, seeking domestic violence injunctions, defending clients in commercial litigation, and assisting the elderly and disabled in pursuing social security and disability claims. In addition, because of the diversity of Foley & Lardner’s practices and geographical footprint, it is able to serve a wide variety of client needs, in part by collaborating with key community partners. For example, Foley & Lardner is a member of the Medical Legal Partnership for Children, a Boston-based organization in which pediatricians help identify environmental and socio-economic issues affecting the treatment of chronic illnesses. Where appropriate, the physicians refer the cases to attorneys who use their legal skills to help affect healthy changes in the children’s lives. Addressing housing issues such as lead paint and mold, and developmental issues such as the establishment of individualized education plans are among the services provided in the program. Discussions are underway with Nemours Hospital regarding the development of such a program in its new Orlando facility.

Foley has also teamed with two other firms and the Disabled American Veterans to bring free legal services to soldiers and sailors returning from the wars in Iraq and Afghanistan. The lawyers involved in the project help our servicemen and servicewomen receive the medical care they need and richly deserve. In cooperation with the Holocaust Survivor Justice Network, lawyers in Foley’s Orlando, Miami, Los Angeles, Chicago and New York offices have helped Holocaust survivors obtain reparations available from the German government. Interacting with these



John R. Hamilton

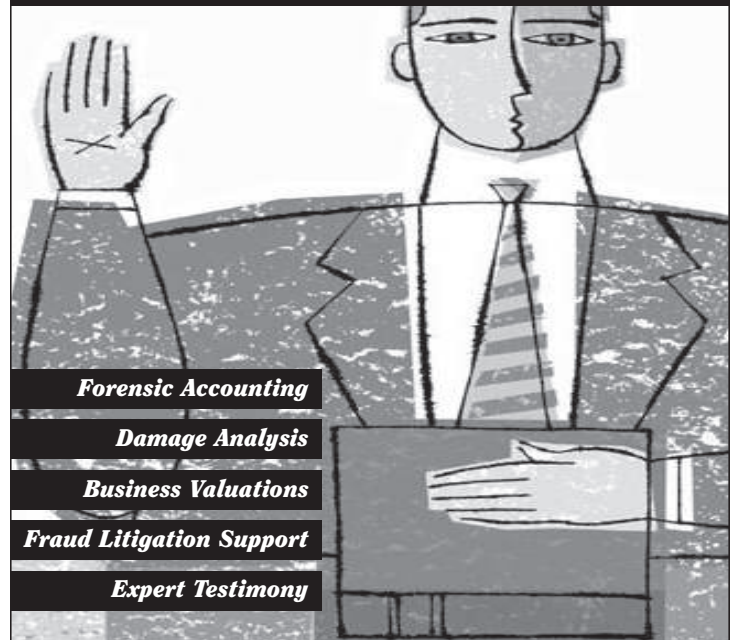
brave members of our "best generation" has been especially gratifying.

Finally, the firm's Life Sciences team has embarked on a program to assist medical researchers in their pursuit of "orphan drugs" - medications which show promise in the treatment of illnesses affecting 200,000 or fewer people. By providing *pro bono* legal services to these researchers, the Foley lawyers will help reduce the cost impediments to the discovery of cures for illnesses which are too rare to attract the interest of the commercial pharmaceutical industry.

The renewed focus on *pro bono* service has provided the attorneys at Foley & Lardner with a deep sense of professional accomplishment. "There is no better reward than applying our legal skills on behalf of those who are alone in front of the justice system," said Baxa. "We consider *pro bono* to be part of our ethical obligation as members of the bar. At Foley, we are serious about that commitment."

John R. Hamilton is a partner with Foley & Lardner LLP. He has been a member of the OCBA since 1991.

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Hearsay

Jared Kurtin passed the file to the firm's appellate unit, the "eggheads," as they were known, brilliant legal scholars who functioned poorly in normal circles and were best kept in the library. — John Grisham, The Appeal



Nicholas A. Shannin

The reward for us self-avowed appellate geeks who rushed out to purchase Grisham's newest legal adventure was certainly questionable. Aside from the egghead reference above, there was remarkably little appeal (so to speak)

from an appellate perspective. The briefing was referenced in maybe two pages of the book, the oral argument briefer still. Of the two paragraphs devoted to the OA (as us appellate-types call it), one was focused solely to what our trial-lawyer heroine elected to wear. Oh, well – for any real appellate insight, I guess I'll have to wait for the sequel: Bond, Supersedeas Bond.

The one thing *The Appeal* does accomplish, however, is that the over-the-top political storyline reminds us how very fortunate we are that our judiciary is, at the appellate level, essentially campaign-free. Florida gets this right, but a number of states have openly partisan races for their state supreme courts. This article should hit your desk after November 4, so you know who won all the races. It is good to know, however, that none of the campaign ads you saw leading up to Election Day were from Florida Supreme Court judicial candidates, and let's hope it stays that way.

Speaking of the Seven, a special *Hearsay* congratulations and thank you goes out to our new Chief Justice, **The Honorable Peggy Quince**. The reasons for the congrats are obvious, but the thank you must be discussed here. Justice Quince is leading a new *pro bono* initiative for which she is personally traveling statewide. Stop #1? Of course, right here in Orlando, where she met with judges and attorneys from across the Central Florida area. Our own "The Boss" **Bruce Blackwell** and **Matt "No relation to Yul" Brenner** each spoke to the crowd, extolling the virtues of *pro bono*

advocacy and providing an example of how an attorney can always make a difference. Justice Quince praised the example each of these Legal Aid warriors had set, and commended the whole of the OCBA community for contributing nearly half of the state's collection of *pro bono* recognition winners. Way to go all you *pro bono* doers out there, and God-speed, Justice Quince, in your effort to upgrade the rest of the state to Orange County standards for *pro bono* service.

Care to heed Justice Quince's call? Look no further than your November calendar, and put a big to do on November 12, 2008, when the Legal Aid Society hosts its "Breakfast of Champions," a celebration of the role of *pro bono* advocacy in our community. For more information about the event, please contact **Bill "The U" Umansky** at bill@thelawman.net.

Returning to politics, *Hearsay* congratulates **Lou Frey** for a rare induction – the Roll Call Congressional Hall of Fame. Okay, sports has often proved a springboard for politics (Bill Bradley, Heath Shuler, Shaq if he runs for Sheriff someday...), but rare is it that politics is the springboard for sport. Apparently, during a ten-year span, the annual tilt between Blue and Red found Congressman Frey named the MVP three times. An article on his induction in Roll Call is entitled, "Lou Frey: Capitol Hill's Very Own Willie Mays." Congratulations, "Say Hey" Frey!

Let's keep with baseball and roam to another MVP, our local hero David

Eckstein, winner of the 2006 World Series MVP award. David makes *Hearsay* only by riding the coattails of his bro-in-law, **Peter Schoemann** of Broad & Cassell. Schoemann makes *Hearsay* by way of his designation by the *Orlando Business Journal* as a "40 under 40" member. Schoemann has recently founded the nationwide Chamber of Commerce for Persons with Disabilities, and *Hearsay* joins the OBJ in congratulating Pete for a job well done!

Searching for a segue, I note that Pete is also a graduate of UF Law's LLM program in Taxation, where – coincidentally – OCBA member **A. Brian Phillips** has now been appointed as an adjunct professor and by the time this issue hits will be two months into his course on Tax Fraud taught to these tax gurus. While making *Hearsay* for this impressive reason, however, it has come to light that Brian was independently referred to *Hearsay* by a reader seeking the other half of a Separated at Birth entry. So without further ado, I ask

you, are the likenesses between **Ian Forsythe** and **Brian Phillips** to the two lawyer-skewering Coke Zero guys pure coincidence or were they Separated at Birth?

Trivia winner for last issue? *Hearsay*



Ian Forsythe

Favorite **Jamie "Go Irish" Moses** put her Catholic school training to good use by responding to The Cardinal's query that the small cap worn by a cardinal is called a zucchetto. Great job, Jamie! To follow in her footsteps, your November-themed question is to tell me all three teams to have hosted NFL games on Thanksgiving between 1970 and 2005. (Hint, the obscure team has been obliquely referenced earlier in



Brian Phillips

this *Hearsay* article.) Ah, the combination of triptophan and football is truly a classic holiday indeed!

A final Thanksgiving shout out goes 'round the world to OCBA member Captain **Steve Meints**, who has sent greetings to us all from Camp Taji in Iraq. Steve has deployed with the 4th Infantry Division and we wish him Godspeed with his mission. Thanks, Steve, for the very long distance greetings and we hope to have you back stateside soon.

With that reminder of things we should be thankful for, that will draw this month's column to a close. Please keep those bits of good news or gossip coming – I can't report it unless I know it! Send your scoop to me at nshannin@floridalawonline.com. Have a great November all, and we'll see you back here for the holiday issue to follow!

Nicholas A. Shannin is a Board Certified Appellate Attorney and a partner with Page, Eichenblatt, Bernbaum & Bennett. He has been a member of the OCBA since 1995.

Keersten Heskin Martinez, President of the Central Florida Association of Women Lawyers, had the honor of introducing Chief Demings at September's bar luncheon, co-hosted by CFAWL.



Senator Graham and Lawson Lamar, State Attorney for the Ninth Judicial Circuit, have a "photo op" at August's bar luncheon.



Former U.S. Senator Bob Graham spoke about civic education and the political process to more than 300 OCBA members at the August luncheon. Senator Graham was introduced by long-time friend, former gubernatorial campaign aid and OCBA Executive Council member Frank Bedell.



Our September luncheon speaker, Orlando Police Chief Val B. Demings, spoke about the variety of programs the department has developed to help youth who are at risk of becoming habitual offenders. She applauded the courts and attorneys for their dedication to working with young people and encouraging good outcomes.



Professor Terry Coonan, the Executive Director of the FSU Center for the Advancement of Human Rights, spoke at July's luncheon. Mr. Coonan, an expert in human trafficking, leads the Human Rights Center in offering *pro bono* legal representation to asylum-seekers, torture survivors, and victims of human trafficking. He's show here with Bruce Blackwell and Tad Yates, OCBA President.

LUNCHEON PHOTO GALLERY

Let's just cut straight to the chase: We owe a big thank you to **Sunny Hillary** and **Jason Hill**, co-chairs of the **17th Annual YLS Charity Golf Tournament**. The tournament took place on October 3rd at ChampionsGate. It's not surprising why this event is always one of YLS's biggest and most enjoyable of the year. Prizes were awarded to the Best Foursome (**Eric Reed, Gregg Swift, Eric Castleson** and **Damien Prosser**), Longest Putt Made (**Judge Rand Wallis**), Longest Drive (**Michael Gasdick**) and Closest to the Pin (**Jim Boghos**). Look for tourney photos in the next issue of *The Briefs*! Many thanks to the players and sponsors for making this event yet another success. We also owe our gratitude to all the players and sponsors who showed up at ChampionsGate and helped make this event yet another success. Proceeds will go towards various charitable events organized by the YLS throughout the year, including a college scholarship to a deserving Orange County high school senior.

Another big thank you goes out to **Lauren Carmody** for organizing the **Fall Oath of Admission Ceremony and Reception** on October 1, 2008. The celebration included more than 40 newly admitted members and their families, friends and guests, and we owe a debt of gratitude to the OCBA, participating judges and sponsors who helped make this event happen. Hopefully we will see all the newly admitted attorneys at our next luncheon!

In case you haven't figured it out yet, YLS loves a good **Happy Hour!** We gathered at Finnhenry's on September 26th and again at Ember on October 17th. We want you to raise your glasses to **Kristen Cox** and **Melanie Shoemaker** for their continued dedication to making these events so fun and successful. There are so many other social and festive events happening at the end of the year that we won't be having a happy hour this month, but check your YLS email blasts after the New Year for information on the next happy hour.

Dog Day Afternoon took place on Saturday, October 18, 2008, at Fleet Peoples Park near Baldwin Park. This annual, free event draws a great mix of dogs and fellow YLS members! A big thank you to our organizers **Kristen Cox** and **Mike Caborn**.



The Downtown College Park Partnership is delighted to continue its outdoor concert tradition with the **2008 Annual JazzFest** on November 8th. Just pack a picnic basket with your favorite food and beverages, grab a blanket or lawn chair, and sit back to enjoy a warm fall evening under the stars, filled with beautiful jazz music and good friends! Alcoholic beverages are permitted for patrons 21 and older. Seating is on a first come first served basis. The free concert begins at 6:00 p.m. in downtown College Park on Edgewater Drive between Smith Street and Rugby Street. **Dellecker Wilson King McKenna & Ruffier** will host a **Pre-Jazz Bash** just before the JazzFest at 4:30 p.m. at 719 Vassar Street in College Park, right in the middle of all the action! Contact **Tony Sos** (asos@dwkllaw.com) for more information. We hope to see you all there!

The Young Lawyers are participating in the Orange County **Teach In** on Wednesday, November 19, 2008. Teach In is an annual event held at all Orange County public schools. Community members are invited into the classroom to share their experiences with students regarding career choices, goal-setting, academic preparation and anything else that may help expand the horizons of today's children. If you are interested in making a presentation regarding the legal community with fellow Young Lawyers, contact **Melanie Shoemaker** at mshoemaker@deanmead.com or 407-428-5106.

YLS on the move FALL FUN

Last, but certainly not least, in celebration of football season, YLS is proud to announce this year's **YLS Gator Bus Trip** to Gainesville on November 15th. We will be gathering together for the UF vs. South Carolina game. You can email **Jonathan Stimler** at jstimler@lseblaw.com if you are interested in attending and/or helping out with the event.



Bridget Heffernan Labutta

YLS meets the third Thursday of each month for a luncheon at the Citrus Club and we are always interested in seeing new faces, including law students, attorneys who just moved into the Greater Orlando area and guests. RSVP to ocbayls@gmail.com; stop by to see what we're all about, and come back again as a new member! The cost is \$18 if you RSVP in advance, \$20 at the door, or \$10 for sole practitioners, law students and government attorneys and judges.

If you have an exciting story to share about a YLS member, or know of an award or accolade presented to one of our members, please send an email to me at blabutta@addmg.com and it may be included in the next month's column. Photographs are welcomed and encouraged! Finally, if you are not receiving the YLS email blasts, send an email to ocbayls@gmail.com to sign up.

Bridget Heffernan Labutta is an associate with Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A. She has been a member of the OCBA since 2006.



Forty-one new attorneys were sworn in by Judge Frederick Lauten and fourteen other members of the judiciary at the YLS Fall Oath of Admission ceremony on October 1, 2008. A reception for family and friends was held at Harvey's Bistro following the ceremony.



Vanessa Guillaume (second from left) received the 2008-2009 YLS Scholarship at the bar's September luncheon. Vanessa is shown with her mother; Chantel Guillaume, YLS scholarship committee member Melanie Shoemaker (left), and YLS President Chelsie Roberts (right).



PRE-JAZZ BASH
at the
COLLEGE PARK JAZZ FEST
Starting at 4:30 p.m.
Saturday, November 8, 2008
Hosted by
DELLECKER WILSON KING
MCKENNA & RUFFIER, LLP

This free outdoor jazz concert begins at 6:00 p.m. in College Park on Edgewater Drive between Smith and Rugby Streets. Plan to get there early, stake out your seating, then stop by the DWKM&R offices adjacent to the stage for a pre-concert Happy Hour featuring beer, wine and jazzy hors d'oeuvres.

For more information, please contact: Tony Sos at 407-244-3000 or asos@dwklaw.com



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The magical world of fan fiction has enchanted many on the Muggle Internet, but J. K. Rowling managed to cast *stupify* on it prior to its infiltration of the print media – at least for the time being. Rowling managed to obtain a permanent injunction against a rabid fan from publishing his online material as *The Harry Potter Lexicon* in print media format because



Jonathan L. Innes

of potential copyright infringement. See *Warner Bros. Entertainment Inc. v. RDR Books*, --- F.Supp.2d ---, 2008 WL 4126736, (S.D.N.Y. 2008).

It all started with a website created and maintained by librarian Steven Vander Ark. In it, Vander Ark managed to provide so much detail about the Harry Potter world that Rowling honored Vander Ark's work with J.K. Rowling's Fan Site Award and admittedly used his website to check facts when writing her sequential books. See J.K. Rowling Official Site <http://www.jkrowling.com/en>. In addition to Rowling's approval, Vander Ark received world praise for his obsessive work – he spoke at conventions, granted interviews to news media, and was even featured on the *Harry Potter and the Order of the Phoenix* DVD. However, when Vander Ark decided to enter his work in the same *Muggle* realm of his beloved author, the New York Court for the Southern District prevented him from doing so.

The Harry Potter Lexicon was scheduled to be released November 28, 2007, but was stopped with a temporary injunction filed by Warner Bros. Entertainment, Inc. The injunction was later made permanent by the 2008 copy-

right case. In that case, Rowling testified that she had intended to publish her own encyclopedia of facts about her fictional wizarding world, complete with some new material as she had done in her two prior companion books. The two companion books, *Quidditch Through the Ages* (2001) and *Fantastic Beasts & Where to Find Them* (2001), gave her readers a multitude of detailed facts and insights to Harry Potter's world. Vander Ark claimed that his work, while derivative of all of Rowling's work, added independent information, analysis

and material not previously provided by Rowling. However, the court ruled that, "because the Lexicon appropriates too much of Rowling's creative work for its purposes as a reference guide," a permanent injunction was deemed appropriate. *Warner Bros.*, 2008 WL 4126736. While the ruling of the court on this alleged derivative work was for the benefit of the copyright holder, it may have sent a chill worthy of a *dementor attack* to other fan fiction authors.

While many connoisseurs of Internet fan fiction may disagree that *The Harry Potter Lexicon* qualifies as "fan fiction" (being, instead, only an "encyclopedia" of spells, characters, creatures, and objects found in the realm of Harry Potter), fan fiction applied in its broadest sense may include Vander Ark's work. Fan fiction is a piece of fiction using characters, situations, and/or other facts based upon pre-existing work from mediums including, but not limited to, television, movies, books and comics. See *Webster's New Millennium™ Dictionary of English, Preview Edition (v 0.9.7)*. Lexicon Publishing Group, LLC. 01 Oct. 2008. While not part of the generally "acceptable" definition, fan fiction according to many Internet

communities includes works where the producers typically do not derive commercial benefits from their publication, but only receive the satisfaction of being part of the experience. See Rebecca Tushnet, *User-Generated Discontent: Transformation In Practice*, 31 CLM-JLA 497, Columbia Journal of Law & the Arts (Summer 2008). When Vander Ark decided to publish his book, he not only crossed the magical threshold from Internet to print media, he also dared to enter his work in the commercial arena – something many in the fan fiction community would consider dangerous to their world.

The reason for concern is that fan fiction is generally considered to be a derivative work of the original piece that spawned it.

A "derivative work" is one based upon one or more pre-existing works, such as a translation, musical arrangement, dramatization, fictionalization, motion picture version, sound recording, art reproduction, abridgment, condensation, or any other form in which a work may be recast, transformed, or adapted. A work consisting of editorial revisions, annotations, elaborations, or other modifications which, as a whole, represent an original work of authorship, is a "derivative work". 17 U.S.C. 101.

As such, only the copyright owner may draft or license works that are based upon their own works. See 17 U.S.C 103.

However, many legal commentators state fan fiction is not an *unforgivable curse* within the courts. Instead, they find that the legality of fan fiction is a grey area because it falls under the fair use doctrine of copyright protection.

See Tim Wu, *Tolerated Use*, 31 CLM-JLA 617, Columbia Journal of Law & the Arts (Summer 2008). "Fair Use" is an allowed limitation on the rights of a copyright owner, which, despite its codification by congress, is not clearly defined. The following four factors as set forth in 17 U.S.C. 107 are to be used by the courts in determining whether a work falls under the fair use exception:

- (1) the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - (2) the nature of the copyrighted work;
 - (3) the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - (4) the effect of the use upon the potential market for or value of the copyrighted work.
- Id.*

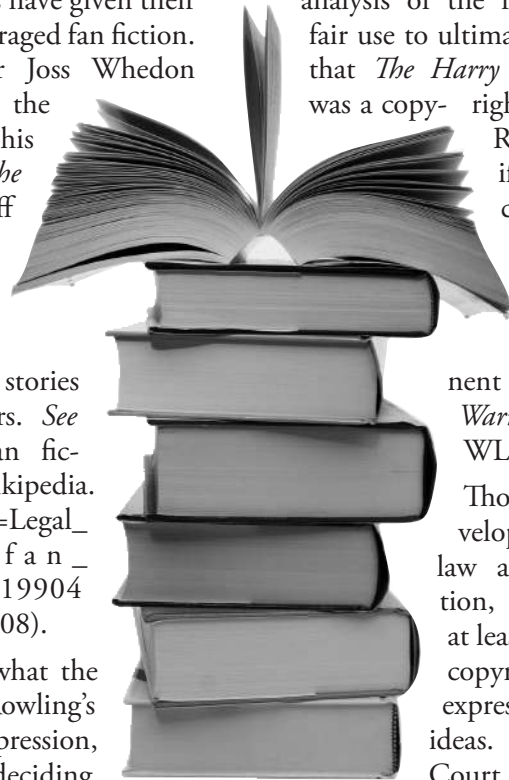
Many argue that the fan fiction found on the Internet should be allowed because the works are typically not generated for commercial purposes, but rather are free to those with access. However, common law is absent any determination whether this belief would survive in our *Muggle* world. The cost-prohibitive reality of suing in the courts coupled with the proliferation of fan fiction publishers in the community¹ may be a significant reason this area of the law has not clearly been defined. See Wu, *Tolerated Use*, 620.

While the history of fan fiction is quite old, it has blossomed with the rise of the Internet and has developed certain social norms and self-regulations to deal with plagiarism and unauthorized commercial use. Beyond the self monitoring, fan fiction creators and website hosts quickly abide by the requests of the copyright owners, especially with the prominence of the Digital Millennium Copyright Act takedown notices for the removal of potentially violative

works. See Marjorie Heins & Tricia Beckles, *Will Fair Use Survive? Free Expression in the Age of Copyright Control* 55, 57 (2005). Still, several prominent copyright owners have given their blessings to and encouraged fan fiction. For instance, creator Joss Whedon asked fans to read the fan fiction regarding his show when *Buffy the Vampire Slayer* went off the air. Rowling has gone on to say that she was "flattered" that people wanted to write their own stories based on her characters. See Legal issues with fan fiction, http://en.wikipedia.org/w/index.php?title=Legal_issues_with_fan_fiction&oldid=239919904 (last visited Oct. 1, 2008).

One has to wonder what the true significance of Rowling's suit, a case of first impression, is on fan fiction. By deciding to create and commercially sell his encyclopedia based on Rowling's wizarding empire, Vander Ark crossed the line from enthusiastic fan to that of a professional and potential competitor. The court acknowledged that the encyclopedic facts in *The Harry Potter Lexicon* did not necessarily compete against Rowling's seven books, and its use of facts give strong argument to allow it to escape containment under the fair use doctrine. See *Campbell v. Acuff-Rose Music, Inc.*, 510 U.S. 569 (1994) and *Stewart v. Abend*, DBA Authors Research Co., 495 U.S. 207 (1990) ("In general, fair use is more likely to be found in factual works than in fictional works."). However, New York's Judge Patterson did not entirely value Vander Ark's argument that his encyclopedia was transformative and merely using the copyrighted materials for purposes distinct from the original work, even though he acknowledged that *The Harry Potter Lexicon* was not created for the purpose of telling an entertaining and thought-provoking

story. It was, however, in direct competition with Rowling's two companion books that also presented facts to the fiction. The court went into detailed analysis of the four factors of fair use to ultimately determine that *The Harry Potter Lexicon* was a copy-



right violation of Rowling's work, if mainly to her charity, companion works, and granted her motion for permanent injunction. See *Warner Bros.*, 2008 WL 4126736.

Though still a developing area of law and interpretation, it seems clear, at least for now, that copyright protects expression and not ideas. The New York Court seems to hint that if Rowling's two

companion books did not exist, *The Harry Potter Lexicon* may have been published. Copyright is a law that does not protect facts or any idea, process, concept, principle, or discovery, regardless of the form in which it is described, explained, illustrated, or embodied in such work. See *Baker v. Selden*, 101 U.S. 99 (1879). However, the court implied that when the fan fiction is too close to the nature of work upon which it is based, the copyright owner may step in, wave her magic wand, and make the alleged violative work disappear in a cloud of smoke.

Jonathan L. Innes is an associate with Alvarez, Sambol, Winthrop & Madson, P.A. He would like to thank his editor, Alyson Innes, who is an associate at Rissman, Barrett, Hurt, Donahue & McLain, P.A. Both Jonathan and Alyson have been members of the OCBA since 2003.

¹ It has been reported that well over 300,000 Harry Potter stories have been posted online, a number increase from 280,000 last year.

The Briefs is fresh from a month hiatus, but just because we stopped, no one else did! Take a look at all the happenings! You may want to get involved in these, especially a hot OCBA social event!

On November 6, 2008, the **OCBA's Annual Joint Happy Hour**, sponsored by Westlaw, will be held from 5:30 p.m. to 7:30 p.m. at Brick & Fire on Church Street in downtown Orlando (near Cheyenne Saloon). The cost is \$5.00, with a donation of non-perishable food (or a cash donation of \$5.00 or more) to the Destiny Foundation of Central Florida to stock the shelves of the Destiny Foundation as the organization prepares for Thanksgiving and the holiday season. To learn more about the Destiny Foundation, please visit their website at www.battlepoverty.org. Admission to the Joint Happy Hour will feature free brick-oven pizza, the specialty of Brick & Fire. Two free drinks are included in the price of admission, and there will also be great drink specials on martinis, beer, and wine. Please RSVP to Assistant Social Committee Chair, **Jacquelynne**

Jordan at jacquelynne.jordan@lowndes-law.com. In your RSVP, please give Jacquelynne your full name, firm name, and bar association(s).

The Central Florida Real Estate Council (CFREC) conducted its 2008 Law Symposium Seminar on real estate law and An Evening With Economist Dr. Hank Fishkind: 2008 and Beyond Economic Forecast.

Central Florida Association for Women Lawyers (CFAWL) had a great attendance at its New Member Reception. FAWL President, *Rebecca Steele*, addressed the group and a candidate forum was held. CFAWL's Holiday Party will be Thursday, December 11, 2008. Lunches are continuing the first Friday of the month at the Citrus Club.

The Federal Bar Association Orlando Chapter celebrated with the **Honorable Patricia C. Fawsett's** election of Senior Status. The **Honorable Judge Charles R. Wilson** of the United States Court of Appeals for the Eleventh Circuit spoke to the group on "New Developments in the United States Court of Appeals for the Eleventh Circuit and Ethical Considerations." The State of the District Luncheon featured "The State of the District Address" delivered by the **Honorable Judge Anne C. Conway** and featured **William K. Suter**, Clerk of the United States Supreme Court. At the conclusion of the luncheon, Clerk Suter conducted a swearing in

ceremony for Admission to the Bar of the United States Supreme Court for those who qualified for admission.

The Hispanic Bar Association (HBA) jointly hosted a series of Central Florida election debates to promote voter education. The group thanks everyone for making their Annual School Supply Drive benefiting the entire 4th Grade of Engelwood Elementary a huge success! The Annual Installation Dinner is scheduled for January 17, 2009 at the Disney Yacht and Beach Club and will feature Keynote Speaker **Mr. Frank Angones**, past president of The Florida Bar. For information please contact cduque@duquelaw.com.

Central Florida Paralegal Association, Inc.

(CFPA) hosts monthly lunches at three locations: Winter Park/Maitland (2nd Thursday of the month), Downtown Orlando (2nd Wednesday of the month), and Altamonte Springs (final Friday of the month).

CFPA hosts monthly Membership Mixers/Happy Hours the 3rd Thursday of the month. For more information on any and all of these events, please visit their website at www.cfpainc.org.

Central Florida Gay and Lesbian Lawyers

Association (CFGALLA) participated in and conducted a food drive to benefit Hope and Help during October's Annual Come Out With Pride festivities. Substantively, CFGALLA sponsored "Out in Court: Thirty Years of Gays and Lesbians in the Legal Profession," the first formal recognition and observance of the Florida Supreme Court's decision of *Eimers* 30 years ago, which held that being "homosexual" does not per se bar one from becoming a lawyer. Once again, CFGALLA is participating in the 5th Annual Minority Mentoring Picnic, which pairs a minority student with a judge or attorney, on November 1st. To learn more about the picnic, read about it at: goliath.ecnext.com/coms2/gi_0199-7307889/Matchingmentors. Participation is welcomed. Reserve at: www.kttlaw.com/picnic. Admission to the park is \$5 per car.

If you have any legal organizational news to share, please email Jessica K. Hew at jhew@grahambuilder.com.

Jessica K. Hew is a partner with Graham, Builder, Jones, Pratt & Marks, LLP. She has been a member of the OCBA since 1995.

Side Bar



Jessica K. Hew



Presentation Skills for Lawyers ● “Trust Me, I’m a Lawyer!” ●

On television the life of a trial lawyer is always filled with excitement, isn’t it? For example, on a typical episode of *Boston Legal*, whenever Alan Shore goes to court he either vigorously cross-examines a witness (and wins his case) or he delivers an impassioned closing argument (and wins his case). After court he returns to the office where he gains a new client (whose case is always scheduled for trial *tomorrow*), strikes up a romance with one of the beautiful new associates and then finishes the day by enjoying Scotch and cigars on the balcony with his best friend and fellow superstar lawyer, Denny Crane.



Elliott Wilcox

That’s a typical day in the life of most trial lawyers, right?

In reality, the life of a trial lawyer isn’t that exciting. Sure, we may spend more time in court than the TV lawyers do, but those superstar courtroom moments are few and far between. If you’re like me, much of your time in court is probably spent twiddling your thumbs, waiting for judges to call up your case.

Each week I typically spend at least a dozen hours in court. Rather than let it become wasted time, I always try to keep my eyes and ears open for anything that might help persuade jurors, win trials or make me become a better trial lawyer. I also try to keep my ears open for any phrases that might detract from the ability to persuade or that might make someone sound foolish. Over the past few weeks, there’s been one particular phrase that’s been grating on my ears. It’s a phrase that you’ve probably heard countless times in court. Heck, you’ve probably even said it (I know that I have) without realizing how much it can detract from your persuasive power.

Here’s the phrase: “*As an officer of the court . . .*”

Wait a second. You’re probably saying, “What’s so terrible about that? Doesn’t that phrase show proper respect for our role in the courtroom?”

Yes, it does, but the attorneys I heard weren’t using it to show deference to the court or respect for the profession. Look at how they used it:

- “*As an officer of the court*, I wanted to let you know that I **did** attempt to coordinate depositions with Ms. Thomas, but we were unable to agree upon the meeting location.”

- “I know this has been a contentious case, Judge, *but as an officer of the court*, let me say that I **never** asked my assistant to ignore Ms. Jenkins’ vacation schedule when planning the timing for motion hearings.”
- “*As an officer of the court*, let me assure you that I met with my client several times before today’s plea conference to discuss the ramifications of his plea.”

Basically, they were asking to be trusted because of their position as a member of the bar and an officer of the court. To boil it down to its most basic level, they were saying, “Trust me... I’m a lawyer!”

When lawyers draw attention to the fact that they’re credible because they’re “officers of the court,” it always causes me to question their credibility. I guess it’s the equivalent of a criminal suspect telling a police officer, “Officer, let me be honest with you . . .” When you hear him say “let me be honest with you,” what do you assume he’s going to do next? That’s right – you assume that he’s going to lie!

When someone calls attention to the fact that they’re being honest, we usually start to question everything else that they say. When a lawyer speaks in court it is **presumed**

that he’s telling the truth. But when you draw attention to that assumption it loses its persuasive power.

Judges shouldn’t be persuaded by your position or your title. Your credibility **must** be intrinsic. You need to demonstrate an “affidavit quality” - what you say must

be true simply because **you** are saying it. If you possess that “affidavit quality,” then you won’t have any need to use superfluous (and unpersuasive) language. If you **don’t** have it, then no label exists which could make you credible.

The next time you speak in court don’t rely upon your position or your title to persuade. Demonstrate that “affidavit quality” by letting your character and your credibility speak for you, and you’ll be the most persuasive lawyer in the courtroom.

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Elliott Wilcox is the editor of *Trial Tips Newsletter*. To get a free copy of his special report, “The Ten Critical Mistakes Trial Lawyers Make (and How to Avoid Them),” visit www.TrialTheater.com.

“*In reality, the life of a trial lawyer isn’t that exciting. Sure, we may spend more time in court than the TV lawyers do, but those superstar courtroom moments are few and far between.*”

Rainmaking ● Can Tracking Your Marketing Efforts ● Make You More Money? PART I

Businessmen say it. People with MBAs and top-level executive positions say it. And some enlightened attorneys say it. “You



Mark Powers



Shawn McNalis

can’t manage what you don’t measure.” We say it all the time because we believe this is one cliché worth repeating. If you don’t keep track of certain key measurements, you really won’t be able to tell what’s working and what’s not when it comes to your client development efforts.

You may have a general feeling about whether or not a new tactic is successful, but you won’t be able to fine-tune your marketing efforts without taking measurements. There are eight key statistics that we’d recommend tracking.

To start, let’s talk about how to gather the data. To obtain the eight key statistics we discuss below, you’ll have to have someone in the office tracking the numbers. This is easily accomplished in one of several ways: you can use a handmade chart placed on a clipboard, an Excel spreadsheet placed next to the telephone, or a report generated by your contact management software if it has this function. A basic spreadsheet format, in whatever level of technology works for your office, is fine for this task. Included in this

article is a sample spread sheet you can use as a model when you format your form.

Filling out the form, or spreadsheet, is typically handled by the receptionist who is charged with capturing much of the initial data concerning calls and appointments made by inquiring potential clients. If your office employs a marketing assistant, it is usually a part of his or her job description to gather this kind of marketing data, usually working with the front desk person who is well positioned to capture the initial data on new client inquiries.

The spreadsheet is set up to capture a month’s worth of information and contains areas at the top for totals, as in “Total # of Inquiry Calls,” “Total # of New Clients,” and “Total # of Marketing Activities.” Reading across the sample chart from left to right,

well. In the next column, list whether or not the client is qualified. This is something that the attorney will have to help determine unless it’s clear the caller is price-shopping. Next is a place to record whether or not the person signed up for a consultation followed by a column to capture whether or not the potential client became a paying client. The model spreadsheet is truncated due to space limitations – make yours long enough to handle all your monthly inquiries.

Keep in mind that this spreadsheet is useless unless it is reviewed on a regular basis. Either the marketing assistant and the attorney, the attorney and his or her partners, or the attorney alone should look at this form often during the month to track progress. Once data from a number of months has been captured, the firm will have

Sample Tracking Form					
Month: _____		Total # of Inquiry Calls this month: _____			
Total # of Marketing Activities: _____			Total # of New Clients this month: _____		
Date	Potential Client Name	Source of Referral and Name of Referral Source	Qualified Client?	Consultation Meeting Set?	Convert To Client?
		<input type="checkbox"/> YP <input type="checkbox"/> AD <input type="checkbox"/> RS <input type="checkbox"/> CL <input type="checkbox"/> Internet Name: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> YP <input type="checkbox"/> AD <input type="checkbox"/> RS <input type="checkbox"/> CL <input type="checkbox"/> Internet Name: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No
		<input type="checkbox"/> YP <input type="checkbox"/> AD <input type="checkbox"/> RS <input type="checkbox"/> CL <input type="checkbox"/> Internet Name: _____			<input type="checkbox"/> Yes <input type="checkbox"/> No

there are spaces to capture the date, the potential client’s name, where the client originated. (YP stands for Yellow Pages, AD stands for advertising, RS stands for Referral Source, and CL for client. Internet is spelled out.) If the name of the referral source is known, it can be written here as

an invaluable record of their key indicators and a tool to help them decide how to proceed with their marketing efforts.

A year’s worth of this data, for example, can tell you whether you are getting your money’s worth out of your phone book ad, whether your

conversion rate from potential clients to paying clients is strong, what percentage of your clients are unqualified, whether your website is pulling in potential clients, and what percentage of your referrals come from past clients.

We'll discuss these key indicators in more depth in next month's issue. Stay tuned to learn more about marketing metrics.

Author's note: *In our article in the September issue of The Briefs, "A Simple Way to Increase Referrals – Learn to Say Thank You," we discussed the importance of adding a personal touch when expressing appreciation to referral sources including, in some cases, sending a meaningful gift. However, we neglected to remind attorneys that their gestures must not violate Rule 4-7.2(c)(14) of the Rules Regulating the Florida Bar, which prohibits an attorney from giving anything "of value" to a referral source. Attorneys should consult with*

the Florida Bar if they have questions regarding the application of the rule.

Mark Powers, President of Atticus, Inc., and **Shawn McNalis** co-authored "The Making of a Rainmaker: An Ethical Approach to Marketing for Solo and Small Firm Practitioners" and are featured writers 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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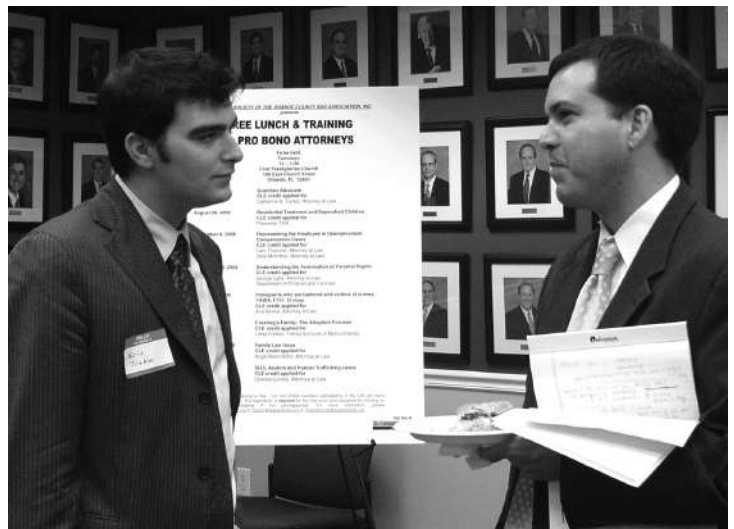
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Congratulations to new OCBA members Brendan Lynch, Jacquelynne Jordan and Kim Nguyen! The three attorneys, all with Lowndes, Drosdick, Doster, Kantor and Reed, attended the bar's New Member Reception in August.



Eric Trabin, an attorney with the State Attorney's Office, speaks with Tad Yates at the New Member Reception. Information about LAS pro bono training and photos of past OCBA presidents provide the backdrop.

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Speaking Engagements

Zachary Bancroft, William Porter and **Gary Soles**, Lowndes, Drosdick, *et al.*, gave a presentation on foreclosures to approximately 25 members of the Central Florida Chapter of the Risk Management Association in June at the firm.

Amanda Caruso, Lowndes, Drosdick, *et al.*, was featured in the July issue of *Orlando Lawyer* magazine for the column *10 Things I Can't Live Without*. In addition, **Kristopher Kest** was mentioned in an article about the firm's 20-member team for the Insurance Office of America's Corporate 5K run.

Richard Dellinger, Lowndes, Drosdick, *et al.*, presented a seminar entitled *Discovery Strategy: Finding the*

Smoking Gun to attorneys and other legal professionals.

Miranda Fitzgerald, Lowndes, Drosdick, *et al.*, led a panel discussion on Growth Management and DRI issues at the Environmental Summer School sponsored by The Florida Chamber in Marco Island.

Rebecca Furman, Lowndes, Drosdick, *et al.*, was a panel member for the *Orlando Business Journal* and Winter Park Chamber of Commerce's annual Winter Park update on August 6.

Rebecca Furman, Tom Sullivan, Jennifer Cerasa and **Brendan Lynch**, Lowndes, Drosdick, *et al.*, gave a seminar for the members of the local chapter of the American Planning Association on school concurrency and the Capacity Enhancement Agreement for the August monthly meeting.

Jon H. Gutmacher, Esq. presented a seminar entitled *Weapons and Use of Force Issues for Licensed Investigators* at the Florida Association of Licensed Investigators annual conference in Orlando on May 23, 2008. He also presented the topic *Everything You Ever Wanted to Know about Gun Defenses* to the Florida Public Defenders Association at its summer conference in Orlando on August 4, 2008.

Woody Igou of The Law Office of Igou & Smith, recently spoke at the Michigan Association for Justice in Novi, Michigan on *New Issues Plaintiff Brain Injury Litigation*.

Kristopher Kest, Lowndes, Drosdick, *et al.*, is a member of the board of directors of the OCBA Young Lawyers Section and was recognized for his outstanding chairmanship of the recent CLE event, *Afternoon at the Courthouse*.

Morey Raiskin, Lowndes, Drosdick, *et al.*, presented *Florida Employment Law Issues* at the firm.

Michael Ryan, Lowndes, Drosdick, *et al.*, was certified as a faculty member for the Tampa conference on

Development Agreements, Easements and CCRs: Uses and Considerations in 2008 by Law Seminars International.

Drew Sorrell, Lowndes, Drosdick, *et al.*, was a panelist/speaker at the firm's co-sponsored seminar entitled *Business Readiness: Reducing Costs Through Proactive Management of eDiscovery*.

Brikena Tomasic, Lowndes, Drosdick, *et al.*, was recently admitted to the United States District Court for the Northern District of Florida as well as to the Middle District of Florida.

Lawrence M. Watson, Jr. and **A. Michelle Jernigan** of Upchurch Watson White & Max, and other members of the firm, gave a panel presentation entitled *Situational Mediation Techniques* at the American College of Civil Trial Mediators (ACCTM) 2008 Retreat and Conference, Advanced Mediation Training, on July 22 in Rockport, Maine.

Louise B. Zeuli, JD, MSN, ARNP, RN, of Louise B. Zeuli, P.A., recently presented *Legal Implications of Parish Nursing* at the Florida Hospital Community Outreach Program, Center for Community Health Ministry, in Orlando.

Published

Alexander Dobrev, Lowndes, Drosdick, *et al.*, recently wrote an article entitled, "Fractured Condos - Avoiding the Broken Deal," which was published in the July issue of *Florida Real Estate Journal*, a commercial real estate news publication.

Dennis Wall's book, "Litigation and Prevention of Insurer Bad Faith," Second Edition and 2008 Supplement to the Second Edition, has been published online and in print by West Publishing Company. Additionally, "Big Claims, Low Limits," co-authored by **Dennis Wall** and the Excess and Surplus Lines Claims Association's (ESLCA) Ed McKinnon of California, has been published by ESLCA.

News to Note

From the Fifth DCA – Effective November 1, 2008, in addition to filing paper originals of briefs, petitions, responses to petitions and orders and motions for rehearing, the Fifth DCA will require that a copy of those documents be transmitted to the Court as an attachment to an e-mail addressed to 5DCAefiling@flcourts.org. Transcripts and Appendices must also be electronically filed by e-mail. Administrative Order 5D08-01, which establishes the procedure for e-mailing pleadings, is available for review on the Court's website, www.5dca.org.

Barry University School of Law – The ABA has awarded Barry its National Law Student Division Volunteer Income Tax Assistance (VITA) Program Award for the third consecutive year. The community service program serves moderate income tax payers. Among others participating in the program were OCBA members Professor **Frank Schiavo** and 3L **Chanel Mosley**.

Chief Justice of the United States John G. Roberts Jr. participated in the UF Levin College of Law's Justice Campbell Thornal Moot Court Final Four competition in September. Four second-year students argued a hypothetical First Amendment case before Justice Roberts, **Senior Judge Peter T. Fay**, **Judge Susan H. Black** and **Judge Rosemary Barkett**, jurists on the U.S. Eleventh Circuit Court of Appeals.

UF Levin College of Law - The new Peter T. Fay Jurist-In-Residence program will bring judges to the college to provide insights to students and faculty on a broad range of issues relating to judicial process, substantive law, trial and appellate advocacy, and the day-to-day practice of law. Judge Peter T. Fay is a senior judge of the U.S. Eleventh Circuit Court of Appeals and a 1956 graduate of the College of Law.



Mary Ann Morgan, Wynne McFarlin, and Barbara Eagan were among those who attended the CFAWL Judicial Candidate Forum on August 1, 2008.

Nov. 20 - Intellectual Property Committee & Allen, Dyer, Doppelt, et al. 12:00 p.m.-1:30 p.m. (lunch included), *Recent Developments in the Patent Cooperation Treaty and Current WIPO Initiatives*. Guest Speaker: Matthew R. Bryan. Citrus Club. Contact Karen Lessard at klessard@addmg.com or 407-841-2330.

Seminars

Nov. 5 - Real Property Committee. 12:00 p.m.-1:30 p.m., *Short Sales*. 1.0 CLE (pending). OCBA Center. Contact Carol Buckley at CBuckley@lseblaw.com.

Nov. 14 - Thomson Reuters & OCBA. 9:00 a.m.-4:00 p.m., *Internet Marketing Seminar*. 5.0 CLE. Full day - \$50 (lunch included); 2.5 CLE - Half day - \$35. OCBA Center. Contact Christine Otto at Christine.Otto@thomsonreuters.com or 800-455-4565, ext. 75146.

Nov. 20 - Appellate Practice Committee. 1:30 p.m.-5:00 p.m. (reception to follow), *Appeals and Extraordinary Writs for the Criminal Law Practitioner*. 4.0 CLE. \$40 - members (by Nov. 13); \$60 - non-members (by Nov. 13); late fee: add \$10. OCBA Center. Contact Marie B. at 407-422-4551, ext. 233.

Dec. 11 - Real Property Law Committee Seminar. 12:00 p.m. *2008 Real Property Legislative Update*. 1.0 CLE (pending). OCBA Center. Contact Carol Buckley at CBuckley@lseblaw.com.

Legal Aid Lunchtime Training seminars are held from 12:00 p.m.-1:30 p.m. at the First Presbyterian Church, Downtown. Reservations requested. Contact Cathy Tucker at ctucker@legalaidocba.org.

Nov. 18 - Family Law Issues. CLE (pending).

Dec. 9 - SIJS, Asylum and Human Trafficking Cases. CLE (pending).

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12:00 p.m. • Bar Center
- 6** *Federal Judicial Relations Committee*
12:00 p.m. • Judge Conway's Chambers
- OCBA Joint Happy Hour*
5:30 p.m. • Brick & Fire
- 11** *Executive Council Meeting*
4:30 p.m. • Bar Center
- 12** *Estate Guardianship & Trust Committee*
12:00 p.m. • Bar Center
- Judicial Relations Committee*
12:15 p.m. • Courthouse, 21st Flr.
Conference Rm.
- 13** *OCBA Luncheon*
Hon. Patricia C. Fawsett, Hon. Charles T. Wells, Hon. Robert J. Pleus, Jr.
11:30 a.m.
The Ballroom at Church Street
- Social Security Committee*
12:00 p.m. • Bar Center
- YLS Executive Board Meeting*
5:30 p.m. • 300 S. Orange Ave., #1300
- 14** *Thomson Reuter's Internet Marketing Seminar*
9:00 a.m. • Bar Center
- Workers' Compensation Committee*
11:45 a.m. • Smokey Bones
- 17** *Legal Aid Society Board Meeting*
11:45 a.m. • 100 E. Robinson St.
- 18** *Professionalism Committee*
8:00 a.m. • Bar Center
- Legal Aid Society Lunchtime Training*
Family Law Issues
12:00 p.m. • First Presbyterian Church,
Downtown
- Entertainment Law Committee*
12:00 p.m. • Bar Center
- Social Committee*
6:00 p.m. • TBA
- 19** *Insurance Law Committee*
12:00 p.m. • Bar Center
- 20** *Appellate Practice Committee Seminar*
Appeals and Extraordinary Writs for the
Criminal Law Practitioner
1:30 p.m. • Bar Center
- Intellectual Property Committee & Allen, Dyer, Doppelt, et al. Seminar*
Recent Developments in the Patent
Cooperation Treaty and Current
WIPO Initiatives
12:00 p.m. • Citrus Club
- 21** *Family Law Committee*
8:00 a.m. • 425 N. Orange Ave., #2310
- Legal Aid Volunteer Appreciation Luncheon*
9:00 a.m. • Bar Center
- 26** *Labor & Employment Law Committee*
12:00 p.m. • Bar Center
- Business Law Committee*
1:00 p.m. • Location varies.
Contact Chairperson
- 27-28**
Thanksgiving Holiday
Bar Office Closed
- 2** *Intellectual Property Committee*
11:30 a.m. • Bar Center
- 3** *Criminal Law Committee*
12:00 p.m. • Courthouse, 23rd Flr.
Judges' Conference Rm.
- 9** *Executive Council Meeting*
4:30 p.m. • Bar Center
- 10** *Estate Guardianship & Trust Committee*
12:00 p.m. • Bar Center
- 11** *Real Property Law Committee Seminar*
2008 Real Property Legislative Update
Speaker: Valerie Grandin (The Fund)
12:00 p.m. • Bar Center
- Social Security Committee*
12:00 p.m. • Bar Center
- 7** *Criminal Law Committee*
12:00 p.m. • Courthouse, 23rd Flr.
Judges' Conference Rm.
- Elder Law Committee*
12:00 p.m. • OCBA Center
- 8** *Real Property Law Committee*
12:00 p.m. • Bar Center
- Social Security Committee*
12:00 p.m. • Bar Center
- OCBA Paralegal Committee*
5:30 p.m. • Bar Center
- YLS Executive Board Meeting*
5:30 p.m. • 300 S. Orange Ave., #1300
- 9** *Workers' Compensation Committee*
11:45 a.m. • Smokey Bones
- 12** *Workers' Compensation Committee*
11:45 a.m. • Smokey Bones
- Professionalism Committee*
8:00 a.m. • Bar Center
- Entertainment Law Committee*
12:00 p.m. • Bar Center
- Social Committee*
6:00 p.m. • TBA
- 17** *Insurance Law Committee*
12:00 p.m. • Bar Center
- 18** *Appellate Practice Committee*
12:00 p.m. • Bar Center
- 19** *Family Law Committee*
8:00 a.m. • 425 N. Orange Ave., #2310
- 22-26**
Winter Holiday
Bar Closed
- 31** *Business Law Committee*
1:00 p.m. • Location varies. Contact
Chairperson

December

January '09



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